

A verbatim transcript of the hearing and copies of written statements will be included in the rulemaking docket.

How can I get copies of this document, the proposed rule, and other related information?

The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2010-0133. The EPA has also developed a Web site for the RFS program, including the notice of proposed rulemaking, at the address given above. Please refer to the notice of proposed rulemaking for detailed information on accessing information related to the proposal.

Dated: June 16, 2011.

Margo Tsirigotis Oge,

Director, Office of Transportation and Air Quality, Office of Air and Radiation.

[FR Doc. 2011-16144 Filed 6-27-11; 8:45 am]

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DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Parts 8, 12, 15, 42, and 49

[FAR Case 2009-042; Docket 2011-0087; Sequence 1]

RIN 9000-AM09

**Federal Acquisition Regulation;
Documenting Contractor Performance**

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

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to provide Governmentwide standardized past performance evaluation factors and performance ratings, and to require all past performance information be entered into the Contractor Performance Assessment Reporting System (CPARS), the Governmentwide past performance feeder system.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at one of the addressees shown below on or before August 29, 2011 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2009-042 by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2009-042" under the heading "Enter Keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "FAR Case 2009-042." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2009-042" on your attached document.

- *Fax:* (202) 501-4067.

- *Mail:* General Services

Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE., 7th Floor, Washington, DC 20417.

Instructions: Please submit comments only and cite FAR Case 2009-042, 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. Curtis E. Glover, Sr., Procurement Analyst, at (202) 501-1448 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAR Case 2009-042.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to amend the FAR because the Office of Federal Procurement Policy (OFPP) requested that FAR parts 8, 12, 15, 42, and 49 be revised to include recommendations from the Government Accountability Office Report GAO-09-374, *Better Performance Information Needed to Support Agency Contract Award Decisions* and OFPP's memorandum dated July 29, 2009, *Improving the Use of Contractor Performance Information*. These changes provide Governmentwide standardized evaluation factors and rating scales for the evaluation of contractor performance in the FAR. The FAR change also incorporates policy guidance outlined in OFPP's memorandum dated January 21, 2011, *Improving Contractor Past Performance Assessment: Summary of the Office Of Federal Procurement Policy Review, and Strategies for Improvement*. Up until September 30, 2010, agencies had the option of using various past performance reporting feeder systems such as the Department of Health and Human Services (DHHS), National Institutes of Health's (NIH) Contractor

Performance System (CPS), the Department of Defense's Contractor Performance Assessment Reporting System (CPARS), and other agency systems to report their evaluations into the Governmentwide Past Performance Information Retrieval System (PPIRS), each of which included different evaluation factors and rating scales. With the need to standardize past performance reporting practices and to enhance reporting metrics, the Government transitioned to one past performance feeder system, CPARS. DHHS/NIH, OFPP, and the DoD CPARS program office reached a decision not to revamp the CPS and to officially end service to all customers on September 30, 2010. See NIH's complete message on their Web site at <https://cps.nih.gov>. Agencies using CPS transitioned to CPARS. Agencies currently using other systems must prepare to transition to CPARS in the near future. Agencies' migration to CPARS, one feeder system into PPIRS, presented an opportune time to standardize the evaluation factors and rating scales for the evaluation of contractor performance.

The proposed FAR revisions include the following:

(1) Addition of language in FAR 42.1501 to provide for the use of CPARS as the Governmentwide past performance information feeder system into PPIRS.

(2) Revision of FAR 42.1502 to move the language in paragraph (a) "The content of the evaluations should be tailored to the size, content, and complexity of the contractual requirements", to FAR 42.1503(b).

(3) Addition of language in FAR 42.1503 to provide for Governmentwide standard evaluation factors and a five scale rating system, which reflects the rating definitions contained in the CPARS Policy Guide. Also, incentive-fee and award-fee contract performance ratings will be entered into CPARS.

(4) References to FAR part 42 changes in FAR part 8, 12, and 15.

This proposed rule is a follow on to two previous FAR rules FAR Case 2006-022, Contractor Performance Information (74 FR 31557) published July 1, 2009, and FAR Case 2008-016, Termination for Default Reporting (75 FR 60258) published September 29, 2010. FAR Case 2006-022 established thresholds for contractor performance assessments. FAR Case 2008-016 required the submission of contractor performance assessments for defective cost or pricing data and terminations for default or cause.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 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 is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD, GSA, and NASA 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 proposed rule codifies in the FAR existing guidelines and practices. The evaluation factors and rating system language proposed are currently that which are used by Federal agencies. There are no new requirements on small businesses.

Therefore, an Initial Regulatory Flexibility Analysis has not been performed. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the 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 2009–042), in correspondence.

IV. Paperwork Reduction Act

The proposed rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 8, 12, 15, 42, and 49

Government procurement.

Dated: June 22, 2011.

Millisa Gary,

Acting Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 8, 12, 15, 42, and 49 as set forth below:

1. The authority citation for 48 CFR parts 8, 12, 15, 42, and 49 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).

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.406–4 [Amended]

2. Amend section 8.406 by removing from the last sentence of paragraph (e) “42.1503(f)” and adding “42.1503(h)” in its place.

8.406–7 [Amended]

3. Amend section 8.406–7 by removing “evaluation” and adding “annual evaluation” in its place.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.403 [Amended]

4. Amend section 12.403 by removing from the last sentence of paragraph (c)(4) “42.1503(f)” and adding “42.1503(h)” in its place.

PART 15—CONTRACTING BY NEGOTIATION

15.407–1 [Amended]

5. Amend section 15.407–1 by removing from the fifth sentence of paragraph (d) “42.1503(f)” and adding “42.1503(h) in its place.

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

42.1500 [Amended]

6. Amend section 42.1500 by removing from the last sentence “However,” and adding “See subpart 16.4. However,” in its place.

7. Revise section 42.1501 to read as follows:

42.1501 General.

(a) Past performance information (including the ratings and supporting narratives) is relevant information, for future source selection purposes, regarding a contractor’s actions under previously awarded contracts. It includes, for example, the contractor’s record of—

(1) Conforming to contract requirements and to standards of good workmanship;

(2) Forecasting and controlling costs;

(3) Adherence to contract schedules, including the administrative aspects of performance;

(4) History of reasonable and cooperative behavior and commitment to customer satisfaction;

(5) Reporting into databases (see subparts 4.14 and 4.15, and reporting requirements of 9.104–7);

(6) Integrity and business ethics; and

(7) Business-like concern for the interest of the customer.

(b) All past performance information shall be entered into the Contractor Performance Assessment Reporting System (CPARS), the Governmentwide assessment reporting tool for all past performance reports. Instructions for submitting assessments into CPARS are available at <http://www.cpars.gov/>.

(c) Agencies shall monitor their compliance with the past performance reporting requirements in 42.1502.

8. Amend section 42.1502 by—

a. Removing the last sentence from paragraph (a);

b. Revising paragraph (b);

c. Revising the first sentence of paragraph (c);

d. Removing from paragraph (d) the words “task order and delivery order” and adding “task-order and delivery-order” in its place; and

e. Removing from paragraph (i) “42.1503(f)” and adding “42.1503(h)” in its place.

The revised text reads as follows:

42.1502 Policy.

* * * * *

(b) Except as provided in paragraphs (e), (f) and (h) of this section, agencies shall prepare, at a minimum, an annual evaluation of contractor performance for each contract that exceeds the simplified acquisition threshold.

(c) Agencies shall prepare an annual evaluation of contractor performance for each order that exceeds the simplified acquisition threshold placed against a Federal Supply Schedule contract, or under a task-order contract or a delivery-order contract awarded by another agency (*i.e.* Governmentwide acquisition contract or multi-agency contract). * * *

* * * * *

9. Revise section 42.1503 to read as follows:

42.1503 Procedures.

(a) Agency procedures for the past performance evaluation system shall generally provide for input to the evaluations from the technical office, contracting office and, where appropriate, end users of the product or service. Agency procedures shall identify and assign past performance

evaluation roles and responsibilities to those individuals responsible for preparing interim and final performance evaluations (e.g., contracting officer representatives and program managers). If agency procedures do not specify the individuals responsible for past performance evaluation duties, the contracting officer will remain responsible for this function. Those individuals identified may obtain information for the evaluation of performance from the program office, administrative contracting office, audit office, end users of the product or service, and any other technical or business advisor, as appropriate. Interim evaluations shall be prepared on an annual basis, in accordance with agency procedures.

(b)(1) The evaluation report should reflect how the contractor performed. The report should include clear relevant information that accurately depicts the contractor's performance, and be based on objective facts supported by program and contract performance data. The evaluations should be tailored to the contract type, size, content, and complexity of the contractual requirements.

(2) Evaluation factors for each assessment shall include, at a minimum, the following:

- (i) Technical or Quality.
- (ii) Cost Control (as applicable).
- (iii) Schedule/Timeliness.
- (iv) Management or Business

Relations.

(v) Small Business Subcontracting (as applicable).

(3) These evaluation factors, including subfactors, may be tailored, however, each factor and subfactor shall be evaluated and supporting narrative provided.

(4) Each evaluation factor, as listed in paragraph (b)(2) of this section, shall be rated in accordance with a five scale rating system (e.g., exceptional, very good, satisfactory, marginal, and unsatisfactory). Rating definitions shall reflect those contained in the CPARS Policy Guide available at <http://www.cpars.gov/>.

(c)(1) When the contract provides for incentive fees, the incentive-fee contract performance evaluation shall be entered into CPARS. (See 16.401(f).)

(2) When the contract provides for award fee, the award fee-contract performance adjectival rating as described in 16.401(e)(3) shall be entered into CPARS.

(d) Agency evaluations of contractor performance, including both negative and positive evaluations, prepared under this subpart shall be provided to

the contractor as soon as practicable after completion of the evaluation.

(e) Agencies shall require—

(1) Performance issues be documented promptly during contract performance to ensure critical details are included in the evaluation;

(2) The award fee determination, if required, align with the contractor's performance and be reflected in the evaluation;

(3) Timely assessments and quality data (see the quality standards in the CPARS Policy Guide at <http://www.cpars.gov/>) in the contractors past performance evaluation; and

(4) Frequent assessment (e.g., monthly or quarterly) of agency compliance with the reporting requirements in 42.1502, so agencies can readily identify delinquent past performance reports and monitor their reports for quality control.

(f) Agencies shall prepare and submit all past performance reports electronically into the CPARS at <http://www.cpars.gov/>. These reports are transmitted to the Past Performance Information Retrieval System (PPIRS) at <http://www.ppirs.gov/>. Past performance reports for classified contracts and special access programs shall not be reported in CPARS, but will be reported as stated in this subpart and in accordance with agency procedures. Agencies shall ensure that appropriate management and technical controls are in place to ensure that only authorized personnel have access to the data and the information safeguarded in accordance with 42.1503(b).

(g) Agencies shall use the past performance information in PPIRS that is within the last three years (six for construction and architect-engineer contracts) and information contained in the Federal Awardee Performance and Integrity Information System (FAPIIS), e.g., termination for default or cause.

(h) *Other contractor performance information.* (1) Agencies shall ensure information is reported in the FAPIIS module of CPARS within 3 working days after a contracting officer—

(2) Agencies shall establish CPARS focal points who will register users to report data into the FAPIIS module of CPARS (available at <http://www.cpars.gov/>, then select FAPIIS).

(3) The primary duties of the CPARS focal point is to administer CPARS and FAPIIS access. Agencies must also establish PPIRS group managers. The primary duties of the PPIRS group managers are to grant or deny access to PPIRS. The CPARS Reference Material, on the Web site, includes reporting instructions.

PART 49—TERMINATION OF CONTRACTS

49.402–8 [Amended]

10. Amend section 49.402–8 by removing “42.1503(f)” and adding “42.1503(h)” in its place.

[FR Doc. 2011–16169 Filed 6–27–11; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2009–0020; MO 92210–0–0008–B]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List *Castanea pumila* var. *ozarkensis* as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a 12-month finding on a petition to list *Castanea pumila* var. *ozarkensis* (Ozark chinquapin), a tree, as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). After review of all available scientific and commercial information, we find that listing Ozark chinquapin is not warranted at this time. However, we ask the public to submit to us any new information that becomes available concerning the threats to Ozark chinquapin or its habitat at any time.

DATES: The finding announced in this document was made on June 28, 2011.

ADDRESSES: This finding is available on the Internet at <http://www.regulations.gov> at Docket Number [FWS–R4–ES–2009–0020]. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Arkansas Ecological Services Field Office, 110 South Amity Road, Suite 300, Conway, AR 72032. Please submit any new information, materials, comments, or questions concerning this finding to the above address.

FOR FURTHER INFORMATION CONTACT: Jim Boggs, Field Supervisor, Arkansas Ecological Services Field Office, 110 South Amity Road, Suite 300, Conway, AR 72032 (see **ADDRESSES**); by telephone (501–513–4470) or by facsimile (501–