

automotive aftermarket products, insecticides, coatings, and other miscellaneous products.

Maryland adopted the consumer products regulation based on the 2001 Ozone Transport Commission (OTC) model rule in 2003 that was based on the California Air Resources Board (CARB) rule. EPA approved the Maryland consumer products regulation on December 9, 2003 (68 FR 68523). In July 2005, CARB amended the 2001 OTC model rule adding 14 new categories. In 2006, the OTC developed an updated model rule based on the 2005 CARB amendments. Maryland adopted the updated 2006 OTC model rule on June 8, 2007 with an effective date of June 18, 2007 to incorporate the changes in the 2005 CARB rule.

## II. Summary of SIP Revision

Maryland's amended consumer products regulation incorporates the changes made by CARB. These amendments affect 18 categories of consumer products. Fourteen categories are new, including subcategories with new product category definitions and VOC limits; one previously regulated category with a more restrictive VOC limit, and two previously regulated categories with additional requirements. The compliance date for the new standards is January 1, 2009.

*The new categories are the following:* (1) Adhesive remover with four subcategories: Floor or wall covering, gasket or thread locking, general purpose, and specialty; (2) anti-static product; (3) electrical cleaner; (4) electronic cleaner; (6) fabric refresher; (7) footwear or leather care product; (8) hair styling product that will incorporate hair styling gel and include additional forms of hair styling products (i.e., liquid, semi-solid, and pump spray) but does not include hair spray product or hair mousse; (9) graffiti remover; (10) shaving gel; (11) toilet/urinal care product; and (12) wood cleaner. The previously regulated category with a more restrictive limit is contact adhesive that has been separated into 2 subcategories: general purpose and special purpose. The previously regulated categories with additional requirements are air fresheners and general purpose degreasers.

## III. Proposed Action

EPA is proposing to approve the Maryland SIP revision for the control of VOC emissions from consumer products (COMAR 26.11.32) submitted on June 18, 2007. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

## IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This proposed rule also does not have a substantial direct effect 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be

inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This proposed rule pertaining to the amendments of Maryland's consumer products regulation, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: September 25, 2007.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

[FR Doc. E7-19626 Filed 10-3-07; 8:45 am]

**BILLING CODE 6560-50-P**

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## ENVIRONMENTAL PROTECTION AGENCY

### 48 CFR Parts 1516, 1533, and 1552

[Docket ID No. EPA-HQ-OARM-2003-0001; FRL-8477-9]

RIN 2030-AA89

### Acquisition Regulation: Guidance on Use of Award Term Incentives; Administrative Amendments

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

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**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to amend the EPA Acquisition Regulation (EPAAR) to add policy, procedures, and contract clauses for the use of award term incentives. This rule makes two

administrative changes to the EPAAR. One change is to reflect the General Services Board of Contract Appeals as EPA's new forum for appeals under the Contract Disputes Act of 1978. The other change corrects a numbering error in Subpart 1516.4.

**DATES:** Comments must be received on or before December 3, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OARM-2003-0001 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) 566-0224.

- *Mail:* OEI Docket, Environmental Protection Agency, Mailcode: 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-2003-0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](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 [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) Web site 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 [www.regulations.gov](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 [www.regulations.gov](http://www.regulations.gov) or in hard copy at the OEI Docket, EPA/DC, EPA West, Room B102, 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 OEI Docket is (202) 566-1752.

**FOR FURTHER INFORMATION CONTACT:** Marilyn E. Chambers, U.S. EPA, Office of Acquisition Management, Mail Code (3802R), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564-4398; fax number: (202) 565-2474; e-mail address: [chambers.marilyn@epa.gov](mailto:chambers.marilyn@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. General Information**

1. *Submitting CBI.* Do not submit this information to EPA through [www.regulations.gov](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.

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

##### **II. Background**

Award terms are a form of incentive, offering additional periods of performance rather than additional profit or fee as a reward for achieving prescribed performance measures. Award term incentives were introduced by the Department of the Air Force in 1997. While they have become increasingly popular, the Federal Acquisition Regulation (FAR) has yet to provide any coverage on their use. Accordingly, in order to assist EPA contracting officers seeking to use award term incentives, it is necessary to amend the EPAAR to incorporate guidance on their use.

The administrative amendments are necessary because of two matters. First, the numbering of the sections under Subpart 1516.4 of the EPAAR does not align with the corresponding sections in the FAR. Second, EPA has changed its forum for appeals under the Contract Disputes Act of 1978 from the Department of Interior Board of Contract Appeals to the General Services Board of Contract Appeals. However, the EPAAR still references the Department of Interior Board of Contract Appeals as this forum.

##### **III. Proposed Rule**

This proposed rule would amend the EPAAR to add coverage on the use of award term incentives, and to make the administrative changes discussed above. The award term incentives coverage consists of a clause prescription and three clauses, one of which includes an alternate.

The first clause, entitled "Award Term Incentive," sets forth the overall framework of the incentive including

the incentive period(s) of performance for which a contractor may become eligible by achieving prescribed performance measures, e.g., acceptable quality levels. The second clause, entitled "Award Term Incentive Plan," sets forth the performance criteria and evaluation periods which will serve as the basis for the Government's decision on whether the contractor is eligible for an award term incentive. An alternate to this clause is provided for contracting officers to use ratings entered into the National Institutes of Health Contractor Performance System for the contract at hand as the basis for a contractor's eligibility for an award term incentive. The last clause, entitled "Award Term Availability of Funds," informs contractors that funds are not presently available for any award term, and that the Government's obligation under any award term is contingent upon the availability of appropriated funds from which payment can be made. The "Award Term Incentive" clause, and the "Award Term Incentive Plan" clause including its alternate, are prescribed for use on substantially the same basis.

In preparing this guidance, EPA was concerned that some contractors may believe that their achievement of prescribed performance measures conferred an absolute entitlement to award term(s), notwithstanding the absence of need or funds for such term(s). Accordingly, the guidance provides that any award terms are contingent upon a need for the services and the availability of funds.

The administrative amendments involve the renumbering of sections under Subpart 1516.4 of the EPAAR to be consistent with the numbering of their corresponding sections in the FAR, and a change to EPAAR 1533.2 to reflect the substitution of the General Services Board of Contract Appeals for the Department of the Interior Board of Contract Appeals as EPA's forum for appeals under the Contract Disputes Act of 1978.

#### IV. Statutory and Executive Order Reviews

##### *Executive Order 12866: Regulatory Planning and Review*

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 Paperwork Reduction Act does not apply because this rule does not

contain information requirements that require the approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

##### *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. Since award term incentives will be available equally to large and small entities, this rule will not have a significant economic impact on small entities.

##### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 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: Protection of Children From Environmental Health and Safety Risks*

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: Federalism*

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 provide guidance on the use of award term incentives and make other administrative changes. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

*Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*

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), Public Law 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: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use*

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 1516, 1533 and 1552**

Government procurement.

Dated: September 27, 2007.

**Denise Benjamin Sirmons,**  
*Director, Office of Acquisition Management.*

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

**PART 1516—TYPES OF CONTRACTS**

1. The authority citation for part 1516 continues to read as follows:

**Authority:** The provisions of this regulation are issued under 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.

2. Add section 1516.401-1 to read as follows:

**1516.401-1 General.**

3. Add section 1516.401-170 to read as follows:

**1516.401-70 Award Term Incentives.**

(a) Award term incentives enable a contractor to become eligible for additional periods of performance under

a current contract by achieving prescribed performance measures under that contract.

(b) Award term incentives are designed to motivate contractors to superior performance. Accordingly, the prescribed performance measures, i.e., acceptable quality levels (AQL) which must be achieved by a contractor to become eligible for an award term typically will be in excess of the AQLs necessary for Government acceptance of contract deliverables.

(c) The Award Term Incentive Plan sets forth the evaluation process, including the evaluation criteria and performance measures, and serves as the basis for award term decisions. The Award Term Incentive Plan may be unilaterally revised by the Government.

(d) Award term incentives may be used in conjunction with options. The Federal Acquisition Regulation does not prescribe a level of performance for the exercise of options, as contrasted with award term incentives, which should require superior performance as discussed in paragraph (b) of this subsection. Award term incentive periods will follow any option periods.

(e) (1) The Government has the unilateral right not to grant or to cancel award term incentive periods and the associated award term incentive plans if—

(i) The Contracting Officer has failed to initiate an award term incentive period, regardless of whether the contractor's performance permitted the Contracting Officer to consider initiating the award term incentive period; or

(ii) The contractor has failed to achieve the performance measures for the corresponding evaluation period, or

(iii) The Government notifies the contractor in writing it does not have funds available for the award term; or

(iv) The Government no longer has a need for the award term incentive period at or before the time an award term incentive period is to commence.

(2) When an award term incentive period is not granted or cancelled, any—

(i) Prior award term incentive periods for which the contractor remains otherwise eligible are unaffected.

(ii) Subsequent award term incentive periods are thereby also cancelled.

(f) Award term incentives may be appropriate for any type of service contract.

4. Add section 1516.401-270 to read as follows:

**1516.401-270 Definition.**

*Acceptable quality level (AQL)* as used in this subpart means the minimum percent of deliverables which are compliant with a given performance

standard that would permit a contractor to become eligible for an award term incentive. Because the performance necessary for eligibility for the award term incentive may be in excess of that necessary for the Government acceptance of contract deliverables, the AQLs associated with the award term incentive may exceed the AQLs associated with the acceptance of contract deliverables. For example, under contract X, acceptable performance is 75 percent of reports submitted to the Government within five days. However, to be eligible for an award term incentive, 85 percent of reports must be submitted to the Government within five days.

**1516.405 [Redesignated as 1516.406]**

5. Redesignate section 1516.405 as section 1516.406.

**1516.404-2 [Redesignated as 1516.405-2]**

6. Redesignate section 1516.404-2 as section 1516.405-2.

**1516.404-272 [Redesignated as 1516.405-270]**

7. Redesignate section 1516.404-272 as section 1516.405-270.

**1516.404-273 [Redesignated as 1516.405-271]**

8. Redesignate section 1516.404-273 as section 1516.405-271.

**1516.404-274 [Redesignated as 1516.405-272]**

9. Redesignate section 1516.404-274 as section 1516.405-272.

10. Amend newly designated section 1516.406 to add new paragraphs (c) and (d) to read as follows:

**1516.406 Contract clauses.**

\* \* \* \* \*

(c) The Contracting Officer shall insert the clauses at 1552.216-77, Award Term Incentive, 1552.216-78, Award Term Incentive Plan, and 1552.216-79 Award Term Availability of Funds in solicitations and contracts when award term incentives are contemplated. The clauses at 1552.216-77 and 1552.216-78 may be used on a substantially the same basis.

(d) If the Contracting Officer wishes to use the ratings set forth in the National Institutes of Health (NIH) Contractor Performance System (CPS) on the contract at hand as the basis for contractor eligibility for an award term incentive, the Contracting Officer shall insert the clause at 1552.216-78 with its Alternate I.

**PART 1533—PROTESTS, DISPUTES AND APPEALS**

11. The authority citation for part 1533 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.

12. Revise section 1533.203 to read as follows:

**1533.203 Applicability.**

Pursuant to an interagency agreement between the EPA and the General Services Board of Contract Appeals (GSBCA), the GSBCA will hear appeals from final decisions of EPA Contracting Officers issued pursuant to the Contracts Disputes Act. The rules and regulations of the GSBCA appear in 48 CFR Chapter 61.

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

13. 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. 418b.

14. Add section 1552.216-77 to read as follows:

**1552.216-77 Award term incentive.**

As prescribed in 1515.406(c), insert a clause substantially the same as follows:

**AWARD TERM INCENTIVE (XXX 2007)**

(a) *General.* This contract may be extended as set forth in paragraph (b) based on overall contractor performance as evaluated in accordance with the Clause entitled "Award Term Incentive Plan," provided the Agency has a need for the effort at or before the time an award term is to commence, and if the contractor receives notice of the availability of funding for an award term period pursuant to the "Award Term Availability of Funds" clause. The Contracting Officer is responsible for the overall award term evaluation and award term decision. The Contracting Officer will unilaterally decide whether or not the contractor is eligible for an award term extension, and in conjunction with the Contracting Officer's Representative, will determine the need for continued performance and funding availability.

(b) *Period of performance.* Provided the contractor has achieved the performance measures, e.g., acceptable quality levels, set forth in the clause "Award Term Incentive Plan," the Contracting Officer may extend the contract by exercising \_\_\_\_\_ [insert the total award term incentive periods] additional award term incentive period(s) of \_\_\_\_\_ [insert the award term incentive period] months each. The total maximum period of performance under this contract, if the Government exercises any option periods and all award term incentive periods is \_\_\_\_\_ [insert the total of the base

period, option periods (if any), and award term incentive periods] years.

(c) *Right not to grant or cancel the award term incentive.* (1) The Government has the unilateral right not to grant or to cancel award term incentive periods and the associated award term incentive plans if—

(i) The Contracting Officer has failed to initiate an award term incentive period, regardless of whether the contractor's performance permitted the Contracting Officer to consider initiating the award term incentive period; or

(ii) The contractor has failed to achieve the performance measures for the corresponding evaluation period, or

(iii) The Government notifies the contractor in writing it does not have funds available for the award term incentive periods; or

(iv) The Government no longer has a need for the award term incentive period at or before the time an award term incentive period is to commence.

(2) When an award term incentive period is not granted or cancelled, any—

(i) Prior award term incentive periods for which the contractor remains otherwise eligible are unaffected.

(ii) Subsequent award term incentive periods are thereby also cancelled.

(d) Cancellation of an award term incentive period that has not yet commenced for any of the reasons set forth in paragraph (c) of this clause shall not be considered either a termination for convenience or termination for default, and shall not entitle the contractor to any termination settlement or any other compensation. If the award term incentive is cancelled, a unilateral modification will cite this clause as the authority.

(e) *Award term incentive administration.* The award term incentive evaluation(s) will be completed in accordance with the schedule in the Award Term Incentive Plan. The contractor will be notified of the results and their eligibility to be considered for the respective award term incentive no later than 120 days after an evaluation period.

(f) *Review process.* The contractor may request a review of an award term incentive evaluation which has resulted in the contractor being ineligible for the award term incentive. The request shall be submitted in writing to the Contracting Officer within 15 days after notification of the results of the evaluation.

(end of clause)

15. Add section 1552.216-78 to read as follows:

**1552.216-78 Award Term Incentive Plan.**

As prescribed in 1515.406(c), insert a clause substantially the same as follows:

**AWARD TERM INCENTIVE PLAN (XXX 2007)**

(a) The Award Term Incentive Plan provides for the evaluation of performance, and, together with Agency need and availability of funding, serves as the basis for award term decisions. The Award Term Incentive Plan may be unilaterally revised by the Government. Any changes to the Award

Term Incentive Plan will be made in writing and incorporated into the contract through a unilateral modification citing this clause. The Government will consult with the contractor prior to the issuance of a revised Award Term Incentive Plan, but is not required to obtain the contractor's consent to the revisions.

(b) [describe the evaluation periods and associated award term incentive periods, e.g., months 1–18 for award term incentive period I, and months 19–36 for award term incentive period II]

(c) [describe the evaluation schedule, e.g., 90 days after the end of the evaluation period]

(d) In order to be eligible for an award term incentive period the contractor must achieve all of the acceptable quality levels (AQL) for the evaluated tasks, both individual and

aggregate, for that evaluation period. Failure to achieve any AQL renders the contractor ineligible for the associated award term incentive period. [identify the most significant tasks. Describe the AQL for each task as well as an overall AQL for the associated evaluation periods, e.g., an AQL of 90% each for tasks 1 and 3, and an AQL of 85% for task 7, and an overall AQL of 90% for the months 1–18 evaluation period]

(e) [If the contract will contain a quality assurance surveillance plan (QASP), reference the QASP, e.g., attachment 2. Typically, the performance standards and AQLs will be defined in the QASP]

(end of clause)

*Alternate 1 (XXX 2007)*. As prescribed in 1516.406(d), substitute paragraphs substantially the same as following

paragraphs (b) through (e) for paragraphs (b) through (e) in the basic clause:

(b) At the conclusion of each contract year, an average contract rating shall be determined by using the numerical ratings entered into the National Institutes of Health (NIH) Contractor Performance System (CPS) for this contract. The NIHCPSP is an interactive database located on the Internet which EPA uses to record contractor performance evaluations.

(c) The contract year average rating shall be obtained by dividing the combined ratings by the number of ratings, for example:

Criteria	Rating
Quality of Product or Service .....	5.
Cost Control .....	4.
Timeliness of Performance .....	4.
Business Relations .....	5.
	18 (combined rating). + 4 (number of ratings). = 4.5 contract year average rating.

(d) The contractor shall be evaluated for performance from the start of the contract through Year \_\_\_\_\_ [identify

the evaluation period, e.g., year three]. The average rating for each contract year (as derived in paragraph (c) above) will

be combined and divided by [insert the number of evaluation periods] to obtain an overall average rating, for example:

Evaluation period	Average rating
Year One .....	4.5.
Year Two .....	4.75.
Year Three .....	4.75.
	14 (combined average rating). + 3 (number of evaluation periods). = 4.66 overall average rating.

(e) Based on the overall average rating as determined under paragraph (d), provided that no individual rating, i.e., *Quality of Product or Service, Cost Control, Timeliness of Performance, or Business Relations* is below a 3, the contractor shall be eligible for the following award term periods:

(1) Overall average rating of 4.6 to 5.0—Two award term incentive periods of \_\_\_\_\_ [insert the number of months] months.

(2) Overall average rating of 4.0 to 4.6—One award term incentive period of \_\_\_\_\_ [insert the number of months] months.

16. Add section 1552.216–79 to read as follows:

**1552.216–79 Award Term Availability of Funds.**

As prescribed in 1515.406(c), insert the following clause:

**AWARD TERM AVAILABILITY OF FUNDS (XXX 2007)**

Funds are not presently available for any award term. The Government's obligation under any award term is contingent upon the availability of appropriated funds from which payment can be made. No legal liability on the part of the Government for any award term payment may arise until funds are made available to the Contracting Officer for an award term and until the Contractor receives notice of such availability, to be confirmed in writing by the Contracting Officer.

(end of clause)

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**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Part 571**

[Docket No. NHTSA–2007–29272]

**RIN 2127–AK04**

**Federal Motor Vehicle Safety Standards; Controls, Telltales and Indicators**

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** In an August 2005 final rule, we updated our standard regulating motor vehicle controls, telltales and indicators. The standard specifies requirements for the location, identification, and illumination of these items.