

DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Parts 9, 13, 23 and 52

[FAR Case 96-311]

RIN 9000-AH06

**Federal Acquisition Regulation;
Certification Requirements—Drug-Free
Workplace**

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

ACTION: Proposed rule.

SUMMARY: The Civilian Agency
Acquisition Council (CAAC) and the
Defense Acquisition Regulations
Council (DARC) are proposing to amend
the Federal Acquisition Regulation
(FAR) to delete the requirement for an
offeror to provide a certification
regarding a drug-free workplace. This
regulatory action was not subject to
Office of Management and Budget
review under Executive Order 12866,
dated September 30, 1993. This is not a
major rule under 5 U.S.C. 804.

DATES: Comments should be submitted
on or before August 19, 1996 to be
considered in the formulation of a final
rule.

ADDRESSES: Interested parties should
submit written comments to: General
Services Administration, FAR
Secretariat (MVRS), 18th & F Streets,
NW, Room 4037, Washington, DC
20405.

Please cite FAR case 96-311 in all
correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr.
Ralph DeStefano at (202) 501-1758 in
reference to this FAR case. For general
information, contact the FAR
Secretariat, Room 4037, GS Building,
Washington, DC 20405; telephone: (202)
501-4755. Please cite FAR case 96-311.

SUPPLEMENTARY INFORMATION:

A. Background

Section 4301(a) of the Fiscal Year
1996 Defense Authorization Act (Pub. L.
104-106) amended 41 U.S.C. 701 to
eliminate the requirement for an offeror
to certify that it will take certain actions
to provide a drug-free workplace. The
proposed rule revises FAR Subpart 23.5
to remove the requirement for the
certification and removes the
solicitation provision at FAR 52.223-5.

B. Regulatory Flexibility Act

This proposed rule is not expected to
have a significant economic impact on
a substantial number of small entities
within the meaning of the Regulatory
Flexibility Act, 5 U.S.C. 601, *et seq.*
Although the rule eliminates a
certification requirement, the
underlying policy regarding
maintenance of a drug-free workplace
has not changed. An Initial Regulatory
Flexibility Analysis has, therefore, not
been performed. Comments from small
entities concerning the affected FAR
subpart will be considered in
accordance with section 610 of the Act.
Such comments must be submitted
separately and should cite 5 U.S.C. 601,
et seq., (FAR case 96-311), in
correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does
not apply because the proposed changes
to the FAR do not impose recordkeeping
or information collection requirements,
or collections of information from
offerors, contractors, or members of the
public which require the approval of the
Office of Management and Budget under
44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 9, 13,
23 and 52

Government procurement.

Dated: May 12, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR
parts 9, 13, 23 and 52 be amended as set
forth below:

1. The authority citation for 48 CFR
parts 9, 13, 23 and 52 continues to read
as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C.
chapter 137; and 42 U.S.C. 2473(c).

**PART 9—CONTRACTOR
QUALIFICATIONS**

2. Section 9.406-2 is amended by
revising paragraph (b)(2) to read as
follows:

9.406-2 Causes for debarment.

* * * * *

(b) * * *

(2) Violations of the Drug-Free
Workplace Act of 1988 (Public Law
100-690 as indicated by—

(i) Failure to comply with the
requirements of the clause at 52.223-6,
Drug-Free Workplace; or

(ii) Such a number of contractor
employees having been convicted of
violations of criminal drug statutes
occurring in the workplace, as to
indicate that the contractor has failed to

make a good faith effort to provide a
drug-free workplace (see 23.505).

* * * * *

3. Section 9.407-2 is amended by
revising paragraph (a)(4) to read as
follows:

9.407.2 Causes for suspension.

(a) * * *

(4) Violations of the Drug-Free
Workplace Act of 1988 (Public Law
100-690), as indicated by—

(i) Failure to comply with the
requirements of the clause at 52.223-6,
Drug-Free Workplace; or

(ii) Such a number of contractor
employees having been convicted of
violations of criminal drug statutes
occurring in the workplace, as to
indicate that the contractor has failed to
make a good faith effort to provide a
drug-free workplace (see 23.504).

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**PART 13—SIMPLIFIED ACQUISITION
PROCEDURES**

4. Section 13.111 is amended by
revising paragraphs (h) and (i) and
removing paragraph (j) to read as
follows:

**13.111 Inapplicable provisions and
clauses.**

* * * * *

(h) 52.222-4, Contract Work Hours
and Safety Standards Act—Overtime
Compensation; and

(i) 52.223-6, Drug-Free Workplace,
except for individuals.

**PART 23—ENVIRONMENT,
CONSERVATION, OCCUPATIONAL
SAFETY, AND DRUG-FREE
WORKPLACE**

5. Section 23.504 is amended by
revising the introductory text of
paragraph (a); revising paragraph (b);
removing paragraph (c); and
redesignating paragraph (d) as (c) to
read as follows:

23.504 Policy.

(a) No offeror other than an individual
shall be considered a responsible source
(see 9.104-1(g) and 19.602- 1(a)(2)(i)) for
a contract that exceeds the simplified
acquisition threshold, unless it agrees
that it will provide a drug-free
workplace by—

* * * * *

(b) No individual shall be awarded a
contract of any dollar value unless that
individual agrees that the individual
will not engage in the unlawful
manufacture, distribution, dispensing,
possession, or use of a controlled

substance in the performance of the contract.

* * * * *

23.504 [Amended]

5b. In addition to the above, section 23.504 is amended by removing

“calendar” from the following places:

(a) 23.504(a)(4)(ii);

(b) 23.504(a)(5);

(c) 23.504(a)(6) introductory text; and

(d) newly designated 23.504(c).

6. Section 23.505 is amended by revising the heading and the introductory text of paragraph (a); in paragraph (a)(2) by removing “; or” and inserting a period in its place; by removing paragraph (b), redesignating (c) as (b) and revising the introductory text of newly designated (b) to read as follows:

23.505 Contract clause.

(a) Contracting officers shall insert the clause at 52.223-6, Drug-Free

Workplace, except as provided in paragraph (b) of this section, in solicitations and contracts—

* * * * *

(b) Contracting officers shall not insert the clause at 52.223-6, Drug-Free Workplace, in solicitations and contracts, if—

* * * * *

7. Section 23.506 is amended by revising paragraph (d) to read as follows:

23.506 Suspension of payments, termination of contract, and debarment and suspension actions.

* * * * *

(d) The specific causes for suspension of contract payments, termination of a contract for default, or suspension and debarment are—

(1) The contractor has failed to comply with the requirements of the

clause at 52.223-6, Drug-Free Workplace; or

(2) The number of contractor employees convicted of violations of criminal drug statutes occurring in the workplace indicates that the contractor has failed to make a good faith effort to provide a drug-free workplace.

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PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.223-5 [Reserved]

8. Section 52.223-5 is removed and reserved.

52.223-6 [Amended]

9. Section 52.223-6 is amended in the introductory text by removing “(b)”.

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