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## ENVIRONMENTAL PROTECTION AGENCY

### 2 CFR Part 1536

### 40 CFR Part 36

[Docket No. EPA-HQ-OARM-2010-0922; FRL-9242-2]

### Environmental Protection Agency Implementation of OMB Guidance on Drug-Free Workplace Requirements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency is removing its regulation implementing the Governmentwide common rule on drug-free workplace requirements for financial assistance. 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 would make no substantive change in Environmental Protection Agency policy or procedures for drug-free workplace.

**DATES:** This final rule is effective on December 22, 2010.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-HQ-OARM-2010-0922. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is publicly available only in hard copy. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at

the Public Reading Room. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth January, Environmental Protection Agency, 5 Post Office Square, Boston, MA 02109, by phone (617) 918-8655 or by e-mail ([january.elizabeth@epa.gov](mailto:january.elizabeth@epa.gov)).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

*Affected Entities:* Entities that receive grants from EPA.

##### II. 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, Sec. 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 collocates OMB's guidance and all of the agencies' implementing regulations in 2 CFR.

#### Conclusion

As the OMB guidance requires, the Environmental Protection Agency is taking two regulatory actions. First, we are removing the drug-free workplace common rule from 40 CFR part 36. Second, to replace the common rule, we are issuing a brief regulation in 2 CFR part 1536 to adopt the Governmentwide policies and procedures in the OMB guidance.

*Statutory and Executive Order Reviews:* OMB has determined under Executive Order 12866 (58 FR 51735, October 4, 1993), that this action is not a "significant regulatory action." Because this grants rule is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et.*). Today's rule contains no Federal mandates (under the regulatory provisions of Title 2 of the Unfunded Mandates Reform Act of 1999 (UMRA)) for State, local, or tribal governments or the private sector that would subject the rule to Sections 202 and 205 of the UMRA (Pub. L. 104-4). The rule imposes no enforceable duty on any State, local, or Tribal governments or the private sector. In addition, this rule does not significantly or uniquely affect small governments. This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This final rule is

solely an administrative simplification that would make no substantive change in Environmental Protection Agency policy or procedures for drug-free workplace. Thus, Executive Order 13175 (63 FR 67249, November 9, 2000) does not apply to this action. EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. This rule will not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). Executive Order 12898 (59 FR 7629 (February 16, 1994)) establishes Federal executive policy on environmental justice. EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it is a grant rule that does not affect the level of protection provided to human health or the environment. This rule is not a “significant energy action” as defined in Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects. This rule does not involve technical standards; thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an additional information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

*Congressional Review Act:* The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in

the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This rule will be effective on December 22, 2010.

#### List of Subjects

2 *CFR Part 1536*

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

40 *CFR Part 36*

Governmentwide requirements for drug-free work-place (financial assistance).

Dated: December 16, 2010.

**Howard Corcoran,**

*Director, Office of Grants and Debarment.*

■ Accordingly, for the reasons set forth in the preamble, and under the authority of 5 U.S.C. 301, the Environmental Protection Agency amends the Code of Federal Regulations, Title 2, Subtitle B, Chapter XV, Part 1536, and Title 40, Chapter I, Part 36, as follows:

#### Title 2—Grants and Agreements

■ 1. Add Part 1536 in Subtitle B, Chapter XV, to read as follows:

#### PART 1536—REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Sec.

1536.10 What does this part do?

1536.20 Does this part apply to me?

1536.30 What policies and procedures must I follow?

#### Subpart A—Purpose and Coverage [Reserved.]

#### Subpart B—Requirements for Recipients Other Than Individuals

1536.225 Whom in the Environmental Protection Agency does a recipient other than an individual notify about a criminal drug conviction?

#### Subpart C—Requirements for Recipients Who Are Individuals

1536.300 Whom in the Environmental Protection Agency does a recipient who is an individual notify about a criminal drug conviction?

#### Subpart D—Responsibilities of Agency Awarding Officials

1536.400 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

1536.500 Who in the Environmental Protection Agency determines that a recipient other than an individual violated the requirements of this part?

1536.505 Who in the Environmental Protection Agency determines that a recipient who is an individual violated the requirements of this part?

**Authority:** 41 U.S.C. 701–707.

#### § 1536.10 What does this part do?

This part requires that the award and administration of Environmental Protection Agency 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 Environmental Protection Agency’s grants and cooperative agreements; and

(b) Establishes Environmental Protection Agency 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.

#### § 1536.20 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 Environmental Protection Agency grant or cooperative agreement; or

(b) Environmental Protection Agency awarding official.

#### § 1536.30 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) .....	§ 1536.225	Whom in the Environmental Protection Agency 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) .....	§ 1536.300	Whom in the Environmental Protection Agency 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 .....	§ 1536.500	Who in the Environmental Protection Agency 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 .....	§ 1536.505	Who in the Environmental Protection Agency 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.

(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, Environmental Protection Agency 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**

**§ 1536.225 Whom in the Environmental Protection Agency 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 the EPA award official from each Environmental Protection Agency office from which it currently has an award.

**Subpart C—Requirements for Recipients Who Are Individuals**

**§ 1536.300 Whom in the Environmental Protection Agency 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 the EPA award official from each Environmental Protection Agency office from which it currently has an award.

**Subpart D—Responsibilities of Agency Awarding Officials**

**§ 1536.400 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 2 CFR Subtitle B, Chapter XV, Part 1536, 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**

**§ 1536.500 Who in the Environmental Protection Agency determines that a recipient other than an individual violated the requirements of this part?**

The EPA Administrator or designee is the official authorized to make the determination under 2 CFR 182.500.

**§ 1536.505 Who in the Environmental Protection Agency determines that a recipient who is an individual violated the requirements of this part?**

The EPA Administrator or designee is the official authorized to make the determination under 2 CFR 182.505.

**Title 40—Protection of Environment Chapter I**

**PART 36—[REMOVED]**

■ 2. Remove Part 36.

[FR Doc. 2010–32134 Filed 12–21–10; 8:45 am]

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**DEPARTMENT OF ENERGY**

**10 CFR Part 430**

[Docket No. EERE–2010–BT–STD–WAV–0045]

**Energy Efficiency Program for Consumer Products: Waiver of Federal Preemption of State Regulations Concerning the Water Use or Water Efficiency of Showerheads, Faucets, Water Closets and Urinals**

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Final rule.

**SUMMARY:** The U.S Department of Energy (DOE) waives the general rule of Federal preemption for energy conservation standards under 42 U.S.C. 6297(c) with respect to any State regulation concerning the water use or water efficiency of faucets, showerheads, water closets and urinals if such State regulation is: More stringent than Federal regulation concerning the water use or water efficiency for that same type or class of product; and applicable to any sale or installation of all products in that particular type or class.

**DATES:** *Effective Date:* This rule is effective December 22, 2010.

**ADDRESSES:** The public may review copies of all materials related to this rulemaking at the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

**FOR FURTHER INFORMATION CONTACT:** Lucas Adin, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 950