



NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

2 CFR Part 1882

14 CFR Parts 1267 and 1274

RIN 2700-AE15

NASA Implementation of OMB Guidance for Drug-Free Workplace Requirements

(Financial Assistance)

AGENCY: National Aeronautics and Space Administration

ACTION: Direct final rule.

SUMMARY: The National Aeronautics and Space Administration (NASA) is deleting existing drug-free workplace requirements for financial assistance in one Title of the Code of Federal Regulations (CFR), and moving it to another Title, consistent with the Office of Management and Budget's (OMB) guidance on drug-free workplace requirements for financial assistance. Further, NASA is implementing, and thereby giving regulatory effect to, the OMB guidance on drug-free workplace requirements for financial assistance.

DATES: This final rule is effective [Insert Date of Publication in the Federal Register].

Comments are due on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. If adverse comments are received, NASA will publish a timely withdrawal of the rule in the Federal Register.

ADDRESSES: Interested parties may submit comments, identified with RIN 2700-AE15, to NASA via the Federal E-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. Comments may also be submitted to Jamiel C. Commodore at Jamiel.C.Commodore@NASA.gov. Please note that NASA will post all comments on the Internet, including any personal information that is provided.

FOR FURTHER INFORMATION CONTACT: Jamiel C. Commodore, NASA, Office of Procurement, Contract Management Division; (202) 358-0302; e-mail: Jamiel.C.Commodore@nasa.gov.

SUPPLEMENTARY INFORMATION:

A. Direct Final Rule Adverse Comments:

NASA has determined that this rulemaking meets the criteria for a direct final rule because it involves nonsubstantive changes to relocate sections from Title 14 to Title 2 of the Code of Federal Regulations (CFR) to properly align with the CFR structure, and to adopt OMB guidance in Title 2 CFR part 182 that has already been through the rulemaking process. No opposition to the changes and no significant adverse comments are expected. However, if the Agency receives a significant adverse comment, it will withdraw this direct final rule by publishing a notice in the Federal Register. A significant adverse comment is one that explains: (1) Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, NASA will consider whether it warrants a substantive response in a notice and comment process.

B. Background

Congress established drug-free workplace requirements for Federal grant recipients in section 5153 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D, which was enacted November 18, 1988). Section 5156 of the Act (41 U.S.C. 705) requires Government-wide regulations to implement the requirements. In the initial implementation of the Act, OMB issued guidance (54 FR 4946, January 31, 1989) in conjunction with agencies' issuance of a common rule (54 FR 4947). On November 26, 2003 (68 FR 66534), the agencies updated the common rule on drug-free workplace requirements and converted it to plain language.

May 11, 2004, OMB established Title 2 of the CFR with two subtitles (69 FR 26275). Subtitle A, “Government-wide Grants and Agreements,” contains OMB policy guidance to Federal agencies on grants and agreements. Subtitle B, “Federal Agency Regulations for Grants and Agreements,” contains Federal agencies' regulations implementing the OMB guidance, as it applies to grants and other financial assistance agreements and nonprocurement transactions.

As the next step in that process, OMB proposed for comment on September 26, 2008 (73 FR 55776) and finalized on June 15, 2009 (74 FR 28149) Government-wide guidance with policies and procedures to implement drug-free workplace requirements for financial assistance. The guidance is located in title 2 of the CFR as subtitle A, chapter 1, Part 182 and requires each agency to replace the common rule on drug-free workplace requirements that the agency previously issued in its own CFR title with a brief regulation in 2 CFR adopting the Government-wide policies and procedures.

In accordance with OMB's guidance, NASA is issuing a new part 1882 on drug-free workplace requirements for financial assistance in Title 2 of the CFR. This new part is NASA's implementation of the Office of Management and Budget's (OMB) guidance provided at 2 CFR part 182. Inasmuch as the new 2 CFR 1882 replaces NASA's current coverage on this subject, NASA is removing the existing coverage from 14 CFR part 1267. The new 2 CFR 1882 serves the same purpose as the common rule in a simpler way. The rule includes the same NASA additions and clarifications to the common rule on drug-free workplace requirements that were added to 14 CFR 1267 in November 2003 (68 FR 66573). This final rule is part of OMB's initiative to streamline and consolidate all Federal regulations on drug-free workplace requirements for financial assistance. It is an administrative simplification that makes no substantive change in NASA policy or procedures for drug-free workplace requirements for financial assistance.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule involves an administrative adoption of previously codified material in a new part of the CFR.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects

2 CFR Part 1882

Administrative practice and procedure, Drug-free workplace, Grant programs, Reporting and recordkeeping requirements

14 CFR Part 1267

Administrative practice and procedure, Drug-free workplace, Grant programs, Reporting and recordkeeping requirements

14 CFR Part 1274

Grant programs-science and technology

Cynthia Boots

Alternate Federal Register Liaison

Accordingly, 2 CFR and 14 CFR Parts 1260, 1267, and 1274 are amended as follows:

Title 2 – Grants and Agreements

Chapter XVIII – NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

1. Add part 1882 to subtitle B, chapter XVIII to read as follows:

PART 1882 – REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Sec.

1882.5 What does this part do?

Subpart A—Purpose and Coverage

1882.120 Are any of my Federal assistance awards exempt from this part?

Subparts B – D [Reserved]

Subpart E—Violations of this Part and Consequences

1882.500 How are violations of this part determined for recipients other than individuals?

1882.505 How are violations of this part determined for recipients who are individuals?

1882.510 What actions will the Federal Government take against a recipient determined to have violated this part?

1882.515 Are there any exceptions to those actions?

Subpart F – [Reserved]

AUTHORITY: 41 U.S.C. 701 *et seq.*; 51 U.S.C. 20113(e).

§ 1882.100 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through F of 2 CFR part 182, as supplemented by this part, as the NASA policies and procedures for implementing the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701-707, as amended, hereafter referred to as “the Act”) that applies to grants and cooperative agreements. It thereby gives regulatory effect for NASA to the OMB guidance. Further, it supplements the OMB guidance with NASA-specific regulation.

Subpart A—Purpose and Coverage**§ 1882.120 Are any of my Federal assistance awards exempt from this part?**

This part does not apply to any award for which the Assistant Administrator for Procurement determines that the application of this part would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government.

Subparts B – D [Reserved]**Subpart E—Violations of this Part and Consequences****§ 1882.500 How are violations of this part determined for recipients other than individuals?**

A recipient other than an individual is in violation of the requirements of this part if the Assistant Administrator for Procurement determines, in writing, that—

(a) The recipient has violated the requirements of subpart B of this part; or

(b) The number of convictions of the recipient's employees for violating criminal drug statutes in the workplace is large enough to indicate that the recipient has failed to make a good faith effort to provide a drug-free workplace.

§ 1882.505 How are violations of this part determined for recipients who are individuals?

An individual recipient is in violation of the requirements of this part if the Assistant Administrator for Procurement determines, in writing, that—

(a) The recipient has violated the requirements of subpart C of this part; or

(b) The recipient is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity.

§ 1882.515 Are there any exceptions to those actions?

The Assistant Administrator for Procurement (AA) may waive with respect to a particular award, in writing, a suspension of payments under an award or a suspension or termination of an award. The Chief Acquisition Officer (CAO) may approve an award to a suspended or debarred

entity if the CAO determines that such a waiver would be in the public interest. These exception authorities cannot be delegated to any other official.

Subpart F – [Reserved]

Title 14 – Aeronautics and Space

Chapter V – National Aeronautics and Space Administration

PART 1267 – [REMOVED]

2. Under the authority of 41 U.S.C. 701 *et seq.*, part 1267 is removed.

PART 1274—COOPERATIVE AGREEMENTS WITH COMMERCIAL FIRMS

3. The authority citation for 14 CFR Part 1274 is revised to read as follows:

Authority: 31 U.S.C. 6301 to 6308; 51 U.S.C. 20102, *et seq.*

4. Revise § 1274.927 to read as follows:

§ 1274.927 Debarment and Suspension and Drug-Free Workplace.

Debarment and Suspension and Drug-Free Workplace

([MONTH/YEAR]

NASA cooperative agreements are subject to the provisions of 2 CFR Part 180, Government-wide Debarment and Suspension (Nonprocurement) and 2 CFR Part 182, Government-wide requirements for Drug-Free Workplace, unless excepted by 2 CFR 180.110 or 180.610.

[End of Provision]