

Office of the Secretary of Labor

§ 13.11

other failure to comply with the requirements of § 13.25, constitutes a violation of Executive Order 13706, this part, and the underlying contract.

§ 13.7 Waiver of rights.

Employees cannot waive, nor may contractors induce employees to waive, their rights under Executive Order 13706 or this part.

§ 13.8 Multiemployer plans or other funds, plans, or programs.

(a) A contractor may fulfill its obligations under Executive Order 13706 and this part jointly with other contractors—that is, as though all of the contractors are a single contractor—through a multiemployer plan that provides paid sick leave in compliance with the rules and requirements of Executive Order 13706 and this part. Regardless of what functions the plan performs, each contractor remains responsible for any violation of the Order or this part that occurs during its employment of the employee.

(b) Nothing in this part prohibits a contractor from providing paid sick leave through a fund, plan, or program. Regardless of the manner in which a contractor provides paid sick leave or what functions any fund, plan, or program performs, the contractor remains responsible for any violation of the Order or this part with respect to any of its employees.

Subpart B—Federal Government Requirements

§ 13.11 Contracting agency requirements.

(a) *Contract clause.* The contracting agency shall include the Executive Order paid sick leave contract clause set forth in Appendix A of this part in all covered contracts and solicitations for such contracts, as described in § 13.3, except for procurement contracts subject to the FAR. The required contract clause directs, as a condition of payment, that all employees performing work on or in connection with covered contracts shall be provided paid sick leave as required by Executive Order 13706 and this part. For procurement contracts subject to the FAR, contracting agencies must use

the clause set forth in the FAR developed to implement this rule. Such clause will accomplish the same purposes as the clause set forth in Appendix A and be consistent with the requirements set forth in this rule.

(b) *Failure to include the contract clause.* Where the Department of Labor or the contracting agency discovers or determines, whether before or subsequent to a contract award, that a contracting agency made an erroneous determination that Executive Order 13706 and this part did not apply to a particular contract and/or failed to include the applicable contract clause in a contract to which the Executive Order and this part apply, the contracting agency, on its own initiative or within 15 calendar 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).

(c) *Withholding.* A contracting officer shall, upon his or her own action or upon written request of the Administrator, withhold or cause to be withheld from the prime contractor under the covered contract or any other Federal contract with the same prime 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 Executive Order 13706 or this part. In the event of any such violation, the agency may, after authorization or by direction of the Administrator 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. Additionally, any failure to comply with the requirements of Executive Order 13706 or this part may be grounds for termination of the right to proceed with the contract work. In such event, the contracting agency may enter into other contracts