

II. Background

The events of September 11, 2001, have heightened both Government and private industry awareness relative to protecting facilities and the personnel who work therein. EPA has a large number of contracts that require contractor (and subcontractor) employees to access federally-owned or leased facilities and space, federally-occupied facilities, and Superfund, Oil Pollution Act, and Stafford Act sites. Although such access is often necessary for contract performance, it nevertheless creates significant potential risks for EPA. While background checks provide no guarantee as to a person's loyalty, trustworthiness, or suitability for contract performance, they provide valuable information that may prove useful in determining an individual's suitability to perform on-site services for the EPA.

III. Proposed Rule

This proposed rule would amend the EPAAR to create an EPA contract clause that will require contractors (and subcontractors) to perform background checks and make suitability determinations for contractor (and subcontractor) employees performing services on-site.

IV. Statutory and Executive Order Reviews

Executive Order 12866

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866; therefore, no review is required by the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB).

Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned ICR No. 2102.01.

The EPA uses contractors to perform services on or within federally-owned or leased facilities and space, federally-occupied facilities, and Superfund, Oil Pollution Act, and Stafford Act sites. Information collected by on-site contractors for performing background checks and making suitability determinations is required for all contractor employees before the individual employees can perform on-site contract services for the EPA. The Contractor is also responsible for

maintaining records associated with all background checks and suitability determinations.

The annual public reporting and record keeping burden for this collection of information is a total of 7,000.5 hours annually. This figure was determined by multiplying the average number of background checks per annum (4,667) by the estimated time to complete one collection request (1.5 hours per response).

The total annual costs are estimated at \$590,002.14. This figure was determined by multiplying the cost associated with one collection request (\$126.42) by the average number of collections per annum (4,667). This figure does not include any capital or start-up costs because it will not be necessary for respondents to acquire any capital goods to provide the requested information.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this ICR under Docket ID No. OARM-2002-0001, which is available for public viewing at the OEI Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center 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 Reading Room is (202) 566-1745 and

the telephone number for the OEI Docket is (202) 566-1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at <http://www.epa.gov/edocket>. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above. Also, you can send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Please include the EPA Docket ID No. OARM-2002-0001 in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after January 22, 2003, a comment to OMB is best assured of having its full effect if OMB receives it by February 21, 2003. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

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; and (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