

Rules and Regulations

Federal Register

Vol. 75, No. 131

Friday, July 9, 2010

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DEPARTMENT OF ENERGY

2 CFR Part 902

10 CFR Part 607

RIN 1991-AB93

Implementation of OMB Guidance on Drug-Free Workplace Requirements

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is removing its regulation implementing the Governmentwide common rule on drug-free workplace requirements for financial assistance, currently located within Part 607 of Title 10 of the Code of Federal Regulations (CFR), and issuing a new regulation to adopt the Office of Management and Budget (OMB) guidance at 2 CFR part 182. This regulatory action implements the OMB's initiative to streamline and consolidate into one title of the CFR all federal regulations on drug-free workplace requirements for financial assistance. These changes constitute an administrative simplification that make no substantive change in DOE policy or procedures for drug-free workplace.

DATES: This final rule is effective on September 7, 2010 without further action. Submit comments by August 9, 2010 on any unintended changes this action makes in DOE policies and procedures for drug-free workplace. All comments on unintended changes will be considered and, if warranted, DOE will revise the rule.

ADDRESSES: Written comments should be sent to the following: Denise Clarke, Procurement Analyst, MA-612/L'Enfant Plaza Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585-1615, deniset.clarke@hq.doe.gov.

E-Mail: Please include "Implementation of OMB Guidance on

Drug-Free Workplace Requirements" in the subject line of your e-mail message. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message.

Mail: Due to potential delays in DOE's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT: Denise Clarke at the above address, or by telephone at (202) 287-1748.

SUPPLEMENTARY INFORMATION:

Background

The Drug-Free Workplace Act of 1988 [Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701, *et seq.*] was enacted as a part of omnibus drug legislation on November 18, 1988. Federal agencies issued an interim final common rule to implement the act as it applied to grants [54 FR 4946, January 31, 1989]. The rule was a subpart of the Governmentwide common rule on nonprocurement suspension and debarment. The agencies issued a final common rule after consideration of public comments [55 FR 21681, May 25, 1990].

The agencies proposed an update to the drug-free workplace common rule in 2002 [67 FR 3266, January 23, 2002] and finalized it in 2003 [68 FR 66534, November 26, 2003]. The updated common rule was redrafted in plain language and adopted as a separate part, independent from the common rule on nonprocurement suspension and debarment. Based on an amendment to the drug-free workplace requirements in 41 U.S.C. 702 [Pub. L. 105-85, div. A, title VIII, Section 809, Nov. 18, 1997, 111 Stat. 1838], the update also allowed multiple enforcement options from which agencies could select, rather than requiring use of a certification in all cases.

When it established Title 2 of the CFR as the new central location for OMB guidance and agency implementing regulations concerning grants and agreements [69 FR 26276, May 11, 2004], OMB announced its intention to replace common rules with OMB guidance that agencies could adopt in brief regulations. OMB began that process by proposing [70 FR 51863, August 31, 2005] and finalizing [71 FR 66431, November 15, 2006]

Governmentwide guidance on nonprocurement suspension and debarment in 2 CFR part 180.

As the next step in that process, OMB proposed for comment [73 FR 55776, September 26, 2008] and finalized [74 FR 28149, June 15, 2009] Governmentwide guidance with policies and procedures to implement drug-free workplace requirements for financial assistance. The guidance 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 Governmentwide policies and procedures. One advantage of this approach is that it reduces the total volume of drug-free workplace regulations. A second advantage is that it co-locates OMB's guidance and all of the agencies' implementing regulations in 2 CFR.

The Current Regulatory Actions

As the OMB guidance requires, DOE is taking two regulatory actions. First, we are removing the drug-free workplace common rule from 10 CFR part 607. Second, to replace the common rule, we are issuing a brief regulation in 2 CFR part 902 to adopt the Governmentwide policies and procedures in the OMB guidance.

Invitation to Comment

Taken together, these regulatory actions are solely an administrative simplification and are not intended to make any substantive change in policies or procedures. In soliciting comments on these actions, we therefore are not seeking to revisit substantive issues that were resolved during the development of the final common rule in 2003. We are inviting comments specifically on any unintended changes in substantive content that the new part in 2 CFR would make relative to the common rule at 10 CFR part 607.

Administrative Procedure Act

Under the Administrative Procedure Act (5 U.S.C. 553), agencies generally propose a regulation and offer interested parties the opportunity to comment before it becomes effective. However, as described in the "Background" section of this preamble, the policies and procedures in this regulation have been proposed for comment two times—one time by federal agencies as a common rule in 2002 and a second time by OMB

as guidance in 2008—and adopted each time after resolution of the comments received.

This direct final rule is solely an administrative simplification that would make no substantive change in DOE policy or procedures for drug-free workplace. We therefore believe that the rule is noncontroversial and do not expect to receive adverse comments, although we are inviting comments on any unintended substantive change this rule makes.

Accordingly, we find that the solicitation of public comments on this direct final rule is unnecessary and that “good cause” exists under 5 U.S.C. 553(b)(B) and 553(d) to make this rule effective on September 7, 2010 without further action, unless we receive adverse comment by August 9, 2010. If any comment on unintended changes is received, it will be considered and, if warranted, we will publish a timely revision of the rule.

Executive Order 12866

OMB has determined this rule to be not significant for purposes of E.O. 12866.

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This regulatory action will not have a significant adverse impact on a substantial number of small entities.

Unfunded Mandates Act of 1995 (Sec. 202, Pub. L. 104–4)

This regulatory action does not contain a Federal mandate that will result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector of \$100 million or more in any one year.

Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35)

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

Federalism (Executive Order 13132)

This regulatory action does not have Federalism implications, as set forth in Executive Order 13132. It will 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.

Approval of the Office of the Secretary of Energy

The Office of the Secretary has approved the issuance of this rule.

List of Subjects

2 CFR Part 902

Administrative practice and procedure, Drug abuse, Grant programs, Loan programs, Reporting and recordkeeping requirements.

10 CFR Part 607

Administrative practice and procedure, Drug abuse, Grant programs, Loan programs, Reporting and recordkeeping requirements.

Issued in Washington, DC on July 2, 2010.

Patrick M. Ferraro,

Acting Director, Office of Procurement and Assistance Management, Office of Management, Department of Energy.

Joseph F. Waddell,

Director, Office of Acquisition and Supply Management, National Nuclear Security Administration.

Accordingly, for the reasons set forth in the preamble, DOE amends the Code of Federal Regulations, Title 2, Subtitle B, chapter IX, and Title 10, chapter II, part 607, as follows:

Title 2—Grants and Agreements

- 1. Add part 902 in Subtitle B, Chapter IX, to read as follows:

PART 902—REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Sec.

902.10 What does this part do?

902.20 Does this part apply to me?

902.30 What policies and procedures must I follow?

Subpart A—Purpose and Coverage [Reserved.]

Subpart B—Requirements for Recipients Other Than Individuals

902.225 Whom in the DOE does a recipient other than an individual notify about a criminal drug conviction?

Subpart C—Requirements for Recipients Who Are Individuals

902.300 Whom in the DOE does a recipient who is an individual notify about a criminal drug conviction?

Subpart D—Responsibilities of Agency Awarding Officials

902.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

Subpart E—Violations of this Part and Consequences

902.500 Who in the DOE determines that a recipient other than an individual violated the requirements of this part?

902.505 Who in the DOE determines that a recipient who is an individual violated the requirements of this part?

Subpart F—Definitions

902.605 Award (DOE supplement to Governmentwide definition at 2 CFR 182.605).

902.645 Federal agency or agency.

Authority: 41 U.S.C. 701; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

§ 902.10 What does this part do?

This part requires that the award and administration of DOE grants and cooperative agreements comply with Office of Management and Budget (OMB) guidance 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. It thereby—

(a) Gives regulatory effect to the OMB guidance (Subparts A through F of 2 CFR part 182) for the DOE's grants and cooperative agreements; and

(b) Establishes DOE policies and procedures for compliance with the Act that are the same as those of other Federal agencies, in conformance with the requirement in 41 U.S.C. 705 for Governmentwide implementing regulations.

§ 902.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in Subparts A through F of 2 CFR part 182 (see table at 2 CFR 182.115(b)) apply to you if you are a—

- (a) Recipient of a DOE grant or cooperative agreement; or
- (b) DOE awarding official.

§ 902.30 What policies and procedures must I follow?

(a) *General.* You must follow the policies and procedures specified in applicable sections of the OMB guidance in Subparts A through F of 2 CFR part 182, as implemented by this part.

(b) *Specific sections of OMB guidance that this part supplements.* In implementing the OMB guidance in 2 CFR part 182, this part supplements four sections of the guidance, as shown in the following table. For each of those sections, you must follow the policies and procedures in the OMB guidance, as supplemented by this part.

Section of OMB guidance	Section in this part where supplemented	What the supplementation clarifies
(1) 2 CFR 182.225(a)	§ 902.225	Whom in the DOE a recipient other than an individual must notify if an employee is convicted for a violation of a criminal drug statute in the workplace.
(2) 2 CFR 182.300(b)	§ 902.300	Whom in the DOE a recipient who is an individual must notify if he or she is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity.
(3) 2 CFR 182.500	§ 902.500	Who in the DOE is authorized to determine that a recipient other than an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part.
(4) 2 CFR 182.505	§ 902.505	Who in the DOE is authorized to determine that a recipient who is an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part.
(5) 2 CFR 182.605	§ 902.605	Definition of "Award".
(6) 2 CFR 182.645	§ 902.645	Definition of "Federal agency or agency".

(c) Sections of the OMB guidance that this part does not supplement. For any section of OMB guidance in Subparts A through F of 2 CFR part 182 that is not listed in paragraph (b) of this section, DOE policies and procedures are the same as those in the OMB guidance.

Subpart A—Purpose and Coverage [Reserved]

Subpart B—Requirements for Recipients Other Than Individuals

§ 902.225 Whom in the DOE does a recipient other than an individual notify about a criminal drug conviction?

A recipient other than an individual that is required under 2 CFR 182.225(a) to notify Federal agencies about an employee's conviction for a criminal drug offense must notify each DOE office from which it currently has an award.

Subpart C—Requirements for Recipients Who Are Individuals

§ 902.300 Whom in the DOE does a recipient who is an individual notify about a criminal drug conviction?

A recipient who is an individual and is required under 2 CFR 182.300(b) to notify Federal agencies about a conviction for a criminal drug offense must notify each DOE office from which it currently has an award.

Subpart D—Responsibilities of Agency Awarding Officials

§ 902.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

To obtain a recipient's agreement to comply with applicable requirements in the OMB guidance at 2 CFR part 182, you must include the following term or condition in the award:

Drug-free workplace. You as the recipient must comply with drug-free workplace requirements in Subpart B

(or Subpart C, if the recipient is an individual) of Part 902, which adopts the Governmentwide implementation (2 CFR part 182) of sec. 5152–5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701–707).

Subpart E—Violations of this Part and Consequences

§ 902.500 Who in the DOE determines that a recipient other than an individual violated the requirements of this part?

The Secretary of the Department of Energy and the Secretary's designee or designees are authorized to make the determinations under 2 CFR 182.500 for DOE, including NNSA.

§ 902.505 Who in the DOE determines that a recipient who is an individual violated the requirements of this part?

The Secretary of the Department of Energy and the Secretary's designee or designees are authorized to make the determinations under 2 CFR 182.500 for DOE, including NNSA.

Subpart F—Definitions

§ 902.605 Award (DOE supplement to Governmentwide definition at 2 CFR 182.605).

The term *award* also includes Technology Investment Agreements (TIA). A TIA is a special type of assistance instrument used to increase the involvement of commercial firms in the Department's RD&D programs. A TIA may be either a type of cooperative agreement or a type of assistance transaction other than a cooperative agreement, depending on the intellectual property provisions. A TIA may be either expenditure based or fixed support.

§ 902.645 Federal agency or agency.

Department of Energy means the U.S. Department of Energy (DOE), including the National Nuclear Security Administration (NNSA).

Title 10—Energy

CHAPTER II—DEPARTMENT OF ENERGY

PART 607—[REMOVED]

■ 2. Under the authority of 5 U.S.C. 301, remove part 607.

[FR Doc. 2010–16745 Filed 7–8–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2010–0279]

RIN 1625–AA08

Special Local Regulation; Harrison Township Grand Prix, Lake St. Clair, Harrison Township, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation in the Captain of the Port Detroit Zone on Lake St. Clair, Harrison Township, Michigan. This special local regulation is intended to restrict vessels from portions of Lake St. Clair during the Harrison Township Grand Prix. This special local regulation is necessary to protect spectators and vessels from the hazards associated with powerboat races.

DATES: This rule is effective on July 17, 2010 through July 18, 2010.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2010–0279 and are available online by going to <http://www.regulations.gov>, inserting USCG–2010–0279 in the "Keyword" box, and then clicking "Search." This material is