

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 1, 11, 22, and 52**

[FAC 2005–93; FAR Case 2017–001, Item I; Docket No. 2017–0001; Sequence No. 1]

RIN 9000–AN27

Federal Acquisition Regulation; Paid Sick Leave for Federal Contractors

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement the Executive Order, Establishing Paid Sick Leave for Federal Contractors, and a final rule issued by the Department of Labor.

DATES: *Effective:* January 1, 2017.

Applicability:

- This rule applies to solicitations issued on or after January 1, 2017, and resultant contracts.

- Applicability of the clause at 52.222–62, Paid Sick Leave Under Executive Order 13706, to existing contracts is as follows—

(1) Contracting officers shall include the clause in bilateral modifications extending the contract when such modifications are individually or cumulatively longer than six months.

(2) In accordance with FAR 1.108(d)(3), contracting officers are strongly encouraged to include the clause in existing indefinite-delivery indefinite-quantity contracts, if the remaining ordering period extends at least six months and the amount of remaining work or number of orders expected is substantial.

Comment date: Interested parties should submit written comments to the Regulatory Secretariat Division at one of the addresses shown below on or before February 14, 2017 to be considered in the formation of the final rule.

ADDRESSES: Submit comments identified by FAC 2005–93, FAR Case 2017–001 by any of the following methods:

- Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering “FAR Case 2017–001” under the heading “Enter Keyword or ID” and selecting “Search”. Select the link

“Submit a Comment” that corresponds with “FAR Case 2017–001”. Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “FAR Case 2017–001” on your attached document.

- Mail:* General Services Administration, Regulatory Secretariat Division, ATTN: Ms. Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405–0001.

Instructions: Please submit comments only and cite “FAC 2005–93, FAR Case 2017–001” in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Zenaída Delgado, Procurement Analyst, at 202–969–7207 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2005–93, FAR Case 2017–001.

SUPPLEMENTARY INFORMATION:**I. Background**

This interim rule revises the FAR to implement Executive Order (E.O.) 13706, Establishing Paid Sick Leave for Federal Contractors. The E.O. was signed September 7, 2015, and published in the **Federal Register** at 80 FR 54697 on September 10, 2015. The E.O. seeks to increase efficiency and cost savings in the work performed by parties who contract with the Federal Government by ensuring that employees on those contracts can earn up to 7 days or more of paid sick leave annually, including paid sick leave for family care. The E.O. directed the Department of Labor (DOL) to issue regulations by September 30, 2016, and for the FAR Council to issue regulations within 60 days of the DOL regulations.

The Wage and Hour Division of DOL published a final rule in the **Federal Register** at 81 FR 67598, on September 30, 2016, also entitled “Establishing Paid Sick Leave for Federal Contractors,” which added a new part 13 to title 29 Code of Federal Regulation (CFR). The DOL rule applies to FAR acquisitions (as described in FAR 1.104) that are covered by the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and also applies to contracts for concessions, and to contracts entered into with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or

the general public, even if such contracts are not governed by the FAR. Although the DOL rule covers both FAR-based contracts, and non-FAR-based contracts and contract-like instruments, this interim rule only applies to FAR-based contracts.

II. Discussion and Analysis

FAR implementation of the DOL rule by DoD, GSA, and NASA is discussed below, as well as those instances where the FAR rule differs from the DOL rule, and the rationale for those differences.

A. FAR Subpart 22.21, Paid Sick Leave for Federal Contractors**1. Definitions (22.2101).**

a. *Employee.* The DOL definition of “employee” (29 CFR 13.2) is incorporated at FAR 22.2101, updating the statutory references to reflect the recodification of titles 40 and 41 of the United States Code (see FAR 1.110).

b. *New contract.* The term “new contract” is defined in 29 CFR 13.2, Definitions. The FAR rule does not adopt this definition because not all the elements of the definition apply to or are consistent with FAR principles. When FAR rules apply to existing contracts, application is addressed in the Effective Date/Applicability section of the preamble, not in the CFR, and treatment of bilateral modifications to existing contracts is also addressed in the Applicability section at the beginning of the preamble. See the discussion in Section II.A.3. below. In discussing treatment of existing contracts, DOL stated in the preamble of its rule, “if the parties bilaterally negotiate a modification that is outside the scope of the contract, the agency will be required to create a new contract, triggering solicitation and/or justification requirements, and thus such a modification after January 1, 2017, will constitute a ‘new contract’ subject to the Executive Order’s paid sick leave requirements.” We understand this to refer to the long-standing requirement for any out-of-scope modification to be addressed as a new procurement and conducted in accordance with the requirements of FAR part 6, Competition Requirements.

c. *United States.* The DOL regulations at 29 CFR 13.2 define “United States” in a geographic sense consistent with the basic FAR definition of “United States” in FAR 2.101 (*i.e.*, the 50 states and the District of Columbia). Therefore, this definition is not included at FAR 22.2101, but is included in the clause at FAR 52.222–62.

d. *Other definitions.* The definitions from the DOL rule for “accrual year,” “multiemployer plan,” and “paid sick

leave” were added in full text at FAR 22.2101. The definitions for “health care provider” and “certification issued by a health care provider” are incorporated by reference from 29 CFR 13.2.

2. Policy (FAR 22.2102).

a. FAR 22.2102(a) states the policy of E.O. 13706, which requires contractors to allow all employees performing work on or in connection with a contract covered by the E.O. to accrue and use paid sick leave in accordance with E.O. 13706 and 29 CFR part 13.

b. FAR 22.2102(b) and (c) address interaction with other laws and paid time off policies (29 CFR 13.5(f)).

3. Applicability (FAR 22.2103). This section provides applicability of FAR subpart 22.21 to contracts that are covered by the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are performed in whole or in part in the United States; and to employees performing on or in connection with such contracts whose wages are governed by the Wage Rate Requirements (Construction) statute, the Service Contract Labor Standards statute, or the Fair Labor Standards Act, including employees who qualify for an exemption from the Fair Labor Standards Act’s minimum wage and overtime provisions (29 CFR 13.3).

4. Exclusions (FAR 22.2104). This section delineates exclusions for certain employees from the general applicability in accordance with 29 CFR 13.4(e) and (f). It also clarifies that an option renewal of contracts that do not contain the 52.222–62 clause will not trigger automatic application of the clause.

5. Paid sick leave for Federal contractors and subcontractors (FAR 22.2105). This section provides information regarding some of the basic paid sick leave requirements in accordance with 29 CFR 13.5.

6. Prohibited acts (FAR 22.2106). This section addresses the prohibited acts set forth at 29 CFR 13.6 (*i.e.*, interference, discrimination, and failure to make and maintain or to make available required records, or any other failure to comply with 29 CFR 13.25).

7. Waiver of rights (FAR 22.2107). This section states that an employee cannot waive, nor can a contractor induce an employee to waive, rights under E.O. 13706 and 29 CFR part 13 (29 CFR 13.7).

8. Multiemployer plans or other funds, plans, or programs (FAR 22.2108). This section explains how contractors may fulfill their obligations through a multiemployer plan or through other funds, plans, or programs (29 CFR 13.8).

9. Enforcement (FAR 22.2109). This section provides information on enforcement authority, filing complaints, reporting and investigating complaints, remedies and sanctions, and retroactive inclusion of the contract clause when an agency fails to include the clause in a contract to which E.O. 13706 applies (29 CFR 13.11, 13.41, and 13.44).

10. Clause prescription (FAR 22.2110). The prescription for use of the clause at FAR 52.222–62 is consistent with the applicability specified in FAR 22.2103 (29 CFR 13.3). The prescription requires use of the clause when a contract includes 52.222–6, Construction Wage Rate Requirements, (\$2,000 threshold), or 52.222–41, Service Contract Labor Standards, (\$2,500 threshold) and performance is in whole or in part in the United States.

B. FAR Clause 52.222–62 Paid Sick Leave Under Executive Order 13706

FAR clause 52.222–62 is substantially based on, and accomplishes the same purposes as, the clause provided in the DOL regulations at appendix A to 29 CFR part 13—Contract Clause, which is required for use in contracts, contract-like instruments, and solicitations to which E.O. 13706 applies, except for procurements subject to the FAR. For contracts subject to the FAR, the clause at FAR 52.222–62 must be used.

- In FAR 52.222–62(a), all definitions are based on 29 CFR 13.2. The definitions for “employee,” “multiemployer plan,” and “paid sick leave” are the same as at 22.2101. The definition of “United States” (*i.e.*, the 50 States and the District of Columbia) is also included in full text in the clause, for clarity. Definitions for “child,” “domestic partner,” “domestic violence,” “individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship,” “parent,” “sexual assault,” “spouse,” and “stalking” are incorporated by reference from 29 CFR 13.2.

- In FAR 52.222–62(b), the statement is added that, if the contract is not performed wholly within the United States the clause applies only with respect to that part of the contract that is performed within the United States (29 CFR 13.3(c)).

- In FAR 52.222–62(f), the term “contract suspension” in the heading is changed to “payment suspension,” to be consistent with the text of the paragraph.

- Paragraph (h) in the DOL clause, which addresses flowdown to subcontracts, is revised slightly and moved to be the last paragraph of FAR

52.222–62, consistent with FAR drafting conventions. The requirement to include the substance of the clause allows only for ministerial changes to the clause. The substance of the clause will be consistent with the requirements of the clause, and will not permit substantive changes such as to the rights and responsibilities of the parties.

- Paragraph (i) of the DOL clause, “Certification of Eligibility” is not included in the FAR clause 52.222–62. This paragraph duplicates coverage in paragraph (p) of FAR clause 52.222–41, Service Contract Labor Standards, for service and 52.222–15, Certification of Eligibility, for construction contracts. 41 U.S.C. 1304 discourages adding certifications to the FAR.

- Paragraph (k) of the DOL clause, Waiver, is not included in the FAR clause 52.222–62, although it is included at FAR 22.2107. The FAR clause requirements become contract requirements, which likewise cannot be waived, thus separate inclusion is unnecessary.

C. Conforming Changes

1. References to the Office of Management and Budget (OMB) clearances for the information collection requirements on the DOL final rule are added at FAR 1.106. The FAR rule does not add any burdens beyond those already approved by the Office of Information and Regulatory Affairs in OMB in connection with the DOL final rule on Paid Sick Leave.

2. FAR 11.500, Scope, in FAR subpart 11.5, Liquidated Damages, is modified to exclude application to liquidated damages related to paid sick leave for Federal contractors (FAR subpart 22.21).

3. FAR 22.403–4, Department of Labor regulations involving construction, is moved to the end of the section, renumbered as 22.403–6, and updated with references to parts 10 and 13, which implement E.O.s 13658 and 13706. New sections 22.403–5 and 22.1002–6 are added, citing E.O. 13706 and referencing the new paid sick leave subpart and clause.

4. The FAR clause at 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, is revised to include 52.222–62, Paid Sick Leave Under Executive Order 13706.

5. The FAR clause at 52.213–4, Terms and Conditions—Simplified Acquisitions (Other than Commercial Items), is revised to include 52.222–62, Paid Sick Leave Under Executive Order 13706.

6. The FAR clause at 52.244–6, Subcontracts for Commercial Items, is revised to address flowdown in clause

52.222–55, Minimum Wages under Executive Order 13658, and to include 52.222–62, Paid Sick Leave Under Executive Order 13706.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

This rule implements E.O. 13706, which does not exempt contracts at or below the SAT or contracts for the acquisition of commercial items. The rule applies to contracts that are covered by the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and meet or exceed the thresholds specified in those statutes. However, since these statutes

do not apply to contracts for acquisition of supplies, the rule does not cover acquisitions of COTS items.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was

subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

E.O. 13706, Establishing Paid Sick Leave for Federal Contractors, directed the Department of Labor (DOL) and the FAR Council to sequentially issue implementing regulations. In the preamble of its final rule (81 FR 67598, September 30, 2016), DOL's Wage and Hour Division published a regulatory impact analysis that included estimates of some major impacts, including transfers and compliance costs, associated with the overall implementation of the E.O. The DOL quantitative estimates are summarized in Table A.

TABLE A—E.O.-WIDE AFFECTED EMPLOYEES AND SELECTED CATEGORIES OF REGULATORY COSTS AND TRANSFERS
[Millions]

	Year 1	Year 2	Year 5	Year 10	Annualized (3%)	Annualized (7%)
Affected employees	0.22	0.45	1.15	1.20
Direct employer costs, including regulatory familiarization, administration, and initial and recurring implementation	\$125	\$11	\$17	\$11	\$25	\$27
Transfers from employers to employees	86	176	457	497	364	350

Due to these impacts, the Office of Management and Budget designated the DOL rule as economically significant and major. Because we determine that the effects of the completed DOL rule are part of the baseline for the FAR's implementing rule at issue here, the incremental effects of this FAR rule itself are not economically significant. More information on the source of these impacts estimates are discussed below.

For FAR-based contracts, the E.O.'s paid sick leave requirements apply "to covered contracts where the solicitation for such contract has been issued, or the contract has been awarded outside the solicitation process, on or after . . . January 1, 2017, consistent with the effective date for the action taken by the Federal Acquisition Regulatory Council."

Of the entities with employees potentially affected by the E.O., DOL estimated that 91,878 are prime contractors (with contracts subject to the FAR and listed at *USASpending.gov*) and 24,352 are subcontractors. DOL assumed that regulatory familiarization and initial implementation costs are to be incurred per contractor, with per-contractor labor costs as shown in DOL Table 9. As noted in DOL's analysis, it is necessary to capture regulatory familiarization and implementation costs incurred by entities that do not yet hold federal contracts but will be

awarded contracts in the future. As regards FAR-based contracts, these costs are attributable to this interim final rule; however, the associated entities are omitted from the entity-count estimates derived from *USASpending.gov*, thus contributing to a tendency toward underestimation in the cost totals.

DOL assumes that recurring implementation and administration costs, along with transfers from employers to employees, are a function of the number of affected employees. DOL's Table 3 shows industry-specific estimates of total affected employees and of affected employees working on Federal contracts (as opposed to working for entities operating on federal property). The contract-work percentages derived from Table 3 are applied to the employee estimates in DOL Table 8, yielding an estimate that the FAR rule's recurring implementation and administration costs are 84 percent of the E.O.-wide costs in those categories, and to the transfer estimates in DOL Table 13, yielding an estimate that the FAR rule's transfer impacts are 86 percent of the E.O.-wide transfer impacts. DOL estimates that the effects grow over time according to the pattern shown in DOL Tables 8, 11, and 14.

V. Regulatory Flexibility Act

The DOL final rule included a Regulatory Flexibility Analysis, which concluded that the DOL rule will not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* DoD, GSA, and NASA have prepared an Initial Regulatory Flexibility Analysis (IRFA) of the FAR rule, which is summarized as follows:

This rule is necessary to implement Executive Order (E.O.) 13706, Establishing Paid Sick Leave for Federal Contractors, dated September 7, 2015, and associated Department of Labor (DOL) regulatory requirements at 29 CFR part 13.

The objective of this rule is to allow employees under covered contracts to accrue and use paid sick leave in accordance with E.O. 13706 and 29 CFR part 13.

This rule applies to contracts and subcontracts at all tiers covered by the Service Contract Labor Standards statute, or the Wage Rate Requirements (Construction) statute, which require performance in whole or in part within the United States. For procurement contracts where employees' wages are governed by the Fair Labor Standards Act, this rule applies when the contract exceeds the micro-purchase threshold, as defined in FAR 2.101. When performance is in part within and in part outside the United States, the rule applies to the part of the contract or subcontract performed within the United States. Data available through the Federal Procurement

Data System (FPDS) for Fiscal Year 2015, reveals contracts were awarded to 18,874 unique small business vendors for services, which contained the FAR clause at 52.222-41, Service Contract Labor Standards. Additionally, contracts were awarded to 6,753 unique small business vendors for construction, which contained the FAR clause at 52.222-6, Construction Wage Rate Requirements, for a total of 25,627 unique small businesses.

The DOL final rule identifies records to be kept by all firms, including small entities (29 CFR 13.25). Some records are already required under the Fair Labor Standards Act, Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, and their governing regulations. DOL noted in their final rule (81 FR 67598 at 67669) that OMB has assigned control number 1235-0029 for the new recordkeeping requirements related to paid sick leave. The information collection requirement under 1235-0029 includes recordkeeping and regulatory familiarization.

Regarding initial implementation, DOL assumed firms that need to create a sick leave policy will each spend 10 hours of time developing this policy, regardless of the number of employees, and firms with a program in place will spend one hour, regardless of the number of employees. DOL also stated in its final rule that “Transfers from small contractors and costs to small contractors in Year 1 are less than 0.02 percent of revenues on average and are no more than 0.17 percent in any industry”. Therefore, DOL believes its final rule will not have a significant impact on small businesses. The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known significant alternatives to the rule that would meet the requirements of the E.O. and DOL regulation and minimize any significant economic impact of the rule on small entities. In its final rule, DOL introduced several changes and clarifications that may ease the compliance burden. For instance, DOL provided greater detail and clarity about how companies with paid time off policies can use those policies to satisfy their obligations under the E.O. In addition, if a collective bargaining agreement (CBA) ratified before September 30, 2016, applies to an employee's work performed on or in connection with a covered contract and provides at least 56 hours of paid sick time each year, the employee will be exempted from the requirements of the E.O. and 29 CFR part 13 until CBA termination or January 1, 2020, whichever is earlier.

The rule was also modified to allow employers to meet the requirements of this rule through multiemployer plans or other funds, plans, or programs. This may ease the burden for those employers in industries with transitory or mobile workforces.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA and NASA invite comments from

small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2017-001), in correspondence.

VI. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. Chapter 35) does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved for the DOL regulations under OMB Control Numbers 1235-0018, Records to be kept by Employers—Fair Labor Standards Act, and 1235-0021, Employment Information Form. OMB assigned control number 1235-0029 for the new recordkeeping requirements related to paid sick leave, Government Contractor Paid Sick Leave (see 81 FR 67669).

VII. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. Section 7 of Executive Order (E.O.) 13706 entitled “Establishing Paid Sick Leave for Federal Contractors” requires that the order shall apply to covered contracts where the solicitation for such contracts has been issued on or after January 1, 2017. In addition, section 3 of the order directs the FAR Council to issue this regulation after the DOL issues its own regulations implementing the order. The DOL issued those regulations on September 30, 2016. Thus, it is necessary to publish an interim FAR rule in order to meet the specified applicability date of January 1, 2017.

However, pursuant to 41 U.S.C. 1707 and FAR 1.501-3(b), DoD, GSA, and NASA will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 1, 11, 22, and 52

Government procurement.

Dated: December 9, 2016.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA are amending 48 CFR parts 1, 11, 22, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 11, 22, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

■ 2. Amend section 1.106 by adding to the table, in numerical sequence, FAR segment “52.222-62” and its corresponding OMB Control No. “1235-0018, 1235-0021, 1235-0029”.

PART 11—DESCRIBING AGENCY NEEDS

■ 3. Revise section 11.500 to read as follows:

11.500 Scope.

(a) This subpart prescribes policies and procedures for using liquidated damages clauses in solicitations and contracts for supplies, services, research and development, and construction.

(b) This subpart does not apply to liquidated damages—

(1) For subcontracting plans (see 19.705-7);

(2) Related to the Contract Work Hours and Safety Standards statute (see subpart 22.3); or

(3) Related to paid sick leave for Federal contractors (see subpart 22.21).

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

■ 4. Amend section 22.403 by revising the section heading to read as follows:

22.403 Statutory, Executive order, and regulatory requirements.

22.403-4 [Removed]

■ 5. Remove section 22.403-4.

22.403-5 [Redesignated as section 22.403-4]

■ 6. Redesignate section 22.403-5 as section 22.403-4.

■ 7. Add a new section 22.403-5 to read as follows:

22.403-5 Executive Order 13706.

Executive Order 13706 establishes paid sick leave for employees of certain Federal contractors. See subpart 22.21

and the clause at 52.222–62, Paid Sick Leave under Executive Order 13706.

■ 8. Add section 22.403–6 to read as follows:

22.403–6 Department of Labor regulations involving construction.

(a) Under the statutes and Executive orders referred to in 22.403 and Reorganization Plan No. 14 of 1950 (3 CFR 1949–53 Comp., p. 1007), the Secretary of Labor has issued regulations in title 29, subtitle A, Code of Federal Regulations, prescribing standards and procedures to be observed by the Department of Labor and the Federal contracting agencies. Those standards and procedures applicable to contracts involving construction are implemented in this subpart.

(b) The Department of Labor regulations include—

(1) Part 1, relating to Construction Wage Rate Requirements statute minimum wage rates;

(2) Part 3, relating to the Copeland (Anti-Kickback) Act and requirements for submission of weekly statements of compliance and the preservation and inspection of weekly payroll records;

(3) Part 5, relating to enforcement of the—

(i) Construction Wage Rate Requirements statute;

(ii) Contract Work Hours and Safety Standards statute; and

(iii) Copeland (Anti-Kickback) Act;

(4) Part 6, relating to rules of practice for appealing the findings of the Administrator, Wage and Hour Division, in enforcement cases under the various labor statutes, and by which Administrative Law Judge hearings are held;

(5) Part 7, relating to rules of practice by which contractors and other interested parties may appeal to the Department of Labor Administrative Review Board, decisions issued by the Administrator, Wage and Hour Division, or administrative law judges under the various labor statutes;

(6) Part 10, relating to establishing a minimum wage for Federal contractors; and

(7) Part 13, relating to establishing paid sick leave for Federal contractors.

(c) Refer all questions relating to the application and interpretation of wage determinations (including the classifications therein) and the interpretation of the Department of Labor regulations in this subsection to the Administrator, Wage and Hour Division.

■ 9. Amend section 22.1002 by revising the section heading to read as follows:

22.1002 Statutory and Executive order requirements.

■ 10. Add section 22.1002–6 to read as follows:

22.1002–6 Executive Order 13706.

Executive Order 13706 establishes paid sick leave for employees of certain Federal contractors. See subpart 22.21 and the clause at 52.222–62, Paid Sick Leave under Executive Order 13706.

■ 11. Add subpart 22.21 to read as follows:

Subpart 22.21—Establishing Paid Sick Leave for Federal Contractors

Sec.

22.2100 Scope of subpart.

22.2101 Definitions.

22.2102 Policy.

22.2103 Applicability.

22.2104 Exclusions.

22.2105 Paid sick leave for Federal contractors and subcontractors.

22.2106 Prohibited acts.

22.2107 Waiver of rights.

22.2108 Multiemployer plans or other funds, plans, or programs.

22.2109 Enforcement of Executive Order 13706 paid sick leave requirements.

22.2110 Contract clause.

Subpart 22.21—Establishing Paid Sick Leave for Federal Contractors

22.2100 Scope of subpart.

This subpart prescribes policies and procedures to implement E.O. 13706, Establishing Paid Sick Leave for Federal Contractors, dated September 7, 2015, and Department of Labor implementing regulations at 29 CFR part 13.

22.2101 Definitions.

As used in this subpart (in accordance with 29 CFR 13.2)—

Accrual year means the 12-month period during which a contractor may limit an employee's accrual of paid sick leave to no less than 56 hours (see 29 CFR 13.5(b)(1)).

Certification issued by a health care provider has the meaning given in 29 CFR 13.2.

Employee—

(1)(i) Means any person engaged in performing work on or in connection with a contract covered by E.O. 13706; and

(A) Whose wages under such contract are governed by the Service Contract Labor Standards statute (41 U.S.C. chapter 67), the Wage Rate Requirements (Construction) statute (40 U.S.C. chapter 31, subchapter IV), or the Fair Labor Standards Act (29 U.S.C. chapter 8);

(B) Including employees who qualify for an exemption from the Fair Labor Standards Act's minimum wage and overtime provisions; and

(C) Regardless of the contractual relationship alleged to exist between the individual and the employer; and

(ii) Includes any person performing work on or in connection with the contract and individually registered in a bona fide apprenticeship or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

(2)(i) An employee performs on a contract if the employee directly performs the specific services called for by the contract; and

(ii) An employee performs in connection with a contract if the employee's work activities are necessary to the performance of a contract but are not the specific services called for by the contract.

Health care provider has the meaning given in 29 CFR 13.2.

Multiemployer plan means a plan to which more than one employer is required to contribute and which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer.

Paid sick leave means compensated absence from employment that is required by E.O. 13706 and 29 CFR part 13.

22.2102 Policy.

(a) The Government shall require contractors to allow employees performing work on or in connection with a contract covered by E.O. 13706 to accrue and use paid sick leave in accordance with the E.O. and 29 CFR part 13.

(b) *Interaction with other laws.* Nothing in E.O. 13706 or 29 CFR part 13 shall excuse noncompliance with or supersede any applicable Federal or State law, any applicable law or municipal ordinance, or a collective bargaining agreement requiring greater paid sick leave or leave rights than those established under E.O. 13706 and 29 CFR part 13. For additional details regarding interaction with the Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, the Family and Medical Leave Act, and State and local paid sick time laws, see 29 CFR 13.5(f)(2) through (4).

(c) *Interaction with paid time off policies.* In accordance with 29 CFR 13.5(f)(5)(i), the paid sick leave requirements of E.O. 13706 and 29 CFR part 13 may be satisfied by a contractor's voluntary paid time off policy, whether provided pursuant to a

collective bargaining agreement or otherwise, where the voluntary paid time off policy meets or exceeds the requirements. For additional details regarding paid time off policies, see 29 CFR 13.5(f)(5)(ii) and (iii).

(d) Unless otherwise provided in this subpart, compliance is the responsibility of the contractor, and enforcement is the responsibility of the Department of Labor.

22.2103 Applicability.

This subpart applies to—

(a) Contracts that—

(1) Are covered by the Service Contract Labor Standards statute (41 U.S.C. chapter 67, formerly known as the Service Contract Act, subpart 22.10), or the Wage Rate Requirements (Construction) statute (40 U.S.C. chapter 31, Subchapter IV, formerly known as the Davis-Bacon Act, subpart 22.4); and

(2) Require performance in whole or in part within the United States. When performance is in part within and in part outside the United States, this subpart applies to the part of the contract that is performed within the United States; and

(b) Employees performing on or in connection with such contracts whose wages are governed by the Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, or the Fair Labor Standards Act, including employees who qualify for an exemption from the Fair Labor Standards Act's minimum wage and overtime provisions.

22.2104 Exclusions.

The following are excluded from coverage under this subpart:

(a) Employees performing in connection with contracts covered by the E.O. for less than 20 percent of their work hours in a given workweek. This exclusion is inapplicable to employees performing on contracts covered by the E.O., *i.e.*, those employees directly engaged in performing the specific work called for by the contract, at any point during the workweek (see 29 CFR 13.4(e)).

(b) Until the earlier of the date the agreement terminates or January 1, 2020, employees whose covered work is governed by a collective bargaining agreement ratified before September 30, 2016, that—

(1) Already provides 56 hours (or 7 days, if the agreement refers to days rather than hours) of paid sick time (or paid time off that may be used for reasons related to sickness or health care) each year; or

(2) Provides less than 56 hours (or 7 days, if the agreement refers to days

rather than hours) of paid sick time (or paid time off that may be used for reasons related to sickness or health care) each year, provided that each year the contractor provides covered employees with the difference between 56 hours (or 7 days) and the amount provided under the existing agreement in accordance with 29 CFR 13.4(f).

(c) The Government's unilateral exercise of a pre-negotiated option to renew an existing contract that does not contain the clause at 52.222-62 will not automatically trigger the application of that clause. (See definition of "new contract" at 29 CFR 13.2).

22.2105 Paid sick leave for Federal contractors and subcontractors.

In accordance with 29 CFR 13.5, and by operation of the clause at 52.222-62, Paid Sick Leave Under Executive Order 13706, the following contractor requirements apply:

(a) *Accrual.* (1) Contractors are required to permit an employee to accrue not less than 1 hour of paid sick leave for every 30 hours worked on or in connection with a contract covered by the E.O. (see 29 CFR 13.5(a)(1)).

(2) Contractors are required to inform each employee, in writing, of the amount of paid sick leave the employee has accrued but not used no less than once each pay period or each month, whichever interval is shorter, as well as upon a separation from employment and upon reinstatement of paid sick leave, pursuant to 29 CFR 13.5(b)(4) (see 29 CFR 13.5(a)(2)).

(3) Contractors may choose to provide employees with at least 56 hours of paid sick leave at the beginning of each accrual year rather than allowing the employee to accrue such leave based on hours worked over time (see 29 CFR 13.5(a)(3)).

(b) *Maximum accrual, carryover, reinstatement, and payment for unused leave.* (1) Contractors may limit the amount of paid sick leave employees are permitted to accrue to not less than 56 hours in each accrual year (see 29 CFR 13.5(b)(1)).

(2) Paid sick leave shall carry over from one accrual year to the next. Paid sick leave carried over from the previous accrual year shall not count toward any limit the contractor sets on annual accrual (see 29 CFR 13.5(b)(2)).

(3) Contractors may limit the amount of paid sick leave an employee is permitted to have available for use at any point to not less than 56 hours (see 29 CFR 13.5(b)(3)).

(4) Contractors are required to reinstate paid sick leave for employees only when rehired by the same

contractor within 12 months after a job separation (see 29 CFR 13.5(b)(4)).

(5) Nothing in E.O. 13706 or 29 CFR part 13 requires contractors to make a financial payment to an employee for accrued paid sick leave that has not been used upon a separation from employment. If a contractor nevertheless makes such a payment in an amount equal to or greater than the value of the pay and benefits the employee would have received pursuant to 29 CFR 13.5(c)(3) had the employee used the paid sick leave, the contractor is relieved of the obligation to reinstate an employee's accrued paid sick leave upon rehiring the employee within 12 months of the separation pursuant to 29 CFR 13.5(b)(4) (see 29 CFR 13.5(b)(5)).

(c) *Use.* Contractors are required to permit an employee to use paid sick leave in accordance with 29 CFR 13.5(c).

(d) *Request for paid sick leave.* Contractors are required to permit an employee to use any or all of the employee's available paid sick leave upon the oral or written request of an employee that includes information sufficient to inform the contractor that the employee is seeking to be absent from work for a purpose described in 29 CFR 13.5(c) and, to the extent reasonably feasible, the anticipated duration of the leave (see 29 CFR 13.5(d)).

(e) *Certification or documentation for leave of 3 or more consecutive full workdays.* Contractors may require certification issued by a health care provider to verify the need for paid sick leave used for a purpose described in 29 CFR 13.5(c)(1)(i), (ii), or (iii), or documentation from an appropriate individual or organization to verify the need for paid sick leave used for a purpose described in 29 CFR 13.5(c)(1)(iv), only if the employee is absent for 3 or more consecutive full workdays (see 29 CFR 13.5(e)).

22.2106 Prohibited acts.

In accordance with 29 CFR 13.6, and by operation of the clause at 52.222-62, Paid Sick Leave Under Executive Order 13706, a contractor may not—

(a) Interfere with an employee's accrual or use of paid sick leave as required by E.O. 13706 or 29 CFR part 13 (see 29 CFR 13.6(a));

(b) Discharge or in any other manner discriminate against any employee for—

(1) Using, or attempting to use, paid sick leave as provided for under E.O. 13706 and 29 CFR part 13;

(2) Filing any complaint, initiating any proceeding, or otherwise asserting any right or claim under E.O. 13706 or 29 CFR part 13;

(3) Cooperating in any investigation or testifying in any proceeding under E.O. 13706 or 29 CFR part 13; or

(4) Informing any other person about his or her rights under E.O. 13706 or 29 CFR part 13 (see 29 CFR 13.6(b)); or

(c) Fail to make and maintain or to make available to authorized representatives of the Wage and Hour Division records for inspection, copying, and transcription as required by 29 CFR 13.25, or otherwise fail to comply with the requirements of 29 CFR 13.25 (see 29 CFR 13.6(c)).

22.2107 Waiver of rights.

Employees cannot waive, nor may contractors induce employees to waive, their rights under E.O. 13706 or 29 CFR part 13 (see 29 CFR 13.7).

22.2108 Multiemployer plans or other funds, plans, or programs.

Contractors may fulfill their obligations under E.O. 13706 and 29 CFR part 13 jointly with other contractors through a multiemployer plan, or may fulfill their obligations through an individual fund, plan, or program (see 29 CFR 13.8).

22.2109 Enforcement of Executive Order 13706 paid sick leave requirements.

(a) *Authority.* Section 4 of the E.O. grants to the Secretary of Labor the authority for investigating potential violations of, and obtaining compliance with, the E.O. The Secretary of Labor, in promulgating the implementing regulations required by section 3 of the E.O., has assigned this authority to the Administrator of the Wage and Hour Division. Contracting agencies do not have authority to conduct compliance investigations under 29 CFR part 13 as implemented in this subpart. This does not limit the contracting officer's authority to otherwise enforce the terms and conditions of the contract.

(b) *Complaints.* (1) Complaints are filed with the Administrator of the Wage and Hour Division and may be brought by any person (including the employee), entity, or organization that believes a violation of this subpart has occurred.

(2) The identity of any individual who makes a written or oral statement as a complaint or in the course of an investigation, as well as portions of the statement which would reveal the individual's identity, shall not be disclosed in any manner to anyone other than Federal officials without the prior consent of the individual, unless otherwise authorized by law.

(3) If the contracting agency receives a complaint or is notified that the Administrator of the Wage and Hour Division has received a complaint, the

contracting officer shall report, within 14 days, to the Department of Labor, Wage and Hour Division, Office of Government Contracts, 200 Constitution Avenue NW., Room S3006, Washington, DC 20210, all of the following information that is available without conducting an investigation:

(i) The complaint or description of the alleged violation.

(ii) Available statements by the employee, contractor, or any other person regarding the alleged violation.

(iii) Evidence that clause 52.222-62, Paid Sick Leave Under Executive Order 13706, was included in the contract.

(iv) Information concerning known settlement negotiations between the parties, if applicable.

(v) Any other relevant facts known to the contracting officer or other information requested by the Wage and Hour Division.

(c) *Investigations.* Complaints will be investigated by the Administrator of the Wage and Hour Division, if warranted, in accordance with the procedures in 29 CFR 13.43.

(d) *Remedies and sanctions—(1) Withholding or suspending payment.* The contracting officer shall, upon his or her own action or upon written request of the Administrator of the Wage and Hour Division—

(i)(A) Withhold or cause to be withheld from the contractor under the contract covered by the E.O. or any other Federal contract with the same contractor, so much of the accrued payments or advances as may be considered necessary to pay employees the full amount owed to compensate for any violation of E.O. 13706 or 29 CFR part 13; and

(B) In the event of any such violation, the contracting agency may, after authorization or by direction of the Administrator of the Wage and Hour Division and written notification to the contractor, take action to cause suspension of any further payment, advance, or guarantee of funds until such violations have ceased; or

(ii) Take action to cause suspension of any further payment, advance, or guarantee of funds to a contractor that has failed to make available for inspection, copying, and transcription any of the records identified in 29 CFR 13.25.

(2) *Civil actions to recover greater underpayments than those withheld.* (i) If the payments withheld under 29 CFR 13.11(c) are insufficient to reimburse all monetary relief due, or if there are no payments to withhold, the Department of Labor, following a final order of the Secretary of Labor, may bring an action against the contractor in any court of

competent jurisdiction to recover the remaining amount.

(ii) The Department of Labor shall, to the extent possible, pay any sums it recovers in this manner directly to the employees who suffered the violation(s) of 29 CFR 13.6(a) or (b).

(iii) Any sum not paid to an employee because of inability to do so within 3 years shall be transferred into the Treasury of the United States as miscellaneous receipts.

(3) *Termination.* Contracting officers may consider the failure of a contractor to comply with the requirements of E.O. 13706 or 29 CFR part 13 as grounds for termination for default or cause.

(4) *Debarment.* (i) The Department of Labor may initiate debarment proceedings under 29 CFR 13.44(d) and 29 CFR 13.52 whenever a contractor is found to have disregarded its obligations under E.O. 13706 or 29 CFR part 13.

(ii) Contracting officers shall consider notifying the agency suspending and debarring official in accordance with agency procedures when a contractor commits significant violations of contract terms and conditions related to this subpart (see subpart 9.4).

(5) *Remedies for interference.* (i) When the Administrator of the Wage and Hour Division determines that a contractor has interfered with an employee's accrual or use of paid sick leave in violation of 29 CFR 13.6(a), the Administrator of the Wage and Hour Division will notify the contractor and the relevant contracting agency of the interference and request that the contractor remedy the violation.

(ii) If the contractor does not remedy the violation, the Administrator of the Wage and Hour Division shall direct the contractor to provide any appropriate relief to the affected employee(s) in the investigative findings letter issued pursuant to 29 CFR 13.51. Such relief may include—

(A) Any pay and/or benefits denied or lost by reason of the violation;

(B) Other actual monetary losses sustained as a direct result of the violation; or

(C) Appropriate equitable or other relief.

(iii) Payment of liquidated damages in an amount equaling any monetary relief may also be directed unless such amount is reduced by the Administrator of the Wage and Hour Division because the violation was in good faith and the contractor had reasonable grounds for believing it had not violated the E.O. or 29 CFR part 13.

(iv) The Administrator of the Wage and Hour Division may additionally direct that payments due on the contract

or any other contract between the contractor and the Federal Government be withheld as may be necessary to provide any appropriate monetary relief. Upon the final order of the Secretary of Labor that monetary relief is due, the Administrator of the Wage and Hour Division may direct the relevant contracting agency to transfer the withheld funds to the Department of Labor for disbursement.

(6) Remedies for discrimination. (i) When the Administrator of the Wage and Hour Division determines that a contractor has discriminated against an employee in violation of 29 CFR 13.6(b), the Administrator of the Wage and Hour Division will notify the contractor and the relevant contracting agency of the discrimination and request that the contractor remedy the violation.

(ii) If the contractor does not remedy the violation, the Administrator of the Wage and Hour Division shall direct the contractor to provide appropriate relief to the affected employee(s) in the investigative findings letter issued pursuant to 29 CFR 13.51. Such relief may include, but is not limited to—

- (A) Employment;
(B) Reinstatement;
(C) Promotion; and
(D) Restoration of leave, or lost pay and/or benefits.

(iii) Payment of liquidated damages in an amount equaling any monetary relief may also be directed unless such amount is reduced by the Administrator of the Wage and Hour Division because the violation was in good faith and the contractor had reasonable grounds for believing the contractor had not violated the E.O. or 29 CFR part 13.

(iv) The Administrator of the Wage and Hour Division may additionally direct that payments due on the contract or any other contract between the contractor and the Federal Government be withheld as may be necessary to provide any appropriate monetary relief. Upon the final order of the Secretary of Labor that monetary relief is due, the Administrator of the Wage and Hour Division may direct the relevant contracting agency to transfer the withheld funds to the Department of Labor for disbursement.

(7) Recordkeeping. When a contractor fails to make, maintain, or protect records; or produce records when requested by authorized representatives of the Administrator of the Wage and Hour Division, or otherwise comply with the requirements of 29 CFR 13.25 in violation of 29 CFR 13.6(c), the Administrator of the Wage and Hour Division will request that the contractor remedy the violation. If the contractor fails to produce required records upon

request, the contracting officer shall, upon his or her own action or upon direction of an authorized representative of the Department of Labor, take such action as may be necessary to cause suspension of any further payment, advance, or guarantee of funds on the contract until such time as the violations are discontinued.

(e) Inclusion of contract clause. If a contracting agency fails to include the clause at FAR 52.222-62 in a contract to which the E.O. applies, the contracting officer, on his or her own initiative or within 15 days of notification by an authorized representative of the Department of Labor, shall incorporate the contract clause in the contract retroactive to commencement of performance under the contract through the exercise of any and all authority that may be needed (including, where necessary, its authority to negotiate or amend, its authority to pay any necessary additional costs, and its authority under any contract provision authorizing changes, cancellation, and termination).

22.2110 Contract clause.

Insert the clause at 52.222-62, Paid Sick Leave Under Executive Order 13706, in solicitations and contracts that include the clause at 52.222-6, Construction Wage Rate Requirements, or 52.222-41, Service Contract Labor Standards, where work is to be performed, in whole or in part, in the United States (the 50 States and the District of Columbia).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 12. Amend section 52.212-5 by—
a. Revising the date of the clause;
b. Redesignating paragraphs (c)(9) and (10) as paragraphs (c)(10) and (11), respectively;
c. Adding a new paragraph (c)(9);
d. Redesignating paragraphs (e)(1)(xviii) through (xx) as paragraphs (e)(1)(xix) through (xxi), respectively;
e. Adding a new paragraph (e)(1)(xviii); and
f. In Alternate II:
i. Revising the date of the alternate;
ii. Redesignating paragraphs (e)(1)(ii)(R) and (S) as paragraphs (e)(1)(ii)(S) and (T), respectively; and
iii. Adding a new paragraph (e)(1)(ii)(R).

The revisions and additions read as follows:

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (JAN 2017)

* * * * *

(c) * * *
(9) 52.222-62, Paid Sick Leave Under Executive Order 13706 (JAN 2017) (E.O. 13706).

* * * * *

(e)(1) * * *
(xviii) 52.222-62 Paid Sick Leave Under Executive Order 13706 (JAN 2017) (E.O. 13706).

* * * * *

Alternate II (JAN 2017). * * *

* * * * *

(e)(1) * * *

(ii) * * *

(R) 52.222-62 Paid Sick Leave Under Executive Order 13706 (JAN 2017) (E.O. 13706).

* * * * *

- 13. Amend section 52.213-4 by—
a. Revising the date of the clause and paragraph (a)(2)(viii);
b. Redesignating paragraphs (b)(1)(x) through (xx) as paragraphs (b)(1)(xi) through (xxi), respectively; and
c. Adding a new paragraph (b)(1)(x).

The revisions and addition read as follows:

52.213-4 Terms and Conditions—Simplified Acquisitions (Other than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other than Commercial Items) (JAN 2017)

(a) * * *

(2) * * *

(viii) 52.244-6, Subcontracts for Commercial Items (JAN 2017).

(b) * * *

(1) * * *

(x) 52.222-62, Paid Sick Leave Under Executive Order 13706 (JAN 2017) (E.O. 13706) (Applies when 52.222-6 or 52.222-41 are in the contract and performance in whole or in part is in the United States (the 50 States and the District of Columbia.))

* * * * *

- 14. Add section 52.222-62 to read as follows:

52.222-62 Paid Sick Leave Under Executive Order 13706.

As prescribed at 22.2110, insert the following clause:

Paid Sick Leave Under Executive Order 13706 (JAN 2017)

(a) Definitions. As used in this clause (in accordance with 29 CFR 13.2)—

Child, domestic partner, and domestic violence have the meaning given in 29 CFR 13.2.

Employee—(1)(i) Means any person engaged in performing work on or in connection with a contract covered by Executive Order (E.O.) 13706; and

(A) Whose wages under such contract are governed by the Service Contract Labor Standards statute (41 U.S.C. chapter 67), the Wage Rate Requirements (Construction) statute (40 U.S.C. chapter 31, subchapter IV), or the Fair Labor Standards Act (29 U.S.C. chapter 8);

(B) Including employees who qualify for an exemption from the Fair Labor Standards Act's minimum wage and overtime provisions;

(C) Regardless of the contractual relationship alleged to exist between the individual and the employer; and

(ii) Includes any person performing work on or in connection with the contract and individually registered in a bona fide apprenticeship or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

(2)(i) An employee performs "on" a contract if the employee directly performs the specific services called for by the contract; and

(ii) An employee performs "in connection with" a contract if the employee's work activities are necessary to the performance of a contract but are not the specific services called for by the contract.

Individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship has the meaning given in 29 CFR 13.2.

Multiemployer plan means a plan to which more than one employer is required to contribute and which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer.

Paid sick leave means compensated absence from employment that is required by E.O. 13706 and 29 CFR part 13.

Parent, sexual assault, spouse, and stalking have the meaning given in 29 CFR 13.2.

United States means the 50 States and the District of Columbia.

(b) *Executive Order 13706*. (1) This contract is subject to E.O. 13706 and the regulations issued by the Secretary of Labor in 29 CFR part 13 pursuant to the E.O.

(2) If this contract is not performed wholly within the United States, this clause only applies with respect to that part of the contract that is performed within the United States.

(c) *Paid sick leave*. The Contractor shall—

(1) Permit each employee engaged in performing work on or in connection with this contract to earn not less than 1 hour of paid sick leave for every 30 hours worked;

(2) Allow accrual and use of paid sick leave as required by E.O. 13706 and 29 CFR part 13;

(3) Comply with the accrual, use, and other requirements set forth in 29 CFR 13.5 and 13.6, which are incorporated by reference in this contract;

(4) Provide paid sick leave to all employees when due free and clear and without subsequent deduction (except as otherwise provided by 29 CFR 13.24), rebate, or kickback on any account;

(5) Provide pay and benefits for paid sick leave used no later than one pay period following the end of the regular pay period in which the paid sick leave was taken; and

(6) Be responsible for the compliance by any subcontractor with the requirements of E.O. 13706, 29 CFR part 13, and this clause.

(d) Contractors may fulfill their obligations under E.O. 13706 and 29 CFR part 13 jointly with other contractors through a multiemployer plan, or may fulfill their obligations through an individual fund, plan, or program (see 29 CFR 13.8).

(e) *Withholding*. The Contracting Officer will, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this or any other Federal contract with the same Contractor, so much of the accrued payments or advances as may be considered necessary to pay employees the full amount owed to compensate for any violation of the requirements of E.O. 13706, 29 CFR part 13, or this clause, including—

(1) Any pay and/or benefits denied or lost by reason of the violation;

(2) Other actual monetary losses sustained as a direct result of the violation; and

(3) Liquidated damages.

(f) *Payment suspension/contract termination/contractor debarment*. (1) In the event of a failure to comply with E.O. 13706, 29 CFR part 13, or this clause, the contracting agency may, on its own action or after authorization or by direction of the Department of Labor and written notification to the Contractor take action to cause suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(2) Any failure to comply with the requirements of this clause may be grounds for termination for default or cause.

(3) A breach of the contract clause may be grounds for debarment as a contractor and subcontractor as provided in 29 CFR 13.52.

(g) The paid sick leave required by E.O. 13706, 29 CFR part 13, and this clause is in addition to the Contractor's obligations under the Service Contract Labor Standards statute and Wage Rate Requirements (Construction) statute, and the Contractor may not receive credit toward its prevailing wage or fringe benefit obligations under those Acts for any paid sick leave provided in satisfaction of the requirements of E.O. 13706 and 29 CFR part 13.

(h) Nothing in E.O. 13706 or 29 CFR part 13 shall excuse noncompliance with or supersede any applicable Federal or State law, any applicable law or municipal ordinance, or a collective bargaining agreement requiring greater paid sick leave or leave rights than those established under E.O. 13706 and 29 CFR part 13.

(i) *Recordkeeping*. (1) The Contractor shall make and maintain, for no less than three (3) years from the completion of the work on the contract, records containing the following information for each employee, which the

Contractor shall make available upon request for inspection, copying, and transcription by authorized representatives of the Administrator of the Wage and Hour Division of the Department of Labor:

(i) Name, address, and social security number of each employee.

(ii) The employee's occupation(s) or classification(s).

(iii) The rate or rates of wages paid (including all pay and benefits provided).

(iv) The number of daily and weekly hours worked.

(v) Any deductions made.

(vi) The total wages paid (including all pay and benefits provided) each pay period.

(vii) A copy of notifications to employees of the amount of paid sick leave the employee has accrued, as required under 29 CFR 13.5(a)(2).

(viii) A copy of employees' requests to use paid sick leave, if in writing, or, if not in writing, any other records reflecting such employee requests.

(ix) Dates and amounts of paid sick leave taken by employees (unless the Contractor's paid time off policy satisfies the requirements of E.O. 13706 and 29 CFR part 13 as described in 29 CFR 13.5(f)(5), leave shall be designated in records as paid sick leave pursuant to E.O. 13706).

(x) A copy of any written responses to employees' requests to use paid sick leave, including explanations for any denials of such requests, as required under 29 CFR 13.5(d)(3).

(xi) Any records reflecting the certification and documentation the Contractor may require an employee to provide under 29 CFR 13.5(e), including copies of any certification or documentation provided by an employee.

(xii) Any other records showing any tracking of or calculations related to an employee's accrual or use of paid sick leave.

(xiii) The relevant contract.

(xiv) The regular pay and benefits provided to an employee for each use of paid sick leave.

(xv) Any financial payment made for unused paid sick leave upon a separation from employment intended, pursuant to 29 CFR 13.5(b)(5), to relieve the Contractor from the obligation to reinstate such paid sick leave as otherwise required by 29 CFR 13.5(b)(4).

(2)(i) If the Contractor wishes to distinguish between an employee's covered and noncovered work, the Contractor shall keep records or other proof reflecting such distinctions. Only if the Contractor adequately segregates the employee's time will time spent on noncovered work be excluded from hours worked counted toward the accrual of paid sick leave. Similarly, only if the Contractor adequately segregates the employee's time may the Contractor properly refuse an employee's request to use paid sick leave on the ground that the employee was scheduled to perform noncovered work during the time he or she asked to use paid sick leave.

(ii) If the Contractor estimates covered hours worked by an employee who performs work in connection with contracts covered by the E.O. pursuant to 29 CFR 13.5(a)(1)(i) or (iii), the Contractor shall keep records or

other proof of the verifiable information on which such estimates are reasonably based. Only if the Contractor relies on an estimate that is reasonable and based on verifiable information will an employee's time spent in connection with uncovered work be excluded from hours worked counted toward the accrual of paid sick leave. If the Contractor estimates the amount of time an employee spends performing in connection with contracts covered by the E.O., the Contractor shall permit the employee to use his or her paid sick leave during any work time for the Contractor.

(3) In the event the Contractor is not obligated by the Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, or the Fair Labor Standards Act to keep records of an employee's hours worked, such as because the employee is exempt from the Fair Labor Standards Act's minimum wage and overtime requirements, and the Contractor chooses to use the assumption permitted by 29 CFR 13.5(a)(1)(iii), the Contractor is excused from the requirement in paragraph (i)(1)(iv) of this clause and 29 CFR 13.25(a)(4) to keep records of the employee's number of daily and weekly hours worked.

(4)(i) Records relating to medical histories or domestic violence, sexual assault, or stalking, created for purposes of E.O. 13706, whether of an employee or an employee's child, parent, spouse, domestic partner, or other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship, shall be maintained as confidential records in separate files/records from the usual personnel files.

(ii) If the confidentiality requirements of the Genetic Information Nondiscrimination Act of 2008 (GINA), section 503 of the Rehabilitation Act of 1973, and/or the Americans with Disabilities Act (ADA) apply to records or documents created to comply with the recordkeeping requirements in this contract clause, the records and documents shall also be maintained in compliance with the confidentiality requirements of the GINA, section 503 of the Rehabilitation Act of 1973, and/or ADA as described in 29 CFR 1635.9, 41 CFR 60-741.23(d), and 29 CFR 1630.14(c)(1), respectively.

(iii) The Contractor shall not disclose any documentation used to verify the need to use 3 or more consecutive days of paid sick leave for the purposes listed in 29 CFR 13.5(c)(1)(iv) (as described in 29 CFR 13.5(e)(1)(ii)) and shall maintain confidentiality about any domestic abuse, sexual assault, or stalking, unless the employee consents or when disclosure is required by law.

(5) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(6) Nothing in this contract clause limits or otherwise modifies the Contractor's recordkeeping obligations, if any, under the Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, the Fair Labor Standards Act, the Family and Medical Leave Act, E.O. 13658,

their respective implementing regulations, or any other applicable law.

(j) *Interference/discrimination.* (1) The Contractor shall not in any manner interfere with an employee's accrual or use of paid sick leave as required by E.O. 13706 or 29 CFR part 13. Interference includes, but is not limited to—

(i) Miscalculating the amount of paid sick leave an employee has accrued;

(ii) Denying or unreasonably delaying a response to a proper request to use paid sick leave;

(iii) Discouraging an employee from using paid sick leave;

(iv) Reducing an employee's accrued paid sick leave by more than the amount of such leave used;

(v) Transferring an employee to work on contracts not covered by the E.O. to prevent the accrual or use of paid sick leave;

(vi) Disclosing confidential information contained in certification or other documentation provided to verify the need to use paid sick leave; or

(vii) Making the use of paid sick leave contingent on the employee's finding a replacement worker or the fulfillment of the Contractor's operational needs.

(2) The Contractor shall not discharge or in any other manner discriminate against any employee for—

(i) Using, or attempting to use, paid sick leave as provided for under E.O. 13706 and 29 CFR part 13;

(ii) Filing any complaint, initiating any proceeding, or otherwise asserting any right or claim under E.O. 13706 and 29 CFR part 13;

(iii) Cooperating in any investigation or testifying in any proceeding under E.O. 13706 and 29 CFR part 13; or

(iv) Informing any other person about his or her rights under E.O. 13706 and 29 CFR part 13.

(k) *Notice.* The Contractor shall notify all employees performing work on or in connection with a contract covered by the E.O. of the paid sick leave requirements of E.O. 13706, 29 CFR part 13, and this clause by posting a notice provided by the Department of Labor in a prominent and accessible place at the worksite so it may be readily seen by employees. Contractors that customarily post notices to employees electronically may post the notice electronically, provided such electronic posting is displayed prominently on any Web site that is maintained by the Contractor, whether external or internal, and customarily used for notices to employees about terms and conditions of employment.

(l) *Disputes concerning labor standards.* Disputes related to the application of E.O. 13706 to this contract shall not be subject to the general disputes clause of the contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR part 13. Disputes within the meaning of this contract clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the Department of Labor, or the employees or their representatives.

(m) *Subcontracts.* The Contractor shall insert the substance of this clause, including

this paragraph (m), in all subcontracts, regardless of dollar value, that are subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the United States.

(End of clause)

■ 15. Amend section 52.244-6 by—

■ a. Revising the date of the clause and paragraph (c)(1)(xii);

■ b. Redesignating paragraphs (c)(1)(xv) through (xvii) as paragraphs (c)(1)(xvi) through (xviii), respectively; and

■ c. Adding a new paragraph (c)(1)(xv).

The revisions and addition read as follows:

52.244-6 Subcontracts for Commercial Items.

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Subcontracts for Commercial Items (JAN 2017)

* * * * *

(c)(1) * * *

(xii) 52.222-55, Minimum Wages under Executive Order 13658 (DEC 2015), if flowdown is required in accordance with paragraph (k) of FAR clause 52.222-55.

* * * * *

(xv) 52.222-62, Paid Sick Leave Under Executive Order 13706 (JAN 2017) (E.O. 13706), if flowdown is required in accordance with paragraph (m) of FAR clause 52.222-62.

* * * * *

[FR Doc. 2016-30090 Filed 12-15-16; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 4, 9, 17, 22, 42, and 52

[FAC 2005-93; FAR Case 2014-025; Item II; Docket No. 2014-0025; Sequence No. 2]

RIN 9000-AN30

Federal Acquisition Regulation; Fair Pay and Safe Workplaces; Injunction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule; injunction.

SUMMARY: A final rule was published in the **Federal Register** on August 25, 2016 amending the Federal Acquisition Regulation (FAR) to implement the Executive Order (E.O.) on Fair Pay and Safe Workplaces. The E.O. was designed