

of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: February 6, 2015.

Wren Stenger,

Director, Multimedia Planning and Permitting Division, Region 6.

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GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101-25 and 102-32

[FPMR Case 2014-101-1; FMR Case 2014-102-2; Docket No. 2014-0016; Sequence No. 1]

RIN 3090-AJ50

Federal Property Management Regulations/Federal Management Regulation; Supply and Procurement

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: GSA is proposing to amend the Federal Property Management Regulations (FPMR) and the Federal Management Regulation (FMR) by migrating regulations regarding the supply and procurement of Government personal property management from the FPMR to the FMR. The FPMR will contain a cross-reference to direct readers to the coverage in the FMR. This proposed rule also eliminates material that is not regulatory in nature, is overly prescriptive, outdated, addressed in other policy, or no longer appropriate

for today's Government business environment. This case is included in GSA's retrospective review of existing regulations under Executive Order 13563. Additional information is available at www.gsa.gov/improvingregulations.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at one of the addresses shown below on or before April 27, 2015 to be considered in the formation of a final rule.

ADDRESSES: Submit comments in response to FPMR Case 2014-101-1/ FMR Case 2014-102-2 by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking Portal by searching for "FPMR Case 2014-101-1/FMR Case 2014-102-2," and selecting the link that corresponds with "FPMR Case 2014-101-1/FMR Case 2014-102-2." Follow the instructions provided at the "Comment Now" screen. Please include your name, company name (if any), and "FPMR Case 2014-101-1/ FMR Case 2014-102-2" on your attached document.
- *Fax:* 202-501-4067.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Hada Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only and cite FPMR Case 2014-101-1/FMR Case 2014-102-2, on 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: For clarification of content, contact Mr. Robert Holcombe, Office of Government-wide Policy, Office of Asset and Transportation Management (MA), at 202-501-3828. For information pertaining to status or publication schedules, contact the Regulatory Secretariat (MVCB) at 202-501-4755. Please cite FPMR Case 2014-101-1/ FMR Case 2014-102-2.

SUPPLEMENTARY INFORMATION:

A. Background

GSA is proposing to amend the FPMR by revising regulations regarding Government personal property management policies in FPMR 101-25 (41 CFR part 101-25), and by moving these policies to part 102-32 of the FMR (41 CFR part 102-32). GSA anticipates migrating the remaining parts of FPMR, Subchapter E, to succeeding subparts of FMR part 102-32. This revision is part of GSA's effort to improve its external directives system by reducing the number of regulations and rewriting them in plain language. This proposed rule removes material that is not regulatory in nature (such as internal GSA operating procedures), is overly prescriptive, outdated, addressed in other policy, or no longer appropriate for today's Government business environment.

B. Substantive Changes

The following table provides a crosswalk from FPMR part 101-25 (left column) to FMR part 102-32 (right column). This table identifies where the policy provisions of FPMR part 101-25 will be migrated to in the FMR, and explains significant changes or deletions.

| Title 41: Public contracts and property management part 101-25—general | FMR part 102-32—supply and procurement |
|--|---|
| § 101-25.000 Scope of subchapter | Revised and added to section 102-32.5. |
| § 101-25.001 Scope of part | Deleted as not necessary. |
| § 101-25.100 Use of Government personal property and nonpersonal services. | Revised in sections 102-32.20 and 102-32.25. |
| § 101-25.101 Criteria for determining method of supply | Revised in section 102-32.35. Definition of "use point" removed and replaced with general terminology. |
| § 101-25.102 Exchange or sale of personal property for replacement purposes. | Deleted because this topic is addressed in FMR part 102-39. |
| § 101-25.103 Promotional materials, trading stamps, or bonus goods ... | Deleted. Items addressed in this Subpart are treated the same as other personal property and disposed of accordingly. |
| § 101-25.104 Acquisition of office furniture and office machines | Deleted as being too prescriptive; refer to the Federal Acquisition Regulation (FAR) for general policies on acquisition. The prohibition against acquiring unnecessary items is retained in section 102-32.30. |
| § 101-25.105 [Reserved] | Deleted. |
| § 101-25.106 Servicing of office machines | Deleted as being too prescriptive. |
| § 101-25.107 Guidelines for requisitioning and proper use of consumable or low cost items. | Policy summarized in section 102-32.45. |
| § 101-25.108 Multiyear subscriptions for publications | Deleted, refer to the FAR for requirements determination and structuring a procurement. |

| Title 41: Public contracts and property management part 101–25—general | FMR part 102–32—supply and procurement |
|--|---|
| § 101–25.109 Laboratory and research equipment | Policy summarized in section 102–32.40 and generalized to include all types of facilities and activities, not just laboratories and research facilities. |
| § 101–25.110 Tire identification/registration program | Deleted. Federal motor vehicle policy is found in FMR part 102–34. |
| § 101–25.111 Environmental impact policy | Deleted because this section simply explains that environmental policies and practices are part of GSA’s policies. |
| § 101–25.112 Energy conservation policy | Deleted because conservation and efficiency is contained in other Federal law and policy addressing the procurement, management, and disposal of personal property and nonpersonal services. For example, see the Energy Policy Act (EPACT) laws and related Executive Orders (E.O.) (e.g., E.O. 13423 and E.O. 13514). |
| § 101–25.113 [Reserved] | Deleted. |
| § 101–25.114 Supply management surveys and assistance | Necessary policy summarized in section 102–32.50. |
| Subpart 101–25.2 Interagency Purchase Assignments | Deleted. This policy is provided in FAR Subpart 17.5; Interagency Acquisitions. |
| Subpart 101–25.3 Use Standards | Necessary policy summarized in section 102–32.55; overly-prescriptive policy is deleted. |
| Subpart 101–25.4 Replacement Standards | Necessary policy summarized in section 102–32.55; overly-prescriptive policy is deleted. |
| Subpart 101–25.5 Purchase or Lease Determinations | Deleted as unnecessary. |
| Subparts 101–25.6 through 101–25.49 [Reserved] | Deleted “reserved” sections. |

C. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 of September 30, 1993 (“Regulatory Planning and Review”), and 13563 of January 18, 2011 (“Improving Regulation and Regulatory Review”), direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits including potential economic, environmental, public health and safety effects, distributive impacts, and equity. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule is not a significant regulatory action, and therefore, is not subject to review under Section 6(b) of E.O. 12866. This proposed rule is not a major rule under 5 U.S.C. 804.

D. Regulatory Flexibility Act

This proposed rule will not 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.* This proposed rule is also exempt from the Administrative Procedure Act per 5 U.S.C. 553(a)(2) because it applies to agency management or personnel or to public property.

E. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this proposed 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.*

F. Small Business Regulatory Enforcement Fairness Act

This proposed rule is exempt from Congressional review under 5 U.S.C. 801 since it relates solely to agency management or personnel and does not substantially affect the rights or obligations of non-agency parties.

List of Subjects in Parts 101–25 and 102–32

Public contracts, Management of property.

Dated: February 6, 2015.

Christine J. Harada,
Associate Administrator, Office of Government-wide Policy.

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

CHAPTER 101—FEDERAL PROPERTY MANAGEMENT REGULATIONS

PART 101–25—GENERAL

■ 1. Revise the authority citation for part 101–25 to read as follows:

Authority: 40 U.S.C. 121(c) and 40 U.S.C. 506(a).

■ 2. Revise § 101–25 to read as follows:

§ 101–25 Cross-reference to the Federal Management Regulation (FMR) (41 CFR parts 102–1 through 102–220).

For information on the supply and procurement of personal property previously contained in this part, see FMR part 102–32 (41 CFR part 102–32).

CHAPTER 102—FEDERAL MANAGEMENT REGULATION

SUBCHAPTER B—PERSONAL PROPERTY

■ 3. Add part 102–32 to subchapter B of chapter 102 to read as follows:

PART 102–32—SUPPLY AND PROCUREMENT

- Sec.
- 102–32.5 What is the purpose of this part?
- 102–32.10 How does this part use “I,” “me,” and “you”?
- 102–32.15 How does this part apply to my agency?
- 102–32.20 What definitions apply to this part?
- 102–32.25 How may I use Government personal property and services?
- 102–32.30 How must I acquire personal property?
- 102–32.35 How do I determine the best method of supply?
- 102–32.40 What processes are available to effectively manage agency personal property assets?
- 102–32.45 How do I manage low-value Federal personal property?
- 102–32.50 What are supply management surveys?
- 102–32.55 What are Use and Replacement Standards?

Authority: 40 U.S.C. 121(c) and 40 U.S.C. 506(a).

§ 102–32.5 What is the purpose of this part?

This part provides policy for the effective and efficient supply and procurement of personal property items necessary to support the programs of the Federal Government, as well as the use of Federal personal property assets to preserve agency funds and contribute to the accomplishment of agency missions.

§ 102–32.10 How does this part use “I,” “me,” and “you”?

This part uses “I,” “me,” and “you” to refer to executive agency personnel. When referring to the organization, the term “agency” is used.

§ 102–32.15 How does this part apply to my agency?

All executive agencies and personnel, including the Department of Defense, must follow the policies in this part unless specifically exempted by separate statute or regulation.

§ 102–32.20 What definitions apply to this part?

The following definitions apply to this part:

Equipment Pool means the collection, at a central point, of equipment under control for short term issue to individuals or organizations.

Method of supply means the process for an agency to obtain those items of personal property needed to fulfill the agency’s mission.

Nonpersonal services, as defined at 40 U.S.C. 472 means such contractual services, other than personal and professional services, under which the personnel rendering the services are not subject, either by the contract’s terms or by the manner of its administration, to the supervision and control usually prevailing in relationships between the Government and its employees.

Voluntary Consensus Standards means standards developed or adopted by bodies (which are domestic or international organizations which plan, develop, establish, or coordinate standards using agreed-upon procedures), and which include provisions requiring that owners of relevant intellectual property agree to make intellectual property available on a non-discriminatory, royalty-free or reasonable royalty basis to all interested parties (see OMB Circular A–119 at http://www.whitehouse.gov/omb/circulars_a119/).

§ 102–32.25 How may I use Government personal property and services?

Except in emergencies, Government personal property and nonpersonal services shall be used only for those purposes for which they were obtained or for other officially designated agency purposes. Emergency conditions are those threatening loss of life and property. This includes property and services on interagency loan as well as property leased by agencies.

§ 102–32.30 How must I acquire personal property?

Personal property (as defined in FMR 102–36.40), must be acquired only to

fulfill an official purpose, and be acquired so as to minimize the cost and maximize the utility to the Federal Government, reasonably considering alternative items and acquisition methods in accordance with the Federal Acquisition Regulation (FAR), 48 CFR 1.000, *et seq.*, or other applicable law. Each executive agency shall determine whether using currently owned items can meet the requirements of the agency prior to the acquisition of new items. Each executive agency shall also, to the extent practicable, use excess personal property from other agencies before acquiring new items.

§ 102–32.35 How do I determine the best method of supply?

When acquiring supplies, you must determine and utilize the method of supply that is most advantageous to the Federal Government. You must consider the costs and benefits of the various supply methods and all orders must be within the planned requirements for use. General supply methods include, but are not limited to supply through:

(a) Storage and issue—where an item can be most advantageously supplied through storage and issued accordingly;

(b) Consolidated purchase for direct delivery to storage or redistribution locations—where an item can be most advantageously supplied through consolidated purchase for direct delivery;

(c) Indefinite quantity requirement contracts—where an item can be most advantageously supplied through indefinite quantity requirement contracts covering specific periods and providing for delivery (see FAR Subpart 16.5); and

(d) Local purchase—where the local purchase is within applicable limitation established by the agency head and will produce the greatest economy to the Government.

§ 102–32.40 What processes are available to effectively manage agency personal property assets?

You should establish any necessary policies, procedures, and controls to effectively manage your agency’s personal property, so that you can determine whether your agency’s requirements can be met by using existing personal property, instead of procuring similar equipment. Agencies should consider:

(a) Identifying idle and unnecessary assets. You should conduct inspection tours of agency facilities on a scheduled basis, annually, if feasible, but no less than every 3 years, for the purpose of identifying idle and unnecessary assets; and

(b) Establishing equipment pools. You should establish equipment pools to minimize the investment in commonly-used assets typically used by many employees within a geographic area.

§ 102–32.45 How do I manage low-value Federal personal property?

Your agency must determine the threshold for which property is considered accountable. Low-value personal property is any asset valued at less than this accountability threshold. Low-value personal property is “expendable” and may be handled by:

(a) Restricting approval of requisitions for replenishment of storeroom stocks to officials at a responsible supervisory level to ensure that supply requirements are justified based on need and quantity;

(b) Establishing adequate safeguards and controls to ensure that expendable supplies are used for official use only; and

(c) Giving special attention and care to those consumable or low cost items when issues are excessive compared to normal program needs.

§ 102–32.50 What are supply management surveys?

Under the provisions of 40 U.S.C. 506, GSA may perform surveys of Government property and property management practices of executive agencies. These surveys will be conducted in connection with regular studies of agency supply management practices or when providing assistance in the development of agency property accounting systems. As appropriate, GSA will provide written reports of findings and recommendations to agency heads.

§ 102–32.55 What are Use and Replacement Standards?

Use and Replacement Standards are procedures designed to maximize the effectiveness of asset inventories and to reduce costs. Agencies are encouraged to implement agency-specific procedures for personal property assets when appropriate.

(a) Use Standards limit the amount and type of property held by the organization to the minimum requirements necessary for the efficient functioning of the organization. An example of a Government-wide Use Standard methodology is described in FMR Bulletin B–30, relating to the management of motor vehicle assets. (Bulletins may be found at www.gsa.gov/bulletins). Considering the methodology in this Bulletin for the management of other assets will guide the agency to a more cost-effective operation.

(b) Replacement Standards guide agencies to consider an effective replacement strategy for Government personal property items. For example, an agency may designate a type of item to be replaced every three years, based upon the expected trends of reliability, maintenance costs, and usefulness as the item ages. However, actual replacement decisions should also consider the condition of the item.

(c) Agencies should consider voluntary consensus standards, industry standards, and Federal best-practices in developing Use and Replacement Standards. Factors to consider when choosing standards to use are outlined in OMB Circular A-119, "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities." Voluntary consensus standards must be used in lieu of Government-unique standards unless such use would be inconsistent with applicable law or regulation, or be otherwise impractical.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 140407321-5096-02]

RIN 0648-XD233

Listing Endangered or Threatened Species; 12-Month Finding on a Petition To Revise the Critical Habitat Designation for the Southern Resident Killer Whale Distinct Population Segment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of 12-month finding.

SUMMARY: We, the National Marine Fisheries Service (NMFS), announce a 12-month finding on a petition from the Center for Biological Diversity to revise the critical habitat designation for the Southern Resident killer whale (*Orcinus orca*) Distinct Population Segment (DPS) under the Endangered Species Act (ESA). In November 2006 we issued a final rule designating approximately 2,560 square miles (6,630 square km) of inland waters of Washington State as critical habitat for the Southern Resident killer whale DPS. The January 2014 petition requests we revise this

critical habitat to include Pacific Ocean marine waters along the West Coast of the United States that constitute essential foraging and wintering areas for Southern Resident killer whales. Additionally, the petition requests that we adopt as a primary constituent element (PCE), for both currently designated critical habitat and the proposed revised critical habitat, protective in-water sound levels. The ESA defines a process for responding to petitions to revise critical habitat. We have reviewed the public comments and best available information on Southern Resident killer whale habitat use and as the next step in the response to the petition process defined in the ESA, this 12-month determination describes how we intend to proceed with the requested revision.

DATES: The finding announced in this document was made on February 24, 2015.

ADDRESSES: Copies of the petition, 90-day finding, and the list of references are available online at: http://www.westcoast.fisheries.noaa.gov/protected_species/marine_mammals/killer_whale/esa_status.html

Requests for copies of this determination should be addressed to: NMFS, West Coast Region, Protected Resources Division, 7600 Sand Point Way NE., Seattle, WA 98115. Attention—Lynne Barre, Seattle Branch Chief.

FOR FURTHER INFORMATION CONTACT: Lynne Barre, NMFS West Coast Region, (206) 526-4745; or Dwayne Meadows, NMFS Office of Protected Resources, (301) 427-8403.

SUPPLEMENTARY INFORMATION:

Background

On January 21, 2014, we received a petition from the Center for Biological Diversity requesting revisions to the critical habitat designation for the Southern Resident killer whale DPS. That requested revision sets in motion a process for agency response defined in the ESA and explained below.

The ESA defines critical habitat under section 3(5)(A) as: "(i) the specific areas within the geographical area currently occupied by the species, at the time it is listed . . . on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed upon a determination by the Secretary that such areas are essential for the conservation of the species."

Joint NMFS-Fish and Wildlife Service (FWS) regulations for designating critical habitat at 50 CFR 424.12(b) state that the agencies "shall consider those physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection (hereafter also referred to as 'Essential Features' or 'Primary Constituent Elements'/PCEs')." Pursuant to these regulations, such features include, but are not limited to space for individual and population growth, and normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, rearing of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distribution of a species. When considering the designation of critical habitat, we focus on the principal biological or physical constituent elements, known as primary constituent elements (PCEs). PCEs may include, but are not limited to: nesting grounds, feeding sites, water quality, tide, and geological formation. Our implementing regulations (50 CFR 424.02) define "special management considerations or protection" as any method or procedure useful in protecting physical and biological features of the environment for the conservation of the species.

Section 4(b)(2) of the ESA requires us to designate and make revisions to critical habitat for listed species based on the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary of Commerce may exclude any particular area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines that the failure to designate such area as critical habitat will result in the extinction of the species concerned.

NMFS and FWS have recently published proposed rules to implement changes to the regulations for designating critical habitat. The proposed amendments would make minor edits to the scope and purpose, add and remove some definitions (e.g., geographic area and essential features), and clarify the criteria for designating critical habitat (79 FR 27066; May 12, 2014). We will incorporate any relevant final regulations and guidance into our process for revising critical habitat.