

B. Supplemental Final Regulatory Flexibility Analysis

24. As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission has prepared the following Supplemental Final Regulatory Flexibility Analysis (FRFA) relating to this *Order on Reconsideration*. As discussed in the initial FRFA in this proceeding, the Commission sought comment on alternatives for small entities including: (1) The establishment of different compliance and reporting requirements; (2) clarification, consolidation, or simplification of compliance or reporting requirements for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. As the Commission stated in the FRFA, “[w]hile we acknowledge that small or rural service providers may have limited resources or operate in remote areas, 911 is no less a critical public service in any part of the nation, and we decline to establish two tiers of 911 reliability based on economics or geography.” Accordingly, we intend our 911 reliability certification requirements—including the clarifications set forth in this *Order on Reconsideration*—to apply to all Covered 911 Service Providers without exceptions based on size or location, and we also decline to create a specific waiver procedure for entities to seek exemption from the rules.

25. That said, the Commission’s certification approach to 911 reliability continues to “allow[] flexibility for small or rural providers to comply with our rules in the manner most appropriate for their networks, and certain requirements will, by their nature, only apply to larger providers.” In contrast to more prescriptive reliability requirements, the option to certify reasonable alternative measures in lieu of specified best practices minimizes regulatory burdens on small entities by recognizing a variety of acceptable approaches to providing reliable 911 service. If anything, the clarifications provided above offer additional flexibility to small entities by making clear that they may certify reasonable alternative measures in lieu of circuit audits and tagging depending on their individual circumstances and network architecture. Thus, the rules as clarified in this *Order on Reconsideration* continue to take into account the unique interests of small entities as required by the RFA.

C. Congressional Review Act

26. The Commission will send a copy of this *Order on Reconsideration* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

V. Ordering Clauses

27. Accordingly, *it is ordered*, pursuant to sections 1, 4(i), 4(j), 4(o), 201(b), 214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(r), 307, 309(a), 316, 332, 403, 405, 615a–1, and 615c of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j) & (o), 201(b), 214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(r), 307, 309(a), 316, 332, 403, 405, 615a–1, and 615c, and sections 1.108 and 1.429 of the Commission’s rules, 47 CFR 1.1, 1.429, that this *Order on Reconsideration is adopted*.

28. *It is further ordered* that Part 12 of the Commission’s rules, 47 CFR part 12, *is amended* as set forth in the Appendix, and that such rule amendments *shall be effective* 30 days after publication in the **Federal Register**.

29. *It is further ordered* that the Motion for Clarification or, in the Alternative, Petition for Partial Reconsideration of Intrado, Inc., *is granted* to the extent described herein.

30. *It is further ordered* that the Commission *shall send* a copy of this *Order on Reconsideration* to Congress and to the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

31. *It is further ordered* that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Order on Reconsideration*, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

List of Subjects in 47 CFR part 12

Resiliency, Redundancy and Reliability of Communications.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 12 as follows:

PART 12—RESILIENCY, REDUNDANCY, AND RELIABILITY OF COMMUNICATIONS

■ 1. The authority citation for part 12 is revised to read as follows:

Authority: Sections 1, 4(i), 4(j), 4(o), 5(c), 201(b), 214(d), 218, 219, 251(e)(3), 301, 303(b), 303(g), 303(j), 303(r), 307, 309(a), 316, 332, 403, 405, 615a-1, 615c, 621(b)(3), and 621(d) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154 (j), 154 (o), 155(c), 201(b), 214(d), 218, 219, 251(e)(3), 301, 303(b), 303(g), 303(j), 303(r), 307, 309(a), 316, 332, 403, 405, 615a-1, 615c, 621(b)(3), and 621(d) unless otherwise noted.

■ 2. Amend § 12.4 by revising paragraphs (c)(1)(ii) introductory text and (c)(3)(ii) introductory text to read as follows:

§ 12.4 Reliability of covered 911 service providers.

* * * * *
(c) * * *
(1) * * *

(ii) If a Covered 911 Service Provider does not conform with all of the elements in paragraph (c)(1)(i) of this section with respect to the 911 service provided to one or more PSAPs, it must certify with respect to each such PSAP:

* * * * *
(3) * * *

(ii) If a Covered 911 Service Provider does not conform with all of the elements in paragraph (c)(3)(i) of this section, it must certify with respect to each such 911 Service Area:

* * * * *

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1823, 1846, and 1852
RIN 2700–AE17

NASA Federal Acquisition Regulation Supplement: Drug- and Alcohol-Free Workforce and Mission Critical Systems Personnel Reliability Program (NFS Case 2015–N002)

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: NASA is issuing a final rule amending the NASA FAR Supplement (NFS) to remove requirements related to the discontinued Space Flight Mission Critical Systems Personnel Reliability Program and to revise requirements related to contractor drug and alcohol testing.

DATES: Effective November 6, 2015.

FOR FURTHER INFORMATION CONTACT: Marilyn Chambers, NASA, Office of Procurement, email: Marilyn.Chambers@nasa.gov, or 202-358-5154.

SUPPLEMENTARY INFORMATION:

I. Background

The revision to this rule is part of NASA's retrospective plan under Executive Order (EO) 13563 completed in August 2011. NASA published a proposed rule in the **Federal Register** at 80 FR 26519 on May 8, 2015, to amend the NASA FAR Supplement (NFS) to remove 1846.370, NASA contract clauses, and the related clause at 1852.246-70, Mission Critical Space System Personnel Reliability Program. Additionally, Subpart 1823.5, Drug-Free Workplace, and the associated clause at 1852.223-74, Drug- and Alcohol-Free Workforce are amended to make revisions related to the removal of the Mission Critical Space System Personnel Reliability Program and also to clarify and update the clause and its prescription. One respondent submitted public comments on the proposed rule.

II. Discussion and Analysis

NASA has reviewed the public comment submitted in the development of the final rule. A discussion of the comments and the changes made as a result of those comments is provided, as follows:

A. Changes

There is one minor change made in the final rule in response to the public comment received.

B. Analysis of Public Comment

One respondent submitted five comments.

Comment: The respondent found the policy on the use of a controlled substance to be extremely limited and with additional monitoring requirements to ensure proper monitoring or assignment to a less critical position during the term of usage.

Response: The policy on the use of a controlled substance has not been changed in this rule. It permits the use of such substances when a doctor prescribes their use or for other uses authorized by law.

Comment: The respondent recommended referencing Appendix C, in addition to Appendices A and B of NASA Procedural Requirements (NPR) 3792.1, NASA's Plan for a Drug Free Workplace, for use as a guide for contractors to use when determining if an employee is in a sensitive position and subject to drug and alcohol testing.

Appendix C of the Procedural Requirements provides the most detailed guidance, and should be included in the revised section. Additionally, the respondent stated that contractors should be required to follow the NPR and not use the NPR as guidance only.

Response: NASA agrees the policy should have referenced Appendix C, NASA Guidelines for Determining Testing Designated Positions (TDPs) Subject to Random Drug Testing, of NPR 3792.1. To avoid future errors when the NPR is updated resulting in changes to specific appendices, 1852.223-74 Drug- and alcohol-free workforce, paragraph (b)(2), is revised to generically reference the guidance on designating TDP contained in the NPR rather than referencing a specific appendix. While the guidance on designating TDP is helpful information for contractors, the NPR is a NASA-internal policy, which applies only to NASA civil servants. Therefore, contractors must make TDP determinations for their employees as part of complying with the requirements set forth in NFS 1852.223-17.

Comment: The respondent recommended that the list of substances tested for be updated a minimum of every six months or as necessary.

Response: The NASA drug testing program in this rule follows the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" published by the Department of Health and Human Services, 73 FR 71858, and the procedures in 49 CFR part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs." These regulations list which substances will be tested for. Changes to these regulations are outside the scope of this rule.

Comment: The respondent recommends a variety of changes to the post-accident drug testing requirements of the rule, including expanding it to when there is any injury or property damage over \$500; requiring the contractor always submit post-accident drug test results and requiring identification of the individual tested to the Government. Additionally, the respondent recommends hair follicle testing in lieu of urine testing.

Response: NASA does not concur with these recommended changes. The requirements for post-accident drug testing in the rule were thoughtfully considered to balance the seriousness of the accident, the contributing factors, the privacy of individuals tested, and the burden to contractors in conducting drug tests. The method of testing, *i.e.*, hair follicle versus urine, is determined by the Department of Health and Human

Services and Department of Transportation regulations referenced previously.

Comment: The respondent recommends that the rule include a requirement for a drug-free workplace policy with the following components: A written policy, access to employee assistance, employee education, supervisor training, and drug testing.

Response: This rule sets forth NASA's contractor drug testing policy, based on Department of Health and Human Services and Department of Transportation regulations referenced previously. The other elements listed are required under the Federal Acquisition Regulation clause at 52.223-6, Drug-Free Workplace.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a significant regulatory action under section 6(b) of Executive Order 12866. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

NASA has prepared a Final Regulatory Flexibility Analysis consistent with the Regulatory Flexibility Act (FRFA), 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This rule is necessary to amend the NASA FAR Supplement (NFS) to remove requirements related to the Mission Critical Space System Personnel Reliability Program, which was discontinued effective April 8, 2014. The NFS contained a clause at 1852.246-70, Mission Critical Space System Personnel Reliability Program, which implemented the requirements of the Program on NASA contracts involving critical positions designated in accordance with 14 CFR 1214.5, Mission Critical Space System Personnel Reliability Program. With the discontinuance of the Program, the clause is no longer necessary and is removed.

Removal of the NFS clause at 1852.246-70 necessitated changes to the prescription at NFS 1823.570-2, Contract clause and to the clause at 1852.223-74, Drug- and Alcohol-Free

Workforce. The NFS clause at 1852.223–74 directed the inclusion of the Drug- and Alcohol-Free Workforce clause at 1852.223–74 in all solicitations and contracts containing the clause at 1852.246–70, Mission Critical Space Systems Personnel Reliability Program. Because NASA’s contractor drug and alcohol testing requirements are based on the statutory requirements of the Civil Space Employee Testing Act of 1991, Public Law 102–195, sec. 21, 105 Stat. 1616 to 1619, the terms “mission critical space systems” and “mission critical positions/duties,” used in the Act, and previously used in the Program, were carried over to the drug and alcohol testing clause as a point of reference for defining contract personnel and contract functions which come under the civil space employee testing requirements. Other revisions to correct and clarify the requirements in 1852.223–74, Drug- and Alcohol-Free Workforce, include—

- Moving the guidance on the use of a controlled substance from the definition to a separate paragraph;
- Referencing NASA Procedural Requirements (NPR) 3792.1, NASA’s Plan for a Drug Free Workplace, on “Testing Designated Positions” (TDPs) for federal employees, as a guide for contractors to use when designating “sensitive” positions;
- Updating outdated references to the Mandatory Guidelines for Federal Workplace Drug Testing Programs, published by the Department of Health and Human Services and Department of Transportation’s procedures at 49 CFR part 40 and updating the list of drugs required to be tested in accordance with the Mandatory Guidelines for Federal Workplace Drug Testing Programs; and
- Clarifying that post-accident testing is required when the contractor determines the employee’s actions are reasonably suspected of having caused or contributed to an accident resulting in death or personal injury requiring immediate hospitalization or damage to Government or private property estimated to exceed \$20,000 and that the contracting officer may request the results of this post-accident testing.

The rule does not change the application of the clause at 1852.223–74, Drug- and Alcohol-Free Workforce. This proposed rule imposes no new reporting requirements.

This rule does not duplicate, overlap, or conflict with any other Federal rules. No alternatives were identified that would meet the objectives of the rule. Excluding small business concerns that may be subject to the rule would not be in the best interest of the small business concerns or the Government, because

drug and alcohol testing of contractors performing functions related to mission critical space systems is statutorily mandated and is necessary in order to protect human life and the nation’s civil space assets.

V. Paperwork Reduction Act

The final rule does not contain information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. Chapter 35).

List of Subjects in 48 CFR Parts 1823, 1846, and 1852

Government procurement.

Manuel Quinones,
Federal Register Liaison.

Accordingly, 48 CFR parts 1823, 1846, and 1852 are amended as follows:

PART 1823—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

1. The authority citation for part 1823 is revised to read as follows:

Authority: 51 U.S.C. 20113(a) and 48 CFR chapter 1.1823.570–1.

■ 2. Section 1823.570–1 is revised to read as follows:

1823.570–1 Definitions.

Employee in a sensitive position means a contractor or subcontractor employee who has been granted access to classified information; a contractor or subcontractor employee in other positions that the contractor or subcontractor determines could reasonably be expected to affect safety, security, National security, or functions other than the foregoing requiring a high degree of trust and confidence; and includes any employee performing in a position designated “mission critical” or performing mission-critical duties. The term also includes any applicant who is tentatively selected for a position described in this paragraph.

Mission Critical Space Systems means the collection of all space-based and ground-based systems used to conduct space missions or support activity in space, including, but not limited to, the crewed space system, space-based communication and navigation systems, launch systems, and mission/launch control.

Mission Critical Positions/Duties means positions or duties which, if performed in a faulty, negligent, or malicious manner, could jeopardize

mission critical space systems and/or delay a mission.

Use, in violation of applicable law or Federal regulation, of alcohol includes having, while on duty or during a preemployment interview, an alcohol concentration of 0.04 percent by weight or more in the blood, as measured by chemical test of the individual’s breath or blood. An individual’s refusal to submit to such test is presumptive evidence of use, in violation of applicable law or Federal regulation, of alcohol.

■ 3. Section 1823.570–2 is revised to read as follows:

1823.570–2 Contract clause.

The contracting officer shall insert the clause at 1852.223–74, Drug- and Alcohol-Free Workforce, in all solicitations and contracts exceeding \$5 million in which work is performed by an employee in a sensitive position. However, the contracting officer shall not insert the clause at 1852.223–74 in solicitations and contracts for commercial items.

PART 1846—QUALITY ASSURANCE

■ 4. The authority citation for part 1846 is revised to read as follows:

Authority: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

■ 5. Section 1846.370 is revised to read as follows:

1846.370 NASA contract clauses.

The contracting officer shall insert the clause at 1852.246–73, Human Space Flight Item, in solicitations and contracts for human space flight hardware and flight-related equipment if the highest available quality standards are necessary to ensure astronaut safety.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. The authority citation for part 1852 continues to read as follows:

Authority: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

■ 7. Amend section 1852.223–74 by revising the date of the clause and paragraphs (a) and (b) to read as follows:

1852.223–74 Drug- and alcohol-free workforce.

* * * * *

Drug- and Alcohol-Free Workforce (Nov 2015)

(a) Definitions.

Employee in a sensitive position means a contractor or subcontractor

employee who has been granted access to classified information; a contractor or subcontractor employee in other positions that the contractor or subcontractor determines could reasonably be expected to affect safety, security, National security, or functions other than the foregoing requiring a high degree of trust and confidence; and includes any employee performing in a position designated mission critical or performing mission critical duties. The term also includes any applicant who is tentatively selected for a position described in this paragraph.

Mission Critical Space Systems means the collection of all space-based and ground-based systems used to conduct space missions or support activity in space, including, but not limited to, the crewed space system, space-based communication and navigation systems, launch systems, and mission/launch control.

Mission Critical Positions/Duties means positions or duties which, if performed in a faulty, negligent, or malicious manner, could jeopardize mission critical space systems and/or delay a mission.

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

(2) In determining which positions to designate as "sensitive," the contractor may use the guidelines for determining testing designated positions in NASA Procedural Requirements (NPR) 3792.1, NASA's Plan for a Drug Free Workplace, as a guide for the criteria and in designating "sensitive" positions for contractor employees.

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

(4) The Contractor's program shall conform to the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" published by the Department of Health and Human Services (73 FR 71858) and the procedures in 49 CFR part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs."

(i) The Contractor shall test for the following drugs: Marijuana, Cocaine, Amphetamines, Opiates and Phencyclidine (PCP) in accordance with the Mandatory Guidelines for Federal Workplace Drug Testing Programs Mandatory Guidelines, Section 3.1, and 49 CFR 40.85.

(ii) The contractor shall comply with the requirements and procedures for alcohol testing at 49 CFR part 40.

(iii) The use of a controlled substance in accordance with the terms of a valid prescription, or other uses authorized by law shall not be subject to the requirements this clause.

(5) The contractor shall conduct post-accident testing when the contractor determines the employee's actions are reasonably suspected of having caused or contributed to an accident resulting in death or personal injury requiring immediate hospitalization or damage to Government or private property estimated to exceed \$20,000. Upon request, the Contractor shall provide the results of post-accident testing to the Contracting Officer.

* * * * *

1852.246-70 [Removed and Reserved]

■ 8. Section 1852.246-70 is removed and reserved.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. NHTSA-2015-0043]

RIN 2127-AL59

Federal Motor Vehicle Theft Prevention Standard; Final Listing of 2016 Light Duty Truck Lines Subject to the Requirements of This Standard and Exempted Vehicle Lines for Model Year 2016

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation.

ACTION: Final rule.

SUMMARY: This final rule announces NHTSA's determination that there are no new model year (MY) 2016 light duty truck lines subject to the parts-marking requirements of the Federal motor vehicle theft prevention standard because they have been determined by the agency to be high-theft or because they have major parts that are interchangeable with a majority of the

covered major parts of passenger car or MPV lines. This final rule also identifies those vehicle lines that have been granted an exemption from the parts-marking requirements because the vehicles are equipped with antitheft devices determined to meet certain statutory criteria.

DATES: The amendment made by this final rule is effective October 7, 2015.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Consumer Standards Division, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, West Building, 1200 New Jersey Avenue SE., (NVS-131, Room W43-302), Washington, DC 20590. Ms. Proctor's telephone number is (202) 366-4807. Her fax number is (202) 493-0073.

SUPPLEMENTARY INFORMATION: The theft prevention standard (49 CFR part 541) applies to (1) all passenger car lines; (2) all multipurpose passenger vehicle (MPV) lines with a gross vehicle weight rating (GVWR) of 6,000 pounds or less; (3) low-theft light-duty truck (LDT) lines with a GVWR of 6,000 pounds or less that have major parts that are interchangeable with a majority of the covered major parts of passenger car or MPV lines; and (4) high-theft LDT lines with a GVWR of 6,000 pounds or less.

The purpose of the theft prevention standard is to reduce the incidence of motor vehicle theft by facilitating the tracing and recovery of parts from stolen vehicles. The standard seeks to facilitate such tracing by requiring that vehicle identification numbers (VINs), VIN derivative numbers, or other symbols be placed on major component vehicle parts. The theft prevention standard requires motor vehicle manufacturers to inscribe or affix VINs onto covered original equipment major component parts, and to inscribe or affix a symbol identifying the manufacturer and a common symbol identifying the replacement component parts for those original equipment parts, on all vehicle lines subject to the requirements of the standard.

Section 33104(d) provides that once a line has become subject to the theft prevention standard, the line remains subject to the requirements of the standard unless it is exempted under § 33106. Section 33106 provides that a manufacturer may petition annually to have one vehicle line exempted from the requirements of § 33104, if the line is equipped with an antitheft device meeting certain conditions as standard equipment. The exemption is granted if NHTSA determines that the antitheft device is likely to be as effective as compliance with the theft prevention