

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule concerning Pennsylvania's adoption of a CTG for paper, film, and foil surface coating processes does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

**Dated:** February 22, 2011.

**W.C. Early,**

*Acting Regional Administrator, Region III.*

[FR Doc. 2011-4909 Filed 3-3-11; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 211, 212, and 252

[DFARS Case 2009-D043]

**RIN 0750-AG83**

#### Defense Federal Acquisition Regulation Supplement; Reporting of Government-Furnished Property

**AGENCY:** Defense Acquisition Regulations System; Department of Defense (DoD).

**ACTION:** Notice of public meeting on proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to revise and expand reporting requirements for Government-furnished property to include items uniquely and non-uniquely identified, and to clarify policy for contractor access to Government supply sources.

**DATES:** *Public Meeting:* DoD is hosting a public meeting to discuss the proposed rule on March 18, 2011, from 1 p.m. to 4 p.m. DST. DoD published a notice of the public meeting on March 1, 2011 (76 FR 11190). This notice provides

additional information about the process for admittance to the meeting. Attendees should register for the public meeting at least one week in advance to ensure adequate room accommodations and to facilitate admittance into the meeting. Registrants will be given priority if room constraints require limits on attendance. To register, please go to—<http://www.acq.osd.mil/dpap/dars/Government-furnishedproperty.html> and submit the following information:

- (1) Company or organization name;
- (2) Full names of persons attending;
- (3) Identity if desiring to speak; limit to a 10-minute presentation per company or organization;
- (4) Last four digits of social security number for each person attending (non-Federal employees only).

Send questions about registration or the submission of comments to the e-mail address identified at <http://www.acq.osd.mil/dpap/dars/Government-furnishedproperty.html>. Please cite “Public Meeting, DFARS Case 2009-D043” in the subject line of the e-mail.

**ADDRESSES:** *Public Meeting:* The public meeting will be held in the General Services Administration (GSA) multipurpose room, 2nd floor, One Constitution Square (OCS), 1275 First Street, NE., Washington, DC 20417. Interested parties are encouraged to arrive at least 30 minutes early.

*Federal employees:* Upon arrival at OCS, attendees may enter through the main entrance and show their badge to the security officer behind the front desk prior to gaining admittance.

*Non-Federal employees:* Upon arrival at OCS, attendees must have a valid picture ID and enter through the visitor entrance. From there, they will be escorted to and from the meeting room by a designated GSA employee. If an attendee's name is not on the list provided to security in advance of the meeting, the attendee will still be allowed into the meeting, but admittance may be delayed.

If you wish to make a presentation, please contact and submit a copy of your presentation by March 11, 2011, to Ms. Clare Zebrowski, OUSD (AT&L) DPAP (DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20302-3060; facsimile 703-602-0350. Please cite “Public Meeting, DFARS Case 2009-D043” in all correspondence related to this public meeting. The submitted presentations will be the only record of the public meeting. If you intend to have your presentation considered as a public comment to be considered in the formation of a final rule, the

presentation must be submitted separately as a written comment as instructed below.

*Special Accommodations:* The public meeting is physically accessible to people with disabilities.

**FOR FURTHER INFORMATION CONTACT:** Ms. Clare Zebrowski, Telephone 703-602-0289; facsimile 703-602-0350. Please cite DFARS Case 2009-D043.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

DoD published a proposed rule in the **Federal Register** on December 22, 2010 (75 FR 80427). DoD published an extension of the public comment period on February 18, 2011 (75 FR 9527). The public comment period ends on April 8, 2011.

**Ynette R. Shelkin,**

*Editor, Defense Acquisition Regulations System.*

[FR Doc. 2011-4877 Filed 3-3-11; 8:45 am]

**BILLING CODE 5001-08-P**

## DEPARTMENT OF ENERGY

#### 48 CFR Parts 908, 945, and 970

**RIN 1991-AB86**

#### Acquisition Regulation: Department of Energy Acquisition Regulation, Government Property

**AGENCY:** Department of Energy.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Energy (DOE) is proposing to amend the Department of Energy Acquisition Regulation (DEAR) to conform to the Federal Acquisition Regulation (FAR), remove out-of date government property coverage, and update references. This proposed rule does not alter substantive rights or obligations under current law.

**DATES:** Written comments on the proposed rulemaking must be received on or before close of business April 4, 2011.

**ADDRESSES:** This proposed rule is available and you may submit comments, identified by DEAR: parts 908, 945 and 970 and RIN 1991-AB86, by any of the following methods: Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

*E-mail to:*

[DEARrulemaking@hq.doe.gov](mailto:DEARrulemaking@hq.doe.gov)mailto:. Include DEAR: parts 908 and 945 and RIN 1991-AB86 in the subject line of the message.

*Mail to:* U.S. Department of Energy, Office of Resource Management, MA-632, 1000 Independence Avenue, SW.,

Washington, DC 20585. Comments by e-mail are encouraged.

**FOR FURTHER INFORMATION CONTACT:**

Helene Abbott at (202) 287-1593 or via e-mail: [helene.abbott@hq.doe.gov](mailto:helene.abbott@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:**

Background

Section-by-Section Analysis

Procedural Requirements

- A. Review Under Executive Order 12866
- B. Review Under Executive Order 12988
- C. Review Under the Regulatory Flexibility Act
- D. Review Under the Paperwork Reduction Act
- E. Review Under the National Environmental Policy Act
- F. Review Under Executive Order 13132
- G. Review Under the Unfunded Mandates Reform Act of 1995
- H. Review Under the Treasury and General Government Appropriations Act, 1999
- I. Review Under Executive Order 13211
- J. Review Under the Treasury and General Government Appropriations Act, 2001
- K. Approval by the Office of the Secretary of Energy

**I. Background**

DOE is proposing to amend parts 908, Required Sources of Supplies and Services, 945, Government Property, and related 970, Management and Operating Contracts, to remove out-of-date coverage, to update references and to conform to the FAR.

Part 945 is amended to conform to FAR Part 45, Government Property. On May 15, 2007 (72 FR 27364), in the Federal Acquisition Circular (FAC) 2005-17, FAR Part 45 was amended to simplify procedures, clarify language, and eliminate out-of-date requirements related to the management and disposition of Government property in the possession of contractors by establishing a life-cycle approach to property management and sanctioning the use of consensus standards or industry-leading standards and practices for property management. The FAC deleted outdated clauses and combined selected FAR property clauses into a single clause. This proposed rule updates corresponding DEAR sections to conform to the FAR and other federal agencies' procedures. None of these changes are substantive or of a nature to cause any significant expense for DOE or its contractors.

**II. Section-by-Section Analysis**

DOE proposes to amend the DEAR as follows:

1. Section 908.1102 is amended by redesignating paragraph (a)(4) as 908.1102-70 Vehicle leasing to conform to the FAR convention, and adding the phrase "All subsequent lease renewals or extensions may be exercised only when General Service Administration

(GSA) has advised that it cannot furnish the vehicle(s) as prescribed herein."

2. Section 908.1104(f) is amended by removing "Federal Property Management Regulation (FPMR) 41 CFR 101-38.6." and adding in its place "Federal Management Regulation (FMR) 41 Code of Federal Regulation (CFR) 102-34.160, 102-34.175 and 102-34.80" to provide the updated citation.

3. Section 908.7101-2(a) is amended by removing "FPMR 41 CFR 101-25.304, 101-26.501, and 101-38.13 and DOE-PMR 41 CFR 109-25.304, 109-38.13, and 109-38.51" and adding in its place "Federal Property Management Regulations (FPMR) 41 CFR 101-26.501, and FMR 41 CFR 102-34, and Department of Energy-Property Management Regulations (DOE-PMR) 41 CFR 109-26.501" to provide the updated citation.

4. Section 908.7101-2 paragraph (b) is amended by removing "on GSA Form 1781, Motor Vehicle Requisition—Delivery Order—Invoice," and adding in its place "utilizing GSA's on-line system (Auto Choice)" to update the procedures.

5. Section 908.7101-3 is amended by removing "those" in the third sentence and removing in the last sentence, "(See DOE-PMR 41 CFR 109-38.5102-4)" to correct grammar and to remove an out-of-date citation.

6. Section 908.7101-4 is amended in paragraph (a) by removing "FMPR 101-38.9 and DOE-PMR 41 CFR 109-38.9" and adding in its place "FMR 102-34.270" to update the citation.

7. Section 908.7101-5 is amended in the third sentence by removing "38.5102" and adding in its place "26.501-50 and 109-26.501-51," to update the citation.

8. Section 908.7101-6 is amended in paragraph (a) by removing the last three sentences and adding in their place "Such forecast shall be submitted to the Property Executive, or designee, when requested.

9. Section 908.7101-6 is amended in paragraph (b) by removing "Sedans, station wagons, and light trucks requisitioned according to an approved forecast, but not contracted for by GSA until the subsequent fiscal year, will" and adding in its place "Approved sedans, station wagons, and light trucks requisitioned, but not contracted for by GSA until the subsequent fiscal year, shall" to update the procedures.

10. Section 908.7101-7 is amended in paragraph (a) by removing "101-38.303" and adding in its place "102-34.140" to update the citation.

11. Section 908.7101-7 is amended in paragraph (b) by removing in the second sentence the "," after records; removing

in the second sentence the "Director, Office of Property Management," and adding in its place "Director, Personal Property Management Division," to correct grammar and update office names.

12. Section 908.7101-7 is amended in paragraph (e) by removing the sentence and adding in its place "See DOE-PMR 41 CFR 109-38.202-2 and 109-38.202-3 for additional guidance." to update the citation.

13. Section 908.7102 is amended by removing the sentence and adding in its place "Acquisition of aircraft shall be in accordance with FMR 41 CFR 102-33, subpart B and DOE Order 440.2B latest revision." to update the citation.

14. Section 908.7103 is amended by removing "FPMR 41 CFR 101-25.104, 101-25.302, 101-25.302-3, 101-25.302-4, and 101-25.302-6, and 101-25.403, and DOE-PMR 41 CFR 109-25.302, 109-25.302-3, and 109-25.4" and by adding in its place "FPMR 41 CFR 101-25.104, 101-25.302, and DOE-PMR 41 CFR 109-25.302, and 109-25.4" to update the citations.

15. Section 908.7104 is amended by removing "FPMR 41 CFR 101-25.104, 101-25.302, 101-25.302-1, 101-25.302-5, 101-25.302-7, and 101-25.302-8, 101-25.404 and 101-26.505, and DOE-PMR 41 CFR 109-25.302, 109-25.302-1, and 109-25.350" and adding in its place "FPMR 41 CFR 101-25.104, 101-25.302, 101-25.302-5, 101-25.302-7, 101-25.404 and 101-26.505, and DOE-PMR 41 CFR 109-25.302, and 109-25.350" to update the citations.

16. Section 908.7121 is revised to update the first paragraph to clarify that the contracting officers shall require authorized contractors to follow procedures set forth in paragraphs (a) through (c).

17. Section 908.7121(b) *Precious metals* is revised to update the responsible office in subparagraph (1) and add subparagraph (2) to reference 945.604-1 for contractor identification and reporting for contractor inventory containing precious metals or possessing precious metals excess.

18. Section 908.7121(c) is amended to state that lithium is available from The National Nuclear Security Administration (NNSA), Y-12 National Security Complex in Oak Ridge, TN (Y-12) and that the excess quantities at Y-12 are to be the first source of supply.

19. Part 945 is amended to simplify procedures, clarify language, and eliminate obsolete requirements related to the management and disposition of Government property in the possession of contractors to conform to FAR Part 45 Government Property regulation.

20. Section 945.000 is amended by lower casing the first letter of the word “part”; by reversing “operating and management” to read “management and operating”; and by removing the second sentence in its entirety.

21. Section 945.101 is amended by removing the definition of capital equipment; and adding a definition of sensitive property. For clarity, since the FAR definition of sensitive property was changed under FAC 2005–17 and for further emphasis by DOE, the FAR definition is incorporated by reference.

22. Section 945.102–70 is revised in the first paragraph, first sentence, by removing “Within 30 days after the end of each fiscal year,” and adding in its place “The below listed information may be required to be reported from time to time to”; and by removing “Director, Office of Property Management,” and adding in its place “Personal Property Management Division”; in paragraph (e), by removing “dollar” and adding in its place “acquisition”; and in paragraph (e), by removing “as reported on last semiannual asset report (including date of report).” These changes correct the reporting process and provide the correct title of the receiving activity. Changes pertain to the Property Information Database System (PIDS) which was created by the Idaho National Lab and has been in use since the late 1990s. The PIDS system is used by both DOE and Contractors alike.

23. Subpart 945.1 is revised to add the new section “945.102–72 Reporting of contractor sensitive property inventory” to reflect the current sensitive property policy.

24. Section 945.3 is amended by redesignating subpart 945.3 and section 945.303–1 as section 945.170 and section 945.170–1, respectively, and by reserving section 945.3 and by using lower case letters for “property” and “contractors” in the section 945.170 title, and by adding a period at the end of “contractors”. These changes are made to conform to the FAR.

25. Subpart 945.4 is amended by removing and reserving this subpart in its entirety to conform to the FAR.

26. Section 945.5 title is amended by removing “Management of Government Property in the Possession of Contractors” and adding in its place “Support Government Property Administration” to conform to the FAR.

27. Section 945.505–11 is removed in its entirety to conform to the FAR.

28. Subpart 945.5 is revised by changing its title to “945.570 Management of Government property in the possession of contractors” to conform to the FAR.

29. Section 945.506 is removed in its entirety.

30. Section 945.570–2 is redesignated as 945.570–1 and is amended at paragraph (c) the second sentence by removing “(GSA Form 1781)”, and adding “via GSA Autochoice” after “should be processed”. The replaced information updates the DEAR to conform to GSA’s current procedures.

31. Redesignated 945.570–1(f) is amended by removing “Motor Vehicle Rental” and adding in its place “Leasing of Automobiles and Light Trucks”.

32. Section 945.570–7 is redesignated as 945.570–2.

33. Section 945.570–8 is redesignated as 945.570–3 and is revised in section (a) in the first sentence, by removing “(on or before December 1)”.

34. Redesignated 945.570–3(b) is amended after “DOE-owned” by adding “, GSA leased”; before “and/or” and by adding “electronically” before “submit”.

35. Redesignated 945.570–3(b)(1) is amended by removing “DOE Report of Motor Vehicle Data (passenger vehicles)” and adding in its place “Annual Motor Vehicle Fleet Report”.

36. Redesignated section 945.570–3(b)(2) is amended by removing “DOE Report of Truck Data” and adding in its place “Federal Fleet Report (41 CFR 102–34.335)”.

37. Subpart 945.6 is amended by removing the subpart title “Reporting, Redistribution, and Disposal of Contractor Inventory” and adding in its place “Reporting, Reutilization, and Disposal”.

38. Subpart 945.6 is amended by adding a new section “945.602 Reutilization of Government property.”

39. Subpart 945.6 is amended by adding a new section “945.602–70 Local screening”.

40. Section 945.603 is redesignated as 945.670, DOE disposal methods.

41. Section 945.603–70 is amended by redesignating this section as “945.670–1”; and removing “FAR Subpart 45.6” and adding in its place “48 CFR 45.606–3”. This amendment is to conform the DEAR to the FAR.

42. Section 945.603–71 is redesignated as “945.670–2”.

43. Subpart 945.6 is amended by adding a new section 945.603 Abandonment, destruction or donation of excess personal property which refers to 945.670 for disposal methods. These changes are made to conform to the FAR and move current DEAR information to a new section.

44. Subpart 945.6 is revised by adding a new section 945.604 Disposal of surplus property to conform to the FAR.

45. Section 945.607–2(b) is redesignated as 945.604–1 Recovering

precious metals. The office name and address are updated. Paragraph (d) references 945.670 for DOE disposal methods. By adding the other precious metals, we are aligning the DEAR to FAR 46.101.

47. Section 945.608–2 is redesignated as “945.602–3(a)” and is amended by removing subparagraph (b)(1) in its entirety and adding in its place “(a) *Standard screening*. (1) Prior to reporting excess property to GSA, all reportable property, as identified in Federal Management Regulation 41 CFR 102–36.220, shall be reported for centralized screening in the DOE Energy Asset Disposal System (EADS). Reportable excess personal property will be screened internally via the EADS system for a period of 15 days.” These changes are made to update the DEAR to the current on-line reporting.

50. Redesignated section 945.602–3(a)(1)(i) [previously 945.608–2(b)(1)] is amended by in the first sentence, by removing “REAPS” and adding in its place “EADS”; in the first sentence, by removing “address code” and adding in its place “Activity Address Code (AAC)”; by removing the second sentence in its entirety and adding in its place “The AAC will be assigned by DOE Headquarters upon receipt of a formal letter of authorization signed by the DOE contracting officer,” and by removing the third sentence in its entirety. These changes are made to update the current procedure.

51. Redesignated section 945.602–3(a)(1)(ii) is amended by removing the sentence in its entirety and adding a new sentence to indicate that any changes to an Activity Address code shall be submitted to the Office of Procurement and Assistance Management, Personal Property Management Division, within the Headquarters procurement organization.

52. The section designated as 945.608–3 is removed. Section 945.602–70 Local screening provides the correct process and title for property screening and disposal.

53. The section designated as 945.608–4 is removed.

54. Section 945.608–5 is redesignated as 945.602–3(b)(2) and is amended in the first paragraph, by adding “(b) *Special screening requirements*. (2) *Special test equipment with commercial components*—” prior to the redesignated text.

55. Section 945.608–5(c) is redesignated as 945.602–3(b)(3).

56. Section 945.608–6 is redesignated as 945.670–3; and is amended in paragraph (a) after requirements, by removing “in accordance with the provisions of FAR 45.608–6.”; in both

paragraphs, by removing “Office of Property Management Division” and adding in its place “Personal Property Management Division”; and in paragraph (b) by removing “HCA” and adding in its place “Procurement Directors”.

57. Section 945.610–4 is redesignated as 945.671.

58. Section 970.5244–1(k) is amended by removing the paragraph in its entirety and adding in its place “*Government Property*”. The Contractor shall establish and maintain a property management system that complies with criteria in 48 CFR 970.5245–1, Property, and 48 CFR 52.245–1, Government Property.”

59. Section 970.5244–1(q)(13) is added to correct an error in the DEAR Final Rule [74 FR 36376–36378, dated July 22, 2009] which omitted “Products made in Federal and penal and correctional institutions—41 CFR 101–26.702.”

60. Section 970.5245–1 is amended by removing and reserving paragraph (i)(1)(ii)(B). This amendment clarifies the contract conditions for property management systems approval.

### III. Procedural Requirements

#### A. Review Under Executive Order 12866

This regulatory action has been determined not to be a “significant regulatory action” under Executive Order 12866, “Regulatory Planning and Review,” [58 FR 51735, October 4, 1993]. Accordingly, this rule is not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

#### B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, “Civil Justice Reform,” [61 FR 4729, February 7, 1996], imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for

affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the United States Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or if it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

#### C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that an agency prepare an initial regulatory flexibility analysis for any regulation for which a general notice or proposed rulemaking is required, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)). This rule updates references in the DEAR that apply to public contracts and does not impose any additional requirements on small businesses. This proposed rule does not alter any substantive rights or obligations and consequently, this proposed rule will not have a significant cost or administrative impact on contractors, including small entities.

On the basis of the foregoing, DOE certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE’s certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

#### D. Review Under the Paperwork Reduction Act

This proposed rule does not impose a collection of information requirement subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Existing burdens associated with the collection of certain contractor data under the DEAR have been cleared under OMB control number 1910–4100.

#### E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this proposed rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE’s regulations (10 CFR part 1021, subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this proposed rule is categorically excluded from NEPA review because the amendments to the DEAR are strictly procedural (categorical exclusion A6). Therefore, this proposed rule does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

#### F. Review Under Executive Order 13132

Executive Order 13132, [64 FR 43255, August 4, 1999], imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive Order requires agencies to have an accountability process to ensure meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations [65 FR 13735]. DOE has examined the proposed rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

#### G. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires a Federal agency to perform a written assessment of costs and benefits of any rule imposing a Federal mandate with costs to State, local or tribal governments, or to the private sector of \$100 million or more. This rulemaking proposes changes that do not alter any substantive rights or obligations. This

proposed rule does not impose any mandates.

*H. Review Under the Treasury and General Government Appropriations Act, 1999*

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277), requires Federal agencies to issue a Family Policymaking Assessment for any rulemaking or policy that may affect family well-being. This rulemaking will have no impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

*I. Review Under Executive Order 13211*

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, [66 FR 28355, May 22, 2001] requires Federal agencies to prepare and submit to Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This proposed rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

*J. Review Under the Treasury and General Government Appropriations Act, 2001*

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at [67 FR 8452, February 22, 2002], and DOE's guidelines were published at [67 FR 62446 October 7, 2002]. DOE has reviewed the proposed rule under the OMB and DOE guidelines and has

concluded that it is consistent with applicable policies in those guidelines.

*K. Approval by the Office of the Secretary of Energy*

Issuance of this proposed rule has been approved by the Office of the Secretary of Energy.

**List of Subjects in 48 CFR Parts 908, 945, and 970**

Government procurement.

Issued in Washington, DC, on February 2, 2011.

**Patrick M. Ferraro,**

*Acting Director, Office of Procurement and Assistance Management, Department of Energy.*

**Joseph W. Waddell,**

*Director, Office of Acquisition and Supply Management, National Nuclear Security Administration.*

For the reasons set out in the preamble, the Department of Energy (DOE) proposes to amend Chapter 9 of Title 48 of the Code of Federal Regulations as set forth below.

**PART 908—REQUIRED SOURCES OF SUPPLIES AND SERVICES**

1. The authority citation for part 908 continues to read as follows:

**Authority:** 42 U.S.C. 7101, *et seq.*; 50 U.S.C. 2401, *et seq.*

2. Section 908.1102 is revised to read as follows:

**908.1102 Presolicitation requirements.**

2a. Section 908.1102-70 is added to read as follows:

**908.1102-70 Vehicle leasing.**

(a)(4) Commercial vehicle lease sources may be used only when the General Services Administration (GSA) has advised that it cannot furnish the vehicle(s) through the Interagency Motor Pool System and it has been determined that the vehicle(s) are not available through the GSA Consolidated Leasing Program. All subsequent lease renewals or extensions may be exercised only when GSA has advised that it cannot furnish the vehicle(s) as prescribed herein.

**908.1104 [Amended]**

3. Section 908.1104 is amended by removing "(FPMR) 41 CFR 101-38.6" in paragraph (f) and adding in its place "Federal Management Regulation (FMR) 41 CFR 102-34.160, 102-34.175, and 102-34.180".

4. Section 908.7101-2 is amended by: a. Revising paragraph (a); and b. Removing "on GSA Form 1781, Motor Vehicle Requisition—Delivery Order—Invoice," in paragraph (b), and

adding in its place "utilizing GSA's on-line system (Auto Choice)".

The revision reads as follows:

**908.7101-2 Consolidated acquisition of new vehicles by General Services Administration.**

(a) New vehicles shall be procured in accordance with Federal Property Management Regulations (FPMR) 41 CFR 101-26.501, and FMR 41 CFR 102-1 through 102-220, and Department of Energy-Property Management Regulations (DOE-PMR) 41 CFR 109-26.501.

Orders for all motor vehicles must be placed using GSA's online vehicle purchasing system (AutoChoice).

\* \* \* \* \*

**908.7101-3 [Amended]**

5. Section 908.7101-3 is amended by removing "those" in the third sentence; and "(See DOE-PMR 41 CFR 109-38.5102-4)" in the last sentence.

**908.7101-4 [Amended]**

6. Section 908.7101-4 is amended by removing "FPMR 41 CFR 101-38.9 and DOE-PMR 41 CFR 109-38.9." in paragraph (a), and adding in its place. "FMR 41 CFR 102-34.270."

**908.7101-5 [Amended]**

7. Section 908.7101-5 is amended by removing "109-38.5102," in third sentence and adding in its place "109-26.501-50 and 109-26.501-51,".

**908.7101-6 [Amended]**

8. Section 908.7101-6 is amended by: a. Removing the last three sentences in paragraph (a), and adding in their place "Such forecast shall be submitted to the Property Executive, or designee."; and

b. Removing "Sedans" at the beginning of the first sentence of paragraph (b) and adding "Approved sedans" in its place;

c. Removing in paragraph (b) "according to an approved forecast" and removing "will" and adding in its place "shall".

**908.7101-7 [Amended]**

9. Section 908.7101-7 is amended by: a. Removing "FPMR 41 CFR 101-38.303." in paragraph (a) and adding in its place "FMR 41 CFR 102-34.140.";

b. Removing in paragraph (b) in the second sentence, "records," and adding in its place "records";

c. Removing in paragraph (b) "Director, Office of Property Management," and adding in its place "Director, Office of Personal Property Management Division,"; and

d. Removing "109-38.3 and 109-38.6" in paragraph (e) and adding in its place "109-38.202-2 and 109-38.202-3".

10. Section 908.7102 is revised to read as follows:

**908.7102 Aircraft.**

Acquisition of aircraft shall be in accordance with FMR 41 CFR part 102–33, subpart B and DOE Order 440.2B latest revision.

**908.7103 [Amended]**

11. Section 908.7103 is amended by removing “101–25.302–3, 101–25.302–4, and 101–25.302–6, and 101–25.403,” and “109–25.302–3,” and adding in its place “FPMR 41 CFR 101–25.104, 101–25.302, and DOE–PMR 41 CFR 109–25.302, and 109–25.4.”

**908.7104 [Amended]**

12. Section 908.7104 is amended by removing “FMPR 41 CFR 101–25.104, 101–25.302, 101–25.302–1, 101–25.302–5, 101–25.302–7 and 101–25.302–8, 101–25.404 and 101–26.505 and DOE PMR 41 CFR 109–25.302, 109–25.302–1 and 109–25.350” and adding in its place “FPMR 41 CFR 101–25.104, 101–25.302, 101–25.302–5, 101–25.302–7, 101–25.404 and 101–26.505 and DOE–PMR 41 CFR 109–25.302 and 109–25.350.”

13. Section 908.7121 is revised to read as follows:

**908.7121 Special materials.**

This section covers the purchase of materials peculiar to the DOE program. While purchases of these materials may be unclassified, the specific quantities, destination or use may be classified (see appropriate sections of the Classification Guide). Contracting officers shall require authorized contractors to obtain the special materials identified in the following subsections in accordance with the following procedures:

(a) *Heavy water.* The Senior Program Official or designee controls the acquisition and production of heavy water for a given program. Request for orders shall be placed directly with the cognizant Senior Program Official or designee.

(b) *Precious metals.* (1) NNSA, Y–12 National Security Complex in Oak Ridge, TN is responsible for maintaining the DOE supply of precious metals. These metals are platinum, palladium, iridium, osmium, rhodium, ruthenium, gold and silver. The NNSA Y–12 National Security Complex has assigned management of these precious metals to its Management and Operating (M&O) contractor. DOE and NNSA offices and authorized contractors shall coordinate with the Y–12 M&O contractor regarding the availability of these metals prior to purchasing in the open market.

(2) For contractor inventory containing precious metals or

possessing precious metals excess, see 945.604–1 for contractor identification and reporting.

(c) *Lithium.* Lithium is available from Y–12 at no cost other than normal packing, handling, and shipping charges from Oak Ridge. The excess quantities at Y–12 are the first source of supply prior to procurement of lithium compounds from any other source.

14. Part 945 is revised to read as follows:

**PART 945—GOVERNMENT PROPERTY**

Sec.

945.000 Scope of part.

**Subpart 945.1—General**

945.101 Definitions.

945.102–70 Reporting of contractor-held property.

945.102–71 Maintenance of records.

945.102–72 Reporting of contractor sensitive property inventory.

945.170 Providing Government property to contractors.

945.170–1 Policy.

**Subpart 945.3 [Reserved]**

**Subpart 945.4 [Reserved]**

**Subpart 945.5—Support Government Property Administration**

945.570 Management of Government property in the possession of contractors.

945.570–1 Acquisition of motor vehicles.

945.570–2 Disposition of motor vehicles.

945.570–3 Reporting motor vehicle data.

**Subpart 945.6—Reporting, Reutilization, and Disposal**

945.602 Reutilization of Government property.

945.602–3 Screening.

945.602–70 Local screening.

945.603 Abandonment, destruction or donation of excess personal property.

945.604 Disposal of surplus property.

945.604–1 Disposal methods.

945.670 DOE disposal methods.

945.670–1 Plant clearance function.

945.670–2 Disposal of radioactively contaminated personal property.

945.670 Waiver of screening requirements.

945.671 Contractor inventory in foreign countries.

**Authority:** 42 U.S.C. 7101, *et seq.*; 50 U.S.C. 2401, *et seq.*

**945.000 Scope of part.**

This part and 48 CFR part 45 are not applicable to the management of property by management and operating contractors, unless otherwise stated.

**Subpart 945.1—General**

**945.101 Definitions.**

*Personal property*, as used in this part, means property of any kind or interest therein, except real property; records of the Federal Government; and nuclear and special source materials,

atomic weapons, and by-product materials.

*Sensitive property*, as used in this part, has the meaning contained in 48 CFR 45.101.

**945.102–70 Reporting of contractor-held property.**

The information listed in this section may be required to be reported from time to time to the Head of the Contracting Activity shall report the following information to the Personal Property Management Division, within the Headquarters procurement organization:

(a) Name and address of each contractor with DOE property in their possession, or in the possession of their subcontractors (do not include grantees, cooperative agreements, interagency agreements, or agreements with state or local governments).

(b) Contract number of each DOE contract with Government property.

(c) Date contractor's property management system was approved and by whom (DOE office, Defense Contract Management Command, or the Office of Naval Research).

(d) Date of most current appraisal of contractor's property management system, who conducted the appraisal, and status of the system (satisfactory or unsatisfactory).

(e) Total acquisition value of DOE property for each DOE contract administered by the contracting activity.

**945.102–71 Maintenance of records.**

The contracting activity shall maintain records of approvals and reviews of contractors' property management systems, the dollar value of DOE property as reported on the most recent semiannual financial report, and records on property administration delegations to other Government agencies.

**945.102–72 Reporting of contractor sensitive property inventory.**

(a) For Department of Energy (DOE) sensitive property, the Organizational Property Management Officer (OPMO) shall submit a contractor-specific list of sensitive property to the DOE Property Executive, Office of Resource Management, or designee, by October 31st of each year for review and approval. The DOE Property Executive or designee will provide the approved contractor-specific list to the appropriate Contracting Officer and OPMO.

(b) For National Nuclear Security Administration (NNSA) sensitive property, the OPMO shall submit a contractor-specific list of sensitive

property to the Director NNSA, Office of Acquisition and Supply Management, or designee, by October 31st of each year for review and approval. The Director, NNSA or designee, will provide the approved contractor-specific list to the appropriate Contracting Officer and OPMO.

#### **945.170 Providing Government property to contractors.**

##### **945.170-1 Policy.**

The DOE has established specific policies concerning special nuclear material requirements needed under DOE contracts for fabricating end items using special nuclear material, and for conversion or scrap recovery of special nuclear material. *Special nuclear material* means uranium enriched in the isotopes U233 or U235, and/or plutonium, other than PU238. The policies to be followed are:

(a) Special nuclear material will be furnished by the DOE for fixed-price contracts and subcontracts, at any tier, which call for the production of special nuclear products, including fabrication and conversion, for Government use. (The contractor or subcontractor must have the appropriate license or licenses to receive the special nuclear material. The Nuclear Regulatory Commission is the licensing agency.)

(b) Contracts and subcontracts for fabrication of end items using special nuclear material generally shall be of the fixed-price type. Cost-type contracts or subcontracts for fabrication shall be used only with the approval of the Head of the Contracting Activity. This approval authority shall not be further delegated.

(c) Contracts and subcontracts for conversion or scrap recovery of special nuclear material shall be of a fixed-price type, except as otherwise approved by the Head of the Contracting Activity.

#### **Subpart 945.3 [Reserved]**

#### **Subpart 945.4 [Reserved]**

#### **Subpart 945.5—Support Government Property Administration**

##### **945.570 Management of Government property in the possession of contractors.**

##### **945.570-1 Acquisition of motor vehicles.**

(a) GSA Interagency Fleet Management System (GSA-IFMS) is the first source of supply for providing motor vehicles to contractors; however, contracting officer approval is required for contractors to utilize this service.

(b) Prior approval of GSA must be obtained before—

(1) Fixed-price contractors can use the GSA-IFMS;

(2) DOE-owned motor vehicles can be furnished to any contractor in an area served by GSA-IFMS; and

(3) A contractor can commercially lease a motor vehicle for more than 60 days after GSA has determined that it can provide the required vehicle.

(c) GSA has the responsibility for acquisition of motor vehicles for Government agencies. All requisitions shall be processed via GSA Autochoice in accordance with 41 CFR 101-26.501.

(d) Contractors shall submit all motor vehicle requirements to the contracting officer for approval.

(e) The acquisition of sedans and station wagons is limited to small, subcompact, and compact vehicles which meet Government fuel economy standards. The acquisition of light trucks is limited to those vehicles which meet the current fuel economy standards set by Executive Orders 12003 and 12375.

(f) Cost reimbursement contractors may be authorized by the contracting officer to utilize GSA Federal Supply Schedule 751, Leasing of Automobiles and Light Trucks, for short term rentals not to exceed 60 days, and are required to utilize available GSA consolidated leasing programs for long term (60 continuous days or longer) commercial leasing of passenger vehicles and light trucks.

(g) The Personal Property Management Division, within the Headquarters procurement organization shall certify all requisitions prior to submittal to GSA for the following:

(1) The acquisition of sedans and station wagons.

(2) The lease (60 continuous days or longer) of any passenger automobile.

(3) The acquisition or lease (60 continuous days or longer) of light trucks less than 8,500 GVWR.

(h) Purchase requisitions for other motor vehicles may be submitted directly to GSA when approved by the contracting officer.

(i) Contractors shall thoroughly examine motor vehicles acquired under a GSA contract for defects. Any defect shall be reported promptly to GSA, and repairs shall be made under terms of the warranty.

##### **945.570-2 Disposition of motor vehicles.**

(a) The contractor shall dispose of DOE-owned motor vehicles as directed by the contracting officer.

(b) DOE-owned motor vehicles may be disposed of as exchange/sale items when directed by the contracting officer; however, a designated DOE official must execute the Title Transfer forms (SF-97).

##### **945.570-3 Reporting motor vehicle data.**

(a) Contractors conducting motor vehicle operations shall forward annually to the contracting officer their plan for acquisition of motor vehicles for the next fiscal year for review, approval and submittal to DOE Headquarters. This plan shall conform to the fuel efficiency standards for motor vehicles for the applicable fiscal year, as established by Executive Orders 12003 and 12375 and as implemented by GSA and current DOE directives. Additional guidance for the preparation of the plan will be issued by the contracting officer, as required.

(b) Contractors operating DOE-owned, GSA leased and/or commercially leased (for 60 continuous days or longer) motor vehicles shall prepare and electronically submit the following annual year-end reports to the contracting officer:

(1) Annual Motor Vehicle Fleet Report.

(2) Federal Fleet Report (41 CFR 102-34.335).

#### **Subpart 945.6—Reporting, Reutilization, and Disposal**

##### **945.602 Reutilization of Government property.**

##### **945.602-3 Screening.**

(a) *Standard screening.* (1) Prior to reporting excess property to GSA, all reportable property, as identified in Federal Management Regulations 41 CFR 102-36.220, shall be reported for centralized screening in the DOE Energy Asset Disposal System (EADS). Reportable excess personal property will be screened internally via the EADS system for a period of 15 days.

(i) EADS requires the inclusion of a six character Activity Address Code (AAC) which identifies the reporting contractor. The AAC will be assigned by DOE Headquarters upon receipt of a formal letter of authorization signed by the DOE contracting officer.

(ii) Requests to establish, extend or delete an Activity Address Code shall be submitted by the contracting officer to the Office of Procurement and Assistance Management, Personal Property Management Division, within the Headquarters procurement organization.

(b) *Special screening requirements.* (2) *Special test equipment with commercial components.*—Prior to reporting the property to GSA in accordance with 48 CFR 45.604-1(a), (b) and (c), the property shall be reported and screened within DOE in accordance with 945.602-3(a) and 945.602-70.

(3) *Printing equipment.* All printing equipment excess to requirements shall



be reported to the Office of Administration at Headquarters.

#### 945.602–70 Local screening.

Local screening shall be done using EADS.

#### 945.603 Abandonment, destruction or donation of excess personal property.

See 945.670 for DOE disposal methods.

#### 945.604 Disposal of surplus property.

##### 945.604–1 Disposal methods.

(b)(3) *Recovering precious metals.* Contractors generating contractor inventory containing precious metals or possessing precious metals excess to their programmatic requirements, shall identify and promptly report such items to the contracting officer for review, approval and reporting to the DOE Business Center for Precious Metals Sales & Recovery (Business Center). This includes Gold, Silver, Platinum, Rhodium, Palladium, Iridium, Osmium, and Ruthenium in any form, shape, concentration, or purity. Report all RCRA contaminated precious metals, but not radiological contaminated. The Y-12 NNSA Site Office is responsible for maintaining the DOE Business Center. Precious metals scrap will be reported to the DOE Business Center.

(d) See 945.670 for DOE disposal methods.

#### 945.670 DOE disposal methods.

##### 945.670–1 Plant clearance function.

If the plant clearance function has not been formally delegated to another Federal agency, the contracting officer shall assume all responsibilities of the plant clearance officer identified in 48 CFR 45.606–3.

##### 945.670–2 Disposal of radioactively contaminated personal property.

Special procedures regarding the disposal of radioactively contaminated property may be found at 41 CFR 109–45.50.

##### 945.670–3 Waiver of screening requirements.

(a) The Director of the Personal Property Management Division, within the Headquarters procurement organization may authorize exceptions from screening requirements.

(b) A request to the Director of the Personal Property Management Division, within the Headquarters procurement organization for the waiver of screening requirements must be submitted by the Procurement Directors with a justification setting forth the compelling circumstances warranting the exception.

#### 945.671 Contractor inventory in foreign countries.

Contractor inventory located in foreign countries will be utilized and disposed of in accordance with DOE–PMR 41 CFR part 109–43, subpart 109–43.5, and part 109–45, subpart 45.51.

#### PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

15. The authority citation for part 970 continues to read as follows:

**Authority:** 42 U.S.C. 2201; 2282a; 2282b; 2282c; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

##### 970.5244–1 [Amended]

16. Section 970.5244–1 is amended by:

a. Revising the clause date to read as set forth below; and

b. Revising clause paragraph (k) and adding a paragraph (q)(13).

The revisions and additions read as follows:

##### 970.5244–1 Contractor purchasing system.

\* \* \* \* \*

CONTRACTOR PURCHASING SYSTEM (XXX 20XX) [abbreviated month and year of the date of publication of the final rule]

\* \* \* \* \*

(k) *Government Property.* The Contractor shall establish and maintain a property management system that complies with criteria in 48 CFR 970.5245–1, Property, and 48 CFR 52.245–1, Government Property.

\* \* \* \* \*

(q) \* \* \*

(13) Products made in Federal penal and correctional institutions—41 CFR 101–26.702

\* \* \* \* \*

17. Section 970.5245–1 is amended by:

a. Revising the date of the clause to read as set forth below;

b. Removing and reserving paragraph (i)(1)(ii)(B).

The revisions read as follows:

##### 970.5245–1 Property.

\* \* \* \* \*

PROPERTY (XXX 20XX) [abbreviated month and year 30 DAYS AFTER date of publication of the final rule]

\* \* \* \* \*

(i) \* \* \*

(1) \* \* \*

(ii) \* \* \*

(B) [Reserved]

\* \* \* \* \*

[FR Doc. 2011–4350 Filed 3–3–11; 8:45 am]

BILLING CODE 6450–01–P

#### DEPARTMENT OF TRANSPORTATION

##### Federal Railroad Administration

[Docket No. FRA–2009–0041, Notice No. 1]

#### 49 CFR Part 234

RIN 2130–AC12

#### Systems for Telephonic Notification of Unsafe Conditions at Highway-Rail and Pathway Grade Crossings

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** FRA is proposing amendments to its primary regulations on grade crossing safety. The major amendments proposed would require a railroad that dispatches a train through a public or private highway-rail or pathway grade crossing to establish and maintain a system that allows a member of the public to call the railroad and report an emergency or other unsafe condition at the crossing. Upon receiving such a report, the railroad would be required to warn all trains authorized to operate through the crossing of the reported unsafe condition, inform local law enforcement of the reported unsafe condition, and either investigate the report itself or request that the railroad with maintenance responsibility for the crossing investigate the report. If the report is substantiated, the railroad with maintenance responsibility for the crossing would be required to take certain actions to remedy the condition found.

**DATES:** Written comments must be received by May 3, 2011. Comments received after that date will be considered to the extent possible without incurring additional expenses or delays.

FRA anticipates being able to resolve this rulemaking without a public, oral hearing. However, if FRA receives a specific request for a public, oral hearing prior to May 3, 2011, one will be scheduled, and FRA will publish a supplemental notice in the **Federal Register** to inform interested parties of the date, time, and location of any such hearing.

**ADDRESSES:** *Comments:* Comments related to Docket No. FRA–2009–0041 may be submitted by any of the following methods:

- *Online:* Comments should be filed at the Federal eRulemaking Portal, <http://www.regulations.gov>. Follow the online instructions for submitting comments.