Answer—Yes. Federal purchases of utility services are covered under subpart 8.3 of the FAR.

5. Question—Is an order issued pursuant to a basic ordering agreement covered by the FAR and, therefore, subject to the Act?

Answer—Yes. Basic ordering agreements are covered under subpart 16.7 of the FAR. Orders exceeding $25,000 issued under basic ordering agreements are subject to the Act.

6. Question—What are examples of Federal contracts that are not "procurement contracts"?

Answer—Contracts not covered by the FAR, e.g., any other acquisition contract for real or personal property or services not subject to the FAR. An example is contracts for obtaining goods and services for post exchanges on military bases.

7. Question—Are oil and gas leases with the Federal Government covered by the FAR?

Answer—No. These types of contracts are not covered under the FAR.

8. Question—Are contracts to buy timber from the Federal Government covered by the FAR?

Answer—No. These types of contracts are not covered by the FAR.

9. Question—Are FSLIC and FDIC contracts for deposit insurance covered by the FAR?

Answer—No. These types of contracts are not covered by the FAR.

10. Question—Does selling U.S. savings bonds or acting as a depository for the Department of the Treasury constitute a procurement contract?

Answer—No.

11. Question—Is the receipt of funds by an individual pursuant to an imprest fund transaction covered by the FAR?

Answer—Yes; however, the Act is not applicable because imprest fund transactions do not exceed the $25,000 threshold.

12. Question—Is an order issued against a requirements contract or an indefinite quantity contract covered by the Drug-Free Workplace Act when the order is reasonably expected to exceed $25,000?

Answer—Yes.

13. Question—If a single firm has several contracts that when added together total $25,000 or more, is the firm subject to the Act?

Answer—No. A firm would be subject to the Act only if the value of a single contract is $25,000 or more.

14. Question—Does the FAR, which is issued jointly by three agencies (the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration), apply to contract awards by other executive agencies?

Answer—Yes.

15. Question—Do Drug-Free Workplace Act requirements apply to subcontracts?

Answer—No.

16. Question—Under the Act, can an agency impose any additional requirements, beyond those in the common rule, on grantees?

Answer—No. Both the January 31, 1989, grantee interim final common rule and the grantee final common rule indicate that the grantee common rule is the sole authority for implementing the Act and that no separate agency guidance is authorized under the Act.

17. Question—What is section 5301 of the omnibus drug legislation and how will it be implemented?

Answer—Section 5301 of the Anti-Drug Abuse Act of 1988, Pub. L. 100–690, 102 Stat. 4310 (codified at 21 U.S.C. section 853a) is another, separate part of the omnibus drug legislation that included the Drug-Free Workplace Act of 1988. Section 5301 deals with denial of certain Federal benefits for persons convicted of drug offenses. Denial decisions are made by Federal and State judges. The Department of Justice will be directing implementation. Questions should be addressed to: Director, Drug Offense/Denial of Federal Benefits Project, Office of Justice Programs, Department of Justice, 633 Indiana Avenue, NW., Washington, DC 20531; telephone: 202–307–0630.

18. Question—How will the Drug-Free Workplace Act be enforced?

Answer—Under the Act, certifications are required from contractors and grantees. Also, as part of normal Federal contract and grant administration, compliance will be checked. Additionally, as part of normal Federal auditing, compliance will be checked. And, lastly, as part of grantees' Single Audits, compliance checking will be required. OMB's compliance supplements for State and local governments and for other entities will include a requirement for such · compliance checking.

Dated: May 20, 1990.

Frank Hodsoll,

Executive Associate Director.

[FR Doc. 90-12186 Filed 5-24-90; 8:45 am]

BILLING CODE 3110-01-M

Department of Agriculture

7 CFR PART 3017

Department of Energy

10 CFR PART 1036

Small Business Administration

13 CFR PART 145

National Aeronautics and Space Administration

14 CFR PART 1265

Department of Commerce

15 CFR PART 26

Department of State

22 CFR PART 137

International Development Cooperation Agency

Agency for International Development

22 CFR PART 208

Peace Corps

22 CFR PART 310

United States Information Agency

22 CFR PART 513

Inter-American Foundation

22 CFR PART 1006

African Development Foundation

22 CFR PART 1508

Department of Housing and Urban Development

24 CFR PART 24

Department of Justice

28 CFR PART 67

Department of Labor

29 CFR PART 98

Federal Mediation and Conciliation Service

29 CFR PART 1471

Department of the Treasury

31 CFR PART 19

Department of Defense

32 CFR PART 280

Department of Education

34 CFR PART 85

National Archives and Records Administration

36 CFR PART 1209

Department of Veterans Affairs

38 CFR PART 44

Environmental Protection Agency

40 CFR PART 32

General Services Administration

41 CFR PART 105-68

Department of the Interior

43 CFR PART 12

Federal Emergency Management Agency

44 CFR PART 17

Department of Health and Human Services

45 CFR PART 76

National Science Foundation

45 CFR PART 620

National Foundation on the Arts and the Humanities

National Endowment for the Arts

45 CFR PART 1154

National Endowment for the Humanities

45 CFR PART 1169

Institute of Museum Services

45 CFR PART 1185

ACTION

45 CFR PART 1229

Commission on the Bicentennial of the United States Constitution

45 CFR PART 2016

Department of Transportation

49 CFR PART 29

Government-Wide Requirements for Drug-Free Workplace (Grants)

AGENCIES: Department of Agriculture, Department of Commerce, Department of Defense, Department of Education, Department of Energy, Department of Health and Human Services, Department of Housing and Urban Development, Department of the Interior, Department of Justice, Department of Labor, Department of State, Department of Transportation, Department of the Treasury, Department of Veterans Affairs, ACTION, African Development Foundation, Agency for International Development, Commission on the Bicentennial of the United States Constitution, Environmental Protection Agency, Federal Emergency Management Agency, Federal Mediation and Conciliation Service, General Services Administration, Institute of Museum Services, Inter-American Foundation, National Aeronautics and Space Administration, National Archives and Records Administration, National Endowment for the Arts, National Endowment for the Humanities, National Science Foundation, Peace Corps, Small Business Administration, United States Information Agency.

ACTION: Final rule.

SUMMARY: The Drug-Free Workplace Act of 1988 requires that all grantees receiving grants from any Federal agency certify to that agency that they will maintain a drug-free workplace, or, in the case of a grantee who is an individual, certify to the agency that his or her conduct of grant activity will be drug-free. This government-wide rule is for the purpose of implementing the statutory requirements. It directs that grantees take steps to provide a drug-free workplace in accordance with the Act. The rule amends an interim final rule published January 31, 1989, in response to public comment.

DATES: This rule is effective July 24, 1990, except for the certification requirement of § ______.630 (c) and (d) for States and State agencies which is effective June 25, 1990. Compliance is authorized immediately. However, the Department of Education is required to submit the final rule to Congress for review. See Education's agency-specific preamble below.

FOR FURTHER INFORMATION CONTACT: See agency-specific preambles for the contact person for each agency.

SUPPLEMENTARY INFORMATION: As part of the omnibus drug legislation enacted November 18, 1988, Congress passed the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 *et seq.).* This statute requires contractors and grantees of Federal agencies to certify that they will provide drug-free workplaces; or, in the case of a grantee who is an individual, certify to the agency that his or her conduct of the grant will be drug-free. Making the required certification is a precondition for receiving a contract or grant from a Federal agency.

The Federal agencies published an interim final rule on this subject January

31, 1989 (53 FR 4946), requesting public comments on it. The requirements of the interim final rule became applicable on March 18, 1989. The agencies received 95 comments, which they have reviewed. The responses to the comments are discussed below.

Drug-free workplace requirements pertaining to contractors will be found in a separate final rule amending the Federal Acquisition Regulation (FAR; 48 CFR subparts 9.4, 23.5, and 52.2). This government-wide common rulemaking concerns only grants (including cooperative agreements). This common rule will be the sole authority for implementing the Act, i.e., there will be no separate agency guidance issued. Because the statute makes use of existing suspension and debarment remedies for noncompliance with drug-free workplace requirements, the agencies have determined to implement the statute through an amendment to the existing government-wide nonprocurement suspension and debarment common rule. Using this vehicle will allow the agencies to take advantage of existing administrative procedures and definitions, minimizing regulatory duplication.

Section-By-Section Analysis

This portion of the preamble discusses the amendments made by this rule to the interim final government-wide drug-free workplace common rule as published on January 31, 1989. This section-by-section analysis does not attempt to describe the entire drug-free workplace rule, only those portions added or changed by this final rule.

Section _____.605 Definitions

In the definition of "controlled substance," citations to regulations implementing the Controlled Substances Act have been corrected to refer to 21 CFR part 1308.

The definition of "employee" has been made more specific. An employee now includes all "direct charge" employees (i.e., those whose services are directly and explicitly paid for by grant funds) and "indirect charge" employees (i.e., those members of the grantee's organization who perform support or overhead functions related to the grant and for which the Federal Government pays its share of expenses under the grant program). (The terms "direct charge and indirect charge" come from cost principles in OMB Circular A–21, A–87, and A–122). Among indirect charge employees, those whose impact or involvement is insignificant to the performance of the grant are exempted from coverage.

Any other person who is on the grantee's payroll and works in any activity under the grant, even if not paid from grant funds, is also considered to be an employee. Temporary personnel and consultants who are on the grantee's payroll are covered. Similar workers who are not on the grantee's own payroll (e.g., who are on the payroll of contractors working for the grantee) are not covered, even if their physical place of employment is in the grantee's covered workplace. Likewise, volunteers, even if used to help meet a matching requirement, are not employees for purposes of this rule.

In the definition of "grant," editorial changes to the reference to the common rule on grants management were made. The definition of "grantee" specifies that a Federal agency that received a grant from another Federal agency is not considered a grantee for purposes of this rule. For convenience of parties that may use this rule but not the entire nonprocurement suspension and debarment rule, the definition of "State" from the suspension and debarment rule is repeated in this section. It emphasizes that State-supported institutions of higher education are not considered part of a "State" for purposes of the rule.

Section _____.610 Coverage

Paragraph (b) of this section now provides that the agency head or his/her designee can determine that the application of this rule should be negated on the basis of inconsistency with U.S. international obligations or foreign law.

Section _____.615 Grounds for Suspension of Payments, Suspension or Termination of Grants, or Suspension or Debarment

Since grants are often made to individuals (e.g., Pell Grants), a new paragraph (c) has been added to this section to specify the conduct by an individual grantee that constitutes a violation of the rule. (There is no similar provision in the drug-free workplace rule for contracting.) This conduct includes failing to carry out the requirements of the individual grantee's certification (e.g., by unlawful possession or use of a controlled substance during the conduct of any grant activity) or conviction of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity. The sanctions, set forth in § _____.620, are the same as for other grantees. Paragraph (a), now limited to making a false certification, applies both to individual and other grantees. The former subparagraphs (b) and (c), which concern grantees other than individuals, are now subparagraphs (1) and (2) of a new paragraph (b) concerning grantees other than individuals.

Section _____.630 Certification Requirements and Procedures

This new section replaces the former § _____.630 (Grantees' responsibilities) in its entirety. Paragraph (a) states the general rule that grantees must make the appropriate drug-free workplace certification as a prior condition to being awarded a grant. They need not do so, however, for a grant awarded before March 18, 1989, or under a no-cost time extension for such a grant. If there is a non-automatic continuation of such a grant that occurs after March 18, 1989, a one time certification is necessary. Non-automatic continuations are equivalent to competing continuations for many agencies.

As provided in paragraph (b), grantees must make the required certification for each grant as part of the grant application or if there is no application, prior to award. (For mandatory formula grants and entitlements with no application process, a one-time certification is needed to continue receiving awards.)

Paragraph (c) provides an opportunity for grantees that are States to make the certification to each Federal agency on an annual (Federal fiscal year) basis starting in Fiscal Year 1990, rather than on a grant-by-grant basis. Except as provided in paragraph (d), an annual State certification must cover all Federal agency grants to all State agencies. The original certification must be retained in the Governor's office. A copy must be sent with each grant to each Federal agency providing a grant to the State. A Federal agency may designate a central location for submission. For States that previously submitted an annual certification, statewide certification for Fiscal Year 1990 is required to be provided to Federal agencies no later than June 30, 1990.

Paragraph (d) establishes a variation on the statewide annual certification procedure of paragraph (c). Under this variation, the Governor may exclude certain State agencies from the statewide certification. Such certification would identify the excluded agencies. Each of the excluded agencies would then have the option to submit a single State agency certification to each Federal grant agency covering a Federal fiscal year. A State agency could also submit a single State agency certification in a case where there is no statewide certification. Otherwise, State agencies will have to submit grant-by-grant certifications.

The original State agency certification is retained in the State agency's central office; a copy is submitted with each grant, unless the Federal agency has designated a central location for submission. The State agency certification is deemed to apply to all State agencies involved with the grant. If State agency X receives the grant, and part of the work is subgranted or subcontracted out to State agency Y, the workplaces and employees of the latter, as well as those of the former, are covered by the certification.

Paragraph (e) concerns the question of when the drug-free workplace policy statement and program promised in the certification must actually be in place. The certification promises that the policy statement and program will be in effect in the future; they do not need to be in place at the time of award. For a grant of 30 days or less in duration of performance, they must be in place as soon as possible, but in any case before performance is expected to be completed. For a grant of over 30 days in duration of performance, they must be in effect within 30 days of award. An agency may set a different compliance date where extraordinary circumstances warrant for a specific grant.

Section _____.635 Reporting and Employee Sanctions for Convictions of Criminal Drug Offenses

This new section concerns requirements of employers and grantees who are individuals to report criminal drug offense convictions and the actions that employers are required to take concerning employees who are convicted of a criminal drug offense occurring in the workplace.

When a grantee other than an individual is notified by an employee, or learns from another source, that the employee has been convicted of a criminal drug offense occurring in the workplace, the grantee must provide, within 10 calendar days, a written notice of the conviction (including the employee's position title and grant identification number(s)) to the appropriate person or office in the Federal agency for each grant on which the convicted employee was working.

As with certifications, it is up to each Federal agency whether such reports are made to each grant officer or other official or to a central point in the agency. A grantee who is an individual who is convicted of a criminal drug offense while conducting grant activity must also make a written report of the conviction within 10 calendar days to the appropriate Federal agency official or office. Sanctions for the individual grantee are as provided in § _____.620.

When a grantee is notified that an employee has been convicted of a criminal drug offense for a violation occurring in the workplace, the grantee has 30 calendar days to take appropriate action. One type of action would be to require the employee to participate satisfactorily in an approved drug abuse assistance or rehabilitation program. Alternatively, the employer would take appropriate personnel action against the employee, up to and including termination. Terminating the employee is not mandatory under the rule; less stringent disciplinary action is permitted.

Whatever personnel action is taken must be consistent with section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794). This statute prohibits discrimination on the basis of handicap in programs receiving Federal financial assistance. As a general matter, a person may be a handicapped person protected by the Act on the basis of a "physical or mental impairment" that substantially limits a major life activity, such as working, including drug addiction or alcoholism (*see* for example 43 Op. Atty. Gen. 12 (1977), Department of Transportation rules at 49 CFR 27.5).

Under case law interpreting the Rehabilitation Act, a recovering substance abuser who is rehabilitated or undergoing rehabilitation would fall within the definition of a handicapped individual. It should be pointed out, however, that under the Rehabilitation Act (29 U.S.C. 706(7)(B)), the definition of a handicapped individual, for purposes of employment, does not include someone

> whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.

Appendix C

Instructions

This rule adds three new paragraphs to the instructions for the certification for grantees other than individuals. Paragraph eight repeats certain key definitions from the regulation (controlled substance, conviction, criminal drug statute, and employee) for the convenience of grantees. Paragraphs five, six and seven relate to the identification of workplaces. Federal agencies, in order to audit grantee compliance, must have access to the addresses or locations of workplaces to which drug-free workplace requirements apply. Consequently, grantees must identify workplaces in one of three ways: (1) On the certification document, (2) on the grant application or in signing the award if there is no application, or (3) in a document kept on file and available for inspection by Federal agencies. The choice among these options is the grantee's. The identifications must include the street address or location of the workplace, where work will take place at a specific site or sites. In other situations, it may be necessary to use a categorical identification instead. For example, a mass transit authority could identify covered workplaces as including all buses and subway trains while in operation.

Certification for Grantees Other Than Individuals

Paragraph A(b) of this certification has been amended to specify that the grantee's drug-free awareness program must be an "ongoing" program. This means that this program cannot be a one-time effort at the outset of the grant, but must continue throughout the life of the grant. In addition to editorial changes, paragraphs (A) (d), (e) and (f) have been amended to specify that notices must be provided in writing and that deadlines are determined in calendar days. Reference to the notification requirement of § _____.635(a)(1) has been added to paragraph A(e) and a reference to the Rehabilitation Act has been added to paragraph A(f)(1). Finally, paragraph B now says that the grantee "may" submit workplace identifications in the certification; the grantee, as explained in the instructions, may also do so at the time of grant application (or the time of award, if there is no application) or may keep the identifications on file.

Certification for Grantees Who Are Individuals

A new paragraph (b) has been added, incorporating the notice requirement of § _____.635(b).

Response to Comments

The following portion of the preamble lists the issues raised by public comments to the docket for the January 31, 1989, interim final rule. The statement of each issue is followed by the agencies' response.

The Certification Process

1. All grantees (not just States) should be allowed to certify on an annual basis, rather than on a grant-by-grant basis.

Response: Under principles of Federalism, States occupy a special position in the Federal system. Moreover, States and State agencies receive substantial funding under many Federal programs, and have many continuing grant program relationships with Federal agencies. State governments are well situated to make comprehensive certifications for their State agencies. The Federal agencies have determined that annual certifications make sense as an option for the States. It is far less clear that such a system would be appropriate for other grantees. It should be noted that State-supported institutions of higher education are not considered to be "States" or State agencies for this or other purposes under the regulation. This means, for example, that a university could not submit a one-time certification for itself or for a particular agency or the entire State government.

2. The certification options available to grantees should be clarified.

Response: Section____.630 of the common rule now provides that grantees shall make the required certification for each grant at the time of initial grant application or before award if there is no application. States may make a one-time annual certification; State agencies not covered by an annual statewide certification may make a one-time annual State agency-wide certification. However, a photocopy of the statewide or State agency-wide certification must accompany each grant, unless the Federal agency has established a central point for receiving certifications.

3. Add relevant definitions to the certification.

Response: Definitions of key terms, including controlled substance, conviction, criminal drug statute, and employee have been added to the certification. The definition of a controlled substance includes Schedule I–V substances under the Controlled Substances Act.

4. Work sites should not have to be identified in each certification, in order to reduce administrative burdens.

Response: The purpose of identification of work sites is to enable Federal agencies to determine whether grantees are complying with the regulation. To reduce administrative burdens, the revised rule allows grantees to choose whether to list work sites on the certification, in the grant application or award, or in a file maintained by the grantee available for Federal inspection.

5. Clarify that certification Alternate I is for grantees other than individuals and that Alternate II is for individuals.

Response: The titles of Alternates I and II now explicitly provide that they are for grantees other than individuals and for grantees who are individuals, respectively.

6. Conditional certifications should be allowed.

Response: The Drug-Free Workplace Act does not allow for conditional certification. All grantees must certify that they will have a drug-free workplace.

7. Certifications should not be required for students in general, and recipients of Pell Grants in particular.

Response: The statute does not provide a basis on which student grantees can be exempted from the requirement that all grantees, including individuals, make a drug-free workplace certification. Making this certification will not add a significant burden to the student grant application process, and it is consistent with the intent of Congress that students, like other grantees, maintain a drug-free workplace.

8. Clarify whether certifications are needed for changes or modifications to grants awarded before March 18, 1989.

Response: In the case of a grant awarded prior to March 18, 1989, a certification is required only when there is a nonautomatic continuation award made after that date. That certification will be in effect through the end of the project period.

Scope of the Regulation

1. Requirements should not apply to local school districts or other educational organizations.

Response: The statute does not provide a basis on which school districts or other education-related grantees can be exempted from the requirements of the regulations.

2. Clarify whether any type of entity (e.g., banks, hospitals, institutions of higher education, local governments, utilities) is exempt from drug-free workplace requirements. What kind of grants do banks get that would be subject to these requirements?

Response: There are no exemptions for any type of organization. Banks may be more likely to get contracts (e.g., for debt collection, tax collection, or financial management services) than grants. Nevertheless, should a bank receive a grant, it would be subject to grant-related drug-free workplace requirements, whether or not it was also subject to these requirements as the result of having a contract with a Federal agency.

3. Clarify whether grants from such agencies as the U.S. Postal Service (USPS), the Tennessee Valley Authority (TVA), and the Legal Services Corporation (LSC) trigger drug-free workplace requirements.

Response: Grants from TVA would do so; grants from USPS and LSC would not, because they are not executive branch agencies.

4. Clarify whether drug-free workplace requirements apply to subgrantees or contractors under grants, or to employees of contractors who work in a grantee's workplace.

Response: These requirements do not apply to subgrantees or contractors under grants, since the statute covers only parties who get grants directly from a Federal agency. For example, if a Federal agency provides grant funds to a State government, which in turn passes some of these funds to a local government, the State government is covered by these regulations and the local government is not. Employees of a subgrantee or contractor under a grant are not covered by the regulation, even if they work in a grantee's workplace. Of course, these rules do not preclude a grantee, acting on its own independent authority, from imposing additional requirements on subrecipients or contractors.

5. Clarify whether the receipt of free or subsidized space or utilities from a Federal agency is a grant subjecting the recipient to coverage under the regulation.

Response: Receipt of space or utilities (e.g., space used by enterprises operated by blind persons in Federal facilities) is not a grant subject to these regulations.

Drug-Free Policy Statement and Awareness Program

1. Grantees' drug-free awareness programs should be ongoing, not a one-time affair. Clarify whether employees need to be notified only once as part of the drug-free awareness program or with each grant.

Response: It is the intent of the regulations that the grantee's policy and program be a continuing effort. For clarity on this point, the regulation has been amended to specify that the grantee's program must be "ongoing." Consequently, while there is not a requirement that a grantee notify employees about their responsibilities each time a new grant is received, as such, the grantee's ongoing program must ensure that employees remain aware of their continuing responsibilities.

2. Clarify whether alcohol and nonprescription drug abuse must be a part of programs under this regulation.

Response: While grantees may include these subjects in their programs at their own discretion, this regulation does not require their inclusion. For grantees' information, it is not essential to use the term "controlled substances" in the policy statement or program.

3. Clarify what responsibility employees or grantees have for reporting the use of controlled substances consistent with a legal prescription.

Response: Since the reporting requirements of the regulations pertain only to convictions for the unlawful use, possession, etc., of drugs occurring in the workplace, there is no reporting requirement in this situation.

4. The agencies should provide additional guidance or models for policy statements and drug awareness programs and sources of additional information about programs to combat drug abuse.

Response: The agencies believe that the requirements of the statute and regulation are very clear and explicit and that providing models is not necessary. It is preferable that individual grantees draft their own policies and create their own awareness programs, which can be better adapted to the needs of their workforces than any government-wide guidance. For grantees' information, the National Institute on Drug Abuse (NIDA) has a toll-free employer help-line for persons interested in programs to combat drug abuse in the workplace. The number is 800-843-4971. NIDA also has a clearinghouse for general information on controlling alcohol and drug abuse. That number is 301-468-2600. The address of the National Clearinghouse for Alcohol and Drug Information is Box 2345, Rockville, MD 20852.

5. Clarify whether grantees are required to establish an employee assistance program (EAP) or special training for supervisors.

Response: Nothing beyond the drug-free workplace policy statement and awareness program cited in the regulation is required. While grantees may voluntarily establish EAPs or special training for supervisors, doing so is not a requirement of this regulation.

6. The rules should define more specifically what constitutes a drug awareness program.

Response: The agencies believe that it is preferable to allow grantees to tailor programs to their needs. In addition, further specification could interfere with successful existing employer programs.

7. The regulation should allow the notice and policy statement to be given to a collective bargaining representative rather than to each employee individually.

Response: Under the statute and regulations, grantees are accountable for informing each employee of his or her responsibilities. This task cannot be delegated to a third party, such as a union. Nothing prevents the grantee from working cooperatively with a union to improve understanding of the grantee's policy and program among employees, however.

8. Clarify that employees are not required individually to verify receipt of the policy statement.

Response: We understand that some grantees have chosen to ask their employees to sign that they have received the statement. While grantees have the discretion to follow this practice, it is not required by the regulation.

9. Clarify whether drug testing is required or authorized under these regulations.

Response: The Act and these rules neither require nor authorize drug testing. The legislative history of the Drug-Free Workplace Act indicates that Congress did not intend to impose any additional requirements beyond those set forth in the Act. Specifically, the legislative history precludes the imposition of drug testing of employees as part of the implementation of the Act. At the same time, these rules in no way preclude employers from conducting drug testing programs in response to government requirements (e.g., Department of Transportation or Nuclear Regulatory Commission rules) or on their own independent legal authority.

10. Clarify when the drug-free awareness program required by the regulations must be in place.

Response: The statute and regulations do not require the program to be in place at the time of grant award. The certification is to the effect that such a program "will" be implemented (i.e., in the future). The agencies believe that grantees should have a reasonable time to get their program up and running. For a grant of 30 days or less duration, however, the program must be in place as soon as possible, but in any case before the performance of the grant is expected to be completed. To require less would be clearly contrary to the intent of Congress. Given that there is often some lag between the award of a grant and its performance, grantees for many short-duration grants should still have a reasonable amount of time after award to ensure that their program is in place. An agency may set a different compliance date where extraordinary circumstances warrant for a specific grant. For grants that will be performed during a period of over 30 days, the program must be in place within 30 days of award.

Employees

1. Clarify whether all employees of a grantee are covered if only a few of the grantee's several divisions are involved with the grant.

Response: As noted above, persons on the grantee's payroll who work on any activity under the grant are covered. This includes both so-called "direct charge" (i.e., those whose services are directly and explicitly paid for from grant funds) and "indirect charge" (i.e., those persons who perform support or overhead functions related to the grant and for which the Federal agency pays its share of expenses under the grant program) employees. If a grantee has four operating divisions and a headquarters unit, and one division receives a Federal grant, then the employees of the one division receiving the grant who are directly engaged in the performance of work under the grant are covered, as well as headquarters employees that support the division's operations. However, these rules in no way preclude a grantee from electing to cover employees of other divisions.

2. Clarify whether temporary employees or volunteers are covered.

Response: Any person who works on any activity under the grant, and who is on the grantee's payroll, is considered to be a covered employee (except for an indirect charge employee whose impact or involvement is insignificant to the performance of a grant), even if not paid from grant funds. A temporary employee is covered if he or she meets these criteria. A volunteer is someone who is not on the grantee's payroll, and hence is not covered under the rule, even if used to help meet a matching requirement.

3. If convicted of a criminal drug offense resulting from a violation occurring in the workplace, employees are obligated to report the conviction to the grantee. Clarify whether employees also have an obligation to report co-workers' convictions to the grantee.

Response: Employees are required to report only their own convictions. Reporting co-workers' convictions is not required.

4. Clarify whether a grantee is required to take action with respect to an employee who is convicted of a criminal drug offense resulting from a violation occurring in the workplace, even if the information about the conviction comes from a source other than the employee's self-report.

Response: Under § ______.635(a), the grantee's obligation to take action (either disciplinary action or referral for rehabilitation) arises when the grantee is "notified" of the conviction. This notification can come from any source (e.g., a newspaper report, contact from a probation officer, the employee's self-report).

5. The grantee's action with respect to a convicted employee should be determined on a case-by-case basis.

Response: The regulation requires only that, in case of a conviction for a criminal drug offense resulting from a violation occurring in the workplace, the grantee take one of two types of action. The grantee may take disciplinary action (which may be termination or a less severe sanction) or may refer the employee for a rehabilitation or drug abuse assistance program. The choice of which basic course to choose, as well as the specific discipline or treatment option, is left to the grantee's discretion and may be on a case-by-case basis.

6. Clarify that names of convicted employees need not be transmitted to the Federal agency.

Response: Notice is to be provided, including grant identification number(s) and position title, to the appropriate grant officer or office of the Federal agency. Language has been added to the certification for grantees other than individuals to make this point.

7. Clarify that employer obligations to inform employees of potential action against them include only those actions specified under this rule and not other Federal, State, or local laws.

Response: This statement is correct. While an employer may include other matters as part of the drug-free awareness policy, only the potential consequences of violations under this rule are required to be covered.

Enforcement and Sanctions

1. Clarify that agencies are not authorized to impose sanctions for employee convictions occurring before certifications are made.

Response: The grounds for sanctions under § ______.615 include false certification, violation of a certification, and failing to make a good faith effort to provide a drug-free workplace (i.e., in response to the certification). None of these grounds for a sanction arise in the absence of a certification. Consequently, convictions occurring before a grantee ever made a certification would not be relevant to a determination concerning sanctions.

2. Clarify whether, after closeout on a grant but before final audit resolution, grantees must report convictions of covered employees.

Response: Reporting of convictions is not required in this period.

3. The rule should allow reporting of convictions to a single agency to provide government-wide compliance with this requirement for all grants.

Response: If a given agency wishes to establish a central point for the reporting of convictions, it may do so. Requiring a central point for reporting to each agency, let alone the entire government, would be too cumbersome administratively and would not be consistent with the requirements of the Act. The same point applies to the submission of certifications to one government-wide point, which some commenters also requested.

4. Clarify to which Federal agencies grantees must report convictions of covered employees.

Response: Grantees (both individuals and others) must notify every grant officer on whose grant activity the convicted employee was working. If the employee was working on grants from more than one agency, then grant officers at all applicable agencies must be notified. Alternatively, if one or more of the agencies involved has designated a central point for the receipt of such notices, the grantee would notify the central point rather than the grant officer(s) in these agencies.

5. The rule should indicate the percentage of a grantee's employees that need to be convicted of criminal drug offenses for violations occurring in the workplace in order to trigger a finding that a grantee has failed to make a good faith effort to maintain a drug-free workplace. In any case, more guidance on what constitutes a good faith effort should be provided.

Response: The legislative history of the Act indicates that Congress did not believe that such a percentage trigger is appropriate. In determining whether the rule has been violated, an agency will look at the convictions and the efforts the grantee has made to maintain a drug-free workplace, deciding on a case-by-case basis whether the grantee has made a good faith effort. A numerical or percentage cutoff would not permit agencies to do justice to the variety of situations that may occur. Likewise, guidance on what constitutes a good faith effort would either be so general as to be of little use in particular situations or so specific as to unreasonably limit the necessary case-by-case judgments that agencies have the responsibility to make.

6. The evidentiary standard for imposing sanctions should be one of "substantial" evidence.

Response: The drug-free workplace requirements pertaining to grants do not independently state any such standard. Since the rules are part of the government-wide common rule for nonprocurement suspension and debarment, they use the same standards for imposing sanctions applicable to other nonprocurement suspension and debarment actions. The agencies do not believe that adopting a separate standard for drug-free workplace actions is appropriate or necessary.

7. Responsibility for making determinations about lack of good faith or other grounds for violations of the rule should be delegated to agency suspension and debarment officials.

Response: Section______.615 authorizes agency heads or their official designees to make determinations of violations. This language permits agency heads to delegate this responsibility. The regulation should not constrain the discretion of agency heads by automatically designating certain officials to perform this task.

8. Sanctions should be limited only to the transgressing workplace, not to other parts of the grantee's organization.

Response: The agencies do not believe that the regulation should contain such a limitation. If the grantee falsely certifies, fails to carry out the requirements of the certification, or fails to make a good faith effort to maintain a drug-free workplace, the grantee's overall management could be faulted for the violation, not only lower-level management at a particular site or facility. Responsibility for compliance goes all the way up an organization's chain of command, and agencies need to be able to apply sanctions accordingly.

9. The rule should provide that sanctions, and waivers of sanctions under § ______.625, must be granted consistently and fairly by agencies.

Response: The agencies do not believe that there is a practical way of implementing this request. Agencies must deal with sanction and waiver issues on a case-by-case basis. Meaningful regulatory guidelines for agency action to this end would be very difficult to draft and implement, and could lead to unnecessary litigation.

10. Clarify whether benefits can be withheld from individual grantees.

Response: Section______.615 now specifies that individuals can violate the rule by falsely certifying, failing to carry out the requirements of the certification, or being convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity. Like other grantees, grantees who are individuals are subject to sanctions (e.g., suspension or termination of the grant, debarment) if they violate the rule. As discussed in §_____.605(b), veterans' benefits are not subject to sanctions under this rule.

11. Clarify that a conviction includes acceptance of a guilty plea by a judicial body.

Response: It does.

12. The rule should make distinctions for severity of criminal statute violations.

Response: The Act, which speaks of convictions of a criminal drug offense, does not provide discretion to make such distinctions. However, grantees can take this information into account when developing their drug-free awareness programs or deciding on disciplinary actions.

13. Agencies should be permitted to grant a waiver of sanctions on the ground that sanctions would disrupt the operations of the agency.

Response: The rule permits waivers in the public interest, which is a sufficient basis for considering waivers. It is unlikely that there would be many circumstances in which sanctions to a grantee would disrupt the operations of the Federal agency making the grant, in any case.

14. The rule should delete the requirement to take corrective action for reported convictions within 30 days.

Response: This requirement is statutory and the rule cannot change it.

Relationship to Other Laws, Regulations and Agreements

1. Clarify whether the requirements of the Act and regulations preempt State and local laws.

Response: The requirements of the Act and regulations coexist with State and local law. We know of no conflicts with State or local law, so the question appears moot.

2. Clarify whether the requirements of the Act and regulations preempt collective bargaining agreements and inform grantees what to do about negotiations with unions about drug-free workplace requirements.

Response: These requirements coexist with the collective bargaining process. Compliance with the requirements of the Act and regulations is a condition of receiving a Federal grant. Preemption is not an issue. The Act and regulations do not purport to compel any change in existing labor-management agreements. Of course, labor and management cannot, via a collective bargaining agreement, nullify a grant condition based on Federal law. Federal agencies are not compelled to provide grants to organizations that fail to comply with a statutorily-imposed grant condition, for whatever reason. However, where the regulations provide discretion to grantees about the mode of compliance with the regulations (e.g., a grantee may either take disciplinary action against an employee convicted of a criminal drug offense resulting from a violation occurring in the workplace or refer the employee for rehabilitation), labor and management may determine the mode of compliance through collective bargaining.

3. Clarify the relationship of the Act and regulations to tenure policies of institutions of higher education.

Response: There is no relationship between university tenure policies and these requirements. If a tenured faculty member is convicted of a criminal drug offense resulting from a violation occurring in the workplace, the university would be required to take disciplinary action against the faculty member or refer her or him for rehabilitation. Given the range of choice which the university has under this provision, nothing in the rule requires the university to take action inconsistent with its tenure policies.

4. Either agency heads or their designees should be able to make the determination concerning whether application of these rules would be inconsistent with international law or the laws of a foreign nation.

Response: The rule has been changed so that the designee of an agency head, as well as the agency head, may make this determination.

5. Clarify whether the rule is intended to preempt laws of other nations or international law, including with respect to privacy and confidentiality matters. There should be prior consultation with foreign governments about any regulatory requirements before the rules are applied to grants that may be performed abroad.

Response: For this Act, it has been determined that Federal law does not preempt the laws of other nations or international law, including with respect to employee confidentiality. Concerning prior consultation, neither the Act nor the Administrative Procedure Act allows special treatment for foreign governments in rulemaking.

6. The rule should provide protection to grantees from employee lawsuits or provide for Federal reimbursement from costs incurred in defending against such litigation.

Response: The statute does not immunize grantees from employee litigation and the agencies could not effectually create such protection in a regulation. Nor does the statute authorize the expenditure of Federal funds to reimburse grantees for the cost of defending such lawsuits.

7. Clarify the relationship between this rule and drug testing programs of the Department of Defense, Department of Transportation, and the Nuclear Regulatory Commission.

Response: The Department of Defense requires drug testing for certain employees of some defense contractors. If such a defense contractor also receives a grant from the Department of Defense or another Federal agency, the contractor would have to comply with both the Department of Defense requirements and these drug-free workplace rules.

The Department of Transportation and the Nuclear Regulatory Commission require drug testing for certain employees of employers in the industries they regulate. If one of these employers is also a grantee of a Federal agency, the employer would have to comply with both the Department of Transportation or Nuclear Regulatory Commission requirements and these drug-free workplace rules. Finally, various Federal agencies, including the Departments of Defense, Treasury and Transportation, require some of their own Federal employees (e.g., air traffic controllers) to be tested for drug use. These requirements are unrelated to any requirements for grantees under the Drug-Free Workplace Act.

Other Issues

1. Clarify what the "place of performance" of a grant means, particularly for activities that have no fixed location e.g., buses in a mass transit system).

Response: The place of performance is wherever activity under a grant occurs. It can be in a fixed location, a variety of locations, or no fixed location. For mass transit buses, for instance, the place of performance may be the transit authority's buses, wherever they are in operation. For grants for the arts, the places of performance may be the various concert halls, theaters, galleries, etc. at which the public views the performance or art work. General categorical descriptions of such workplaces may be listed by grantees.

2. Clarify whether the number of days employees and grantees have to make various notifications are calendar days or working days.

Response: The certification now specifies calendar days.

3. The notice of conviction from an employee to a grantee and a grantee to an agency should be in writing.

Response: The certification now so specifies.

4. The regulation should have more specific language concerning which costs related to a drug-free awareness program are allowable under a grant.

Response: Grantees should refer to applicable OMB Circulars A–21, A–87, and A–122 and Federal agency regulations for information on the allowability of costs. Cost allowability principles are the same for activities under these regulations as they are for expenditures needed to meet other grant conditions.

5. Clarify whether the rehabilitation of employees is an allowable cost under grants.

Response: Only the fair Federal share of the reasonable and necessary expenses for the rehabilitation or other treatment for covered employees would be allowable, consistent with OMB Circulars A–21, A–87, and A–122 and Federal agency regulations.

6. There should be a second opportunity for public comments after more experience under the rules.

Response: This suggestion, essentially a recommendation that the agencies issue another interim final rule, has not been adopted. The comments received in response to the interim final rule covered virtually all aspects of the rule, and the agencies have considered them fully and carefully. A second round of public comment would be likely to generate little additional useful comment and would only prolong uncertainty about the final shape of the regulations.

Regulatory Process Matters

This rule is a non-major rule under Executive Order 12291. The agencies have evaluated the rule under Executive Order 12612, pertaining to Federalism. The statute requires drug-free workplace certifications to be made by all grantees, including State agencies. The rule does reduce burdens on State grantees by allowing State agencies to elect an annual certification to each Federal grantor agency in lieu of a certification for every grant. For these reasons, the agencies have determined that the rule will not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

As a statutory matter, this rule must apply to all grantees, regardless of size. (The statute does provide a shorter, less burdensome certification to be made by grantees who are individuals, however.) Costs incurred by grantees to implement drug-free workplace programs are directly mandated by statute; the agencies have minimal regulatory discretion in designing this regulation.

This rule contains information collection requirements subject to the Paperwork Reduction Act. The information collection requirements concern employees reporting drug offense convictions to grantees, grantees reporting these convictions to the agencies, and grantees listing the location(s) of their workplace(s) as part of the certification. These requirements have been reviewed and approved by the Office of Management and Budget, with OMB Control Number 0991–0002.

Text of the Common Rule

The text of the common rule, as adopted by the agencies in this document, appears below:

PART ____—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

* * * * *

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.

* * * *

Subpart F—Drug-Free Workplace Requirements (Grants)

§ ____.600 Purpose.

(a) The purpose of this subpart is to carry out the Drug-Free Workplace Act of 1988 by requiring that—

(1) A grantee, other than an individual, shall certify to the agency that it will provide a drug-free workplace;

(2) A grantee who is an individual shall certify to the agency that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

(b) Requirements implementing the Drug-Free Workplace Act of 1988 for contractors with the agency are found at 48 CFR subparts 9.4, 23.5, and 52.2.

§ ____.605 Definitions.

(a) Except as amended in this section, the definitions of § ____.105 apply to this subpart.

(b) For purposes of this subpart—

(1) *Controlled substance* means a controlled substance in schedules I through V of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15;

(2) *Conviction* means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

(3) *Criminal drug statute* means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

(4) *Drug-free workplace* means a site for the performance of work done in connection with a specific grant at which employees of the grantee are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance;

(5) *Employee* means the employee of a grantee directly engaged in the performance of work under the grant, including:

(i) All "direct charge" employees;

(ii) All "indirect charge" employees, unless their impact or involvement is insignificant to the performance of the grant; and,

(iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll.

This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the payroll; or employees of subrecipients or subcontractors in covered workplaces);

(6) *Federal agency* or *agency* means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency;

(7) *Grant* means an award of financial assistance, including a cooperative agreement, in the form of money, or property in lieu of money, by a Federal agency directly to a grantee. The term grant includes block grant and entitlement grant programs, whether or not exempted from coverage under the grants management government-wide common rule on uniform administrative requirements for grants and cooperative agreements. The term does not include technical assistance that provides services instead of money, or other assistance in the form of loans, loan guarantees, interest subsidies, insurance, or direct appropriations; or any veterans' benefits to individuals, i.e., any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States;

(8) *Grantee* means a person who applies for or receives a grant directly from a Federal agency (except another Federal agency);

(9) *Individual* means a natural person;

(10) *State* means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers the instrumentality to be an agency of the State government.

§ ______.610 Coverage.

(a) This subpart applies to any grantee of the agency.

(b) This subpart applies to any grant, except where application of this subpart would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government. A determination of such inconsistency may be made only by the agency head or his/her designee.

(c) The provisions of subparts A, B, C, D and E of this part apply to matters covered by this subpart, except where specifically modified by this subpart. In the event of any conflict between provisions of this subpart and other provisions of this part, the provisions of this subpart are deemed to control with respect to the implementation of drug-free workplace requirements concerning grants.

§ ______.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.

A grantee shall be deemed in violation of the requirements of this subpart if the agency head or his or her official designee determines, in writing, that—

(a) The grantee has made a false certification under § ______.630;

(b) With respect to a grantee other than an individual—

(1) The grantee has violated the certification by failing to carry out the requirements of subparagraphs (A.) (a)–(g) and/or (B.) of the certification (Alternate I to Appendix C) or

(2) Such a number of employees of the grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the grantee has failed to make a good faith effort to provide a drug-free workplace.

(c) With respect to a grantee who is an individual—

(1) The grantee has violated the certification by failing to carry out its requirements (Alternate II to Appendix C); or

(2) The grantee is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity.

§ ______.620 Effect of violation.

(a) In the event of a violation of this subpart as provided in § ______.615, and in accordance with applicable law, the grantee shall be subject to one or more of the following actions:

(1) Suspension of payments under the grant;

(2) Suspension or termination of the grant; and

(3) Suspension or debarment of the grantee under the provisions of this part.

(b) Upon issuance of any final decision under this part requiring debarment of a grantee, the debarred grantee shall be ineligible for award of any grant from any Federal agency for a period specified in the decision, not to exceed five years (*see* § ______.320(a)(2) of this part).

§ ______.625 Exception provision.

The agency head may waive with respect to a particular grant, in writing, a suspension of payments under a grant, suspension or termination of a grant, or suspension or debarment of a grantee if the agency head determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

§ ______.630 Certification requirements and procedures.

(a)(1) As a prior condition of being awarded a grant, each grantee shall make the appropriate certification to the Federal agency providing the grant, as provided in Appendix C to this part.

(2) Grantees are not required to make a certification in order to continue receiving funds under a grant awarded before March 18, 1989, or under a no-cost time extension of such a grant. However, the grantee shall make a one-time drug-free workplace certification for a non-automatic continuation of such a grant made on or after March 18, 1989.

(b) Except as provided in this section, all grantees shall make the required certification for each grant. For mandatory formula grants and entitlements that have no application process, grantees shall submit a one-time certification in order to continue receiving awards.

(c) A grantee that is a State may elect to make one certification in each Federal fiscal year. States that previously submitted an annual certification are not required to make a certification for Fiscal Year 1990 until June 30, 1990. Except as provided in paragraph (d) of this section, this certification shall cover all grants to all State agencies from any Federal agency. The State shall retain the original of this statewide certification in its Governor's office and, prior to grant award, shall ensure that a copy is submitted individually with respect to each grant, unless the Federal agency has designated a central location for submission.

(d)(1) The Governor of a State may exclude certain State agencies from the statewide certification and authorize these agencies to submit their own certifications to Federal agencies. The statewide certification shall name any State agencies so excluded.

(2) A State agency to which the statewide certification does not apply, or a State agency in a State that does not have a statewide certification, may elect to make one certification in each Federal fiscal year. State agencies that previously submitted a State agency certification are not required to make a certification for Fiscal Year 1990 until June 30, 1990. The State agency shall retain the original of this State agency-wide certification in its central office and, prior to grant award, shall ensure that a copy is submitted individually with respect to each grant, unless the Federal agency designates a central location for submission.

(3) When the work of a grant is done by more than one State agency, the

certification of the State agency directly receiving the grant shall be deemed to certify compliance for all workplaces, including those located in other State agencies.

(e)(1) For a grant of less than 30 days performance duration, grantees shall have this policy statement and program in place as soon as possible, but in any case by a date prior to the date on which performance is expected to be completed.

(2) For a grant of 30 days or more performance duration, grantees shall have this policy statement and program in place within 30 days after award.

(3) Where extraordinary circumstances warrant for a specific grant, the grant officer may determine a different date on which the policy statement and program shall be in place.

§ _____.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

(a) When a grantee other than an individual is notified that an employee has been convicted for a violation of a criminal drug statute occurring in the workplace, it shall take the following actions:

(1) Within 10 calendar days of receiving notice of the conviction, the grantee shall provide written notice, including the convicted employee's position title, to every grant officer, or other designee on whose grant activity the convicted employee was working, unless a Federal agency has designated a central point for the receipt of such notifications. Notification shall include the identification number(s) for each of the Federal agency's affected grants.

(2) Within 30 calendar days of receiving notice of the conviction, the grantee shall do the following with respect to the employee who was convicted.

(i) Take appropriate personnel action against the employee, up to and including termination, consistent with requirements of the Rehabilitation Act of 1973, as amended; or

(ii) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(b) A grantee who is an individual who is convicted for a violation of a criminal drug statute occurring during the conduct of any grant activity shall report the conviction, in writing, within 10 calendar days, to his or her Federal agency grant officer, or other designee, unless the Federal agency has designated a central point for the receipt of such notices. Notification shall include the identification number(s) for each of the Federal agency's affected grants.

(Approved by the Office of Management and Budget under control number 0991-0002.)

Appendix C to Part _____ Certification Regarding Drug-Free Workplace Requirements

Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

A. The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

____

____

____

Check ☐ if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

Adoption of the Common Rule

The text of the common rule, as adopted by the agencies in this document, appears below.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 3017

RIN 0505-AA06

FOR FURTHER INFORMATION CONTACT: Juliette Bethea, Chief, Federal Assistance and Fiscal Policy Division, Office of Finance and Management, (202) 382-1204.

ADDITIONAL SUPPLEMENTARY INFORMATION: Any State or State Agency electing to submit an annual drug-free workplace certification to the U.S. Department of Agriculture (USDA), as specified in paragraphs (c) and (d) of section 3017.630, should forward its certification to: U.S. Department of Agriculture, Office of Finance and Management, Federal Assistance and Fiscal Policy Division, Federal Assistance Team, Room 1369, South Building, Washington, DC 20250.

Under § 3017.635(a)(1), grantees who are not individuals shall provide written notice of employee convictions for violations of a criminal drug statute occurring in the workplace to every USDA granting agency on whose grant activity the convicted employee was working. Under § 3017.635(b), grantees who are individuals shall provide written notice to every USDA granting agency of their convictions for violations of criminal drug statutes occurring during the conduct of any grant activity. Grantees may contact the USDA granting agency for the appropriate mailing address. USDA agencies shall give the Office of Finance and Management a copy of any such conviction notices they receive.

List of Subjects in 7 CFR Part 3017

Debarment and suspension (nonprocurement), Drug abuse, Grant programs (Agriculture).

Title 7 of the Code of Federal Regulations is amended as set forth below.

Dated: May 11, 1990.

Clayton Yeutter,

Secretary.

Accordingly, the interim final rule amending 7 CFR part 3017 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 3017—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 3017 continues to read as follows:

Authority: E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 5 U.S.C. 301.

2. Subpart F and Appendix C to part 3017 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

* * * * *

Appendix C to Part 3017—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR ______, May 25, 1990.

DEPARTMENT OF ENERGY

10 CFR Part 1036

RIN 1991-AA71

FOR FURTHER INFORMATION CONTACT: Howard K. Mitchell, (202) 586-8190.

List of Subjects in 10 CFR Part 1036

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 10 of the Code of Federal Regulations is amended as set forth below.

Berton J. Roth,

Deputy Director, Office of Procurement and Assistance Management.

Accordingly, the interim final rule amending 10 CFR part 1036, which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the final changes:

PART 1036—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 1036 continues to read as follows:

Authority: E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); Secs. 644 and 646, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254 and 7256); Pub. L. 97–258, 98 Stat. 1003–1005 (31 U.S.C. 6301–6308).

2. Subpart F and Appendix C to part 1036 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.

1036.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.

1036.620 Effect of violation.

1036.625 Exception provision.

1036.630 Certification requirements and procedures.

1036.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

* * * * *

Appendix C to Part 1036—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR _____, May 25, 1990.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 145

RIN 3245-AC08

FOR FURTHER INFORMATION CONTACT: Christopher Holleman, Attorney-Advisor, U.S. Small Business Administration, 1441 L Street NW., Room 706, Washington, DC 20416, (202) 653-6169.

List of Subjects in 13 CFR Part 145

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 13 of the Code of Federal Regulations is amended as set forth below.

Katherine Bulow,

Deputy Administrator.

Susan Engeleiter,

Administrator.

Accordingly, the interim final rule amending 13 CFR part 145 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 145—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 145 continues to read as follows:

Authority: E.O. 12549; Secs. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 15 U.S.C. 634(b)(6).

2. Subpart F and Appendix C to part 145 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.

145.600 Purpose.

145.605 Definitions.

145.610 Coverage.

145.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.

145.620 Effect of violation.

145.625 Exception provision.

145.630 Certification requirements and procedures.

145.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

* * * * *

Appendix C to Part 145—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice at 55 FR _____, May 25, 1990.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1265

RIN 2700-AA81

FOR FURTHER INFORMATION CONTACT: David K. Beck, (202) 453-8250.

List of Subjects in 14 CFR Part 1265

Administrative practice and procedure, Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 14 of the Code of Federal Regulations is amended as set forth below.

S. J. Evans,

Assistant Administrator for Procurement.

Accordingly, the interim final rule amending 14 CFR part 1265 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 1265—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 1265 continues to read as follows:

Authority: E.O. 12549; Secs. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); National Aeronautics and Space Act, Pub. L. 85-568, July 29, 1958, as amended, sec. 203(c)(1).

2. Subpart F and Appendix C to part 1265 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.

1265.600 Purpose.

1265.605 Definitions.

1265.610 Coverage.

1265.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.

1265.620 Effect of violation.

1265.625 Exception provision.

1265.630 Certification requirements and procedures.

1265.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

* * * * *

Appendix C to Part 1265—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR _____, May 25, 1990.

DEPARTMENT OF COMMERCE

15 CFR Part 26

RIN 0605-AA05

FOR FURTHER INFORMATION CONTACT: Diane C. Haeger, (202) 377-5817.

ADDITIONAL SUPPLEMENTARY INFORMATION: As provided under §§ 26.630 (c) and (d)(2) and 26.635 (a)(1) and (b), a central point of contact may be designated for submission of annual State and State agency certifications and notices of conviction. The Office of Federal Assistance serves as the central point for the Department of Commerce. State and State agency certifications and notices of conviction should be forwarded to: Barbara L. Spithas, Director, Office of Federal Assistance, HCHB Room 6204, U.S. Department of Commerce, Washington, DC 20230.

List of Subjects in 15 CFR Part 26

Administrative practice and procedures, Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 15 of the Code of Federal Regulations is amended as set forth below.

Sonya G. Stewart,

Director for Finance and Federal Assistance.

Accordingly, the interim final rule amending 15 CFR part 26 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 26—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 26 continues to read as follows:

Authority: Executive Order 12549; Secs. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 5 U.S.C. 301.

2. Subpart F and Appendix C to part 26 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

* * * * *

Appendix C to Part 26—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR ———, May 25, 1990.

3. Part 26, subpart F is further amended as follows:

a. Section 26.630 is amended by adding paragraphs (c)(1) and (d)(2)(i) to read as follows:

§ 26.630 Certification requirements and procedures.

* * * * *

(c) * * *

(1) The Office of Federal Assistance serves as the central location for submission of State and State agency certifications. Certifications should be sent to: Director, Office of Federal Assistance, HCHB Room 6204, Washington, DC 20230.

(d) * * *

(2) * * *

(i) The Office of Federal Assistance serves as the central location for submission of should be sent to: Director, Office of Federal Assistance, HCHB Room 6204, Washington, DC 20230.

* * * * *

b. Section 26.635 is amended by adding paragraphs (a)(1)(i) and (b)(1) to read as follows:

§ 26.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

(a) * * *

(1) * * *

(i) The Office of Federal Assistance serves as the central location for submission of notices of conviction. Notices should be sent to: Director, Office of Federal Assistance, HCHB-Room 6204, Washington, DC 20230.

* * * * *

(b) * * *

(1) The Office of Federal Assistance serves as the central location for submission of notices of conviction. Notices should be sent to: Director, Office of Federal Assistance, HCHB Room 6204, Washington, DC 20230.

* * * * *

DEPARTMENT OF STATE

22 CFR Part 137

RIN 1400–AA21

FOR FURTHER INFORMATION CONTACT: James Tyckoski, Office of the Procurement Executive (703) 875–7046.

List of Subjects in 22 CFR Part 137

Administrative practice and procedure, Controlled substances, Debarment and suspension (nonprocurement), Drug abuse, Fraud, Grant programs-foreign relations, Grants administration, Reporting and recordkeeping requirements.

Title 22 of the Code of Federal Regulations is amended as set forth below.

John J. Conway,
Procurement Executive.

Accordingly, the interim final rule amending 22 CFR part 137 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 137—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 137 continues to read as follows:

Authority: Executive Order 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 22 U.S.C. 2658.

2. Subpart F and Appendix C to part 137 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

* * * * *

Appendix C to Part 137—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR———, May 25, 1990.

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Part 208

RIN 0412–AA14

FOR FURTHER INFORMATION CONTACT: Kathleen O'Hara, (703) 875–1534.

List of Subjects in 22 CFR Part 208

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 22 of the Code of Federal Regulations is amended as set forth below.

John F. Owens,
Deputy Assistant to the Administrator for Management.

Accordingly, the interim final rule amending 22 CFR part 208 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 208—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 208 continues to read as follows:

Authority: Executive Order 12549; Sec. 5151–5160 of the Drug Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); Sec. 621, Foreign Assistance Act of 1961, 22 U.S.C. 2381.

2. Subpart F and Appendix C to part 208 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

* * * * *

Appendix C to Part 208—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR———, May 25, 1990.

PEACE CORPS

22 CFR Part 310

RIN 0420-AA05

FOR FURTHER INFORMATION CONTACT: John K. Scales, General Counsel, 202–606–3114.

List of Subjects in 22 CFR Part 310

Cooperative agreements, Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 22 of the Code of Federal Regulations is amended as set forth below.

Paul D. Coverdell,

Director.

Accordingly, the interim final rule amending 22 CFR part 310 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 310—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 310 continues to read as follows:

Authority: Executive Order 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D); 22 U.S.C. 2503.

2. Subpart F and Appendix C to part 310 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

* * * * *

Appendix C to Part 310—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR ———, May 25, 1990.

UNITED STATES INFORMATION AGENCY

22 CFR Part 513

FOR FURTHER INFORMATION CONTACT: Darwin Roberts, United States Information Agency, Office of Contracts, Policy and Procedures Staff, Room 1611, 330 C Street, SW., Washington, DC 20547, Telephone (202) 485–6410.

List of Subjects in 22 CFR Part 513

Administrative practice and procedure, Controlled substances, Debarment and suspension (nonprocurement), Drug abuse, Grant monitoring, Grant programs, Grants administration, Ineligible grantees.

Title 22 of the Code of Federal Regulations is amended as set forth below.

Henry E. Hockeimer,

Associate Director for Management.

Accordingly, the interim final rule amending 22 CFR part 513 which was published at 54 FR 4947 on January 31, 1989, is adopted as final rule with the following changes:

PART 513—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 513 continues to read as follows:

Authority: E.O. 12549; 40 U.S.C. 486(c); Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.)

2. Subpart F and Appendix C to part 513 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

* * * * *

Appendix C to Part 513—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR ———, May 25, 1990.

INTER-AMERICAN FOUNDATION

22 CFR Part 1006

FOR FURTHER INFORMATION CONTACT: Charles M. Berk, (703) 841–3812.

List of Subjects in 22 CFR Part 1006

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 22 of the Code of Federal Regulations is amended as set forth below.

Charles M. Berk,

General Counsel.

Accordingly, the interim final rule amending 22 CFR part 1006 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 1006—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 1006 continues to read as follows:

Authority: E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 22 U.S.C. 290f.

2. Subpart F and Appendix C to part 1006 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

* * * * *

Appendix C to Part 1006—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR———, May 25, 1990.

AFRICAN DEVELOPMENT FOUNDATION

22 CFR Part 1508

FOR FURTHER INFORMATION CONTACT: Paul S. Magid, General Counsel at (202) 673–3916.

List of Subjects in 22 CFR Part 1508

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 22 of the Code of Federal Regulations is amended as set forth below.

Leonard H. Robinson, Jr.,
President.

Accordingly, the interim final rule amending 22 CFR part 1508 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 1508—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 1508 is revised to read as follows:

Authority: Sec. 506(a)(4) of Title V of the International Security and Development Cooperation Act of 1980 (Pub. L. 96–533).

2. Subpart F and Appendix C to part 1508 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

* * * * *

Appendix C to Part 1508—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR ———, May 25, 1990.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 24

RIN 2501–AA78

FOR FURTHER INFORMATION CONTACT: Marylea W. Byrd, Office of General Counsel, Department of Housing and Urban Development, Room 10266, 451 Seventh Street, SW., Washington, DC 20410. (202) 755–9886 (This is not a toll-free number.)

ADDITIONAL SUPPLEMENTARY INFORMATION: The provisions of this subpart apply to recipients of all HUD grants including CDBG formula grant recipients not otherwise subject to sanctions under part 24. Certifications required under this subpart should be submitted by formula grant recipients in conjunction with other required certifications.

Additionally, public housing authorities (PHAs) that receive HUD grants through annual contributions contracts are grantees who are subject to the requirements in this subpart. The certification required by this subpart is in addition to the requirement that PHAs include a provision in tenant's leases making drug-related criminal activity grounds for terminating the lease.

On November 3, 1989, the Department published, at 54 FR 46566, a final rule implementing the requirements of the Comprehensive Homeless Assistance Plan (CHAP), as authorized by Subtitle A of Title IV of the Stewart B. McKinney Homeless Assistance Act (the "McKinney Act") (42 U.S.C. 11361). One of the provisions of November 3, 1989 final rule requires all applicants for assistance under the McKinney Act—including applicants for (1) the Emergency Shelter Grants program, (2) the Supportive Housing Demonstration program (both the Transitional Housing and Permanent Housing for the Handicapped Homeless programs), (3) the Supplemental Assistance for Facilities to Assist the Homeless program, and (4) the section 8 Housing Assistance Payments program for the Moderate Rehabilitation of Single Room Occupancy Units for the Homeless—to include in their CHAPs an assurance that the homeless facility will be drug- and alcohol-free. Applicants should note that they must comply both with the requirements of this common rule and with the certification requirements set forth under the November 3, 1989 final rule regarding CHAPs.

List of Subjects in 24 CFR Part 24

Administrative practice and procedure, Debarment and suspension (nonprocurement), Drug abuse, Government contracts, Organization and functions (Government Agencies), Government procurement, Grant programs: housing and community development, Loan programs: housing and community development.

Title 24 of the Code of Federal Regulations is amended as set forth below.

Alfred A. DelliBovi,
Acting Secretary, Department of Housing and Urban Development.

Accordingly, the interim final rule amending 24 CFR part 24 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 24—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 24 continues to read as follows:

Authority: E.O. 12549; secs. 5151–5160, Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D, 41 U.S.C. 701 *et seq.*); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Subpart F and Appendix C to part 24 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

* * * * *

Appendix C to Part 24—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR———, May 25, 1990.

DEPARTMENT OF JUSTICE

28 CFR Part 67

[Atty. Gen. Order No. 1416-90]

RIN 1121-AA14

FOR FURTHER INFORMATION CONTACT: Cynthia J. Schwimer (202) 307-3186.

ADDITIONAL SUPPLEMENTARY INFORMATION: Notices of convictions as described in § 67.635 (a) and (b), should be sent to the Department of Justice, Office of Justice Programs, ATTN: Control Desk, 633 Indiana Avenue NW., Washington, DC 20531. The Department of Justice has adopted a uniform system of implementing the Drug-Free Workplace common rule that will be applicable to the nonprocurement assistance activities of the offices, bureaus, and divisions of the Department of Justice which have grantmaking authority. These include: The Office of Justice Programs (including the Office for Victims of Crime, the National Institute of Justice, the Bureau of Justice Assistance, the Office of Juvenile Justice and Delinquency Prevention, and the Bureau of Justice Statistics), the Bureau of Prisons, the U.S. Marshals Service, the Immigration and Naturalization Service, the Federal Bureau of Investigation, the Drug Enforcement Administration and the Community Relations Service.

List of Subjects in 28 CFR Part 67

Administrative practice and procedures, Controlled substances, Debarment and suspension (nonprocurement), Drug abuse, Fraud, Grant programs—Law, Grants administration, Reporting and recordkeeping requirements.

Title 28 of the Code of Federal Regulations is amended as set forth below.

Dick Thornburgh,
Attorney General.

PART 67—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 67 continues to read as follows:

Authority: Executive Order 12549; Sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 *et seq*), Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3711, *et seq* (as amended), Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601, *et seq* (as amended), Victims of Crime Act of 1984, 42 U.S.C. 10601, *et seq* (as amended); 18 U.S.C. 4042; and 18 U.S.C. 4351-4353.

2. Subpart F and Appendix C to part 67 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

* * * * *

Appendix C to Part 67—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR———, May 25, 1990.

DEPARTMENT OF LABOR

29 CFR Part 98

RIN 1291-AA17

FOR FURTHER INFORMATION CONTACT: Richard W. Strom on (202) 523-9174.

List of Subjects in 29 CFR Part 98

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 29 of the Code of Federal Regulations is amended as set forth below.

Elizabeth Dole,
Secretary of Labor.

Accordingly, the interim final rule amending 29 CFR part 98 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 98—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 98 continues to read as follows:

Authority: E.O. 12549; Sec. 5151 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 5 U.S.C. 552-556.

2. Subpart F and Appendix C to part 98 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

* * * * *

Appendix C to Part 98—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR———, May 25, 1990.

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Part 1471

RIN 3076-AA02

FOR FURTHER INFORMATION CONTACT: Lee A. Buddendeck, 202/653-5320.

List of Subjects in 29 CFR Part 1471

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 29 of the Code of Federal Regulations is amended as set forth below.

Bernard E. DeLury,

Director.

Accordingly, the interim final rule amending 29 CFR part 1471 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 1471—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 1471 continues to read as follows:

Authority: Executive Order 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.), P.L. 95–524, Oct 27, 1978, 29 USC 175a.

2. Subpart F and Appendix C to part 1471 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.
1471.600 Purpose.
1471.605 Definitions.
1471.610 Coverage.
1471.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
1471.620 Effect of violation.
1471.625 Exception provision.
1471.630 Certification requirements and procedures.
1471.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

* * * * *

Appendix C to Part 1471—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR ———, May 25, 1990.

DEPARTMENT OF THE TREASURY

31 CFR Part 19

RIN 1505–AA40

FOR FURTHER INFORMATION CONTACT: Charles Schaefer (202) 566–9616.

List of Subjects in 31 CFR Part 19

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 31 of the Code of Federal Regulations is amended as set forth below.

Linda M. Combs,

Assistant Secretary (Management).

Accordingly, the interim final rule amending 31 CFR part 19 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 19—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 19 continues to read as follows:

Authority: Executive Order 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 31 U.S.C. 32.

2. Subpart F and Appendix C to part 19 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.
19.600 Purpose.
19.605 Definitions.
19.610 Coverage.
19.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
19.620 Effect of violation.
19.625 Exception provision.
19.630 Certification requirements and procedures.
19.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

* * * * *

Appendix C to Part 19—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR ———, May 25, 1990.

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 280

RIN 0790–AC53

FOR FURTHER INFORMATION CONTACT: Dr. Mark Herbst, telephone (202) 694–0205.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Defense is adopting the following final rule establishing requirements for a drug-free workplace for DoD grantees. In adopting this rule, DoD is establishing uniform practices within the Office of the Secretary of Defense, the Military Departments and the Defense Agencies that are consistent with those being established by other Executive Departments and Agencies.

List of Subjects in 32 CFR Part 280

Debarment and suspension (Nonprocurement), Drug abuse, Grant programs.

Title 32 of the Code of Federal Regulations is amended as set forth below.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Accordingly, the interim final rule amending 32 CFR Part 280 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 280—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 280 continues to read as follows:

Authority: Executive Order 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 5 U.S.C. 301.

2. Subpart F and Appendix C to part 280 are revised to read as follows:

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.
280.600 Purpose.
280.605 Definitions.
280.610 Coverage.
280.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
280.620 Effect of violation.
280.625 Exception provision.
280.630 Certification requirements and procedures.
280.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

* * * * *

Appendix C to Part 280—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR———, May 25, 1990.

DEPARTMENT OF EDUCATION

34 CFR Part 85

RIN 1880–AA39

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A notice announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mary Jane Kane, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue SW. (Room 3636, GSA Regional Office Building No. 3), Washington, DC 20202–4700, 202–732–7400 (FTS 732–7400), 202–708–5580 (FTS 458–5580) after May 6, 1990.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Education has designated central locations for submission of annual statewide or State agency drug-free workplace certifications and for receipt of notifications of convictions of criminal drug offenses. States and State agencies that previously submitted an annual certification are not required to make a certification for Federal Fiscal year 1990 until July 31, 1990. Any State or State agency electing to submit an annual drug-free workplace certification to the Department of Education must forward its certification to: Office of Intergovernmental and Interagency Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3073, Federal Office Building No. 6), Washington, DC 20202–3500. Grantees reporting convictions of criminal drug offenses must forward reports to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue SW. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202–4571.

Analysis of Comments and Changes

In response to the invitation to comment in the interim final regulations published in the **Federal Register** on January 31, 1989 (54 FR 4947), a number of comments and questions were received regarding the applicability and effect of the regulations on the Pell Grant and campus-based student financial assistance programs authorized by Title IV of the Higher Education Act of 1965 (HEA), as amended. The campus-based student financial assistance program include the Perkins Loan (formerly National Direct Student Loan (NDSL)), College Work-Study (CWS), and Supplemental Educational Opportunity Grant (SEOG) programs.

An analysis of the comments follows. Major issues are grouped according to subject. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Pell Grant Program

Comment: Commenters asked what is required under the provisions of the Drug-Free Workplace Act of students who receive a grant under the Pell Grant Program.

Discussion: These grants are considered direct grants to individuals and thus the certification requirements are applicable. To receive a Pell grant, a student must certify that, as a condition of receiving a Pell grant, he or she will not engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance during the period covered by his or her Pell grant.

Change: None.

Comment: Commenters asked if Pell grant recipients must sign the certification statement annually.

Discussion: Each student must sign the certification for any year in which he or she receives a Pell grant.

Change: None.

Comment: Commenters asked if a student who refuses to sign the certification required under the Drug-Free Workplace regulations in order to receive a Pell grant would still be eligible for other Title IV, HEA programs.

Discussion: If a student does not sign the certification, he or she may not receive a Pell grant. However, the student could still be eligible for other Federal student assistance. The amount of the Pell grant that the student would have been eligible to receive would still be counted as (1) estimated financial assistance for the Stafford Loan, Supplemental Loans for Students (SLS), and PLUS programs and (2) as a resource under the campus-based programs and the Income Contingent Loan (ICL) Program.

Change: None.

Comment: Commenters asked if by signing the certification statement required for the Pell Grant Program, a student is agreeing not to engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance during the period covered by his or her Pell grant at all times, or just when he or she is attending classes.

Discussion: By signing the certification required for eligibility under the Pell Grant Program, a student is agreeing not to engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance during the period covered by his or her Pell grant at all times. For example, even if the student is off campus, away for the weekend, or on a school break, the student has agreed that he or she will be drug-free during the period of time covered by his or her Pell grant.

Change: None.

Comment: Commenters asked what happens if a Pell grant recipient who has signed the certification is convicted of the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance during the period of enrollment covered by the Pell grant.

Discussion: A Pell grant recipient convicted of a criminal drug offense resulting from a violation occurring during the period of enrollment covered by the Pell grant must report the conviction, in writing, within 10 calendar days of the conviction, to the Director, Grants and Contracts Service, U.S. Department of Education. If the Department determines, in writing, that the reported conviction constitutes a violation of the Requirements for Drug-Free Workplace regulations, the Pell grant recipient shall be subject to suspension of payments under the grant, suspension or termination of the grant, or suspension or debarment. Failure of a Pell grant recipient to report the conviction constitutes a violation of these regulations and is subject to suspension of payments under the grant, suspension or termination of the grant, or suspension or debarment. If debarred, the student shall be ineligible for award of any grant from any Federal agency, for a period of up to five years.

Change: None.

Campus-Based Programs

Comment: Commenters asked how the Drug-Free Workplace Act of 1988 affects institutions participating in the campus-based student financial assistance programs.

Discussion: For purposes of the Act, institutions of postsecondary education participating in the campus-based programs are deemed to be "grantees" and the program allocations are deemed to be "grants." Therefore, as of March 18, 1989, as a precondition to receiving a grant, institutions of postsecondary education must certify annually (on a form provided by the Department) that they will provide a drug-free workplace. Individual recipients of funds under the campus-based student financial assistance programs are not required to sign a certification.

Change: None.

Comment: Commenters asked if institutions of postsecondary education participating in the campus-based programs are required to certify annually that they provide a drug-free workplace.

Discussion: Yes. Institutions are required to certify annually that they will provide a drug-free workplace and to submit that certification as part of the Fiscal Operations Report and Application to Participate (FISAP) process.

Change: None.

Comment: Commenters asked if students employed under the College Work-Study (CWS) Program are considered to be employees of the institution for purposes of the Drug-Free Workplace requirements.

Discussion: Students employed under the CWS Program are considered to be employees of the institution if the work is performed for the institution in which the student is enrolled. For work performed for (a) a Federal, State, or local public agency, or (b) a private nonprofit or a private for-profit organization, students are also considered to be employees of the institution unless the agreement between the institution and organization specifies that the organization is considered to be the employer. (Reference: Appendix B—Model Off-Campus Agreement of the regulations for the College Work-Study Program, 34 CFR part 674).

Change: None.

Comment: Commenters questioned the necessity of having the Chief Executive Officer sign the "Certification Regarding Drug-Free Workplace Requirements—Grantees Other Than Individuals" required of institutions of postsecondary education participating in the campus-based programs. A few commenters also asked what the policy is if the institution's Chief Executive Officer claims that he or she cannot sign a certification because the institution uses a private servicer to administer Title IV, HEA programs under a contractual arrangement and the institution has no employees directly engaged in the administration of the programs other than a limited number of its personnel who function in a contract monitoring role.

Discussion: Under the Student Assistance General Provisions regulations in 34 CFR 668.12(a)(2), the institution enters into a written participation agreement with the Secretary in order to participate in the Title IV, HEA programs. Funds provided under the campus-based programs are considered to be "grants" awarded to postsecondary institutions as "grantees" directly rather than to a subordinate administrative component such as the financial aid office or student service division. Therefore, the Chief Executive Officer is responsible for the proper administration of the Title IV, HEA programs and for compliance with all statutory and regulatory requirements. Correspondingly, regardless of the institution's relationship with a private servicer, the Chief Executive Officer must certify that the institution maintains a drug-free workplace on behalf of the entire grantee organization (i.e., all departments, divisions, or other units of the institution) and is responsible for the implementation of the drug-free workplace requirements as specified in the Drug-Free Workplace regulations. The institution is not responsible for ensuring that the servicer as a subrecipient maintains a drug-free workplace.

Change: None.

List of Subjects in 34 CFR Part 85

Debarment and suspension (nonprocurement), Drug abuse, Grant programs. Title 34 of the Code of Federal Regulations is amended as set forth below.

Dated: May 10, 1990.

Lauro F. Cavazos,

Secretary of Education.

Accordingly, the interim final rule amending 34 CFR part 85 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 85—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 85 continues to read as follows:

Authority: Executive Order 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D 41 U.S.C. 701 et seq.); 20 U.S.C. 3474, 1221e-3(a)(1).

2. Subpart F and Appendix C of part 85 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

* * * * *

Appendix C to Part 85—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR ———, May 25, 1990.

3. Part 85 is further amended as follows:

a. Section 85.630 is amended by: amending paragraph (c) introductory text by removing "June 30, 1990" and adding "July 31, 1990"; adding paragraph (c)(1); amending paragraph (d)(2) by removing "June 30, 1990" and adding "July 31, 1990"; and adding paragraph (d)(2)(i) to read as follows:

§ 85.630 Certification requirements and procedures.

* * * * *

(c) * * *

(1) If a State elects to make one certification in each Federal fiscal year as specified in paragraph (c) of this section it must forward its certification to: Office of Intergovernmental and Interagency Affairs.

(d) * * *

(2) * * *

(i) If a State agency elects to make one certification in each Federal fiscal year as specified in paragraph (d) of this section it must forward its certification to: Office of Intergovernmental and Interagency Affairs.

* * * * *

b. Section 85.635 is amended by adding paragraphs (a)(1)(i) and (b)(1) to read as follows:

§ 85.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

(a) * * *

(1) * * *

(i) A grantee must report convictions as specified in paragraph (a)(1) of this section to the Director, Grants and Contracts Service, Office of Management.

* * * * *

(b) * * *

(1) A grantee must report convictions as specified in paragraph (b) of this section to the Director, Grants and Contracts Service, Office of Management.

* * * * *

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1209

RIN 3095-AA44

FOR FURTHER INFORMATION CONTACT: John Constance or Nancy Allard at 202-501-5110 (FTS 241-5110).

List of Subjects in 36 CFR Part 1209

Debarment and suspension (nonprocurement), Drug abuse, Grant programs—Archives and records.

Title 36 of the Code of Federal Regulations is amended as set forth below:

Don W. Wilson:

Archivist of the United States.

Accordingly, the interim final rule amending 36 CFR part 1209 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 1209—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 1209 continues to read as follows:

Authority: E.O. 12549; sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, title V, subtitle D; 41 U.S.C. 701 et seq.); 44 U.S.C. 2104(a).

2. Subpart F and Appendix C to part 1209 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.
1209.600 Purpose.
1209.605 Definitions.
1209.610 Coverage.
1209.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
1209.620 Effect of violation.
1209.625 Exception provision.
1209.630 Certification requirements and procedures.
1209.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

* * * * *

Appendix C to Part 1209—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR ———, May 25, 1990.

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 44

RIN 2900-AE66

FOR FURTHER INFORMATION CONTACT: Mr. B. Michael Berger, Director, Records Management Service (723), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-6232.

List of Subjects in 38 CFR Part 44

Accounting, Administrative practice and procedures, Agreements, Debarment and suspension (nonprocurement), Drug abuse, Drug-free workplace, Grant programs—State cemetery and State veterans homes, Insurance, Loan guaranty, Reporting and recordkeeping requirements, Scholarships, Veterans, Vocational rehabilitation and education.

Title 38 of the Code of Federal Regulations is amended as set forth below:

Dated: May 11, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

Accordingly, the interim final rule amending 38 CFR part 44 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 44—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 44 continues to read as follows:

Authority: E.O. 12549; sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, title V, subtitle D; 41 U.S.C. 701 et seq.); 38 U.S.C. 210(c).

2. Subpart F and Appendix C to part 44 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.
44.600 Purpose.
44.605 Definitions.
44.610 Coverage.
44.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
44.620 Effect of violation.
44.625 Exception provision.
44.630 Certification requirements and procedures.
44.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

* * * * *

Appendix C to Part 44—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR ———, May 25, 1990.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 32

RIN 2090-AA10

FOR FURTHER INFORMATION CONTACT: Corinne Allison at (202) 245-4077.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Environmental Protection Agency (EPA) is highly decentralized and delegates the administration of its financial assistance programs to various Regional and Headquarters offices. For this reason, the Agency will not establish a central office to receive (1) drug-free workplace certifications or (2) notifications of criminal convictions for drug offenses occurring during the conduct of grant activity in the recipient's workplace. Submitting those materials directly to the Regional or Headquarters office responsible for processing the application and administering the award is in the best interest of EPA's applicants/recipients.

List of Subjects in 40 CFR Part 32

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 40 of the Code of Federal Regulations is amended as set forth below.

Dated: May 3, 1990.

William K. Reilly,

Administrator.

Accordingly, the interim final rule amending 40 CFR part 32 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 32—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 32 continues to read as follows:

Authority: E.O. 12549; secs. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 7 U.S.C. 136 et seq.; 15 U.S.C. 2601 et seq.; 20 U.S.C. 4011 et seq.; 33 U.S.C. 1251 et seq.; 42 U.S.C. 300f, 4901, 6901 et seq.

2. Subpart F and Appendix C to part 32 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

* * * * *

Appendix C to Part 32—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR ———, May 25, 1990.

GENERAL SERVICES ADMINISTRATION

41 CFR Part 105-68

RIN 3090-AE00

FOR FURTHER INFORMATION CONTACT: Ida M. Ustad (202) 501-1224.

List of Subjects in 41 CFR Part 105-68

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 41 of the Code of Federal Regulations is amended as set forth below.

Richard G. Austin,
Acting Administrator.

Accordingly, the interim final rule amending 41 CFR part 105-68 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 105-68—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 105-68 continues to read as follows:

Authority: Title V, Subtitle D; 41 U.S.C. 701 et seq.; 40 U.S.C. 486(c).

2. Subpart F and Appendix C to part 105-68 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug Free Workplace Requirements (Grants)

* * * * *

Appendix C to Part 105-68—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR ———, May 25, 1990.

DEPARTMENT OF THE INTERIOR

43 CFR PART 12

RIN 1090-AA28

FOR FURTHER INFORMATION CONTACT: Ceceil Coleman, Phone (202) 208-6431.

Additional Supplementary Information: The Department of the Interior is not designating a central location for the receipt of the documents required by §§ 12.630 and 12.635.

List of Subjects in 43 CFR Part 12

Cooperative agreements, Debarment and suspension (nonprocurement), Drug abuse, Grant programs, Grants administration.

Title 43 of the Code of Federal Regulations is amended as set forth below.

Dated: May 11, 1990.

Lou Gallegos,
Assistant Secretary—Policy, Management and Budget.

Accordingly, the interim final rule amending 43 CFR part 12 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 12—ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPLES FOR ASSISTANCE PROGRAMS

1. The authority citation for part 12 continues to read as follows:

Authority: E.O. 12549; Sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 *et seq.*); 5 U.S.C. 301; Pub. L. 98-502; OMB Circulars A-102 and A-110; and OMB Circular A-128.

Subpart D—Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)

2. In subpart D the heading preceding § 12.600, §§ 12.600, 12.605, 12.610, 12.615, 12.620, 12.625, 12.630, and Appendix C to subpart D are revised, and § 12.635 is added to read as set forth at the end of the common preamble.

Drug-Free Workplace Requirements (Grants)

* * * * *

Appendix C to Subpart D—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR ———, May 25, 1990.

3. Subpart D is further amended as follows:

§ 12.610 [Amended]

a. Section 12.610(c) is amended by removing "subparts A, B, C, D, and E" and adding "subpart D."

b. Section 12.630 is amended by adding paragraphs (c)(1) and (d)(2)(i) to read as follows:

§ 12.630 Certification requirements and procedures.

* * * * *

(c) * * *

(1) The Department of the Interior is not designating a central location for the receipt of the statewide certifications from States. Therefore, each State shall ensure that a copy of their certification is submitted individually with respect to each grant application sent to the Bureau/Office within the Department.

* * * * *

(d) * * *

(2) * * *

(i) The Department of the Interior is not designating a central location for the receipt of State agency-wide certifications from State agencies. Therefore, each State agency shall ensure that a copy is submitted individually with respect to each grant application sent to the Bureau/Office within the Department.

c. Section 12.635 is amended by adding paragraphs (a)(1)(i) and (b)(1) to read as follows:

§ 12.635 Reporting of and employee sanctions for convictions of sanctions for convictions of criminal drug offenses.

* * * * *

(a) * * *

(1) * * *

(i) The Department of the Interior is not designating a central location for the receipt of these notices from grantees. Therefore, the grantee shall provide this written notice to every grant officer, or other designee within a Bureau/Office of the Department on whose grant activity the convicted employee was working.

* * * * *

(b) * * *

(1) The Department of the Interior is not designating a central location for the receipt of the notice from a grantee who is an individual. Therefore, the grantee who is an individual shall provide this writtten notice to the grant officer or other designee within the Bureau/Office within the Department.

§§ 12.600, 12.605, 12.610, 12.615, 12.620, 12.625, 12.630, and 12.635 [Amended]

d. Sections 12.600, 12.605, 12.610, 12.615, 12.620, 12.625, 12.630, and 12.635 are further amended by removing "this subpart" and adding "the drug-free workplace requirements for grants" wherever "this subpart" appears, by removing "this part" and adding "subpart D" wherever "this part" appears.

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 17

RIN 3067-AB58

FOR FURTHER INFORMATION CONTACT: Arthur E. Curry, Chief, Policy Division, Office of the Comptroller, (202) 646-3718.

List of Subjects in 44 CFR Part 17

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 44 of the Code of Federal Regulations is amended as set forth below.

Arthur E. Curry,

Chief, Policy Division, Office of the Comptroller.

Accordingly, the interim final rule amending 44 CFR part 17 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 17—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 17 continues to read as follows:

Authority: E.O. 12549; Sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690), Title V, Subtitle D; 41 U.S.C. 701 *et seq.*).

2. Subpart F and Appendix C to part 17 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.
17.600 Purpose.
17.605 Definitions.
17.610 Coverage.
17.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
17.620 Effect of violation.
17.625 Exception provision.
17.630 Certification requirements and procedures.
17.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

* * * * *

Appendix C to Part 17—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR———, May 25, 1990.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 76

RIN 0991-AA67

FOR FURTHER INFORMATION CONTACT: Beverly Cordova, 202-245-0377.

ADDITIONAL SUPPLEMENTARY INFORMATION: Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for State-wide and State agency-wide certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Ave., SW., Washington, DC 20201.

However, please note that § 76.630(b) now provides, "For mandatory formula grants and entitlements which have no application process, grantees shall submit a one-time certification in order to continue receiving awards."

List of Subjects in 45 CFR Part 76

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 45 of the Code of Federal Regulations is amended as set forth below.

Dated: May 4, 1990.

Louis W. Sullivan,

Secretary, Department of Health and Human Services.

Accordingly, the interim final rule amending 45 CFR part 76 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 76—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 76 continues to read as follows:

Authority: E.O. 12549; Sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690), Title V, Subtitle D; 41 U.S.C. 701 *et seq*). 5 U.S.C. 301.

2. Subpart F and Appendix C to part 76 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.
76.600 Purpose.
76.605 Definitions.
76.610 Coverage.
76.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
76.620 Effect of violation.
76.625 Exception provisions.
76.630 Certification requirements and procedures.
76.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

* * * * *

Appendix C to Part 76—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR———, May 25, 1990.

National Science Foundation

45 CFR Part 620

RIN 3145-AA16

FOR FURTHER INFORMATION CONTACT: J. Rom, 357-7880.

List of Subjects in 45 CFR Part 620

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 45 of the Code of Federal Regulations is amended as set forth below.

Jeff Fenstermacher,

Assistant Director for Administration.

Accordingly, the interim final rule amending 45 CFR part 620 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 620—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 620 continues to read as follows:

Authority: E.O. 12549; Sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 *et seq.*); Sec. 11(a) of the National Science Foundation Act of 1950, as amended (42 U.S.C. 1870(a)).

2. Subpart F and Appendix C to part 620 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.
620.600 Purpose.
620.605 Definitions.
620.610 Coverage.
620.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
620.620 Effect of violation.
620.625 Exception provision.
620.630 Certification requirements and procedures.
620.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

* * * * *

Appendix C to Part 620—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR ———, May 25, 1990.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

45 CFR Part 1154

RIN 3135-AA05

FOR FURTHER INFORMATION CONTACT: Larry Baden, Grants Officer, 202-682-5403.

ADDITIONAL SUPPLEMENTAL INFORMATION: Given the frequency of touring, performances, and exhibition activity of organizational applicants to the Arts Endowment and given the fluidity of those types of activities, it is not practical for these applicants to list places of performance at the time of application. Therefore, the Arts Endowment believes that the Office of Mangement and Budget-approved alternative for maintaining workplace information on file is the most responsible and least burdensome option for Endowment organizational applicants.

List of Subjects in 45 CFR Part 1154

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 45 of the Code of Federal Regulations is amended as set forth below.

Cynthia C. Rand,

Deputy Chairman for Management.

Accordingly, the interim final rule amending 45 CFR part 1154 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 1154—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 1154 continues to read as follows:

Authority: E.O. 12549; Secs. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 20 U.S.C. 959(a)(1).

2. Subpart F and Appendix C to part 1154 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.
1154.600 Purpose.
1154.605 Definitions.
1154.610 Coverage.
1154.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
1154.620 Effect of violation.
1154.625 Exception provision.
1154.630 Certification requirements and procedures.
1154.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

* * * * *

Appendix C to Part 1154—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR———May 25, 1990.

National Endowment for the Humanities

45 CFR Part 1169

RIN 3136-AA12

FOR FURTHER INFORMATION CONTACT: David J. Wallace, (202) 786-0494.

List of Subjects in 45 CFR Part 1169

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 45 of the Code of Federal Regulations is amended as set forth below.

Lynne V. Cheney,

Chairman, National Endowment for the Humanities.

Accordingly, the interim final rule amending 45 CFR part 1169 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 1169—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 1169 continues to read as follows:

Authority: E.O. 12549; Secs. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 20 U.S.C. 959(a)(1).

2. Subpart F and Appendix C to part 1169 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.
1169.600 Purpose.
1169.605 Definitions.
1169.610 Coverage.
1169.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
1169.620 Effect of violation.
1169.625 Exception provision.
1169.630 Certification requirements and procedures.
1169.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

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Appendix C to Part 1169—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR———, May 25, 1990.

Institute of Museum Services

45 CFR Part 1185

RIN 3137-AA00

FOR FURTHER INFORMATION CONTACT: Rebecca Danvers, 786-0539.

List of Subjects in 45 CFR Part 1185

Debarment and suspension (nonprocurement), Drug abuse, Grant programs, Museums.

Title 45 of the Code of Federal Regulations is amended as set forth below.

Daphne Wood Murray,

Director, Institute of Museum Services.

Accordingly, the interim final rule amending 45 CFR part 1185 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 1185—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 1185 continues to read as follows:

Authority: E.O. 12549; Section 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 20 U.S.C. 961-68, as amended.

2. Subpart F and Appendix C to part 1185 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.
1185.600 Purpose.
1185.605 Definitions.
1185.610 Coverage.
1185.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
1185.620 Effect of violation.
1185.625 Exception provision.
1185.630 Certification requirements and procedures.
1185.635 Report of and employee sanctions for convictions of criminal drug offenses.

* * * * *

Appendix C to Part 1185—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR ———, May 25, 1990.

ACTION

45 CFR Part 1229

RIN 3001-AA16

FOR FURTHER INFORMATION CONTACT: Margaret M. McHale at 202-634-9150.

List of Subjects in 45 CFR Part 1229

Accounting, Administrative practice and procedures, Debarment and suspension (nonprocurement), Drug abuse, Grant programs—Volunteer services, Grants administration, insurance, Reporting and recordkeeping requirements.

Title 45 of the Code of Federal Regulations is amended as set forth below.

Jane A. Kenny,

Director, ACTION.

Accordingly, the interim final rule amending 45 CFR part 1229 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 1229—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 1229 continues to read as follows:

Authority: E.O. 12549; Sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq; Pub. L. 93-113; 42 U.S.C. 4951, et seq.; 42 U.S.C. 5060.

2. Subpart F and Appendix C to part 1229 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.
1229.600 Purpose.
1229.605 Definitions.
1229.610 Coverage.
1229.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
1229.620 Effect of violation.
1229.625 Exception provision.
1229.630 Certification requirements and procedures.
1229.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

* * * * *

Appendix C to Part 1229—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR ———, May 25, 1990.

COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

45 CFR Part 2016

FOR FURTHER INFORMATION CONTACT: Jack McDade, Acting Director of Administration, (202) 653-5330.

List of Subjects in 45 CFR Part 2016

Debarment and suspension (nonprocurement), Drug abuse, Grant programs, Grants administration, Reporting and recordkeeping requirements.

Title 45 of the Code of Federal Regulations is amended as set forth below:

Dr. Herbert M. Atherton,

Staff Director and Director of Education.

Accordingly, the interim final rule amending 45 CFR part 2016 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 2016—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 2016 continues to read as follows:

Authority: Public Law 98-101, as amended; title V of Public Law 99-194; and title V of Public Law 101-62.

2. Subpart F and Appendix C to part 2016 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec
2016.600 Purpose.
2016.605 Definitions.
2016.610 Coverage.
2016.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
2016.620 Effect of violation.
2016.625 Exception provision.
2016.630 Certification requirements and procedures.
2016.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

* * * * *

Appendix C to Part 2016—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR ———, May 25, 1990.

DEPARTMENT OF TRANSPORTATION

49 CFR Part 29

RIN 2105-AB64

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, 202-366-9306.

List of Subjects in 49 CFR Part 29

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 49 of the Code of Federal Regulations is amended as set forth below.

Samuel K. Skinner,

Secretary of Transportation.

Accordingly, the interim final rule amending 49 CFR part 29 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 29—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 29 continues to read as follows:

Authority: E.O. 12549; sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, title V, subtitle D; 41 U.S.C. 701 et seq.); 49 CFR part 322.

2. Subpart F and Appendix C to part 29 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

* * * * *

Appendix C to Part 29—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR ———, May 25, 1990.

[FR Doc. 90-11589 Filed 5-24-90; 8:45 am]

BILLING CODES 3410-90-M; 6450-01-M; 8025-01-M; 7510-01-M; 3510-FE-M; 4710-24-M; 6116-01-M; 6051-01-M; 8230-01-M; 7025-01-M; 6117-01-M; 4210-32-M; 4410-18-M; 4510-23-M; 6372-01-M; 4810-25-M; 3810-01-M; 4000-01-M; 7515-01-M; 8032-01-M; 6560-50-M; 6820-61-M; 4310-RF-M; 6718-01-M; 4150-04-M; 7555-01-M; 7537-01-M; 7536-01-M; 7036-01-M; 6050-28-M; 6340-01-M; 4910-62-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 9, 23, 42, and 52

[Federal Acquisition Circular 84-57]

RIN 9000-AC98

Federal Acquisition Regulation (FAR); Drug-Free Workplace Act of 1988

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

ACTION: Final rule.

SUMMARY: Federal Acquisition Circular (FAC) 84-57 amends the Federal Acquisition Regulation (FAR) to implement the Drug Free Workplace Act of 1988 (Pub. L. 100-690). The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are issuing this final rule to adopt and amend the interim rule (FAC 84-43) published in the **Federal Register** on January 31, 1989 (54 FR 4967). The Act requires that certain contractors certify that they will maintain a drug-free workplace.

DATES: *Effective Date:* July 24, 1990. This rule applies to contracts awarded on or after that date, and for modifications awarded on or after that date which require a justification and approval (see subpart 6.3).

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 501-4755. Please cite Federal Acquisition Circular 84-57.

SUPPLEMENTARY INFORMATION:

A. Background

The FAR revisions included in this final rule implement the Drug-Free Workplace Act of 1988 (Pub. L. 100-690) and are applicable to all Federal agencies. Generally, all offerors on contracts expected to equal or exceed $25,000 will be required to certify that they will maintain a drug-free workplace by—

(1) Publishing a statement notifying employees that drug abuse in the workplace is prohibited;

(2) Establishing an ongoing, drug-free awareness program to inform its employees of the dangers of drug abuse, the contractor's drug-free workplace policy, the availability of drug counseling programs, and the possible penalties for drug abuse violations occurring in the workplace;

(3) Requiring each employee directly involved in the performance of a Government contract to notify the employer of any criminal drug statute conviction for a violation occurring in the workplace, and requiring the contractor to so notify the Government;

(4) Requiring the imposition of sanctions or remedial measures for an employee convicted of a drug abuse violation in the workplace; and

(5) Continuing, in good faith, to comply with the above requirements.

With respect to contractors consisting of only one individual, regardless of the dollar value of the contract, the regulation requires the individual to certify that he/she will not engage in unlawful conduct related to controlled substances in the workplace. Development or promulgation of a drug-free awareness program is not required for contractors consisting of only one individual. The agencies intend that a "principal investigator," in a research or similar contract, be viewed as an individual only if the contract is awarded directly to the investigator.

The regulation also provides various remedies to the Government for a contractor's false certification, violation of the certification, or failure to make a good faith effort to provide a drug-free workplace program. The remedies provided are suspension of payments, termination of the contract for default, and suspension or debarment of the contractor.

B. Paperwork Reduction Act

This final rule is deemed to contain information collection requirements. Public comments concerning the information collection requirement pertaining to the interim rule were previously invited in the **Federal Register** on January 23, 1989. The Office of Management and Budget, pursuant to 5 CFR part 1320, granted approval for a paperwork collection requirement under OMB Control Number 9000-0101. However, the information collection requirements in this final rule remain unchanged.

C. Regulatory Flexibility Act

It is expected that this final rule will have a singificant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.). A Final Regulatory Flexibility Act Analysis has been prepared and will be submitted to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Final Regulatory Flexibility Act Analysis is available from the FAR Secretariat upon request.

D. Public Comments

An interim rule was published in the **Federal Register** on January 31, 1989 (54 FR 4967), and the comments received were considered in the development of this final rule.

List of Subjects in 48 CFR Parts 1, 9, 23, 42, and 52

Government procurement.

Dated: May 16, 1990.

Albert A. Vicchiolla,
Director, Office of Federal Acquisition Policy.

Federal Acquisition Circular

[Number 84-57]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84-57 is effective July 24, 1990, for contracts awarded on or after that date which require a justification and approval (see subpart 6.3).

(The provisions of the interim rule remain in effect until the effective date of this rule.)

Eleanor Spector,
Deputy Assistant Secretary of Defense for Procurement, DoD.

Richard H. Hopf,
Associate Administrator for Acquisition Policy, GSA.

S.J. Evans,
Assistant Administrator for Procurement, NASA.

Federal Acquisition Circular (FAC) 84-57 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Drug-Free Workplace

FAR 9.405(a), 9.406-1(c), 9.406-2(b) and (d), 9.406-4(a), 9.407-2(a), 23.501, 23.503, 23.504, 23.505, 23.506, and 42.302 are revised, and a provision at 52.223-5, and a clause at 52.223-6 are revised to implement the Drug-Free Workplace Act of 1988 (Pub. L. 100-690). The Act was passed to ensure that Government contractors establish and maintain a drug-free workplace. As of March 18, 1989, the regulations require Government contractors, including 8(a) contractors, to certify, in order to be eligible for award, that they will provide a drug-free workplace through certain enumerated acts. The Act provides specified remedies to the Government for failure of the contractor to comply. Special rules apply to contracts with individuals.

This requirement is effective July 24, 1990, for contracts awarded on or after that date and for modifications awarded on or after that date which require a justification and approval (see subpart 6.3). Until the effective date of this final rule, the provisions of the interim rule remain in effect.

Accordingly, the interim rule amending 48 CFR parts 1, 9, 23, and 52, which was published at 54 FR 4967–4971 on January 31, 1989, is adopted as a final rule with the following changes which includes a change to part 42:

1. The authority citation for 48 CFR parts 1, 9, 23, 42 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

§ 9.405 [Amended]

2. Section 9.405 is amended by removing in paragraph (a), at the end of the first sentence, the parenthetical phrase "(see 9.405–2, 9.406–1(c), and 9.407–1(d))" and inserting in its place the parenthetical phrase "(see 9.405–2, 9.406–1(c), 9.407–1(d), and 23.506(e))".

3. Section 9.406–1 is amended by revising paragraph (c) to read as follows:

§ 9.406–1 General.

* * * * *

(c) A contractor's debarment shall be effective throughout the executive branch of the Government, unless an acquiring agency's head or a designee (except see 23.506(e)) states in writing the compelling reasons justifying continued business dealings between that agency and the contractor.

§ 9.406–2 [Amended]

4. Section 9.406–2 is amended by adding in paragraph (b)(2)(iii), at the end of the sentence, the parenthetical reference "(see 23.504)".

5. Section 9.406–4 is amended by revising in paragraph (a), the third sentence to read as follows:

§ 9.406–4 Period of debarment.

(a) * * * If suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

* * * * *

9.407–2 [Amended]

6. Section 9.407–2 is amended by adding in paragraph (a)(4)(iii), at the end of the sentence, the parenthetical reference "(see 23.504)."

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

7. Section 23.501 is amended by revising the introductory text and paragraph (c) to read as follows:

23.501 Applicability.

This subpart applies to all contracts, including contracts with 8(a) contractors under FAR subpart 19.8 and modifications which require a justification and approval (see subpart 6.3) except—

* * * * *

(c) Contracts by law enforcement agencies, if the head of the law enforcement agency or designee involved determines that application of this subpart would be inappropriate in connection with the law enforcement agency's undercover operations; or

* * * * *

8. Section 23.503 is amended by revising the definitions "Drug-free workplace" and "Employee" to read as follows:.

23.503 Definitions.

* * * * *

Drug-free workplace means the site(s) for the performance of work done by the contractor in connection with a specific contract at which employees of the contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

Employee means an employee of a contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all direct cost employees and any other contract employee who has other than a minimal impact or involvement in contract performance.

* * * * *

9. Section 23.504 is amended by revising the introductory text of paragraph (a)(2); by revising paragraphs (a)(4), (a)(5), and (a)(6); and by adding paragraph (d) to read as follows:

23.504 Policy.

(a) * * *

(2) Establishing an ongoing drug-free awareness program to inform its employees about—

* * * * *

(4) Notifying all employees in writing in the statement required by subparagraph (a)(1) of this section, that as a condition of employment on a covered contract, the employee will—

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 calendar days after such conviction;

(5) Notifying the contracting officer in writing within 10 calendar days after receiving notice under subdivision (a)(4)(ii) of this section, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the postion title of the employee;

(6) Within 30 calendar days after receiving notice under subparagraph (a)(4) of this section of a conviction, taking one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

* * * * *

(d) For a contract of 30 days or more performance duration, the contractor shall comply with the provisions of paragraph (a) of this section within 30 calendar days after contract award, unless the contracting officer agrees in writing that circumstances warrant a longer period of time to comply. Before granting such an extension, the contracting officer shall consider such factors as the number of contractor employees at the worksite, whether the contractor has or must develop a drug-free workplace program, and the number of contractor worksites. For contracts of less than 30 days performance duration, the contractor shall comply with the provisions of paragraph (a) of this section as soon as possible, but in any case, by a date prior to when performance is expected to be completed.

10. Section 23.505 is revised to read as follows:

23.505 Solicitation provision and contract clause.

(a) Contracting officers shall insert the provision at 52.223–5, Certification Regarding A Drug-Free Workplace, except as provided in paragraph (c) of this section, in solicitations—

(1) Of any dollar value if the contract is expected to be awarded to an individual; or

(2) Expected to equal or exceed $25,000, if the contract is expected to be awarded to other than an individual.

(b) Contracting officers shall insert the clause at 52.223–6, Drug-Free Workplace, in solicitations and contracts described in paragraph (a) of this section unless the conditions of paragraph (c) of this section apply.

(c) Contracting officers shall not insert the provision at 52.223–5, Certification Regarding A Drug-Free Workplace, or the clause at 52.223-6, Drug-Free Workplace, in solicitations or contracts, if—

(1) The resultant contract is to be performed entirely outside of the United States, its territories, and its possessions;

(2) The resultant contract is for law enforcement agencies, and the head of the law enforcement agency or designee involved determines that application of the requirements of this subpart would be inappropriate in connection with the law enforcement agency's undercover operations; or

(3) Inclusion of these requirements would be inconsistent with the international obligations of the United States or with the laws and regulations of a foreign country.

23.506 [Amended]

11. Section 23.506 is amended in paragraph (e) by removing in the first sentence the word "subpart" and inserting in its place the word "section".

PART 42—CONTRACT ADMINISTRATION

. Section 42.302 is amended by adding paragraph (a)(66) to read as follows:

42.302 Contract administration functions.

(a) * * *

(66) Determine that the contractor has a drug-free workplace program and drug free awareness program (see subpart 23.5).

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

13. Section 52.223-5 is amended in the clause by removing in the title of the provision the date "(March 1989)" and inserting in its place the date "(JUL 1990)"; by revising in paragraph (a) the definitions "Drug-free workplace" and "Employee"; by revising the introductory text of paragraphs (b), (b)(2), and (b)(6); and by revising paragraphs (b)(4), (b)(5), and (e) to read as follows:

52.223-5 Certification Regarding A Drug-Free Workplace.

* * * * *

(a) * * *

* * * * *

"Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract at which employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a Contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

* * * * *

(b) By submission of its offer, the offeror, if other than an individual, who is making an offer that equals or exceeds $25,000, certifies and agrees, that with respect to all employees of the offeror to be employed under a contract resulting from this solicitation, it will—no later than 30 calendar days after contract award (unless a longer period is agreed to in writing), for contracts of 30 calendar days or more performance duration; or as soon as possible for contracts of less than 30 calendar days performance duration, but in any case, by a date prior to when performance is expected to be completed—

* * * * *

(2) Establish an ongoing drug-free awareness program to inform such employees about—

* * * * *

(4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this provision that, as a condition of continued employment on the contract resulting from this solicitation, the employee will—

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 calendar days after such conviction;

(5) Notify the Contracting Officer in writing within 10 calendar days after receiving notice under subdivision (b)(4)(ii) of this provision, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee; and

(6) Within 30 calendar days after receiving notice under subdivision (b)(4)(ii) of this provision of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

* * * * *

(e) In addition to other remedies available to the Government, the certification in paragraphs (b) or (c) of this provision concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

* * * * *

14. Section 52.223-6 is amended in the introductory text by removing the reference "23.505(c)" and inserting in its place "23.505(b)"; in the title of the clause by removing the date "(Mar. 1989)" and inserting in its place "(JUL 1990)"; by revising in paragraph (a) the definitions "Drug-free workplace" and "Employee"; by revising the introductory text of paragraphs (b), (b)(2), and (b)(6); by revising paragraphs (b)(4), (b)(5), and (d) to read as follows:

52.223-6 Drug-Free Workplace.

* * * * *

(a) * * *

* * * * *

"Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract at which employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a Contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

* * * * *

(b) The Contractor, if other than an individual, shall—within 30 calendar days after award (unless a longer period is agreed to in writing for contracts of 30 calendar days or more performance duration); or as soon as possible for contracts of less than 30 calendar days performance duration—

* * * * *

(2) Establish an ongoing drug-free awareness program to inform such employees about—

* * * * *

(4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will—

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 calendar days after such conviction.

(5) Notify the Contracting Officer in writing within 10 calendar days after receiving notice under subdivision (a)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 calendar days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any

employee who is convicted of a drug abuse violation occurring in the workplace:

* * * * *

(d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract for default, and suspension or debarment.

* * * * *

[FR Doc. 90-11721 Filed 5-24-90; 8:45 am]

BILLING CODE 6820-34-M

federal register

Friday
May 25, 1990

Part III

Department of Education

34 CFR Part 300 et al.

Intergovernmental Review of Department of Education Programs and Activities; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 300, 315, 332, 365, 366, 367, 369, 380, 385, 396, 400, 607, 608, 609, 624, 628, 629, 630, 631, 637, 639, 643, 644, 645, 646, 649, 656, 657, 658, and 692

RIN 1860-AA00

Intergovernmental Review of Department of Education Programs and Activities

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends program regulations to implement changes in coverage for Department of Education programs subject to Executive Order 12372 (Intergovernmental Review of Federal Programs). These changes are required to comply with amendments published on July 6, 1986 to the regulations in 34 CFR part 79 that implement the Executive Order. Those amendments to part 79 revised the criteria for inclusion and exclusion of programs subject to State review under the Executive Order. The notice of proposed rulemaking for these changes provided an opportunity for the public to comment on revisions to the lists of included and excluded programs. The notice also allowed each State to select the programs to be subject to that State's review process.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Linda Mount, Telephone: (202) 732-3671.

SUPPLEMENTARY INFORMATION: Executive Order 12372 (the Order), signed July 14, 1982, was intended "to foster an intergovernmental partnership and a strengthening federalism by relying on State and local processes for the State and local government coordination and review of proposed Federal financial assistance and direct Federal development."

On June 24, 1983, the Secretary published regulations in 48 FR 29158, implementing the Order. The Secretary published amendments to these regulations (at 51 FR 20823, June 9, 1986) to implement changes in criteria for program coverage issued in OMB's March 14, 1985, memorandum entitled "Procedural Changes in Agency Implementation of Executive Order 12372."

On March 13, 1989, the Secretary published a notice of proposed rulemaking to amend certain program regulations to bring them within the coverage of the Order, as specified in the new part 79 criteria. Also published with that document were two new appendices—Appendix A, Programs for Inclusion for State Review under Executive Order 12372 and Appendix B, Programs for Exclusion from Review under Executive Order 12372. The appendices include all included and excluded programs implemented on or before December 31, 1989. Regulations for each program implemented after that date indicate whether the program is subject to the Order. The Department will publish supplements to the lists before the end of this year, indicating whether new programs are included or excluded.

The Department has reviewed all of its current programs for coverage under the Order according to the revised OMB criteria. Under these criteria, a Federal assistance program or activity is included for State review unless the program or activity does not directly affect State or local governments, is proposed Federal legislation, regulation, or budget formulation, or involves one of the following: (1) National security, (2) procurement, (3) direct payments to individuals, (4) financial transfers for which Federal agencies have no funding discretion or direct authority to approve specific sites or projects, (5) research and development that is national in scope, and (6) assistance to federally-recognized Indian tribes.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM for public comment, ten parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows:

There were a number of comments related to listing of programs in the Catalog of Federal Domestic Assistance that were not related to program coverage under this Executive Order. Therefore, those comments are not discussed in this preamble.

General comments

Comment: Two commenters inquired if a noncompeting continuation grant application requires a review by a State agency, particularly if the original award predated the date these rules become final.

Discussion: The first continuation award for which application is made after these regulations become effective will be covered by these regulations. Further, awards under all new programs, including multi-year awards, are covered under part 79 unless the applicable program regulations exclude that program from coverage under the Order.

Changes: None.

Comment: One commenter was concerned that adherence to this Order would result in undue lengthening of the grant application process.

Discussion: Adherence to these regulations will not usually result in lengthening of the time between submission of the proposal and the actual time of the grant award is made since the period between the submission of the proposal and the grant award is usually more than the 60-day comment period provided for State comment under the regulations.

Changes: None.

Comment: One commenter expressed concerns over the disadvantages that the university community would experience as a result of the proposed change to programs covered under the Order since a responsible level of review presently exists.

Discussion: By establishing a single point of contact (SPOC), the State can coordinate programs to avoid duplication within the State. The normal university-State relationship would not provide this kind of coordination ability.

Changes: None.

Comment: Some commenters questioned whether programs not listed in these regulations are covered under the Order. The regulations for each program specifies whether the regulations in part 79 implementing the Order apply to the program. If a new program does not have regulations, part 79 provides that the program is automatically covered (34 CFR 79.3(b)). This final regulation only amends program regulations that do not already apply part 79 to add coverage of that part for programs that meet the criteria for coverage. The application notice for each discretionary grant program specifies whether the program is subject to review under the Executive Order.

Change: None.

Appendices A and B

Comment: Several commenters suggested that some programs be moved from the included list to the excluded list. These included the Supplemental Education Opportunity Grant (SEOG), State Student Loan Incentive Grant (SSIG), and Paul Douglas Teacher Scholarship Programs. The justification offered for why these programs should be excluded was that funds are awarded through States or institutions of postsecondary education to students.

Discussion: The applicable criterion for exclusion under the Order provides that the funds must be paid by the Federal Government directly to the individual. The funds awarded in the above programs go first to the State or the postsecondary institution and then to the individual. Therefore, these programs cannot be properly excluded from coverage. (See 34 CFR 79.3(c)(5)).

Change: None.

Comment: A commenter suggested that the National Resource Centers and Fellowship Program for Language and Area or Language and International Studies, and the Undergraduate International Studies and Foreign Language Program be moved to the excluded list based on the rationale that funds under this program support research that is national in scope and go directly to the individual.

Discussion: The funds awarded under these programs do not go directly to individuals but rather go first to postsecondary institutions and are therefore not excluded under the Order. They also do not conduct research and development that is national in scope and therefore do not fall into one of OMB's categories for exclusion. These programs remain on the list of included programs. The International Research and Studies program does support research and development that is national in scope and remains on the list of excluded programs.

Change: None.

Comment: Clarification of the appropriate placement for several programs was sought by several commenters.

Discussion: The Rehabilitation Services Administration-Service Projects program (CFDA #84.128) appears both in appendix A and appendix B. There are several components under 84.128. All components are covered except 84.128H which is excluded from coverage under the Order.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Paperwork Reduction Act of 1980

These proposed regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 300

Administrative practice and procedure, Education, Education of handicapped, Equal educational opportunity, Privacy, Private schools.

34 CFR Part 315

Education, Education of handicapped, Education—research, Government contracts, Student aid, Teachers.

34 CFR Part 332

Education, Education of handicapped.

34 CFR Part 365

Education, State Independent Living, Reporting and recordkeeping requirements, Vocational rehabilitation services.

34 CFR Part 366

Education, Grant programs—social programs, Vocational rehabilitation.

34 CFR Part 367

Education, Independent living services, Older Blind individuals, Reporting and recordkeeping requirements, Vocational rehabilitation.

34 CFR Part 369

Education, Grant Programs—social programs,Vocational rehabilitation.

34 CFR Part 380

Education, Grants program—education, Grants program—social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

34 CFR Part 385

Education, Vocational rehabilitation.

34 CFR Part 396

Education, Vocational rehabilitation.

34 CFR Part 400

Adult Education, Education, Education of disadvantaged, Equal educational opportunity, Private schools, Schools, School construction, Vocational education, Women.

34 CFR Part 607

Colleges and universities, Education.

34 CFR Part 608

Colleges and universities, Education.

34 CFR Part 609

Colleges and universities, Education.

34 CFR Part 624

Colleges and universities, Education.

34 CFR Part 628

Colleges and universities, Education.

34 CFR Part 629

Adult education, Colleges and universities, Education, Veterans.

34 CFR Part 630

Colleges and universities, Education, Government contracts.

34 CFR Part 631

Colleges and universities, Education, Educational research, Employment, Manpower training programs, Student aid.

34 CFR Part 637

Colleges and universities, Education, Education of disadvantaged, Educational study programs, Equal educational opportunity, Science and technology.

34 CFR Part 639

Colleges and universities, Education, Educational study programs, Law.

34 CFR Part 643

Colleges and universities, Education, Education of disadvantaged, Education of handicapped.

34 CFR Part 644

Colleges and universities, Education of disadvantaged, Education, Education of handicapped.

34 CFR Part 645

Colleges and universities, Education, Education of disadvantaged, Education of handicapped.

34 CFR Part 646

Bilingual education, Education, Education of disadvantaged, Education of handicapped, Government contracts.

34 CFR Part 649

Colleges and universities, Education, Energy, Mineral resources, Mines, Scholarships and fellowships.

34 CFR Part 656

Education, Foreign language.

34 CFR Part 657

Education, Fellowships.

34 CFR Part 658

Education, Foreign language.

34 CFR Part 692

Education, State-administered-education, Student aid.

Dated: May 21, 1990.

Lauro F. Cavazos,

Secretary of Education.

The Secretary proposes to amend parts 300, 315, 332, 365, 366, 367, 369, 380, 385, 396, 400, 607, 608, 609, 624, 628, 629, 630, 631, 637, 639, 643, 644, 645, 646, 649, 656, 657, 658, and 692 of title 34 of the Code of Federal Regulations as follows:

PART 300—ASSISTANCE TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

1. The authority citation for part 300 continues to read as follows:

Authority: 20 U.S.C. 1411–1420, unless otherwise noted.

§ 300.3 [Amended]

2. Section 300.3(a)(1) is amended by removing "Programs), and part 77 (Definitions)." and adding, in their place, "Programs), part 77 (Definitions that apply to Department Regulations), and part 79 (Intergovernmental Review of Department of Education Programs and Activities)."

PART 315—PROGRAM FOR SEVERELY HANDICAPPED CHILDREN

3. The authority citation of part 315 continues to read as follows:

Authority: 20 U.S.C. 1424, unless otherwise noted.

4. In § 315.3, paragraphs (b) (3) and (4) are revised to read as follows:

§ 315.3 What regulations apply to this program?

* * * * *

(b) * * *

(3) Part 77 (Definitions that Apply to Department Regulations);

(4) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(Authority: 20 U.S.C. 1424, 20 U.S.C. 3474(a))

PART 332—EDUCATIONAL MEDIA RESEARCH, PRODUCTION, DISTRIBUTION, AND TRAINING

5. The authority citation for part 332 is revised to read as follows:

Authority: 20 U.S.C. 1451–1452, unless otherwise noted.

§ 332.3 [Amended]

6. Section 332.3 is amended by removing "77 and" and adding, in their place, the words "77, 79, and ".

PART 365—THE STATE INDEPENDENT LIVING REHABILITATION SERVICES PROGRAM

7. The authority citation for part 365 continues to read as follows:

Authority: 29 U.S.C. 796a–d–1, unless otherwise noted.

§ 365.1 [Amended]

8. Section 365.1(b)(1) is amended by removing the word "and", and by adding ", and part 79 (Intergovernmental Review of Department of Education Programs and Activities)," before the period at the end of the sentence.

PART 366—CENTERS FOR INDEPENDENT LIVING

9. The authority citation for part 366 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 796(e), unless otherwise noted.

§ 366.3 [Amended]

10. Section 366.3(a) is amended by removing the word "and" each place it appears, and by adding ", and part 79 (Intergovernmental Review of Department of Education Programs and Activities)" before the period at the end of the sentence.

PART 367—INDEPENDENT LIVING SERVICES FOR OLDER BLIND INDIVIDUALS

11. The authority citation for part 367 continues to read as follows:

Authority: 29 U.S.C. 796f, unless otherwise noted.

§ 367.4 [Amended]

12. Section 367.4(a) is amended by removing the word "and" and by adding the words ", and part 79 (Intergovernmental Review of Department of Education Programs and Activities)" before the period at the end of the sentence.

PART 369—VOCATIONAL REHABILITATION SERVICE PROJECTS

13. The authority citation for part 369 continues to read as follows:

Authority: 29 U.S.C. 711(c), 732, 750, 775, 777 (a)(1) and (a)(3), 777b, 777f, and 795g, unless otherwise noted.

§ 369.3 [Amended]

14. Section 369.3(a) is amended by removing the word "and", and by adding ", and part 79 (Intergovernmental Review of Department of Education Programs and Activities), except that part 79 does not apply to the Handicapped American Indian Vocational Rehabilitation Service Projects Program (34 CFR part 371)" before the period at the end of the sentence.

PART 380—SPECIAL PROJECTS AND DEMONSTRATION FOR PROVIDING SUPPORTED EMPLOYMENT SErVICES TO INDIVIDUALS WITH SEVERE HANDICAPS AND TECHNICAL ASSISTANCE PROJECTS

15. The authority citation for part 380 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 777a(d), unless otherwise noted.

§ 380.8 [Amended]

16. Section 380.8(a) is amended by adding ", part 79 (Intergovernmental Review of Department of Education Programs and Activities)" before "Part 80".

PART 385—REHABILITATION TRAINING

17. The authority citation for part 385 continues to read as follows:

Authority: 29 U.S.C. 711(c), 744, and 776, unless otherwise noted.

§ 385.3 [Amended]

18. Section 385.3(a) is amended by removing the word "and", and by adding ", and part 79 (Intergovernmental Review of Department of Education Programs and Activities)" before the period at the end of the sentence.

PART 396—TRAINING OF INTERPRETERS FOR DEAF INDIVIDUALS

19. The authority citation for part 396 is revised to read as follows:

Authority: 29 U.S.C. 744(d), unless otherwise noted.

20. In § 396.3, paragraph (a)(3) and (4) are revised to read as follows:

§ 396.3 What regulations apply to this program?

* * * * *

(a) * * *

(3) Part 77 (Definitions that Apply to Department Regulations); and

(4) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

* * * * *

(Authority: 29 U.S.C. 774(d))

PART 400—VOCATIONAL EDUCATION PROGRAMS—GENERAL PROVISIONS

21. The authority citation for part 400 continues to read as follows:

Authority: 29 U.S.C. *et seq.*, unless otherwise noted.

§ 400.3 [Amended]

22. Section 400.3(f) is amended by adding "except that part 79 does not apply to any applications submitted by an Indian tribal organization that is eligible under 34 CFR 410.2(a)(1) of the Indian and Hawaiian Natives Program (34 CFR Part 410)" before the period at the end of the sentence.

PART 607—STRENGTHENING INSTITUTIONS PROGRAMS

23. The authority citation for part 607 continues to read as follows:

Authority: 20 U.S.C. 1057–1059, 1066–1069F, unless otherwise noted.

§ 607.6 [Amended]

24. Section 607.6(a) is amended by removing "Regulations; and Part 78 (Education Appeal Board)." and adding in their place "Regulations; and Part 79 (Intergovernmental Review of Department of Education Programs and Activities)."

PART 608—STRENGTHENING HISTORICALLY BLACK COLLEGES AND UNIVERSITIES PROGRAM

25. The authority citation for part 608 continues to read as follows:

Authority: 20 U.S.C. 1060 through 1063a, 1063c, and 1069c, unless otherwise noted.

§ 608.3 [Amended]

26. Section 608.3(a) is amended by removing the word "and", and adding ", and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)" before the period at the end of the sentence.

PART 609—STRENGTHENING HISTORICALLY BLACK GRADUATE INSTITUTIONS PROGRAM

27. The authority citation for part 609 continues to read as follows:

Authority: 20 U.S.C. 1063b and 1069c, unless otherwise noted.

§ 609.3 [Amended]

28. Section 609.3(a) is amended by removing the word "and" and adding ", and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)" before the period at the end of the sentence.

PART 624—INSTITUTIONAL AID PROGRAMS—GENERAL PROVISIONS

29. The authority citation for part 624 continues to read as follows:

Authority: 20 U.S.C. 1051–1069c, unless otherwise noted.

§ 624.5 [Amended]

30. Section 624.5(a) introductory text is amended by removing "and", and adding in its place a comma after "(Direct Grant Programs)" and adding ", and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)," after "(Definitions)".

PART 628—ENDOWMENT CHALLENGE GRANT PROGRAM

31. The authority citation for part 628 continues to read as follows:

Authority: 20 U.S.C. 1065a, unless otherwise noted.

32. In § 628.5, paragraph (b)(1)(v) is added and paragraph (b)(2) is revised to read as follows:

§ 628.5 What regulations apply to the Endowment Challenge Grant Program?

* * * * *

(b)(1) * * *

(v) The regulations in 34 CFR part 79.

(2) Except as specifically indicated in paragraph (b)(1) of this section, the Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74 through 77 do not apply.

(Authority: 20 U.S.C. 1065a)

PART 629—VETERANS EDUCATION OUTREACH PROGRAM

33. The authority citation for part 629 continues to read as follows:

Authority: 20 U.S.C. 1070e–1, unless otherwise noted.

34. In § 629.4, paragraph (a)(5) is added to read as follows:

§ 629.4 What regulations apply?

* * * * *

(a) * * *

(5) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

* * * * *

(Authority: 20 U.S.C. 1070e–1, 1088)

PART 630—FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION

35. The authority citation for part 630 continues to read as follows:

Authority: 20 U.S.C. 1135–1135a–2, 1135e–1135e–1, unless otherwise noted.

§ 630.4 [Amended]

36. Section 630.4(a)(1) is amended by removing the word "and," and by adding before the period at the end of the sentence ", and Part 79 (Intergovernmental Review of Department of Education Programs and Activities)".

PART 631—COOPERATIVE EDUCATION PROGRAM—GENERAL

37. The authority citation for part 631 continues to read as follows:

Authority: 20 U.S.C. 1133–1133b, unless otherwise noted.

§ 631.4 [Amended]

38. Section 631.4(a)(1) is amended by removing the word "and", and by adding before the period at the end of the sentence ", and 79 (Intergovernmental Review of Department of Education Programs and Activities)".

PART 637—MINORITY SCIENCE IMPROVEMENT PROGRAM

39. The authority citation for part 637 continues to read as follows:

Authority: 20 U.S.C. 1135b–1135b–3, 1135d–1135d–6, unless otherwise noted.

§ 637.3 [Amended]

40. Section 637.3(a) is amended by removing the word "and", and by adding before the period at the end of the sentence, ", and Part 79 (Intergovernmental Review of Department of Education Programs and Activities)".

PART 639—LAW SCHOOL CLINICAL EXPERIENCE PROGRAM

41. The authority citation for part 639 continues to read as follows:

Authority: 20 U.S.C. 1134s–1134t, unless otherwise noted.

§ 639.3 [Amended]

42. Section 639.3(a) is amended by removing the word "and" after the words "(Direct Grant Programs)" and adding, in its place a comma, and by removing "(Definitions)" and adding, in its place, the words "(Definitions that Apply to Department Regulations), and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)".

PART 643—TALENT SEARCH PROGRAM

43. The authority citation for part 643 continues to read as follows:

Authority: 20 U.S.C. 1070d–1, unless otherwise noted.

§ 643.5 [Amended]

44. Section 643.5(a) is amended by removing the word "and," and adding, in its place, a comma and by adding before the period at the end of the sentence, ", and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)".

PART 644—EDUCATIONAL OPPORTUNITY CENTERS PROGRAM

45. The authority citation for part 644 continues to read as follows:

Authority: 20 U.S.C. 1070d–1c, unless otherwise noted.

§ 644.5 [Amended]

46. Section 644.5(a) is amended by removing the word "and," and adding, in its place, a comma, and by adding before the period at the end of the sentence ", and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)".

PART 645—UPWARD BOUND PROGRAM

47. The authority citation for part 645 continues to read as follows:

Authority: 20 U.S.C. 1070d, 1070d–1a, unless otherwise noted.

§ 645.5 [Amended]

48. Section 645.5(a) is amended by removing the word "and" and adding, in its place, a comma, and by adding before the period at the end of the sentence, ", and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)".

49. The authority citation for part 646 continues to read as follows:

Authority: 20 U.S.C. 1070, 1070d–1b, unless otherwise noted.

PART 646—STUDENT SUPPORT SERVICES PROGRAM

§ 646.5 [Amended]

50. Section 646.5(a) is amended by removing the word "and" and adding, in its place, a comma, and by adding before the period at the end of the sentence ", and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)".

PART 649—PATRICIA ROBERTS HARRIS FELLOWSHIPS PROGRAM

51. The authority citation for part 649 continues to read as follows:

Authority: 20 U.S.C. 1134d–1134f, unless otherwise noted.

§ 649.3 [Amended]

52. Section 649.3(a) is amended by removing the word "and" after "Department Regulations)," and by adding after "Appeal Board)," ", and Part 79 (Intergovernmental Review of Department of Education Programs and Activities),".

PART 656—NATIONAL RESOURCE CENTERS PROGRAM FOR LANGUAGE AND AREA OR LANGUAGE AND INTERNATIONAL STUDIES

53. The authority citation for part 656 continues to read as follows:

Authority: 20 U.S.C. 1122, unless otherwise noted.

§ 656.6 [Amended]

54. Section 656.6(c) is amended by removing the word "and" and adding, in its place, a comma, and by adding before the period at the end of the sentence ", and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)".

PART 657—FOREIGN LANGUAGES AND AREA STUDIES FELLOWSHIPS PROGRAM

55. The authority citation for part 657 continues to read as follows:

Authority: 20 U.S.C. 1122, unless otherwise noted.

56. Section 657.4(c) is amended by removing the word "and" and adding, in its place, a comma, and by adding before the period at the end of the sentence ", and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)".

PART 658—UNDERGRADUATE INTERNATIONAL STUDIES AND FOREIGN LANGUAGE PROGRAM

57. The authority citation for part 658 continues to read as follows:

Authority: 20 U.S.C. 1124, unless otherwise noted.

§ 658.3 [Amended]

58. Section 658.3(c) is amended by removing the word "and" and adding, in its place, a comma, and by adding before the period at the end of the sentence ", and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)".

PART 692—STATE STUDENT INCENTIVE GRANT PROGRAM

59. The authority citation for part 692 is revised to read as follows:

Authority: 20 U.S.C. 1070c–1070c–4, unless otherwise noted.

§ 692.3 [Amended]

60. Section 692.3(b) is amended by removing the word "and", and by adding before the period at the end of the sentence ", and Part 79 (Intergovernmental Review of Department of Education Programs and Activities)".

Note: This appendix is not to be codified in the Code of Federal Regulations.

Appendix A—Programs Included for State Review Under Executive Order 12372 [1]

Program name	CFDA section No.
Adult education—state-administered	84.002
Bilingual education	84.003
Desegregation of public education	84.004
Supplemental educational opportunity grants.	84.007
Follow through	84.014
National Resources Centers and Fellowship program for langauge and area or language and international studies.	84.015
Undergraduate international studies and foreign language program.	84.016
Handicapped children's early education.	84.024
Services for deaf-blind children and youth.	84.025N
Handicapped media services and captioned films.	84.026
Assistance to states for education of handicapped children.	84.027
Regional resource and federal centers.	84.028
Training personnel for the education of the handicapped.	84.029
Clearinghouse for the handicapped	84.030
Strengthening institutions	84.031A
Strengthening historically black colleges and universities.	84.031B
Endowment challenge grants	84.031D
Public library services	84.034
Interlibrary cooperation	84.035
Library career training fellowships	84.036
Library research and demonstration	84.039
School assistance in federally affected areas—construction.	84.040
Student support services program	84.042
Talent search	84.044
Upward bound	84.047
Vocational education—basic grants to states.	84.049
Vocational education—state advisory councils.	84.053
Cooperative education	84.055
*Indian education—formula grants to local educational agencies and tribal schools.	84.060
*Indian education—special programs and projects.	84.061

[1] This list includes programs implemented on or before December 31, 1988.

Program name	CFDA section No.
*Indian education—adult indian education.	84.062
Veterans education outreach	84.064
Educational opportunity centers	84.066
State student incentive grant	84.069
*Indian education—grants to Indian controlled schools.	84.072
National diffusion network	84.073
Bilingual vocational training	84.077
Postsecondary education programs for handicapped persons.	84.078
Women's educational equity	84.083
Program for severely handicapped children.	84.086
Strengthening research library resources.	84.091
Patricia Roberts Harris Graduate and professional study.	84.094
Law school clinical experience	84.097
Bilingual vocational instructor training.	84.099
Bilingual vocational instructional materials, methods, and techniques.	84.100
Vocational education Hawaiian native program.	84.101C
Training program for special program staff and leadership personnel.	84.103
Fund for the improvement of postsecondary education.	84.116
Minority science improvement	84.120
Law-related education	84.123
Territorial teacher training assistance.	84.124
State vocational rehabilitation services.	84.126
Rehabilitation service projects	84.128A, B, C, D, F, G, J
Rehabilitation training	84.129
Centers for independent living	84.132
Migrant education high school equivalency.	84.141
College facilities loan	84.142
Migrant education—interstate and intrastate coordination.	84.144
Federal real property assistance	84.145
Transition program for refugee children.	84.146
College assistance migrant	84.149
Business and international education.	84.153
Library services and construction act—construction.	84.154
Removal of architectural barriers to the handicapped.	84.155
Secondary education and transitional services for handicapped youth.	84.158
Training interpreters for deaf individuals.	84.160
Client assistance for handicapped individuals.	84.161
Emergency immigrant education assistance act.	84.162
Library services and construction act, title IV—basic grants to Indian tribes and Hawaiian native (Indian tribes excluded from coverage).	84.163B
Strengthening teacher skills and instruction in mathematics and science.	84.164
Magnet schools assistance	84.165
Library literacy	84.167
Secretary's discretionary program for mathematics, science, computer learning, and critical foreign languages.	84.168
State independent living rehabilitation service program.	84.169
Construction, reconstruction, and renovation of academic facilities.	84.172
Preschool grants for handicapped children.	84.173
State assistance for vocational education—support programs by community based organizations.	84.174
Paul T. Douglas teacher scholarship	84.176
Independent living for older blind adults.	84.177
Leadership in educational administration development.	84.178
Technology, media and materials	84.180
Early intervention programs for infants and toddlers with handicaps.	84.181
Drug-free schools and communities programs—training and demonstration grants to institutions of higher education, and federal activities.	84.184
Drug-free schools and communities—State and local.	84.186
The State supported employment services.	84.187
Drug free schools and communities—regional centers.	84.188
Adult education for the homeless	84.192
Vocational educational—national programs; demonstration centers for the retraining of dislocated workers.	84.193
Education of the homeless	84.196
College library technology and cooperation.	84.197
Workplace literacy partnerships	84.198
Vocational education—national cooperative demonstration.	84.199
School dropout demonstration assistance.	84.201
Star school	84.203
State vocational education comprehensive career guidance and counseling.	No CFDA #
State vocational education industry—education partnerships.	No CFDA #
Vocational education—state equipment pools.	No CFDA #
Vocational education—national programs.	No CFDA #

*Except applicants that are federally recognized Indian tribes.

Note: This appendix is not to be codified in the Code of Federal Regulations.

Appendix B—Programs Excluded From State Review Under Executive Order 12372 [2]

Program	CFDA No.
Interest subsidy grants for academic facilities loans.	84.001
Exclusion Justification:	
Funds under this program were determined by prior action and the government's commitment is for the life of the loan. Since no application to the Federal government is involved, States do not review this program.	
Education of handicapped children in State operated schools.	84.009
Exclusion Justification:	
Funds under this program are determined by a statutory formula. Therefore, the Department has no discretion in approving specific sites or in determining the amount of allocations.	
Educationally deprived children; local educational agencies.	84.010
Exclusion Justification:	
Funds under this program are determined by a statutory formula and distributed to participating local education agencies. Therefore, the Department has no discretion in approving specific sites or in determining the amounts of allocations.	
Migrant education—State formula grant.	84.011
Exclusion Justification:	
Funds under this program are determined by a statutory formula and distributed to State education agencies. Therefore, the Department has no discretion in approving specific sites or projects or in determining the amount of allocations.	
Educationally deprived children State administration.	84.012
Exclusion Justification:	
Funds under this program are determined by a statutory formula and distributed to State education agencies. Therefore, the Department has no discretion in approving specific sites or projects or in determining the amounts of allocations.	
Neglected and delinquent children	84.013
Exclusion Justification:	
Funds under this program are determined by a statutory formula and distributed to State education agencies. Therefore, the Department has no discretion in approving specific sites or projects or in determining the amounts of allocations.	
International research and studies	84.017
Exclusion Justification:	
This program provides assistance for the conduct of research, studies and surveys and the development of instructional materials for modern languages and area and international studies. Research is national in scope and is conducted by individual scholars.	
Fulbright-Hays training grants—faculty research abroad.	84.019
Exclusion Justification:	
This program supports research projects conducted abroad by individual research scholars in cooperation with bi-national commissions, U.S. embassies, foreign ministries of education, and institutions of higher education abroad. Research is of national and international scope.	
Fulbright-Hays training centers—foreign curriculum consultants.	84.020

[2] This list includes programs implemented on or before December 31, 1988.

Program	CFDA No.
Exclusion Justification:	
This program awards grants to institutions of higher education for the selection of curriculum specialists from abroad to assist U.S. institutions or groups of institutions in the development of programs of research and study in the United States. This program does not affect State or local governments because the recruitment of individual candidates is made by U.S. embassies, Fulbright Commissions abroad, or foreign ministries of education.	
Fulbright-Hays training grants—group projects abroad.	84.021
Exclusion Justification:	
This program awards grants to individuals through eligible institutions in the United States and abroad in cooperation with Fulbright Commissions, U.S. Embassies, and foreign ministries of education for the purpose of engaging in group projects in research, training, and curriculum development. Projects conducted abroad and at institutions in the United States are national in scope and do not directly affect State or local governments.	
Fulbright-Hays training grants—doctoral dissertation research abroad.	84.022
Exclusion Justification:	
This fellowship program provides payments to individuals who have been advanced to doctoral degree candidacy in foreign language and area studies. Individual projects are conducted abroad and therefore the research has no impact on States or local governments.	
Research in education on the handicapped.	84.023
Exclusion Justification:	
This program provides assistance for the conduct of special education research and studies. Research is national in scope and does not affect individual States.	
Guaranteed student loan program and plus (auxiliary) loan.	84.032
Exclusion Justification:	
These programs authorize low interest loans available from lenders such as banks and credit unions to help defray costs of education at participating institutions. The loans are provided directly to the student or to parents of the student.	
College work-study	84.033
Exclusion Justification:	
This program provides jobs for undergraduate and graduate students. Participating institutions receive direct allocations of Federal funds according to national funding formulas. Funds are ultimately paid directly to students.	
Perkins loan program to schools	84.037
Exclusion Justification:	
Funds for this program provide reimbursement for the value of loan cancellations as prescribed by statute. The Department has no discretion in determining the amount of these reimbursements.	
Perkins direct student loan	84.038
Exclusion Justification:	
This program provides low-interest loans to both undergraduate and graduate students. This is a matching funds program with the institution contributing one-ninth of the project award. The annual allocation is distributed to participating institutions according to national formulas.	
School assistance in federally affected areas—Maintenance and operations.	84.041
Exclusion Justification:	
This program makes financial payments to school districts. Funds under this program are distributed to participating local educational agencies that are affected by the presence of Federal activity or property, or by Presidentially-declared disasters. Once eligibility is established, the Department of Education has no discretion in approving sites or projects, or in determining allocation amounts.	
National vocational education research.	84.051
Exclusion Justification:	
This program is designed to provide support to the National Center for Research in Vocational Education for which a location is chosen every five years; six curriculum development and demonstration centers; and several other contractors to engage in research and curriculum development and demonstration. Contracts may only be awarded to projects of national significance in vocational education and to develop and provide information to facilitate national planning and policy development.	
Pell grant	84.063
Exclusion Justification:	
This program is a student financial assistance program based on a formula. Payments are made directly to individual students to pursue college or other postsecondary education goals.	
Indian education—grants to Indian controlled schools.	84.072
Exclusion Justification:	
This program is designed to meet the special needs of Indian children. Single Points of Contact may not review applications submitted by federally recognized Indian tribes. Other applicants under this program must submit applications to Single Points of Contact for review as required by this Order.	
Arts in Education	84.084
Exclusion Justification:	
Legislation for this program identifies the two grantees; The Kennedy Center and the National Committee on Arts for the Handicapped and therefore, the Department has no funding discretion.	
Indian education fellowship for Indian students.	84.087
Exclusion Justification:	
This program provides fellowships to individual Indian students to enable them to pursue studies at accredited colleges or institutions of higher education.	
Vocational education Indian and Hawaiian Native.	84.101A
Exclusion Justification:	
This program provides grants and contracts to federally recognized Indian tribal governments that are eligible to contract with the Secretary of the Interior for the administration of programs under the Indian Self-Determination Act or under the Act of April 16, 1934.	
Educational research and development.	84.117
Exclusion Justification:	
This program is designed to provide grants and contracts to institutions of higher education, public and private non-profit organizations, and local and State educational agencies to support the conduct of educational research and development that is of national scope.	
Handicapped American Indian vocational rehabilitation services solely to handicapped American Indians who reside on Federal or State reservations in order to prepare for suitable employment.	84.128H
National institute on disability and rehabilitation research.	84.133
Exclusion Justification:	
The Institute provides financial support for research conducted by over 200 organizations throughout the United States and internationally and for scholarly exchange. Research priorities are based on areas of national scope such as spinal cord injury; physical restoration and psycosocial rehabilitation; and telecommunications. Therefore, they do not directly affect local areas or governments.	
Consolidation of Federal programs for elementary and secondary education.	84.151
Funds under this program are distributed as block grants which are determined by a statutory formula and distributed to State educational agencies. The Department has no discretion in approving specific sties or in determining the amount of allocations.	
Handicapped special studies—State evaluation studies.	84.159
This program funds projects for data collection activities and studies; investigations; evaluations (to assess the impact and effectiveness of programs assisted under the Education of the Handicapped Act); and for the development, publication and dissemination of the Annual Report to Congress required under the Act. The projects address issues and research of national audiences, such as researchers, policy maker and Congress.	
Library services and construction act—Title IV basic grants to Indian tribes.	84.163A

Program	CFDA No.
Exclusion Justification:	
This program provides assistance to Federally recognized Indian tribes	
Jacob Javits fellowships	84.170
Exclusion Justification:	
This program provides fellowships to students of superior ability selected on the basis of demonstrated achievement and exceptional promise, for study at the doctoral level in selected fields of the arts, humanities, and the social sciences. Individuals apply directly to the Department and the calculated stipend is directly awarded to the fellow through the institution.	
Robert C. Byrd honors scholarship	84.185
Exclusion Justification:	
This program provides financial assistance to States to award scholarships to States to award scholarships to individuals who have demonstrated outstanding academic achievement and who show promise of continued academic achievement. Funds are determined by a statutory formula and the Department has no discretion on amount of allocations.	
Adult education—national adult education discretionary.	84.191
Exclusion Justification:	
Projects funded under this program will be research based and national in scope. No specific state or region will be targeted	
Allen J. Ellender fellowship	84.998
Exclusion Justification:	
As directed by Congress, The Close Up Foundation is the recipient of this contract which purpose is to enable economically disadvantaged students and their teachers to participate in a week long government studies program to increase their understanding of the Federal Government.	
Drug-free schools and communities—Hawaiian natives.	84.999c
Exclusion Justification:	
Funds under this program are awarded only to Hawaiian natives and the Department has no discretion in selecting recipients.	
General assistance to the Virgin Islands.	No CFDA No.
Exclusion Justification:	
This grant is specifically mandated for the Virgin Islands by section 1524 of PL 95-561.	
Inexpensive book distribution	No CFDA No.
Exclusion Justification:	
Grant recipient is designated in legislation.	

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federal register

Friday
May 25, 1990

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Suspension of Certain Aircraft Operations From the Transponder With Automatic Pressure Altitude Reporting Capability Requirement; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 26242, Notice No. 90-16]

RIN 2120-AD52

Suspension of Certain Aircraft Operations From the Transponder With Automatic Pressure Altitude Reporting Capability Requirement

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to suspend, until December 30, 1993, certain provisions of the regulations which require the installation and use of automatic altitude reporting (Mode C) transponders (Mode C rule). This proposed rule would provide access to specified outlying general aviation (GA) airports within 30 miles of a terminal control area (TCA) primary airport (Mode C veil) for aircraft without a Mode C transponder. The FAA believes that the operation of an aircraft without a Mode C transponder can be safely accommodated provided that the operation is conducted in areas not currently within air traffic control (ATC) radar coverage and not predominantly used by aircraft required to install and use traffic alert and collision avoidance systems (TCAS) equipment. The FAA expects that radar coverage in some Mode C veil airspace will improve as a result of scheduled radar system upgrades. After new radar systems are in service, the FAA may conduct field evaluations to reassess the actual radar coverage in appropriate areas. Based on those reassessments, the FAA may propose further rulemaking to extend the period that the Mode C transponder requirement would be suspended for operations at certain airports on a case-by-case basis by a notice published in the Federal Register.

DATES: Comments must be received on or before July 24, 1990.

ADDRESSES: Comments to the proposal may be mailed or delivered in triplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 26242, 800 Independence Avenue SW., Washington, DC 20591. Comments may be examined in room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Richard K. Kagehiro, Air Traffic Rules Branch, ATO-230, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments should identify the regulatory docket or notice number and be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments will be considered by the Administrator before taking further rulemaking action. Persons wishing the FAA to acknowledge receipt of their comment submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is written: "Comments to Docket Number 26242." The postcard will be date/time stamped and returned to the commenter. The proposals in this notice may be changed as a result of comments received. All comments submitted will be available in the Rules Docket, both before and after the closing date for comments, for examination by interested persons. A report summarizing substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-200, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on a mailing list for future notices should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Background and Need for Rulemaking

Effective July 1, 1989, § 91.24 of the Federal Aviation Regulations (FAR) requires aircraft operating in a Mode C veil to be equipped with an operable Mode C transponder. Aircraft not originally certificated with an engine-driven electrical system or which have not subsequently been certified with such a system installed, balloons, and gliders are excluded from this requirement. The Mode C requirement resulted from regulatory proceedings initiated under Notice 88-2 (53 FR 4306, February 12, 1988; final rule adopted 53 FR 23356, June 21, 1988).

In September 1989, in order to provide for requests to deviate from the Mode C transponder requirements for operations within a Mode C veil, the FAA issued internal guidance to ATC facilities regarding the issuance of an ATC authorization to operate without a Mode C transponder. Such an authorization must be applied for by each aircraft operator and is processed by an ATC facility on a case-by-case basis. If approved, the authorization specifies any restriction or condition determined by the ATC facility to be necessary to ensure that the operation can be conducted safely and will not impact on other operations. Although there may be circumstances which are applicable to many operators or a group of operations (such as operations to and from a specific outlying airport or operations conducted in areas of no radar coverage), ATC authorizations must be requested and granted on an individual basis only. This aspect of the authorization process has been inefficient and time-consuming for both operators and ATC staff with regard to authorizing operations conducted at outlying airports or in areas of no radar coverage.

As a result, the FAA believes that it would be beneficial to provide some temporary means of allowing access to outlying GA airports with a minimum of ATC involvement. However, the means of providing access should be consistent with the safety provisions of the Mode C rule and the legislation which required that rule. Further, in response to over 65,000 comments received to Notice 88-2, the FAA stated in the preamble to the Mode C rule (53 FR 23356, June 21, 1988) that it would consider a means of providing access to outlying GA airports for those aircraft not equipped with Mode C transponders. However, such action would be taken only to the extent that it would be consistent with maintaining adequate safety within the TCA and the airspace surrounding the TCA primary airport.

Safety Benefits of the Mode C Rule

The FAA attributes four safety benefits to the installation and use of Mode C transponders. First, automated ATC radar tracking systems compare altitude information from airborne Mode C transponders, stored flight plan information, and radar positional information of aircraft operating within the ATC system to provide an automatic conflict alert warning to advise controllers of the potential loss of appropriate separation standards between two or more aircraft. The controller can then quickly relay this information to the pilots or issue an instruction or clearance if necessary. Additionally, aircraft altitude information derived from this equipment can be displayed directly on a controller's radar screen. Second, aircraft altitude information derived from Mode C transponders will activate traffic alert and collision avoidance systems (TCAS) in TCAS-equipped aircraft. TCAS is designed to alert a flightcrew to a collision potential and, with certain versions of TCAS, to provide that flightcrew with a conflict resolution advisory. TCAS, however, will not alert the flightcrew of a TCAS-equipped aircraft to the presence of a non-transponder-equipped aircraft. Third, the automated ATC tracking systems compare the aircraft altitude data with pre-programmed terrain information. If any of the comparisons predict a potentially hazardous situation for a tracked aircraft, a low-altitude alert in the form of a visual or aural alarm immediately alerts the controller who issues safety instructions to the aircraft. Finally, a software feature called "Mode C Intruder" (MCI), available in all en route ATC facilities and planned for terminal facilities, establishes tracks on Mode C transponder-equipped aircraft that are not being controlled by ATC and alerts controllers to potential conflicts between these aircraft and controlled aircraft.

The conflict alert, low-altitude alert, and MCI functions require altitude information from Mode C transponders to be detected by ATC radar systems. When aircraft operations are confined exclusively to areas of no radar coverage, the safety benefits attributed to the conflict alert, low-altitude alert, and MCI cannot be realized. As a result, the FAA believes that access to certain outlying GA airports by aircraft without Mode C transponders can be accommodated without derogating these safety benefits provided that the operation is conducted within airspace that is outside ATC radar coverage.

However, the FAA believes certain measures should be taken to ensure that the operation of an aircraft without a Mode C transponder will not derogate the safety benefits attributed to TCAS. The TCAS final rule (54 FR 940, January 10, 1989) provides that certain air taxi and commercial operators, and virtually all large air carrier aircraft must be equipped with some level of TCAS equipment in accordance with a phased-in implementation schedule over the next several years. As discussed earlier, current TCAS equipment does not provide the flightcrew of a TCAS-equipped aircraft with a warning or collision conflict resolution advisory with respect to a non-transponder-equipped aircraft. As a result, the FAA will not propose to suspend the Mode C requirement as it applies to aircraft operating in the airspace overlying or in the immediate vicinity of an airport that is served by scheduled air carrier operations using aircraft that will be required to install TCAS equipment.

ATC Radar System Improvements

The FAA expects the radar coverage in some Mode C veil airspace to improve as a result of the scheduled upgrading of radar systems at each TCA location. Computer programs can help predict the radar coverage of new generation radar systems; however, these computer programs cannot account for all factors which may affect radar coverage. As a result, the actual radar coverage may differ slightly from the predicted coverage. After new radar systems are in service, the FAA may conduct field evaluations to reassess actual radar coverage on a site-by-site basis. Those reassessments may result in future proposed rulemaking to: (1) Extend the period that the Mode C transponder requirement are proposed to be suspended if the evaluations indicate that aircraft operations at a designated airport are still not within radar coverage; or (2) designate other airports at which operations may be suspended from the Mode C transponder requirements if those evaluations determine that such operations are not within radar coverage.

Proposed and Future TCA's

A list of airports and specified altitudes below which aircraft operations are proposed to be excluded from the Mode C transponder requirement for the proposed Tampa and Washington Tri-Area TCA Mode C veils is included in the NPRM. Although a final agency determination regarding these proposed TCA's has not been reached, the FAA is listing the airports in this NPRM to provide the public with as much information as possible to allow full consideration of the impact of the TCA proposals and the Mode C veil on their operations. Should any of the proposed TCA's be established, the effective date of the proposed suspension of the Mode C transponder requirements for operations in the vicinity of the listed airports will be coincident with the effective date of the establishment of that TCA. The list of airports within the proposed Washington Tri-Area TCA Mode C veil at which operations are proposed to be excluded from the Mode C transponder requirement contains a number of airports which are also included in the list of airports for the current Washington TCA Mode C veil. However, should the Washington Tri-Area TCA be adopted, the current Washington TCA would be revoked and replaced by the Washington Tri-Area TCA. The proposed suspension of the Mode C transponder requirement for aircraft operations at the airports specified for the proposed Washington Tri-Area TCA would coincide with the effective date of the Washington Tri-Area TCA, should that TCA become effective.

With regard to future proposed TCA's, a list of airports and specified altitudes below which aircraft operations would be excluded from the Mode C transponder requirement would accompany any notices of proposed rulemaking regarding future TCA's.

The Proposed Special Federal Aviation Regulation

This notice proposes a Special Federal Aviation Regulation (SFAR) to permit the operation of an aircraft to and from designated GA airports within the Mode C veil without a Mode C transponder. A list of airports at which operations without a Mode C transponder would be permitted is contained in the NPRM. It is proposed that the Mode C transponder requirement be reinstated for aircraft operations to and from the designated GA airports after December 30, 1993. However, the FAA may conduct field evaluations to reassess the radar coverage within certain TCA Mode C veils on a site-by-site basis after new radar systems are in service. Based on those reassessments, the FAA may propose to extend the period that the Mode C transponder requirement would be suspended for operations at certain airports on a case-by-case basis by further notice published in the Federal Register.

Aircraft operations without a Mode C transponder would be permitted within a 1.5-nautical-mile radius of a designated airport from the surface up to a specified altitude. Additionally, aircraft operations without a Mode C transponder would be permitted along the most direct route between that designated airport and the boundary of the Mode C veil. The routing would be consistent with established traffic patterns, noise abatement procedures, and safety. This proposed SFAR and the designation of altitudes for each airport, however, would not be intended to supersede the provisions of § 91.79.

minimum safe altitudes. Routings to and from each airport are intentionally unspecified to permit the pilot, complying with § 91.79, to avoid operating over obstructions, noise-sensitive areas, etc. Further, should the pilot of an aircraft, intending to operate into or out of an airport listed in the proposed SFAR, determine that the operation at or below the specified altitude would be unsafe due to meteorological conditions, aircraft operating characteristics, or other factors, then the pilot should seek relief from the Mode C transponder requirement via that ATC authorization process.

Aircraft operations at, to, or from the listed airports would be suspended from the Mode C transponder requirement until December 30, 1993. This time period would accommodate the scheduled upgrading of present ATC radar systems at each TCA airport and an evaluation period to determine the extent of radar coverage within each Mode C veil as a result of radar system enhancements. Based on the results of these evaluations, the period that the Mode C transponder requirement would be suspended for operations at certain airports could be extended on a site-by-site basis by a subsequent notice published in the **Federal Register**.

Operations of aircraft without Mode C transponders at airports not listed in the proposed SFAR would continue to be safely accommodated in accordance with existing provisions for individual ATC authorizations.

Requests for Comments

Comments are requested on the specific proposal contained in this notice, particularly on the airports included or which ought to be included, the altitude restriction at each airport, and the provisions for access to these airports. The FAA received approximately 65,000 comments to the NPRM regarding the establishment of a Mode C transponder requirement for aircraft operations within 30 miles of a TCA primary airport (Notice 88-2; 53 FR 4306, February 12, 1988) and approximately 10,000 comments were received in response to an industry-sponsored petition to allow greater access to Mode C veils (Notice PR-88-16). Basic issues relating to the Mode C requirement have been exhaustively covered in those proceedings, and this notice does not represent a reopening or reconsideration of those issues. Accordingly, commenters should direct their comments to the specific rule proposed in this notice.

Regulatory Evaluation Summary

Introduction

This section summarizes the full regulatory evaluation prepared by the FAA which provides more detailed information on estimates of the potential economic consequences of this proposed rule. This summary and the full evaluation quantify, to the extent practicable, estimated costs to the private sector, consumers, Federal, State and local governments, as well as anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all major rules except those responding to emergency situations or other narrowly defined exigencies. A major rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, a significant adverse effect on competition, or highly controversial.

The FAA has determined that this proposed rule would not be major as defined in the executive order. Therefore a full regulatory analysis, that includes the identification and evaluation of cost reducing alternatives to the proposal, has not been prepared. Instead, the agency has prepared a more concise document termed a regulatory evaluation that analyzes only this proposal without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains an initial regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96-354) and an international trade impact assessment. If the reader desires more detailed economic information than this summary contains, then he/she should consult the full regulatory evaluation contained in the docket.

Benefit and Cost Analysis

Costs

This proposed rule would be relieving in nature and would not be expected to impose costs on either society or the FAA. In addition, this proposal would not impose significant costs on the aviation community (namely, fixed base operators). This assessment is based on rationale contained in the following discussion for each of these groups.

For the FAA, this proposed rule would not impose additional costs for either personnel or equipment. The acquisition of new radar tracking systems is a routine cost of upgrading FAA equipment and would not occur as a result of this proposed rule. In addition, this proposed rule would not impose costs for personnel. This is because the proposed temporary suspension of the Mode C transponder requirement is expected to enhance air traffic control (ATC) operations efficiency by eliminating the need for ATC authorizations at the subject designated airports. This proposed action would reduce the demand on ATC personnel and equipment resources.

This proposed rule would not have an adverse impact on aviation safety. The FAA believes that access to certain outlying GA airports by aircraft without Mode C transponders can be accommodated without diminishing Mode C safety benefits, provided the operation is conducted outside radar coverage. When aircraft operations are confined exclusively to areas of no radar coverage, the full safety benefits of the Mode C rule cannot be realized. Future enhancement of the radar tracking system is expected to increase radar coverage, thus extending the Mode C benefits to more areas outside of the current radar coverage. The scheduled installation of the new radar tracking systems at all TCA primary airports is expected to be completed in about three years. After new radar systems are in service, the FAA may conduct field evaluations to reassess actual radar coverage. Those reassessments could result in future proposed rulemaking to amend the proposed suspension period for operations at certain airports.

For the aviation community, the FAA anticipates no significant costs would be incurred by fixed base operators (FBO's) as the result of this proposed rule. Fixed base operators represent the most likely group to potentially incur costs. These costs would be in the form of lost revenues from the relocation of GA aircraft without Mode C transponders as a result of this proposed action. However, the FAA believes that any potential cost impact on FBO's would be insignificant. The FAA believes that GA aircraft operators based at non-designated airports within a Mode C veil and currently authorized to operate without a Mode C transponder would have little incentive to relocate since: (1) The ATC authorization contains those conditions and provisions necessary for safe operation and the operator has agreed to comply with those provisions; and (2) the renewal process for an existing authorization is less cumbersome than the first-time authorization process. Furthermore, the FAA does not believe that significant numbers of GA aircraft without Mode C transponders would relocate from outside a Mode C veil to a designated airport within a Mode C veil. This is because this proposed rule would only allow aircraft without Mode C transponders to operate from the surface up to a specified altitude within a 1.5 nautical mile radius of a designated airport and along the most direct route between that airport and the boundary of the Mode C veil. Thus, although this proposed rule would provide greater access to a Mode C veil, the FAA believes that this proposed rule would not provide much of an incentive for GA aircraft operators to relocate. This assessment is further supported by the belief that the vast majority of GA aircraft operators required to have Mode C transponders will have acquired them by December 30, 1990. This is when the requirement for such equipment at Airport Radar Service Areas goes into effect.

The FAA recognizes the possibility that lost revenues incurred by some FBO's outside the Mode C veil could be offset by revenue gains on the part of FBO's inside the veil. However, there is much uncertainty associated with this possibility due to a lack of information concerning the level of competition among FBO's inside and outside the Mode C veil throughout the United States. For example, in any given state, the market structure inside the Mode C veil could resemble a spatial monopoly, in which unit prices for services rendered by FBO's would be higher than that of a more competitive market structure located outside the veil. If some aircraft operators were to relocate from areas of higher competition to areas of lower competition among FBO's, those operators may incur higher charges for services rendered. For those operators who elect to relocate, it can be assumed to be in their best interest to do so. Thus, any additional higher FBO charges aircraft operators incur as the result of relocating would be at least offset by those factors that prompted their decision to relocate. The net change in revenue among FBO's may not be offsetting because of differences in unit prices charged. While it is not known to what extent revenue gains and losses would be offset among FBO's, the FAA, nonetheless, believes that the cost impacts on FBO's would not be significant for the reasons stated in the previous paragraphs.

Benefits

This proposed rule is expected to generate potential benefits in the form of increased convenience to GA aircraft operators (without Mode C transponders) and enhanced operations efficiency to FAA air traffic control. Currently, GA aircraft operators, without Mode C transponders, can operate at an airport within the Mode C veil but outside of ATC radar coverage only after receiving ATC authorization. However, certain aspects of the authorization process are inefficient and time consuming for both affected GA operators and the FAA because authorizations can only be granted on a case-by-case basis. The convenience of this proposed rule would be the temporary relief from the burden of obtaining ATC authorizations that sometimes confronts GA aircraft operators who wish to fly to and from the designated airports without Mode C transponders.

For ATC, this proposed rule would provide benefits in the form of enhanced operations efficiency. Such enhanced efficiency would be the temporary relief of the strain on ATC to assign authorizations during busy periods. This temporary action would better allow ATC to allocate its personnel and equipment resources to more productive functions.

Although the benefits of this proposed rule have not been quantified, they are expected to be substantial for both the flying public and the FAA.

Conclusion

This proposed rule is not expected to impose costs on either the FAA or society, and would not impose significant costs on the aviation community (FBO's). The FAA estimates that this proposed rule would potentially generate substantial benefits such as increased convenience to some GA aircraft operators and operations efficiency to FAA air traffic control Thus, the FAA firmly believes that this proposed rule would be cost-beneficial.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities would not be unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities." The small entities that could be potentially affected by the implementation of the proposed rule are air taxi operators and FBO's.

In terms of air taxi operators, no cost impacts are anticipated by this proposed rule. This assessment is based on the FAA's estimation that these operators are already equipped with Mode C transponders. They are, in all likelihood, based at airports within the Mode C veil which fall within the radar coverage of ATC.

In terms of FBO's, the FAA estimates that this proposed rule would not impose significant costs. This assessment is based on the belief that GA aircraft operators are not likely to impose lost revenues on FBO's by relocating from airports outside of the Mode C veil or undesignated airports within the Mode C veil to designated airports specified in this proposed rule. Although the proposed rule would provide greater access to a Mode C veil, the FAA believes that this proposed rule would not provide GA aircraft operators with much of an incentive to relocate. This assessment is further supported by the belief that the vast majority of those GA aircraft operators required to have Mode C transponders will acquire them by December 30, 1990 (Phase II of the Mode C rule for Airport Radar Service Areas). Therefore, the FAA believes that this proposed rule would not have a significant economic impact on substantial number of small entities.

International Trade Impact Assessment

This proposed rule would not have an effect on the sale of foreign aviation products or services in the United States, nor would it have an effect on the sale of U.S. products or services in foreign countries. This is because this proposed rule would neither impose costs on aircraft operators nor aircraft manufacturers (U.S. or foreign) that would result in a competitive disadvantage to either.

Federalism Determination

The regulations proposed herein would 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. Therefore, in accordance with Executive Order 12612, it is determined that this proposal will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Effects

This proposed action would relieve the requirement for an aircraft to be equipped with a Mode C transponder when operating at/to/from certain airports within a Mode C veil. As such, this proposal would not establish specific operating procedures nor would it limit the operation of an aircraft to a specific route or altitude. Routings to and from each airport are intentionally unspecified to permit the pilot, complying with § 91.79, to avoid operating over obstructions, noise-sensitive areas, etc. Therefore, this proposal would accommodate the operation of an aircraft in compliance with existing safety and environmental requirements and procedures and would not alter or supersede those requirements. The FAA's experience with the granting of authorizations since the adoption of the Mode C transponder requirement indicates that there would not be a large number of aircraft operations at any one airport that would utilize this proposed action. For these reasons, the FAA has concluded that further environmental assessment is unnecessary and makes a finding of no significant impact as a result of the adoption of this proposed rule.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed rule would not be major under Executive Order 12291. In addition, the FAA certifies that this proposed rule would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979.)

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Automatic altitude reporting equipment, Aviation safety, Terminal control area, Transponder, Mode C veil.

The Proposed Special Federal Aviation Regulation (SFAR)

For the reasons set forth in the preamble, the FAA proposes to amend part 91 of title 14 of the Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 (as amended by Pub. L. 100–223), 1422 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; Pub. L. 100–202; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. By adding Special Federal Aviation Regulation No. ______ to read as follows:

SFAR NO. ______—Suspension of Certain Aircraft Operations from the Transponder with Automatic Pressure Altitude Reporting Capability Requirement

Section 1. For purposes of this SFAR:

(a) The airspace within 30 nautical miles of a terminal control area primary airport, from the surface upward to 10,000 feet MSL, excluding the airspace designated as a terminal control area is referred to as the Mode C veil.

(b) Effective until December 30, 1993, the transponder with automatic altitude reporting capability requirements of FAR § 91.24(b)(2) do not apply to the operation of an aircraft:

(1) In the airspace at or below the specified altitude and within a 1.5-nautical-mile radius of an airport listed in Section 2 of this SFAR; and

(2) In the airspace at or below the specified altitude along the most direct and expeditious routing between an airport listed in Section 2 of this SFAR and the outer boundary of the Mode C Veil airspace overlying that airport, consistent with established traffic patterns, noise abatement procedures, and safety.

Section 2. Effective until December 30, 1993. Airports At Which the Provisions of Section 91.24(b)(2) Do Not Apply.

(1) Airports within a 30-nautical-mile radius of The William B. Hartsfield Atlanta International Airport.

Airport name	Arpt ID	Alt. (AGL)
Air Acres Airport, Woodstock, GA.	5GA4	1,500
B&L Strip Airport, Hollonville, GA.	GA29	1,500
Camfield Airport, McDonough, GA.	GA36	1,500
Cobb County-McCollum Field Airport, Marietta, GA.	RYY	1,500
Covington Municipal Airport, Covington, GA.	9A1	1,500
Diamond R Ranch Airport, Villa Rica, GA.	3GA5	1,500
Dresden Airport, Newnan, GA	GA79	1,500
Eagles Landing Airport, Williamson, GA.	5GA3	1,500
Fagundes Field Airport, Haralson, GA.	6GA1	1,500
Gable Branch Airport, Haralson, GA.	5GA0	1,500
Georgia Lite Flite Ultralight Airport, Acworth, GA.	31GA	1,500
Griffin-Spalding County Airport, Griffin, GA.	6A2	1,500
Howard Private Airport, Jackson, GA.	GA02	1,500
Newnan Coweta County Airport, Newnan, GA.	CCO	1,500
Peach State Airport, Williamson, GA.	3GA7	1,500
Poole Farm Airport, Oxford, GA	2GA1	1,500
Powers Airport, Hollonville, GA	GA31	1,500
S&S Landing Strip Airport, Griffin, GA.	8GA6	1,500
Shade Tree Airport, Hollonville, GA.	GA73	1,500

(2) Airports within a 30-nautical-mile radius of the General Edward Lawrence Logan International Airport.

Airport name	Arpt ID	Alt. (AGL)
Berlin Landing Area Airport, Berlin, MA.	MA19	2,500
Hopedale Industrial Park Airport, Hopedale, MA.	1B6	2,500
Larson's SPB, Tyngsboro, MA	MA74	2,500
Moore AAF, Ayer/Fort Devens, MA.	AYE	2,500
New England Gliderport, Salem, NH.	NH29	2,500
Plum Island Airport, Newburyport, MA.	2B2	2,500
Plymouth Municipal Airport, Plymouth, MA.	PYM	2,500
Taunton Municipal Airport, Taunton, MA.	TAN	2,500
Unknown Field Airport, Southborough, MA.	1MA5	2,500

(3) Airports within a 30-nautical-mile radius of the Charlotte/Douglas International Airport.

Airport name	Arpt ID	Alt. (AGL)
Arant Airport, Wingate, NC	1NC6	2,500
Bradley Outernational Airport, China Grove, NC.	NC29	2,500
Chester Municipal Airport, Chester, SC.	9A6	2,500
China Grove Airport, China Grove, NC.	76A	2,500
Goodnight's Airport, Kannapolis, NC.	2NC8	2,500
Knapp Airport, Marshville, NC	3NC4	2,500
Lake Norman Airport, Mooresville, NC.	14A	2,500
Lancaster County Airport, Lancaster, SC.	LKR	2,500
Little Mountain Airport, Denver, NC.	66A	2,500
Long Island Airport, Long Island, NC.	NC26	2,500
Miller Airport, Mooresville, NC	8A2	2,500
US Heliport, Wingate, NC	NC56	2,500
Unity Aerodrome Airport, Lancaster, SC.	SC76	2,500
Wilhelm Airport, Kannapolis, NC	6NC2	2,500

(4) Airports within a 30-nautical-mile radius of the Chicago-O'Hare International Airport.

Airport name	Arpt ID	Alt. (AGL)
Aurora Municipal Airport, Chicago/Aurora, IL.	AAR	1,200
Donald Alfred Gade Airport, Antioch, IL.	IL11	1,200
Dr. Joseph W. Esser Airport, Hampshire, IL.	7IL6	1,200
Flying M. Farm Airport, Aurora, IL.	IL20	1,200
Fox Lake SPB, Fox Lake, IL	IS03	1,200
Graham SPB, Crystal Lake, IL	IS79	1,200
Herbert C. Mass Airport, Zion, IL	IL02	1,200
Landings Condominum Airport, Romeoville, IL.	C49	1,200
Lewis University Airport, Romeoville, IL.	LOT	1,200
McHenry Farms Airport, McHenry, IL.	44IL	1,200
Olson Airport, Plato Center, IL	LL53	1,200
Redeker Airport, Milford, IL	IL85	1,200
Reid RLA Airport, Gilberts, IL	6IL6	1,200

Airport name	Arpt ID	Alt. (AGL)
Shamrock Beef Cattle Farm Airports, McHenry, IL.	49LL	1,200
Sky Soaring Airport, Union, IL	55LL	1,200
Waukegan Regional Airport, Waukegan, IL.	UGN	1,200
Wormley Airport, Oswego, IL	85LL	1,200

(5) Airports within a 30-nautical-mile radius of the Cleveland-Hopkins International Airport.

Airport name	Arpt ID	Alt. (AGL)
Akron Fulton International Airport, Akron, OH.	AKR	1,300
Bucks Airport, Newbury, OH	40OH	1,300
Derecsky Airport, Auburn Center, OH.	6OI0	1,300
Hannum Airport, Streetsboro, OH.	69OH	1,300
Kent State University Airport, Kent, OH.	1G3	1,300
Lost Nation Airport, Willoughby, OH.	LNN	1,300
Mills Airports, Mantua, OH	OH06	1,300
Portage County Airport, Ravenna, OH.	29G	1,300
Stoney's Airport, Ravenna, OH	OI32	1,300
Wadsworth Municipal Airport, Wadsworth, OH.	3G3	1,300

(6) Airports within a 30-nautical-mile radius of the Dallas/Fort Worth International Airport.

Airport name	Arpt ID	Alt. (AGL)
Beggs Ranch/Aledo Airport, Aledo, TX.	TX15	1,800
Belcher Airport, Sanger, TX	TA25	1,800
Bird Dog Field Airport, Krum, TX	TA48	1,800
Boe-Wrinkle Airport, Azle, TX	28TS	1,800
Flying V Airport, Sanger, TX	71XS	1,800
Graham Ranch Airport, Celina, TX.	TX44	1,800
Haire Airport, Bolivar, TX	TX33	1,800
Hartlee Field Airport, Denton, TX	1F3	1,800
Hawkins' Ranch Strip Airport, Rhome, TX.	TA02	1,800
Horseshoe Lake Airport, Sanger, TX.	TE24	1,800
Ironhead Airport, Sanger, TX	T58	1,800
Kezer Air Ranch Airport, Springtown, TX.	61F	1,800
Lane Field Airport, Sanger, TX	58F	1,800
Log Cabin Airport, Aledo, TX	TX16	1,800
Lone Star Airpark Airport, Denton, TX.	T32	1,800
Rhome Meadows Airport, Rhome, TX.	TS72	1,800
Richards Airports, Krum, TX	TA47	1,800
Tallows Field Airports, Celina, TX.	79TS	1,800
Triple S Airport, Aledo, TX	42XS	1,800
Warshun Ranch Airport, Denton, TX.	4TA1	1,800
Windy Hill Airport, Denton, TX	46XS	1,800
Bailey Airport, Midlothian, TX	7TX8	1,400
Bransom Farm Airport, Burleson, TX.	TX42	1,400
Carroll Air Park Airport, De Soto, TX.	F66	1,400
Carroll Lake-View Airport, Venus, TX.	70TS	1,400
Eagle's Nest Estates Airport, Ovilla, TX.	2T36	1,400
Flying B Ranch Airport, Ovilla, TX.	TS71	1,400
Lancaster Airport, Lancaster, TX	LNC	1,400
Lewis Farm Airport, Lucas, TX	6TX1	1,400
Markum Ranch Airport, Fort Worth, TX.	TX79	1,400
McKinney Municipal Airport, McKinney, TX.	TKI	1,400
O'Brien Airpark Airport, Waxahachie, TX.	F25	1,400
Phil L. Hudson Municipal Airport, Mesquite, TX.	HQZ	1,400
Plover Heliport, Crowley, TX	82Q	1,400
Venus Airport, Venus, TX	75TS	1,400

(7) Airports within a 30-nautical-mile radius of the Stapleton International Airport.

Airport name	Arpt ID	Alt. (AGL)
Athanasiou Valley Airport, Blackhawk, CO.	CO07	1,200
Boulder Municipal Airport, Boulder, CO.	1V5	1,200
Bowen Farms No. 2 Airport, Strasburg, CO.	3CO5	1,200
Carrera Airpark Airport, Mead, CO.	93CO	1,200
Cartwheel Airport, Mead, CO	0CO8	1,200
Colorado Antique Field Airport, Niwot, CO.	8CO7	1,200
Comanche Airfield Airport, Strasburg, CO.	3CO6	1,200
Comanche Livestock Airport, Strasburg, CO.	59CO	1,200
Flying J Ranch Airport, Evergreen, CO.	27CO	1,200
Frederick-Firestone Air Strip Airport, Frederick, CO.	CO58	1,200
Frontier Airstrip Airport, Mead, CO.	84CO	1,200
Hoy Airstrip Airport, Bennett, CO	76CO	1,200
J&S Airport, Bennett, CO	CD14	1,200
Kugel-Strong Airport, Platteville, CO.	27V	1,200
Land Airport, Keenesburg, CO	CO82	1,200
Lindys Airpark Airport, Hudson, CO.	7CO3	1,200
Marshdale STOL, Evergreen, CO	CO52	1,200
Meyer Ranch Airport, Conifer, CO.	5CO6	1,200
Parkland Airport, Erie, CO	7CO0	1,200
Pine View Airport, Elizabeth, CO	02V	1,200
Platte Valley Airport, Hudson, CO.	18V	1,200
Rancho De Aereo Airport, Mead, CO.	05CO	1,200
Spickard Farm Airport, Byers, CO.	5CO4	1,200
Vance Brand Airport, Longmont, CO.	2V2	1,200
Yoder Airstrip Airport, Bennett, CO.	CD09	1,200

(8) Airports within a 30-nautical-mile radius of the Detroit Metropolitan Wayne County Airport.

Airport name	Arpt ID	Alt. (AGL)
Al Meyers Airport, Tecumseh, MI	3TE	1,400
Brighton Airport, Brighton, MI	45G	1,400
Cackleberry Airport, Dexter, MI	2MI9	1,400
Erie Aerodome Airport, Erie, MI	05MI	1,400
Ham-A-Lot Field Airport, Petersburg, MI.	MI48	1,400
Merillat Airport, Tecumseh, MI	34G	1,400
Rossettie Airport, Manchester, MI.	75G	1,400
Tecumseh Products Airport, Tecumseh, MI.	0D2	1,400

(9) Airports within a 30-nautical-mile radius of the Honolulu International Airport.

Airport name	Arpt ID	Alt. (AGL)
Dillingham Airfield Airport, Mokuleia, HI.	HDH	2,500

(10) Airports within a 30-nautical-mile radius of the Houston Intercontinental Airport.

Airport name	Arpt ID	Alt. (AGL)
Ainsworth Airport, Cleveland, TX	0T6	1,200
Biggin Hill Airport, Hockley, TX	0TA3	1,200
Cleveland Municipal Airport, Cleveland, TX.	6R3	1,200
Fay Ranch Airport, Cedar Lane, TX.	0T2	1,200
Freeman Property Airport, Katy, TX.	61T	1,200
Gum Island Airport, Dayton, TX	3T6	1,200
Harbican Airpark Airport, Katy, TX.	9XS9	1,200
Harold Freeman Farm Airport, Katy, TX.	8XS1	1,200
Hoffpauir Airport, Katy, TX	59T	1,200
Horn-Katy Hawk International Airport, Katy, TX.	57T	1,200
Houston-Hull Airport, Houston, TX.	SGR	1,200
Houston-Southwest Airport, Houston, TX.	AXH	1,200
King Air Airport, Katy, TX	55T	1,200
Lake Bay Gall Airport, Cleveland, TX.	0T5	1,200
Lake Bonanza Airport, Montgomery, TX.	33TA	1,200
R W J Airpark Airport, Baytown, TX.	54TX	1,200
Westheimer Air Park Airport, Houston, TX.	5TA4	1,200

(11) Airports within a 30-nautical-mile radius of the Kansas City International Airport.

Airport name	Arpt ID	Alt. (AGL)
Amelia Earhart Airport, Atchison, KS.	K59	1,000
Booze Island Airport, St. Joseph, MO.	64MO	1,000
Cedar Air Park Airport, Olathe, KS.	51K	1,000
D'Field Airport, McLouth, KS	KS90	1,000
Dorei Airport, McLouth, KS	K69	1,000
East Kansas City Airport, Grain Valley, MO.	3GV	1,000
Excelsior Springs Memorial Airport, Excelsior Springs, MO.	3EX	1,000
Flying T Airport, Oskaloosa, KS	7KS0	1,000

Airport name	Arpt ID	Alt. (AGL)
Hermon Farm Airport, Gardner, KS.	KS59	1,000
Hillside Airport, Stilwell, KS	63K	1,000
Independence Memorial Airport, Independence, MO.	3IP	1,000
Johnson County Executive Airport, Olathe, KS.	OJC	1,000
Johnson County Industrial Airport, Olathe, KS.	IXD	1,000
Kimray Airport, Plattsburg, MO	7MO7	1,000
Lawrence Municipal Airport, Lawrence, KS.	LWC	1,000
Martins Airport, Lawson, MO	21MO	1,000
Mayes Homestead Airport, Polo, MO.	37MO	1,000
McComas-Lee's Summit Municipal Airport, Lee's Summit, MO.	K84	1,000
Mission Road Airport, Stilwell, KS.	64K	1,000
Northwood Airport, Holt, MO	2MO2	1,000
Plattsburg Airpark Airport, Plattsburg, MO.	MO28	1,000
Richards-Gebaur Airport, Kansas City, MO.	GVW	1,000
Rosecrans Memorial Airport, St. Joseph, MO.	STJ	1,000
Runway Ranch Airport, Kansas City, MO.	2MO9	1,000
Sheller's Airport, Tonganoxie, KS	11KS	1,000
Shomin Airport, Oskaloosa, KS	OKS1	1,000
Stonehenge Airport, Williamstown, KS.	71KS	1,000
Threshing Bee Airport, McLouth, KS.	41K	1,000

(12) Airports within a 30-nautical-mile radius of the McCarran International Airport.

Airport name	Arpt ID	Alt. (AGL)
Sky Ranch Estates Airport, Sandy Valley, NV.	3L2	2,500

(13) Airports within a 30-nautical-mile radius of the Memphis International Airport.

Airport name	Arpt ID	Alt. (AGL)
Bernard Manor Airport, Earle, AR.	65M	2,500
Holly Springs-Marshall County Airport, Holly Springs, MS.	M41	2,500
Mc Neely Airport, Earle, AR	M63	2,500
Price Field Airport, Joiner, AR	80M	2,500
Tucker Field Airport, Hughes, AR	78M	2,500
Tunica Airport, Tunica, MS	30M	2,500
Tunica Municipal Airport, Tunica, MS.	M97	2,500

(14) Airports within a 30-nautical-mile radius of the Minneapolis-St. Paul International Wold-Chamberlain Airport.

Airport name	Arpt ID	Alt. (AGL)
Belle Plaine Airport, Belle Plaine, MN.	7Y7	1,200
Carleton Airport, Stanton, MN	SYN	1,200
Empire Farm Strip Airport, Bongards, MN.	MN15	1,200
Flying M Ranch Airport, Roberts, WI.	78WI	1,200
Johnson Airport, Rockford, MN	MY86	1,200
River Falls Airport, River Falls, WI.	Y53	1,200
Rusmar Farms Airport, Roberts, WI.	WS41	1,200
Waldref SPB, Forest Lake, MN	9Y6	1,200

(15) Airports within a 30-nautical-mile radius of the New Orleans International/Moisant Field Airport.

Airport name	Arpt ID	Alt. (AGL)
Bollinger SPB, Larose, LA	L38	1,500
Clovelly Airport, Cut Off, LA	LA09	1,500

(16) Airports within a 30-nautical-mile radius of the John F. Kennedy International Airport, the La Guardia Airport, and the Newark International Airport.

Airport name	Arpt ID	Alt. (AGL)
Allaire Airport, Belmar/Farmingdale, NJ.	BLM	2,000
Cuddihy Landing Strip Airport, Freehold, NJ.	NJ60	2,000
Ekdahl Airport, Freehold, NJ	NJ59	2,000
Fla-Net Airport, Netcong, NJ	0NJ5	2,000
Forrestal Airport, Princeton, NJ	N21	2,000
Greenwood Lake Airport, West Milford, NJ.	4N1	2,000
Greenwood Lake SPB, West Milford, NJ.	6NJ7	2,000
Lance Airport, Whitehouse Station, NJ.	6NJ8	2,000
Mar Bar L Farms, Englishtown, NJ.	NJ46	2,000
Peekskill SPB, Peekskill, NY	7N2	2,000
Peters Airport, Somerville, NJ	4NJ8	2,000
Princeton Airport, Princeton/Rocky Hill, NJ.	39N	2,000
Solberg-Hunterdon Airport, Readington, NJ.	N51	2,000

(17) Airports within a 30-nautical-mile radius of the Philadelphia International Airport.

Airport name	Arpt ID	Alt. (AGL)
Ginns Airport, West Grove, PA	78N	1,000
Hammonton Municipal Airport, Hammonton, NJ.	N81	1,000
Li Calzi Airport, Bridgeton, NJ	N50	1,000
New London Airport, New London, PA.	N01	1,000
Wide Sky Airpark Airport, Bridgeton, NJ.	N39	1,000

(18) Airports within a 30-nautical-mile radius of the Phoenix Sky Harbor International Airport.

Airport name	Arpt. ID	Alt. (AGL)
Ak Chin Community Airfield Airport, Maricopa, AZ.	E31	2,500
Boulais Ranch Airport, Maricopa, AZ.	9E7	2,500
Estrella Sailport, Maricopa, AZ	E68	2,500
Hidden Valley Ranch Airport, Maricopa, AZ.	AZ17	2,500
Millar Airport, Maricopa, AZ	2AZ4	2,500
Pleasant Valley Airport, New River, AZ.	AZ05	2,500
Serene Field Airport, Maricopa, AZ.	AZ31	2,500
Sky Ranch Carefree Airport, Carefree, AZ.	E18	2,500
Sycamore Creek Airport, Fountain Hills, AZ.	0AS0	2,500
University of Arizona, Maricopa Agricultural Center Airport, Maricopa, AZ.	3AZ2	2,500

(19) Airports within a 30-nautical-mile radius of the Lambert/St. Louis International Airport.

Airport name	Arpt ID	Alt. (AGL)
Blackhawk Airport, Old Monroe, MO.	6MO0	1,000
Lebert Flying L Airport, Lebanon, IL.	3H5	1,000
Shafer Metro East Airport, St. Jacob, IL.	3K6	1,000
Sloan's Airport, Elsberry, MO	0MO8	1,000
Wentzville Airport, Wentzville, MO.	MO50	1,000
Woodliff Airpark Airport, Foristell, MO.	98MO	1,000

(20) Airports within a 30-nautical-mile radius of the Salt Lake City International Airport.

Airport name	Arpt ID	Alt. (AGL)
Bolinder Field-Tooele Valley Airport, Tooele, Ut.	TVY	2,500
Cedar Valley Airport, Cedar Fort, UT.	UT10	2,500
Morgan County Airport, Morgan, UT.	42U	2,500
Tooele Municipal Airport, Tooele, UT.	U26	2,500

(21) Airports within a 30-nautical-mile radius of the Seattle-Tacoma International Airport.

Airport name	Arpt ID	Alt. (AGL)
Firstair Field Airport, Monroe, WA.	WA38	1,500
Gower Field Airport, Olympia, WA.	6WA2	1,500
Harvey Field Airport, Snohomish, WA.	S43	1,500

(22) Effective upon the establishment of the Tampa International Airport TCA: Airports within a 30-nautical-mile radius of the Tampa International Airport.

Airport name	Arpt ID	Alt. (AGL)
Hernando County Airport, Brooksville, FL.	BKV	1,500
Lakeland Municipal Airport, Lakeland, FL.	LAL	1,500
Zephyrhills Municipal Airport, Zephyrhills, FL.	ZPH	1,500

(23) Effective until the establishment of the Washington Tri-Area TCA or December 30, 1993, whichever occurs first: Airports within a 30-nautical-mile radius of the Washington National Airport and Andrews Air Force Base Airport.

Airport name	Arpt ID	Alt. (AGL)
Barnes Airport, Lisbon, MD	MD47	2,000
Davis Airport, Laytonsville, MD	W50	2,000
Fremont Airport, Kemptown, MD	MD41	2,000
Montgomery County Airpark Airport, Gaithersburg, MD.	GAI	2,000
Waredaca Farm Airport, Brookeville, MD.	MD16	2,000
Aqua-Land/Cliffton Skypark Airport, Newburg, MD.	2W8	1,000
Buds Ferry Airport, Indian Head, MD.	MD39	1,000
Burgess Field Airport, Riverside, MD.	3W1	1,000
Chimney View Airport, Fredericksburg, VA.	5VA5	1,000
Holly Springs Farm Airport, Nanjemoy, MD.	MD55	1,000
Lanseair Farms Airport, La Plata, MD.	MD97	1,000
Nyce Airport, Mount Victoria, MD	MD84	1,000
Parks Airpark Airport, Nanjemoy, MD.	MD54	1,000
Pilots Cove Airports, Tompkinsville, MD.	MD06	1,000
Quantico MCAF, Quantico, VA	NYG	1,000
Stewart Airport, St. Michaels, MD.	MD64	1,000
U S Naval Weapons Center, Dahlgren Lab Airport, Dahlgren, VA.	NDY	1,000

(24) Effective upon the establishment of the Washington, Tri-Area TCA: Airports within a 30-nautical-mile radius of the Washington National Airport, Andrews Air Force Base Airport, Baltimore-Washington International Airport, and Dulles International Airport.

Airport name	Arpt ID	Alt. (AGL)
Albrecht Airstrip Airport, Long Green, MD.	MD48	2,000
Armacost Farms Airport, Hampstead, MD.	MD38	2,000
Barnes Airport, Lisbon, MD	MD47	2,000
Carroll County Airport, Westminster, MD.	W54	2,000
Clearview Airpark Airport, Westminster, MD.	2W2	2,000
Davis Airport, Laytonsville, MD	W50	2,000
Fallston Airport, Fallston, MD	W42	2,000
Faux-Burhans Airport, Frederick, MD.	3MD0	2,000
Forest Hill Airport, Forest Hill, MD.	MD31	2,000
Fort Detrick Helipad Heliport, Fort Detrick (Frederick), MD.	MD32	2,000
Frederick Municipal Airport, Frederick, MD.	FDK	2,000
Fremont Airport, Kemptown, MD	MD41	2,000
Good Neighbor Farm Airport, Unionville, MD.	MD74	2,000
Happy Landings Farm Airport, Unionville, MD.	MD73	2,000
Harris Airport, Still Pond, MD	MD69	2,000
Hybarc Farm Airport, Chestertown, MD.	MD19	2,000
Kennersley Airport, Church Hill, MD.	MD23	2,000
Montgomery County Airpark Airport, Gaithersburg, MD.	GAI	2,000
Phillips AAF, Aberdeen, MD	APG	2,000
Pond View Private Airport, Chestertown, MD.	0MD4	2,000
Reservoir Airport, Finksburg, MD	1W8	2,000
Scheeler Field Airport, Chestertown, MD.	0W7	2,000
Stolcrest STOL, Urbana, MD	MD75	2,000
Tinsley Airstrip Airport, Butler, MD.	MD17	2,000
Walters Airport, Mount Airy, MD	0MD6	2,000
Waredaca Farm Airport, Brookeville, MD.	MD16	2,000
Weide AAF, Edgewood Arsenal, MD.	EDG	2,000
Woodbine Gliderport, Woodbine, MD.	MD78	2,000
Wright Field Airport, Chestertown, MD.	MD11	2,000
Aviacres Airport, Warrenton, VA	3VA2	1,500
Birch Hollow Airport, Hillsboro, VA.	W60	1,500
Flying Circus Aerodrome Airport, Warrenton, VA.	3VA3	1,500
Fox Acres Airport, Warrenton, VA.	15VA	1,500
Hartwood Airport, Somerville, VA	8W8	1,500
Horse Feathers Airport, Midland, VA.	53VA	1,500
Krens Farm Airport, Hillsboro, VA.	14VA	1,500
Scott Airpark Airport, Lovettsville, VA.	VA61	1,500
The Grass Patch Airport, Lovettsville, VA.	VA62	1,500
Walnut Hill Airport, Calverton, VA	58VA	1,500
Warrenton Air Park Airport, Warrenton, VA.	9W0	1,500
Warrenton-Fauquier Airport, Warrenton, VA.	W66	1,500
Whitman Strip Airport, Manassas, VA.	0V5	1,500
Aqua-Land/Cliffton Skypark Airport, Newburg, MD.	2W8	1,000
Buds Ferry Airport, Indian Head, MD.	MD39	1,000
Burgess Field Airport, Riverside, MD.	3W1	1,000
Chimney View Airport, Fredericksburg, VA.	5VA5	1,000
Holly Springs Farm Airport, Nanjemoy, MD.	MD55	1,000
Lanseair Farms Airport, La Plata, MD.	MD97	1,000
Nyce Airport, Mount Victoria, MD	MD84	1,000
Parks Airpark Airport, Nanjemoy, MD.	MD54	1,000
Pilots Cove Airport, Tompkinsville, MD.	MD06	1,000
Quantico MCAF, Quantico, VA	NYG	1,000
Stewart Airport, St. Michaels, MD.	MD64	1,000
US Naval Weapons Center, Dahlgren Lab Airport, Dahlgren, VA.	NDY	1,000

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