

§ 470.3

duplicate copies of the Department's official poster.

§ 470.3 What contracts are exempt from the employee notice clause requirement?

(a) *Transactions below the Simplified Acquisition Threshold.* The requirements of this part do not apply to Government contracts for purchases that fall below the Simplified Acquisition Threshold, as that threshold is defined in the Office of Federal Procurement Policy Act, 41 U.S.C. 403. Therefore, the employee notice clause need not be included in contracts for purchases below that threshold, *provided that*—

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

(2) The employee notice clause must be included in contracts and subcontracts 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 or subcontract will be less than the Simplified Acquisition Threshold.

(b) *Government contracts resulting from solicitations issued before April 18, 2001.* Pursuant to section 14 of the Order, the requirements of this part do not apply to Government contracts that result from solicitations issued before April 18, 2001, the effective date of the Order.

(c) *Specific contracts.* The Deputy Assistant Secretary for Labor-Management Programs may exempt a contracting agency or any person from requiring the inclusion of any or all of the employee notice clause in any specific contract, subcontract, or purchase order when the Deputy Assistant Secretary deems that special circumstances in the national interest so require. Requests for such exemptions must be in writing, and must be directed to the Deputy Assistant Secretary for Labor-Management Programs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5605, Washington, DC, 20210.

(d) *Withdrawal of exemption.* When any contract or subcontract is of a class exempted under this section, the Deputy Assistant Secretary for Labor-

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Management Programs may withdraw the exemption for a specific contract or subcontract or group of contracts or subcontracts when, in the Deputy Assistant Secretary's judgment, such action is necessary or appropriate to achieve the purposes of the Order.

§ 470.4 What contractors or facilities are exempt from the posting requirements?

(a) *Number of employees.* The requirement to post the employee notice given in § 470.2(a) (hereafter, posting requirement) does not apply to contractors and subcontractors that employ fewer than 15 persons.

(b) *Union representation.* The posting requirement does not apply to contractor establishments or construction work sites where no union has been formally recognized by the prime contractor or certified as the exclusive bargaining representative of the prime contractor's employees.

(c) *State law.* The posting requirement does not apply to contractor establishments or construction work sites in jurisdictions where state law forbids enforcement of union-security agreements. For purposes of this paragraph, the term "state" is intended to include any of the entities identified as comprising the United States, as defined in § 470.1(2).

(d) *Work not performed under Government contracts.* Upon the written request of the contractor, the Deputy Assistant Secretary for Labor-Management Programs may waive the posting requirements with respect to any of a contractor's facilities if the Deputy Assistant Secretary finds that the contractor has demonstrated that:

(1) The facility is in all respects separate and distinct from activities of the contractor related to the performance of a contract; and

(2) Such a waiver will not interfere with or impede the effectuation of the Executive Order.

(e) *Work outside the United States.* The posting requirement does not apply to work performed outside the United States that does not involve the recruitment or employment of workers within the United States.