

TABLE 5 TO SUBPART TTTTT OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART TTTTT OF PART 63—  
Continued

As required in § 63.9950, you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) shown in the following table:

| Citation                                      | Subject                                                                  | Applies to Subpart TTTTT | Explanation                                                            |
|-----------------------------------------------|--------------------------------------------------------------------------|--------------------------|------------------------------------------------------------------------|
| 63.5                                          | Construction and Reconstruction                                          | Yes.                     |                                                                        |
| 63.6(a)–(g)                                   | Compliance with Standards and Maintenance Requirements.                  | Yes.                     |                                                                        |
| 63.6(h)                                       | Determining Compliance with Opacity and Visible Emission standards.      | No.                      |                                                                        |
| 63.6(i)–(j)                                   | Extension of Compliance and Presidential Compliance Exemption.           | Yes.                     |                                                                        |
| 63.7(a)(1)–(2)                                | Applicability and Performance Test Dates                                 | No                       | Subpart TTTTT specifies performance test applicability and dates.      |
| 63.7(a)(3), (b)–(h)                           | Performance Testing Requirements                                         | Yes.                     |                                                                        |
| 63.8 except for (a)(4), (c)(4), and (f)(6).   | Monitoring Requirements                                                  | Yes.                     |                                                                        |
| 63.8(a)(4)                                    | Additional Monitoring Requirements for Control Devices in § 63.11.       | No                       | Subpart TTTTT does not require flares.                                 |
| 63.8(c)(4)                                    | Continuous Monitoring System Requirements                                | No                       | Subpart TTTTT specifies requirements for operation of CMS.             |
| 63.8(f)(6)                                    | Relative Accuracy Test Alternative (RATA)                                | No                       | Subpart TTTTT does not require continuous emission monitoring systems. |
| 63.9                                          | Notification Requirements                                                | Yes                      |                                                                        |
| 63.9(g)(5)                                    | Data Reduction                                                           | No                       | Subpart TTTTT specifies data reduction requirements.                   |
| 63.10 except for (b)(2)(xiii) and (c)(7)–(8). | Recordkeeping and Reporting Requirements                                 | Yes.                     |                                                                        |
| 63.10(b)(2)(xiii)                             | Continuous Monitoring System (CMS) Records for RATA Alternative.         | No                       | Subpart TTTTT does not require continuous emission monitoring systems. |
| 63.10(c)(7)–(8)                               | Records of Excess Emissions and Parameter Monitoring Accedences for CMS. | No                       | Subpart TTTTT specifies recordkeeping requirements.                    |
| 63.11                                         | Control Device Requirements                                              | No                       | Subpart TTTTT does not require flares.                                 |
| 63.12                                         | State Authority and Delegations                                          | Yes.                     |                                                                        |
| 63.13–63.15                                   | Addresses, Incorporation by Reference, Availability of Information.      | Yes.                     |                                                                        |

[FR Doc. 03–89 Filed 1–21–03; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**48 CFR Parts 1511 and 1552**

[FRL–7441–1]

**Acquisition Regulation: Background Checks for Environmental Protection Agency Contractors Performing Services On-Site**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to amend the EPA Acquisition Regulation (EPAAR) to add a clause requiring contractors (and subcontractors) to perform background checks and make suitability determinations for contractor (and subcontractor) employees performing services on or within Federally-owned or leased space and facilities, commercial space primarily occupied

by Federal employees, and Superfund, Oil Pollution Act, and Stafford Act sites. The clause will require contractors (and subcontractors) to perform background checks and make suitability determinations on their employees before the employees can perform on-site contract services for the EPA. Contracting Officers will be allowed to waive the requirements of the clause on a case-by-case basis. The process contemplated by the clause will allow EPA to mitigate any actual or potential threat to the public health, welfare and the environment.

**DATES:** Comments should be submitted no later than March 24, 2003.

**ADDRESSES:** Comments may be submitted by mail, electronically, or through hand delivery/courier. For comments submitted by mail, send three copies of your comments to: OEI Docket, Title: Background Checks for EPA Contractors Performing Services On-Site, EPA Docket Center (28221T), 1200 Pennsylvania Ave., NW, Washington DC, 20460, Attention Docket ID No. OARM–2002–0001. For comments submitted electronically or through

hand delivery/courier, please follow the detailed instructions as provided in Unit I of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Thomas Valentino, U.S. EPA, Office of Acquisition Management, Mail Code (3802R), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, Telephone: (202) 564–4522.

**SUPPLEMENTARY INFORMATION:** Information on the proposed regulation for background checks for contractors (and subcontractors) performing on-site work is organized as follows:

**I. General Information**

*A. How Can I Get Copies of This Document and Other Related Information?*

EPA has established an official public docket for this action under Docket ID No. OARM–2002–0001. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. The official public docket is the collection of materials that is available

for public viewing at 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) 566-1742.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official 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 appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as Confidential Business Information (CBI) and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.A.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be

photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

#### *B. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments, but may consider them if time permits.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment, and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties, or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

*i. EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket/>, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in Docket ID No. OARM-2002-0001. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

*ii. E-mail.* Comments may be sent by electronic mail (e-mail) to [oei.docket@epa.gov](mailto:oei.docket@epa.gov), Attention Docket ID No. OARM-2002-0001. In contrast to EPA's electronic public docket, EPA's e-

mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

*iii. Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.B.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Please avoid the use of special characters and any form of encryption.

2. *By Mail.* Send three copies of your comments to: OEI Docket, Title: Background Checks for EPA Contractors Performing Services On-Site, EPA Docket Center (28221T), 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. OARM-2002-0001.

3. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave, NW., Washington, DC 20004, Attention Docket ID No. OARM-2002-0001. Such deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays).

#### *C. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

## 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

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.

This proposed rule will not have a significant economic impact on small entities because the contractor will be able to include any costs incurred in complying with clause requirements as part of the costs incurred under the contract, either directly or indirectly (depending on the contract type, and the contractor's treatment of costs). In addition, the types of background search services to be undertaken pursuant to the proposed clause are commercially available to all businesses.

#### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess their regulatory actions on State, local, and Tribal governments, and the private sector. This proposed rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in one year. Any private sector costs for this action relate to paperwork requirements and associated expenditures that are far below the level established for UMRA applicability. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### *Executive Order 13045*

Executive Order 13045, entitled “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective

and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions on environmental health or safety risks.

#### *Executive Order 13132*

Executive Order 13132, entitled, “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” are 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.”

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed 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. This proposed rule would amend the EPAAR to create an EPA contract clause that will require contractors to perform background checks for employees performing services on-site. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

#### *Executive Order 13175*

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of

regulatory policies that have tribal implications.” “Policies that have tribal implications” are defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.”

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communication between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

#### *National Technology Transfer and Advancement Act of 1995*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104-113, section 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. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rule does not involve technical standards. Therefore, EPA is not considering use of any voluntary consensus standards.

#### *Executive Order 13211 (Energy Effects)*

This proposed rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use” (66 FR 28335 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

### List of Subjects in 48 CFR Parts 1511 and 1552

Environmental protection,  
Government procurement.

Dated: January 15, 2003.

**John C. Gherardini, III,**

*Acting Director, Office of Acquisition Management.*

Therefore, 48 CFR Chapter 15 is proposed to be amended as set forth below:

#### PART 1511—[AMENDED]

1. The authority citations for Part 1511 continues to read as follows:

**Authority:** Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

2. Section 1511.011–81 is added to read as follows:

#### 1511.011–81 Background Checks for EPA Contractors Performing Services On-Site.

(a) Contracting Officers shall insert the clause at 1552.211–81 in all solicitations and contracts, except for commercial item acquisitions, where it is expected that the contractor will be required to perform services on or within Federally-owned or leased space and facilities, commercial space primarily occupied by federal employees, or Superfund, Oil Pollution Act, or Stafford Act sites. The successful awardee must complete the background checks and suitability determinations for individuals before they may begin on-site performance under the contract. This clause is also required, when applicable, for work to be performed on-site that is ordered under non-EPA contracts.

(b) Contracting Officers may include the clause described in paragraph (a) of this clause in solicitations and contracts other than those identified in paragraph (a) of this clause, including commercial item acquisitions if deemed appropriate, if determined necessary in order to protect the Government's interests and national security.

(c) Contracting Officers, on a case-by-case basis, may, either temporarily or permanently, waive the requirement for background checks and suitability determinations if they determine, in writing, that they are not necessary at a specific location, or for a specific individual, in order to protect the Government's interest and national security.

(d) As used in the solicitation and contract clause, Superfund or CERCLA refers to the "Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA, as amended by SARA in 1986), 42 U.S.C. 9601; the Oil Pollution Act refers to the

Clean Water Act as amended by the Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701; and the Stafford Act is the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121.

#### PART 1552—[AMENDED]

3. The authority citation for Part 1552 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. 418(b).

4. Section 1552.211–81 is added to read as follows:

#### 1552.211–81 Background Checks for EPA Contractors Performing Services On-Site.

As prescribed in 1511.011–81, insert the following clause:

#### BACKGROUND CHECKS FOR EPA CONTRACTORS PERFORMING SERVICES ON-SITE (XXX 2003)

(a) The requirements of this clause apply to the successful awardee(s) of the contract who will be performing on-site work for EPA under the contract.

##### (b) Definitions.

For purposes of this clause, the following definitions apply:

(1) *On-Site:* "On-site" refers to any federally-owned or leased space and facilities and any commercial space primarily occupied by federal workers. It also includes sites where the Environmental Protection Agency (EPA) is working under the authority of CERCLA, the Oil Pollution Act, or the Stafford Act.

(2) *Suitability:* "Suitability" refers to identifiable character traits and past conduct which are reasonably sufficient to indicate whether a given individual is likely or not likely to be able to perform the requirements of a contract or subcontract at EPA on-site locations without undue risk to the interests of the Government and the national security.

(3) *Suitability determination:* A "suitability determination" is a determination that there are reasonable grounds to believe that an individual will likely be able to perform the contract requirements on-site without undue risk to the interests of the Government and the national security.

##### (c) Applicability.

(1) Contractors shall perform background checks and make suitability determinations on contractor employees before the individual employees can perform on-site contract services for the EPA.

(2) Contracting Officers, on a case-by-case basis, may, either temporarily or permanently, waive the requirements of this clause, if they determine in writing that background checks and suitability determinations are not necessary at a specific location, or for a specific individual, in order to protect the Government's interests and national security.

##### (d) Background Check.

(1) The Contractor is responsible for completing background checks and making suitability determinations on its employees prior to the employee beginning on-site work.

Compliance with the requirement for performing a background check and making a suitability determination shall not be construed as providing a contractor employee clearance to have access to classified information or confidential business information. Contractors are required to maintain records of background checks and suitability determinations for four years after they are completed, and to make them available to the Government when requested.

(2) At a minimum, the background check and suitability determination must include an evaluation of:

(i) Law enforcement checks (Federal, State, and Local for the past 5 years);

(ii) Credit report;

(iii) Social Security Number trace;

(iv) Verification of U.S. citizenship or legal resident status;

(v) Employment history (past 5 years);

(vi) Education history (highest degree verified);

(vii) References (3 individuals);

(viii) Residence (past 3 years);

(ix) Military service discharge notice; and

(x) Professional license and certification.

(e) *Background Check Guidelines.*

(1) In making a suitability determination, the contractor shall consider the following factors and evaluate them against the work to be performed, the performance location, and the degree of risk to the Government:

(i) Any loyalty or terrorism issue;

(ii) Patterns of conduct (e.g., alcoholism/drug addiction, financial irresponsibility/major liabilities, dishonesty, unemployability for negligence or misconduct, criminal conduct);

(iii) Dishonorable military discharge;

(iv) Felony and misdemeanor offenses;

(v) Drug manufacturing/trafficking/sale;

(vi) Major honesty issue (e.g., extortion, armed robbery, embezzlement, perjury);

(vii) Criminal sexual misconduct;

(viii) Serious violent behavior (e.g., rape, aggravated assault, arson, child abuse, manslaughter);

(ix) Illegal use of firearms/explosives; and

(x) Employment related misconduct involving dishonesty, criminal or violent behavior.

(2) The contractor shall evaluate any adverse information about an individual by considering the following factors before making a suitability determination:

(i) The nature, extent and seriousness of the conduct;

(ii) The circumstances surrounding the conduct;

(iii) The frequency and recency of the conduct;

(iv) The individual's age and maturity at the time of the conduct;

(v) The presence or absence of rehabilitation and other pertinent behavior changes;

(vi) The potential for pressure, coercion, exploitation, or duress; and

(vii) The likelihood of continuation of the conduct.

##### (f) Employee Removal.

Whenever a contractor becomes aware that any employee working at an on-site location

under an EPA contract becomes an unacceptable risk to the Government, the contractor shall immediately remove that employee from the site, notify the Contracting Officer that such a removal has taken place, and replace them with a qualified substitute. If the approval of the Contracting Officer was initially required for the removed employee, Contracting Officer approval is required for the replacement employee.

(g) *Contracting Officer Notification.*

Prior to commencement of on-site contract performance, the contractor shall notify the Contracting Officer that the background checks and suitability determinations required by this clause have been completed for affected individuals.

(h) *Flowdown Provision.*

The Contractor agrees to insert terms that conform substantially to the language of this clause in all subcontracts under this contract. (End of clause)

[FR Doc. 03-1361 Filed 1-21-03; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. 2002-12347; Notice 01]

#### New Rearview Technology and Federal Motor Vehicle Safety Standard No. 111; Rearview Mirrors

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Request for comments.

**SUMMARY:** The agency has received two petitions asking us to amend the Federal Motor Vehicle Safety Standard for rearview mirrors. AM General Corporation (AM General) petitioned the agency to amend the standard to permit vehicles with a gross vehicle weight rating (GVWR) of more than 4,536 kilograms (kg) and with an overall length that is less than 508 centimeters (cm) to have the option of being equipped with a passenger-side convex mirror with an area of at least 323 square centimeters (cm<sup>2</sup>). Currently, these vehicles are required to have a flat passenger-side mirror with a reflective area of at least 323 cm<sup>2</sup>. The agency granted AM General's petition on May 23, 2001.

In addition, Ms. Barbara Sanford petitioned the agency to amend the rearview mirror standard to require that all commercial trucks traveling on interstate highways have convex mirrors affixed to their front right and left fenders to give drivers of these vehicles

a better view of the area around them while making a lane change. The agency granted Ms. Sanford's petition on May 21, 2001.

This document discusses the recommendations submitted by AM General and Ms. Sanford and asks questions that we hope will help us to determine whether they would be beneficial to safety and at what cost. In addition to addressing the aforementioned petitions, the agency also wishes to take this opportunity to examine the rearview mirror standard as a whole to determine whether there are any amendments that can be made to allow consumers to utilize innovations in mirror and other rearview technology that have been developed since the standard was last amended in 1982. It should be pointed out that the changes to the standard that are being explored are to eliminate impediments to new technology. Any amendments would permit, but not require, the use of new technology.

**DATES:** Comments must be received on or before March 24, 2003.

**ADDRESSES:** Comments must refer to the docket and notice numbers cited at the beginning of this notice and be submitted to: Docket Management, Room PL-401, 400 Seventh Street SW., Washington, DC 20590. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Mr. Chris Flanigan, Office of Rulemaking, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Mr. Flanigan's telephone number is (202) 366-4918 and his facsimile number is (202) 366-4329.

**SUPPLEMENTARY INFORMATION:**

#### Background

##### *Standard No. 111*

When standard No. 111 was promulgated in 1967, it applied only to passenger cars. The standard only permitted the use of mirrors of unit magnification (hereafter referred to as flat mirrors) at that time. On August 12, 1975, the agency published a final rule that extended the passenger car requirements to multipurpose passenger vehicles, trucks, and buses with a GVWR 4,536 kg or less (hereafter referred to as light trucks) [40 FR 33825]. The final rule established requirements for light trucks to have either outside flat mirrors that meet passenger car requirements or mirrors with an area of at least 126 cm<sup>2</sup>.

The August 12, 1975 notice also established requirements that

multipurpose passenger vehicles, trucks, and buses with a GVWR of between 4,536 kg and 11,340 kg have flat outside mirrors with a reflective surface of not less than 323 cm<sup>2</sup>. On December 30, 1976, the agency published a final rule that established requirements for multipurpose passenger vehicles, trucks, and buses with a GVWR of 11,340 kg or more. The requirements specified that these vehicles have outside mirrors with a reflective surface of not less than 323 cm<sup>2</sup>.

Until 1982, the agency allowed only flat mirrors on vehicles with a GVWR of 4,536 kg or less other than school buses (hereafter referred to as "light vehicles"). However, on September 2, 1982, the agency published a final rule amending Standard No. 111 to allow constant radius of curvature or spherical convex mirrors (hereafter referred to as "convex mirrors") to be used on light vehicles [47 FR 38698]. The surface of this type of mirror is curved to increase the field of view. This action was in response to a May 6, 1976, petition from General Motors Corporation (GM). GM petitioned the agency to amend the standard to allow convex mirrors on the passenger side of light vehicles where the interior mirror did not meet the field of view requirements. GM pointed out in its petition that convex mirrors would provide a wider field of view than the flat mirrors of the same size.

The amendment gave light vehicles that do not meet the field of view requirements for their interior mirror the option of having an outside mirror of unit magnification or a convex mirror installed on the passenger side. The agency, however, was concerned about the greater difficulties in correctly judging distance and speed that occur using convex mirrors as a result of the distortion of the objects being viewed. This concern has to be balanced by the fact that convex mirrors greatly increase the driver's field of view and, therefore, reduce the necessity for head movement to detect other vehicles.

Since convex mirrors have been permitted on the passenger side of light vehicles, many manufacturers have used them. Today, most light vehicles have a convex mirror on the passenger side. However, the agency still receives complaints from consumers about these mirrors. As described below, convex mirrors have characteristics that present problems for a portion of the driving public.

#### *Currently Permitted Mirrors*

The main difference between a flat mirror and convex mirror is that the image of an object viewed in a convex