

**252.243-7000 [Removed]**

10. Section 252.243-7000 is removed.

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**DEPARTMENT OF AGRICULTURE****Office of Procurement and Property Management****48 CFR Part 442**

[AGAR Case 99-02]

RIN 0599-AA08

**Agriculture Acquisition Regulation; Designation and Mandatory Use of Contractor Performance System**

**AGENCY:** Office of Procurement and Property Management, USDA.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Department of Agriculture's (USDA) Agriculture Acquisition Regulation (AGAR) to establish the National Institutes of Health (NIH) Contractor Performance System as the single USDA-wide automated performance evaluation system. AGAR regulations are amended to identify that system and specify its mandatory use.

**DATES:** This rule is effective November 30, 2001.

**FOR FURTHER INFORMATION CONTACT:** Patrice K. Honda, (202) 720-8924.

**SUPPLEMENTARY INFORMATION:**

- I. Background
- II. Procedural Requirements
  - A. Executive Orders Nos. 12866 and 12988
  - B. Regulatory Flexibility Act
  - C. Paperwork Reduction Act
  - D. Small Business Regulatory Enforcement Fairness Act
  - E. Unfunded Mandates Reform Act
  - F. Executive Order 13132: Federalism
  - G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

**I. Background**

The AGAR implements the Federal Acquisition Regulation (FAR) (48 CFR chapter 1) where further implementation is needed, and supplements the FAR where coverage is needed for subject matter not covered by the FAR. AGAR section 442.1502 currently provides that the heads of the contracting activities are responsible for establishing past performance evaluation procedures and systems as required by FAR sections 42.1502 and 42.1503. USDA has identified a single automated performance evaluation system (the National Institutes of Health Contractor Performance System

(hereinafter "NIH CPS")) to be used USDA-wide and this rule modifies AGAR section 442.1502 to identify that system and specify its mandatory use by all USDA contracting activities.

In a Notice of Proposed Rulemaking (65 FR 54986, September 12, 2000), USDA announced that this proposed amendment to the AGAR was available for public review and comment during a 60 day comment period. One commenter, an employee of Department of Agriculture, submitted comments to USDA on the proposed rule. The commenter objected to USDA making the NIH CPS system mandatory. The commenter objected that the system was lengthy, complicated, cumbersome, costly, not user-friendly, and that local training was not provided. The commenter suggested that USDA develop its own system. While the employee's agency declined to support the position of the commenter, we have considered the comment as from an individual. After careful consideration, USDA has determined not to change the proposed rule. The NIH CPS provides a single uniform system for evaluating contractor performance, and because of the number of Federal agencies using the system, it has a very broad database available for such evaluations. Design and development of a USDA system would be costly and would not provide the broad database of information afforded by the NIH. In this rulemaking document, USDA is finalizing the proposed amendment to the AGAR.

**II. Procedural Requirements****A. Executive Orders Nos. 12866 and 12988**

USDA prepared a work plan for this regulation and submitted it to the Office of Management and Budget (OMB) pursuant to Executive Order No. 12866. OMB determined that the rule was not significant for the purposes of Executive Order No. 12866. Therefore, the rule has not been reviewed by OMB. USDA has reviewed this rule in accordance with Executive Order No. 12988, Civil Justice Reform. The rule meets the applicable standards in section 3 of Executive Order No. 12988.

**B. Regulatory Flexibility Act**

USDA reviewed this rule 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. USDA certifies that this rule will not have a significant economic effect on a substantial number of small entities, and, therefore, no

regulatory flexibility analysis has been prepared. USDA solicited comments from small entities concerning parts affected by the rule in the Notice of Proposed Rulemaking publicizing the proposed rule for comment (65 FR 54986, September 12, 2000). No comments from small entities were received.

**C. Paperwork Reduction Act**

No information collection or recordkeeping requirements are imposed on the public by this rule. Accordingly no OMB clearance is required by the Paperwork Reduction Act, 44 U.S.C. Chapter 35 or OMB's implementing regulations at 5 CFR part 1320.

**D. Small Business Regulatory Enforcement Fairness Act**

A report on this rule has been submitted to each House of Congress and the Comptroller General in accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801-808. This rule is not a major rule for purposes of the Act.

**E. Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. USDA has determined that this rule does not contain a Federal mandate. USDA has also determined that this rule would not significantly or uniquely affect small governments. Accordingly, the rule is not subject to the requirements of Title II of UMRA.

**F. Executive Order 13132: Federalism**

Executive Order 13132, Federalism (64 FR 43255, August 10, 1999), imposes requirements in the development of regulatory policies that have federalism implications. "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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."

USDA has determined that this rule 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. The

rule will not impose substantial costs on States and localities. Accordingly, this rule is not subject to the procedural requirements of Executive Order 13132 for regulatory policies having federalism implications.

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

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 9, 2000), imposes requirements in the development of regulatory policies that have tribal implications. Executive Order 13175 defines "policies that have tribal implications" as those having "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." USDA has determined that this rule does have tribal implications and, therefore, the consultation and coordination requirements of Executive Order 13175 do not apply to this rule.

**List of Subjects in 48 CFR Part 442**

Acquisition regulations, Government contracts, Government procurement, Procurement.

For the reasons set out in the preamble, the Office of Procurement and Property Management amends 48 CFR part 442 as set forth below:

**PART 442—CONTRACT ADMINISTRATION**

1. The authority citation for part 442 continues to read as follows:

**Authority:** 5 U.S.C. 301; 40 U.S.C. 486(c).

2. Revise section 442.1502 to read as follows:

**442.1502 Policy.**

The Contractor Performance System (CPS), developed by the National Institutes of Health, is designated as the single USDA-wide system for maintaining contractor performance/evaluation information. Use of the CPS is mandatory. As a minimum, the CPS shall be accessed for contractor past performance information as part of proposal evaluation in accordance with FAR subpart 15.3, and information resulting from the evaluation of contractor performance in accordance with FAR subpart 42.15 shall be entered into and maintained in this system. The CPS is a part of the USDA Acquisition Toolkit which can be accessed from the USDA Procurement Homepage at <http://www.usda.gov/procurement/>.

Done at Washington, DC, this 24th day of September, 2001.

**W.R. Ashworth,**

*Director, Office of Procurement and Property Management.*

[FR Doc. 01-24352 Filed 9-28-01; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

**49 CFR Chapter III, Parts 325, 355, 356, 360, 365, 366, 367, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 381, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 395, 396, 397, 398, 399 and Appendixes B, F, and G to Subchapter B**

**[RIN 2126-AA62]**

**Motor Carrier Safety Regulations; Miscellaneous Technical Amendments**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This final rule makes technical corrections throughout 49 CFR, chapter III, subpart B, to various rules containing outdated references to organization structure, contacts, and addresses. The Federal Motor Carrier Safety Administration (FMCSA) is also updating authority citations, removing obsolete and unnecessary references, and making minor editorial corrections. These amendments are necessary due to the establishment of the FMCSA by the Motor Carrier Safety Improvement Act of 1999 and the termination of the Interstate Commerce Commission under the ICC Termination Act of 1995. This action updates the Federal motor carrier safety and economic regulations to reflect the formation of the FMCSA and its current processes and requirements, but does not make any substantive changes to the affected rules.

**DATES:** The effective date of this rule is October 1, 2001.

**FOR FURTHER INFORMATION CONTACT:** Janet Nunn, Regulatory Development Division (MC-PRR), 202-366-2797; or Mr. Michael J. Falk, Office of the Chief Counsel (MC-CC), 202-366-1384, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:15 a.m. to 4:45 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

Internet users may view and download this document from the U.S.

DOT Docket Management System (DMS) website (<http://dms.dot.gov>). Please follow the instructions online for more information and help. You may also view and download this document from the **Federal Register** website at: <http://www.nara.gov/fedreg> and through the Government Printing Office (GPO) Access service (<http://www.access.gpo.gov/nara>).

**Background**

The Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Public Law 106-159, 113 Stat. 1748, December 9, 1999) created the Federal Motor Carrier Safety Administration (FMCSA), the newest agency of the Department of Transportation (DOT), on January 1, 2000. The FMCSA carries out its responsibilities under authority delegated to its Administrator by the Secretary of Transportation (Secretary) pursuant to 49 CFR 1.73 (*see* 65 FR 220, January 4, 2000). Before FMCSA was created by the MCSIA, the Director of a new Office of Motor Carrier Safety (OMCS) in the DOT was delegated authority to regulate motor carrier activities under section 338 of the FY 2000 DOT and Related Agencies Appropriations Act (Public Law 106-69, October 9, 1999). Previously, the Federal Highway Administration (FHWA), through the Office of the Associate Administrator for Motor Carriers (OMC), was the agency responsible for developing and administering the Federal Motor Carrier Safety Regulations (FMCSRs). (*See* 64 FR 56270, October 19, 1999; 64 FR 58355 and 64 FR 58356, October 29, 1999).

Title 49 of the Code of Federal Regulations (CFR), chapter III, Subpart B, contain Federal motor carrier regulations for truck and bus safety. On January 1, 2000, the Secretary revised the heading for chapter III to read "Chapter III—Federal Motor Carrier Safety Administration, Department of Transportation." Simultaneously, part 301 of chapter III (which referenced the FHWA organization) was removed and reserved for the FMCSA organizational structure (*see* 64 FR 72959, December 29, 1999).

**Introduction**

This final rule removes obsolete references and updates authority citations because Congress enacted the MCSIA, which created the FMCSA, and resulted in the transfer of all motor carrier functions and operations to the FMCSA. Because these amendments do not impose new requirements, notice and public comment are unnecessary.