

**DEPARTMENT OF ENERGY****41 CFR Chapter 109****RIN 1991-AB73****Department of Energy Property Management Regulations****AGENCY:** Department of Energy.**ACTION:** Interim final rule; notice of public meeting.

**SUMMARY:** The Department of Energy (DOE) publishes this interim final rule to amend the Department of Energy Property Management Regulations to conform to the Federal Property Management Regulation/Federal Management Regulation (FPMR/FMR), to remove out of date government property parameters, and update references. This rule does not alter substantive rights or obligations under current law.

**DATES:**

*Effective date:* This rulemaking is effective October 14, 2016.

*Comment date:* Written comments must be received by October 14, 2016. DOE will hold a public meeting to discuss this rule on September 22, 2016 from 9 a.m. to 11 a.m. in Warrenville, IL.

**ADDRESSES:** The public meeting will be held at the U.S. Department of Energy, Fermi National Accelerator Laboratory, Outer Ring Rd, Warrenville, IL 60555.

You may submit comments, identified by "Property Management Regulations—RIN 1991-AB73," by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Email to:* [DEARulemaking@hq.doe.gov](mailto:DEARulemaking@hq.doe.gov). Include "Property Management Regulations—RIN 1991-AB73" in the subject line of the message.

- *Mail to:* U.S. Department of Energy, Office of Acquisition Management, MA-611, 1000 Independence Avenue SW., Washington, DC 20585. Comments by email are encouraged.

**FOR FURTHER INFORMATION CONTACT:** Mr. Scott Whiteford, Deputy Director, Office of Management, Department of Energy, at 202-287-1563.

**SUPPLEMENTARY INFORMATION:****I. Background****II. Section by Section Analysis****III. Procedural Requirements**

- A. Review Under Executive Order 12866
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**I. Background**

Management, use and disposal of government property is governed by 41 CFR Subtitle C, Federal Property Management Regulations System. Possession, use, and disposal of DOE owned property is governed by Chapter 109 of Subtitle C, Department of Energy Property Management Regulation (DOE-PMR) which is the DOE supplement to the Federal Property Management Regulation/Federal Management Regulation (FPMR/FMR). The DOE-PMR provides requirements for assets that are unique to DOE.

The DOE-PMR is currently out of date. It contains citations that are no longer accurate, references to regulations in the CFR that no longer exist. DOE has attempted to deal with these deficiencies using internal directives to address the deficiencies as they arose. At this time it is necessary to update the rule to correct the citations and references and to remove coverage of property that is no longer controlled by DOE.

This interim final rule updates the DOE-PMR. It removes expired and incorrect citations and inserts correct citations where appropriate. It clarifies content and realigns sections so that the DOE-PMR sections are numbered consistently with the corresponding sections in the FPMR/FMR. None of these changes add new requirements.

**II. Section by Section Analysis**

DOE amends 41 CFR Ch. 109 as follows:

Section 109-1.100-50 Scope of subpart is amended to remove "Federal Property Management Regulation (FPMR)" and replaces it with "Federal Property Management Regulation/Federal Management Regulation (FPMR/FMR)" throughout this chapter.

Section 109-1.100-51—Definitions and acronyms. The definitions and acronyms are amended to be consistent with current personal property requirements. In this chapter, the terms *personal property* and *property* are synonymous.

Section 109-1.110-50—Deviation procedures, is updated in paragraph

(b)(1) by amending "Director, Office of Administrative Services" and adding "Office of Management."

Section 109-1.5100—Scope of subpart. This Section providing guidance on DOE standards and practices to be applied in the management of personal property is amended to delete outdated citations.

Section 109-1.5101-(b) is amended by removing "Director, Office of Administrative Services; heads of field organizations" and adding "Office of Management; Program Secretarial Officer (PSO)."

Section 109-1.5103—Loan of personal property, in paragraph (a) is amended by adding the term "domestic."

Section 109-1.5103—Loan of personal property, in paragraph (b) is amended by removing "Deputy Assistant Secretary for International Energy Policy, Trade and Investment" and adding "Office of International Affairs."

Section 109-1.5104—Borrowing of personal property is removed. This personal property practice is outdated.

Section 109-1.5105—Identification marking of personal property, is removed to eliminate outdated personal property practices.

Section 109-1.5108-2—Sensitive items is removed to eliminate outdated personal property citations].

Section 109-1.5109—Control of sensitive items is removed to eliminate outdated personal property citations.

Section 109-1.5110—Physical inventories of personal property. Paragraph (e) is amended to reflect current personal property practice. The DOE capitalization threshold for items acquired prior to October 1, 2011 is \$50,000. For items acquired on or after October 1, 2011, the threshold is \$500,000.

Section 109-1.5111—Retirement of property is amended to eliminate outdated personal property citations.

**Subpart 109-25.1**

Section 109-25.100—Use of Government personal property and nonpersonal services is removed to eliminate outdated personal property citations.

Section 109-25.103—Promotional materials, trading stamps, or bonus goods is removed to eliminate outdated personal property citations.

Section 109-25.103-1—General is removed to eliminate outdated personal property citations.

Section 109-25.104—Acquisition of office furniture and office machines is removed to eliminate outdated personal property citations.

Section 109-25.4—Replacement Standards is removed to eliminate outdated personal property citations.

Section 109–6.400–50—Is amended to add current personal property practices. Specifically, new paragraphs (l) and (m) are added as follows: (l) The prohibition against text messaging while operating a Government vehicle, or any vehicle while on Government business, as set forth under Executive Order 13513; and (m) See 31 U.S.C. 1344 and 41 CFR 301–10.201 for allowable use of Government vehicles while on temporary duty or official travel orders.

Section 109–6.402—Statutory provisions paragraph (c) is removed to eliminate outdated personal property citations.

Subpart 109–6.402—is amended by removing “Director, Office of Administrative Services; heads of field organizations” and adding in its place “Office of Management; Program Secretarial Officer (PSO)”.

#### *Subpart 109–26–2*

Section 109–26.203—Activity address codes is amended by removing “Director, Office of Administrative Services” and adding in its place “Office of Management” to make it current with FPMR/FMR.

#### *Subpart 109–26.5*

Sections 109–26.501–1; 109–26.501–4; 109–26.501–50; 109–26.501–51; 109–26.501–52—are amended by removing “Director, Office of Administrative Services”; and adding in its place “Office of Management” to make it current with FPMR/FMR.

#### *Subpart 109–27.50*

Sections 109–27.5001; 109–27.5002; 109–27.5003; 109–27.5004; 109–27.5005; 109–27.5007; 109–27.5007–2; 109–27.5009; 109–27.5011; 109–27.5011–2; 109–27.5104–3—are removed to eliminate outdated personal property citations.

#### *Subpart 109–38.8*

Section 109–38.801—is amended by removing “Obtaining SF 149, U.S. Government National Credit Card” and adding in its place “Obtaining Fleet Credit Card”.

Subpart 109–40.305–50—is removed to eliminate an outdated personal property citation.

#### *Subpart 109–43.3—Utilization of Excess*

§ 109–43.304–1.50—DOE reutilization screening is amended by removing (a) Prior to reporting excess personal property to GSA, reportable personal property shall be screened for reutilization within DOE through the Reportable Excess Automated Property System (REAPS) for a 30-day period. REAPS also provides for a 15-day

expedited screening period for certain categories of personal property for economic development and to satisfy urgent conditions and replacing it with (a) Personal property must be processed through DOE electronic internal screening prior to reporting excess personal property to GSA. (D). National Utilization Officer (NUO).

Section 109–43.307–53—is amended by removing “Automatic data processing equipment (ADPE)” and adding in its place “Information Technology (IT)”.

#### *Subpart 109–45.3*

Section 109–45.309–54—is amended by removing “Automatic data processing equipment (ADPE)” and adding in its place “Information Technology (IT)”.

Subpart 109–45.6—Debarred, Suspended, and Ineligible Contractors, is removed to eliminate outdated citation.

Subpart 109–50.1—is amended by removing “Used Energy-Related Laboratory Equipment Grant Program (ERLE)” and adding in its place “Laboratory Equipment Donation Program Grant program (LEDP)”.

All remaining sections of 41 CFR Chapter 109 will be amended to reflect current property management requirements consistent with the Federal Property Management Regulation/Federal Management Regulation (FPMR/FMR).

### **III. Procedural Requirements**

#### *A. Review Under Executive Order 12866 and 13563.*

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 action 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).

DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011 (76 FR 3281 (Jan. 21, 2011)). Executive Order 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden

on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE emphasizes as well that Executive Order 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. DOE believes that this interim final rule is consistent with these principles, including the requirement that, to the extent permitted by law, agencies adopt a regulation only upon a reasoned determination that its benefits justify its costs and, in choosing among alternative regulatory approaches, those approaches maximize net benefits.

#### *B. Review Under Regulatory Flexibility Act of 1980*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, “Proper Consideration of Small Entities in Agency Rulemaking” (67 FR 53461, August 16, 2002), DOE published procedures and policies to ensure that the potential impacts of its draft rules on small entities are properly considered during the rulemaking process (68 FR 7990, February 19, 2003), and has made them available on the Office of General Counsel’s Web site: <http://www.energy.gov/gc/office-general-counsel>. DOE has reviewed this

interim final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process.

#### *C. Review Under the Paperwork Reduction Act of 1995*

This regulatory action will not impose any additional reporting or recordkeeping requirements subject to approval under the Paperwork Reduction Act. This interim final 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: 1845–0065.

#### *D. Review Under the National Environmental Policy Act*

DOE has concluded that promulgation of this rule falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*)(NEPA). Specifically, DOE has determined that this interim final rule is covered under categorical exclusions found in DOE's NEPA regulations at paragraphs A5 and A6 of Appendix A to Subpart D, 10 CFR part 1021. Categorical exclusion A5 applies to a rulemaking that amends an existing rule or regulation and that does not change the environmental effect of the rule or regulation being amended. Categorical exclusion A6 applies to rulemakings that are strictly procedural. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

#### *E. 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 also requires agencies to have an accountable 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 this 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.

#### *F. 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 Federal 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. 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 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 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.

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

This regulatory action does not contain a Federal mandate that will result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector of \$100 million or more in any one year.

#### *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 proposed rule or policy that may affect family well-being. This rule would not have any 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 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 implementing 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 today's notice of proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

#### *J. 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 OIRA a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated 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 and (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. Today's regulatory action is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

### *K. Review Under the Small Business Regulatory Enforcement Fairness Act*

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a “major rule” as defined by 5 U.S.C. 801(2).

### *L. The Administrative Procedure Act*

In accordance with 5 U.S.C. 553(b), the Administrative Procedure Act, DOE generally publishes a rule in a proposed form and solicits public comment on it before issuing the rule in final. This rulemaking, as a matter relating to public property, is exempt from the requirement to publish a notice of proposed rulemaking under 5 U.S.C. 553(a)(2). Specifically, this rule is a matter relating to public property. In addition, DOE is not obligated to provide an opportunity for comment on this rule pursuant to 5 U.S.C. 553(b)(B), which provides an exception to the public comment requirement if the agency finds good cause to omit advance notice and public participation. Good cause is shown when public comment is “impracticable, unnecessary, or contrary to the public interest.” An opportunity for comment on this rule would be unnecessary because DOE is amending this rule only for consistency with the Federal property management regulations. DOE, however, is publishing this rule as an interim final rule and allowing for public comment until October 14, 2016.

### *M. Approval of the Office of the Secretary of Energy*

The Office of the Secretary has approved the issuance of this interim final rule.

### **List of Subjects in 41 CFR Chapter 109**

Government property management.

Issued in Washington, DC, on August 30, 2016.

**Carmelo Melendez,**

*Director, Office of Asset Management.*

**Barbara Stearrett,**

*Director, Acquisition Management, National Nuclear Security Administration.*

■ For the reasons stated in the preamble, DOE revises Chapter 109, title 41 of the Code of Federal Regulations, as set forth below:

## **CHAPTER 109—DEPARTMENT OF ENERGY PROPERTY MANAGEMENT REGULATIONS**

### **PART 109-1—INTRODUCTION**

#### **SUBCHAPTER A—GENERAL**

#### **Subpart 109-1.1—Regulation System** Sec.

- 109-1.100-50 Scope of subpart.
- 109-1.100-51 Definitions and acronyms.
- 109-1.101 Federal Property Management Regulations/Federal Management Regulation System.
- 109-1.101-50 DOE-PMR System.
- 109-1.102 Federal Property Management Regulations/Federal Management Regulation.
- 109-1.101-50 DOE-PMR System.
- 109-1.102 Federal Property Management Regulations/Federal Management Regulation.
- 109-1.102-50 DOE-PMRs.
- 109-1.103 FPMR/FMR temporary regulations.
- 109-1.103-50 DOE-PMR temporary policies and bulletins.
- 109-1.104 Publication and distribution of FPMR/FMR.
- 109-1.104-50 Publication and distribution of DOE-PMR.
- 109-1.106 Applicability of FPMR/FMR.
- 109-1.106-50 Applicability of FPMR/FMR and DOE-PMR.
- 109-1.107 Agency consultation regarding FPMR/FMR.
- 109-1.107-50 Consultation regarding DOE-PMR.
- 109-1.108 Agency implementation and supplementation of FPMR/FMR.
- 109-1.110-50 Deviation procedures.

#### **Subpart 109-1.50—Personal Property Management Program**

- 109-1.5000 Scope of subpart.
- 109-1.5001 Policy.
- 109-1.5002 Personal property management program objectives.

#### **Subpart 109-1.51—Personal Property Management Standards and Practices**

- 109-1.5100 Scope of subpart.
- 109-1.5101 Official use of personal property.
- 109-1.5102 Maximum use of personal property.
- 109-1.5103 Loan of personal property.
- 109-1.5105 Identification marking of personal property.
- 109-1.5106 Segregation of personal property.
- 109-1.5107 Physical protection of personal property.
- 109-1.5108 Personal property records requirements.
- 109-1.5108-1 Equipment.
- 109-1.5108-3 Stores inventories.
- 109-1.5108-4 Precious metals.
- 109-1.5108-5 Administratively controlled items.
- 109-1.5110 Physical inventories of personal property.
- 109-1.5112 Loss, damage, or destruction of personal property in possession of DOE direct operations.
- 109-1.5113 Loss, damage, or destruction of personal property in possession of designated contractors.
- 109-1.5114 Use of non-Government-owned property.
- 109-1.5148 Personal property management reports.

#### **Subpart 109-1.52—Personal Property Management Program for Designated Contractors**

- 109-1.5200 Scope of subpart.
- 109-1.5201 Policy.
- 109-1.5202 Establishment of a personal property holdings baseline.
- 109-1.5203 Management of subcontractor held personal property.
- 109-1.5204 Review and approval of a designated contractor's personal property management system.
- 109-1.5205 Personal property management system changes.

#### **Subpart 109-1.53—Management of High Risk Personal Property**

- 109-1.5300 Scope of subpart.
- 109-1.5301 Applicability.
- 109-1.5302 Policies.
- 109-1.5303 Procedures.
- 109-1.5304 Deviations.

### **Subpart 109-1.1—Regulation System**

#### **§ 109-1.100-50 Scope of subpart.**

This subpart sets forth the Department of Energy (DOE) Property Management Regulations (DOE-PMR) which establish uniform DOE property management policies, regulations, and procedures that implement and supplement the Federal Property Management Regulations/Federal Management Regulation. Property management statutory authorities that are unique to the Department (*e.g.*, section 161g of the Atomic Energy Act of 1954 (42 U.S.C. 2201(g)) and section 3155 of the National Defense Authorization Act for Fiscal Year 1994 (42 U.S.C. 72741)) are not addressed in these regulations.

#### **§ 109-1.100-51 Definitions and acronyms.**

(a) *Definitions.* As used in this chapter, the terms *personal property* and *property* are synonymous. In addition, the following definitions apply:

*Accountable Personal Property* includes nonexpendable personal property whose expected useful life is two years or longer and whose acquisition value, as determined by the agency, warrants tracking in the agency's property records, including capitalized and sensitive personal property. 41 CFR 102-35.20.

*Administratively controlled items* means personal property controlled at the discretion of individual DOE offices, but for which there is no DOE requirement to maintain formal records.

*Cannibalization* means to remove serviceable parts from one item of equipment in order to install them on another item of equipment (48 CFR Subpart 45.101).

*Capitalized Personal Property* includes property that is entered on the

agency's general ledger records as a major investment or asset. An agency must determine its capitalization thresholds as discussed in Financial Accounting Standard Advisory Board (FASAB) Statement of Federal Financial Accounting Standards No. 6, 41 CFR 102–35.20; DOE Financial Management Handbook.

*Controlled Unclassified Information (CUI)* means the Unclassified information that is controlled within DOE because its release could cause damage. CUI within DOE encompasses Official Use Only (OUO) and Unclassified Nuclear Information (UCNI). OUO includes information such as Personally Identifiable Information, Export Controlled Information, proprietary information, and other information not covered by other DOE directives. CUI is governed by Executive Order 13556 and is a developing Government-wide policy, Controlled Unclassified Information, which will mandate uniform standards for the control of unclassified information within the Government.

*Designated contractors* means those on-site DOE contractors to which the DOE-PMR is made applicable when included as a contractual requirement. The contractors to which these regulations may be made applicable include management and operating (M&O) contractors, environmental management, and other major prime contractors located at DOE sites.

*Direct operations* means operations conducted by DOE personnel.

*Disposal* means the process of reutilizing, transferring, donating, selling, abandoning, destroying, or other disposition of Government-owned personal property.

*Dual-Use List* means nuclear-related material, equipment, and related technology as described in the Nuclear Suppliers Group Dual-Use List as published in International Atomic Energy Agency Information Circular (INFCIRC) 254 Part 2 and as implemented by the Department of Commerce in the U.S. Export Administration Regulations (15 CFR part 774).

*Equipment* means a tangible asset that is functionally complete for its intended purpose, durable, nonexpendable, and needed for the performance of a contract. Equipment is not intended for sale, and does not ordinarily lose its identity or become a component part of another article when put into use (48 CFR Subpart 45.101).

*Especially designed or prepared property* means equipment and material designed or prepared especially for use in the nuclear fuel cycle and described

in the Nuclear Suppliers Group Trigger List as published in International Atomic Energy Agency INFCIRC 254 Part 1 and as implemented by the Nuclear Regulatory Commission in 10 CFR part 110.

*Excess Property* means property that is no longer required to carry out the Department of Energy's needs, but for purposes of this regulation, such property has not been reported to the General Services Administration as excess property under 41 CFR 102–36.35.

*Export controlled information* means unclassified U.S. Government information under DOE cognizance that, if proposed for export by the private sector, would require a U.S. Department of Commerce or U.S. Department of State validated license, or a DOE authorization for export, and which, if given uncontrolled release, could reasonably be expected to adversely affect U.S. national security or nuclear nonproliferation objectives.

*Export controlled property* means property the export of which is subject to licensing by the U.S. Department of Commerce, the U.S. Department of State, the U.S. Nuclear Regulatory Commission, or authorized by the U.S. Department of Energy.

*Hazardous personal property* means property that is deemed a hazardous material, chemical substance or mixture, or hazardous waste under the Hazardous Materials Transportation Act (HMTA) (49 U.S.C. 5101), the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901–6981), or the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601–2609). 41 CFR 102–36.40.

*High risk personal property* means property that, because of its potential impact on public health and safety, the environment, national security interests, or proliferation concerns, must be controlled, and disposed of in other than the routine manner. The categories of high risk property are automatic data processing equipment, especially designed or prepared property, export controlled information, export controlled property, hazardous property, nuclear weapon components or weapon-like components, proliferation sensitive property, radioactive property, special nuclear material, and unclassified controlled nuclear information.

*Information Technology.* (i) With respect to an executive agency means any equipment or interconnected system or subsystem of equipment, used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange,

transmission, or reception of data or information by the executive agency, if the equipment is used by the executive agency directly or is used by a contractor under a contract with the executive agency that requires the use—

(A) Of that equipment; or

(B) Of that equipment to a significant extent in the performance of a service or the furnishing of a product;

(ii) Includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources; but

(iii) Does not include any equipment acquired by a federal contractor incidental to a federal contract. 40 U.S.C. 11101.

*Munitions List Items (MLIs)* are commodities (usually defense articles/defense services) listed in the International Traffic in Arms Regulation (22 CFR part 121), published by the U.S. Department of State. 41 CFR 102–36.40.

*Nuclear weapon component or weapon-like component* means parts of whole war reserve nuclear weapon systems, joint test assemblies, trainers, or test devices, including associated testing, maintenance, and handling equipment; or items that simulate such parts.

*Organizational Property Management Officers* means establish and administer personal property management programs within their organizations consistent with applicable laws, regulations, practices, and standards.

*Personal property* means any property, except real property. For purposes of this part, the term excludes records of the Federal Government, and naval vessels of the following categories: Battleships, cruisers, aircraft carriers, destroyers, and submarines. 102–36.40.

*Program Secretarial Officer (PSO)* Assistant Secretaries/Program Element Heads.

*Proliferation-sensitive property* means nuclear-related or dual-use equipment, material, or technology as described in the Nuclear Suppliers Group Trigger List and Dual-Use List, or equipment, material or technology used in the research, design, development, testing, or production of nuclear or other weapons.

*Property Administrator* means an authorized representative of the contracting officer appointed in accordance with agency procedures, responsible for administering the contract requirements and obligations

relating to Government property in the possession of a contractor FAR 45–101.

*Property management* means the system of acquiring, maintaining, using and disposing of the personal property of an organization or entity. 102–35.20.

*Radioactive property* means any item or material that is contaminated with radioactivity and which emits ionizing radiation in excess of background radiation as measured by appropriate instrumentation.

*Sensitive Personal Property* includes all items, regardless of value, that require special control and accountability due to unusual rates of loss, theft or misuse, or due to national security or export control considerations. Such property includes weapons, ammunition, explosives, information technology equipment with memory capability, cameras, and communications equipment. These classifications do not preclude agencies from specifying additional personal property classifications to effectively manage their programs. 41 CFR 102–35.20.

*Spare equipment/property* means items held as replacement spares for equipment in current use in DOE program.

*Special nuclear material* means plutonium, uranium 233, uranium enriched in the isotope 233 or 235, any other materials which the Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954, as amended, determines to be special nuclear material, or any material artificially enriched by any of the foregoing, but does not include source material.

*Trigger List* means nuclear material, equipment, and related technology as described in International Atomic Energy Agency in INFCIRC 254, Part 1 and as implemented by the Nuclear Regulatory Commission in 10 CFR part 110.

*Unclassified controlled nuclear information* means U.S. Government information pertaining to atomic energy defense activities as defined in section 148 of the Atomic Energy Act. Such information can relate to aspects of nuclear weapons design, development, testing, physical security, production, or utilization facilities. 10 CFR part 1017.

(b) *Acronyms.* As used in this chapter, the following acronyms apply:

CFR: Code of Federal Regulations  
 CSC: Customer Supply Center  
 CUI: Controlled Unclassified Information  
 DEAR: Department of Energy Acquisition Regulation  
 DOD: Department of Defense  
 DOE: Department of Energy  
 DOE–PMR: Department of Energy Property Management Regulations

DPMO: Departmental Property Management Officer  
 ECCN: Export Control Classification Number  
 ECI: Export Controlled Information  
 EHFFP: Equipment Held For Future Projects  
 EOQ: Economic Order Quantity  
 FAR: Federal Acquisition Regulation  
 FPMR/FMR: Federal Property Management Regulations/Federal Management Regulation  
 FSC: Federal Supply Classification  
 FSCG: Federal Supply Classification Group  
 GAO: General Accounting Office  
 GSA: General Services Administration  
 GVWR: Gross Vehicle Weight Rating  
 INFCIRC: International Atomic Energy Agency Information Circular  
 IFMS: Interagency Fleet Management System  
 IT: Information Technology  
 LEDP: Laboratory Equipment Donation Program  
 M&O: Management and Operating  
 MCTL: Military Critical Technologies List  
 OPMO: Organizational Property Management Officer  
 OPSEC: Operations Security  
 PA: Property Administrator  
 PSO: Program Secretarial Officer (PSO)  
 SNM: Special Nuclear Material  
 UCNI: Unclassified Controlled Nuclear Information  
 U.S.C.: United States Code

#### **§ 109–1.101 Federal Property Management Regulations/Federal Management Regulation System.**

##### **§ 109–1.101–50 DOE–PMR System.**

The DOE–PMR system described in this subpart is established to provide uniform personal property management policies, standards, and practices within the Department.

#### **§ 109–1.102 Federal Property Management Regulations/Federal Management Regulation.**

##### **§ 109–1.102–50 DOE–PMRs.**

The DOE–PMRs (41 CFR Ch. 109) implements and supplements the FPMR/FMR (41 CFR Ch. 101) issued by the General Services Administration (GSA), Public Laws, Executive Orders, Office of Management and Budget directives, and other agency issuances affecting the Department's personal property management program.

##### **§ 109–1.103 FPMR/FMR temporary regulations.**

##### **§ 109–1.103–50 DOE–PMR temporary policies and bulletins.**

(a) Subject to applicable procedural requirements in 41 U.S.C. 1707, 42 U.S.C 7191 and 5 U.S.C 553, Personal Property Letters are authorized for publication of temporary policies that should not be codified in the Code of Federal Regulations (CFR).

(b) DOE–PMR Bulletins are used to disseminate information concerning

personal property management matters not affecting policy or to clarify instructions in actions required by the FPMR/FMR or DOE–PMR.

##### **§ 109–1.104 Publication and distribution of FPMR/FMR.**

##### **§ 109–1.104–50 Publication and distribution of DOE–PMR.**

The DOE–PMR will be published in the **Federal Register** and will appear in the CFR as Chapter 109 of Title 41, Public Contracts and Property Management. Written publications of the DOE–PMR will be distributed to DOE offices.

##### **§ 109–1.106 Applicability of FPMR/FMR.**

##### **§ 109–1.106–50 Applicability of FPMR/FMR and DOE–PMR.**

(a) The FPMR/FMR and DOE–PMR apply to all direct operations.

(b) The DOE–PMR does not apply to facilities and activities conducted under Executive Order 12344 (Naval Nuclear Propulsion Program) and Public Law 98–525.

(c) Unless otherwise provided in the appropriate part or subpart, the FPMR/FMR and DOE–PMR apply to designated contractors.

(d) The Procurement Executive or

head of a contracting activity may designate contractors other than designated contractors to which the FPMR/FMR and DOE–PMR apply.

(e) Program Secretarial Officers and other DOE elements are responsible to identify the contracts that involve the life-cycle management of personal property assets. The respective program's Head of Contracting Activity is responsible to issue direction to Contracting Officers to incorporate any and all applicable requirements of the FPMR/FMR and DOE–PMR and any supplemental Program Office guidance into contracts identified with life-cycle management of personal property.

(f) Principal authority and responsibility for the administration of DOE personal property in the custody of its contractors rest with the responsible Contracting Officer.

(g) The FPMR/FMR and DOE–PMR shall be used by contracting officers in the administration of applicable contracts, and in the review, approval, or appraisal of such contractor operations.

(h) Regulations for the management of Government property in the possession of other DOE contractors are contained in the Federal Acquisition Regulation (FAR), 48 CFR part 45, and in the DOE Acquisition Regulation (DEAR), 48 CFR part 945.

(i) Regulations for the management of personal property held by financial

assistance recipients are contained in the DOE Financial Assistance Rules (10 CFR part 600) 2 CFR parts 200 and 910 and DOE Order 534.1, Accounting.

**§ 109–1.107–50 Consultation regarding DOE–PMR.**

(a) The DOE–PMR shall be fully coordinated with all Departmental elements substantively concerned with the subject matter.

(b) The accountable Under Secretary is responsible for implementation of the DOE PMR through their respective DOE elements.

(c) Program Secretarial Officers and DOE elements with responsibility for personal property, as delegated by their cognizant Under Secretary, may develop program management plans and issue internal program office guidance that is aligned to the requirements in the DOE–PMR and as explicitly authorized by their Under Secretary.

(d) Heads of Contracting Activity designates Organizational Property Management Officers (OPMO) to establish and administer personal property management programs within their organizations.

(e) Contracting Officers designates Property Administrators (PA) as authorized representatives responsible performing delegated contract administration functions for contract and financial assistance requirements relating to Government personal property.

(f) The Office of Management is responsible for Agency-level management of the contract property program and provides policy and management assistance in support of the policy implementation effort. The Office of Management designates an Agency Property Executive to serve as National Utilization Officer responsible for promoting acquisition and utilization of excess personal property and for establishing policies, standards, and guidance in accordance with applicable laws, regulations and sound personal property management practices and standards.

**§ 109–1.108 Agency implementation and supplementation of FPMR/FMR.**

(a) The DOE–PMR includes basic and significant Departmental personal property management policies and standards which implement, supplement, or deviate from the FPMR/FMR. In the absence of any DOE–PMR issuance, the basic FPMR/FMR material shall govern.

(b) The DOE–PMR shall be consistent with the FPMR/FMR and shall not duplicate or paraphrase the FPMR/FMR material.

(c) Implementing procedures, instructions, and guides which are necessary to clarify or to implement the DOE–PMR may be issued by Headquarters or field organizations, provided that the implementing procedures, instructions and guides:

(1) Are consistent with the policies and procedures contained in this regulation;

(2) To the extent practicable, follow the format, arrangement, and numbering system of this regulation; and

(3) Contain no material which duplicates, paraphrases, or is inconsistent with the contents of this regulation.

**§ 109–1.110–50 Deviation procedures.**

(a) Each request for deviation shall contain the following:

(1) A statement of the deviation desired, including identification of the specific paragraph number(s) of the DOE–PMR;

(2) The reason why the deviation is considered necessary or would be in the best interest of the Government;

(3) If applicable, the name of the contractor and identification of the contractor affected;

(4) A statement as to whether the deviation has been requested previously and, if so, circumstances of the previous request;

(5) A description of the intended effect of the deviation;

(6) A statement of the period of time for which the deviation is needed; and

(7) Any pertinent background information which will contribute to a full understanding of the desired deviation.

(b)(1) Requests for deviations from applicable portions of the FPMR/FMR and DOE–PMR (except aviation related portions) shall be forwarded with supporting documentation by the Organizational Property Management Officer (OPMO) to the Office of Management.

(2) Requests for deviations from aviation related portions of the FPMR/FMR and DOE–PMR concerning aviation operations shall be forwarded by the OPMO or on-site DOE Aviation Management Officer with supporting documentation to the DOE Senior Aviation Management Official.

(c) The accountable Under Secretary is authorized to approve documented program-specific or location-specific exemptions, exclusions, and/or deviations from requirements of the DOE PMR based on mission needs, efficiency, and/or efficacy of execution without disregarding federal laws and regulations.

(d) Requests for deviations from the FPMR/FMR will be coordinated with GSA by the Office of Management.

**Subpart 109–1.50—Personal Property Management Program**

**§ 109–1.5000 Scope of subpart.**

This subpart supplements the FPMR/FMR, states DOE personal property management policy and program objectives, and prescribes authorities and responsibilities for the conduct of an efficient personal property management program in DOE.

**§ 109–1.5001 Policy.**

It is DOE policy that a program for the management of personal property shall be established and maintained to meet program needs. Personal property shall be managed efficiently, in accordance with Federal statutes and regulations, and in alignment with mission needs. Personal property must be managed in a safe and secure manner and ensure personal property assets are available to support efficient mission execution. Commercial practices may be used (*i.e.*, industry leading practices, voluntary consensus standards) that are necessary, appropriate, and provide effective and efficient Government property management, except where those practices are inconsistent with law, regulation or otherwise impractical.

**§ 109–1.5002 Personal property management program objectives.**

The objectives of the DOE personal property management program are to provide:

(a) A system for efficiently managing personal property in the custody or possession of DOE organizations and designated contractors; and

(b) Uniform principles, policies, and standards for efficient management of personal property that are sufficiently broad in scope and flexible in nature to facilitate adaptation to local needs and various kinds of operations.

**Subpart 109–1.51—Personal Property Management Standards and Practices**

**§ 109–1.5100 Scope of subpart.**

This subpart provides guidance on DOE standards and practices to be applied in the management of personal property.

**§ 109–1.5101 Official use of personal property.**

Personal property shall be used only in the performance of official work of the United States Government, except:

(a) In emergencies threatening loss of life or property as authorized by law;

(b) As otherwise authorized by law and approved by the Office of



Management; Program Secretarial Officer (PSO) for their respective organizations; or a contracting officer for contractor-held property.

**§ 109–1.5102 Maximum use of personal property.**

Personal property management practices shall assure the best possible use of personal property. Supplies and equipment shall be generally limited to those items essential for carrying out the programs of DOE efficiently.

**§ 109–1.5103 Loan of personal property.**

(a) Personal property which is not excess and would otherwise be out of service for temporary periods may be loaned to other DOE offices and contractors, other Federal agencies, and to others for official purposes. The loan request shall be in writing, stating the purpose of the loan and period of time required. The loan shall be executed on DOE Form 4420.2, Personal Property Loan Agreement when approved in writing by the OPMO or on-site DOE property administrator. When approved, a memorandum transmitting the loan agreement shall be prepared identifying the loan period, delivery time, method of payment and transportation, and point of delivery and return, to ensure proper control and protect DOE's interest. The domestic loan period shall not exceed one year, but may be renewed in one year increments. Second renewals of loan agreements shall be reviewed and justified at a level of management at least two levels above that of the individual making the determination to loan the property. Third renewals shall be approved by the head of the field organization or designee.

(b) Requests for loans to foreign Governments and other foreign organizations shall be submitted to the Office of International Affairs for approval, with a copy to the cognizant Headquarters program office.

**§ 109–1.5105 Identification marking of personal property.**

(a) Personal property shall be marked "U.S. Government property" or "U.S. DOE") subject to the criteria below. The markings shall be securely affixed to the property, legible, and conspicuous. Examples of appropriate marking media are bar code labels, decals, and stamping.

(b) Personal property which by its nature cannot be marked, such as stores items, metal stock, etc., is exempted from this requirement.

(c) To the extent practicable and economical, markings shall be removed prior to disposal outside of DOE. 41 CFR 102–35.30.

**§ 109–1.5106 Segregation of personal property.**

Generally, contractor-owned personal property shall be segregated from Government personal property.

Commingling of Government and contractor-owned personal property may be allowed only when:

(a) The segregation of the property would materially hinder the progress of the work (*i.e.*, segregation is not feasible for reasons such as small quantities, lack of space, or increased costs); and

(b) Control procedures are adequate (*i.e.*, the Government property is specifically marked or otherwise identified as Government property).

**§ 109–1.5107 Physical protection of personal property.**

Controls such as property pass systems, memorandum records, regular or intermittent gate checks, and/or perimeter fencing shall be established as appropriate to prevent loss, theft, or unauthorized removal of property from the premises on which such personal property is located.

**§ 109–1.5108 Personal property records requirements.**

The contractor's property control records shall provide the following information for every accountable item of Government personal property in the contractor's possession and any other data elements required by specific contract provisions:

(a) Contract number or equivalent code designation.

(b) Asset type.

(c) Description of item (name, serial number, national stock number (if available)).

(d) Property control number (Government ownership identity).

(e) Unit acquisition cost (including delivery and installation cost, when appropriate, and unit of measure).

(f) Acquisition document reference and date.

(g) Manufacturer's name, model and serial number.

(h) Quantity received, fabricated, issued or on hand.

(i) Location (physical area)

(j) Custodian name and organization code.

(k) Use status (active, storage, excess, etc.)

(l) High risk designation.

(m) Disposition document reference and date.

**§ 109–1.5108–1 Equipment.**

An individual property record will be developed and maintained for each item of equipment.

**§ 109–1.5108–3 Stores inventories.**

Perpetual inventory records are to be maintained for stores inventory items.

**§ 109–1.5108–4 Precious metals.**

Perpetual inventory records are to be maintained for precious metals.

**§ 109–1.5108–5 Administratively controlled items.**

No formal property management records are required to be maintained for this category of personal property, which includes such items as those controlled for calibration or maintenance purposes, contaminated property, tool crib items, and equipment pool items. Various control records can be employed to help safeguard this property against waste and abuse, including purchase vs. use information, tool crib check-outs, loss and theft reports, calibration records, disposal records, and other similar records. Control techniques would include physical security, custodial responsibility, identification/markings, or other locally established control techniques.

**§ 109–1.5110 Physical inventories of personal property.**

(a) Physical inventories of those categories of personal property as specified in paragraph (g) of this section shall be conducted at all DOE and designated contractor locations.

(b) Physical inventories shall be performed by the use of personnel other than custodians of the property. Where staffing restraints or other considerations apply, the inventory may be performed by the custodian with verification by a second party.

(c) Detailed procedures for the taking of physical inventories shall be developed for each DOE office and designated contractor. The OPMO/PA shall review and approve the DOE office and contractor procedures.

(d) The conduct of a physical inventory will be observed, or follow-on audits made, by independent representatives, *e.g.*, finance, audit, or property personnel, to the extent deemed necessary to assure that approved procedures are being followed and results are accurate. These observations or audits shall be documented and the documentation retained in the inventory record file.

(e) The DOE capitalization threshold for items acquired prior to October 1, 2011 is \$50,000. For items acquired on or after October 1, 2011, the threshold is \$500,000.

(f) Procedures that are limited to a check-off of a listing of recorded property without actual verification of



the location and existence of such property do not meet the requirements of a physical inventory.

(g) The frequency of physical inventories of personal property shall be as follows:

- (1) Equipment—biennial 98% Inventory accuracy.
- (2) Sensitive items—annual 100% Inventory accuracy.
- (3) Stores inventories—annual.
- (4) Precious metals—annual 100% Inventory accuracy.
- (5) HRPP—annual 100% Inventory accuracy.
- (6) All other accountable property every three years 98% Inventory accuracy.
- (7) Administratively controlled items—There is no formal Department requirement for the performance of physical inventories of this property. However, OPMOs/PA's determines inventory requirements based on management needs.

(h) Physical inventories shall be performed at intervals more frequently than required when experience at any given location or with any given item or items indicates that this action is necessary for effective property accounting, utilization, or control as directed by OPMO/PA.

(i) Physical inventories of equipment may be conducted by the "inventory by exception" method. The system and procedures for taking physical inventories by this method must be fully documented and approved in writing by the OPMO/PA.

(j) The results of physical inventories shall be reconciled with the property records, and with applicable financial control accounts.

(k) The results of physical inventories shall be reported to the OPMO/PA.

(l) Physical inventories of equipment and stores inventories may be conducted using statistical sampling methods in lieu of the normal wall-to-wall method. The sampling methods employed must be statistically valid and approved in writing by the OPMO. If use of the statistical methods of physical inventory does not produce acceptable results, the wall-to-wall method shall be used to complete the inventories.

**§ 109-1.5112 Loss, damage, or destruction of personal property in possession of DOE direct operations.**

DOE offices shall establish procedures to provide for the reporting, documentation, and investigation of instances of loss, damage, or destruction of personal property including:

(a) Notification to appropriate DOE organizations and law enforcement offices;

(b) Determination of cause or origin;

(c) Liability and responsibility for repair or replacement; and

(d) Actions taken to prevent further loss, damage, or destruction, and to prevent repetition of similar incidents.

**§ 109-1.5113 Loss, damage, or destruction of personal property in possession of designated contractors.**

(a) Designated contractors shall report any loss, damage, or destruction of personal property in its possession or control, including property in the possession or control of subcontractors, to the property administrator as soon as it becomes known.

(b) When physical inventories, consumption analyses, or other actions disclose consumption of property considered unreasonable by the property administrator; or loss, damage, or destruction of personal property not previously reported by the contractor, the property administrator shall require the contractor to investigate the incidents and submit written reports.

(c) Reports of physical inventory results and identified discrepancies shall be submitted to the property administrator within 90 days of completion of physical inventories. An acceptable percentage of shrinkage for stores inventories shall be determined by the property administrator on a location-by-location basis, based on type and cost of materials, historical data, and other site-specific factors. This determination shall be in writing and be supported by appropriate documentation.

(d) The contractor's report referenced above shall contain factual data as to the circumstances surrounding the loss, damage, destruction or excessive consumption, including:

- (1) The contractor's name and contract number;
- (2) A description of the property;
- (3) Cost of the property, and cost of repairs in instances of damage (in event actual cost is not known, use reasonable estimate);
- (4) The date, time (if pertinent), and cause or origin; and
- (5) Actions taken by the contractor to prevent further loss, damage, destruction, or unreasonable consumption, and to prevent repetition of similar incidents.

(e) The property administrator shall ensure that the corrective actions taken by the contractor under paragraph (d)(5) of this section satisfactorily address system weaknesses.

(f) The contracting officer shall make a determination of contractor liability with a copy of the determination furnished to the contractor and the

property administrator. Costs may be assessed against a contractor for physical inventory discrepancies or other instances of loss of Government property within the terms of the contract. Credit should only be applied if specific items reported as lost can be uniquely identified. General physical inventory write-ons are not to be used as a credit.

(g) If part of a designated contractor's personal property management system is found to be unsatisfactory, the property administrator shall increase surveillance of that part to prevent, to the extent possible, any loss, damage, destruction or unreasonable consumption of personal property. The property administrator shall give special attention to reasonably ensuring that any loss, damage, destruction or unreasonable consumption occurring during a period when a contractor's personal property management system is not approved is identified before approval or reinstatement of approval.

**§ 109-1.5114 Use of non-Government-owned property.**

Non-Government-owned personal property shall not be installed in, affixed to, or otherwise made a part of any Government-owned personal property when such action will adversely affect the operation or condition of the Government property.

**§ 109-1.5148 Personal property management reports.**

Annual personal property reports as required by 41 CFR 102 35.25 and internal DOE personal property reports must be submitted to the Office of Management at a date determined by the Property Executive.

**Subpart 109-1.52—Personal Property Management Program for Designated Contractors**

**§ 109-1.5200 Scope of subpart.**

This subpart prescribes policy and responsibilities for the establishment, maintenance, and appraisal of designated contractors' programs for the management of personal property.

**§ 109-1.5201 Policy.**

(a) Designated contractors shall establish, implement, and maintain a system that provides for an efficient personal property management program. The system shall be consistent with the terms of the contract; prescribed policies, procedures, regulations, statutes, and instructions; and directions from the contracting officer.

(b) Designated contractors' personal property management systems shall not be considered acceptable until reviewed

and approved in writing by the cognizant DOE contracting office in accordance with § 109–1.5205 of this subpart.

(c) Designated contractors shall maintain their personal property management systems in writing. Revisions to the systems shall be approved in writing by the cognizant DOE contracting office in accordance with § 109–1.5205 of this subpart.

(d) Designated contractors shall include their personal property management system in their management surveillance or internal review program in order to identify weaknesses and functions requiring corrective action.

(e) Designated contractors are responsible and accountable for all Government personal property in the possession of subcontractors, and shall include appropriate provisions in their subcontracts and property management systems to assure that subcontractors establish and maintain efficient systems for the management of Government personal property in their possession in accordance with § 109–1.5204 of this subpart.

#### **§ 109–1.5202 Establishment of a personal property holdings baseline.**

(a) If the contractor is a new designated contractor, the contractor may accept the previous contractor's personal property records as a baseline or may perform a complete physical inventory of all personal property. This physical inventory is to be performed within the time period specified by the contracting officer or the contract, but no later than one year after the execution date of the contract. If the physical inventory is not accomplished within the allotted time frame, the previous contractor's records will be considered as the baseline.

(b) If any required physical inventories have not been accomplished within the time periods prescribed in § 109–1.5110(f) of this part, the new contractor shall either perform such physical inventories within 120 days of contract renegotiation, or accept the existing property records as the baseline.

#### **§ 109–1.5203 Management of subcontractor-held personal property.**

Designated contractors shall require those subcontractors provided Government-owned personal property to establish and maintain a system for the management of such property. As a minimum, a subcontractor's personal property management system shall provide for the following:

(a) Adequate records.

(b) Controls over acquisitions.

(c) Identification as Government-owned personal property.

(d) Physical inventories.

(e) Proper care, maintenance, and protection.

(f) Controls over personal property requiring special handling (*i.e.*, nuclear-related, proliferation-sensitive, hazardous, or contaminated property).

(g) Reporting, redistribution, and disposal of excess and surplus personal property.

(h) Accounting for personal property that is lost, damaged, destroyed, stolen, abandoned, or worn out.

(i) Periodic reports, including physical inventory results and total acquisition cost of Government property.

(j) An internal surveillance program, including periodic reviews, to ensure that personal property is being managed in accordance with established procedures.

#### **§ 109–1.5204 Review and approval of a designated contractor's personal property management system.**

(a) An initial review of a designated contractor's personal property management system shall be performed by the property administrator within one year after the execution date of the contract, except for contract extensions or renewals or when an existing contractor has been awarded a follow-on contract. The purpose of the review is to determine whether the contractor's system provides adequate protection, maintenance, utilization, and disposition of personal property, and reasonable assurance that the Department's personal property is safeguarded against waste, loss, unauthorized use, or misappropriation, in accordance with applicable statutes, regulations, contract terms and conditions, programmatic needs, and good business practices. If circumstances preclude completion of the initial review within the "within one year" initial review requirement, the property administrator shall request a deviation from the requirement in accordance with the provisions of § 109–1.110–50 of this part.

(b) If a designated contractor is the successor to a previous designated contractor and the contract award was based in part on the contractor's proposal to overhaul the existing personal property management system(s), the "within one year" initial review requirement may be extended based on:

(1) The scope of the overhaul; and

(2) An analysis of the cost to implement the overhaul within a year versus a proposed extended period.

(c) When an existing contract has been extended or renewed, or the designated contractor has been awarded a follow-on contract, an initial review of the contractor's personal property management system is not required. In such cases, the established appraisal schedule will continue to be followed as prescribed in paragraph (d) of this section.

(d) At a minimum of every three years after the date of approval of a designated contractor's property management system, the OPMO/PA shall make an appraisal of the personal property management operation of the contractor. The purpose of the appraisal is to determine if the contractor is managing personal property in accordance with its previously approved system and procedures, and to establish whether such procedures are efficient. The appraisal may be based on a formal comprehensive appraisal or a series of formal appraisals of the functional segments of the contractor's operation.

(e) A designated contractor's property management system shall be approved, conditionally approved, or disapproved in writing by the head of the field organization with advice of the contracting officer, property administrator, OPMO, legal counsel, and appropriate program officials. Approval authority may be redelegated to the contracting officer or OPMO/PA. Conditional approval and disapproval authority cannot be redelegated. When a system is conditionally approved or disapproved, the property administrator or contracting officer shall advise the contractor, in writing, of deficiencies that need to be corrected, and a time schedule established for completion of corrective actions.

(f) Appropriate follow-up will be made by the property administrator to ensure that corrective actions have been initiated and completed.

(g) When a determination has been made by the property administrator that all major system deficiencies identified in the review or appraisal have been corrected, the head of the field organization shall withdraw the conditional approval or disapproval, and approve the system with the concurrence of the OPMO/PA. The approval shall be in writing and addressed to appropriate contractor management.

(h) The property administrator shall maintain a copy of all designated contractor personal property management system appraisals and approvals in such manner as to be readily available to investigative and external review teams.

**§ 109–1.5205 Personal property management system changes.**

Any proposed significant change to a designated contractor's approved personal property management system shall be reviewed by the property administrator at the earliest possible time. Such changes should then be approved in writing on an interim basis, or disapproved in writing, by the property administrator as appropriate.

**Subpart 109–1.53—Management of High Risk Personal Property****§ 109–1.5300 Scope of subpart.**

(a) This subpart provides identification, accounting, control, and disposal policy guidance for the following categories of high risk personal property: Especially designed or prepared property, export controlled property, nuclear weapon components or weapon-like components, and proliferation sensitive property. The guidance is intended to ensure that the disposition of these categories of high risk personal property does not adversely affect the national security or nuclear nonproliferation objectives of the United States.

(b) The other categories of high risk personal property are controlled by other life cycle management programs and procedures monitored by other Departmental elements.

**§ 109–1.5301 Applicability.**

This subpart is applicable to all DOE organizations which purchase, manage or dispose of Government personal property, or contract for the management of Government facilities, programs, or related services, which may directly or indirectly require the purchase, management, or disposal of Government-owned personal property. Using the high-risk personal property control requirements in this subpart as guidance, Program Secretarial Officer (PSO) or OPMOs/PAs shall ensure that designated contractors and financial assistance recipients are responsible for developing a cost effective high-risk property management system, covering all operational responsibilities enumerated in this subpart.

**§ 109–1.5302 Policies.**

(a) It is the responsibility of DOE organizations and designated contractors to manage and control Government-owned high risk personal property in an efficient manner. High-risk personal property will be managed throughout its life cycle so as to protect public and DOE personnel safety and to advance the national security and the nuclear nonproliferation objectives of the U.S. Government.

(b) The disposition of high risk property is subject to special considerations. Items of high risk property may present significant risks to the national security and nuclear nonproliferation objectives of the Government which must be evaluated. Organizations will identify high risk property and control its disposition to eliminate or mitigate such risks. In no case shall property be transferred or disposed unless it receives a high risk assessment and is handled accordingly.

**§ 109–1.5303 Procedures.**

(a) *Identification, marking and control.* To ensure the appropriate treatment of property at its disposal and to prevent inadvertent, uncontrolled release of high risk property, property should be assessed and evaluated as high risk property as early in its life cycle as practical.

(1) Newly acquired high risk personal property shall be identified and tracked during the acquisition process and marked upon receipt.

(2) All personal property shall be reviewed for high risk identification, marking, and database entry during regularly scheduled physical inventories, unless access to the property is difficult or impractical because the property is a component of a larger assembly, a complex operating system, or an older facility. The review of this property will be completed, prior to disposition, when replacing components or when operating systems and facilities are decommissioned and dismantling.

(3) High risk personal property which by its nature cannot be marked, such as stores items and metal stock, is exempt from this requirement. However, personal property management programs should contain documentation on the characterization of this property as high risk.

(b) *Disposition of high risk property.*

(1) Prior to disposition, all personal property, materials or data will be assessed to determine:

(i) Whether it should be characterized as high risk, and

(ii) What actions are necessary to ensure compliance with applicable national security or nonproliferation controls.

(2) The DOE or designated contractor property management organization may not process high risk personal property into a reutilization/disposal program without performing the reviews prescribed by the local high risk property management system. The reviews must be properly documented, and all appropriate certifications and clearances received, in accordance with

the approved site or facility personal property management program.

(3) The disposition (including demilitarization of items on the Munitions List) and handling of high risk personal property are subject to applicable provisions of subchapter H of the FPMR/FMR, subchapter H of this chapter, and the DOE Guidelines on Export Control and Nonproliferation.

(4) All applicable documentation, including records concerning the property's categorization as high risk, shall be included as part of the property transfer. The documentation shall be included with all transfers within, or external to, DOE.

(5) Unless an alternative disposition option appears to be in the best interest of the Government, surplus Trigger List components, equipment, and materials and nuclear weapon components shall either be sold for scrap after being rendered useless for their originally intended purpose or destroyed, with the destruction verified and documented. Requests for approval of an alternative disposition may be made through the cognizant Assistant Secretary to the Director of the Office of Nonproliferation and National Security.

(6) The following Export Restriction Notice, or approved equivalent notice, shall be included in all transfers, sales, or other offerings:

**Export Restriction Notice**

The use, disposition, export and re-export of this property are subject to all applicable U.S. laws and regulations, including the Atomic Energy Act of 1954, as amended; the Arms Export Control Act (22 U.S.C. 2751 *et seq.*); the Export Administration Act of 1979 as continued under the International Emergency Economic Powers Act (Title II of Pub. L. 95–223, 91 Stat. 1626, October 28, 1977); Trading with the Enemy Act (50 U.S.C. 4305) as amended by the Foreign Assistance Act of 1961); Assistance to Foreign Atomic Energy Activities (10 CFR part 810); Export and Import of Nuclear Equipment and Material (10 CFR part 110); International Traffic in Arms Regulations (22 CFR parts 120 *et seq.*); Export Administration Regulations (15 CFR part 730 *et seq.*); and the Espionage Act (37 U.S.C. 791 *et seq.*) which among other things, prohibit:

a. The making of false statements and concealment of any material information regarding the use or disposition, export or re-export of the property; and

b. Any use or disposition, export or re-export of the property which is not authorized in accordance with the provisions of this agreement.

**§ 109–1.5304 Deviations.**

(a) Life cycle control determinations. When the PSO approves a contractor program containing controls, other than life cycle control consistent with this subpart, the decision shall be justified in writing and a copy sent to the Office of Management. A PSO's decision not to provide life-cycle control should take into account:

(1) The nature and extent of high risk property typically purchased or otherwise brought to a DOE or designated contractor facility or site;

(2) The projected stability of DOE and designated contractor operations; and

(3) The degree of confidence in the property control measures available at disposition.

(b) Certain transfers, sales, or other offerings of high risk personal property may require special conditions or specific restrictions as determined necessary by the property custodian or cognizant program office.

(c) Requests for deviations from the requirements of this subpart may be made through the cognizant PSO to the Office of Management.

**PART 109–6—MISCELLANEOUS REGULATIONS****Subpart 109–6.4—Official Use of Government Passenger Carriers Between Residence and Place of Employment**

Sec.

109–6.400 Scope and applicability.

109–6.400–50 Instructions to DOE passenger carrier operators.

109–6.402 Policy.

109–6.450 Statutory provisions.

**Authority:** Sec. 205(c), 63 Stat. 390 (40 U.S.C. 121; 31 U.S.C. 1344(e)(1)).

**Subpart 109–6.4—Official Use of Government Passenger Carriers Between Residence and Place of Employment****§ 109–6.400 Scope and applicability.**

(a) With the exception of § 109–6.400–50, the provisions of this subpart and 41 CFR part 102–5 do not apply to designated contractors. Official use provisions applicable to these contractors are contained in § 109–38.3 of this chapter.

(b) When an employee on temporary duty is authorized to travel by Government motor vehicle, and in the interest of the Government, is scheduled to depart before the beginning of regular working hours, or if there will be a significant savings in time, a Government motor vehicle may be issued at the close of the preceding working day. Such authorizations must be submitted to the fleet manager to ensure proper use of motor vehicles

during non-duty hours. Similarly, when scheduled to return after the close of working hours, the motor vehicle may be returned the next regular working day. This use of a Government motor vehicle is not regarded as prohibited by 31 U.S.C. 1344 (25 Comp. Gen. 844(1946)).

**§ 109–6.400–50 Instructions to DOE passenger carrier operators.**

DOE offices shall ensure that DOE employees operating Government motor vehicles are informed concerning:

(a) The statutory requirement that Government motor vehicles shall be used only for official purposes;

(b) Personal responsibility for safe driving and operation of Government motor vehicles, and for compliance with Federal, state, and local laws and regulations, and all accident reporting requirements;

(c) The need to possess a valid state, District of Columbia, or commonwealth operator's license or permit for the type of vehicle to be operated and some form of agency identification. Check for specific details within your state laws regarding vehicle operator's licenses from foreign countries which may be valid in certain States;

(d) The penalties for unauthorized use of Government motor vehicles;

(e) The prohibition against providing transportation to strangers or hitchhikers;

(f) The proper care, control and use of Government credit card and vehicle keys;

(g) Mandatory use of seat belts by each employee operating or riding in a Government motor vehicle;

(h) The prohibition against the use of tobacco products in GSA-Interagency Fleet Management System (IFMS) motor vehicles;

(i) Any other duties and responsibilities assigned to operators with regard to the use, care, operation, and maintenance of Government motor vehicles;

(j) The potential income tax liability when they use a Government motor vehicle for transportation between residence and place of employment; and

(k) Protection for DOE employees under the Federal Tort Claims Act when acting within the scope of their employment.

(l) The prohibition against text messaging while operating a Government vehicle, or any vehicle while on Government business, as set forth under Executive Order 13513; and

(m) See 31 U.S.C. 1344 and 41 CFR 301–10.201 for allowable use of Government vehicles while on temporary duty or official travel orders.

**§ 109–6.402 Policy.**

(a) It is DOE policy that Government motor vehicles operated by DOE employees are to be used only for official Government purposes or for incidental purposes as prescribed in this section. The Office of Management and Program Secretarial Officer (PSO) for their respective organizations shall establish appropriate controls to ensure that the use of a Government motor vehicle for transportation between an employee's residence and place of employment is in accordance with the provisions of 41 CFR part 102–5 and this subpart.

(b) It is DOE policy that space in a Government motor vehicle used for home-to-work transportation may be shared with a spouse, relative, or friend in accordance with the restrictions contained in 41 CFR 102–5.105.

**§ 109–6.450 Statutory provisions.**

(a) In accordance with 31 U.S.C. 1349(b), any officer or employee of the Government who willfully uses or authorizes the use of a Government passenger motor vehicle for other than official purposes shall be suspended from duty by the head of the department concerned, without compensation, for not less than one month and shall be suspended for a longer period or summarily removed from office if circumstances warrant.

(b) Under the provisions of 18 U.S.C. 641, any person who knowingly misuses any Government property (including Government motor vehicles) may be subject to criminal prosecution and, upon conviction, to fines or imprisonment.

**PART 109–25—GENERAL****Subpart 109–25.1—General Policies**

Sec.

109–25–109–1 Identification of idle equipment.

109–25–109–2 Equipment pools.

109–25.302 Office furniture, furnishings, and equipment.

109–25.350 Furnishing of Government clothing and individual equipment.

**Authority:** Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

**Subpart 109–25.1—General Policies****§ 109–25.109–1 Identification of idle equipment.**

At a minimum, management walk-throughs shall be conducted to provide for coverage of all operating and storage areas at least once every two years to identify idle and unneeded personal property.

**§ 109–25.109–2 Equipment pools.**

(a)–(c) [Reserved]

(d) The report on the use and effectiveness of equipment pools shall be submitted to the head of the DOE office at the discretion of that official. However, documentation of evaluations of pools shall be maintained and made available for review by appropriate contractor management, DOE offices, and audit teams.

(e) Program Secretarial Officer (PSO) shall require periodic independent reviews of equipment pool operations.

**§ 109–25.302 Office furniture, furnishings, and equipment.**

The Director, Office of Management, Program Secretarial Officer (PSO), and designated contractors shall establish criteria for the use of office furniture, furnishings, and equipment.

**§ 109–25.350 Furnishing of Government clothing and individual equipment.**

(a) Government-owned clothing and individual equipment may be furnished to employees:

(1) For protection from physical injury or occupational disease; or  
(2) When employees could not reasonably be required to furnish them as a part of the personal clothing and equipment needed to perform the regular duties of the position to which they are assigned or for which services were engaged.

(b) This section does not apply to uniforms or uniform allowances under the Federal Employees Uniform Allowance Act of 1954, 84 Public Law 37, as amended.

**PART 109–26—PROCUREMENT SOURCES AND PROGRAM**

**Subpart 109–26.2—Federal Requisitioning System**

Sec.  
109–26.203 Activity address codes.

**Subpart 109–26.5—GSA Procurement Programs**

109–26.501 Purchase of new motor vehicles.  
109–26.501–1 General.  
109–26.501–4 Submission of orders.  
109–26.501–50 Authority and allocations for the acquisition of passenger motor vehicles.  
109–26.501–51 Used vehicles.  
109–26.501–52 Justification for purchase.  
109–26.501–53 Acquisitions by transfer.  
109–26.501–54 Communications equipment.

**Authority:** Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

**Subpart 109–26.2—Federal Requisitioning System**

**§ 109–26.203 Activity address codes.**

(a) DOE field organizations designated by the Office of Management are

responsible for processing routine activity code related transactions for specified groupings of field organizations. Each field organization in a specified grouping will forward their activity address code related transactions to the grouping's lead organization for processing. Each lead organization shall designate a point of contact who will:

(1) Verify the need, purpose, and validity of each transaction; and  
(2) Be the specified grouping's authorized point of contact for dealing directly with GSA.

(b) The Office of Management is responsible for:

(1) All policy matters related to the issuance and control of activity address codes within DOE; and  
(2) Furnishing the identity of the lead field organization points of contact to GSA.

**Subpart 109–26.5—GSA Procurement Programs**

**§ 109–26.501 Purchase of new motor vehicles.**

**§ 109–26.501–1 General.**

(a) GSA is a mandatory source, under FPMR 101–26.501, for purchase of new non-tactical vehicles.

(b) Under unique circumstances which meet the criteria set forth under FPMR, motor vehicles may be purchased directly rather than through GSA when a waiver has been granted by GSA. The waiver request should be submitted directly to GSA and a copy forwarded to the Office of Management. GSA will grant waivers on a case-by-case basis, in accordance with FPMR 101–26.501(b)(c).

**§ 109–26.501–4 Submission of orders.**

An original and two copies of requisitions for passenger motor vehicles and law enforcement motor vehicles shall be forwarded with justification for purchase to the Office of Management, for approval and submission to GSA. Requisitions for all other types of motor vehicles shall be submitted directly to GSA.

**§ 109–26.501–50 Authority and allocations for the acquisition of passenger motor vehicles.**

(a) Authority for the acquisition of passenger motor vehicles is contained in the Department's annual appropriation act.

(b) DOE offices shall include in their budget submissions the number of passenger motor vehicles to be purchased during the fiscal year. The procurements will be identified as either additions to the motor vehicle

fleet or replacement vehicles. A copy of the motor vehicle portion of the submission should be submitted to the Office of Management.

(c) To ensure that DOE does not exceed the number of passenger motor vehicles authorized to be acquired in any fiscal year, the Office of Management or designee shall allocate to and inform the field organizations in writing of the number of passenger motor vehicles which may be acquired under each appropriation. These allocations and the statutory cost limitations imposed on these motor vehicles shall not be exceeded.

(d) The motor vehicle fleet manager shall provide written certification to the OPMO that disposition action has been taken on replaced passenger motor vehicles. Such certification shall be provided no later than 30 days after the disposition of the vehicle. Replaced passenger motor vehicles shall not be retained in service after receipt of the replacement vehicle.

**§ 109–26.501–51 Used vehicles.**

Normally, DOE does not purchase or authorize contractors to purchase used motor vehicles. However, the Office of Management and Program Secretarial Officer (PSO) may authorize the purchase of used motor vehicles where justified by special circumstances, e.g., when new motor vehicles are in short supply; motor vehicles are to be used for experimental or test purposes; or motor vehicles are acquired from exchange/sale. The statutory passenger motor vehicle allocation requirements shall apply to any purchase of used passenger motor vehicles except in the case of motor vehicles to be used exclusively for experimental or test purposes.

**§ 109–26.501–52 Justification for purchase.**

(a) Requisitions for additions to the passenger motor vehicle fleet must contain adequate written justification of need. Such justifications shall be prepared by the motor vehicle fleet manager and approved by the OPMO, and should include:

(1) A statement as to why the present fleet size is inadequate to support requirements;

(2) Efforts made to achieve maximum use of on-hand motor vehicles through pool arrangements, shuttle buses, and taxicabs;

(3) The programmatic requirement for the motor vehicles and the impact on the program/project if the requisitions are not filled;

(4) The established DOE or local utilization objectives used to evaluate the utilization of passenger motor

vehicles and whether the objectives have been approved by the OPMO; and

(5) The date of the last utilization review and the number of passenger motor vehicles which did not meet the established utilization objectives and the anticipated mileage to be achieved by the new motor vehicles.

(b) Requisitions for replacement passenger motor vehicles should include a statement that utilization, pools, shuttle buses and taxicabs have been considered by the motor vehicle fleet manager and the OPMO. Specific information on the identification, age and mileage of the motor vehicles should be included. When a passenger motor vehicle being replaced does not meet Federal replacement standards, a description of the condition of the vehicle should also be provided.

#### **§ 109–26.501–53 Acquisitions by transfer.**

(a) The acquisition of passenger motor vehicles by transfer from another Government agency or DOE organization shall be within the allocations prescribed in § 109–26.501–50 of this subpart.

(b) Passenger motor vehicles may be acquired by transfer provided they are:

(1) Considered as an addition to the motor vehicle fleet of the receiving office;

(2) Acquired for replacement purposes and an equal number of replaced motor vehicles are reported for disposal within 30 days;

(3) For temporary emergency needs exceeding three months and approved in writing by the DPMO; or

(4) For temporary emergency needs of three months or less in lieu of commercial rentals. These transfers will not count toward the allocation.

#### **§ 109–26.501–54 Communications equipment.**

Communications equipment considered to be essential for the accomplishment of security and safety responsibilities is exempt from the requirements of 41 CFR 101–26.501. The Fleet Manager shall approve the installation of communications equipment in motor vehicles.

### **PART 109–27—INVENTORY MANAGEMENT**

#### **Subpart 109–27.50—Inventory Management Policies, Procedures, and Guidelines**

Sec.

109–27.5008 Control of drug substances.

#### **Subpart 109–27.51—Management of Precious Metals**

109–27.5100 Scope of subpart.

109–27.5101 Definition.

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109–27.5103 Precious Metals Control Officer.

109–27.5104 Practices and procedures.

109–27.5104–1 Acquisitions.

109–27.5104–2 Physical protection and storage.

109–27.5104–3 [Reserved]

109–27.5104–4 Physical inventories.

109–27.5104–5 Control and issue of stock.

109–27.5104–6 Control by using organization.

109–27.5105 Management reviews and audits.

109–27.5106 Precious metals pool.

109–27.5106–1 Purpose.

109–27.5106–2 Withdrawals.

109–27.5106–3 Returns.

109–27.5106–4 Withdrawals/returns forecasts.

109–27.5106–5 Assistance.

109–27.5107 Recovery of silver from hypo solution and scrap film.

**Authority:** Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

#### **Subpart 109–27.50—Inventory Management Policies, Procedures, and Guidelines**

##### **§ 109–27.5008 Control of drug substances.**

Effective procedures and practices shall provide for the management and physical security of controlled substances from receipt to the point of use. Such procedures shall, as a minimum, provide for safeguarding, proper use, adequate records, and compliance with applicable laws and regulations.

#### **Subpart 109–27.51—Management of Precious Metals**

##### **§ 109–27.5100 Scope of subpart.**

This subpart provides policies, principles, and guidelines to be used in the management of purchased and recovered precious metals used to meet research, development, production, and other programmatic needs.

##### **§ 109–27.5101 Definition.**

*Precious metals* means uncommon and highly valuable metals characterized by their superior resistance to corrosion and oxidation. Included are gold, silver, and the platinum group metals—platinum, palladium, rhodium, iridium, ruthenium and osmium.

##### **§ 109–27.5102 Policy.**

DOE organizations and contractors shall establish effective procedures and practices for the administrative and physical control of precious metals in accordance with the provisions of this subpart.

##### **§ 109–27.5103 Precious Metals Control Officer.**

Each DOE organization and contractor holding precious metals shall designate

in writing a Precious Metals Control Officer. This individual shall be the organization's primary point of contact concerning precious metals control and management, and shall be responsible for the following:

(a) Ensuring that the organization's precious metals activities are conducted in accordance with Departmental requirements.

(b) Maintaining an accurate list of the names of precious metals custodians.

(c) Providing instructions and training to precious metals custodians and/or users as necessary to assure compliance with regulatory responsibilities.

(d) Ensuring that physical inventories are performed as required by, and in accordance with, these regulations.

(e) Witnessing physical inventories.

(f) Performing periodic unannounced inspections of a custodian's precious metals inventory and records.

(g) Conducting an annual review of precious metals holdings to determine excess quantities.

(h) Preparing and submitting to the DOE Business Center for Precious Metals Sales and Recovery the annual forecast of anticipated withdrawals from, and returns to, the DOE precious metals pool.

(i) Conducting a program for the recovery of silver from used hypo solution and scrap film in accordance with 41 CFR 101–45.10 and § 109–45.10 of this chapter.

(j) Preparing and submitting of the annual report on recovery of silver from used hypo solution and scrap film as required by § 109–45.1002–2 of this chapter.

(k) Developing and issuing current authorization lists of persons authorized by management to withdraw precious metals from stockrooms.

##### **§ 109–27.5104 Practices and procedures.**

##### **§ 109–27.5104–1 Acquisitions.**

DOE organizations and contractors shall contact the DOE Business Center for Precious Metals Sales and Recovery to determine the availability of precious metals prior to acquisition on the open market.

##### **§ 109–27.5104–2 Physical protection and storage.**

Precious metals shall be afforded exceptional physical protection from time of receipt until disposition. Precious metals not in use shall be stored in a noncombustible combination locked repository with access limited to the designated custodian and an alternate. When there is a change in custodian or alternate having access to the repository, the combination shall be changed immediately.

**§ 109–27.5104–3 [Reserved]****§ 109–27.5104–4 Physical inventories.**

(a) Physical inventories shall be conducted annually by custodians, and witnessed by the Precious Metals Control Officer or his designee in accordance with 109–1.5110, Physical inventories frequency requirements.

(b) Precious metals not in use shall be inspected and weighed on calibrated scales. The inventoried weight and form shall be recorded on the physical inventory sheets by metal content and percent of metal. Metals in use in an experimental process or contaminated metals, neither of which can be weighed, shall be listed on the physical inventory sheet as observed and/or not observed as applicable.

(c) Any obviously idle or damaged metals should be recorded during the physical inventory. Justification for further retention of idle metals shall be required from the custodian and approved one level above the custodian, or disposed of in accordance with established procedures.

(d) The dollar value of physical inventory results shall be reconciled with the financial records. All adjustments shall be supported by appropriate adjustment reports, and approved by a responsible official.

**§ 109–27.5104–5 Control and issue of stock.**

Precious metals in stock are metals held in a central location and later issued to individuals when authorized requests are received. The following control procedures shall be followed for such metals:

(a) Stocks shall be held to a minimum consistent with efficient support to programs.

(b) The name and organization number of each individual authorized to withdraw precious metals, and the type and kind of metals, shall be prominently maintained in the stockroom. This authorization shall be issued by the Precious Metals Control Officer or his designee and updated annually. Issues of metals will be made only to authorized persons.

(c) Accurate records of all receipts, issues, returns, and disposals shall be maintained in the stockroom.

(d) Receipts for metal issues and returns to stock shall be provided to users. Such receipts, signed by the authorized requesting individual and the stockroom clerk, shall list the requesting organization, type and form of metal, quantity, and date of transaction.

**§ 109–27.5104–6 Control by using organization.**

(a) After receipt, the using organization shall provide necessary controls for precious metals. Materials shall be stored in a non-combustible, combination locked repository at all times except for quantities at the actual point of use.

(b) Each using organization shall maintain a log showing the individual user, type and form of metal, and the time, place, and purpose of each use. The log shall be kept in a locked repository when not in use.

(c) The logs and secured locked storage facilities are subject to review by the Precious Metals Control Officer and other audit or review staffs as required.

(d) Cognizant Departmental managers are responsible for assuring that minimum quantities of precious metals are withdrawn consistent with work requirements and that quantities excess to requirements are promptly returned to the stockroom.

**§ 109–27.5105 Management reviews and audits.**

(a) Unannounced inspections of custodian's precious metals inventory and records may be conducted between scheduled inventories.

(b) DOE organizations and contractors holding precious metals shall annually review the quantity of precious metals on hand to determine if the quantity is in excess of program requirements. Precious metals which are not needed for current or foreseeable requirements shall be promptly reported to the DOE precious metals pool. The results of this annual review are to be documented and entered into the precious metals inventory records.

**§ 109–27.5106 Precious metals pool.****§ 109–27.5106–1 Purpose.**

The purpose of the precious metals pool is to recycle, at a minimum cost to pool participants, DOE-owned precious metals within the Department and to dispose of DOE-owned precious metals that are excess to DOE needs. However, if the pool is unable to accept any potential precious metal return, the using activity will dispose of the precious metals through the disposal process specified in subchapter H of the FPMR/FMR and this regulation.

**§ 109–27.5106–2 Withdrawals.**

Pure metals are available through the Business Center for either direct shipment to DOE contractors or facilities to fulfill fabrication requirements. Contact the Business Center for available forms and quantity

(<https://www.y12.doe.gov/missions/pmetal/>).

**§ 109–27.5106–3 Returns.**

All excess precious metals must be returned to the precious metals pool except as noted in § 109–27.5106–1 of this subpart. The pool is entirely dependent on metal returns; therefore, metal inventories should be maintained on an as-needed basis, and any excess metals must be returned to the pool for recycling. This includes precious metals in any form, including shapes, and scraps. Procedures have been developed by the precious metals pool contractor for metal returns, including storing, packaging, shipping, and security.

**§ 109–27.5106–4 Withdrawals/returns forecasts.**

The Business Center for Precious Metals Sales and Recovery will request annually from each DOE field organization its long-range forecast of anticipated withdrawals from the pool and returns to the pool.

**§ 109–27.5106–5 Assistance.**

The Business Center for Precious Metals Sales and Recovery operates the precious metals pool. DOE organizations and contractors may obtain specific information regarding the operation of the precious metals pool (operating contractor's name, address, and telephone number; processing charges; etc.) by contacting the Chief, Property Management Branch.

**§ 109–27.5107 Recovery of silver from used hypo solution and scrap film.**

The requirements for the recovery of silver from used hypo solution and scrap film are contained in § 109–45.1003 of this chapter.

**PART 109–28—STORAGE AND DISTRIBUTION**

Sec.

109–28.000–50 Policy.

109–28.000–51 Storage guidelines.

**Subpart 109–28.3—Customer Supply Centers**

109–28.306 Customer supply center (CSC) accounts and related controls.

109–28.306–3 Limitations on use.

109–28.306–5 Safeguards.

**Subpart 109–28.50—Management of Equipment Held for Future Projects**

109–28.5000 Scope of subpart.

1109–28.5001 Definition.

109–28.5002 Objective.

109–28.5003 Records.

109–28.5004 Justification and review procedures.

109–28.5005 EHFFP program review.

109–28.5006 Utilization.



**Subpart 109–28.51—Management of Spare Equipment/Property**

- 109–28.5100 Scope of subpart.
- 109–28.5101 Definition.
- 109–28.5102 Exclusions.
- 109–28.5103 Management policy.

Authority: 42 U.S.C. 7254.

**§ 109–28.000–50 Policy.**

DOE offices and designated contractors shall:

(a) Establish storage space and warehousing services for the receipt, storage, issue, safekeeping and protection of Government property;

(b) Provide storage space and warehousing services in the most efficient manner consistent with program requirements; and

(c) Operate warehouses in accordance with generally accepted industrial management practices and principles.

**§ 109–28.000–51 Storage guidelines.**

(a) Indoor storage areas should be arranged to obtain proper stock protection and maximum utilization of space within established floor load capacities.

(b) Storage yards for items not requiring covered protection shall be protected by locked fenced enclosures to the extent necessary to protect the Government's interest.

(c) Storage areas shall be prominently posted to clearly indicate that the property stored therein is U.S. Government property, with entrance to such areas restricted to authorized personnel only.

(d) Property in storage must be protected from fire, theft, deterioration, or destruction. In addition certain items require protection from dampness, heat, freezing, or extreme temperature changes. Other items must be stored away from light and odors, protected from vermin infestation, or stored separately because of their hazardous characteristics.

(e) Hazardous or contaminated property, including property having a history of use in an area where exposure to contaminated property may have occurred, shall not be commingled with non-contaminated property, but stored separately in accordance with instructions from the environmental, safety, and health officials.

(f) Unless inappropriate or impractical until declared excess, nuclear-related and proliferation-sensitive property shall be identified as such by use of a certification tag signed by an authorized program official (designated in writing with signature cards on file in the personal property management office). Such personal property shall not be commingled with other personal

property, but stored separately in accordance with instructions from the cognizant program office.

**Subpart 109–28.3—Customer Supply Centers****§ 109–28.306 Customer supply center (CSC) accounts and related controls.****§ 109–28.306–3 Limitations on use.**

DOE offices and designated contractors shall establish internal controls for ensuring that the use of CSC accounts is limited to the purchase of items for official Government use.

**§ 109–28.306–5 Safeguards.**

DOE offices and designated contractors shall establish internal controls for ensuring that the customer access codes assigned for their accounts are properly protected.

**Subpart 109–28.50—Management of Equipment Held for Future Projects****§ 109–28.5000 Scope of subpart.**

This subpart provides policies, principles, and guidelines to be used in the management of equipment held for future projects (EHFFP).

**§ 109–28.5001 Definition.**

*Equipment held for future projects* means items being retained, based on approved justifications, for a known future use, or for a potential use in planned projects.

**§ 109–28.5002 Objective.**

The objective of the EHFFP program is to enable DOE offices and contractors to retain equipment not in use in current programs but which has a known or potential use in future DOE programs, while providing visibility on the types and amounts of equipment so retained through review and reporting procedures. It is intended that equipment be retained where economically justifiable for retention, considering cost of maintenance, replacement, obsolescence, storage, deterioration, or future availability; made available for use by others; and promptly excessed when no longer needed.

**§ 109–28.5003 Records.**

Records of all EHFFP shall be maintained by the holding organization, including a listing of items with original date of classification as EHFFP; initial justifications for retaining EHFFP; rejustifications for retention; and documentation of reviews made by higher levels of management.

**§ 109–28.5004 Justification and review procedures.**

Procedures shall provide for the following:

(a) The original decision to classify and retain equipment as EHFFP shall be justified in writing, providing sufficient detail to support the need for retention of the equipment. This justification will cite the project for which retained, the potential use to be made of the equipment, or other reasons for retention.

(b) The validity of the initial classification EHFFP shall be reviewed by management at a level above that of the individual making the initial determination.

(c) Retention of equipment as EHFFP must be rejustified annually to ensure that original justifications remain valid. The rejustifications will contain sufficient detail to support retention.

(d) When equipment is retained as EHFFP for longer than one year, the annual rejustification shall be reviewed at a level of management at least two levels above that of the individual making the determination to retain the EHFFP. Equipment retained as EHFFP for longer than three years should be approved by the head of the DOE field organization.

**§ 109–28.5005 EHFFP program review.**

OPMOs or on-site DOE property administrators shall conduct periodic reviews in accordance 109–1.5110 Physical inventories of personal property frequency requirement to ensure that the EHFFP program is being conducted in accordance with established procedures DOE–FMR. Included in the review will be proper determinations of property as EHFFP, the validity of justifications for retaining EHFFP.

**§ 109–28.5006 Utilization.**

It is DOE policy that, where practicable and consistent with program needs, EHFFP be considered as a source of supply to avoid or postpone acquisition.

**Subpart 109–28.51—Management of Spare Equipment/Property****§ 109–28.5100 Scope of subpart.**

This subpart provides policy guidance to be used in the management of spare equipment.

**§ 109–28.5101 Definition.**

*Spare equipment/property* means items held as replacement spares for equipment in current use in DOE program.

**§ 109–28.5102 Exclusions.**

The following categories of equipment will not be considered spare equipment:

(a) Equipment/Property installed for emergency backup, *e.g.*, an emergency power facility, or an electric motor or a pump, any of which is in place and electrically connected.

(b) Equipment items properly classified as stores inventory.

**§ 109–28.5103 Management policy.**

(a) Procedures shall require the maintenance of records for spare equipment/property, cross-referenced to the location in the facility and the engineering drawing number. The purpose for retention shall be in the records.

(b) Reviews shall be made based on technical evaluations of the continued need for the equipment. The reviews should be held biennially. In addition, individual item levels shall be reviewed when spare equipment/Property is installed for use, the basic equipment is removed from service, or the process supported is changed.

(c) Procedures shall be established to provide for the identification and reporting of unneeded spare equipment/property as excess property.

**PART 109–30—FEDERAL CATALOG SYSTEM**

Sec.

109–30.001–50 Applicability.

Authority: 42 U.S.C. 7254.

**§ 109–30.001–50 Applicability.**

The provisions of 41 CFR part 101–30 do not apply to designated contractors.

**PART 109–38—MOTOR EQUIPMENT MANAGEMENT**

Sec.

109–38.000 Scope of part.

109–38.000–50 Policy.

**Subpart 109–38.0—Definition of Terms**

109–38.001 Definitions.

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109–38.5101 Policy.

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109–38.5201 Definition.

109–38.5202 Watercraft operations.

109–38.5203 Watercraft identification and numbers.

Authority: 42 U.S.C. 7254.

**§ 109–38.000 Scope of part.****§ 109–38.000–50 Policy.**

Motor vehicles and watercraft shall be acquired, maintained, and utilized in support of DOE programs in the minimum quantity required and in the most efficient manner consistent with program requirements, safety considerations, fuel economy, and applicable laws and regulations.

**Subpart 109–38.0—Definition of Terms****§ 109–38.001 Definitions.**

*Experimental vehicles* means vehicles acquired solely for testing and research purposes or otherwise designated for experimental purposes. Such vehicles are to be the object of testing and research as differentiated from those used as vehicular support to testing and research. Experimental vehicles are not to be used for passenger carrying services unless required as part of a testing/evaluation program, and they are not subject to statutory price limitations or authorization limitations.

*Motor equipment* means any item of equipment which is self-propelled or drawn by mechanical power, including motor vehicles, motorcycles and scooters, construction and maintenance equipment, materials handling equipment, and watercraft.

*Motor vehicle* means any equipment, self-propelled or drawn by mechanical power, designed to be operated principally on highways in the transportation of property or passengers.

*Special purpose vehicles* means vehicles which are used or designed for specialized functions. These vehicles include, but are not limited to: Trailers, semi-trailers, other types of trailing equipment; trucks with permanently mounted equipment (such as aerial ladders); construction and other types of equipment set forth in Federal Supply Classification Group (FSCG) 38; material handling equipment set forth in FSCG 39; and firefighting equipment set forth in FSCG 42. For reporting purposes within DOE, motorcycles, motor scooters and all-terrain vehicles will also be reported as special purpose vehicles.

**Subpart 109–38.1—Fuel Efficient Motor Vehicles****§ 109–38.104 Fuel efficient passenger automobiles and light trucks.**

(a) What size motor vehicles may we obtain? (See 41 CFR 102–34.50).

(b) All requests to obtain passenger automobiles larger than class IA, IB, or II (small, subcompact, or compact) shall

be forwarded with justification to the DPMO for approval and certification for compliance with the fuel economy objectives listed in 41 CFR 102–34 Subpart B.

(c) Requests to exempt certain light trucks from the fleet average fuel economy calculations shall be forwarded with justification to the Office of Management for approval.

**§ 109–38.105 Agency purchase and lease of motor vehicles.**

(a) DOE activities shall submit a copy of all motor vehicle leases and purchases not procured through the GSA Automotive Commodity Center to GSA.

(b)–(c) [Reserved]

(d) DOE activities desiring to renew a commercial lease shall submit the requirement in writing to the Office of Management for approval prior to submission by field offices to GSA.

(e) DOE activities shall submit a copy of all lease agreements to GSA.

**Subpart 109–38.2—Registration, Identification, and Exemptions**

**§ 109–38.200 General requirements.**

(a)–(e) [Reserved]

(f) Requests made pursuant to 41 CFR 102–34.155 through 102–34.170 for limited exemption from the requirement for displaying U.S. Government tags and other identification on motor vehicles, except for those vehicles exempted in accordance with 41 CFR 102–34.175 and § 109–38.204–1 of this subpart, shall be submitted to the Office of Management for approval. Each approved exemption must be renewed annually, and the Office of Management shall be notified promptly when the need for a previously authorized exemption no longer exists. Copies of certifications and cancellation notices required to be furnished to GSA pursuant to 41 CFR 102–34.160 will be transmitted to GSA.

(g) Requests for temporary removal and substitution of Government markings shall be submitted with justification to the DPMO for review and approval. Copies of the determination and justification required to be furnished to GSA will be transmitted to GSA by the DPMO.

**§ 109–38.201 Registration and inspection.**

**§ 109–38.201–50 Registration in foreign countries.**

Motor vehicles used in foreign countries are to be registered and carry license tags in accordance with the existing motor vehicle regulations of the country concerned. The person responsible for a motor vehicle in a

foreign country shall make inquiry at the United States Embassy, Legation, or Consulate concerning the regulations that apply to registration, licensing, and operation of motor vehicles and shall be guided accordingly.

**§ 109–38.202 Tags.**

**§ 109–38.202–2 Outside the District of Columbia.**

The Office of Management and Program Secretarial Officer (PSO) shall make the determination concerning the use of tags outside the District of Columbia.

**§ 109–38.202–3 Records.**

(a) The Office of Management assigns “blocks” of U.S. Government license tag numbers to DOE organizations and maintains a current record of such assignments. Additional “blocks” will be assigned upon request.

(b) Each DOE direct operation and designated contractor shall maintain a current record of individual assignments of license tags to the motor vehicles under their jurisdiction.

**§ 109–38.202–50 Security.**

Unissued license tags shall be stored in a locked drawer, cabinet, or storage area with restricted access to prevent possible fraud or misuse. Tags which are damaged or unusable will be safeguarded until destroyed.

**§ 109–38.203 Agency identification.**

Standard DOE motor vehicle window decals (DOE Form 1530.1), and door decals to be used only on vehicles without windows (DOE Form 1530.2), are available from the Office of Administrative Services, Logistics Management Division, Headquarters, using DOE Form 4250.2, “Requisition for Supplies, Equipment or Services”, or as directed by that office.

**§ 109–38.204 Exemptions.**

**§ 109–38.204–1 Unlimited exemptions.**

(a)–(f) [Reserved]

(g) The Office of Management and Program Secretarial Officer (PSO) for their respective organizations may approve exemptions from the requirement for the display of U.S. Government license tags and other official identification for motor vehicles used for security or investigative purposes.

**§ 109–38.204–3 Requests for exempted motor vehicles in the District of Columbia.**

The Director, Office of Administrative Services is designated to approve requests for regular District of Columbia license tags, and furnishes annually the name and specimen signature of each

representative authorized to approve such requests to the District of Columbia Department of Transportation.

**§ 109–38.204–4 Report of exempted motor vehicles.**

DOE offices shall provide upon request the necessary information to the DPMO to enable that office to submit a report of exempted vehicles.

**§ 109–38.204–50 Records of exempted motor vehicles.**

The Office of Management and Program Secretarial Officer (PSO) shall maintain records of motor vehicles exempted from displaying U.S. Government license tags and other identification. The records shall contain a listing, by type, of each exempted motor vehicle operated during the previous fiscal year, giving information for each motor vehicle on hand at the beginning of the year and each of those newly authorized during the year, including:

(a) Name and title of authorizing official (including any authorization by Headquarters and GSA);

(b) Date exemption was authorized;

(c) Justification for exemption and limitation on use of the exempted motor vehicle;

(d) Date of discontinuance for any exemption discontinued during the year; and

(e) Probable duration of exemptions for motor vehicles continuing in use.

**Subpart 109–38.3—Official Use of Government Motor Vehicles**

**§ 109–38.300 Scope.**

This subpart prescribes the requirements governing the use of Government motor vehicles for official purposes by designated contractors.

**§ 109–38.301 Authorized use.**

The use of Government motor vehicles by officers and employees of the Government is governed by the provisions of 41 CFR 102–34 Subpart D and section 109–6.4 of this chapter.

**§ 109–38.301–1 Contractors’ use.**

Program Secretarial Officer (PSO) shall ensure that provisions of the FPMR/FMR concerning contractor use of Government motor vehicles are complied with by their designated contractors.

**§ 109–38.301–1.50 Authorization for transportation between residence and place of employment.**

(a) Government motor vehicles shall not be used for transportation between residence and place of employment by designated contractor personnel except

under extenuating circumstances specifically provided for under the terms of the contract. Examples of circumstances eligible for prior approval of home-to-work motor vehicle use which would be appropriate to include in the terms of the contract include: Use related to safety or security operations, use related to compelling operational considerations, and use determined as cost effective to DOE's interest. Under no circumstances shall the comfort and convenience, or managerial position, of contractor employees be considered justification for authorization of use.

(b) The use of Government motor vehicles for transportation between residence and place of employment (including sporadic use) by designated contractor personnel shall be approved in writing by the Head of the field organization or designee, with delegation no lower than the Director, Office of Management and Program Secretarial Officer (PSO) or the equivalent position at other DOE contracting activities provided that the individual is a warranted contracting officer. The contractor's request for approval shall include the name and title of the employee, the reason for the use, and the expected duration of the use. Each authorization is limited to one year, but can be extended for an unlimited number of additional one-year periods.

#### **§ 109–38.301–1.51 Emergency use.**

(a) Procedures for authorization of designated contractor use of Government motor vehicles in emergencies, including unscheduled overtime situations at remote sites where prior approval is not possible, shall be included in a contractor's approved property management procedures. The procedures shall include examples of emergency situations warranting such use. Records detailing instances of emergency use shall be maintained and review of all such emergency or overtime use must be certified through established audit procedures on at least an annual basis by the OPMO.

(b) In limiting the use of Government motor vehicles to official purposes, it is not intended to preclude their use in emergencies threatening loss of life or property. Such use shall be documented and the documentation retained for three years.

#### **§ 109–38.301–1.52 Maintenance of records.**

Designated contractors shall maintain logs or other records on the use of a Government motor vehicle for transportation between an employee's residence and place of employment. As

a minimum, these logs shall indicate the employee's name, date of use, time of departure and arrival, miles driven, and names of other passengers. Cognizant finance offices shall be provided with applicable data on employees who utilize Government motor vehicles for such transportation for purposes of the Deficit Reduction Act of 1984 concerning the taxation of fringe benefits.

#### **§ 109–38.301–1.53 Responsibilities of motor vehicle operators.**

Designated contractors shall assure that their employees are aware of their responsibilities, identical to those listed in § 109–6.400–50 of this chapter for DOE employees, concerning the use and operation of Government motor vehicles.

### **Subpart 109–38.4—Use and Replacement Standards**

#### **§ 109–38.401 Use standards.**

##### **§ 109–38.401–2 Use of self-service pumps.**

It is DOE policy that motor vehicle operators shall use self-service pumps in accordance with the provisions of 41 CFR 101–38.401–2.

##### **§ 109–38.402 Replacement standards.**

(a) [Reserved]

(b) Motor vehicles may be replaced without regard to the replacement standards in 41 CFR 102–34 Subpart E only after certification by the Office of Management or the Head of the field organization for their respective organizations that a motor vehicle is beyond economical repair due to accident damage or wear caused by abnormal operating conditions.

##### **§ 109–38.402–50 Prompt disposal of replaced motor vehicles.**

A replaced motor vehicle shall be removed from service and disposed of prior to or as soon as practicable after delivery of the replacement motor vehicle to avoid concurrent operation of both motor vehicles.

#### **§ 109–38.403 Responsibility for damages.**

##### **§ 109–38.403–1 Policy.**

The policy for assigning responsibility for vehicle damage is to recover from users the costs for damages which would adversely affect the vehicle's resale.

##### **§ 109–38.403–2 Responsibility.**

The designated contractor will charge the using organization all costs resulting from damage, including vandalism, theft and parking lot damage to a DOE vehicle which occurs during the period that the vehicle is assigned to an

employee of that organization. The charges recovered by the designated maintenance operation will be used to repair the vehicle. Other examples for which organizations will be charged are as follows:

(a) Damage caused by misuse or abuse inconsistent with normal operation and local conditions; or

(b) Repair costs which are incurred as a result of user's failure to obtain required preventative maintenance; or

(c) Unauthorized purchases or repairs, including credit card misuse, provided there is a clear, flagrant, and documented pattern of such occurrences.

#### **§ 109–38.403–3 Exceptions.**

Exceptions to § 109–38.403–2 of this subpart are as follows:

(a) As a result of the negligent or willful act of a party other than the organization or its employee, and the responsible party can be determined; or

(b) As a result of mechanical failure and the employee was not otherwise negligent. Proof of the failure must be provided; or

(c) As a result of normal wear comparable to similar vehicles.

### **Subpart 109–38.5—Scheduled Maintenance**

#### **§ 109–38.502 Guidelines.**

##### **§ 109–38.502–50 DOE guidelines.**

(a) Whenever practicable and cost effective, commercial service facilities shall be utilized for the maintenance of motor vehicles.

(b) Individual vehicle maintenance records shall be kept to provide records of past repairs, as a control against unnecessary repairs and excessive maintenance, and as an aid in determining the most economical time for replacement.

(c) One-time maintenance and repair limitations shall be established by the motor equipment fleet manager. To exceed repair limitations, approval of the motor equipment fleet manager is required.

(d)(1) Motor vehicles under manufacturer's warranty shall be repaired under the terms of the warranty.

(2) When motor vehicles are maintained in Government repair facilities in isolated locations that are distant from franchised dealer facilities, or when it is not practical to return the vehicles to a dealer, a billback agreement shall be sought from manufacturers to permit warranty work to be performed on a reimbursable basis.

**Subpart 109–38.7—Transfer, Storage, and Disposal of Motor Vehicles****§ 109–38.701 Transfer of title for Government-owned motor vehicles.****§ 109–38.701–50 Authority to sign Standard Form 97, The United States Government Certificate to Obtain Title to a Vehicle.**

The Standard Form (SF) 97 shall be signed by an appropriate contracting officer. The Director, Office of Management and Program Secretarial Officer (PSO) for their respective organizations may delegate the authority to sign SF 97 to responsible DOE personnel under their jurisdiction.

**Subpart 109–38.8—Fleet Credit Card****§ 109–38.800 General.**

(a)–(c) [Reserved]

(d) The Office of Management and Program Secretarial Officer (PSO) for their respective organizations shall be responsible for establishing procedures to provide for the administrative control of fleet credit cards. Administrative control shall include, as a minimum:

(1) A reconciliation of on-hand credit cards with the inventory list provided by GSA,

(2) Providing motor vehicle operators with appropriate instructions regarding the use and protection of credit cards against theft and misuse,

(3) The taking of reasonable precautions in the event a fleet credit card is lost or stolen to minimize the opportunity of purchases being made by unauthorized persons, including notification to the paying office of the loss or theft,

(4) Validation of credit card charges to ensure they are for official use only items, and

**§ 109–38.801 Obtaining fleet credit card.**

A dedicated fleet credit card is issued with each GSA-leased motor vehicle. DOE offices electing to use fleet credit cards for agency-owned vehicles and motor equipment shall request the assignment of new accounts from the Office of Management. Following the assignment, DOE organizations shall submit orders for issuance of fleet credit cards in accordance with the instructions provided by GSA.

**Subpart 109–38.9—Federal Motor Vehicle Fleet Report****§ 109–38.902 Records.**

The Office of Management and OPMOs for their respective organizations shall establish adequate records for accounting and reporting purposes.

**§ 109–38.903 Reporting of data.****§ 109–38.903–50 Reporting DOE motor vehicle data.**

See 41 CFR 102–34 Subpart J.

**Subpart 109–38.51—Utilization of Motor Equipment****§ 109–38.5100 Scope of subpart.**

This subpart prescribes policies and procedures concerning the utilization of motor equipment.

**§ 109–38.5101 Policy.**

It is DOE policy to keep the number of motor vehicles and other motor equipment at the minimum needed to satisfy programmatic requirements. To attain this goal, controls and practices shall be established which will achieve the most practical and economical utilization of motor equipment. These controls and practices apply to all DOE-owned and commercially leased motor equipment and to GSA Interagency Fleet Management System motor vehicles.

**§ 109–38.5102 Utilization controls and practices.**

Controls and practices to be used by DOE organizations and designated contractors for achieving maximum economical utilization of motor equipment shall include, but not be limited to:

(a) The maximum use of motor equipment pools, taxicabs, shuttle buses, or other common service arrangements;

(b) The minimum, practicable assignment of motor equipment to individuals, groups, or specific organizational components;

(c) The maintenance of individual motor equipment use records, such as trip tickets or vehicle logs, or hours of use, as appropriate, showing sufficiently detailed information to evaluate appropriateness of assignment and adequacy of use being made. If one-time use of a motor vehicle is involved, such as assignments from motor pools, the individual's trip records must, as a minimum, identify the motor vehicle and show the name of the operator, dates, destination, time of departure and return, and mileage;

(d) The rotation of motor vehicles between high and low mileage assignments where practicable to maintain the fleet in the best overall replacement age and mileage balance and operating economy;

(e) The charging, if considered feasible, to the user organization for the cost of operating and maintaining motor vehicles assigned to groups or organizational components. These charge-back costs should include all

direct and indirect costs of the motor vehicle fleet operation as determined by the field organization and contractor finance and accounting functions;

(f) The use of dual-purpose motor vehicles capable of hauling both personnel and light cargo whenever appropriate to avoid the need for two motor vehicles when one can serve both purposes. However, truck-type or van vehicles shall not be acquired for passenger use merely to avoid statutory limitations on the number of passenger motor vehicles which may be acquired;

(g) The use of motor scooters and motorcycles in place of higher cost motor vehicles for certain applications within plant areas, such as mail and messenger service and small parts and tool delivery. Their advantage, however, should be weighed carefully from the standpoint of overall economy (comparison with cost for other types of motor vehicles) and increased safety hazards, particularly when mingled with other motor vehicle traffic; and

(h) The use of electric vehicles for certain applications. The use of these vehicles is encouraged wherever it is feasible to use them to further the goal of fuel conservation.

**§ 109–38.5103 Motor vehicle utilization standards.**

(a) The following average utilization standards are established for DOE as objectives for those motor vehicles operated generally for those purposes for which acquired:

(1) Sedans and station wagons, general purpose use—12,000 miles per year.

(2) Light trucks (4 x 2's) and general purpose vehicles, one ton and under (less than 12,500 GVWR)—10,000 miles per year.

(3) Medium trucks and general purpose vehicles, 1½ ton through 2½ ton (12,500 to 23,999 GVWR)—7,500 miles per year.

(4) Heavy trucks and general purpose vehicles, three ton and over (24,000 GVWR and over)—7,500 miles per year.

(5) Truck tractors—10,000 miles per year.

(6) All-wheel-drive vehicles—7,500 miles per year.

(7) Other motor vehicles—No utilization standards are established for other trucks, ambulances, buses, law enforcement motor vehicles, and special purpose vehicles. The use of these motor vehicles shall be reviewed at least annually by the motor equipment fleet manager and action shall be taken and documented to verify that the motor vehicles are required to meet programmatic, health, safety, or security requirements.

(b) When operating circumstances prevent the above motor vehicle utilization standards from being met, local use objectives must be established and met as prescribed in § 109–38.5105 of this subpart.

**§ 109–38.5104 Other motor equipment utilization standards.**

No utilization standards are established for motor equipment other than motor vehicles. Each DOE office should establish through an agreement between the fleet manager and the OPMO utilization criteria for other motor equipment including heavy mobile equipment and review, adjust, and approve such criteria annually. Utilization of various classifications of other motor equipment can be measured through various statistics including miles, hours of use, number of trips, and fuel consumption. A utilization review of other motor equipment shall be performed at least annually by the motor equipment fleet manager to justify retainment or disposition of excess equipment not needed to fulfill Departmental, programmatic, health, safety, or security requirements.

**§ 109–38.5105 Motor vehicle local use objectives.**

(a) Individual motor vehicle utilization cannot always be measured or evaluated strictly on the basis of miles operated or against any Department-wide mileage standard. For example, light trucks specifically fitted for use by a plumber, welder, etc., in the performance of daily work assignments, would have uniquely tailored use objectives, different from those set forth for a truck used for general purposes. Accordingly, efficient local use objectives, which represent practical units of measurement for motor vehicle utilization and for planning and evaluating future motor vehicle requirements, must be established and documented by the Organizational Motor Equipment Fleet Manager. The objectives should take into consideration past performance, future requirements, geographical disbursement, and special operating requirements.

(b) These objectives shall be reviewed and adjusted as appropriate, but not less often than annually, by the motor equipment fleet manager. The reviews shall be documented. The Organizational Motor Equipment Fleet Manager is responsible for reviewing and approving in writing all proposed local use objectives.

**§ 109–38.5106 Application of motor vehicle use goals.**

(a) At least annually, the motor equipment fleet manager will review motor vehicle utilization statistics and all motor vehicles failing to meet the applicable DOE utilization standard or local use objective must be identified.

(b) Prompt action must be initiated to:

- (1) Reassign the underutilized motor vehicles;
- (2) Dispose of the underutilized motor vehicles; or

(3) Obtain a special justification from users documenting their continued requirement for the motor vehicle and any proposed actions to improve utilization. Any requirement for underutilized motor vehicles which the motor equipment fleet manager proposes to continue in its assignment, must be submitted in writing to the Organizational Motor Equipment Fleet Manager for approval.

(c) Both Department-wide standards and local use objectives should be applied in such a manner that their application does not stimulate motor vehicle use for the purpose of meeting the objective. The ultimate standard against which motor vehicle use must be measured is that the minimum number of motor vehicles will be retained to satisfy program requirements.

**Subpart 109–38.52—Watercraft**

**§ 109–38.5200 Scope of subpart.**

This subpart establishes basic policies and procedures that apply to the management of watercraft operated by DOE organizations and designated contractors. The head of each Departmental organization operating watercraft shall issue such supplemental instructions as may be needed to ensure the efficient use and management of watercraft.

**§ 109–38.5201 Definition.**

As used in this subpart the following definition applies:

*Watercraft* means any vessel used to transport persons or material on water.

**§ 109–38.5202 Watercraft operations.**

(a) No person may operate a watercraft on a waterway until skill of operation and basic watercraft knowledge have been demonstrated.

(b) Operators of watercraft shall check the vessel to ensure that necessary equipment required by laws applicable to the area of operation are present, properly stowed, and in proper working order.

(c) Operators shall comply with all applicable Federal, state, and local laws pertaining to the operation of watercraft.

(d) Operators shall not use watercraft or carry passengers except in the performance of official Departmental assignments.

**§ 109–38.5203 Watercraft identification and numbers.**

Watercraft in the custody of DOE or designated contractors shall display identifying numbers, whether issued by the U.S. Coast Guard, State, or local field organization, in accordance with applicable requirements.

**PART 109–39—INTERAGENCY FLEET MANAGEMENT SYSTEMS**

**Subpart 109–39.1—Establishment, Modification, and Discontinuance of Interagency Fleet Management Systems**

Sec.

109–39.101 Notice of intention to begin a study.

109–39.101–1 Agency cooperation.

109–39.103 Agency appeals.

109–39.105 Discontinuance or curtailment of service.

109–39.105–2 Agency requests to withdraw participation.

109–39.106 Unlimited exemptions.

109–39.107 Limited exemptions.

**Subpart 109–39.3—Use and Care of GSA Interagency Fleet Management System Vehicles**

109–39.300 General.

109–39.301 Utilization guidelines.

Authority: 42 U.S.C. 7254.

**Subpart 109–39.1—Establishment, Modification, and Discontinuance of Interagency Fleet Management Systems**

**§ 109–39.101 Notice of intention to begin a study.**

**§ 109–39.101–1 Agency cooperation.**

The Office of Management and Program Secretarial Officer (PSO) for their respective organizations shall designate representatives to coordinate with GSA concerning the establishment of a GSA fleet management system to serve their organization.

**§ 109–39.103 Agency appeals.**

The Office of Management and Program Secretarial Officer (PSO) for their respective organizations may appeal, or request exemption from, a determination made by GSA concerning the establishment of a fleet management system. A copy of the appeal or request shall be forwarded to the DPMO.

**§ 109–39.105 Discontinuance or curtailment of service.**

**§ 109–39.105–2 Agency requests to withdraw participation.**

Should circumstances arise that would tend to justify discontinuance or

curtailment of participation by a DOE organization of a given interagency fleet management system, the participating organization should forward complete details to the DPMO for consideration and possible referral to the Administrator of General Services.

#### **§ 109–39.106 Unlimited exemptions.**

The Office of Management and Program Secretarial Officer (PSO) for their respective organizations shall make the determination that an unlimited exemption from inclusion of a motor vehicle in a fleet management system is warranted. A copy of the determination shall be forwarded to GSA and to the Office of Management.

#### **§ 109–39.107 Limited exemptions.**

The Office of Management and Program Secretarial Officer (PSO) for their respective organizations shall seek limited exemptions from the fleet management system.

### **Subpart 109–39.3—Use and Care of GSA Interagency Fleet Management System Vehicles**

#### **§ 109–39.300 General.**

(a)–(c) [Reserved]

(d) Motor equipment fleet managers shall ensure that operators and passengers in GSA Interagency Fleet Management System (IFMS), agency-owned and agency commercially-leased motor vehicles are aware of the prohibition against the use of tobacco products in these vehicles.

#### **§ 109–39.301 Utilization guidelines.**

DOE activities utilizing GSA IFMS motor vehicles will receive and review vehicle utilization statistics in order to determine if miles traveled justify vehicle inventory levels. Activities should retain justification for the retention of vehicles not meeting DOE utilization guidelines or established local use objectives, as appropriate. Those vehicles not justified for retention shall be returned to the issuing GSA interagency fleet management center.

## **PART 109–40—TRANSPORTATION AND TRAFFIC MANAGEMENT**

### **Subpart 109–40.1—General Provisions**

Sec.

- 109–40.000 Scope of part.
- 109–40.000–50 Applicability to contractors.
- 109–40.102 Representation before regulatory bodies.
- 109–40.103 Selection of carriers.
- 109–40.103–1 Domestic transportation.
- 109–40.103–2 Disqualification and suspension of carriers.
- 109–40.103–3 International transportation.
- 109–40.104 Use of Government-owned transportation equipment.

- 109–40.109 Utilization of special contracts and agreements.
- 109–40.110 Assistance to economically disadvantaged transportation businesses.
- 109–40.110–1 Small business assistance.
- 109–40.110–2 Minority business enterprises.
- 109–40.112 Transportation factors in the location of Government facilities.
- 109–40.113 Insurance against transportation hazards.

### **Subpart 109–40.3—Traffic Management**

- 109–40.301 Traffic management functions administration.
- 109–40.302 Standard routing principle.
- 109–40.303–3 Most fuel efficient carrier/mode.
- 109–40.304 Rate tenders to the Government.
- 109–40.305–50 [Reserved].
- 109–40.305–50 Negotiations involving national security.
- 109–40.306–1 Recommended rate tender format.
- 109–40.306–2 Required shipping documents and annotations.
- 109–40.306–3 Distribution.

### **Subpart 109–40.50—Bills of Lading**

- 109–40.5000 Scope of subpart.
- 109–40.5001 Policy.
- 109–40.5002 Applicability.
- 109–40.5003 Commercial bills of lading.
- 109–40.5004 Government bills of lading.
- 109–40.5005 Description of property for shipment.

### **Subpart 109–40.51—Price-Anderson Coverage Certifications for Nuclear Shipments**

- 109–40.5100 Scope of subpart.
- 109–40.5101 Policy.

**Authority:** Sec. 161, as amended, 68 Stat. 948; 42 U.S.C. 2201; sec. 205, as amended, 63 Stat. 390; 40 U.S.C. 121; sec. 644, 91 Stat. 585, 42 U.S.C. 7254.

### **Subpart 109–40.1—General Provisions**

#### **§ 109–40.000 Scope of part.**

This part describes DOE regulations governing transportation and traffic management activities. It also covers arrangements for transportation and related services by bill of lading. These regulations are designed to ensure that all transportation and traffic management activities will be carried out in the manner most advantageous to the Government in terms of economy, efficiency, service, environment, safety and security.

#### **§ 109–40.000–50 Applicability to contractors.**

DOE–PMR 109–40, Transportation and Traffic Management, should be applied to cost-type contractors' transportation and traffic management activities. Departure by cost-type contractors from the provisions of these regulations may be authorized by the contracting officer provided the

practices and procedures followed are consistent with the basic policy objectives in these regulations and DOE Order 460.2, Departmental Materials Transportation and Packaging Management, except to the extent such departure is prohibited by statute or executive order.

#### **§ 109–40.102 Representation before regulatory bodies.**

Participation in proceedings related to carrier applications to regulatory bodies for temporary or permanent authority to operate in specified geographical locations shall be confined to statements or testimony in support of a need for service and shall not extend to support of individual carriers or groups of carriers.

#### **§ 109–40.103 Selection of carriers.**

##### **§ 109–40.103–1 Domestic transportation.**

(a) Preferential treatment, normally, shall not be accorded to any mode of transportation (motor, rail, air, water) or to any particular carrier when arranging for domestic transportation services. However where, for valid reasons, a particular mode of transportation or a particular carrier within that mode must be used to meet specific program requirements and/or limitations, only that mode or carrier shall be considered. Examples of valid reasons for considering only a particular mode or carrier are:

(1) Where only a certain mode of transportation or individual carrier is able to provide the needed service or is able to meet the required delivery date; and

(2) Where the consignee's installation and related facilities preclude or are not conducive to service by all modes of transportation.

(b) The following factors are considered in determining whether a carrier or mode of transportation can meet DOE's transportation service requirements for each individual shipment:

(1) Availability and suitability of carrier equipment;

(2) Carrier terminal facilities at origin and destination;

(3) Pickup and delivery service, if required;

(4) Availability of required or accessorial and special services, if needed;

(5) Estimated time in transit;

(6) Record of past performance of the carrier; and

(7) Availability and suitability of transit privileges.



**§ 109–40.103–2 Disqualification and suspension of carriers.**

Disqualification and suspension are measures which exclude carriers from participation, for temporary periods of time, in DOE traffic. To ensure that the Government derives the benefits of full and free competition of interested carriers, disqualification and suspension shall not apply for any period of time longer than necessary to protect the interests of the Government.

**§ 109–40.103–3 International transportation.**

See 49 U.S.C. 41102 for a certificate required in nonuse of U.S. flag vessels or U.S. flag certificated air carriers.

**(a) U.S.-flag ocean carriers.**

Arrangements for international ocean transportation services shall be made in accordance with the provisions of section 901(b) of the Merchant Marine Act of 1936, as amended (46 U.S.C. 1241(b)) concerning the use of privately owned U.S.-flag vessels.

**(b) U.S.-flag certificated air carriers.**

Arrangements for international air transportation services shall be made in accordance with the provisions of section 5(a) of the International Air Transportation Fair Competition Practices Act of 1974 (49 U.S.C. 40118), which requires the use of U.S.-flag certificated air carriers for international travel of persons or property to the extent that services by these carriers is available.

**§ 109–40.104 Use of Government-owned transportation equipment.**

The preferred method of transporting property for the Government is through use of the facilities and services of commercial carriers. However, Government vehicles may be used when they are available to meet emergencies and accomplish program objectives which cannot be attained through use of commercial carriers.

**§ 109–40.109 Utilization of special contracts and agreements.**

From time to time special transportation agreements are entered into on a Government-wide or DOE-wide basis and are applicable, generally, to DOE shipments. The HQ DOE Manager, Transportation Operations and Traffic, will distribute information on such agreements to field offices as it becomes available.

**§ 109–40.110 Assistance to economically disadvantaged transportation businesses.****§ 109–40.110–1 Small business assistance.**

Consistent with the policies of the Government with respect to small

businesses, DOE shall place with small business concerns a fair proportion of the total purchases and contracts for transportation and related services such as packing and crating, loading and unloading, and local drayage.

**§ 109–40.110–2 Minority business enterprises.**

Minority business enterprises shall have the maximum practical opportunity to participate in the performance of Government contracts. DOE shall identify transportation-related minority enterprises and encourage them to provide services that will support DOE's transportation requirements.

**§ 109–40.112 Transportation factors in the location of Government facilities.**

Transportation rate, charges, and commercial carrier transportation services shall be considered and evaluated prior to the selection of new site locations and during the planning and construction phases in the establishment of leased or relocated Government installations or facilities to ensure that consideration is given to the various transportation factors that may be involved in this relocation or deactivation.

**§ 109–40.113 Insurance against transportation hazards.**

The policy of the Government with respect to insurance of its property while in the possession of commercial carriers is set forth in 41 CFR 1–19.107.

**Subpart 109–40.3—Traffic Management****§ 109–40.301 Traffic management functions administration.**

The DOE traffic management functions are accomplished by established field traffic offices under provisions of appropriate Departmental directives and Headquarters' staff traffic management supervision.

**§ 109–40.302 Standard routing principle.**

(a) Shipments shall be routed using the mode of transportation, or individual carriers within the mode, that can provide the required service at the lowest overall delivered cost to the Government.

(b) When more than one mode of transportation, or more than one carrier within a mode, can provide equally satisfactory service at the same overall cost the traffic shall be distributed as equitably as practicable among the modes and among the carriers within the modes.

**§ 109–40.303–3 Most fuel efficient carrier/mode.**

When more than one mode, or more than one carrier within a mode, can satisfy the service requirements of a specific shipment at the same lowest aggregate delivered cost, the carrier/mode determined to be the most fuel efficient will be selected. In determining the most fuel efficient carrier/mode, consideration will be given to such factors as use of the carrier's equipment in "turn around" service, proximity of carrier equipment to the shipping activity, and ability of the carrier to provide the most direct service to the destination points.

**§ 109–40.304 Rate tenders to the Government.**

Under the provisions of the Interstate Commerce Act (49 U.S.C. 10721), common carriers are permitted to submit to the Government tenders which contain rates lower than published tariff rates available to the general public. In addition, rates tenders may be applied to shipments other than those made by the Government provided the total benefits accrue to the Government; that is, provided the Government pays the charges or directly and completely reimburses the party that initially bears the freight charges (323 ICC 347 and 332 ICC 161).

**§ 109–40.305–50 [Reserved]****§ 109–40.306–1 Recommended rate tender format.**

Only those rate tenders which have been submitted by the carriers in writing shall be considered for use. Carriers should be encouraged to use the format "Uniform Tender of Rates and/or Charges for Transportation Services" when preparing and submitting rate tenders to the Government. Rate tenders that are ambiguous in meaning shall be resolved in favor of the Government.

**§ 109–40.306–2 Required shipping documents and annotations.**

(a) To qualify for transportation under section 10721 rates, property must be shipped by or for the Government on:

(1) Government bills of lading;  
(2) Commercial bills of lading endorsed to show that these bills of lading are to be converted to Government bills of lading after delivery to the consignee;

(3) Commercial bills of lading showing that the Government is either the consignor or the consignee and endorsed with the following statement:

Transportation hereunder is for the U.S. Department of Energy, and the actual total transportation charges paid to the carrier(s) by the consignor or

consignee are assignable to, and are to be reimbursed by, the Government.

(b) When a rate tender is used for transportation furnished under a cost-reimbursable contract, the following endorsement shall be used on covering commercial bills of lading:

Transportation hereunder is for the U.S. Department of Energy, and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are to be reimbursed by the Government, pursuant to cost-reimbursable contract number (insert contract number). This may be confirmed by contacting the agency representative at (name and telephone number).

See 332 ICC 161.

(c) To ensure proper application of a Government rate tender on all shipments qualifying for their use, the issuing officer shall show on the bills of lading covering such shipments the applicable rate tender number and carrier identification, such as: "Section 10721 tender, ABC Transportation Company, ICC No. 374." In addition, if commercial bills of lading are used, they shall be endorsed as specified above.

#### **§ 109–40.306–3 Distribution.**

Each agency receiving rate tenders shall promptly submit one signed copy to the Transportation and Public Utilities Service (WIT), General Services Administration, Washington, DC 20407. Also, two copies (including at least one signed copy) shall be promptly submitted to the General Services Administration (TA), Chester A. Arthur Building, Washington, DC 20406.

#### **Subpart 109–40.50—Bills of Lading**

##### **§ 109–40.5000 Scope of subpart.**

This subpart sets forth the requirements under which commercial or Government bills of lading may be used.

##### **§ 109–40.5001 Policy.**

Generally DOE cost-type contractors will use commercial bills of lading in making shipments for the account of DOE. Cost-type contractors may be authorized by the contracting officer to use Government bills of lading if such use will be advantageous to the Government. Such authorizations shall be coordinated with the HQ DOE Manager, Transportation Operations and Traffic.

##### **§ 109–40.5002 Applicability.**

The policy and procedures set forth in this subpart shall be applied when DOE's cost-type contractors use commercial bills of lading.

##### **§ 109–40.5003 Commercial bills of lading.**

(a) DOE's cost-type contractors using commercial bills of lading in making shipments for the account of DOE shall include the following statement on all commercial bills of lading:

This shipment is for the account of the U.S. Government which will assume the freight charges and is subject to the terms and conditions set forth in the standard form of the U.S. Government bills of lading and to any available special rates or charges.

(b) The language in paragraph (a) of this section may be varied without materially changing its substance to satisfy the needs of particular cost-type contractors for the purpose of obtaining the benefit of the lowest available rates for the account of the Government.

(c) Where practicable, commercial bills of lading shall provide for consignment of a shipment to DOE c/o the cost-type contractor or by the contractor "for the DOE."

(d) Commercial bills of lading exceeding \$10,000 issued by cost-type contractors shall be annotated with a typewritten, rubber stamp, or similar impression containing the following wording:

Equal Employment Opportunity. All provisions of Executive Order 11246, as amended by Executive Order 11375, and of the rules, regulations, and relevant orders of the Secretary of Labor are incorporated herein.

##### **§ 109–40.5004 Government bills of lading.**

In those instances where DOE cost-type contractors are authorized to use Government bills of lading, specific employees of cost-type contractors will be authorized by the contracting officer to issue such Government bills of lading (see Title V, U.S. Government Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies).

##### **§ 109–40.5005 Description of property for shipment.**

(a) Each shipment shall be described on the bill of lading or other shipping document as specified by the governing freight classification, carrier's tariff, or rate tender. Shipments shall be described as specifically as possible. Trade names such as "Foamite" or "Formica," or general terms such as "vehicles," "furniture," or "Government supplies," shall not be used as bill of lading descriptions.

(b) A shipment containing hazardous materials, such as explosives, radioactive materials, flammable liquids, flammable solids, oxidizers, or poison A or poison B, shall be prepared for shipment and described on bills of

lading or other shipping documents in accordance with the Department of Transportation Hazardous Materials Regulation, 49 CFR, subchapter C.

#### **Subpart 109–40.51—Price-Anderson Coverage Certifications for Nuclear Shipments**

##### **§ 109–40.5100 Scope of subpart.**

This subpart sets forth the policy for issuance of certifications regarding Price-Anderson coverage of particular shipments of nuclear materials.

##### **§ 109–40.5101 Policy.**

Upon request of a carrier, an appropriate certification will be issued by an authorized representative of the DOE to the carrier regarding the applicability of Price-Anderson indemnity to a particular shipment. Copies of such certifications, if performed by a Field Manager or a DOE cost-type contractor, shall be provided to the HQ DOE Manager, Transportation Operations and Traffic.

#### **SUBCHAPTER H—UTILIZATION AND DISPOSAL**

#### **PART 109–42—UTILIZATION AND DISPOSAL OF HAZARDOUS MATERIALS AND CERTAIN CATEGORIES OF PROPERTY**

##### **Subpart 109–42.11—Special Types of Hazardous Material and Certain Categories of Property**

Sec.

109–42.1100.50 Scope of subpart.

109–42.1100.51 Policy.

109–42.1102–8 United States Munitions

List items which require demilitarization.

109–42.1102–51 Suspect personal property.

109–42.1102–52 Low level contaminated personal property.

Authority: 40 U.S.C. 121.

##### **Subpart 109–42.11—Special Types of Hazardous Material and Certain Categories of Property**

##### **§ 109–42.1100.50 Scope of subpart.**

This subpart sets forth policies and procedures for the utilization and disposal outside of DOE of excess and surplus personal property which has been radioactively or chemically contaminated.

##### **§ 109–42.1100.51 Policy.**

When the holding organization determines it is appropriate to dispose of contaminated personal property, it shall be disposed of by DOE in accordance with appropriate Federal regulations governing radiation/chemical exposure and environmental contamination. In special cases where Federal regulations do not exist or

apply, appropriate state and local regulations shall be followed.

**§ 109–42.1102–8 United States Munitions List items which require demilitarization.**

Program Secretarial Officer (PSO) shall determine demilitarization requirements regarding combat material and military personal property using DoD 4160.21–M–1, Defense Demilitarization Manual as a guide.

**§ 109–42.1102–51 Suspect personal property.**

(a) Excess personal property (including scrap) having a history of use in an area where radioactive or chemical contamination may occur shall be considered suspect and shall be monitored using appropriate instruments and techniques by qualified personnel of the DOE office or contractor generating the excess.

(b) With due consideration to the economic factors involved, every effort shall be made to reduce the level of contamination of excess or surplus personal property to the lowest practicable level. Contaminated personal property that exceeds applicable contamination standards shall not be utilized or disposed outside DOE.

(c) If contamination is suspected and the property is of such size, construction, or location as to make testing for contamination impossible, the property shall not be utilized or disposed outside of DOE.

**§ 109–42.1102–52 Low level contaminated personal property.**

If monitoring of suspect personal property indicates that contamination does not exceed applicable standards, it may be utilized and disposed of in the same manner as uncontaminated personal property, provided the guidance in § 109–45.5005–1(a) of this chapter has been considered. However, recipients shall be advised where levels of radioactive contamination require specific controls for shipment as provided in Department of Transportation Regulations (49 CFR parts 171–179) for shipment of radioactive personal property. In addition, when any contaminated personal property is screened within DOE, reported to GSA, or otherwise disposed of, the kind and degree of contamination must be plainly indicated on all pertinent documents.

**PART 109–43—UTILIZATION OF PERSONAL PROPERTY**

Sec.  
109–43.001 Definition.

**Subpart 109–43.1—General Provisions**

109–43.101 Agency utilization reviews.  
109–43.103 Agency utilization officials.

**Subpart 109–43.3—Utilization of Excess**

109–43.302 Agency responsibility.  
109–43.302–50 Utilization by designated contractors.  
109–43.304 Reporting requirements.  
109–43.304–1 Reporting.  
109–43.304–1.50 DOE reutilization screening.  
109–43.304–1.51 [Reserved]  
109–43.304–2 [Reserved]  
109–43.304–4 [Reserved]  
109–43.305 [Reserved]  
109–43.305–50 Nuclear-related and proliferation-sensitive personal property.  
109–43.307 Items requiring special handling.  
109–43.307–2 Hazardous materials.  
109–43.307–2.50 Monitoring of hazardous personal property.  
109–43.307–2.51 Holding hazardous personal property.  
109–43.307–50 Export controlled personal property.  
109–43.307–51 Classified personal property.  
109–43.307–52 Nuclear-related or proliferation-sensitive personal property.  
109–43.307–53 Information Technology (IT).  
109–43.307–54 Unsafe personal property.  
109–43.312 Use of excess personal property on cost-reimbursement contracts.  
109–43.313 Use of excess personal property on cooperative agreements.  
109–43.314 Use of excess personal property on grants.

**Subpart 109–43.5—Utilization of Foreign Excess Personal Property**

109–43.502 Holding agency responsibilities.

**Subpart 109–43.47—Reports**

109–43.4701 Performance reports.

**Subpart 109–43.50—Utilization of Personal Property Held for Facilities in Standby**

109–43.5000 Scope of subpart.  
109–43.5001 Definition.  
109–43.5002 Reviews to determine need for retaining items.

**Authority:** 40 U.S.C. 121.

**§ 109–43.001 Definition.**

*DOE screening period* means the period of time that reportable existing personal property is screened throughout DOE for reutilization purposes and, for selected items, through the Used Laboratory Equipment Donation Program (LEDP).

**Subpart 109–43.1—General Provisions**

**§ 109–43.101 Agency utilization reviews.**

DOE offices and designated contractors are responsible for continuously surveying property under their control to assure maximum use, and shall promptly identify property

that is excess to their needs and make it available for use elsewhere.

**§ 109–43.103 Agency utilization officials.**

The Property Executive is designated as the DOE National Utilization Officer.

**§ 109–43.302 Agency responsibility.**

**§ 109–43.302–50 Utilization by designated contractors.**

Program Secretarial Officer (PSO) may authorize designated contractors to perform the functions pertaining to the utilization of excess personal property normally performed by a Federal agency, provided the designated contractors have written policies and procedures.

**§ 109–43.304 Reporting requirements.**

**§ 109–43.304–1 Reporting.**

**§ 109–43.304–1.50 DOE reutilization screening.**

(a) Personal property must be processed through DOE electronic internal screening prior to reporting excess personal property to GSA.

(b) An additional 30-day screening period shall be allocated for items eligible for screening by educational institutions through LEDP.

(c) Items in FSCG 66 (Instruments and Laboratory Equipment), 70 (General Purpose Information Processing Equipment (including firmware)), and 99 (Miscellaneous) are reportable.

(d) The Department of Energy National Utilization Officer (NUO) may authorize in exceptional or unusual cases when time is critical, screening of excess property may be accomplished by with due consideration given to the additional costs involved. Examples of situations when this method of screening would be used are when there is a requirement for quick disposal actions due to unplanned contract terminations or facilities closing; to alleviate the paying of storage costs; when storage space is critical; to process exchange/sale transactions; property dangerous to public health and safety; property determined to be classified or otherwise sensitive for reasons of national security (when classified communications facilities are used); or for hazardous materials which may not be disposed of outside of the Department.

(e) Concurrent DOE and Federal agency screening shall not be conducted.

**§ 109–43.304–1.51 [Reserved]****§ 109–43.304–2 [Reserved]****§ 109–43.304–4 [Reserved]****§ 109–43.305 [Reserved]****§ 109–43.305–50 Nuclear-related and proliferation-sensitive personal property.**

Nuclear-related and proliferation-sensitive property is not reportable and shall not be formally screened within DOE or reported to GSA.

**§ 109–43.307 Items requiring special handling.****§ 109–43.307–2 Hazardous materials.****§ 109–43.307–2.50 Monitoring of hazardous personal property.**

To provide assurance that hazardous personal property is not being inadvertently released from the site by transfer or sale to the public, all hazardous or suspected hazardous personal property shall be checked for contamination by environmental, safety, and health officials. Contamination-free personal property will be tagged with a certification tag authorizing release for transfer or sale. Contaminated personal property will be referred back to the program office for appropriate action.

**§ 109–43.307–2.51 Holding hazardous personal property.**

Excess or surplus hazardous personal property shall not be commingled with non-hazardous personal property while waiting disposition action.

**§ 109–43.307–50 Export controlled personal property.**

(a) When personal property that is subject to export controls is being exported directly by DOE (e.g., a transfer of nuclear equipment or materials as part of a program of cooperation with another country), DOE or the DOE contractor must obtain the necessary export license.

(b) When personal property subject to export controls is transferred under work-for-others agreements, cooperative agreements, or technical programs, the recipients will be informed in writing that:

(1) The property is subject to export controls;

(2) They are responsible for obtaining export licenses or authorizations prior to transferring or moving the property to another country; and

(3) They are required to pass on export control guidance if they transfer the property to another domestic or foreign recipient.

**§ 109–43.307–51 Classified personal property.**

Classified personal property which is excess to DOE needs shall be stripped of all characteristics which cause it to be classified, or otherwise rendered unclassified, as determined by the cognizant program office, prior to any disposition action. The cognizant program office shall certify that appropriate action has been taken to declassify the personal property as required. Declassification shall be accomplished in a manner which will preserve, so far as practicable, any civilian utility or commercial value of the personal property.

**§ 109–43.307–52 Nuclear-related or proliferation-sensitive personal property.**

(a) Recognizing that property disposal officials will not have the technical knowledge to identify nuclear-related and proliferation-sensitive personal property, all such personal property shall be physically tagged with a certification signed by an authorized program official at time of determination by the program office of the personal property as excess. Such an authorized official should be designated in writing with signature cards on file in the property office.

(b) Nuclear-related and proliferation-sensitive personal property which is excess to DOE needs shall be stripped of all characteristics which cause it to be nuclear-related or proliferation-sensitive personal property, as determined by the cognizant program office, prior to disposal. The cognizant program office shall certify that appropriate actions have been taken to strip the personal property as required, or shall provide the property disposal office with adequate instructions for stripping the items. Such action shall be accomplished in a manner which will preserve, so far as practicable, any civilian utility or commercial value of the personal property.

**§ 109–43.307–53 Information Technology (IT).**

All IT shall be sanitized before being transferred into excess to ensure that all data, information, and software has been removed from the equipment. Designated computer support personnel must indicate that the equipment has been sanitized by attaching a certification tag to the item. Sanitized IT will be utilized and disposed in accordance with the provisions of the FPMR/FMR.

**§ 109–43.307–54 Unsafe personal property.**

Personal property that is considered defective or unsafe must be mutilated prior to shipment for disposal.

**§ 109–43.312 Use of excess personal property on cost-reimbursement contracts.**

(a) [Reserved]

(b) It is DOE policy for designated contractors to use Government excess personal property to the maximum extent possible to reduce contract costs. However, the determination required in 41 CFR 101–43.312(b) does not apply to such contracts, and a DOE official is not required to execute transfer orders for authorized designated contractors. The procedures prescribed in 41 CFR 101–43.309–5 for execution of transfer orders apply.

**§ 109–43.313 Use of excess personal property on cooperative agreements.**

(a)–(c) [Reserved]

(d) Program Secretarial Officer (PSO) shall ensure that required records are maintained in a current status.

**§ 109–43.314 Use of excess personal property on grants.**

(a)–(e) [Reserved]

(f) Program Secretarial Officer (PSO) shall ensure that the records required by 41 CFR 101–43.314(f) are maintained.

**Subpart 109–43.5—Utilization of Foreign Excess Personal Property****§ 109–43.502 Holding agency responsibilities.**

(a) [Reserved]

(b) Property which remains excess after utilization screening within the general foreign geographical area where the property is located shall be reported to the accountable field office or Headquarters program organization for consideration for return to the United States for further DOE or other Federal utilization. The decision to return property will be based on such factors as acquisition cost, residual value, condition, usefulness, and cost of transportation.

**Subpart 109–43.47—Reports****§ 109–43.4701 Performance reports.**

(a)–(b) [Reserved]

(c) The annual report of personal property furnished (e.g., transfers, gifts, loans, leases, license agreements, and sales) to non-Federal recipients, including elementary and secondary schools, is furnished to GSA in accordance with 41 CFR 102–38. Internal DOE personal property reports must be submitted to the Office of Management at the date determined by the Property Executive.

**Subpart 109-43.50—Utilization of Personal Property Held for Facilities in Standby****§ 109-43.5000 Scope of subpart.**

This subpart supplements 41 CFR part 101-43 by providing policies and procedures for the economic and efficient utilization of personal property associated with facilities placed in standby status.

**§ 109-43.5001 Definition.**

*Facility in standby* means a complete plant or section of a plant, which is neither in service or declared excess.

**§ 109-43.5002 Reviews to determine need for retaining items.**

Procedures and practices shall require an initial review at the time the plant is placed in standby to determine which items can be made available for use elsewhere within the established start-up criteria; periodic reviews (no less than biennially) to determine need for continued retention of property; and special reviews when a change in start-up time is made or when circumstances warrant. Such procedures should recognize that:

(a) Equipment, spares, stores items, and materials peculiar to a plant should be retained for possible future operation of the plant;

(b) Where practicable, common-use stores should be removed and used elsewhere; and

(c) Uninstalled equipment and other personal property not required should be utilized elsewhere on-site or be disposed of as excess.

**PART 109-44—DONATION OF PERSONAL PROPERTY****Subpart 109-44.7—Donations of Property to Public Bodies**

Sec.

109-44.701 Findings justifying donation to public bodies.

109-44.702 Donations to public bodies.

109-44.702-3 Hazardous materials.

**Authority:** Sec. 205(c), 63 Stat. 390; 40 U.S.C. 121.

**Subpart 109-44.7—Donations of Property to Public Bodies****§ 109-44.701 Findings justifying donation to public bodies.**

The Office of Management and Program Secretarial Officer (PSO) shall appoint officials to make required findings and reviews.

**§ 109-44.702 Donations to public bodies.****§ 109-44.702-3 Hazardous materials.**

The Office of Management and Heads of field organizations) shall be

responsible for the safeguards, notifications, and certifications required by 41 CFR part 101-42 and part 109-42 of this chapter, as well as compliance with all other requirements therein.

**PART 109-45—SALE, ABANDONMENT, OR DESTRUCTION OF PERSONAL PROPERTY****Subpart 109-45.1—General**

Sec.

109-45.105 Exclusions and exemptions.

109-45.105-3 Exemptions.

**Subpart 109-45.3—Sale of Personal Property**

109-45.300-50 Sales by designated contractors.

109-45.301-51 Export/import clause.

109-45.302 Sale to Government employees.

109-45.302-50 Sales to DOE employees and designated contractor employees.

109-45.303 Reporting property for sale.

109-45.303-3 Delivery.

109-45.304 Sales methods and procedures.

109-45.304-2 Negotiated sales and negotiated sales at fixed prices.

109-45.304-2.50 Negotiated sales and negotiated sales at fixed prices by designated contractors.

109-45.304-6 Reviewing authority.

109-45.304-50 Processing bids and awarding of contracts.

109-45.304-51 Documentation.

109-45.309 Special classes of property.

109-45.309-2.50 Hazardous property.

109-45.309-51 Export controlled property.

109-45.309-52 Classified property.

109-45.309-53 Nuclear-related or proliferation-sensitive property.

109-45.309-54 Information Technology (IT).

109-45.310 Antitrust laws.

109-45.317 Noncollusive bids and proposals.

**Subpart 109-45.9—Abandonment or Destruction of Personal Property**

109-45.901 Authority to abandon or destroy.

109-45.902 Findings justifying abandonment or destruction.

109-45.902-2 Abandonment or destruction without notice.

**Subpart 109-45.10—Recovery of Precious Metals**

109-45.1002 Agency responsibilities.

109-45.1002-3 Precious metals recovery program monitor.

109-45.1003 Recovery of silver from precious metals bearing materials.

109-45.1004 Recovery and use of precious metals through the DOD Precious Metals Recovery Program.

**Subpart 109-45.47—Reports**

109-45.4702 Negotiated sales reports.

**Subpart 109-45.50—Excess and Surplus Radioactively and Chemically Contaminated Personal Property**

109-45.5005 Disposal.

109-45.5005-1 General.

**Subpart 109-45.51—Disposal of Excess and Surplus Personal Property in Foreign Areas**

109-45.5100 Scope of subpart.

109-45.5101 Authority.

109-45.5102 General.

109-45.5103 Definitions.

109-45.5104 Disposal.

109-45.5104-1 General.

109-45.5104-2 Methods of disposal.

109-45.5105 Reports.

**Subpart 109-45.1—General****§ 109-45.105 Exclusions and exemptions.****§ 109-45.105-3 Exemptions.**

GSA, by letter dated May 28, 1965, exempted contractor inventory held by DOE designated contractors from the GSA conducted sales provisions of 41 CFR 101-45.

**Subpart 109-45.3—Sale of Personal Property****§ 109-45.300-50 Sales by designated contractors.**

Sales of surplus contractor inventory will be conducted by designated contractors when Program Secretarial Officer (PSO) determine that it is in the best interest of the Government. OPMOs and appropriate program officials shall perform sufficient oversight over these sales to ensure that personal property requiring special handling or program office certification is sold in accordance with regulatory requirements.

**§ 109-45.301-51 Export/import clause.**

The following clause shall be included in all sales invitations for bid:

Personal property purchased from the U.S. Government may or may not be authorized for export/import from/into the country where the personal property is located. If export/import is allowed, the purchaser is solely responsible for obtaining required clearances or approvals. The purchaser also is required to provide to the appropriate party DOE's export control guidance if the property is resold or otherwise disposed.

**§ 109-45.302 Sale to Government employees.****§ 109-45.302-50 Sales to DOE employees and designated contractor employees.**

(a) DOE employees and employees of designated contractors shall be given the same opportunity to acquire Government personal property as is given to the general public, provided the employees warrant in writing prior to award that they have not either directly or indirectly:

(1) Obtained information not otherwise available to the general public regarding usage, condition, quality, or value of the personal property, or

(2) Participated in:

(i) The determination to dispose of the personal property;

(ii) The preparation of the personal property for sale; and

(iii) Determining the method of sale.

(b) Excess or otherwise unusable special, fitted clothing and other articles of personal property, acquired for the exclusive use of an individual employee, may be sold to the employee for the best price obtainable when the property is no longer required by the holding organization or the employee is terminated.

#### **§ 109–45.303 Reporting property for sale.**

##### **§ 109–45.303–3 Delivery.**

(a)–(b) [Reserved]

(c) Guidelines for signature authorization and control of blank copies of Standard Form 97, United States Government Certificate to Obtain Title to a Vehicle are contained in subpart 109–38.7 of this chapter.

#### **§ 109–45.304 Sales methods and procedures.**

##### **§ 109–45.304–2 Negotiated sales and negotiated sales at fixed prices.**

(a)(1) [Reserved]

(2) The head of each field organization shall designate a responsible person to approve negotiated sales by DOE direct operations.

(3) Requests for prior approval of negotiated sales by DOE direct operations shall be submitted with justification to the OPMO for review and forwarding to GSA for approval.

(b) [Reserved]

##### **§ 109–45.304–2.50 Negotiated sales and negotiated sales at fixed prices by designated contractors.**

(a) Negotiated sales by designated contractors of surplus contractor inventory may be made when the DOE contracting officer determines and documents prior to the sale that the use of this method of sale is justified on the basis of the circumstances enumerated below, provided that the Government's interests are adequately protected. These sales shall be at prices which are fair and reasonable and not less than the proceeds which could reasonably be expected to be obtained if the personal property was offered for competitive sale. Specific conditions justifying negotiated sales include:

(1) No acceptable bids have been received as a result of competitive bidding under a suitable advertised sale;

(2) Personal property is of such small value that the proceeds to be derived would not warrant the expense of a formal competitive sale;

(3) The disposal will be to a state, territory, possession, political subdivision thereof, or tax-supported agency therein, and the estimated fair market value of the personal property and other satisfactory terms of disposal are obtained by negotiation;

(4) The specialized nature and limited use potential of the personal property would create negligible bidder interest;

(5) Removal of the personal property would result in a significant reduction in value, or the accrual of disproportionate expense in handling; or

(6) It can be clearly established that such action is in the best interests of the Government.

(b) When determined to be in the best interests of the Government, Program Secretarial Officer (PSO) may authorize fixed-price sales of surplus contractor inventory by designated contractors provided:

(1) The fair market value of the item to be sold does not exceed \$15,000;

(2) Adequate procedures for publicizing such sales have been established;

(3) The sales prices are not less than could reasonably be expected if competitive bid sales methods were employed and the prices have been approved by a reviewing authority designated by the head of the field organization; and

(4) The warranty prescribed in § 109–45.302–50(a) of this subpart is obtained when sales are made to employees.

##### **§ 109–45.304–6 Reviewing authority.**

The reviewing authority may consist of one or more persons designated by the head of the field organization.

##### **§ 109–45.304–50 Processing bids and awarding of contracts.**

The procedures established in 48 CFR 14.4 and 48 CFR 914.4 shall be made applicable to the execution, receipt, safeguarding, opening, abstraction, and evaluation of bids and awarding contracts, except that in evaluating bids and awarding contracts, disposal under conditions most advantageous to the Government based on high bids received shall be the determining factor.

##### **§ 109–45.304–51 Documentation.**

Files pertaining to surplus property sales shall contain copies of all documents necessary to provide a complete record of the sales transactions and shall include the following as appropriate:

(a) A copy of the request/invitation for bids if a written request/invitation for bids is employed. A list of items or lots sold, indicating acquisition cost, upset price and sales price indicated.

(b) A copy of the advertising literature distributed to prospective bidders.

(c) A list of prospective bidders solicited.

(d) An abstract of bids received.

(e) Copies of bids received, including Standard Form 119, Contractor's Statement of Contingent or Other Fees, together with other relevant information.

(f) A statement concerning the basis for determination that proceeds constitute a reasonable return for property sold.

(g) When appropriate, full and adequate justification for not advertising the sale when the fair market value of property sold in this manner in any one case exceeds \$1,000.

(h) A justification concerning any award made to other than the high bidder.

(i) The approval of the reviewing authority when required.

(j) A copy of the notice of award.

(k) All related correspondence.

(l) In the case of auction or spot bid sales, the following additional information should be included:

(1) A summary listing of the advertising used (e.g., newspapers, radio, television, and public postings).

(2) The names of the prospective bidders who attended the sale.

(3) A copy of any pertinent contract for auctioneering services and related documents.

(4) A reference to files containing record of deposits and payments.

#### **§ 109–45.309 Special classes of property.**

##### **§ 109–45.309–2.50 Hazardous property.**

Hazardous property shall be made available for sale only after the review and certification requirements of § 109–43.307–2.50 of this subpart have been met.

##### **§ 109–45.309–51 Export controlled property.**

Export controlled property shall be made available for sale only after the export license requirements of § 109–43.307–50 of this subpart have been met.

##### **§ 109–45.309–52 Classified property.**

Classified property shall be made available for sale only after the declassification requirements of § 109–43.307–51 of this subpart have been met.

##### **§ 109–45.309–53 Nuclear-related or proliferation sensitive property.**

Nuclear-related or proliferation-sensitive property shall be made available for sale only after the stripping and certification requirements of § 109–

43.307–52 of this subpart have been met.

#### **§ 109–45.309–54 Information Technology (IT).**

IT shall be made available for sale only after the sanitizing and certification requirements of § 109–43.307–53 of this subpart have been met.

#### **§ 109–45.310 Antitrust laws.**

DOE offices shall submit to the Office of Management any request for a proposed sale of a patent, process, technique, or invention, regardless of cost; or of surplus personal property with a fair market value of \$3,000,000 or more.

#### **§ 109–45.317 Noncollusive bids and proposals.**

(a) [Reserved]

(b) The head of the field organization shall make the determination required in 41 CFR 101–45.317(b). This authority cannot be redelegated.

#### **Subpart 109–45.9—Abandonment or Destruction of Personal Property**

##### **§ 109–45.901 Authority to abandon or destroy.**

Personal property in the possession of DOE offices or designated contractors may be abandoned or destroyed provided that a written determination has been made by the OPMO/PA that property has no commercial value or the estimated cost of its continued care and handling would exceed the estimated proceeds from its sale.

##### **§ 109–45.902 Findings justifying abandonment or destruction.**

##### **§ 109–45.902–2 Abandonment or destruction without notice.**

The head of the field organization shall designate an official to make the findings justifying abandonment or destruction without public notice of personal property. The OPMO/PA shall review and coordinate on the findings.

#### **Subpart 109–45.10—Recovery of Precious Metals**

##### **§ 109–45.1002 Agency responsibilities.**

The Office of Management and Program Secretarial Officer (PSO) are responsible for establishing a program for the recovery of precious metals.

##### **§ 109–45.1002–3 Precious metals recovery program monitor.**

The Office of Management shall be the precious metals recovery program monitor.

##### **§ 109–45.1003 Recovery of silver from precious metals bearing materials.**

The Office of Management and Program Secretarial Officer (PSO) are responsible for the establishment and maintenance of a program for silver recovery from used hypo solution and scrap film.

##### **§ 109–45.1004 Recovery and use of precious metals through the DOD Precious Metals Recovery Program.**

DOE operates its own precious metals pool and therefore does not participate in the DOD Precious Metals Recovery Program. See § 109–27.5106 of this chapter for guidance on operation of the DOE precious metals pool.

#### **Subpart 109–45.47—Reports**

##### **§ 109–45.4702 Negotiated sales reports.**

The report of negotiated sales shall be submitted by DOE offices to GSA, in accordance with 41 CFR 102–38.

#### **Subpart 109–45.50—Excess and Surplus Radioactively and Chemically Contaminated Personal Property**

##### **§ 109–45.5005 Disposal.**

##### **§ 109–45.5005–1 General.**

(a) Nuclear-related, proliferation-sensitive, low level contaminated property, and classified personal property shall not be transferred, sold, exchanged, leased, donated, abandoned, or destroyed without approval of the cognizant program office. Disposal of this personal property is subject to the restrictions contained in applicable sections of part 109–42 and §§ 109–43.307–50, 109–43.307–51, and 109–43.307–52 of this chapter, and applicable sections of 41 CFR part 101–42.

(b) Personal property that is considered defective or unsafe must be mutilated prior to shipment for disposal.

#### **Subpart 109–45.51—Disposal of Excess and Surplus Personal Property in Foreign Areas**

##### **§ 109–45.5100 Scope of subpart.**

This subpart sets forth policies and procedures governing the disposal of DOE-owned foreign excess and surplus personal property.

##### **§ 109–45.5101 Authority.**

The policies and procedures contained in this subpart are issued pursuant to the provisions of the Federal Property and Administrative Services Act of 1949, former 40 U.S.C. *et seq.*, as amended. Title IV of the Act entitled “Foreign Excess Property” provides that, except where

commitments exist under previous agreements, all excess personal property located in foreign areas shall be disposed of by the owning agency, and directs that the head of the agency conform to the foreign policy of the United States in making such disposals in accordance 41 CFR 102–36.

##### **§ 109–45.5102 General.**

Disposal of Government-owned personal property in the custody of DOE organizations or its contractors in foreign areas shall be made in an efficient and economical manner, and in conformance with the foreign policy of the United States.

##### **§ 109–45.5103 Definitions.**

As used in this subpart, the following definitions apply:

*Foreign* means outside the United States, Puerto Rico, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands.

*Foreign service post* means the local diplomatic or consular post in the area where the excess personal property is located.

##### **§ 109–45.5104 Disposal.**

##### **§ 109–45.5104–1 General.**

Foreign excess personal property which is not required for transfer within DOE or to other U.S. Government agencies, except for the personal property identified in § 109–45.5005–1(a) of this part, shall be considered surplus and may be disposed of by transfer, sale, exchange, or lease, for cash, credit, or other property and upon such other terms and conditions as may be deemed proper. Such personal property may also be donated, abandoned, or destroyed under the conditions specified in § 109–45.5105–2 of this subpart. Most foreign governments have indicated to the U.S. State Department that they wish to be consulted before U.S. Government property is disposed of in their countries (except in the case of transfers to other U.S. Government agencies). Matters concerning customs duties and taxes, or similar charges, may require prior agreement with the foreign government involved. The State Department shall be contacted in regard to these issues. Whenever advice or approval of the State Department is required by this subpart, it may be obtained either through the foreign service post in the foreign area involved or from the State Department in Washington, DC. If the issue is to be presented to the State Department in Washington, DC, it shall be referred through appropriate administrative channels to the Office of International



Affairs for review, coordination, and handling.

#### **§ 109–45.5104–2 Methods of disposal.**

(a) Sales of foreign surplus personal property shall be conducted in accordance with the following guidelines:

(1) Generally, all sales of foreign surplus personal property shall be conducted under the competitive bid process unless it is advantageous and more practicable to the Government not to do so. When competitive bids are not solicited, reasonable inquiry of prospective purchasers shall be made in order that sales may be made on terms most advantageous to the U.S. Government.

(2) In no event shall any personal property be sold in foreign areas without a condition which states that its importation into the United States is forbidden unless the U.S. Secretary of Agriculture (in the case of any agricultural commodity, food, cotton, or woolen goods), or the U.S. Secretary of Commerce (in the case of any other property), has determined that the importation of such property would relieve domestic shortages or otherwise be beneficial to the economy of the United States.

(3) Sales documents shall provide that the purchaser must pay any import duties or taxes levied against personal property sold in the country involved and further provide that the amount of this duty or tax shall not be included as a part of the price paid the U.S. Government for the personal property. In the event the levy is placed upon the seller by law, the buyer will be required to pay all such duties or taxes and furnish the seller copies of his receipts prior to the release of the personal property to him. However, if the foreign government involved will not accept payment from the buyer, the seller will collect the duties or taxes and turn the amounts collected over to the foreign government. Accounting for the amounts collected shall be coordinated with the disbursing officer of the nearest United States foreign service post. The property shall not be released to the purchaser until the disposal officer is satisfied that there is no responsibility for payment by the United States (as contrasted to collection by the United States) of taxes, duties, excises, etc.

(4) Advance approval must be obtained from the State Department for the sale of certain categories of personal property, including small arms and machine guns; artillery and projectiles; ammunition, bombs, torpedoes, rockets and guided missiles; fire control equipment and range finders; tanks and

ordnance vehicles; chemical and biological agents, propellants and explosives; vessels of war and special naval equipment; aircraft and all components, parts and accessories for aircraft; military electronic equipment; aerial cameras, military photo-interpretation, stereoscopic plotting and photogrammetry equipment; and all material not enumerated which is included in the United States Munitions List, 22 CFR 121.01, and is subject to disposal restrictions. Therefore, prior to the sale of any of the articles enumerated in the U.S. Munitions List, the foreign service post in the area shall be consulted.

(5) All proposed sales, regardless of the total acquisition cost of personal property involved, which the head of the DOE foreign office believes might have a significant economic or political impact in a particular area, shall be discussed with the foreign service post.

(b) While there is authority for exchange or lease of foreign surplus personal property, such authority shall be exercised only when such action is clearly in the best interests of the U.S. Government. Disposals by exchange are subject to the same requirements as disposals by sale under § 109–45.5105–2 of this subpart.

(c)(1) Foreign excess or surplus personal property (including salvage and scrap) may be donated, abandoned, or destroyed provided:

(i) The property has no commercial value or the estimated cost of its care and handling would exceed the estimated proceeds from its sale; and

(ii) A written finding to that effect is made and approved by the Office of International Affairs.

(2) No personal property shall be abandoned or destroyed if donation is feasible. Donations under these conditions may be made to any agency of the U.S. Government, or to educational, public health, or charitable nonprofit organizations.

(3) Foreign excess personal property may also be abandoned or destroyed when such action is required by military necessity, safety, or considerations of health or security. A written statement explaining the basis for disposal by these means and approval by the Office of International Affairs.

(4) Property shall not be abandoned or destroyed in a manner which is detrimental or dangerous to public health and safety, or which will cause infringement on the rights of other persons.

#### **§ 109–45.5105 Reports.**

(a) Proposed sales of foreign surplus personal property shall include all pertinent data, including the following:

(1) The description of personal property to be sold, including:

(i) Identification of personal property (description should be in terms understandable to persons not expert in technical nomenclature). Personal property covered by the U.S. Munitions List and regulations pertaining thereto (as published in 22 CFR 121.1) should be clearly identified;

(ii) Quantity;

(iii) Condition; and

(iv) Acquisition cost.

(2) The proposed method of sale (*e.g.*, sealed bid, negotiated sale, etc.)

(3) Any currency to be received and payment provisions (*i.e.*, U.S. dollars, foreign currency, or credit, including terms of the proposed sale).

(4) Any restrictions on use of personal property to be sold (such as resale of property, disposal as scrap, demilitarization, etc.).

(5) Any special terms or conditions of sale.

(6) The categories of prospective purchasers (*e.g.*, host country, other foreign countries, special qualifications, etc.).

(7) How taxes, excises, duties, etc., will be handled.

#### **PART 109–46—UTILIZATION AND DISPOSAL OF PERSONAL PROPERTY PURSUANT TO EXCHANGE/SALE AUTHORITY**

Sec.

109–46.000 Scope of part.

109–46.000–50 Applicability.

##### **Subpart 109–46.2—Authorization**

109–46.202 Restrictions and limitations.

109–46.203 Special authorizations.

**Authority:** Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

#### **§ 109–46.000 Scope of part.**

##### **§ 109–46.000–50 Applicability.**

(a) Except as set forth in paragraphs (a)(1) through (5) of this section, the requirements of FPMR/FMR part 101–46 and this part are not applicable to designated contractors. Designated contractors shall comply with the following FPMR/FMR requirements:

(1) 101–46.200;

(2) 101–46.201–1;

(3) 101–46.202(b)(2), (3), (4), (5), (6),

and (7);

(4) 101–46.202(c)(1), (2), (4), (5), (6), (7), (10), (11), and (12);

(5) 101–46.202(d).

(b) Items in the following Federal Supply Classification Groups (FSCG) are

not eligible for processing under the exchange/sale provision. Requests for waivers must be processed through the DPMO to GSA.

## Description

### FSCG

- 10 Weapons
- 11 Nuclear ordnance
- 12 Fire control equipment
- 14 Guided missiles
- 15 Aircraft and airframe structural components (except FSC Class 1560, Airframe structural components)
- 20 Ship and marine equipment
- 22 Railway equipment
- 41 Firefighting, rescue, and safety equipment

## Subpart 109-46.2—Authorization

### § 109-46.202 Restrictions and limitations.

- (a)–(c)(9) [Reserved]
- (10) The Office of Management and Program Secretarial Officer (PSO) for their respective organizations shall designate an official to make the certification that a continuing valid requirement exists for excess personal property acquired and placed in official use for less than one year but no longer required and is to be disposed of under the exchange/sale provisions.
- (11) [Reserved]
- (12) Program Secretarial Officer (PSO) shall make the determination concerning demilitarization of combat material.

### § 109-46.203 Special authorizations.

- (a) [Reserved]
- (b) The Office of Management and Program Secretarial Officer (PSO) for their respective organizations shall designate an official to make the certification concerning the exchange of historic items for historical preservation or display.

## PART 109-48—UTILIZATION, DONATION, OR DISPOSAL OF ABANDONED AND FORFEITED PERSONAL PROPERTY

- Sec.
- 109-48.000 Scope of part.
- 109-48.000–50 Applicability.

### Subpart 109-48.1—Utilization of Abandoned and Forfeited Personal Property

- 109-48.101 Forfeited or voluntarily abandoned property.
- 109-48.101–6 Transfer to other Federal agencies.

Authority: 40 U.S.C. 121.

### § 109-48.000 Scope of part.

### § 109-48.000–50 Applicability.

This part is applicable to contractor operations where the abandoned or

forfeited personal property is found on premises owned or leased by the Government that are managed and operated by designated contractors.

## Subpart 109-48.1—Utilization of Abandoned and Forfeited Personal Property

### § 109-48.101 Forfeited or voluntarily abandoned property.

### § 109-48.101–6 Transfer to other Federal agencies.

- (a)–(c) [Reserved]
- (d) Transfer orders for forfeited or voluntarily abandoned distilled spirits, wine, and malt beverages for medicinal, scientific, or mechanical purposes or any other official purposes for which appropriated funds may be expended by a Government agency shall be forwarded through normal administrative channels for signature by the DPMO and for subsequent forwarding to GSA for release.
- (e) [Reserved]
- (f) Transfer orders for reportable forfeited drug paraphernalia shall be forwarded through normal administrative channels for signature by the Property Executive and for subsequent forwarding to GSA for approval.

## PART 109-50—SPECIAL DOE DISPOSAL AUTHORITIES

- Sec.
- 109-50.000 Scope of part.
- 109-50.001 Applicability.

### Subpart 109-50.1—Laboratory Equipment Donation Program Grant Program

- 109-50.100 Scope of subpart.
- 109-50.101 Applicability.
- 109-50.102 General.
- 109-50.103 Definitions.
- 109-50.104 Equipment which may be granted.
- 109-50.105 Equipment which may not be granted.
- 109-50.106 Procedure.
- 109-50.107 Reporting.

### Subpart 109-50.2—Math and Science Equipment Gift Program

- 109-50.200 Scope of subpart.
- 109-50.201 Applicability.
- 109-50.202 Definitions.
- 109-50.203 Eligible equipment.
- 109-50.204 Limitations.
- 109-50.205 Procedure.
- 109-50.206 Reporting.

### Subpart 109-50.3—[Reserved]

### Subpart 109-50.4—Programmatic Disposal to Contractors of DOE Property in a Mixed Facility

- 109-50.400 Scope of subpart.
- 109-50.401 Definitions.
- 109-50.402 Submission of proposals.
- 109-50.403 Need to establish DOE program benefit.

## Subpart 109-50.48—Exhibits

- 109-50.4800 Scope of subpart.
- 109-50.4801 Equipment Gift Agreement.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254); sec. 31, Atomic Energy Act, as amended; Energy Reorganization Act of 1974, secs. 103 and 107; Title III, Department of Energy Organization Act; E.O. 12999; sec. 3710(i), Stevenson-Wydler Technology Innovation Act, as amended (15 U.S.C. 3710(i)); Pub. L. 101–510, Department of Energy Science Education Enhancement Act; Pub. L. 102–245, American Technologies Preeminence Act of 1991 (15 U.S.C. 3701); Office of Science Financial Assistance Program (10 CFR part 605).

### § 109-50.000 Scope of part.

This part provides guidance on the policies, practices, and procedures for the disposal of DOE property under special legislative authorities.

### § 109-50.001 Applicability.

The provisions of this part apply to direct DOE operations and to designated contractors only when specifically provided for in the appropriate subpart.

## Subpart 109-50.1—Laboratory Equipment Donation Program Grant Program

### § 109-50.100 Scope of subpart.

This subpart provides guidance on the granting of Laboratory Equipment Donation Program in the LEDP is limited to accredited, post graduate, degree granting institutions including universities, colleges, junior colleges, technical institutes, museums, or hospitals, located in the U.S. and interested in establishing or upgrading energy-oriented educational programs in the life, physical, and environmental sciences and in engineering is eligible to apply. An energy-oriented program is defined as an academic research activity dealing primarily or entirely in energy-related topics.

### § 109-50.101 Applicability.

This subpart is applicable to DOE offices and designated contractors.

### § 109-50.102 General.

DOE, to encourage research and development in the field of energy, awards grants of excess Laboratory Equipment Donation Program to eligible institutions for use in energy-oriented educational programs. Under the Used Laboratory Equipment Donation Program (LEDP) Grant Program, grants of used energy-related equipment excess to the requirements of DOE offices and designated contractors may be made to eligible institutions prior to reporting the equipment to GSA for reutilization screening.

**§ 109–50.103 Definitions.**

As used in this subpart the following definitions apply: *Book value* means acquisition cost less depreciation. *DOE Financial Assistance Rules* (10 CFR part 600) means the DOE regulation which establishes a uniform administrative system for application, award, and administration of assistance awards, including grants and cooperative agreements.

*Eligible institution* means any nonprofit educational institution of higher learning, such as universities, colleges, junior colleges, hospitals, and technical institutes or museums located in the United States and interested in establishing or upgrading energy-oriented education programs.

*Energy-oriented education program* means one that deals partially or entirely in energy or energy-related topics.

**§ 109–50.104 Equipment which may be granted.**

Generally, equipment items classified in FSCG 66, Instruments and Laboratory Equipment, are eligible for granting under this program. Other selected items designated by the Office of Workforce Development for Teachers and Scientists (WDTS) and approved by the OPMO, are made available under the program.

**§ 109–50.105 Equipment which may not be granted.**

Equipment which will not be granted include:

(a) Equipment intended by the DOE institution for use in contractual research projects.

(b) Furniture, such as desks, tables, chairs, typewriters, etc. (exception is such equipment that may be an essential component of and physically attached to an energy-related laboratory equipment system);

(c) General supplies.

**§ 109–50.106 Procedure.**

(a) After DOE utilization screening through EADS, items eligible for LEDP grants are extracted from the EADS system and Office of Workforce Development for Teachers and Scientists (WDTS).

(b) Office of Workforce Development for Teachers and Scientists (WDTS) to prospective grantees through an automated system.

(c) The following periods have been established during which time equipment will remain available to this program prior to reporting it to GSA for reutilization by other Federal agencies:

(1) Thirty days from the date DOE utilization screening is completed to

permit suitable time for eligible institutions to review and earmark the desired equipment.

(2) An additional thirty days after the equipment is earmarked to permit the eligible institutions to prepare and submit an equipment proposal request and to provide time for field organizations to review and evaluate the proposal and take appropriate action.

(d) Upon approval of the proposal, a grant will be issued to the institution upon completion.

(e) A copy of the completed grant, shall be used to transfer title and drop accountability of the granted equipment from the financial records.

(f) The cost of care and handling of personal property incident to the grant shall be charged to the receiving institution. Such costs may consist of packing, crating, shipping and insurance, and are limited to actual costs. In addition, where appropriate, the cost of any repair and/or modification to any equipment shall be borne by the recipient institution.

**§ 109–50.107 Reporting.**

(a) Gifts made under this program shall be included in the annual report of property transferred to non-Federal recipients, as required by 41 CFR 101–43.4701(c) and 109–43.4701(c).

(b) A copy of each equipment agreement shall be forwarded to the Director, Office of Laboratory Policy and Infrastructure Management.

**Subpart 109–50.2—Math and Science Equipment Gift Program****§ 109–50.200 Scope of subpart.**

This subpart provides guidance on providing gifts of excess and/or surplus education related and Federal research equipment to elementary and secondary educational institutions or nonprofit organizations for the purpose of improving math and science curricula or conducting of technical and scientific education and research activities.

**§ 109–50.201 Applicability.**

The provisions of this subpart are applicable to DOE offices and designated contractors.

**§ 109–50.202 Definitions.**

As used in this subpart the following definitions apply:

*DOE Field Organizations* means the DOE Federal management activities, including Operations Offices, Field Offices, Area Offices, Site Offices, Energy Technology Centers, and Project Offices staffed by Federal employees.

*Education-related and Federal research equipment* includes but is not limited to DOE-owned property in FSCG

34, 36, 41, 52, 60, 61, 66, 67, 70, and 74 (See 41 CFR 101–43.4801(d)), and other related equipment, which is deemed appropriate for use in improving math and science curricula or activities for elementary and secondary school education, or for the conduct of technical and scientific education and research activities.

*Eligible recipient* means local elementary and secondary schools and nonprofit organizations.

*Elementary and secondary schools* means individual public or private educational institutions encompassing kindergarten through twelfth grade, as well as public school districts.

*Facilities under DOE Field Organization cognizance* means national laboratories, production plants, and project sites managed and operated by DOE contractors or subcontractors.

**§ 109–50.203 Eligible equipment.**

(a) Education-related and research equipment will include, but is not limited to the following FSCGs:

**FSCG and Description**

34	Metalworking Machinery
36	Special Industry Machinery
41	Refrigeration, Air Conditioning and Air Circulating Equipment
52	Measuring Tools
60	Fiber Optics Materials, Components, Assemblies and Accessories
61	Electric Wire, and Power and Distribution Equipment
66	Instruments and Laboratory Equipment
67	Photographic Equipment
70	General Purpose Automatic Data Processing Equipment (Including Firmware), Software, Supplies and Support Equipment
74	Office Machines, Text Processing Systems and Visible Record Equipment

(b) Other related equipment may be provided if deemed appropriate and approved by the Director, Office of Laboratory Policy and Infrastructure Management.

**§ 109–50.204 Limitations.**

(a) Excess and/or surplus education-related and Federal research equipment at DOE Field Organizations and cognizant facilities is eligible for transfer as a gift under this program. However, safety, environmental, and health matters must be considered.

(b) Title to the equipment will transfer upon the recipient's written acknowledgement of receipt.

(c) The Office of Workforce Development for Teachers and Scientists (WDTS) may authorize gifts of

excess and/or surplus education-related and Federal research equipment by signature on the appropriate gift instrument where the book value of an item of equipment exceeds \$25,000 or the cumulative book value of the gifts under this program to any one institution exceeds \$25,000. HCA or designee may authorize gifts of excess and/or surplus education-related and Federal research equipment of lesser individual and cumulative book value by signature on the appropriate gift instrument. Delegations by the HCA to authorize gifts of excess and/or surplus education-related and Federal research equipment shall be in writing to a specific individual, for a specified period of time, and for a specified (or unlimited) level of authority.

(d) Gifts shall be serviceable and in working order. Disposal Condition Codes 1 and 4, as defined in 41 CFR 101–43.4801(e), meet this criteria. Serviceability of equipment should be verified before the gift is made to the eligible recipient.

#### **§ 109–50.205 Procedure.**

(a) The DOE facility will set aside an appropriate amount of excess and/or surplus education-related and Federal research equipment for transfer under this program.

(b) A list of available education-related and Federal research equipment will be prepared and distributed to eligible recipients and the chief State School Board Officer.

(c) Precollege institutions with partnership arrangements with the DOE or its facilities (e.g., an adopted school) may receive gifts of equipment in support of the partnership.

(d) Precollege institutions not in a partnership with DOE may receive equipment at the recommendation of the chief State School Board Officer. The Chief State School Board Officer will determine which schools within the state will receive which equipment. Consideration for placement of the equipment should be based on:

(1) The elementary or secondary schools determined to have the greatest need; or

(2) Recipients of federally funded math and science projects where the equipment would further enhance the progress of the project.

(e) Eligible recipients will have 30 days to select and freeze, on a first come, first serve basis, the items desired and submit a request for selected items stating:

(1) Why the gift is needed; and  
(2) How the gift will be used to improve math and science curricula or in the conduct of technical and

scientific education and research activities.

(f) The cost of shipping should be minimal and not more than the actual equipment value.

(g) An Equipment Gift Agreement will be prepared and used to provide the gift to eligible recipients. The gift agreement will be in the format provided in section 109–50.4801 of this subchapter. The agreement shall be numbered for control purposes, and signed by the Office of Science's Office of Workforce Development for Teachers and Scientists (WDTS) or the HCA or designee, as appropriate, and an appropriate official representing the eligible recipient.

#### **§ 109–50.206 Reporting.**

(a) Gifts made under this program shall be included in the annual report of property transferred to non-Federal recipients, as required by 41 CFR 101–43.4701(c) and § 109–43.4701(c) of this chapter.

(b) A copy of each equipment agreement shall be forwarded to the Office of Workforce Development for Teachers and Scientists (WDTS).

#### **Subpart 109–50.3—[Reserved]**

#### **Subpart 109–50.4—Programmatic Disposal to Contractors of DOE Property in a Mixed Facility**

##### **§ 109–50.400 Scope of subpart.**

This subpart contains policy to be followed when it is proposed to sell or otherwise transfer DOE personal property located in a mixed facility to the contractor who is the operator of that facility.

##### **§ 109–50.401 Definitions.**

As used in this subpart, the following definitions apply:

*Contractor* means the operator of the mixed facility.

*DOE property* means DOE-owned personal property located in a mixed facility.

*Mixed facility* means a partly DOE-owned and partly contractor-owned facility. For purposes of this subpart, however, this definition does not apply to such a facility operated by an educational or other nonprofit institution under a basic research contract with DOE.

##### **§ 109–50.402 Submission of proposals.**

Proposals involving programmatic disposals of DOE personal property located in mixed facilities to contractors operating that facility shall be forwarded through the appropriate program organization to the Property Executive, for review and processing for

approval. Each such request shall include all information necessary for a proper evaluation of the proposal. The proposal shall include, as a minimum:

(a) The purpose of the mixed facility;

(b) The description, condition, acquisition cost, and present use of the DOE personal property involved.

(c) The programmatic benefits which could accrue to DOE from the disposal to the contractor (including the considerations which become important if the disposal is not made);

(d) The appraised value of the DOE personal property (preferably by independent appraisers); and

(e) The proposed terms and conditions of disposal including:

(1) Price;

(2) Priority to be given work for DOE requiring the use of the transferred property, and including the basis for any proposed charge to DOE for amortizing the cost of plant and equipment items;

(3) Recapture of the property if DOE foresees a possible future urgent need; and

(4) Delivery of the property, whether “as is-where is,” etc.

#### **§ 109–50.403 Need to establish DOE program benefit.**

When approval for a proposed programmatic disposal of DOE personal property in a mixed facility is being sought, it must be established that the disposal will benefit a DOE program. For example, approval might be contingent on showing that:

(a) The entry of the contractor as a private concern into the energy program is important and significant from a programmatic standpoint; and

(b) The sale of property to the contractor will remove obstacles which otherwise discourage entry into the field.

#### **Subpart 109–50.48—Exhibits**

##### **§ 109–50.4800 Scope of subpart.**

This subpart exhibits information referenced in the text of part 109–50 of this chapter that is not suitable for inclusion elsewhere in that part.

##### **§ 109–50.4801 Equipment Gift Agreement.**

(a) The following Equipment Gift Agreement format will be used to provide gifts of excess and/or surplus equipment to eligible recipients under the Math and Science Equipment Gift Program (see subpart 109–50.2 of this chapter).

#### **Equipment Gift Agreement**

(Reference Number)

**Between The U.S. Department of Energy and**

(Name of Eligible Recipient)

**I. Purpose**

The Department of Energy shall provide as a gift, excess and/or surplus education-related and Federal research equipment to (Name of Eligible Recipient), hereafter referred to as the Recipient, for the purpose of improving the Recipient's math and science education curricula or for the Recipient's conduct of technical and scientific education and research activities.

**II. Authority**

Federal agencies have been directed, to the maximum extent permitted by law, to give highest preference to elementary and secondary schools in the transfer or donation of education-related Federal equipment, at the lowest cost permitted by law. Furthermore, subsection 11(i) of the Stevenson Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710 (i)), authorizes the Director of a laboratory, or the head of any Federal agency or department to give excess research equipment to an educational institution or nonprofit organization for the conduct of technical and scientific education and research activities.

**III. Agreement**

A. The Department of Energy agrees to provide the equipment identified in the attached equipment gift list, as a gift for the purpose of improving the Recipient's math and science curricula or for the Recipient's conduct of technical and scientific education and research activities.

B. Title to the education-related and Federal research equipment, provided as a gift under this agreement, shall vest with the Recipient upon the Recipient's written acknowledgement of receipt of the equipment. The acknowledgement shall be provided to (Name of the DOE signatory) at (address).

C. The Recipient will be responsible for any repair and modification costs to any equipment received under this gift.

D. The Recipient hereby releases and agrees to hold the Government, the Department of Energy, or any person acting on behalf of the Department of Energy harmless, to the extent allowable by State law, for any and all liability of every kind and nature whatsoever resulting from the receipt, shipping, installation, operation, handling, use, and maintenance of the education-related and Federal Research equipment provided as a gift under this agreement.

E. The Recipient agrees to use the gift provided herein for the primary purpose of improving the math and science

curricula or for the conduct of technical and scientific education and research activities.

F. The Recipient agrees to provide for the return of the equipment if such equipment, while still usable, has not been placed in use for its intended purpose within one year after receipt from the Department of Energy.

(U.S. Department of Energy Office)

(Name and Address of Recipient)

(Signature of HCA or Designee)

(Signature of Official)

(Typed Name)

(Typed Name)

(Typed Title)

(Typed Title)

(Date)

(Date)

(b) The list of gifts that accompanies the Equipment Gift Agreement shall contain the Gift Agreement reference number, name of the eligible recipient, and the name of the DOE office. In addition, the following information shall be provided for each line item provided as a gift: DOE ID number, description (name, manufacturer, model number, serial number, etc.), FSC code, quantity, location, acquisition date, and acquisition cost.

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