

Quality Control Regulations, and stated that the NMED's request for approval of the part 70 program is also a request for approval of a program for delegation of unchanged section 112 standards. Based on approval of NMED's procedural mechanism for adopting Federal section 112 standards through incorporation by reference into the State's part 70 Operating Permit Program, the EPA can continue to update the State's delegation of section 112 standards along with the update of section 111 NSPS. The effective date of the delegation for unchanged Federal standards under section 112 is the effective date of the State's rule after its adoption. In this case, the effective date is June 19, 1996.

Since review of the pertinent New Mexico laws, rules, and regulations showed them to be adequate for the implementation and enforcement of the aforementioned category of NSPS and NESHAP, EPA is delegating full authority to the State for NSPS and NESHAP standards promulgated from April 1, 1996, through July 1, 1997, and authority for the technical and administrative review of new or amended NSPS and NESHAP promulgated by the EPA, subject to conditions and limitations of the original delegation agreement dated March 15, 1985. It is important to note that no delegation authority is granted to the NMED for Bernalillo County and Indian lands. Also, no authority is delegated to the State for 40 CFR part 60, subpart AAA, Standards of Performance for New Residential Wood Heaters and for 40 CFR part 61 for the radionuclide NESHAP's. Specifically, the subparts for which delegation is excluded are subpart B (National Emission Standards for Radon-222 Emissions from Underground Uranium Mines), subpart H (National Emission Standards for Radionuclide Emissions from Department of Energy Facilities), subpart I (National Emission Standards for Radionuclide Emissions from Facilities Licensed by the Nuclear Regulatory Commission and Federal Facilities not covered by subpart H), subpart K—(National Emission Standards for Radionuclide Emissions from Elemental Phosphorus Plants), subpart R (National Emission Standards for Radon Emissions from Phosphogypsum Stacks), and subpart W (National Emission Standards for Radon-222 Emissions from Licensed Uranium Mill Tailings).

All of the information required pursuant to the Federal NSPS and NESHAP (40 CFR parts 60 and 61) should be submitted by sources located outside the boundaries of Bernalillo

County and in areas outside of Indian lands, directly to the NMED, Harold Runnels Building, Room So. 2100, St. Francis Drive, Santa Fe, New Mexico 87502. Albuquerque/Bernalillo County is excluded from this action because this area is granted delegation authority under AQCR 30 NSPS and 31 NESHAP to the City of Albuquerque's Environmental Health Department. In regards to Indian land, the President established in 1983 a Federal Indian Policy which emphasized the principle of Indian "self-government," and direct dealing with Indian Nations on a "government-to-government" basis. Sources located on Indian lands in the State of New Mexico should submit required information to EPA Region 6 office at the address given in this notice. All of the inquiries and requests concerning implementation and enforcement of the excluded standards under 40 CFR part 60, subpart AAA and 40 CFR part 61, subparts B, H, I, K, R, and W, in the State of New Mexico should be directed to the EPA Region 6 Office.

The Office of Management and Budget has exempted this information notice from requirements of section 6 of Executive Order 12866.

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996. EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Cement industry, Coal, Copper, Electric power plants, Fertilizer, Fossil-fuel steam generators, Glass and glass products, Grain, Iron, Lead, Metals, Motor vehicles, Nitric acid plants, Paper and paper industry, Petroleum phosphate, Sewage disposal, Steel, Sulfuric acid plants, Waste treatment and disposal of Zinc.

List of Subjects in 40 CFR Part 61

Air pollution control, Asbestos, Benzene, Beryllium, Hazardous materials, Mercury, Vinyl chloride.

Authority: This document is issued under the authority of sections 101, 111, 112 and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7411, 7412 and 7601).

Dated: January 27, 1998.

Van P. Kozak,

Acting Regional Administrator, Region VI.
[FR Doc. 98-2879 Filed 2-4-98; 8:45 am]

BILLING CODE 6560-50-P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-46

[FPMR Amendment H-197]

RIN 3090-AG50

Replacement of Personal Property Pursuant to the Exchange/Sale Authority

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: 41 CFR 101-46 is revised to enhance executive agencies' understanding of the exchange/sale authority and to provide those agencies with greater flexibility and opportunity to use that authority.

EFFECTIVE DATE: February 5, 1998.

FOR FURTHER INFORMATION CONTACT: Martha Caswell, Director, Personal Property Management Policy Division (202-501-3828).

SUPPLEMENTARY INFORMATION:

A. Background

The following questions and answers have been developed to explain the purpose and intended use of the exchange/sale authority, and to explain the changes to the exchange/sale regulations promulgated by this final rule:

What is the exchange/sale authority?

An authority provided by Section 201(c) of the Federal Property and Administrative Services Act of 1949, as amended, under which executive agencies "may exchange or sell similar items and may apply the exchange allowance or proceeds of sale in such cases in whole or in part payment for the property acquired".

When should executive agencies use the exchange/sale authority?

When replacing personal property. An example would be the need of an executive agency to replace outdated scientific equipment. Why should executive agencies use the exchange/sale authority?

To reduce the agencies' need for additional funding for the acquisition of replacement personal property. If an agency has personal property that needs to be replaced, it can exchange or sell that property and apply the exchange

allowance or sales proceeds to the acquisition of similar replacement property. Using the exchange/sale authority also enables agencies to avoid the costs (e.g., administrative and storage) associated with holding the property and processing it through the normal disposal cycle, i.e., reutilization by other Federal agencies, donation to eligible non-Federal public or non-profit organizations, sale to the public, or abandonment or destruction. By contrast, if the holding agency does not use the exchange/sale authority but instead reports the property to be replaced as excess, any sales proceeds are forwarded to the miscellaneous receipts account at the United States Treasury and are not available to the agency disposing of the property.

What effect will these changes have on other Federal personal property disposal programs?

This is unknown. The effect will depend on the extent to which executive agencies increase their use of the exchange/sale authority.

Why have changes been made to the exchange/sale regulations?

The regulations have not been subjected to a comprehensive review and revision for over thirty years. The regulations are now being updated to reflect shrinking agency budgets and to increase their usefulness and effectiveness.

Who recommended the changes?

An interagency team led by GSA. In the course of its work, the team consulted with various customers and stakeholders, including representatives from the Office of Management and Budget, the House of Representatives Committee on Government Reform and Oversight, and the National Association of State Agencies for Surplus Property.

What changes have been made?

Changes have been made to incorporate plain language principles, reduce restrictions and limitations on use of the authority, streamline the narrative, define key terms, update organizational references, delete outdated regulatory references, and specify minimal documentation requirements.

B. The General Services Administration (GSA) has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

This rule is not required to be published in the **Federal Register** for public comment. Therefore, the Regulatory Flexibility Act does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed revisions do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501–3520. This rule also is exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel. This rule is written in a “plain language” style.

What is the “plain language” style of regulation writing?

The “plain language” style of regulation writing is a new, simpler to read and understand, question and answer regulatory format.

How does the plain language style of regulation writing affect employees?

A question and its answer combine to establish a rule. The employee and the agency must follow the language contained in both the question and its answer.

List of Subjects in 41 CFR Part 101–46

Government property management.

Therefore, 41 CFR part 101–46 is revised as set forth below:

PART 101–46—REPLACEMENT OF PERSONAL PROPERTY PURSUANT TO THE EXCHANGE/SALE AUTHORITY

Sec.

101–46.000 Why should executive agencies use the exchange/sale authority?

101–46.001 What is prescribed by this part?

101–46.002 What are the definitions of some of the key terms used in this part?

101–46.002–1 Acquire.

101–46.002–2 Combat material.

101–46.002–3 Exchange.

101–46.002–4 Exchange/sale.

101–46.002–5 Executive agency.

101–46.002–6 Federal agency.

101–46.002–7 Historic item.

101–46.002–8 Replacement.

101–46.002–9 Similar.

101–46.003 How do you request deviations from this part, and who can approve them?

Subpart 101–46.1—[Reserved]

Subpart 101–46.2—Exchange or Sale Determination

101–46.200 How do you determine whether to do an exchange or a sale?

101–46.201 When must you make a reimbursable transfer to another Federal agency?

101–46.202 To what other organizations may you make a reimbursable transfer?

101–46.203 What are the conditions for a reimbursable transfer?

101–46.204 What prohibitions and necessary conditions apply to the exchange/sale of personal property?

101–46.205 What special exceptions apply to the exchange/sale authority?

Subpart 101–46.3—Exchange/Sale Methods

101–46.300 What are the exchange methods?

101–46.301 What are the sales methods?

101–46.302 What are the accounting requirements for the proceeds of sale?

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

§ 101–46.000 Why should executive agencies use the exchange/sale authority?

To reduce the agencies' need for additional funding for the acquisition of replacement personal property. If an agency has personal property that needs to be replaced, it can exchange or sell that property and apply the exchange allowance or sales proceeds to the acquisition of similar replacement property. Using the exchange/sale authority also enables agencies to avoid the costs (e.g., administrative and storage) associated with holding the property and processing it through the normal disposal cycle, i.e., reutilization by other Federal agencies, donation to eligible non-Federal public or non-profit organizations, sale to the public, or abandonment or destruction. By contrast, if the holding agency does not use the exchange/sale authority but instead reports the property to be replaced as excess, any sales proceeds are forwarded to the miscellaneous receipts account at the United States Treasury and are not available to the agency disposing of the property.

§ 101–46.001 What is prescribed by this part?

Provisions for use by you (an executive agency) when using the exchange/sale authority of section 201(c) of the Federal Property and Administrative Services Act of 1949, 63 Stat. 384, as amended (40 U.S.C. 481(c)). This part applies to all personal property owned by executive agencies worldwide. For the exchange/sale of aircraft parts and hazardous materials, you must meet the requirements in this part and in parts 101–37 and 101–42 of this chapter, respectively.

§ 101–46.002 What are the definitions of some of the key terms used in this part?

§ 101–46.002–1 Acquire.

To procure or otherwise obtain personal property, including by lease.

§ 101–46.002–2 Combat material.

Arms, ammunition, and implements of war listed in the U.S. munitions list (22 CFR part 121).

§ 101-46.002-3 Exchange.

To replace personal property by trade or trade-in with the supplier of the replacement property.

§ 101-46.002-4 Exchange/sale.

To exchange or sell non-excess, non-surplus personal property and apply the exchange allowance or proceeds of sale in whole or in part payment for the acquisition of similar property.

§ 101-46.002-5 Executive agency.

Any executive department or independent establishment in the executive branch of the Government, including any wholly owned Government corporation.

§ 101-46.002-6 Federal agency.

Any executive agency or any establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his/her direction).

§ 101-46.002-7 Historic item.

Property having added value for display purposes because its historical significance is greater than its fair market value for continued use. Items that are commonly available and remain in use for their intended purpose, such as military aircraft still in use by active or reserve units, are not historic items.

§ 101-46.002-8 Replacement.

The process of acquiring property to be used in place of property which is still needed but will no longer adequately perform all the tasks for which it is used.

§ 101-46.002-9 Similar.

Where the acquired item and replaced item:

- (a) Are identical; or
- (b) Are designed and constructed for the same purpose; or
- (c) Both constitute parts or containers for identical or similar end items; or
- (d) Both fall within a single Federal Supply Classification (FSC) group of property that is eligible for handling under the exchange/sale authority.

§ 101-46.003 How do you request deviations from this part, and who can approve them?

(a) General provisions for deviations from the Federal Property Management Regulations are found in § 101-1.110 of this chapter. Provisions for deviations from the regulations in this part are presented in this section.

(b) To request deviations from this part, you must submit a complete written justification to the General

Services Administration (GSA), Office of Governmentwide Policy, Office of Transportation and Personal Property (MT), Washington, DC 20405. Only the Administrator of General Services (or designee) may grant deviations. Although the Administrator can approve deviations from most of the provisions in this part, he/she cannot approve deviations from provisions that are mandated by statute, i.e., the requirement at 101-46.204(b)(1) that the property exchanged or sold is similar to the property acquired, and the requirement at 101-46.204(b)(2) that the property exchanged or sold is not excess or surplus.

Subpart 101-46.1—[Reserved]**Subpart 101-46.2—Exchange or Sale Determination****§ 101-46.200 How do you determine whether to do an exchange or a sale?**

(a) You must determine which method—exchange or sale—will provide the greater return for the Government. When estimating the return under each method, consider all administrative and overhead costs.

(b) If the exchange allowance or estimated sales proceeds for property would be unreasonably low, you should process the property according to the regulations in Part 101-43 (Utilization of Personal Property) or Subpart 101-45.9 (Abandonment or Destruction of Personal Property) of this subchapter, as applicable.

§ 101-46.201 When must you make a reimbursable transfer to another Federal agency?

If you have property to replace which is eligible for exchange/sale, you should, to the maximum extent practicable, first solicit Federal agencies known to use or distribute such property and, if an agency wants it, arrange for a reimbursable transfer. Property that meets the replacement standards prescribed in subpart 101-25.4 of this chapter is not subject to this requirement.

§ 101-46.202 To what other organizations may you make a reimbursable transfer?

The Senate, the House of Representatives, the Architect of the Capitol and any activities under the Architect's direction, the District of Columbia, and mixed-ownership Government corporations.

§ 101-46.203 What are the conditions for a reimbursable transfer?

When transferring property, you must:

- (a) Do so under terms mutually agreeable to you and the recipient; and

(b) Not require reimbursement of an amount greater than the estimated fair market value of the transferred property; and

(c) Apply the transfer proceeds in whole or part payment for property acquired to replace the transferred property.

§ 101-46.204 What prohibitions and necessary conditions apply to the exchange/sale of personal property?

(a) You must not use the exchange/sale authority for:

(1) The following FSC groups of personal property:

- 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.
- 42 Firefighting, rescue, and safety equipment.
- 44 Nuclear reactors (FSC class 4472 only).
- 51 Hand tools.
- 54 Prefabricated structure and scaffolding.
- 68 Chemicals and chemical products, except medicinal chemicals.
- 71 Furniture.
- 84 Clothing, individual equipment, and insignia.

(2) Materials in the National Defense Stockpile (50 U.S.C. 98-98h) or the Defense Production Act inventory (50 U.S.C. App. 2093).

(3) Nuclear Regulatory Commission-controlled materials unless you meet the requirements of § 101-42.1102-4 of this subchapter.

(4) Controlled substances, unless you meet the requirements of § 101-42.1102-3 of this subchapter.

(5) Scrap materials, except in the case of scrap gold for fine gold.

(6) Property which was originally acquired as excess or forfeited property or from another source other than new procurement, unless such property has been in official use by the acquiring agency for at least 1 year. You may exchange or sell forfeited property in official use for less than 1 year if the head of your agency determines that a continuing valid requirement exists, but the specific item in use no longer meets that requirement, and that exchange or sale meets all other requirements of this part.

(7) Property that is dangerous to public health or safety without first rendering such property innocuous or providing for adequate safeguards as part of the exchange/sale.

(8) Combat material without demilitarizing it in accordance with applicable regulations.

(9) Flight Safety Critical Aircraft Parts unless you meet the provisions of § 101-37.610 of this chapter.

(10) Acquisition of unauthorized replacement property.

(11) Acquisition of replacement property which violates:

(i) Any restriction on procurement of a commodity or commodities; or

(ii) Any replacement policy or standard prescribed by the President, the Congress, or the Administrator of General Services; or

(iii) Any contractual obligation.

(b) You may use the exchange/sale authority only if you meet all of the following conditions:

(1) The property exchanged or sold is similar to the property acquired; and

(2) The property exchanged or sold is not excess or surplus, and the property acquired is needed for approved programs; and

(3) The number of items acquired must equal the number of items exchanged or sold unless:

(i) The item(s) acquired perform all or substantially all of the tasks for which the item(s) exchanged or sold would otherwise be used; or

(ii) The item(s) acquired and the item(s) exchanged or sold meet the test for similarity specified at § 101-46.002-9(iii) in that they are a part(s) or container(s) for identical or similar end items; and

(4) The property exchanged or sold was not acquired for the principal purpose of exchange or sale; and

(5) You document at the time of exchange or sale (or at the time of acquisition if it precedes the sale):

(i) That the exchange allowance or sale proceeds will be applied to the acquisition of replacement property; and

(ii) For any property exchanged or sold under this part, the pertinent Federal Supply Classification (FSC) Group, the number of items, the original acquisition cost, the exchange allowance or sales proceeds (as applicable), and the source from which the property was originally acquired i.e., new procurement, excess, forfeiture, or another source other than new procurement. These data, aggregated at the agency level, may be requested by GSA to evaluate use of the exchange/sale authority.

§ 101-46.205 What special exceptions apply to the exchange/sale authority?

(a) You may exchange books and periodicals in your libraries for other books and periodicals, without monetary appraisal or detailed listing or reporting.

(b) In acquiring items for historical preservation or display at Federal museums, you may exchange historic items in the museum property account

without regard to the FSC group or the requirement in § 101-46.204(b)(3), provided the exchange transaction is documented and certified by the head of your agency to be in the best interests of the Government and all other provisions of this part are met. The documentation must contain a determination that the item exchanged and the item acquired are historic items.

Subpart 101-46.3—Exchange/Sale Methods

§ 101-46.300 What are the exchange methods?

Exchange of property may be accomplished by either of the following two methods:

(a) The supplier (e.g., a Government agency, commercial or private organization, or an individual) delivers the replacement property to one of your organizational units and removes the property being replaced from that same organizational unit. This is the normal manner of exchange.

(b) The supplier delivers the replacement property to one of your organizational units and removes the property being replaced from a different organizational unit.

§ 101-46.301 What are the sales methods?

(a) You must use the methods, terms, and conditions of sale, and the forms prescribed in § 101-45.304 of this subchapter in the sale of property being replaced, except that the provisions of § 101-45.304-2(a) of this subchapter regarding negotiated sales are not applicable. Section 3709, Revised Statutes (41 U.S.C. 5), specifies the following conditions under which property being replaced can be sold by negotiation, subject to obtaining such competition as is feasible:

(1) The reasonable value involved in the contract does not exceed \$500, or

(2) Otherwise authorized by law.

(b) You may sell property being replaced by negotiation at fixed prices in accordance with the provisions of § 101-45.304-2(b) of this subchapter.

§ 101-46.302 What are the accounting requirements for the proceeds of sale?

Except as otherwise authorized by law, you must account for proceeds from sales of personal property disposed of under this part in accordance with the General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies, Title 7, Fiscal Procedures, Section 5.5D.

Dated: January 27, 1998.

David J. Barram,

Administrator of General Services.

[FR Doc. 98-2583 Filed 2-4-98; 8:45 am]

BILLING CODE 6820-24-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067-AC60

Disaster Assistance; Restoration of Damaged Facilities

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency (FEMA) is amending the basis for determining the eligibility of disaster costs associated with State and local repair or replacement standards adopted prior to restoration project approval that change the predisaster construction of a damaged facility. The rule requires that eligible costs associated with State and local repair or replacement standards (building codes, specifications, or standards required for the construction of facilities) be found reasonable and be limited to the standards that are in writing and formally adopted by the State or local government on or before the date of the disaster declaration. This rule staggers the effective dates; the rule will be effective for local standards on January 1, 1999, and for State standards on January 1, 2000.

DATES: This rule is effective March 9, 1998 and is applicable for local governments on January 1, 1999 and for States on January 1, 2000.

FOR FURTHER INFORMATION CONTACT:

Melissa M. Howard, Ph.D., Infrastructure Support Division, Federal Emergency Management Agency, room 713, 500 C Street SW., Washington DC 20472 (202) 646-3243.

SUPPLEMENTARY INFORMATION: FEMA has determined that standards, as dealt with in 44 CFR 206.226(b)(3), must be in effect at the time of the disaster and not at the time of project approval. On October 25, 1996, FEMA published a proposed rule in the **Federal Register** at 61 FR 55262 and invited comments for 60 days ending on December 24, 1996.

The regulation proposed that eligible costs associated with State and local repair or replacement standards that change the pre-disaster construction of a facility be limited to the standards that are in place at the time of the disaster declaration date. The term "standards"