

Commodity	Parts per million
Wheat, straw (of which no more than 40 ppm is TMS)	90

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**GENERAL SERVICES
ADMINISTRATION**

41 CFR Parts 101-46 and 102-39

[FPMR Amendment H-208]

RIN 3090-AH23

**Replacement of Personal Property
Pursuant to the Exchange/Sale
Authority**

AGENCY: Office of Governmentwide
Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration is revising the Federal Property Management Regulations (FPMR) by moving coverage on replacement of personal property pursuant to the exchange/sale authority into the Federal Management Regulation (FMR). A cross-reference is added to the FPMR to direct readers to the coverage in the FMR. The FMR is written in plain language to provide agencies with updated regulatory material that is easy to read and understand.

EFFECTIVE DATE: September 21, 2001.

FOR FURTHER INFORMATION CONTACT: Rick Bender, Personal Property Management Policy Division (MTP), 202-501-3448.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule updates, streamlines, and clarifies FPMR part 101-46 and moves the part into the Federal Management Regulation (FMR). The rule is written in a plain language question and answer format. In this format, a question and its answer combine to establish a rule. This means the employee and the agency must follow the language contained in both the question and its answer.

Updates include:

1. A revised definition of "replacement."
2. A new provision regarding the fixed price sale of exchange/sale property to a State Agency for Surplus Property before conducting an exchange/sale with a non-Government entity.
3. Revised restrictions on types of personal property that are ineligible for

exchange/sale, including removal of large weapons, fire control equipment, and guided missiles belonging to the Department of Defense, and furniture belonging to any executive agency from the list of such property.

4. Clarified restrictions on the exchange/sale of combat material.
5. A revised requirement for documentation of exchange/sale transactions.
6. Revised accounting requirements for the proceeds from the sale of personal property under the exchange/sale authority.
7. A new annual reporting requirement for exchange/sale transactions.

B. Executive Order 12866

GSA has determined that this final rule is not a significant rule for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

A regulatory flexibility analysis is not required under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because there is no requirement that this final rule be published in the **Federal Register** for notice and comment.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does 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 the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

**E. Small Business Regulatory
Enforcement Fairness Act**

This final rule is exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

**List of Subjects in 41 CFR Parts 101-46
and 102-39**

Government property management.

For the reasons set forth in the preamble, GSA amends 41 CFR chapters 101 and 102 as follows:

CHAPTER 101—[AMENDED]

1. Part 101-46 is revised to read as follows:

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

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

§ 101-46.000 Cross-reference to the Federal Management Regulation (FMR) (41 CFR chapter 102, parts 102-1 through 102-220).

For information on replacement of personal property pursuant to the exchange/sale authority previously contained in this part, see FMR part 39 (41 CFR part 102-39).

CHAPTER 102—[AMENDED]

2. Part 102-39 is added to subchapter B of chapter 102 to read as follows:

**PART 102-39—REPLACEMENT OF
PERSONAL PROPERTY PURSUANT
TO THE EXCHANGE/SALE AUTHORITY**

Subpart A—General

Sec.

- 102-39.5 How are the terms "I" and "you" used in this part?
- 102-39.10 What does this part cover?
- 102-39.15 Why should I use the exchange/sale authority?
- 102-39.20 What definitions apply to this part?
- 102-39.25 How do I request a deviation from this part?

Subpart B—Exchange/Sale Considerations

- 102-39.30 When should I not use the exchange/sale authority?
- 102-39.35 How do I determine whether to do an exchange or a sale?
- 102-39.40 When should I arrange for a reimbursable transfer of exchange/sale property to a Federal agency or other eligible organization, or sell such property to a State Agency for Surplus Property?
- 102-39.45 What prohibitions apply to the exchange/sale of personal property?
- 102-39.50 What conditions apply to the exchange/sale of personal property?
- 102-39.55 What exceptions apply to the conditions for exchange/sale in § 102-39.50?

Subpart C—Exchange/Sale Methods and Reports

- 102-39.60 What are the exchange methods?
- 102-39.65 What are the sales methods?
- 102-39.70 What are the accounting requirements for the proceeds of sale?
- 102-39.75 What information am I required to report?

Authority: 40 U.S.C. 486(c).

Subpart A—General**§ 102–39.5 How are the terms “I” and “you” used in this part?**

Use of pronouns “I” and “you” throughout this part refer to executive agencies.

§ 102–39.10 What does this part cover?

This part covers the exchange/sale authority, and 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 title.

§ 102–39.15 Why should I use the exchange/sale authority?

You should use the exchange/sale authority to:

(a) Reduce the cost of replacement personal property. If you have personal property that needs to be replaced, you can exchange or sell that property and apply the exchange allowance or sales proceeds to reduce the cost of similar replacement property. By contrast, if you choose not to replace the property using the exchange/sale authority, you may declare it excess and dispose of it through the normal disposal process. Any sales proceeds from the eventual sale of that property as surplus generally must be forwarded to the miscellaneous receipts account at the United States Treasury and thus would not be available to you.

(b) Avoid costs (e.g., administrative and storage) that may be incurred when declaring the property to be replaced as excess and processing it through the normal disposal process. The normal disposal process may include abandonment or destruction, reutilization by other Federal agencies, donation to eligible non-Federal public or non-profit organizations, or sale to the public. The time required to determine which of these options will apply and to complete the disposal transaction is likely to exceed the time required for an exchange/sale transaction.

§ 102–39.20 What definitions apply to this part?

The following definitions apply to this part:

Acquire means to procure or otherwise obtain personal property, including by lease.

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

Exchange means to replace personal property by trade or trade-in with the supplier of the replacement property.

Exchange/sale means 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.

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

Federal agency means 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).

Historic item means 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.

Replacement means the process of acquiring property to be used in place of property that is still needed but:

- (1) No longer adequately performs the tasks for which it is used; or
- (2) Does not meet the agency's need as well as the property to be acquired.

Similar means where the acquired item and replaced item:

- (1) Are identical;
- (2) Are designed and constructed for the same purpose;
- (3) Constitute parts or containers for identical or similar end items; or
- (4) Fall within a single Federal Supply Classification (FSC) group of property that is eligible for handling under the exchange/sale authority.

§ 102–39.25 How do I request a deviation from this part?

See §§ 102–2.60 through 102–2.110 of this chapter to request a deviation from the requirements of this part.

Subpart B—Exchange/Sale Considerations**§ 102–39.30 When should I not use the exchange/sale authority?**

You should not use the exchange/sale authority if the exchange allowance or estimated sales proceeds for the property will be unreasonably low. You must either abandon or destroy such property in accordance with part 101–45, subpart 101–45.9, of this title, or declare the property excess and follow the regulations in part 102–36 of this chapter, whichever is appropriate. Further, you must not use the exchange/sale authority if the transaction(s) would

violate any other applicable statute or regulation.

§ 102–39.35 How do I determine whether to do an exchange or a sale?

You must determine whether an exchange or sale will provide the greater return for the Government. When estimating the return under each method, consider all related administrative and overhead costs.

§ 102–39.40 When should I arrange for a reimbursable transfer of exchange/sale property to a Federal agency or other eligible organization, or sell such property to a State Agency for Surplus Property?

If you have property to replace which is eligible for exchange/sale, you should first, to the maximum extent practicable, solicit:

(a) Federal agencies known to use or distribute such property. If a Federal agency is interested in acquiring and paying for the property, you should arrange for a reimbursable transfer. Reimbursable transfers may also be conducted with 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. When conducting a reimbursable transfer, you must:

- (1) Do so under terms mutually agreeable to you and the recipient.
- (2) Not require reimbursement of an amount greater than the estimated fair market value of the transferred property.
- (3) Apply the transfer proceeds in whole or part payment for property acquired to replace the transferred property; and

(b) State Agencies for Surplus Property (SASPs) known to have an interest in acquiring such property. If a SASP is interested in acquiring the property, you should consider selling it to the SASP by negotiated sale at fixed price under the conditions specified at § 101–45.304–12 of this title. The sales proceeds must be applied in whole or part payment for property acquired to replace the transferred property.

§ 102–39.45 What prohibitions apply to the exchange/sale of personal property?

You must not use the exchange/sale authority for:

(a) 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.

84 Clothing, individual equipment, and insignia.

Note to § 102–39.45(a): The exception to the prohibition is Department of Defense (DOD) property in FSC Groups 10, 12, and 14 (except FSC Class 1005) for which the applicable DOD demilitarization requirements, and any other applicable regulations and statutes are met.

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

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

(d) Controlled substances, unless you meet the requirements of § 101–42.1102–3 of this title.

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

(f) Property that 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.

(g) 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.

(h) Combat material without demilitarizing it or obtaining a demilitarization waiver or other necessary clearances from the Department of Defense Demilitarization Office.

(i) Flight Safety Critical Aircraft Parts unless you meet the provisions of § 101–37.610 of this title.

(j) Acquisition of unauthorized replacement property.

(k) Acquisition of replacement property that violates any:

(1) Restriction on procurement of a commodity or commodities;

(2) Replacement policy or standard prescribed by the President, the Congress, or the Administrator of General Services; or

(3) Contractual obligation.

(1) Vessels subject to 40 U.S.C. 484(i).

§ 102–39.50 What conditions apply to the exchange/sale of personal property?

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

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

(b) The property exchanged or sold is not excess or surplus, and you have a continuing need for that type of property;

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

(1) 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

(2) The item(s) acquired and the item(s) exchanged or sold meet the test for similarity specified in § 102–39.20 that they are a part(s) or container(s) for identical or similar end items;

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

(e) You document at the time of exchange or sale (or at the time of acquiring the replacement property if it precedes the sale) that the exchange allowance or sale proceeds will be applied to the acquisition of replacement property.

§ 102–39.55 What exceptions apply to the conditions for exchange/sale in § 102–39.50?

The exceptions that apply to the conditions for exchange/sale § 102–39.50 are:

(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, 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 C—Exchange/Sale Methods and Reports

§ 102–39.60 What are the exchange methods?

Exchange of property may be accomplished by either of the following 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.

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

§ 102–39.65 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 title in the sale of property being replaced, except for the provisions of § 101–45.304–2(a) of this title regarding negotiated sales. 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 title.

§ 102–39.70 What are the accounting requirements for the proceeds of sale?

You must account for sales proceeds in accordance with the general finance and accounting rules applicable to you. Except as otherwise directed by law, all proceeds from the sale of personal property under this part will be available during the fiscal year in which the property was sold and for one fiscal year thereafter for obligation for the purchase of replacement property. Any sales proceeds not applied to replacement purchases during this time must be deposited in the United States Treasury as miscellaneous receipts.

§ 102–39.75 What information am I required to report?

(a) You must submit, within 90 calendar days after the close of each fiscal year, a summary report in a format of your choice on the exchange/sale transactions made under this part during the fiscal year (except for transactions involving books and periodicals in your libraries). The report must include:

(1) A list by Federal Supply Classification Group of property sold under this part showing the:

(i) Number of items sold;

(ii) Acquisition cost; and

(iii) Net proceeds.

(2) A list by Federal Supply Classification Group of property exchanged under this part showing the:

(i) Number of items exchanged;

(ii) Acquisition cost; and
 (iii) Exchange allowance.
 (b) Submit your report electronically or by mail to the General Services Administration, Personal Property Management Policy Division (MTP), 1800 F St. NW., Washington, DC 20405.

(c) Report control number: 1528-GSA-AN.

(d) If you make no transactions under this part during a fiscal year, you must submit a report stating that no transactions occurred.

Dated: September 12, 2001.

Stephen A. Perry,

Administrator of General Services Administration.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 1, 10, 12, 28, 30, 32, 35, 67, 78, 97, 131, 161, 162, 167, 182, 196, 199, and 401

[USCG-2001-10224]

Technical Amendments; Organizational Changes; Miscellaneous Editorial Changes; and Conforming Amendments

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule makes editorial and technical changes throughout Title 46 of the Code of Federal Regulations to update the title before it is recodified on October 1, 2001. It corrects addresses, updates cross-references, makes conforming amendments, and makes other technical corrections. This rule will have no substantive effect on the regulated public.

DATES: This final rule is effective September 30, 2001.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the Docket Management Facility, [USCG-2001-10224], U.S. Department of Transportation, room PL-401, 400 Seventh Street SW., Washington, DC, 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Robert Spears, Project Manager, Standards Evaluation and Development Division (G-MSR-2), Coast Guard, telephone 202-267-1099. If you have questions on viewing the docket, call

Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202-366-9329.

SUPPLEMENTARY INFORMATION:

Discussion of the Rule

Each year, title 46 of the Code of Federal Regulations (CFR) is recodified on October 1. This rule makes editorial changes throughout the title, corrects addresses, updates cross-references, and makes other technical and editorial corrections to be included in the recodification. This rule does not change any substantive requirements of existing regulations.

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. This rule consists only of corrections, editorial changes, and conforming amendments to 46 CFR, chapters I and III. These changes will have no substantive effect on the public so publishing an NPRM and providing an opportunity for public comment is unnecessary. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that, for the same reasons, good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Editorial changes that involve more than simply correcting erroneous letters or numbers—or a change of address—are discussed individually in the following paragraphs.

Parts 1 and 10

This rule adds the Director of Waterways Management (G-MW), to the Code of Federal Regulations, and it updates the distribution of functions assigned to several offices.

Parts 28, 35, 78, 97, 131, 167, and 196

In these parts, this rule updates information on obtaining nautical charts and publications by inserting references to the National Imagery and Mapping Agency.

Part 30

Since 1973, this section has referenced SOLAS 60. On July 26, 1990, a rulemaking titled “Replacement of References to SOLAS 60 With SOLAS 74” (55 FR 30658) was published to amend, among other things, this section and three other similar sections of title 46 (§§ 70.05-10, 90.05-10, and 188.05-10). All four amendatory instructions (# 11, 23, 32, and 68) were supposed to make the same change in the regulatory text of these four sections. They all should have read “Section * * * is amended by revising paragraphs (a)(2)(i) and (ii) to read as follows:”.

However, amendatory instruction # 11 in that rulemaking erroneously read “Section 30.01-6 is amended by revising paragraph (a) to read as follows:”. The instruction resulted in the deletion of paragraph (a)(2)(iii). This rule now corrects paragraph (a) by adding back the deleted language.

Part 32

On September 30, 1997, a rulemaking titled “Harmonization With International Safety Standards” (62 FR 51188) was published to amend, among other things, subpart 32.53. The Coast Guard determined that applicable SOLAS provisions regarding inert gas systems were equivalent to current Coast Guard regulations in terms of safety and operating requirements. Therefore, the Coast Guard incorporated SOLAS Chapter II-2 Regulation 62, containing the SOLAS requirements for inert gas systems, by reference in subpart 32.53 and removed §§ 32.53-15 through 32.53-85, which duplicate SOLAS requirements. The result was that § 32.53-5 now incorrectly references § 32.53-30, which was removed. This rule removes the incorrect cross-reference.

Parts 161, 162 and 401

This rule makes changes in these parts to reflect changes in the functional responsibilities for sections in these parts.

Part 199

This rule removes and reserves an obsolete paragraph, 46 CFR 199.620(m), and deletes an obsolete reference in a table.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. As this rule involves internal agency practices and procedures, it will not impose any costs on the public.

Collection of Information

This rule calls for no new collection of information under the Paperwork