

government for the submission of waiver requests by contracting agencies and departments need not be taken into consideration.

The Department invited the public to comment on whether each of the proposed collections of information: (1) Ensures that the collection of information is necessary to the proper performance of the agency, including whether the information will have practical utility; (2) estimates the projected burden, including the validity of the methodology and assumptions used, accurately; (3) enhances the quality, utility, and clarity of the information to be collected; and (4) minimizes the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses). As noted above, the Department received no comments on the PRA analysis.

The Department notes that a federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB under the PRA, and displays a currently valid OMB control number, and the public is not required to respond to a collection of information unless it displays a currently valid OMB control number. Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number.

As instructed by OMB in accordance with the PRA (5 CFR 1320.11 (h)), in connection with this final rule, the Department submitted an ICR to OMB for its request of the new information collection requirements contained in this rule. OMB approved the ICR on May 5, 2010, under OMB Control Number 1215-0209, which will expire on May 31, 2013.

Executive Order 13132 (Federalism)

The Department has reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that the rule does not have "federalism implications." The employee notice required by the Executive Order and part 471 must be posted only by employers covered under the NLRA. Therefore, the rule does not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Executive Order 13084 (Consultation and Coordination With Indian Tribal Governments)

The Department certifies that this final rule does not impose substantial direct compliance costs on Indian tribal governments.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 29 CFR Part 471

Administrative practice and procedure, Government contracts, Employee rights, Labor unions.

Text of Final Rule

■ Accordingly, a new Subchapter D, consisting of Part 471, is added to 29 CFR Chapter IV to read as follows:

Subchapter D—Notification of Employee Rights Under Federal Labor Laws

PART 471—OBLIGATIONS OF FEDERAL CONTRACTORS AND SUBCONTRACTORS; NOTIFICATION OF EMPLOYEE RIGHTS UNDER FEDERAL LABOR LAWS

Subpart A—Definitions, Requirements for Employee Notice, and Exemptions and Exemptions

Sec.

- 471.1 What definitions apply to this part?
 471.2 What employee notice clause must be included in Government contracts?
 471.3 What exceptions apply and what exemptions are available?
 471.4 What employers are not covered under the rule?

Appendix A to Subpart A of Part 471—Text of Employee Notice Clause

Sec.

Subpart B—General Enforcement; Compliance Review and Complaint Procedures

- 471.10 How will the Department determine whether a contractor is in compliance with Executive Order 13496 and this part?
 471.11 What are the procedures for filing and processing a complaint?

471.12 What are the procedures to be followed when a violation is found during a complaint investigation or compliance evaluation?

471.13 Under what circumstances, and how, will enforcement proceedings under Executive Order 13496 be conducted?

471.14 What sanctions and penalties may be imposed for noncompliance, and what procedures will the Department follow in imposing such sanctions and penalties?

471.15 Under what circumstances must a contractor be provided the opportunity for a hearing?

471.16 Under what circumstances may a contractor be reinstated?

Subpart C—Ancillary Matters

471.20 What authority under this part or Executive Order 13496 may the Secretary delegate, and under what circumstances?

471.21 Who will make rulings and interpretations under Executive Order 13496 and this part?

471.22 What actions may the Director of OLMS take in the case of intimidation and interference?

471.23 What other provisions apply to this part?

Authority: 40 U.S.C. 101 *et seq.*; Executive Order 13496, 74 FR 6107, February 4, 2009; Secretary's Order 7-2009, 74 FR 58834, Nov. 13, 2009; Secretary's Order 8-2009, 74 FR 58835, Nov. 13, 2009.

Subpart A—Definitions, Requirements for Employee Notice, and Exemptions and Exemptions

§ 471.1 What definitions apply to this part?

Construction means the construction, rehabilitation, alteration, conversion, extension, demolition, weatherization, or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term construction also includes the supervision, inspection, and other on-site functions incidental to the actual construction.

Construction work site means the general physical location of any building, highway, or other change or improvement to real property which is undergoing construction, rehabilitation, alteration, conversion, extension, demolition, weatherization or repair, and any temporary location or facility at which a contractor or subcontractor meets a demand or performs a function relating to the contract or subcontract.

Contract means, unless otherwise indicated, any Government contract or subcontract.

Contracting agency means any department, agency, establishment, or instrumentality in the executive branch of the Government, including any wholly owned Government corporation, that enters into contracts.

Contractor means, unless otherwise indicated, a prime contractor or subcontractor.

Department means the U.S. Department of Labor.

Director of OFCCCP means the Director of the Office of Federal Contract Compliance Programs in the Department of Labor.

Director of OLMS means the Director of the Office of Labor-Management Standards in the Department of Labor.

Employee notice clause means the contract clause set forth in Appendix A that Government contracting departments and agencies must include in all Government contracts and subcontracts pursuant to Executive Order 13496 and this part.

Government means the Government of the United States of America.

Government contract means any agreement or modification thereof between any contracting agency and any person for the purchase, sale, or use of personal property or non-personal services. The term "personal property," as used in this section, includes supplies, and contracts for the use of real property (such as lease arrangements), unless the contract for the use of real property itself constitutes real property (such as easements). The term "non-personal services" as used in this section includes, but is not limited to, the following services: utilities, construction, transportation, research, insurance, and fund depository. The term Government contract does not include:

(1) Agreements in which the parties stand in the relationship of employer and employee; and

(2) Federal financial assistance, as defined in 29 CFR 31.2.

Labor organization means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

Modification of a contract means any alteration in the terms and conditions of that contract, including amendments, renegotiations, and renewals.

Order or Executive Order means Executive Order 13496 (74 FR 6107, Feb. 4, 2009).

Person means any natural person, corporation, partnership, unincorporated association, State or local government, and any agency, instrumentality, or subdivision of such a government.

Prime contractor means any person holding a contract with a contracting

agency, and, for the purposes of subparts B and C of this part, includes any person who has held a contract subject to the Executive Order and this part.

Related rules, regulations, and orders of the Secretary of Labor, as used in § 471.2 of this part, means rules, regulations, and relevant orders issued pursuant to the Executive Order or this part.

Secretary means the Secretary of Labor, U.S. Department of Labor, or his or her designee.

Subcontract means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee):

(1) For the purchase, sale or use of personal property or non-personal services that, in whole or in part, is necessary to the performance of any one or more contracts; or

(2) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken or assumed.

Subcontractor means any person holding a subcontract and, for the purposes of subparts B and C of this part, any person who has held a subcontract subject to the Executive Order and this part.

Union means a labor organization as defined above.

United States means the several States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Wake Island.

§ 471.2 What employee notice clause must be included in Government contracts?

(a) *Government contracts.* With respect to all contracts covered by this part, Government contracting departments and agencies must, to the extent consistent with law, include the language set forth in Appendix A to Subpart A of Part 471 in every Government contract, other than those contracts to which exceptions are applicable as stated in § 471.3.

(b) *Inclusion by reference.* The employee notice clause need not be quoted verbatim in a contract, subcontract, or purchase order. The clause may be made part of the contract, subcontract, or purchase order by citation to 29 CFR Part 471, Appendix A to Subpart A.

(c) *Adaptation of language.* The Director of OLMS may find that an Act of Congress, clarification of existing law by the courts or the National Labor Relations Board, or other circumstances make modification of the contractual

provisions necessary to achieve the purposes of the Executive Order and this part. In such circumstances, the Director of OLMS will promptly issue rules, regulations, or orders as are needed to ensure that all future government contracts contain appropriate provisions to achieve the purposes of the Executive Order and this part.

(d) *Physical Posting of Employee Notice.* A contractor or subcontractor that posts notices to employees physically must also post the required notice physically. Where a significant portion of a contractor's workforce is not proficient in English, the contractor must provide the notice in the language employees speak. The employee notice must be placed:

(1) In conspicuous places in and about the contractor's plants and offices so that the notice is prominent and readily seen by employees. Such conspicuous placement includes, but is not limited to, areas in which the contractor posts notices to employees about the employees' terms and conditions of employment; and

(2) Where employees covered by the National Labor Relations Act engage in activities relating to the performance of the contract. An employee shall be considered to be so engaged if:

(i) The duties of the employee's position include work that fulfills a contractual obligation, or work that is necessary to, or that facilitates, performance of the contract or a provision of the contract; or

(ii) The cost or a portion of the cost of the employee's position is allowable as a cost of the contract under the principles set forth in the Federal Acquisition Regulation at 48 CFR Ch. 1, part 31: Provided, That a position shall not be considered covered by this part by virtue of this provision if the cost of the position was not allocable in whole or in part as a direct cost to any Government contract, and only a de minimis (less than 2%) portion of the cost of the position was allocable as an indirect cost to Government contracts, considered as a group.

(e) *Obtaining a poster with the employee notice.* A poster with the required employee notice, including a poster with the employee notice translated into languages other than English, will be printed by the Department, and will be provided by the Federal contracting agency or may be obtained from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5609, Washington, DC 20210, or from any

field office of the Department's Office of Labor-Management Standards or Office of Federal Contract Compliance Programs. A copy of the poster in English and in languages other than English may also be downloaded from the Office of Labor-Management Standards Web site at <http://www.olms.dol.gov>. Additionally, contractors may reproduce and use exact duplicate copies of the Department's official poster.

(f) *Electronic postings of employee notice.* A contractor or subcontractor that customarily posts notices to employees electronically must also post the required notice electronically. Such contractors or subcontractors satisfy the electronic posting requirement by displaying prominently on any Web site that is maintained by the contractor or subcontractor, whether external or internal, and customarily used for notices to employees about terms and conditions of employment, a link to the Department of Labor's Web site that contains the full text of the poster. The link to the Department's Web site must read, "Important Notice about Employee Rights to Organize and Bargain Collectively with Their Employers." Where a significant portion of a contractor's workforce is not proficient in English, the contractor must provide the notice required in this subsection in the language the employees speak. This requirement will be satisfied by displaying prominently on any Web site that is maintained by the contractor or subcontractor, whether external or internal, and customarily used for notices to employees about terms and conditions of employment, a link to the Department of Labor's Web site that contains the full text of the poster in the language the employees speak. In such cases, the Office of Labor-Management Standards will provide translations of the link to the Department's Web site that must be displayed on the contractor's or subcontractor's Web site.

§ 471.3 What exceptions apply and what exemptions are available?

(a) *Exceptions for specific types of contracts.* The requirements of this part do not apply to any of the following:

(1) Collective bargaining agreements as defined in the Federal Service Labor-Management Relations Statute, entered into by an agency and the exclusive representative of employees in an appropriate unit to set terms and conditions of employment of those employees.

(2) Government contracts that involve purchases below the simplified acquisition threshold set by Congress under the Office of Federal Procurement

Policy Act. Therefore, the employee notice clause need not be included in government contracts for purchases below that threshold, provided that

(i) No agency or contractor is permitted to procure supplies or services in a manner designed to avoid the applicability of the Order and this part; and

(ii) The employee notice clause must be included in government contracts for indefinite quantities, unless the contracting agency or contractor has reason to believe that the amount to be ordered in any year under such a contract will be less than the simplified acquisition threshold set in the Office of Federal Procurement Policy Act.

(3) Government contracts resulting from solicitations issued before the effective date of this rule.

(4) Subcontracts of \$10,000 or less in value, except that contractors and subcontractors are not permitted to procure supplies or services in a manner designed to avoid the applicability of the Order and this part.

(5) Contracts and subcontracts for work performed exclusively outside the territorial United States.

(b) *Exemptions for certain contracts.* The Director of OLMS may exempt a contracting department or agency or groups of departments or agencies from the requirements of this part with respect to a particular contract or subcontract or any class of contracts or subcontracts when the Director finds that either:

(1) The application of any of the requirements of this part would not serve its purposes or would impair the ability of the Government to procure goods or services on an economical and efficient basis; or

(2) Special circumstances require an exemption in order to serve the national interest.

(c) *Procedures for requesting an exemption and withdrawals of exemptions.* Requests for exemptions under this subsection from a contracting department or agency must be in writing, and must be directed to the Director of OLMS, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5603, Washington, DC, 20210. The Director of OLMS may withdraw an exemption granted when, in the Director's judgment, such action is necessary or appropriate to achieve the purposes of this part.

§ 471.4 What employers are not covered under this part?

(a) The following employers are excluded from the definition of "employer" in the National Labor

Relations Act (NLRA), and are not covered by the requirements of this part:

- (1) The United States or any wholly owned Government corporation;
- (2) Any Federal Reserve Bank;
- (3) Any State or political subdivision thereof;
- (4) Any person subject to the Railway Labor Act;
- (5) Any labor organization (other than when acting as an employer); or
- (6) Anyone acting in the capacity of officer or agent of such labor organization.

(b) Additionally, employers exclusively employing workers who are excluded from the definition of "employee" under the NLRA are not covered by the requirements of this part. Those excluded employees are employed:

- (1) As agricultural laborers;
- (2) In the domestic service of any family or person at his home;
- (3) By his or her parent or spouse;
- (4) As an independent contractor;
- (5) As a supervisor as defined under the NLRA;
- (6) By an employer subject to the Railway Labor Act; or
- (7) By any other person who is not an employer as defined in the NLRA

Appendix A to Subpart A of Part 471—Text of Employee Notice Clause

"1. During the term of this contract, the contractor agrees to post a notice, of such size and in such form, and containing such content as the Secretary of Labor shall prescribe, in conspicuous places in and about its plants and offices where employees covered by the National Labor Relations Act engage in activities relating to the performance of the contract, including all places where notices to employees are customarily posted both physically and electronically. The "Secretary's notice" shall consist of the following:

"Employee Rights Under The National Labor Relations Act"

"The NLRA guarantees the right of employees to organize and bargain collectively with their employers, and to engage in other protected concerted activity. Employees covered by the NLRA* are protected from certain types of employer and union misconduct. This Notice gives you general information about your rights, and about the obligations of employers and unions under the NLRA. Contact the National Labor Relations Board, the Federal agency that investigates and resolves complaints under the NLRA, using the contact information supplied below, if you have any questions about specific rights that may apply in your particular workplace.

"Under the NLRA, you have the right to:

- Organize a union to negotiate with your employer concerning your wages, hours, and other terms and conditions of employment.
- Form, join or assist a union.

- Bargain collectively through representatives of employees' own choosing for a contract with your employer setting your wages, benefits, hours, and other working conditions.

- Discuss your terms and conditions of employment or union organizing with your co-workers or a union.

- Take action with one or more co-workers to improve your working conditions by, among other means, raising work-related complaints directly with your employer or with a government agency, and *seeking* help from a union.

- Strike and picket, depending on the purpose or means of the strike or the picketing.

- Choose not to do any of these activities, including joining or remaining a member of a union.

“Under the NLRA, it is illegal for your employer to:

- Prohibit you from soliciting for a union during non-work time, such as before or after work or during break times; or from distributing union literature during non-work time, in non-work areas, such as parking lots or break rooms.

- Question you about your union support or activities in a manner that discourages you from engaging in that activity.

- Fire, demote, or transfer you, or reduce your hours or change your shift, or otherwise take adverse action against you, or threaten to take any of these actions, because you join or support a union, or because you engage in concerted activity for mutual aid and protection, or because you choose not to engage in any such activity.

- Threaten to close your workplace if workers choose a union to represent them.

- Promise or grant promotions, pay raises, or other benefits to discourage or encourage union support.

- Prohibit you from wearing union hats, buttons, t-shirts, and pins in the workplace except under special circumstances.

- Spy on or videotape peaceful union activities and gatherings or pretend to do so.

“Under the NLRA, it is illegal for a union or for the union that represents you in bargaining with your employer to:

- Threaten you that you will lose your job unless you support the union.

- Refuse to process a grievance because you have criticized union officials or because you are not a member of the union.

- Use or maintain discriminatory standards or procedures in making job referrals from a hiring hall.

- Cause or attempt to cause an employer to discriminate against you because of your union-related activity.

- Take other adverse action against you based on whether you have joined or support the union.

“If you and your coworkers select a union to act as your collective bargaining representative, your employer and the union are required to bargain in good faith in a genuine effort to reach a written, binding agreement setting your terms and conditions of employment. The union is required to fairly represent you in bargaining and enforcing the agreement.

“Illegal conduct will not be permitted. If you believe your rights or the rights of others

have been violated, you should contact the NLRB promptly to protect your rights, generally within six months of the unlawful activity. You may inquire about possible violations without your employer or anyone else being informed of the inquiry. Charges may be filed by any person and need not be filed by the employee directly affected by the violation. The NLRB may order an employer to rehire a worker fired in violation of the law and to pay lost wages and benefits, and may order an employer or union to cease violating the law. Employees should *seek* assistance from the nearest regional NLRB office, which can be found on the Agency's Web site: <http://www.nlrb.gov>. “Click on the NLRB's page titled “About Us,” which contains a link, “Locating Our Offices.” You can also contact the NLRB by calling toll-free: 1-866-667-NLRB (6572) or (TTY) 1-866-315-NLRB (6572) for hearing impaired.

“* The National Labor Relations Act covers most private-sector employers. Excluded from coverage under the NLRA are public-sector employees, agricultural and domestic workers, independent contractors, workers employed by a parent or spouse, employees of air and rail carriers covered by the Railway Labor Act, and supervisors (although supervisors that have been discriminated against for refusing to violate the NLRA may be covered).

“This is an official Government Notice and must not be defaced by anyone.

“2. The contractor will comply with all provisions of the Secretary's notice, and related rules, regulations, and orders of the Secretary of Labor.

“3. In the event that the contractor does not comply with any of the requirements set forth in paragraphs (1) or (2) above, this contract may be cancelled, terminated, or suspended in whole or in part, and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in or adopted pursuant to Executive Order 13496 of January 30, 2009. Such other sanctions or remedies may be imposed as are provided in Executive Order 13496 of January 30, 2009, or by rule, regulation, or order of the Secretary of Labor, or as are otherwise provided by law.

“4. The contractor will include the provisions of paragraphs (1) through (4) herein in every subcontract or purchase order entered into in connection with this contract (unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 3 of Executive Order 13496 of January 30, 2009), so that such provisions will be binding upon each subcontractor. The contractor will take such action with respect to any such subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for non-compliance: Provided, however, if the contractor becomes involved in litigation with a subcontractor, or is threatened with such involvement, as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.”

Subpart B—General Enforcement; Compliance Review and Complaint Procedures

§ 471.10 How will the Department determine whether a contractor is in compliance with Executive Order 13496 and this part?

(a) The Director of OFCCP may conduct a compliance evaluation to determine whether a contractor holding a covered contract is in compliance with the requirements of this part. Such an evaluation may be limited to compliance with this part or may be included in a compliance evaluation conducted under other laws, Executive Orders, and/or regulations enforced by the Department.

(b) During such an evaluation, a determination will be made whether:

(1) The employee notice required by § 471.2(a) is posted in conformity with the applicable physical and electronic posting requirements contained in § 471.2(d) and (f); and

(2) The provisions of the employee notice clause are included in government contracts, subcontracts or purchase orders entered into on or after June 21, 2010, or that the government contracts, subcontracts or purchase orders have been exempted under § 471.3(b).

(c) The results of the evaluation will be documented in the evaluation record, which will include findings regarding the contractor's compliance with the requirements of the Executive Order and this part and, as applicable, conciliation efforts made, corrective action taken and/or enforcement recommended under § 471.13.

§ 471.11 What are the procedures for filing and processing a complaint?

(a) *Filing complaints.* An employee of a covered contractor may file a complaint alleging that the contractor has failed to post the employee notice as required by the Executive Order and this part; and/or has failed to include the employee notice clause in subcontracts or purchase orders. Complaints may be filed with the Office of Labor-Management Standards (OLMS) or the Office of Federal Contract Compliance Programs (OFCCP) at 200 Constitution Avenue, NW., Washington, DC 20210, or with any OLMS or OFCCP field office.

(b) *Contents of complaints.* The complaint must be in writing and must include:

(1) The employee's name, address, and telephone number;

(2) The name and address of the contractor alleged to have violated the Executive Order and this part;

(3) An identification of the alleged violation and the establishment or construction work site where it is alleged to have occurred;

(4) Any other pertinent information that will assist in the investigation and resolution of the complaint; and

(5) The signature of the employee filing the complaint.

(c) *Complaint investigations.* In investigating complaints filed with the Department under this section, the Director of OFCCP will evaluate the allegations of the complaint and develop a case record. The record will include findings regarding the contractor's compliance with the requirements of the Executive Order and this part, and, as applicable, a description of conciliation efforts made, corrective action taken, and/or enforcement recommended.

§ 471.12 What are the procedures to be followed when a violation is found during a complaint investigation or compliance evaluation?

(a) If any complaint investigation or compliance evaluation indicates a violation of the Executive Order or this part, the Director of OFCCP will make reasonable efforts to secure compliance through conciliation.

(b) Before the contractor may be found to be in compliance with the Executive Order or this part, the contractor must correct the violation found by the Department (for example, by posting the required employee notice, and/or by amending its subcontracts or purchase orders with subcontractors to include the employee notice clause), and must commit, in writing, not to repeat the violation.

(c) If a violation cannot be resolved through conciliation efforts, the Director of OFCCP will refer the matter to the Director of OLMS, who may take action under § 471.13.

(d) For reasonable cause shown, the Director of OLMS may reconsider, or cause to be reconsidered, any matter on his or her own motion or in response to a request.

§ 471.13 Under what circumstances, and how, will enforcement proceedings under Executive Order 13496 be conducted?

(a) *General.* (1) Violations of the Executive Order or this part may result in administrative enforcement proceedings. The bases for a finding of a violation may include, but are not limited to:

(i) The results of a compliance evaluation;

(ii) The results of a complaint investigation;

(iii) A contractor's refusal to allow a compliance evaluation or complaint investigation to be conducted; or

(iv) A contractor's refusal to cooperate with the compliance evaluation or complaint investigation, including failure to provide information sought during those procedures.

(v) A contractor's refusal to take such action with respect to a subcontract as directed by the Director of OFCCP or the Director of OLMS as a means of enforcing compliance with the provisions of this part.

(vi) A subcontractor's refusal to adhere to requirements of this part regarding employee notice or inclusion of the contract clause in its subcontracts.

(2) If a determination is made by the Director of OFCCP that the Executive Order or the regulations in this part have been violated, and the violation has not been corrected through conciliation, he or she will refer the matter to the Director of OLMS for enforcement consideration. The Director of OLMS may refer the matter to the Solicitor of Labor to begin administrative enforcement proceedings.

(b) *Administrative enforcement proceedings.* (1) Administrative enforcement proceedings will be conducted under the control and supervision of the Solicitor of Labor, under the hearing procedures in 29 CFR part 18, Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges.

(2) The administrative law judge will certify his or her recommended decision issued under 29 CFR 18.57 to the Administrative Review Board. The decision will be served on all parties and *amicus curiae*.

(3) Within 25 days (10 days if the proceeding is expedited) after receipt of the administrative law judge's recommended decision, either party may file exceptions to the decision. Exceptions may be responded to by the other parties within 25 days (7 days if the proceeding is expedited) after receipt. All exceptions and responses must be filed with the Administrative Review Board.

(4) After the expiration of time for filing exceptions, the Administrative Review Board may issue a final administrative order, or may otherwise appropriately dispose of the matter. In an expedited proceeding, unless the Administrative Review Board issues a final administrative order within 30 days after the expiration of time for filing exceptions, the administrative law judge's recommended decision will become the final administrative order. If

the Administrative Review Board determines that the contractor has violated the Executive Order or the regulations in this part, the final administrative order will order the contractor to cease and desist from the violations, require the contractor to provide appropriate remedies, or, subject to the procedures in § 471.14, impose appropriate sanctions and penalties, or any combination thereof.

§ 471.14 What sanctions and penalties may be imposed for noncompliance, and what procedures will the Department follow in imposing such sanctions and penalties?

(a) After a final decision on the merits has issued and before imposing the sanctions and penalties described in paragraph (d) of this section, the Director of OLMS will consult with the affected contracting agencies, and provide the heads of those agencies the opportunity to respond and provide written objections.

(b) If the contracting agency provides written objections, those objections must include a complete statement of reasons for the objections, which must include a finding that, as applicable, the completion of the contract, or further contracts or extensions or modifications of existing contracts, is essential to the agency's mission.

(c) The sanctions and penalties described in this section will not be imposed if:

(1) The head of the contracting agency, or his or her designee, continues to object to the imposition of such sanctions and penalties, or

(2) The contractor has not been given an opportunity for a hearing.

(d) In enforcing the Executive Order and this part, the Director of OLMS may take any of the following actions:

(1) Direct a contracting agency to cancel, terminate, suspend, or cause to be canceled, terminated or suspended, any contract or any portions thereof, for failure to comply with its contractual provisions required by Section 7(a) of the Executive Order and the regulations in this part. Contracts may be canceled, terminated, or suspended absolutely, or continuance of contracts may be conditioned upon compliance.

(2) Issue an order of debarment under Section 7(b) of the Executive Order providing that one or more contracting agencies must refrain from entering into further contracts, or extensions or other modification of existing contracts, with any non-complying contractor.

(3) Issue an order of debarment under Section 7(b) of the Executive Order providing that no contracting agency may enter into a contract with any non-complying subcontractor.

(e) Whenever the Director of OLMS exercises the authority in this section, the contracting agency must report the actions it has taken to the Director of OLMS within such time as the Director of OLMS will specify.

(f) Periodically, the Director of OLMS will publish and distribute to all executive agencies a list of the names of contractors and subcontractors that have, in the judgment of the Director of OLMS, failed to comply with the provisions of the Executive Order and this part, or of related rules, regulations, and orders of the Secretary of Labor, and as a result have been declared ineligible for future contracts under the Executive Order and the regulations in this part.

§ 471.15 Under what circumstances must a contractor be provided the opportunity for a hearing?

Before the Director of OLMS takes either of the following actions, a contractor or subcontractor must be given the opportunity for a hearing:

(a) Issues an order for cancellation, termination, or suspension of any contract or debarment of any contractor from further Government contracts under Sections 7(a) or (b) of the Executive Order and § 471.14(d)(1) or (2) of this part; or

(b) Includes the contractor on a published list of non-complying contractors under Section 7(c) of the Executive Order and § 471.14(f) of this part.

§ 471.16 Under what circumstances may a contractor be reinstated?

Any contractor or subcontractor debarred from or declared ineligible for further contracts under the Executive Order and this part may request reinstatement in a letter to the Director of OLMS. In connection with a request for reinstatement, debarred contractors and subcontractors shall be required to show that they have established and will carry out policies and practices in compliance with the Executive Order and implementing regulations. Before reaching a decision, the Director of OLMS may request that a compliance

evaluation of the contractor or subcontractor be conducted, and may require the contractor or subcontractor to supply additional information regarding the request for reinstatement. If the Director of OLMS finds that the contractor or subcontractor has come into compliance with the Executive Order and this part and has shown that it will carry out the Executive Order and this part, the contractor or subcontractor may be reinstated. The Director of OLMS shall issue a written decision on the request.

Subpart C—Ancillary Matters

§ 471.20 What authority under this part or Executive Order 13496 may the Secretary delegate, and under what circumstances?

Section 11 of the Executive Order grants the Secretary the right to delegate any functions or duties under the Order to any officer in the Department of Labor or to any other officer in the executive branch of the Government, with the consent of the head of the department or agency in which that officer serves.

§ 471.21 Who will make rulings and interpretations under Executive Order 13496 and this part?

The Director of OLMS and the Director of OFCCP will make rulings under or interpretations of the Executive Order or the regulations contained in this part in accordance with their respective responsibilities under the regulations. Requests for a ruling or interpretation must be submitted to the Director of OLMS, who will consult with the Director of OFCCP to the extent necessary and appropriate to issue such ruling or interpretation.

§ 471.22 What actions may the Director of OLMS take in the case of intimidation and interference?

The Director of OLMS may impose the sanctions and penalties contained in § 471.14 of this part against any contractor or subcontractor who does not take all necessary steps to ensure that no person intimidates, threatens, or coerces any individual for the purpose

of interfering with the filing of a complaint, furnishing information, or assisting or participating in any manner in a compliance evaluation, complaint investigation, hearing, or any other activity related to the administration or enforcement of the Executive Order or this part.

§ 471.23 What other provisions apply to this part?

(a) The regulations in this part implement only the Executive Order, and do not modify or affect the interpretation of any other Department of Labor regulations or policy.

(b) Each contracting department and agency must cooperate with the Director of OLMS and the Director of the OFCCP, and must provide any information and assistance that they may require, in the performance of their functions under the Executive Order and the regulations in this part.

(c)(1) This subpart does not impair or otherwise affect:

(i) Authority granted by law to a department, agency, or the head thereof; or

(ii) Functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(2) This subpart must be implemented consistent with applicable law and subject to the availability of appropriations.

(d) Neither the Executive Order nor this part creates any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Signed in Washington, DC, May 7, 2010.

John Lund,

Director, Office of Labor-Management Standards.

Patricia A. Shiu,

Director, Office of Federal Contract Compliance Programs.

[FR Doc. 2010-11639 Filed 5-19-10; 8:45 am]

BILLING CODE 4510-CP-P