### § 11.13 Public participation.

(a) When an agency has determined that preparation of an environmental impact statement is required, the agency shall publish a notice of intent to prepare an environmental impact statement in the FEDERAL REGISTER and shall invite public participation in the agency's scoping process as required by 40 CFR 1501.7.

(b) When the draft environmental impact statement has been prepared and filed with the EPA pursuant to §11.11(f), comments on the document shall be solicited from appropriate Federal, State and local agencies, Indian tribes, and other persons or organizations who may be interested or affected, as required by 40 CFR 1503.1.

(c) In the case of an action with effects primarily of local concern, agencies shall consider the use of clearinghouses, newspapers and other public media likely to generate local participation in the agency process as ways of supplementing the notices otherwise specified in this part. The use of such public media does not, however, require or authorized the use of paid advertising.

### § 11.14 Legislation.

Notwithstanding any provisions of this part, environmental assessments or impact statements prepared in connection with requests for new legislation or modification of existing statutes shall be handled in accordance with applicable OMB and Department of Labor procedures on the preparation and submission of legislative proposals and the requirements of 40 CFR 1506.8.

## PART 12—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

AUTHORITY: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91–646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987. title IV of Public Law 100–17, 101 Stat. 246–256 (42 U.S.C. 4601 note).

### § 12.1 Uniform relocation assistance and real property acquisition.

Regulations and procedures for complying with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L 91–646, 84 Stat. 1894, 42 U.S.C. 4601), as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987 (title IV of Pub. L. 100–17, 101 Stat. 246–255, 42 U.S.C. 4601 note) are set forth in 49 CFR part 24.

[52 FR 48020, Dec. 17, 1987, and 54 FR 8912, Mar. 2, 1989]

## PART 13—ESTABLISHING PAID SICK LEAVE FOR FEDERAL CONTRACTORS

### Subpart A—General

Sec.
13.1 Purpose and scope.
13.2 Definitions.
13.3 Coverage.
13.4 Exclusions.
13.5 Paid sick leave for Federal contractors and subcontractors.
13.6 Prohibited acts.
13.7 Waiver of rights.
13.8 Multiemployer plans or other funds, plans, or programs.

### Subpart B—Federal Government Requirements

13.11 Contracting agency requirements.
13.12 Department of Labor requirements.

### Subpart C—Contractor Requirements

13.21 Contract clause.
13.22 Paid sick leave.
13.23 Deductions.
13.24 Anti-kickback.
13.25 Records to be kept by contractors.
13.26 Notice.
13.27 Timing of pay.

### Subpart D—Enforcement

13.41 Complaints.
13.42 Wage and Hour Division conciliation.
13.43 Wage and Hour Division investigation.
13.44 Remedies and sanctions.

### Subpart E—Administrative Proceedings

13.51 Disputes concerning contractor compliance.
13.52 Debarment proceedings.
13.53 Referral to Chief Administrative Law Judge; amendment of pleadings.
13.54 Consent findings and order.

AUTHORITY: 5 U.S.C. 301; E.O. 13706, 80 FR 54697, 3 CFR, 2016 Comp., p. 367; Secretary's Order 01–2014, 79 FR 77527.

SOURCE: 81 FR 67709, Sept. 30, 2016, unless otherwise noted.

## Subpart A—General

### § 13.1 Purpose and scope.

(a) *Purpose.* This part contains the Department of Labor's rules relating to the administration and enforcement of Executive Order 13706 (Executive Order or the Order), ''Establishing Paid Sick Leave for Federal Contractors.'' The Order states that providing paid sick leave to employees will improve the health and performance of employees of Federal contractors and will bring benefits packages offered by Federal contractors in line with model employers, ensuring they remain competitive in the search for dedicated and talented employees. The Executive Order concludes that providing paid sick leave will result in savings and quality improvements in the work performed by parties who contract with the Federal Government that will in turn lead to improved economy and efficiency in Government procurement.

(b) *Policy.* Executive Order 13706 sets forth the general position of the Federal Government that providing access to paid sick leave on Federal contracts will increase efficiency and cost savings for the Federal Government. The Order therefore provides that executive departments and agencies shall, to the extent permitted by law, ensure that new covered contracts, contract-like instruments, and solicitations (collectively referred to as ''contracts'') include a clause, which the contractor and any subcontractors shall incorporate into lower-tier subcontracts, specifying, as a condition of payment, that employees will earn not less than 1 hour of paid sick leave for every 30 hours worked on or in connection with covered contracts.

(c) *Scope.* Neither Executive Order 13706 nor this part creates or changes any rights under the Contract Disputes Act or creates any private right of action. The Executive Order provides that disputes regarding whether a contractor has provided paid sick leave as prescribed by the Order, to the extent permitted by law, shall be disposed of only as provided in this part. However, nothing in the Order or this part is intended to limit or preclude a civil action under the False Claims Act, 31 U.S.C. 3730, or criminal prosecution under 18 U.S.C. 1001. The Order and this part similarly do not preclude judicial review of final decisions by the Secretary of Labor in accordance with the Administrative Procedure Act, 5 U.S.C. 701 *et seq.*

### § 13.2 Definitions.

For purposes of this part:

*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.

*Administrative Review Board* (ARB or Board) means the Administrative Review Board, U.S. Department of Labor.

*Administrator* means the Administrator of the Wage and Hour Division and includes any official of the Wage and Hour Division authorized to perform any of the functions of the Administrator under this part.

*As soon as is practicable* means as soon as both possible and practical, taking into account all of the facts and circumstances of the individual case.

*Certification issued by a health care provider* means any type of written document created or signed by a health care provider (or by a representative of the health care provider) that contains information verifying that the physical or mental illness, injury, medical condition, or need for diagnosis, care, or preventive care or other need for care referred to in §13.5(c)(1)(i), (ii), or (iii) exists. The health care provider (or representative) need not have seen the employee or the individual for whom the employee is caring in person to create a valid certification.

*Child* means:

(1) A biological, adopted, step, or foster son or daughter of the employee;

(2) A person who is a legal ward or was a legal ward of the employee when that individual was a minor or required a legal guardian;

(3) A person for whom the employee stands *in loco parentis* or stood *in loco parentis* when that individual was a minor or required someone to stand *in loco parentis;* or

(4) A child, as described in paragraphs (1) through (3) of this definition, of an employee's spouse or domestic partner.

*Concessions contract* or *contract for concessions* means a contract under which the Federal Government grants a right to use Federal property, including land or facilities, for furnishing services. The term *concessions contract* includes, but is not limited to, a contract the principal purpose of which is to furnish food, lodging, automobile fuel, souvenirs, newspaper stands, and/or recreational equipment, regardless of whether the services are of direct benefit to the Government, its personnel, or the general public.

*Contract* or *contract-like instrument* means an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. This definition includes, but is not limited to, a mutually binding legal relationship obligating one party to furnish services (including construction) and another party to pay for them. The term *contract* includes all contracts and any subcontracts of any tier thereunder, whether negotiated or advertised, including any procurement actions, lease agreements, cooperative agreements, provider agreements, intergovernmental service agreements, service agreements, licenses, permits, or any other type of agreement, regardless of nomenclature, type, or particular form, and whether entered into verbally or in writing. The term *contract* shall be interpreted broadly to include, but not be limited to, any contract that may be consistent with the definition provided in the Federal Acquisition Regulation (FAR) or applicable Federal statutes. This definition includes, but is not limited to, any contract that may be covered under any Federal procurement statute. Contracts may be the result of competitive bidding or awarded to a single source under applicable authority to do so. In addition to bilateral instruments, contracts include, but are not limited to, awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. The term *contract* includes contracts covered by the Service Contract Act, contracts covered by the Davis-Bacon Act, concessions contracts not subject to the Service Contract Act, and contracts in connection with Federal property or land and related to offering services for Federal employees, their dependents, or the general public.

*Contracting officer* means a representative of an executive department or agency with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. This term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer.

*Contractor* means any individual or other legal entity that is awarded a Federal Government contract or subcontract under a Federal Government contract. The term *contractor* refers to both a prime contractor and all of its subcontractors of any tier on a contract with the Federal Government. The term *contractor* includes lessors and lessees. The term *employer* is used interchangeably with the terms *contractor* and *subcontractor* in various sections of this part. The U.S. Government, its agencies, and instrumentalities are not contractors, subcontractors, employers, or joint employers for purposes of compliance with the provisions of the Executive Order.

*Davis-Bacon Act* (DBA) means the Davis-Bacon Act of 1931, as amended, 40 U.S.C. 3141 *et seq.*, and its implementing regulations.

*Domestic partner* means an adult in a committed relationship with another adult. A committed relationship is one in which the employee and the domestic partner of the employee are each other's sole domestic partner (and are not married to or domestic partners

with anyone else) and share responsibility for a significant measure of each other's common welfare and financial obligations. This includes, but is not limited to, any relationship between two individuals of the same or opposite sex that is granted legal recognition by a State or by the District of Columbia as a marriage or analogous relationship (including, but not limited to, a civil union).

*Domestic violence* means:

(1) Felony or misdemeanor crimes of violence (including threats or attempts) committed:

(i) By a current or former spouse, domestic partner, or intimate partner of the victim;

(ii) By a person with whom the victim shares a child in common;

(iii) By a person who is cohabitating with or has cohabitated with the victim as a spouse, domestic partner, or intimate partner;

(iv) By a person similarly situated to a spouse of the victim under civil or criminal domestic or family violence laws of the jurisdiction in which the victim resides or the events occurred; or

(v) By any other adult person against a victim who is protected from that person's acts under the civil or criminal domestic or family violence laws of the jurisdiction in which the victim resides or the events occurred.

(2) Domestic violence also includes any crime of violence considered to be an act of domestic violence under the civil or criminal domestic or family violence laws of the jurisdiction in which the victim resides or the events occurred.

*Employee* means any person engaged in performing work on or in connection with a contract covered by the Executive Order, and whose wages under such contract are governed by the Service Contract Act, the Davis-Bacon Act, 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, regardless of the contractual relationship alleged to exist between the individual and the employer. The term *employee* includes any person performing work on or in connection with a covered contract and individually registered in a bona fide apprenticeship or training program registered with the U.S. Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship. An employee performs ''on'' a contract if the employee directly performs the specific services called for by the contract. 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.

*Executive departments and agencies* means executive departments within the meaning of 5 U.S.C. 101, military departments within the meaning of 5 U.S.C. 102, or any independent establishments within the meaning of 5 U.S.C. 104(1) or 39 U.S.C. 201, and any wholly owned Government corporation within the meaning of 31 U.S.C. 9101.

*Executive Order 13495* or *Nondisplacement Executive Order* means Executive Order 13495 of January 30, 2009, Nondisplacement of Qualified Workers Under Service Contracts, 74 FR 6103 (Feb. 4, 2009), and its implementing regulations at 29 CFR part 9.

*Executive Order 13658* or *Minimum Wage Executive Order* means Executive Order 13658 of February 12, 2014, Establishing a Minimum Wage for Contractors, 79 FR 9851 (Feb. 20, 2014), and its implementing regulations at 29 CFR part 10.

*Fair Labor Standards Act* (FLSA) means the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 201 *et seq.*, and its implementing regulations.

*Family and Medical Leave Act* (FMLA) means the Family and Medical Leave Act of 1993, as amended, 29 U.S.C. 2601 *et seq.*, and its implementing regulations.

*Family violence* means any act or threatened act of violence, including any forceful detention of an individual that results or threatens to result in physical injury and is committed by a person against another individual (including an elderly individual) to or with whom such person is related by blood, is or was related by marriage or is or was otherwise legally related, or is or was lawfully residing.

*Federal Government* means an agency or instrumentality of the United States that enters into a contract pursuant to authority derived from the Constitution or the laws of the United States. For purposes of the Executive Order and this part, this definition does not include the District of Columbia, any Territory or possession of the United States, or any independent regulatory agency within the meaning of 44 U.S.C. 3502(5).

*Health care provider* means any practitioner who is licensed or certified under Federal or State law to provide the health-related service in question or any practitioner recognized by an employer or the employer's group health plan. The term includes, but is not limited to, doctors of medicine or osteopathy, podiatrists, dentists, psychologists, optometrists, chiropractors, nurse practitioners, nurse-midwives, clinical social workers, physician assistants, physical therapists, and Christian Science Practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts.

*Independent agencies* means independent regulatory agencies within the meaning of 44 U.S.C. 3502(5).

*Individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship* means any person with whom the employee has a significant personal bond that is or is like a family relationship, regardless of biological or legal relationship.

*Intimate partner* means a person who is or has been in a social relationship of a romantic or intimate nature with the victim, where the existence of such a relationship shall be determined based on a consideration of the length of the relationship; the type of relationship; and the frequency of interaction between the persons involved in the relationship.

*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.

*New contract* means a contract that results from a solicitation issued on or after January 1, 2017, or a contract that is awarded outside the solicitation process on or after January 1, 2017. This term includes both new contracts and replacements for expiring contracts. It does not apply to the unilateral exercise of a pre-negotiated option to renew an existing contract by the Federal Government. For purposes of the Executive Order, a contract that is entered into prior to January 1, 2017 will constitute a *new contract* if, through bilateral negotiation, on or after January 1, 2017:

(1) The contract is renewed;

(2) The contract is extended, unless the extension is made pursuant to a term in the contract as of December 31, 2016 providing for a short-term limited extension; or

(3) The contract is amended pursuant to a modification that is outside the scope of the contract.

*Obtain additional counseling, seek relocation, seek assistance from a victim services organization, or take related legal action,* used in reference to domestic violence, sexual assault, or stalking, means to spend time arranging, preparing for, or executing acts related to addressing physical injuries or mental or emotional impacts resulting from being a victim of domestic violence, sexual assault, or stalking. Such acts include finding and using services of a counselor or victim services organization intended to assist a victim to respond to or prevent future incidents of domestic violence, sexual assault, or stalking; identifying and moving to a different residence to avoid being a victim of domestic violence, sexual assault, or stalking; or a victim's pursuing any related legal action.

*Obtaining diagnosis, care, or preventive care from a health care provider* means receiving services from a health care provider, whether to identify, treat, or otherwise address an existing condition or to prevent potential conditions from arising. The term includes time spent traveling to and from the location at which such services are provided or recovering from receiving such services.

*Office of Administrative Law Judges* means the Office of Administrative Law Judges, U.S. Department of Labor.

*Option* means a unilateral right in a contract by which, for a specified time, the Government may elect to purchase

additional supplies or services called for by the contract, or may elect to extend the term of the contract.

*Paid sick leave* means compensated absence from employment that is required by Executive Order 13706 and this part.

*Parent* means:

(1) A biological, adoptive, step, or foster parent of the employee, or a person who was a foster parent of the employee when the employee was a minor;

(2) A person who is the legal guardian of the employee or was the legal guardian of the employee when the employee was a minor or required a legal guardian;

(3) A person who stands *in loco parentis* to the employee or stood *in loco parentis* to the employee when the employee was a minor or required someone to stand *in loco parentis;* or

(4) A parent, as described in paragraphs (1) through (3) of this definition, of an employee's spouse or domestic partner.

*Physical or mental illness, injury, or medical condition* means any disease, sickness, disorder, or impairment of, or any trauma to, the body or mind.

*Procurement contract for construction* means a procurement contract for the construction, alteration, or repair (including painting and decorating) of public buildings or public works and which requires or involves the employment of mechanics or laborers, and any subcontract of any tier thereunder. The term *procurement contract for construction* includes any contract subject to the Davis-Bacon Act.

*Procurement contract for services* means a contract the principal purpose of which is to furnish services in the United States through the use of service employees, and any subcontract of any tier thereunder. The term *procurement contract for services* includes any contract subject to the Service Contract Act.

*Related legal action* or *related civil or criminal legal proceeding,* used in reference to domestic violence, sexual assault, or stalking, means any type of legal action, in any forum, that relates to the domestic violence, sexual assault, or stalking, including, but not limited to, family, tribal, territorial, immigration, employment, administrative agency, housing matters, campus administrative or protection or stay-away order proceedings, and other similar matters; and criminal justice investigations, prosecutions, and post-trial matters (including sentencing, parole, and probation) that impact the victim's safety and privacy.

*Secretary* means the Secretary of Labor and includes any official of the U.S. Department of Labor authorized to perform any of the functions of the Secretary of Labor under this part.

*Service Contract Act* (SCA) means the McNamara-O'Hara Service Contract Act of 1965, as amended, 41 U.S.C. 6701 *et seq.*, and its implementing regulations.

*Sexual assault* means any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.

*Solicitation* means any request to submit offers, bids, or quotations to the Federal Government.

*Spouse* means the other person with whom an individual entered into marriage as defined or recognized under State law for purposes of marriage in the State in which the marriage was entered into or, in the case of a marriage entered into outside of any State, if the marriage is valid in the place where entered into and could have been entered into in at least one State. This definition includes an individual in a common law marriage that was entered into in a State that recognizes such marriages or, if entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State.

*Stalking* means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.

*United States* means the United States and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States, including corporations of which all or substantially all of the stock is owned by the United States, by the foregoing departments, establishments, agencies, and instrumentalities, including nonappropriated fund instrumentalities. When used in a

geographic sense, the *United States* means the 50 States and the District of Columbia.

*Victim services organization* means a nonprofit, nongovernmental, or tribal organization or rape crisis center, including a State or tribal coalition, that assists or advocates for victims of domestic violence, sexual assault, or stalking, including domestic violence shelters, faith-based organizations, and other organizations, with a documented history of effective work concerning domestic violence, sexual assault, or stalking.

*Violence Against Women Act* (VAWA) means the Violence Against Women Act of 1994, 42 U.S.C. 13925 *et seq.*, and its implementing regulations.

*Wage and Hour Division* means the Wage and Hour Division, U.S. Department of Labor.

### § 13.3 Coverage.

(a) This part applies to any new contract with the Federal Government, unless excluded by § 13.4, provided that:

(1)(i) It is a procurement contract for construction covered by the Davis-Bacon Act;

(ii) It is a contract for services covered by the Service Contract Act;

(iii) It is a contract for concessions, including any concessions contract excluded from coverage under the Service Contract Act by Department of Labor regulations at § 4.133(b); or

(iv) It is a contract in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public; and

(2) The wages of employees performing on or in connection with such contract are governed by the Davis-Bacon Act, the Service Contract Act, 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.

(b) For contracts covered by the Service Contract Act or the Davis-Bacon Act, this part applies to prime contracts only at the thresholds specified in those statutes. For procurement contracts where employees' wages are governed by the Fair Labor Standards Act, this part applies when the prime contract exceeds the micro-purchase threshold, as defined in 41 U.S.C. 1902(a). For all other prime contracts covered by Executive Order 13706 and this part and for all subcontracts awarded under prime contracts covered by Executive Order 13706 and this part, this part applies regardless of the value of the contract.

(c) This part only applies to contracts with the Federal Government requiring performance in whole or in part within the United States. If a contract with the Federal Government is to be performed in part within and in part outside the United States and is otherwise covered by the Executive Order and this part, the requirements of the Order and this part would apply with respect to that part of the contract that is performed within the United States.

(d) This part does not apply to contracts for the manufacturing or furnishing of materials, supplies, articles, or equipment to the Federal Government, including those that are subject to the Walsh-Healey Public Contracts Act, 41 U.S.C. 6501 *et seq.*

### § 13.4 Exclusions.

(a) *Grants.* The requirements of this part do not apply to grants within the meaning of the Federal Grant and Cooperative Agreement Act, as amended, 31 U.S.C. 6301 *et seq.*

(b) *Contracts and agreements with and grants to Indian Tribes.* This part does not apply to contracts and agreements with and grants to Indian Tribes under the Indian Self-Determination and Education Assistance Act, as amended, 25 U.S.C. 450 *et seq.*

(c) *Procurement contracts for construction that are excluded from coverage of the Davis-Bacon Act.* Procurement contracts for construction that are not covered by the Davis-Bacon Act are not subject to this part.

(d) *Contracts for services that are exempted from coverage under the Service Contract Act.* Service contracts, except for those expressly covered by § 13.3(a)(1)(iii) or (iv), that are exempt from coverage of the Service Contract Act pursuant to its statutory language at 41 U.S.C. 6702(b) or its implementing regulations, including those at § 4.115

through 4.122 and §4.123(d) and (e), are not subject to this part.

(e) *Employees performing in connection with covered contracts for less than 20 percent of their work hours in a given workweek.* The accrual requirements of this part do not apply to employees performing in connection with covered contracts, *i.e.*, those employees who perform work duties necessary to the performance of the contract but who are not directly engaged in performing the specific work called for by the contract, who spend less than 20 percent of their hours worked in a particular workweek performing in connection with such contracts. This exclusion is inapplicable to employees performing on covered contracts, *i.e.*, those employees directly engaged in performing the specific work called for by the contract, at any point during the workweek. This exclusion is also inapplicable to employees performing in connection with covered contracts with respect to any workweek in which the employees spend 20 percent or more of their hours worked performing in connection with a covered contract.

(f) *Employees whose covered work is governed by a collective bargaining agreement that already provides 56 hours of paid sick time.* If a collective bargaining agreement ratified before September 30, 2016 applies to an employee's work performed on or in connection with a covered contract and provides the employee with at least 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, the requirements of the Executive Order and this part do not apply to the employee until the earlier of the date the agreement terminates or January 1, 2020. If a collective bargaining agreement ratified before September 30, 2016 applies to an employee's work performed on or in connection with a covered contract and provides the employee with paid sick time (or paid time off that may be used for reasons related to sickness or health care) each year, but the amount of such leave provided under the agreement is less than 56 hours (or 7 days, if the agreement refers to days rather than hours), the requirements of the Executive Order and this part do not apply to the employee until the earlier of the date the agreement terminates or January 1, 2020, *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 a manner consistent with either the Executive Order and this part or the terms and conditions of the collective bargaining agreement.

### §13.5 Paid sick leave for Federal contractors and subcontractors.

(a) *Accrual.* (1) A contractor shall 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 covered contract. A contractor shall aggregate an employee's hours worked on or in connection with all covered contracts for that contractor for purposes of paid sick leave accrual.

(i) Hours worked has the same meaning for purposes of Executive Order 13706 and this part as it does under the Fair Labor Standards Act, as set forth in 29 CFR part 785. To properly exclude time spent on non-covered work from an employee's hours worked that count toward the accrual of paid sick leave, a contractor must accurately identify in its records the employee's covered and non-covered hours worked, or, if the employee performs work in connection with rather than on covered contracts, a contractor may estimate the portion of an employee's hours worked spent in connection with covered contracts provided the estimate is reasonable and based on verifiable information.

(ii) A contractor shall calculate an employee's accrual of paid sick leave no less frequently than at the conclusion of each pay period or each month, whichever interval is shorter. A contractor need not allow an employee to accrue paid sick leave in increments smaller than 1 hour for completion of any fraction of 30 hours worked. Any such fraction of hours worked shall be added to hours worked for the same contractor in subsequent pay periods to reach the next 30 hours worked provided that the next pay period in which the employee performs on or in connection with a covered contract occurs within the same accrual year.

(iii) If a contractor is not obligated by the Service Contract Act, Davis-Bacon Act, or Fair Labor Standards Act to keep records of an employee's hours worked, such as because the employee is employed in a bona fide executive, administrative, or professional capacity as those terms are defined in 29 CFR part 541, the contractor may, as to that employee, calculate paid sick leave accrual by tracking the employee's actual hours worked or by using the assumption that the employee works 40 hours on or in connection with a covered contract in each workweek. If such an employee regularly works fewer than 40 hours per week on or in connection with covered contracts, whether because the employee's time is split between covered and non-covered contracts or because the employee has a part-time schedule, the contractor may allow the employee to accrue paid sick leave based on the employee's typical number of hours worked on or in connection with covered contracts per workweek provided the contractor has probative evidence to support the number it uses or, if the employee performs work in connection with rather than on covered contracts, a contractor may estimate the employee's typical number of hours worked in connection with covered contracts per workweek provided the estimate is reasonable and based on verifiable information.

(2) A contractor shall inform an employee, in writing, of the amount of paid sick leave that 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 paragraph (b)(4) of this section. A contractor's existing procedure for informing employees of their available leave, such as notification accompanying each paycheck or an online system an employee can check at any time, may be used to satisfy or partially satisfy these requirements provided it is written (including electronically, if the contractor customarily corresponds with or makes information available to its employees by electronic means).

(3) A contractor may choose to provide an employee 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.

(i) If a contractor chooses to use the option described in this paragraph, the contractor need not comply with the accrual requirements described in paragraph (a)(1) of this section. The contractor must, however, allow carryover of paid sick leave as required by paragraph (b)(2) of this section, and although the contractor may limit the amount of paid sick leave an employee may carry over to no less than 56 hours, the contractor may not limit the amount of paid sick leave an employee has available for use at any point as is otherwise permitted by paragraph (b)(3) of this section.

(ii) If a contractor chooses to use the option described in this paragraph and the contractor hires an employee or newly assigns the employee to work on or in connection with a covered contract after the beginning of the accrual year, the contractor may provide the employee with a prorated amount of paid sick leave based on the number of pay periods remaining in the accrual year.

(iii) A contractor may use the option described in this paragraph as to any or all of its employees in any or all accrual years.

(b) *Maximum accrual, carryover, reinstatement, and payment for unused leave.* (1) A contractor may limit the amount of paid sick leave an employee is permitted to accrue to not less than 56 hours in each accrual year. An accrual year is a 12-month period beginning on the date an employee's work on or in connection with a covered contract began or any other fixed date chosen by the contractor, such as the date a covered contract began, the date the contractor's fiscal year begins, a date relevant under State law, or the date a contractor uses for determining employees' leave entitlements under the FMLA pursuant to §825.200 of this title. A contractor may choose its accrual year but must use a consistent option for all, or across similarly situated groups of, employees and may not select or change any employee's accrual

year in order to avoid the paid sick leave requirements of Executive Order 13706 and this part.

(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.

(3) A contractor 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. Accordingly, even if an employee has accrued fewer than 56 hours of paid sick leave since the beginning of the accrual year, the employee need only be permitted to accrue additional paid sick leave if the employee has fewer than 56 hours available for use.

(4) Paid sick leave shall be reinstated for employees rehired by the same contractor within 12 months after a job separation. This reinstatement requirement applies whether the employee leaves and returns to a job on or in connection with a single covered contract or works for a single contractor on or in connection with more than one covered contract, regardless of whether the employee remains employed by the contractor in between periods of working on covered contracts.

(5) Nothing in Executive Order 13706 or this part shall require a contractor 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 paragraph (c)(3) of this section 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 paragraph (b)(4) of this section.

(c) *Use.* (1) Subject to the conditions described in paragraphs (d) and (e) of this section and the amount of paid sick leave the employee has available for use, a contractor must permit an employee to use paid sick leave to be absent from work for that contractor during time the employee would have been performing work on or in connection with a covered contract or, if the contractor estimates the employee's hours worked in connection with such contracts for purposes of accrual, during any work time because of:

(i) A physical or mental illness, injury, or medical condition of the employee;

(ii) Obtaining diagnosis, care, or preventive care from a health care provider by the employee;

(iii) Caring for the employee's child, parent, spouse, domestic partner, or any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship who has any of the conditions or needs for diagnosis, care, or preventive care referred to in paragraphs (c)(1)(i) or (ii) of this section or is otherwise in need of care; or

(iv) Domestic violence, sexual assault, or stalking, if the time absent from work is for the purposes otherwise described in paragraphs (c)(1)(i) or (ii) of this section or to obtain additional counseling, seek relocation, seek assistance from a victim services organization, take related legal action, including preparation for or participation in any related civil or criminal legal proceeding, or assist an individual related to the employee as described in paragraph (c)(1)(iii) of this section in engaging in any of these activities.

(2) A contractor shall account for an employee's use of paid sick leave in increments of no greater than 1 hour.

(i) A contractor may not reduce an employee's accrued paid sick leave by more than the amount of time the employee is actually absent from work, and a contractor may not require an employee to use more leave than is necessary to address the circumstances that precipitated the need for the leave, provided that the leave is counted using an increment of no greater than 1 hour.

(ii) The amount of paid sick leave used may not exceed the hours an employee would have worked if the need for leave had not arisen.

(iii) If it is physically impossible for an employee using paid sick leave to commence or end work mid-way

through a shift, such as if a flight attendant or a railroad conductor is scheduled to work aboard an airplane or train, or a laboratory employee is unable to enter or leave a sealed ''clean room'' during a certain period of time, and no equivalent position is available, the entire period that the employee is forced to be absent constitutes paid sick leave. The period of the physical impossibility is limited to the period during which the contractor is unable to permit the employee to work prior to the use of paid sick leave or return the employee to the same or an equivalent position due to the physical impossibility after the use of paid sick leave.

(3) A contractor shall provide to an employee using paid sick leave the same regular pay and benefits the employee would have received had the employee not been absent from work. Regular pay means payments that would be included in the calculation of the employee's regular rate for hours worked under the Fair Labor Standards Act as set forth in 29 CFR part 778.

(4) A contractor may not limit the amount of paid sick leave an employee may use per year or at once on any basis other than the amount of paid sick leave an employee has available.

(5) An employee is encouraged to make a reasonable effort to schedule preventive care or another foreseeable need to use paid sick leave to suit the needs of both the contractor and employee, and a contractor may ask an employee to make a reasonable effort to schedule foreseeable paid sick leave so as to not disrupt unduly the contractor's operations, but a contractor may not make an employee's use of paid sick leave contingent on the employee's finding a replacement worker to cover any work time to be missed or on the fulfillment of the contractor's operational needs.

(d) *Request for leave.* (1) A contractor shall 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 paragraph (c)(1) of this section and, to the extent reasonably feasible, the anticipated duration of the leave.

(i) An employee's request to use paid sick leave need not include a specific reference to the Executive Order or this part or even use the words ''sick leave'' or ''paid sick leave,'' and a contractor may not require an employee to provide extensive or detailed information about the need to be absent from work or the employee's family or family-like relationship with an individual for whom the employee is requesting to care.

(ii) Although an employee shall make a good faith effort to provide a reasonable estimate of the length of the requested absence from work, a contractor shall permit the employee to return to work earlier, or continue to use available paid sick leave for longer, than anticipated.

(iii) The employee's request shall be directed to the appropriate personnel pursuant to a contractor's policy or, in the absence of a formal policy, any personnel who typically receive requests for other types of leave or otherwise address scheduling issues on behalf of the contractor.

(iv) The contractor shall maintain the confidentiality of any medical or other personal information contained in an employee's request to use paid sick leave as required by §13.25(d).

(2) If the need for leave is foreseeable, the employee's request shall be made at least 7 calendar days in advance. If the employee is unable to request paid sick leave at least 7 calendar days in advance, the request shall be made as soon as is practicable. When an employee becomes aware of a need to use paid sick leave less than 7 calendar days in advance, it should typically be practicable for the employee to make a request for leave either the day the employee becomes aware of the need to use paid sick leave or the next business day. In all cases, however, the determination of when an employee could practicably make a request must take into account the individual facts and circumstances.

(3)(i) A contractor may communicate its grant of a request to use paid sick leave either orally or in writing (including electronically, if the contractor customarily corresponds with

or makes information available to its employees by such means).

(ii) A contractor shall communicate any denial of a request to use paid sick leave in writing (including electronically, if the contractor customarily corresponds with or makes information available to its employees by such means), with an explanation for the denial. Denial is appropriate if, for example, the employee did not provide sufficient information about the need for paid sick leave; the reason given is not consistent with the uses of paid sick leave described in paragraph (c)(1) of this section; the employee did not indicate when the need would arise; the employee has not accrued, and will not have accrued by the date of leave anticipated in the request, a sufficient amount of paid sick leave to cover the request (in which case, if the employee will have any paid sick leave available for use, only a partial denial is appropriate); or the request is to use paid sick leave during time the employee is scheduled to be performing non-covered work. If the denial is based on insufficient information provided in the request, such as if the employee did not state the time of an appointment with a health care provider, the contractor must permit the employee to submit a new, corrected request. If the denial is based on an employee's request to use paid sick leave during time she is scheduled to be performing non-covered work, the denial must be supported by records adequately segregating the employee's time spent on covered and non-covered contracts.

(iii) A contractor shall respond to any request to use paid sick leave as soon as is practicable after the request is made. Although the determination of when it is practicable for a contractor to provide a response will take into account the individual facts and circumstances, it should in many circumstances be practicable for the contractor to respond to a request immediately or within a few hours. In some instances, however, such as if it is unclear at the time of the request whether the employee will be working on or in connection with a covered or non-covered contract at the time for which paid sick leave is requested, as soon as practicable could mean within a day or no longer than within a few days.

(e) *Certification or documentation for leave of 3 or more consecutive full workdays.* (1)(i) A contractor may require certification issued by a health care provider to verify the need for paid sick leave used for a purpose described in paragraphs (c)(1)(i), (ii), or (iii) of this section only if the employee is absent for 3 or more consecutive full workdays. The contractor shall protect the confidentiality of any certification as required by § 13.25(d).

(ii) A contractor may only require documentation from an appropriate individual or organization to verify the need for paid sick leave used for a purpose described in paragraph (c)(1)(iv) of this section only if the employee is absent for 3 or more consecutive full workdays. The source of such documentation may be any person involved in providing or assisting with the care, counseling, relocation, assistance of a victim services organization, or related legal action, such as, but not limited to, a health care provider, counselor, representative of a victim services organization, attorney, clergy member, family member, or close friend. Self-certification is also permitted. The contractor may only require that such documentation contain the minimum necessary information establishing a need for the employee to be absent from work. The contractor shall not disclose any verification information and shall maintain confidentiality about the domestic abuse, sexual assault, or stalking, as required by § 13.25(d).

(2) If certification or documentation is to verify the illness, injury, or condition, need for diagnosis, care, or preventive care, or activity related to domestic violence, sexual assault, or stalking of an individual related to the employee as described in paragraph (c)(1)(iii) of this section, a contractor may also require the employee to provide reasonable documentation or a statement of the family or family-like relationship. This documentation may take the form of a simple written statement from the employee or could be a legal or other document proving the relationship, such as a birth certificate or court order.

(3)(i) A contractor may only require certification or documentation if the contractor informs an employee before the employee returns to work that certification or documentation will be required to verify the use of paid sick leave if the employee is absent for 3 or more consecutive full workdays. The contractor may inform an employee of this requirement each time the employee requests to use or does use paid sick leave, or the contractor may inform employees of a general policy to require certification or documentation for absences of 3 or more consecutive full workdays if it does so in a manner reasonably calculated to provide actual notice of the requirement to employees.

(ii) A contractor may require the employee to provide certification or documentation within 30 days of the first day of the 3 or more consecutive full workdays of paid sick leave but may not set a shorter deadline for its submission.

(iii) While a contractor is waiting for or reviewing certification or documentation, it must treat the employee's otherwise proper request for 3 or more consecutive full workdays of paid sick leave as valid. If the employee provides certification or documentation that is insufficient to verify the employee's need for paid sick leave, the contractor shall notify the employee of the deficiency and allow the employee at least 5 days to provide new or supplemental certification or documentation. If after 30 days the employee has not provided any certification or documentation, or if after the 5 or more days allowed for resubmission the employee has either provided no new or supplemental certification or documentation or the new certification or documentation is still insufficient to verify the employee's need for paid sick leave, the contractor may, within 10 calendar days of the employee's deadline for providing sufficient certification or documentation, retroactively deny the employee's request to use paid sick leave. In such circumstances, the contractor may recover the value of the pay and benefits the employee received but to which the employee was not entitled, including through deduction from any sums due to the employee (*e.g.*, unpaid wages, vacation pay, profit sharing, etc.), provided such deductions do not otherwise violate applicable Federal, State, or local wage payment or other laws.

(4) A contractor may contact the health care provider or other individual who created or signed the certification or documentation only for purposes of authenticating the document or clarifying its contents. The contractor may not request additional details about the medical or other condition referenced, seek a second opinion, or otherwise question the substance of the certification. To make such contact, the contractor must use a human resources professional, a leave administrator, or a management official. The employee's direct supervisor may not contact the employee's health care provider unless there is no other appropriate individual who can do so. The requirements of the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, set forth at 45 CFR parts 160 and 164, must be satisfied when individually identifiable health information of an employee is shared with a contractor by a HIPAA-covered health care provider.

(f) *Interaction with other laws and paid time off policies.* (1) *General.* Nothing in Executive Order 13706 or this part 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 the Executive Order and this part.

(2) *SCA and DBA requirements.* (i) Paid sick leave required by Executive Order 13706 and this part is in addition to a contractor's obligations under the Service Contract Act and Davis-Bacon Act. A 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 Executive Order 13706 and this part.

(ii) A contractor may count the value of any paid sick time provided in excess of the requirements of Executive Order 13706 and this part (and any other law) toward its obligations under the Service Contract Act or Davis-

Bacon Act in keeping with the requirements of those Acts.

(3) *FMLA.* A contractor's obligations under the Executive Order and this part have no effect on its obligations to comply with, or ability to act pursuant to, the Family and Medical Leave Act. Paid sick leave may be substituted for (that is, may run concurrently with) unpaid FMLA leave under the same conditions as other paid time off pursuant to §825.207 of this title. As to time off that is designated as FMLA leave and for which an employee uses paid sick leave, all notices and certifications that satisfy the FMLA requirements set forth at §825.300 through 300.308 of this title will satisfy the request for leave and certification requirements of paragraphs (d) and (e) of this section.

(4) *State and local paid sick time laws.* A contractor's compliance with a State or local law requiring that employees be provided with paid sick time does not excuse the contractor from compliance with any of its obligations under the Executive Order 13706 or this part. A contractor may, however, satisfy its obligations under the Order and this part by providing paid sick time that fulfills the requirements of a State or local law provided that the paid sick time is accrued and may be used in a manner that meets or exceeds all of the requirements of the Order and this part including but not limited to the accrual and use requirements in this section and the prohibitions on interference and discrimination in §13.6. Where the requirements of an applicable State or local law and the Order and this part differ, satisfying both will require a contractor to comply with the requirement that is more generous to employees.

(5) *Paid time off policies.* (i) The paid sick leave requirements of Executive Order 13706 and this part need not have any effect on a contractor's voluntary paid time off policy, whether provided pursuant to a collective bargaining agreement or otherwise.

(ii) A contractor's existing paid time off policy (if provided in addition to the fulfillment of Service Contract Act or Davis-Bacon Act obligations, if applicable) will satisfy the requirements of the Executive Order and this part if the paid time off is made available to all employees described in §13.3(a)(2) (other than those excluded by §13.4(e)); may be used for at least all of the purposes described in paragraph (c)(1) of this section; is provided in a manner and an amount sufficient to comply with the rules and restrictions regarding the accrual of paid sick leave set forth in paragraph (a) of this section and regarding maximum accrual, carryover, reinstatement, and payment for unused leave set forth in paragraph (b) of this section; is provided pursuant to policies sufficient to comply with the rules and restrictions regarding use of paid sick leave set forth in paragraph (c) of this section, regarding requests for leave set forth in paragraph (d) of this section, and regarding certification and documentation set forth in paragraph (e) of this section, at least with respect to any paid time off used for the purposes described in paragraph (c)(1) of this section; and is protected by the prohibitions against interference, discrimination, and recordkeeping violations described in §13.6 and the prohibition against waiver of rights described in §13.7, at least with respect to any paid time off used for the purposes described in paragraph (c)(1) of this section.

(iii) A contractor satisfying the requirements of the Executive Order and this part with a paid time off policy that provides more than 56 hours of leave per accrual year may choose to either provide all paid time off as described in paragraph (f)(5)(ii) of this section or track, and make and maintain records reflecting, the amount of paid time off an employee uses for the purposes described in paragraph (c)(1) of this section, in which case the contractor need only provide, for each accrual year, up to 56 hours of paid time off the employee requests to use for such purposes in compliance with the Order and this part.

### §13.6 Prohibited acts.

(a) *Interference.* (1) A contractor may not in any manner interfere with an employee's accrual or use of paid sick leave as required by Executive Order 13706 or this part.

(2) Interference includes, but is not limited to, miscalculating the amount

of paid sick leave an employee has accrued, denying or unreasonably delaying a response to a proper request to use paid sick leave, discouraging an employee from using paid sick leave, reducing an employee's accrued paid sick leave by more than the amount of such leave used, transferring the employee to work on non-covered contracts to prevent the accrual or use of paid sick leave, disclosing confidential information contained in certification or other documentation provided to verify the need to use paid sick leave, or 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.

(b) *Discrimination.* (1) A contractor may 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 Executive Order 13706 and this part;

(ii) Filing any complaint, initiating any proceeding, or otherwise asserting any right or claim under Executive Order 13706 or this part;

(iii) Cooperating in any investigation or testifying in any proceeding under Executive Order 13706 or this part; or

(iv) Informing any other person about his or her rights under Executive Order 13706 or this part.

(2) Discrimination includes, but is not limited to, a contractor's considering any of the activities described in paragraph (b)(1) of this section as a negative factor in employment actions, such as hiring, promotions, or disciplinary actions, or a contractor's counting paid sick leave under a no fault attendance policy.

(c) *Recordkeeping.* A contractor's failure 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 §13.25, or any 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 or arrangements for completion of the work, charging the contractor in default with any additional cost.

(d) *Suspending payment.* A contracting officer shall, upon his or her own action or upon the direction of the Administrator and notification of the contractor, 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 § 13.25.

(e) *Actions on complaints*—(1) *Reporting time frame.* The contracting agency shall forward all information listed in paragraph (e)(2) of this section to the Office of Government Contracts Enforcement, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210 within 14 calendar days of receipt of a complaint alleging contractor noncompliance with Executive Order 13706 or this part or within 14 calendar days of being contacted by the Wage and Hour Division regarding any such complaint.

(2) *Report contents.* The contracting agency shall forward to the Office of Government Contracts Enforcement, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210 any:

(i) Complaint of contractor noncompliance with Executive Order 13706 or this part;

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

(iii) Evidence that the Executive Order paid sick leave contract clause was included in the contract;

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

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

### § 13.12 Department of Labor requirements.

(a) *Notice*—(1) *Wage Determinations OnLine Web site.* The Administrator will publish and maintain on Wage Determinations OnLine (WDOL), *http://www.wdol.gov*, or any successor site, a notice that Executive Order 13706 creates a requirement to allow employees performing work on or in connection with contracts covered by Executive Order 13706 and this part to accrue and use paid sick leave, as well as an indication of where to find more complete information about that requirement.

(2) *Wage determinations.* The Administrator will publish on all wage determinations issued under the Davis-Bacon Act and the Service Contract Act a notice that Executive Order 13706 creates a requirement to allow employees performing work on or in connection with contracts covered by Executive Order 13706 and this part to accrue and use paid sick leave, as well as an indication of where to find more complete information about that requirement.

(b) *Notification to a contractor of the withholding of funds.* If the Administrator requests that a contracting agency withhold funds from a contractor pursuant to §13.11(c), or suspend payment, advance, or guarantee of funds pursuant to §13.11(d), the Administrator and/or contracting agency shall notify the affected prime contractor of the Administrator's request to the contracting agency.

## Subpart C—Contractor Requirements

### §13.21 Contract clause.

(a) The contractor, as a condition of payment, shall abide by the terms of the applicable Executive Order paid sick leave contract clause referred to in §13.11(a).

(b) The contractor shall include in any covered subcontracts the applicable Executive Order paid sick leave contract clause referred to in §13.11(a) and shall require, as a condition of payment, that the subcontractor include the contract clause in any lower-tier subcontracts. The prime contractor and any upper-tier contractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with the requirements of Executive Order 13706 and this part, whether or not the contract clause was included in the subcontract.

### §13.22 Paid sick leave.

The contractor shall allow all employees performing work on or in connection with a covered contract to accrue and use paid sick leave as required by Executive Order 13706 and this part.

### §13.23 Deductions.

The contractor may make deductions from the pay and benefits of an employee who is using paid sick leave only if such deduction qualifies as a:

(a) Deduction required by Federal, State, or local law, such as Federal or State withholding of income taxes;

(b) Deduction for payments made to third parties pursuant to court order;

(c) Deduction directed by a voluntary assignment of the employee or his or her authorized representative;

(d) Deduction for the reasonable cost or fair value, as determined by the Administrator, of furnishing such employee with ''board, lodging, or other facilities,'' as defined in 29 U.S.C. 203(m) and 29 CFR part 531;

(e) Deduction, to the extent permitted by law, for the purpose of recouping pay and benefits provided for paid sick leave as to which the contractor retroactively denied the employee's request pursuant to §13.5(e)(3)(iii) or because the contractor approved the use of the paid sick leave based on a fraudulent request.

### §13.24 Anti-kickback.

All paid sick leave used by employees performing on or in connection with covered contracts must be paid free and clear and without subsequent deduction (except as set forth in §13.23), rebate, or kickback on any account. Kickbacks directly or indirectly to the contractor or to another person for the contractor's benefit for the whole or part of the paid sick leave are prohibited.

### §13.25 Records to be kept by contractors.

(a) The contractor and each subcontractor performing work subject to Executive Order 13706 and this part shall make and maintain during the course of the covered contract, and preserve for no less than 3 years thereafter, records containing the information specified in paragraphs (a)(1) through (15) of this section for each employee and shall make them available for inspection, copying, and transcription by authorized representatives of the Wage and Hour Division of the U.S. Department of Labor:

(1) Name, address, and Social Security number of each employee;
(2) The employee's occupation(s) or classification(s);
(3) The rate or rates of wages paid (including all pay and benefits provided);
(4) The number of daily and weekly hours worked;
(5) Any deductions made;
(6) The total wages paid (including all pay and benefits provided) each pay period;
(7) A copy of notifications to employees of the amount of paid sick leave the employees have accrued as required under § 13.5(a)(2);
(8) 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;
(9) Dates and amounts of paid sick leave used by employees (unless a contractor's paid time off policy satisfies the requirements of Executive Order 13706 and this part as described in § 13.5(f)(5), leave must be designated in records as paid sick leave pursuant to Executive Order 13706);
(10) 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 § 13.5(d)(3);
(11) Any records relating to the certification and documentation a contractor may require an employee to provide under § 13.5(e), including copies of any certification or documentation provided by an employee;
(12) Any other records showing any tracking of or calculations related to an employee's accrual and/or use of paid sick leave;
(13) The relevant covered contract;
(14) The regular pay and benefits provided to an employee for each use of paid sick leave; and
(15) Any financial payment made for unused paid sick leave upon a separation from employment intended, pursuant to § 13.5(b)(5), to relieve a contractor from the obligation to reinstate such paid sick leave as otherwise required by § 13.5(b)(4).

(b) *Segregation of time.* (1) If a contractor wishes to distinguish between an employee's covered and non-covered work (such as time spent performing work on or in connection with a covered contract versus time spent performing work on or in connection with non-covered contracts or time spent performing work on or in connection with a covered contract in the United States versus time spent performing work outside the United States, or to establish that time spent performing solely in connection with covered contracts constituted less than 20 percent of an employee's hours worked during a particular workweek), the contractor must keep records or other proof reflecting such distinctions. Only if the contractor adequately segregates the employee's time will time spent on non-covered work be excluded from hours worked counted toward the accrual of paid sick leave. Similarly, only if that contractor adequately segregates the employee's time may a contractor properly deny an employee's request to take leave under § 13.5(d) on the ground that the employee was scheduled to perform non-covered work during the time she asked to use paid sick leave.

(2) If a contractor estimates covered hours worked by an employee who performs work in connection with covered contracts pursuant to § 13.5(a)(1)(i) or (iii), the contractor must 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 non-covered contracts be excluded from hours worked counted toward the accrual of paid sick leave. If a contractor estimates the amount of time an employee spends performing in connection with covered contracts, the contractor must permit the employee to use her paid sick leave during any work time for the contractor.

(c) If a contractor is not obligated by the Service Contract Act, Davis-Bacon Act, or Fair Labor Standards Act to keep records of an employee's hours worked, such as because the employee is employed in a bona fide executive, administrative, or professional capacity as those terms are defined in 29 CFR part 541, and the contractor chooses to use the assumption permitted by

§ 13.5(a)(1)(iii), the contractor is excused from the requirement in paragraph (a)(4) of this section to keep records of the employee's number of daily and weekly hours worked.

(d)(1) Records relating to medical histories or domestic violence, sexual assault, or stalking, created by or provided to a contractor for purposes of Executive Order 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.

(2) 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 medical information contained in records or documents that the contractor created or received in connection with compliance with the recordkeeping or other requirements of this part, the records and documents must 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 § 1635.9 of this title, 41 CFR 60–741.23(d), and § 1630.14(c)(1) of this title, respectively.

(3) 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 § 13.5(c)(1)(iv) (as described in § 13.5(d)(2)) and shall maintain confidentiality about any domestic abuse, sexual assault, or stalking, unless the employee consents or when disclosure is required by law.

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

(f) Nothing in this part limits or otherwise modifies the contractor's recordkeeping obligations, if any, under the Davis-Bacon Act, the Service Contract Act, the Fair Labor Standards Act, the Family and Medical Leave Act, Executive Order 13658, their implementing regulations, or other applicable law.

### § 13.26 Notice.

(a) The contractor must notify all employees performing work on or in connection with a covered contract of the paid sick leave requirements of Executive Order 13706 and this part 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.

(b) 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.

### § 13.27 Timing of pay.

The contractor shall compensate an employee for time during which the employee used paid sick leave no later than one pay period following the end of the regular pay period in which the paid sick leave was used.

## Subpart D—Enforcement

### § 13.41 Complaints.

(a) Any employee, contractor, labor organization, trade organization, contracting agency, or other person or entity that believes a violation of the Executive Order or this part has occurred may file a complaint with any office of the Wage and Hour Division. No particular form of complaint is required. A complaint may be filed orally or in writing. If the complainant is unable to file the complaint in English, the Wage and Hour Division will accept the complaint in any language.

(b) It is the policy of the Department of Labor to protect the identity of its confidential sources and to prevent an unwarranted invasion of personal privacy. Accordingly, 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. Disclosure of such statements shall be governed by the provisions of the Freedom of Information Act, 5 U.S.C. 552, 29 CFR part 70, and the Privacy Act of 1974, 5 U.S.C. 552a.

### § 13.42 Wage and Hour Division conciliation.

After receipt of a complaint, the Administrator may seek to resolve the matter through conciliation.

### § 13.43 Wage and Hour Division investigation.

The Administrator may investigate possible violations of the Executive Order or this part either as the result of a complaint or at any time on his or her own initiative. As part of the investigation, the Administrator may conduct interviews with the relevant contractor, as well as the contractor's employees at the worksite during normal work hours; inspect the relevant contractor's records (including contract documents and payrolls, if applicable); make copies and transcriptions of such records; and require the production of any documentary or other evidence the Administrator deems necessary to determine whether a violation, including conduct warranting imposition of debarment, has occurred. Federal agencies and contractors shall cooperate with any authorized representative of the Department of Labor in the inspection of records, in interviews with employees, and in all aspects of investigations.

### § 13.44 Remedies and sanctions.

(a) *Interference*. When the Administrator determines that a contractor has interfered with an employee's accrual or use of paid sick leave in violation of §13.6(a), the Administrator will notify the contractor and the relevant contracting agency of the interference and request that the contractor remedy the violation. If the contractor does not remedy the violation, the Administrator shall direct the contractor to provide any appropriate relief to the affected employee(s) in the investigative findings letter issued pursuant to §13.51. Such relief may include any pay and/or benefits denied or lost by reason of the violation; other actual monetary losses sustained as a direct result of the violation; or appropriate equitable or other relief. Payment of liquidated damages in an amount equaling any monetary relief may also be directed unless such amount is reduced by the Administrator because the violation was in good faith and the contractor had reasonable grounds for believing it had not violated the Order or this part. The Administrator 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 that monetary relief is due, the Administrator may direct the relevant contracting agency to transfer the withheld funds to the Department of Labor for disbursement.

(b) *Discrimination*. When the Administrator determines that a contractor has discriminated against an employee in violation of §13.6(b), the Administrator will notify the contractor and the relevant contracting agency of the discrimination and request that the contractor remedy the violation. If the contractor does not remedy the violation, the Administrator shall direct the contractor to provide appropriate relief to the affected employee(s) in the investigative findings letter issued pursuant to §13.51. Such relief may include, but is not limited to, employment, reinstatement, promotion, restoration of leave, or lost pay and/or benefits. Payment of liquidated damages in an amount equaling any monetary relief may also be directed unless such amount is reduced by the Administrator because the violation was in good faith and the contractor had reasonable grounds for believing the contractor had not violated the Order or this part. The Administrator 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 that monetary relief is due, the Administrator may direct the relevant contracting agency to transfer

the withheld funds to the Department of Labor for disbursement.

(c) *Recordkeeping.* When a contractor fails to comply with the requirements of §13.25 in violation of §13.6(c), the Administrator will request that the contractor remedy the violation. If the contractor fails to produce required records upon request, the contracting officer, upon direction of an authorized representative of the Department of Labor, or under its own action, shall 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.

(d) *Debarment.* Whenever a contractor is found by the Secretary to have disregarded its obligations under the Executive Order or this part, such contractor and its responsible officers, and any firm, corporation, partnership, or association in which the contractor or responsible officers have an interest, shall be ineligible to be awarded any contract or subcontract subject to the Executive Order for a period of up to 3 years from the date of publication of the name of the contractor or responsible officer on the excluded parties list currently maintained on the System for Award Management Web site, *http://www.SAM.gov.* Neither an order of debarment of any contractor or its responsible officers from further Government contracts nor the inclusion of a contractor or its responsible officers on a published list of noncomplying contractors under this section shall be carried out without affording the contractor or responsible officers an opportunity for a hearing before an Administrative Law Judge.

(e) *Civil actions to recover greater underpayments than those withheld.* If the payments withheld under §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, may bring an action against the contractor in any court of competent jurisdiction to recover the remaining amount. 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 §13.6(a) or (b). 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.

(f) *Retroactive inclusion of contract clause.* If a contracting agency fails to include the applicable contract clause in a contract to which the Executive Order applies, 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).

## Subpart E—Administrative Proceedings

### §13.51 Disputes concerning contractor compliance.

(a) This section sets forth the procedures for resolution of disputes of fact or law concerning a contractor's compliance with this part. The procedures in this section may be initiated upon the Administrator's own motion or upon request of the contractor.

(b)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that relevant facts are at issue, the Administrator will notify the affected contractor(s) and the prime contractor (if different) of the investigative findings by certified mail to the last known address.

(2) A contractor desiring a hearing concerning the Administrator's investigative findings letter shall request such a hearing by letter postmarked within 30 calendar days of the date of the Administrator's letter. The request shall set forth those findings that are in dispute with respect to the violations and/or debarment, as appropriate, explain how the findings are in dispute including by making reference to any affirmative defenses.

(3) Upon receipt of a timely request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the investigative findings letter from the Administrator and response thereto, for designation to an Administrative Law Judge to conduct such hearings as may be necessary to resolve the disputed matters. The hearing shall be conducted in accordance with the procedures set forth in 29 CFR part 6.

(c)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that there are no relevant facts at issue, and where there is not at that time reasonable cause to institute debarment proceedings under §13.52, the Administrator shall notify the contractor(s) of the investigative findings by certified mail to the last known address, and shall issue a ruling in the investigative findings letter on any issues of law known to be in dispute.

(2)(i) If the contractor disagrees with the factual findings of the Administrator or believes that there are relevant facts in dispute, the contractor shall so advise the Administrator by letter postmarked within 30 calendar days of the date of the Administrator's letter. In the response, the contractor shall explain in detail the facts alleged to be in dispute and attach any supporting documentation.

(ii) Upon receipt of a timely response under paragraph (c)(2)(i) of this section alleging the existence of a factual dispute, the Administrator shall examine the information submitted. If the Administrator determines that there is a relevant issue of fact, the Administrator shall refer the case to the Chief Administrative Law Judge in accordance with paragraph (b)(3) of this section. If the Administrator determines that there is no relevant issue of fact, the Administrator shall so rule and advise the contractor accordingly.

(3) If the contractor desires review of the ruling issued by the Administrator under paragraph (c)(1) or the final sentence of (c)(2)(ii) of this section, the contractor shall file a petition for review thereof with the Administrative Review Board postmarked within 30 calendar days of the date of the ruling, with a copy thereof to the Administrator. The petition for review shall be filed in accordance with the procedures set forth in 29 CFR part 7.

(d) If a timely response to the Administrator's investigative findings letter is not made or a timely petition for review is not filed, the Administrator's investigative findings letter shall become the final order of the Secretary. If a timely response or petition for review is filed, the Administrator's letter shall be inoperative unless and until the decision is upheld by an Administrative Law Judge or the Administrative Review Board or otherwise becomes a final order of the Secretary.

### § 13.52 Debarment proceedings.

(a) Whenever any contractor is found by the Secretary of Labor to have disregarded its obligations to employees or subcontractors under Executive Order 13706 or this part, such contractor and its responsible officers, and any firm, corporation, partnership, or association in which such contractor or responsible officers have an interest, shall be ineligible for a period up to 3 years to receive any contracts or subcontracts subject to Executive Order 13706 from the date of publication of the name or names of the contractor or persons on the excluded parties list currently maintained on the System for Award Management Web site, *http://www.SAM.gov*.

(b)(1) Whenever the Administrator finds reasonable cause to believe that a contractor has committed a violation of Executive Order 13706 or this part which constitutes a disregard of its obligations to employees or subcontractors, the Administrator shall notify by certified mail to the last known address or by personal delivery, the contractor and its responsible officers (and any firms, corporations, partnerships, or associations in which the contractor or responsible officers are known to have an interest), of the finding. The Administrator shall afford such contractor and any other parties notified an opportunity for a hearing as to whether debarment action should be taken under Executive Order 13706 or this part. The Administrator shall furnish to those notified a summary of the

investigative findings. If the contractor or any other parties notified wish to request a hearing as to whether debarment action should be taken, such a request shall be made by letter to the Administrator postmarked within 30 calendar days of the date of the investigative findings letter from the Administrator, and shall set forth any findings which are in dispute and the reasons therefor, including any affirmative defenses to be raised. Upon receipt of such timely request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the investigative findings letter from the Administrator and the response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to determine the matters in dispute.

(2) Hearings under this section shall be conducted in accordance with the procedures set forth in 29 CFR part 6. If no hearing is requested within 30 calendar days of the letter from the Administrator, the Administrator's findings shall become the final order of the Secretary.

### § 13.53 Referral to Chief Administrative Law Judge; amendment of pleadings.

(a) Upon receipt of a timely request for a hearing under § 13.51 (where the Administrator has determined that relevant facts are in dispute) or § 13.52 (debarment), the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the investigative findings letter from the Administrator and response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to decide the disputed matters. A copy of the Order of Reference and attachments thereto shall be served upon the respondent. The investigative findings letter from the Administrator and response thereto shall be given the effect of a complaint and answer, respectively, for purposes of the administrative proceedings.

(b) At any time prior to the closing of the hearing record, the complaint (investigative findings letter) or answer (response) may be amended with the permission of the Administrative Law Judge and upon such terms as the Administrative Law Judge may approve. For proceedings pursuant to § 13.51, such an amendment may include a statement that debarment action is warranted under § 13.52. Such amendments shall be allowed when justice and the presentation of the merits are served thereby, provided there is no prejudice to the objecting party's presentation on the merits. When issues not raised by the pleadings are reasonably within the scope of the original complaint and are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings, and such amendments may be made as necessary to make them conform to the evidence. The presiding Administrative Law Judge may, upon reasonable notice and upon such terms as are just, permit supplemental pleadings setting forth transactions, occurrences, or events that have happened since the date of the pleadings and that are relevant to any of the issues involved. A continuance in the hearing may be granted or the record left open to enable the new allegations to be addressed.

### § 13.54 Consent findings and order.

(a) At any time prior to the receipt of evidence or, at the Administrative Law Judge's discretion prior to the issuance of the Administrative Law Judge's decision, the parties may enter into consent findings and an order disposing of the proceeding in whole or in part.

(b) Any agreement containing consent findings and an order disposing of a proceeding in whole or in part shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the Administrator's findings letter and the agreement;

(3) A waiver of any further procedural steps before the Administrative Law Judge and the Administrative Review Board regarding those matters

which are the subject of the agreement; and

(4) A waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement.

(c) Within 30 calendar days after receipt of an agreement containing consent findings and an order disposing of the disputed matter in whole, the Administrative Law Judge shall, if satisfied with its form and substance, accept such agreement by issuing a decision based upon the agreed findings and order. If such agreement disposes of only a part of the disputed matter, a hearing shall be conducted on the matters remaining in dispute.

### § 13.55 Administrative Law Judge proceedings.

(a) *Jurisdiction*. The Office of Administrative Law Judges has jurisdiction to hear and decide appeals concerning questions of law and fact from the Administrator's investigative findings letters issued under §§ 13.51 and 13.52.

(b) *Proposed findings of fact, conclusions, and order*. Within 20 calendar days of filing of the transcript of the testimony or such additional time as the Administrative Law Judge may allow, each party may file with the Administrative Law Judge proposed findings of fact, conclusions of law, and a proposed order, together with a supporting brief expressing the reasons for such proposals. Each party shall serve such proposals and brief on all other parties.

(c) *Decision*. (1) Within a reasonable period of time after the time allowed for filing of proposed findings of fact, conclusions of law, and order, or within 30 calendar days of receipt of an agreement containing consent findings and order disposing of the disputed matter in whole, the Administrative Law Judge shall issue a decision. The decision shall contain appropriate findings, conclusions, and an order, and be served upon all parties to the proceeding.

(2) If the respondent is found to have violated Executive Order 13706 or this part, and if the Administrator requested debarment, the Administrative Law Judge shall issue an order as to whether the respondent is to be subject to the excluded parties list, including findings that the contractor disregarded its obligations to employees or subcontractors under the Executive Order or this part.

(d) *Limit on scope of review*. The Equal Access to Justice Act, as amended, does not apply to proceedings under this part. Accordingly, Administrative Law Judges shall have no authority to award attorney's fees and/or other litigation expenses pursuant to the provisions of the Equal Access to Justice Act for any proceeding under this part.

(e) *Orders*. If the Administrative Law Judge concludes a violation occurred, the final order shall mandate action to remedy the violation, including any monetary or equitable relief described in § 13.44. Where the Administrator has sought imposition of debarment, the Administrative Law Judge shall determine whether an order imposing debarment is appropriate.

(f) *Finality*. The Administrative Law Judge's decision shall become the final order of the Secretary, unless a timely petition for review is filed with the Administrative Review Board.

### § 13.56 Petition for review.

(a) *Filing*. Within 30 calendar days after the date of the decision of the Administrative Law Judge (or such additional time as is granted by the Administrative Review Board), any party aggrieved thereby who desires review thereof shall file a petition for review of the decision with supporting reasons. Such party shall transmit the petition in writing to the Administrative Review Board with a copy thereof to the Chief Administrative Law Judge. The petition shall refer to the specific findings of fact, conclusions of law, or order at issue. A petition concerning the decision on debarment shall also state the disregard of obligations to employees and/or subcontractors, or lack thereof, as appropriate. A party must serve the petition for review, and all briefs, on all parties and the Chief Administrative Law Judge. It must also timely serve copies of the petition and all briefs on the Administrator, Wage and Hour Division, and on the Associate Solicitor, Division of Fair

Labor Standards, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210.

(b) *Effect of filing.* If a party files a timely petition for review, the Administrative Law Judge's decision shall be inoperative unless and until the Administrative Review Board issues an order affirming the decision, or the decision otherwise becomes a final order of the Secretary. If a petition for review concerns only the imposition of debarment, however, the remainder of the decision shall be effective immediately. No judicial review shall be available unless a timely petition for review to the Administrative Review Board is first filed.

### § 13.57 Administrative Review Board proceedings.

(a) *Authority*—(1) *General.* The Administrative Review Board has jurisdiction to hear and decide in its discretion appeals concerning questions of law and fact from investigative findings letters of the Administrator issued under §13.51(c)(1) or the final sentence of §13.51(c)(2)(ii), Administrator's rulings issued under §13.58, and decisions of Administrative Law Judges issued under §13.55.

(2) *Limit on scope of review.* (i) The Administrative Review Board shall not have jurisdiction to pass on the validity of any provision of this part. The Administrative Review Board is an appellate body and shall decide cases properly before it on the basis of substantial evidence contained in the entire record before it. The Administrative Review Board shall not receive new evidence into the record.

(ii) The Equal Access to Justice Act, as amended, does not apply to proceedings under this part. Accordingly, the Administrative Review Board shall have no authority to award attorney's fees and/or other litigation expenses pursuant to the provisions of the Equal Access to Justice Act for any proceeding under this part.

(b) *Decisions.* The Administrative Review Board's decision shall be issued within a reasonable period of time following receipt of the petition for review and shall be served upon all parties by mail to the last known address and on the Chief Administrative Law Judge (in cases involving an appeal from an Administrative Law Judge's decision).

(c) *Orders.* If the Board concludes a violation occurred, an order shall be issued mandating action to remedy the violation, including, but not limited to, any monetary or equitable relief described in §13.44. Where the Administrator has sought imposition of debarment, the Administrative Review Board shall determine whether an order imposing debarment is appropriate. The ARB's order is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020 (or any successor to that order).

[85 FR 30617, May 20, 2020]

### § 13.58 Administrator ruling.

(a) Questions regarding the application and interpretation of the rules contained in this part may be referred to the Administrator, who shall issue an appropriate ruling. Requests for such rulings should be addressed to the Administrator, Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210.

(b) Any interested party may appeal to the Administrative Review Board for review of a final ruling of the Administrator issued under paragraph (a) of this section. The petition for review shall be filed with the Administrative Review Board within 30 calendar days of the date of the ruling.

## APPENDIX A TO PART 13—CONTRACT CLAUSE

The following clause shall be included by the contracting agency in every contract, contract-like instrument, and solicitation to which Executive Order 13706 applies, except for procurement contracts subject to the Federal Acquisition Regulation (FAR):

(a) *Executive Order 13706.* This contract is subject to Executive Order 13706, the regulations issued by the Secretary of Labor in 29 CFR part 13 pursuant to the Executive Order, and the following provisions.

(b) *Paid Sick Leave.* (1) The contractor shall permit each employee (as defined in 29 CFR 13.2) engaged in the performance of this contract by the prime contractor or any subcontractor, regardless of any contractual relationship that may be alleged to exist between the contractor and employee, to earn not less than 1 hour of paid sick leave for every 30 hours worked. The contractor shall additionally allow accrual and use of paid

sick leave as required by Executive Order 13706 and 29 CFR part 13. The contractor shall in particular 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.

(2) The contractor shall 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. The contractor shall 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.

(3) The prime contractor and any upper-tier subcontractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with the requirements of Executive Order 13706, 29 CFR part 13, and this clause.

(c) *Withholding.* The contracting officer shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the prime contractor under this 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 the requirements of Executive Order 13706, 29 CFR part 13, or this clause, including any pay and/or benefits denied or lost by reason of the violation; other actual monetary losses sustained as a direct result of the violation, and liquidated damages.

(d) *Contract Suspension/Contract Termination/Contractor Debarment.* In the event of a failure to comply with Executive Order 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. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost. A breach of the contract clause may be grounds for debarment as a contractor and subcontractor as provided in 29 CFR 13.52.

(e) The paid sick leave required by Executive Order 13706, 29 CFR part 13, and this clause is in addition to a contractor's obligations under the Service Contract Act and Davis-Bacon Act, and a 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 Executive Order 13706 and 29 CFR part 13.

(f) Nothing in Executive Order 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 Executive Order 13706 and 29 CFR part 13.

(g) *Recordkeeping.* (1) Any contractor performing work subject to Executive Order 13706 and 29 CFR part 13 must make and maintain, for no less than three (3) years from the completion of the work on the contract, records containing the information specified in paragraphs (i) through (xv) of this section for each employee and shall make them available for inspection, copying, and transcription by authorized representatives of the Wage and Hour Division of the U.S. 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 a contractor's paid time off policy satisfies the requirements of Executive Order 13706 and 29 CFR part 13 as described in §13.5(f)(5), leave must be designated in records as paid sick leave pursuant to Executive Order 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 a 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 covered contract;

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

(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 a contractor from the obligation to reinstate such paid sick leave as otherwise required by 29 CFR 13.5(b)(4).

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

(ii) If a contractor estimates covered hours worked by an employee who performs work in connection with covered contracts pursuant to 29 CFR 13.5(a)(i) or (iii), the contractor must 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 non-covered work be excluded from hours worked counted toward the accrual of paid sick leave. If a contractor estimates the amount of time an employee spends performing in connection with covered contracts, the contractor must permit the employee to use her paid sick leave during any work time for the contractor.

(3) In the event a contractor is not obligated by the Service Contract Act, the Davis-Bacon Act, or the Fair Labor Standards Act to keep records of an employee's hours worked, such as because the employee is exempt from the FLSA'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 (1)(d) of this section 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 Executive Order 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 must 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 Davis-Bacon Act, the Service Contract Act, the Fair Labor Standards Act, the Family and Medical Leave Act, Executive Order 13658, their respective implementing regulations, or any other applicable law.

(h) The contractor (as defined in 29 CFR 13.2) shall insert this clause in all of its covered subcontracts and shall require its subcontractors to include this clause in any covered lower-tier subcontracts.

(i) *Certification of Eligibility*. (1) By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Service Contract Act, section 3(a) of the Davis-Bacon Act, or 29 CFR 5.12(a)(1).

(2) No part of this contract shall be subcontracted to any person or firm whose name appears on the list of persons or firms ineligible to receive Federal contracts currently maintained on the System for Award Management Web site, *http://www.SAM.gov*.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(j) *Interference/Discrimination*. (1) A contractor may not in any manner interfere with an employee's accrual or use of paid sick leave as required by Executive Order 13706 or 29 CFR part 13. Interference includes, but is not limited to, miscalculating the amount of paid sick leave an employee has accrued, denying or unreasonably delaying a response to a proper request to use paid sick leave, discouraging an employee from using paid sick leave, reducing an employee's accrued paid sick leave by more than the amount of such leave used, transferring an employee to work on non-covered contracts to prevent the accrual or use of paid sick

leave, disclosing confidential information contained in certification or other documentation provided to verify the need to use paid sick leave, or 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) A contractor may 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 Executive Order 13706 and 29 CFR part 13;

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

(iii) Cooperating in any investigation or testifying in any proceeding under Executive Order 13706 and 29 CFR part 13; or

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

(k) *Waiver.* Employees cannot waive, nor may contractors induce employees to waive, their rights under Executive Order 13706, 29 CFR part 13, or this clause.

(l) *Notice.* The contractor must notify all employees performing work on or in connection with a covered contract of the paid sick leave requirements of Executive Order 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.

(m) *Disputes concerning labor standards.* Disputes related to the application of Executive Order 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 U.S. Department of Labor, or the employees or their representatives.

# PART 14—SECURITY REGULATIONS

### Subpart A—Introduction to Security Regulations

Sec.



### Subpart B—Review of Classified Information



### Subpart C—Transmission of Classified Information



AUTHORITY: E.O. 12356 of April 2, 1982 (47 FR 14874).

SOURCE: 50 FR 51391, Dec. 17, 1985, unless otherwise noted.

## Subpart A—Introduction to Security Regulations

### § 14.1 Purpose.

These regulations implement Executive Order 12356, entitled National Security Information, dated April 2, 1982, and directives issued pursuant to that Order through the National Security Council and the Atomic Energy Act of 1954, as amended.

### § 14.2 Policy.

The interests of the United States and its citizens are best served when information regarding the affairs of Government is readily available to the public. Provisions for such an informed citizenry are reflected in the Freedom of Information Act (5 U.S.C. 552) and in the current public information policies of the executive branch.

(a) *Safeguarding national security information.* Some official information within the Federal Government is directly concerned with matters of national defense and the conduct of foreign relations. This information must, therefore, be subject to security constraints, and limited in term of its distribution.

(b) *Exemption from public disclosure.* Official information of a sensitive nature, hereinafter referred to as national security information, is expressly exempted from compulsory public disclosure by Section 552(b)(1) of