

## 1823.570

requiring contractor operation of Government-owned or -leased motor vehicles, including, but not limited to, interagency fleet management system (IFMS) vehicles authorized in accordance with FAR 51.2.

[68 FR 43334, July 22, 2003]

### Subpart 1823.5—Drug-Free Workplace

#### 1823.570 Drug- and alcohol-free workforce.

This section sets forth NASA requirements for mandatory drug and alcohol testing of certain contractor personnel under section 203, National Aeronautics and Space Act of 1958, as amended, 42 U.S.C. 2473, 72 Stat. 429; and Civil Space Employee Testing Act of 1991, Public Law 102-195, sec. 21, 105 Stat. 1616 to 1619.

[61 FR 55757, Oct. 29, 1996. Redesignated and amended at 69 FR 21765, Apr. 22, 2004]

#### 1823.570-1 Definitions.

As used in this subpart *employee* and *controlled substance* are as defined in FAR 23.503. The use of a controlled substance in accordance with the terms of a valid prescription, or other uses authorized by law shall not be subject to the requirements of 1823.570 through 1823.570-3 and the clause at 1852.223-74.

*Employee in a sensitive position* means a contractor or subcontractor employee who has been granted access to classified information; a contractor or subcontractor employee in other positions that the contractor or subcontractor determines could reasonably be expected to affect safety, security, National security, or functions other than the foregoing requiring a high degree of trust and confidence; and includes any employee performing in a position designated “mission critical” pursuant to the clause at 1852.246-70. The term also includes any applicant who is interviewed for a position described in this paragraph.

*Use, in violation of applicable law or Federal regulation, of alcohol* includes having, while on duty or during a pre-employment interview, an alcohol concentration of 0.04 percent by weight or more in the blood, as measured by chemical test of the individual’s breath

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or blood. An individual’s refusal to submit to such test is presumptive evidence of use, in violation of applicable law or Federal regulation, of alcohol.

[61 FR 55757, Oct. 29, 1996. Redesignated and amended at 69 FR 21765, Apr. 22, 2004]

#### 1823.570-2 Contract clause.

The contracting officer shall insert the clause at 1852.223-74, “Drug- and Alcohol-Free Workforce,” in all solicitations and contracts containing the clause at 1852.246-70, “Mission Critical Space Systems Personnel Reliability Program,” and in other solicitations and contracts exceeding \$5 million in which work is performed by an employee in a sensitive position. However, the contracting officer shall not insert the clause at 1852.223-74 in solicitations and contracts for commercial items (see FAR parts 2 and 12).

[61 FR 55757, Oct. 29, 1996. Redesignated at 69 FR 21765, Apr. 22, 2004]

#### 1823.570-3 Suspension of payments, termination of contract, and debarment and suspension actions.

The contracting officer shall comply with the procedures of FAR 23.506 regarding the suspension of contract payments, the termination of the contract for default, and debarment and suspension of a contractor relative to failure to comply with the clause at 1852.223-74. Causes for suspension of contract payments, termination of the contract for default, and debarment and suspension of the contractor are the following:

(a) The contractor fails to comply with paragraph (b), (c), or (d) of the clause at 1852.223-74; or

(b) Such a number of contractor employees in sensitive positions having been convicted of violations of criminal drug statutes or substantial evidence of drug or alcohol abuse or misuse occurring in the workplace, as to indicate that the contractor has failed to make a good faith effort to provide a drug- and alcohol-free workforce.

[61 FR 55757, Oct. 29, 1996. Redesignated and amended at 69 FR 21765, Apr. 22, 2004]