

levels of functionality (e.g., operating capabilities, features offered, prices). Each provider may determine the criteria for determining these differing levels of functionality, and must disclose its methodology to the Commission pursuant to paragraph (i)(3)(vii) of this section.

\* \* \* \* \*

(f) \* \* \*

(3) Disclosure requirement relating to handsets that allow the user to reduce the maximum power for GSM operation in the 1900 MHz band. Handsets that meet the technical standard for radio frequency interference pursuant to paragraph (b)(1)(iii) of this section shall be labeled as meeting an M3 rating.

\* \* \* \* \*

(1) *In-store testing.* Any entity that sells wireless handsets to consumers through a physical location must make available for consumers to test, in each retail store that it owns or operates, all of its handset models that comply with paragraph (b)(1) or (b)(2) of this section.

[FR Doc. 2010-22254 Filed 9-7-10; 8:45 am]

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Part 53

[FAR Case 2009-029; Docket 2010-0096,  
Sequence 1]

RIN 9000-AL72

#### Federal Acquisition Regulation; Clarification of Standard Form 26— Award/Contract

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to revise (a) the header for blocks 17 and 18 and (b) block 18 of the Standard Form (SF) 26 to clarify that block 18 should not be used when awarding a negotiated procurement and should only be checked when awarding a sealed-bid contract.

**DATES:** Interested parties should submit written comments to the Regulatory

Secretariat on or before November 8, 2010 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAR Case 2009-029 by any of the following methods:

- *Regulations.gov*: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting “FAR Case 2009-029” under the heading “Enter Keyword or ID” and selecting “Search”. Select the link “Submit a Comment” that corresponds with “FAR Case 2009-029”. Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “FAR Case 2009-029” on your attached document.

- Fax: 202-501-4067.

- Mail: General Services

Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1800 F Street, NW., Room 4041, Washington, DC 20405.

*Instructions:* Please submit comments only and cite FAR Case 2009-029, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael O. Jackson, Procurement Analyst, at (202) 208-4949, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAR Case 2009-029.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This case was initiated after an agency identified an inconsistency in the use of the SF 26 by contracting officers. Although block 18 of the form is intended for use only with sealed-bid procurements, contracting officers have used block 18 with negotiated procurements, which has had unintended negative consequences in certain contract disputes.

FAR 53.214(a) prescribes the SF 26 for use in contracting for supplies and services by sealed bidding (except for construction and architect-engineer services). The SF 26 is used to award sealed-bid contracts after obtaining bids using a SF 33, Solicitation, Offer, and Award. FAR 14.408-1(d)(1) specifies that, if an offer made using a SF 33 leads to further changes, the resulting contract must be prepared as a bilateral document using the SF 26.

This case is based on instances where contracting officers have mistakenly

checked block 18 when awarding negotiated, not sealed bid, contracts. Such use has created the potential for disputes in situations where the Government's intent was not to accept the terms of the offer in its entirety, as the current wording of block 18 may imply.

The Councils believe that revising the header for blocks 17 and 18 and block 18 of the form will eliminate the issue. In addition to the recent enhancements to the instructions for use of the form, at FAR 53.214 and 53.215-1, the Councils propose to add “sealed bid” to the title of block 18, change “offer” to “bid” each time it occurs in block 18, and add a new sentence at the end of the block stating that block 18 should only be checked when awarding a sealed-bid contract.

These changes will not prohibit the use of the SF 26 for awarding negotiated procurements; it will only prohibit the use of block 18 of the SF 26 when awarding negotiated procurements.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6 of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

##### B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule does not impose any additional requirements on small businesses, but rather clarifies an area open to confusion. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR part 53 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR Case 2009-029), in all correspondence. The Councils will also consider comments from small entities concerning the existing regulations in parts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2009-029), in all correspondence.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management

and Budget under 44 U.S.C. chapter 35, *et seq.*

### List of Subjects in 48 CFR Part 53

Government procurement.

Dated: August 27, 2010.

**Edward Loeb,**

*Director, Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 53 as set forth below:

### PART 53—FORMS

1. The authority citation for 48 CFR part 53 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

#### § 53.214 [Amended]

2. Amend section 53.214 in paragraph (a) by removing “SF 26 (APR 2008)” and adding “SF 26 (Date)” in its place.

#### § 53.215–1 [Amended]

3. Amend section 53.215–1 in paragraph (a) by removing “SF 26 (APR 2008)” and adding “SF 26 (Date)” in its place.

[FR Doc. 2010–22346 Filed 9–7–10; 8:45 am]

**BILLING CODE 6820–EP–S**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R3-ES-2009-0009]

[MO 92210-0-0008-B2]

RIN 1018-AV94

### Endangered and Threatened Wildlife and Plants; Proposed Rule To List the Ozark Hellbender Salamander as Endangered

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose endangered status under the Endangered Species Act of 1973, as amended (Act), for the Ozark hellbender (*Cryptobranchus alleganiensis bishopi*) throughout its entire range. The species is found in southern Missouri and northern Arkansas. If we finalize this proposed rule, it would extend the Act’s protection to the Ozark hellbender. However, we find that designation of critical habitat is not prudent for the Ozark hellbender at this time, because the increased threat to the species from illegal collection and trade outweighs the benefits of designating critical

habitat. We seek data and comments from the public on this proposed listing rule and prudency determination.

**DATES:** We will accept comments received on or before November 8, 2010. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by October 25, 2010.

**ADDRESSES:** You may submit comments by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. FWS-R3-ES-2009-0009.

- U.S. mail or hand-delivery: Public Comments Processing, Attn: Docket No. FWS-R3-ES-2009-0009; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

**FOR FURTHER INFORMATION CONTACT:** Charles Scott, Field Supervisor, at the U.S. Fish and Wildlife Service, Columbia Missouri Ecological Services Field Office, 101 Park De Ville Dr., Suite A, Columbia, MO 65203 (telephone 573-234-2132). If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### Public Comments

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we request comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule to list the Ozark hellbender as endangered. We particularly seek comments concerning:

(1) Population survey results for the Ozark hellbender, as well as any studies that may show distribution, status, population size, or population trends, including indications of recruitment.

(2) Pertinent aspects of life history, ecology, and habitat use of the Ozark hellbender.

(3) Current and foreseeable threats faced by the Ozark hellbender in relation to the five factors (as defined in section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*)).

(a) The present or threatened destruction, modification, or

curtailment of the species’ habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence and threats to the species or its habitat.

(4) Our determination of “not prudent” for critical habitat.

(5) Whether there is a need for us to consider developing a “similarity of appearance” listing for the eastern hellbender. Section 4(e) of the Act (similarity of appearance cases) allows the Secretary to treat any species as an endangered or threatened species under the Act if he finds that: (A) It (in this case, the eastern hellbender) closely resembles a listed species (in this case, the Ozark hellbender) and enforcement personnel would have substantial difficulty differentiating between the listed and unlisted species; (B) the effect of this difficulty is an additional threat to the listed species; and (C) such treatment of the unlisted species would substantially facilitate enforcement of the Act for Ozark hellbender.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

We will post your entire comment—including your personal identifying information—on <http://www.regulations.gov>. If you provide personal identifying information in addition to the required items specified in the previous paragraph, such as your street address, phone number, or e-mail address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours at the Columbia Missouri Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section).

#### Background

##### Species Description

The Ozark hellbender is a large, strictly aquatic salamander endemic to streams of the Ozark plateau in southern Missouri and northern Arkansas. Its