

location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: February 13, 1996.

Bob Armstrong,

Assistant Secretary of the Interior.

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067-AC39

Exemption From Garnishment for Temporary Housing Assistance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This final rule establishes that all financial assistance provided under the Disaster Housing Program is exempt from garnishment, seizure, encumbrance, levy, execution, pledge, attachment, release, or waiver.

EFFECTIVE DATE: March 28, 1996.

FOR FURTHER INFORMATION CONTACT: Laurence W. Zensinger, Response and Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-4262, (facsimile) 202-646-2730.

SUPPLEMENTARY INFORMATION: Financial assistance provided under the Disaster Housing Program is not currently exempt from garnishment. Financial assistance under the Individual and Family Grant (IFG) Program is exempt from garnishment as specified in 44 CFR 206.131(l). The purpose of financial assistance provided under the Disaster Housing Program is to aid the applicant in obtaining safe housing following a

Presidentially declared disaster. When financial assistance provided to an applicant is garnished, the housing needs of the applicant remain unmet. Regulatory exemption from garnishment serves the intent of the Disaster Housing Program. This final rule provides needed protection for applicants who are awarded assistance.

FEMA previously published this as a proposed rule (69 FR 43740, August 23, 1995), inviting comments. We received one brief postcard comment in support of the proposed rule. We are publishing the final rule with no changes from what we published in the proposed rule.

National Environmental Policy Act

This final rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Executive Order 12866, Regulatory Planning and Review

This final rule is not a significant regulatory action within the meaning of § 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735. To the extent possible this final rule adheres to the regulatory principles set forth in E.O. 12866, but it has not been reviewed by the Office of Management and Budget under the provisions of E.O. 12866.

Paperwork Reduction Act

This final rule does not contain a collection of information requirement as described in section 3504(h) of the Paperwork Reduction Act.

Executive Order 12612, Federalism

This final rule involves no policies that have federalism implications under E.O. 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This final rule meets the applicable standards of § 2(b)(2) of E.O. 12778.

List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Disaster assistance, Housing.

Accordingly, 44 CFR part 206 is amended as follows:

PART 206—FEDERAL DISASTER ASSISTANCE FOR DISASTERS DECLARED ON OR AFTER NOVEMBER 23, 1988

Subpart D—Temporary Housing Assistance

1. The authority citation for part 206 is revised to read as follows:

Authority: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq.; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329, 5 U.S.C. App. 1; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412, as amended; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

2. Section 206.101(g) is amended to add introductory text to read as follows:

§ 206.101 Temporary housing assistance.

* * * * *

(g) *Forms of Temporary Housing Assistance.* All proceeds received or receivable by the applicant under § 206.101 shall be exempt from garnishment, seizure, encumbrance, levy, execution, pledge, attachment, release, or waiver. No rights under this provision are assignable or transferable.

* * * * *

Dated: February 20, 1996.

William C. Tidball,

Associate Director, Response and Recovery.

[FR Doc. 96-4416 Filed 2-26-96; 8:45 am]

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1823 and 1852

RIN 2700-AB68

Drug and Alcohol Testing of Contractor Employees

AGENCY: Office of Procurement, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This rule implements the Civil Space Employee Testing Act of 1991, which requires NASA contractors to institute and maintain a program for achieving a drug and alcohol-free workforce. Contractor programs shall provide for preemployment, reasonable suspicion, random, post-accident, and periodic recurring (follow-up) testing of contractor employees responsible for safety-sensitive, security, or National security functions for use, in violation of applicable law or Federal regulation, of alcohol or a controlled substance.

EFFECTIVE DATE: March 28, 1996.

FOR FURTHER INFORMATION CONTACT: David K. Beck, (202) 358-0482.

SUPPLEMENTARY INFORMATION:

Background

The Civil Space Employees Testing Act of 1991, Public Law 102-195, sec. 21, 105 Stat. 1616 to 1619, requires NASA to prescribe regulations that require testing of NASA contractor

employees conducting safety-sensitive, security, and National security functions for use, in violation of applicable law or Federal regulation, of alcohol or a controlled substance. NASA published a proposed rule on July 13, 1993, 58 FR 37697. Public comments on the proposed rule have been considered in developing this rule.

Changes to Rule

A definition has been added to 1823.570-2 for the phrase "use, in violation of applicable law or Federal regulation, of alcohol." The definition of "employee in a sensitive position" has been expanded to include any applicant who is interviewed for a sensitive position.

In response to public comments, 1823.570-3 has been revised to add a contract threshold of \$5 million, clarify application of the clause, and revise the exception for "commercial products" to cover "commercial items." The exception for contracts performed outside the U.S. has been removed. However, the clause has been revised to address testing outside the U.S.

Editorial changes have been made to 1823.570-4 to shorten and, in response to a public comment, clarify the section.

In response to a public comment, paragraph (b) of the clause at 1852.223-74 has been revised to remove the discussion of NASA Management Instruction (NMI) 3792.3B, "NASA Plan for a Drug-Free Workplace." Appendix C of the NMI, sets forth guidelines that NASA follows in making determinations as to which of its employees are in sensitive positions. A contractor may follow these NASA guidelines in making determinations as to which of its employees performing on the contract are "employee(s) in a sensitive position." However, there is no need for NASA to include this guidance in the contract.

In response to a public comment, paragraph (b) has been revised to allow establishment of testing and rehabilitation programs in cooperation with other contractors or organizations.

To give contractors flexibility in tailoring their programs to test for the use of controlled substances that pose the greatest threat to safety, security, or National security, paragraph (b)(3) of the clause requires testing only for marijuana and cocaine but allows the contractor to test for other controlled substances.

Paragraph (b)(4) of the clause incorporates testing procedures established by the Department of Transportation in 49 CFR part 40.

Paragraphs (c) and (d) of the clause are combined and clarified.

In response to public comments, a paragraph addressing labor agreements has been added. It uses language from the Department of Energy rule at 10 CFR 707.15 and the NASA rule proposed for NASA employees (58 FR 36159, July 6, 1993, proposed for 14 CFR 1272.104).

In response to public comments, paragraph (g) has been revised to state that the clause does not apply to any subcontract for commercial items.

Starting Date for Drug and Alcohol Testing

NASA requested comments on the amount of time that contractors will need, following contract award, to begin their drug and alcohol testing programs in order to meet the requirements of the proposed contract clause. Estimates included "12 to 18 months," "24 to 36 months," or longer. Negotiation of labor agreements was cited as requiring considerable time. Based on these comments, NASA has revised the clause to address labor agreements. The rule does not otherwise specify the amount of time that is considered reasonable for implementing the required testing. As with other elements of contract performance, it is anticipated that the contractor will make sufficient progress on implementing this program to ensure contract performance.

Procedural Requirements

Review Under the Regulatory Flexibility Act

The rule was reviewed under the Regulatory Flexibility Act of 1980. NASA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Review Under the Paperwork Reduction Act

Under 5 CFR 1320.5(b)(2)(i), NASA is required to inform potential persons who are to respond to the collection of information that such persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. Under 5 CFR 1320.5(b)(2)(ii)(C), this paragraph meets that display requirement by providing the following statement: information collection associated with this rule has been approved under OMB Control Numbers 2700-0085 and 2700-0089.

List of Subjects in 48 CFR Parts 1823 and 1852

Government procurement.

Deidre A. Lee,

Associate Administrator for Procurement.

Accordingly, 48 CFR parts 1823 and 1852 are amended as follows:

PART 1823—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

1. The authority citation for 48 CFR Parts 1823 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

2. Subpart 1823.5 is added to read as follows:

Subpart 1823.5—Drug-Free Workplace

Sec.

1823.570 Drug- and alcohol-free workforce.

1823.570-1 Scope.

1823.570-2 Definitions.

1823.570-3 Contract clause.

1823.570-4 Suspension of payments, termination of contract, and debarment and suspension actions.

1823.570 Drug- and alcohol-free workforce.

1823.570-1 Scope.

Sections 1823.570 to 1823.570-4 set 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.

1823.570-2 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 to 1823.570-4 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 preemployment 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 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.

1823.570-3 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).

1823.570-4 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.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 1852.223-74 is added to read as follows:

1852.223-74 Drug- and alcohol-free workforce.

As prescribed in 1823.570-3, insert the following clause:

Drug- and Alcohol-Free Workforce (March 1996)

(a) *Definitions.* As used in this clause the terms "employee," "controlled substance," "employee in a sensitive position," and "use, in violation of applicable law or Federal regulation, of alcohol" are as defined in 48 CFR 1823.570-2.

(b) (1) The Contractor shall institute and maintain a program for achieving a drug- and alcohol-free workforce. As a minimum, the program shall provide for preemployment, reasonable suspicion, random, post-accident, and periodic recurring (follow-up) testing of contractor employees in sensitive positions for use, in violation of applicable law or Federal regulation, of alcohol or a controlled substance. The Contractor may establish its testing or rehabilitation program in cooperation with other contractors or organizations.

(2) This clause neither prohibits nor requires the Contractor to test employees in a foreign country. If the Contractor chooses to conduct such testing, this does not authorize the Contractor to violate foreign law in conducting such testing.

(3) The Contractor's program shall test for the use of marijuana and cocaine. The Contractor's program may test for the use of other controlled substances.

(4) The Contractor's program shall conform to the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" published by the Department of Health and Human Services (59 FR 29908, June 9, 1994) and the procedures in 49 CFR part 40, "Procedures for Transportation Workplace Drug Testing Programs," in which references to "DOT" shall be read as "NASA", and the split sample method of collection shall be used.

(c) (1) The Contractor's program shall provide, where appropriate, for the suspension, disqualification, or dismissal of any employee in a sensitive position in any instance where a test conducted and confirmed under the Contractor's program indicates that such individual has used, in violation of applicable law or Federal regulation, alcohol or a controlled substance.

(2) The Contractor's program shall further prohibit any such individual from working in a sensitive position on a NASA contract,

unless such individual has completed a program of rehabilitation described in paragraph (d) of this clause.

(3) The Contractor's program shall further prohibit any such individual from working in any sensitive position on a NASA contract if the individual is determined under the Contractor's program to have used, in violation of applicable law or Federal regulation, alcohol or a controlled substance and the individual meets any of the following criteria:

(i) The individual had undertaken or completed a rehabilitation program described in paragraph (d) of this clause prior to such use;

(ii) Following such determination, the individual refuses to undertake such a rehabilitation program;

(iii) Following such determination, the individual fails to complete such a rehabilitation program; or

(iv) The individual used a controlled substance or alcohol while on duty.

(d) The Contractor shall institute and maintain an appropriate rehabilitation program which shall, as a minimum, provide for the identification and opportunity for treatment of employees whose duties include responsibility for safety-sensitive, security, or National security functions who are in need of assistance in resolving problems with the use of alcohol or controlled substances.

(e) The requirements of this clause shall take precedence over any state or local Government laws, rules, regulations, ordinances, standards, or orders that are inconsistent with the requirements of this clause.

(f) For any collective bargaining agreement, the Contractor will negotiate the terms of its program with employee representatives, as appropriate, under labor relations laws or negotiated agreements. Such negotiation, however, cannot change the requirements of this clause. Employees covered under collective bargaining agreements will not be subject to the requirements of this clause until those agreements have been modified, as necessary; provided, however, that if one year after commencement of negotiation the parties have failed to reach agreement, an impasse will be determined to have been reached and the Contractor will unilaterally implement the requirements of this clause.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts in which work is performed by an employee in a sensitive position, except subcontracts for commercial items (see FAR parts 2 and 12).

(End of clause)

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