



**ENVIRONMENTAL PROTECTION AGENCY**

**6560-50-P**

**48 CFR Parts 1542, 1552, and 1553**

**[EPA-HQ-OARM-2013-0736; FRL-9908-08-OARM]**

**Environmental Protection Agency Acquisition Regulation (EPAAR); Contractor**

**Performance Information**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct Final Rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is issuing a direct final rule to rescind EPAARs, which include EPA's policies for collecting and maintaining contractor past performance information. A final rule updating the Federal Acquisition Regulations (FAR) was published in **Federal Register** on August 1, 2013. The changes to the FAR make the information in the referenced EPAAR subparts redundant. The impact of removing these sections is administrative in nature and will not change the overall policies for collecting and maintaining contractor past performance which are now detailed in the FAR. EPA does not anticipate any adverse comments.

**DATES:** This rule is effective **[insert date 60 days after date of publication in the Federal Register]** without further action, unless adverse comment is received **[insert date 30 days after date of publication in the Federal Register]**. If adverse comment is received, the EPA will publish a timely withdrawal of the rule in the **Federal Register**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OARM-2013-0736 by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- E-mail: [docket.oei@epa.gov](mailto:docket.oei@epa.gov).

- Fax: (202) 566-1753.
- Mail: EPA-HQ-OARM-2013-0736, OEI Docket, Environmental Protection Agency, 2822T, 1200 Pennsylvania Ave., NW, Washington, DC 20460. Please include a total of three (3) copies.
- Hand Delivery: EPA Docket Center-Attention OEI Docket, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OARM-2013-0736.

EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket, and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment, and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties, and cannot contact you for

clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov>, or in hard copy at the Government Property-Contract Property Administration Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1752. This Docket Facility is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Staci Ramrakha, Policy, Training, and Oversight Division, Acquisition Policy and Training Service Center (3802R), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington DC 20460; telephone number: (202) 564-2017; email address: [ramrakha.staci@epa.gov](mailto:ramrakha.staci@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**General Information**

Do not submit any Classified Business Information (CBI) to EPA website <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI, and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in [40 CFR part 2](#).

2. Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
- Follow directions—The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

3. Make sure to submit your comments by the comment period deadline identified.

## **Background**

EPAAR subpart 1542.15 was last updated July 5, 2011 to establish responsibilities for recording and maintaining EPA contractor past performance information. Subpart 1542.15 requires the use of the Contractor Performance Assessment Reporting System (CPARS); establishes frequency and types of reports that are congruent with CPARS; establishes EPA personnel responsibilities related to CPARS; provides instructions for rating small business subcontracting; provides instructions for novation agreements, requires CPARS be documented in the official contract file; and requires the use of EPAAR clause 1552.242-71 which notifies contractors the EPA utilizes the CPARS system. EPAAR 1553.209 contains outdated forms previously used by EPA personnel to evaluate contractor performance. These forms are no longer relevant or utilized. Additionally, recent changes to FAR subpart 42.15 via a final rule published in **Federal Register** on August 1, 2013 (78 FR 46783), make the information in EPAAR subpart 1542.15 redundant. The new FAR requirements mirror the current EPA policies for collecting and maintaining contractor past performance, and there is no need for an agency supplement. FAR subpart 42.15, combined with the CPARS guidance and reference material included on the CPARS website ([www.CPARS.gov](http://www.CPARS.gov)) provide sufficient policies and procedures for the EPA to satisfy the EPA's needs. Specific guidance, such as defining roles and responsibilities for EPA acquisition personnel in relation to CPARS will be included in the internal EPA Acquisition Guide.

## **Final Rule**

This final rule makes the following changes: 1. Delete EPAAR 1542.15, Contractor Performance Information, in its entirety including all subsections. 2. Delete EPAAR 1552.242-71, Contractor

Performance Evaluations. 3. Delete EPAAR 1553.209, Contractor Qualifications, in its entirety, including all subsections.

### **Statutory and Executive Order Reviews**

#### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563:*

##### *Improving Regulation and Regulatory Review*

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

#### *B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Burden is defined at 5 CFR 1320.3(b).

#### *C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute; unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impact of today's proposed rule on small entities, "small entity" is defined as: (1) A small business that meets the definition of a small business found in the Small Business Act and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated, and is not dominant in its field. After

considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, because the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives “which minimize any significant economic impact of the proposed rule on small entities” 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Since documenting past performance is applicable to large and small entities, this rule will not have a significant economic impact on small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

*D. Unfunded Mandates Reform Act*

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for State, local, or tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this action. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks*

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act of 1995*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

**List of Subjects in 48 CFR Parts 1542, 1552, and 1553**

Contractor performance information, Contractor performance evaluations, Contractor qualifications, Government procurement, Reporting and recordkeeping requirements.

Dated: February 6, 2014

John R. Bashita,

Director, Office of Acquisition Management.

For the reasons stated in the preamble, EPA amends 48 CFR Chapter 15 as follows:

1. The authority citation for 48 CFR parts 1542, 1552 and 1553 continues to read as follows:

Authority: 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b.

**PART 1542 – CONTRACT ADMINISTRATION**

**Subpart 1542.15 [Removed]**

2. Remove subpart 1542.15.

**PART 1552 – SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

**§1552.242-71 [Removed]**

3. Remove §1552.242-71.

**PART 1553 –FORMS**

**§§1553.209, 1553.209-70, and 1553.209-71 [Removed]**

4. Remove §§1553.209, 1553.209-70, and 1553.209-71.

[FR Doc. 2014-06262 Filed 03/21/2014 at 8:45 am; Publication Date:  
03/24/2014]