

hazardous substance natural resource damages assessment regulations, and revise them as appropriate, every two years. 42 U.S.C. 9651(c)(3).

The Department now intends to develop a proposed rule that will address both the biennial review and the remaining aspect of the *Ohio v. Interior* remand and that will supersede the May 4, 1994, proposed rule. This document solicits comment on inclusion in this upcoming proposed rule of the concepts of the recently promulgated oil natural resource damages assessment regulations.

New Oil Regulations

On January 5, 1996, the National Oceanic and Atmospheric Administration (NOAA) published a final rule under the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.) for assessing natural resource damages caused by oil spills. 61 FR 439. The oil regulations adopt a new approach to several aspects of natural resource damages assessment. One particularly significant and promising feature of the oil regulations is the adoption of a new method of measuring damages based on unified restoration planning. The oil regulations extend the hazardous substance regulations' emphasis on restoration to all elements of a natural resource damages claim, including compensation for interim loss of injured natural resources and resource services.

Under the oil regulations, a natural resource damages claim is based on a unified restoration plan developed during the assessment that incorporates both "primary" restoration actions to return injured resources and services to the condition that would have existed if the discharge had not occurred and "compensatory" restoration actions to compensate the public for interim loss of resource services.

The oil regulations fundamentally change the role of economic valuation in developing claims for interim loss of injured natural resources and resource services. Unlike the current hazardous substance regulations, the new oil regulations require trustees to determine compensation for interim losses based on the cost of appropriately scaled compensatory restoration actions, rather than economic values per se.

The Department has indicated that during the biennial review it will work to ensure the maximum consistency appropriate between the hazardous substance regulations and the oil regulations. 59 FR 52752. The Department believes that the unified restoration planning approach in the oil regulations is one appropriate option for biennial reforms to the hazardous

substance regulations designed to expedite restoration, reduce litigation, and encourage cooperative efforts among trustees and PRPs.

The Department also believes that resolution of the *Ohio v. Interior* remand concerning the calculation of nonuse values should be considered within the same context as the overall biennial review of the hazardous substance regulations. As NOAA has stated in connection with its new method of measuring damages, "[t]he possible use of contingent valuation (CV) and other stated-preference methods of valuation to determine what scale of compensatory restoration provides an equivalent value to the lost services avoids many problems identified by commenters regarding the use of CV to calculate a dollar value for the damages." 61 FR 442.

Issues for Comment

To assist in the development of a proposed rule, the Department is soliciting comment on how the hazardous substance regulations should be revised to ensure maximum appropriate consistency with the oil regulations and comply with *Ohio v. Interior*. The Department is particularly interested in comments on revising the hazardous substance regulations to incorporate the new method for measuring damages in the oil regulations. The Department also solicits comment on revising the hazardous substance regulations to reflect the more streamlined approach to injury assessment contained in the oil regulations. Whereas the current hazardous substance regulations contain relatively detailed standards and procedures for all aspects of injury determination and quantification, the oil regulations provide a general framework of decision criteria within which trustees determine on a case-by-case basis how best to assess injury. The Department solicits comment on the suitability of the new approaches in the oil regulations for the hazardous substance regulations, in light of the differences between oil spills and hazardous waste sites.

Dated: July 10, 1996.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

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DEPARTMENT OF AGRICULTURE

48 CFR Parts 401 Through 453

RIN 0599-AA00

Agriculture Acquisition Regulation; Revision

AGENCY: Procurement and Property Management, Department of Agriculture.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites written comments on a proposed amendment to the Agriculture Acquisition Regulation (AGAR). We are revising the AGAR to reflect changes in acquisition law and regulations since the AGAR's last major revision in 1988, to update organizational references throughout the AGAR, and to streamline the AGAR as part of the President's Regulatory Reform Initiative.

DATES: Comments must be submitted on or before September 16, 1996.

ADDRESSES: Requests for a copy of the proposed rule should be sent to U.S. Department of Agriculture, Procurement and Property Management, Procurement Policy Division, STOP 9303, 1400 Independence Avenue SW., Washington, DC 20250-9303. The Procurement Policy Division has also posted a copy of the proposed rule on the Internet for review at WWW.USDA.GOV/DA/PROCURE/AGAR.HTM. Submit written comments to the Procurement Policy Division at the mailing address listed above, through the Internet at 00:00-POST.JDARAGAN@SIES.WSC.AG.GOV (alternate: JDARAGAN@USDA.GOV), or via fax at (202) 720-8972.

FOR FURTHER INFORMATION CONTACT: Joseph J. Daragan, U.S. Department of Agriculture, Procurement and Property Management, STOP 9303, 1400 Independence Avenue SW., Washington, DC 20250-9303, (202) 720-5729.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Procedural Requirements
 - A. Executive Order 12866.
 - B. Regulatory Flexibility Act.
 - C. Paperwork Reduction Act.
- III. Public Comments

I. Background

The AGAR implements the Federal Acquisition Regulation (FAR), where further implementation is needed, and supplements the FAR when coverage is needed for subject matter not covered by the FAR. The AGAR is being revised as part of the National Performance Review (NPR) program to eliminate necessary

regulations and improve those that remain in force.

As an initial step in the NPR regulatory review initiative, the Department of Agriculture (USDA) identified parts of the AGAR which required updating or streamlining. USDA's review indicated that almost all parts required revision. Accordingly, USDA has reviewed and made revisions to substantially all parts of the AGAR. In an Advance Notice of Proposed Rulemaking (61 FR 7456, February 28, 1996). USDA sought comments and suggestions from the public concerning what changes should be made to the AGAR. One comment was received from a USDA field office. The commenter suggested a change to AGAR part 416; this comment has been implemented.

The principal effects of the proposed rule are as follows:

(a) References to the Director, Office of Operations, in the AGAR are revised to refer to the Senior Procurement Executive (SPE) to reflect the reorganization of USDA's Departmental Administration.

(b) To the extent permitted by the FAR, responsibilities have been delegated to the lowest appropriate organizational level.

(c) Section 401.103-70 is redesignated section 401.370 and revised to allow promulgation of interim policies and procedures outside the AGAR, subject to the policies of FAR subpart 1.3.

(d) Section 401.371 is added to establish AGAR Advisories to communicate guidance on acquisition issues to establish internal acquisition policies and procedures on an interim basis.

(e) Subpart 403.1 is added to address standards of conduct and procurement integrity issues.

(f) Subpart 405.3 is added to establish procedures for announcement of contract awards over \$1 million.

(g) Subpart 405.5 is revised to clarify procedures for publication of paid advertisements.

(h) Subpart 406.2 is added to designate the SPE as the individual authorized to make the FAR 6.202 determination.

(i) Section 407.305 and the accompanying clauses at 452.207-70 and 452.207-71 are removed since existing FAR coverage is deemed adequate.

(j) Subpart 407.5 is added to implement FAR subpart 7.5, Inherently Governmental Functions.

(k) 408.7 is added to create an advocacy program for the acquisition of products and services from the non-profit agencies employing people who are blind or severely disabled.

(l) Subpart 408.11 is added to establish a preference for recovered materials in the leasing vehicles.

(m) Section 409.504 and the accompanying clause at 452.209-70 are removed as superfluous.

(n) Part 410 is redesignated as part 411 and is revised to eliminate unnecessary text and to authorize the Head of the Contracting Activity (HCA) to make market acceptance determinations in accordance with FAR 11.103(a).

(o) Subpart 412.1 is redesignated subpart 411.4 and is amended to remove prescriptions for clauses at 452.212-70 and 452.212-71. The corresponding clauses at 452.212-70 and 452.212-71 are also removed.

(p) Part 412 is revised to provide coverage for the acquisition of commercial items. Subpart 412.3 is added to designate the HCA as the individual authorized to approve requests to tailor clauses and terms and conditions for commercial items in accordance with FAR 12.302(c).

(q) Section 413.501 is added to permit issuance of purchase orders on other than a fixed price basis if authorized by contracting activity written procedures.

(r) Section 413.505-3 is added to state that use of Standard Form 44 is not authorized within USDA, and section 413.505-70 is removed since form AD-744, Purchase Order-Invoice-Voucher, is no longer used by USDA.

(s) Section 414.407-3 is revised to delegate the authority to make mistake in bid determinations to HCA's.

(t) Section 415.407 is amended to remove prescriptions for solicitation provisions at 452.215-73, 452.215-74, and 452.215-75, and the corresponding provisions are removed, to eliminate collection of unnecessary information from offerors and to provide flexibility to tailor requests for proposal submissions.

(u) Section 415.612 is amended to remove the requirement that the HCA must be the formal source selection official for negotiated contracts over \$500,000.

(v) Section 415.902 is revised to authorize use of another Federal Agency's formalized structured approach for establishing profit or fee objectives.

(w) Section 416.000 is added to allow the use of contract types described in FAR part 16 for simplified acquisitions.

(x) Subpart 416.3, section 416.403, and section 416.404-1 are removed because FAR coverage is deemed adequate.

(y) Section 416.404-2 is amended to remove material adequately covered by the FAR.

(z) Section 417.204 is added to authorize HCA's to approve option contracts exceeding 5 years in accordance with FAR 17.204(e).

(aa) Section 417.204 is amended to remove prescriptions for clauses at 452.217-74, 452.217-75, 452.217-76, 452.217-77, 452.217-78, and 452.217-79, since they have been superseded by FAR clauses 52.217-6, 52.217-7, and 52.217-9. The referenced AGAR clauses are likewise removed from part 452.

(ab) Subpart 417.4 is removed since USDA does not use the leader company contracting method.

(ac) Subpart 417.6 is removed since USDA does not have the requisite statutory authority to enter into management and operating contracts.

(ad) Section 422.302 is added to provide procedures for review of liquidated damages assessed under section 104(c) of the Contract Work Hours and Safety Standards Act.

(ae) Subpart 422.70 is added to provide guidance for compliance with E.O. 12989, *Economy and Efficiency in Government Procurement Through Compliance with Certain Immigration and Naturalization Act Provisions*, February 13, 1996.

(af) Part 423 is revised to update the part and to address changes in environmental and safety law and in the FAR.

(ag) Subpart 423.4 is added to incorporate USDA's Acquisition, Recycling, and Waste Prevention Program, initiated to comply with 42 U.S.C. 6901, et seq., and with E.O. 12873, *Federal Acquisition, Recycling, and Waste Prevention*, October 20, 1993.

(ah) Subpart 430.2 is revised to update procedures for waivers of the Cost Accounting Standards and of Disclosure Statements.

(ai) Section 432.006 is added to provide procedures for reduction or suspension of contract payments upon finding of fraud.

(aj) Subparts 432.1 and 432.2 are added to supplement FAR coverage on financing for commercial and non-commercial items.

(ak) Subpart 432.6 is added to implement the FAR coverage on contract debts.

(al) Subpart 432.7 is added to address USDA specific funding issues.

(am) Part 433 is modified to provide an alternate forum for agency protests.

(an) Part 434 is amended to remove superfluous material and to identify the official(s) authorized to make the decisions under FAR 34.005-6.

(ao) Section 436.602-1 is amended to remove obsolete selection criteria.

(ap) Section 437.110 is amended to remove the prescription for the clause at

452.237-72, and the corresponding clause, since FAR 52.237-1 may be used instead of this clause.

(aq) Section 442.704 and the clause at 452.242-70 are removed, since the FAR provides identical coverage.

(ar) Section 442.1502 is added to delegate to HCA's responsibility for establishing past performance evaluation procedures and systems as required by FAR 42.1502 and 42.1503.

(at) Section 449.501 is added to delegate authority to HCA's to approve the use of special purpose termination clauses pursuant to FAR 49.501.

II. Procedural Requirements

A. Executive Order 12866

A work plan was prepared for this regulation and submitted to the Office of Management and Budget pursuant to Executive Order 12866. The proposed rule has been determined to be not significant for the purposes of Executive Order 12866. Therefore, the proposed rule has not been reviewed by the Office of Management and Budget.

B. Review Under the Regulatory Flexibility Act

The proposed rule was reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601-611, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. The AGAR is issued to implement or supplement the FAR, and does not materially add to the impact of the FAR regulations it implements or supplements. USDA certifies that this proposed rule will not have a significant economic effect on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared. However, comments from small entities concerning parts affected by the proposed rule will be considered. Such comments must be submitted separately and cite 5 U.S.C. 609 (AGAR Revision) in correspondence.

C. Paperwork Reduction Act

Information collection and recordkeeping required by the AGAR have been approved by the OMB. OMB control numbers 0505-0010, 0505-0011, 0505-0013, 0505-0014, 0505-0015, and 0505-0016 apply to the AGAR. No additional information collection or recordkeeping requirements are imposed on the public by this proposed rulemaking. Accordingly no OMB clearance is required by section 350(h) of the Paperwork Reduction Act, 44 U.S.C. 3501, et. seq., or OMB's implementing regulation at 5 CFR Part 1320.

III. Public Comments

Interested persons are invited to participate in this rulemaking by submitting views and comments with respect to the proposed AGAR revision set out in this notice. All written comments will be carefully assessed and fully considered prior to publication of the final rule.

List of Subjects in 48 CFR Parts 401 Through 453

Government contracts, Government procurement.

For the reasons set out in this preamble, the Department proposes to amend Chapter 4 of Title 48 of the Code of Federal Regulations. Copies of the proposed rule may be obtained from the addresses set forth above.

W.R. Ashworth,

Director, Procurement and Property Management.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB75

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Threatened Status for Copperbelly Water Snake

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: The Fish and Wildlife Service (Service) provides notice that the comment period on the proposed threatened status for the copperbelly water snake (*Nerodia erythrogaster neglecta*) is reopened. This snake occupies portions of southern Michigan, northwestern Ohio and adjacent northeastern Indiana, southern Indiana, southeastern Illinois, and western Kentucky.

DATES: Comments from all interested parties must be received by September 16, 1996.

ADDRESSES: Comments and materials concerning this proposal should be sent to U.S. Fish and Wildlife Service, 620 South Walker Street, Bloomington, Indiana 47403-2121.

FOR FURTHER INFORMATION CONTACT: David Hudak, Field Supervisor, (see **ADDRESSES** section), 812/334-4261 extension 200.

SUPPLEMENTARY INFORMATION:

Background

A proposed rule to list the copperbelly water snake (sometimes referred to as the northern copperbelly water snake) as threatened was published on August 18, 1993 (58 FR 43860). A public hearing on the proposal was held in Indianapolis on April 4, 1994, and the comment period for this proposed rule was extended or reopened five times, with the last comment period closing on September 30, 1995 (60 FR 42140, August 15, 1995).

Following the December 15, 1994, to January 13, 1995, comment period the Service again began evaluating all available scientific and commercial data concerning the species' status. On April 10, 1995, Public Law 104-06 imposed a moratorium which prevented the addition of any species to the Threatened and Endangered Species List. Thus, the Service was prevented from making a final decision on the proposed threatened classification of the copperbelly water snake. The moratorium remained in effect until April 26, 1996, at which time Public Law 104-134 was enacted, providing for the termination of the listing moratorium by the President.

The Service is required to use the best available scientific and commercial data in making listing determinations under the Endangered Species Act of 1973 (Act), as amended. The Service's Final Listing Priority Guidance, published May 16, 1996, (61 FR 24722-24728) notes that the inaction forced upon the Service by the moratorium and related funding limitations may result in a need to reopen comment periods due to unresolved questions or the potential for the existence of new information. Pursuant to this Guidance, it is necessary to reopen the comment period to ensure that the Service has the best scientific and commercial information currently available to use in making a final listing determination for the copperbelly water snake.

During this comment period the Service desires to receive any scientific and commercial data that have become available since the previous comment period closed on September 30, 1995. If significant data are provided that are likely to influence the listing determination, the Service will notify the public of the data's existence and will provide copies to parties that request them. If necessary, the Service will then extend or reopen the comment period to allow sufficient time for interested parties to review and comment on the new data.