

PUBLIC LAW 97-258—SEPT. 13, 1982

96 STAT. 1003

**CHAPTER 63—USING PROCUREMENT CONTRACTS AND
GRANT AND COOPERATIVE AGREEMENTS**

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§ 6301. Purposes

The purposes of this chapter are to—

- (1) promote a better understanding of United States Government expenditures and help eliminate unnecessary administrative requirements on recipients of Government awards by characterizing the relationship between executive agencies and contractors, States, local governments, and other recipients in acquiring property and services and in providing United States Government assistance;
- (2) prescribe criteria for executive agencies in selecting appropriate legal instruments to achieve—
 - (A) uniformity in their use by executive agencies;
 - (B) a clear definition of the relationships they reflect; and
 - (C) a better understanding of the responsibilities of the parties to them; and
- (3) promote increased discipline in selecting and using procurement contracts, grant agreements, and cooperative agreements, maximize competition in making procurement contracts, and encourage competition in making grants and cooperative agreements.

§ 6302. Definitions

In this chapter—

- (1) "executive agency" does not include a mixed-ownership Government corporation.
- (2) "grant agreement" and "cooperative agreement" do not include an agreement under which is provided only—
 - (A) direct United States Government cash assistance to an individual;
 - (B) a subsidy;
 - (C) a loan;
 - (D) a loan guarantee; or
 - (E) insurance.
- (3) "local government" means a unit of government in a State, a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, an interstate entity, or another instrumentality of a local government.
- (4) "other recipient" means a person or recipient (except a State or local government) authorized to receive United States Government assistance or procurement contracts and includes a charitable or educational institution.
- (5) "State" means a State of the United States, the District of Columbia, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State,

regional, or interstate entity having governmental duties and powers.

§ 6303. Using procurement contracts

An executive agency shall use a procurement contract as the legal instrument reflecting a relationship between the United States Government and a State, a local government, or other recipient when—

- (1) the principal purpose of the instrument is to acquire (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government; or
- (2) the agency decides in a specific instance that the use of a procurement contract is appropriate.

§ 6304. Using grant agreements

An executive agency shall use a grant agreement as the legal instrument reflecting a relationship between the United States Government and a State, a local government, or other recipient when—

- (1) the principal purpose of the relationship is to transfer a thing of value to the State or local government or other recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government; and
- (2) substantial involvement is not expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.

§ 6305. Using cooperative agreements

An executive agency shall use a cooperative agreement as the legal instrument reflecting a relationship between the United States Government and a State, a local government, or other recipient when—

- (1) the principal purpose of the relationship is to transfer a thing of value to the State, local government, or other recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government; and
- (2) substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.

§ 6306. Authority to vest title in tangible personal property for research

The head of an executive agency may vest title in tangible personal property in a nonprofit institution of higher education or in a nonprofit organization whose primary purpose is conducting scientific research—

- (1) when the property is bought with amounts provided under a procurement contract, grant agreement, or cooperative agreement with the institution or organization to conduct basic or applied scientific research;
- (2) when the head of the agency decides the vesting furthers the objectives of the agency;

(3) without further obligation to the United States Government; and

(4) under conditions the head of the agency considers appropriate.

§ 6307. Interpretative guidelines and exemptions

The Director of the Office of Management and Budget may—

(1) issue supplementary interpretative guidelines to promote consistent and efficient use of procurement contracts, grant agreements, and cooperative agreements; and

(2) exempt a transaction or program of an executive agency from this chapter.

§ 6308. Use of multiple relationships for different parts of jointly financed projects

This chapter does not require an executive agency to establish only one relationship between the United States Government and a State, a local government, or other recipient on a jointly financed project involving amounts from more than one program or appropriation when different relationships would otherwise be appropriate for different parts of the project.



FEDERAL REGISTER

Monday
February 26, 1990

Part III

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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

International Development Cooperation Agency
 Agency for International Development
Environmental Protection Agency
Export-Import Bank of the United States
Federal Emergency Management Agency
General Services Administration
National Aeronautics and Space Administration
National Foundation on the Arts and the Humanities
 National Endowment for the Arts
 National Endowment for the Humanities
National Science Foundation
Overseas Private Investment Corporation
Peace Corps
Small Business Administration
Tennessee Valley Authority
United States Information Agency

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10 CFR PARTS 500 AND 501

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DEPARTMENT OF TRANSPORTATION

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49 CFR PART 20

New Restrictions on Lobbying

AGENCIES: Departments of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, Interior, Justice, Labor, State, Transportation, Treasury, Veterans Affairs; **ACTION,** Agency for International Development, Environmental Protection Agency, Export-Import Bank of the United States, Federal Emergency Management Agency, General Services Administration, National Aeronautics and Space Administration, National Endowment for the Arts, National Endowment for the Humanities, National Science Foundation, Overseas

Private Investment Corporation, Peace Corps, Small Business Administration, Tennessee Valley Authority and United States Information Agency.

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule is in response to section 319 of Public Law 101-121. Section 319 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. Section 319 also requires that each person who requests or receives a Federal contract grant, cooperative agreement, loan, or a Federal commitment to insure or guarantee a loan, must disclose lobbying.

DATES: OMB's interim final governmentwide guidance was effective December 23, 1989; this rule is effective February 26, 1990, except for the Department of Education. For the Department of Education effective date, see the agency specific preamble below. Comments must be in writing and must be received by April 27, 1990. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent to the Office of Management and Budget, 10300 New Executive Office Building, Washington, DC 20503.

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

SUPPLEMENTARY INFORMATION:**A. Background**

On October 23, 1989, the president signed into law the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 ("the Act"). Section 319 of the Act amended title 31, United States Code, by adding a new section 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions." Section 1352 took effect with respect to Federal contracts, grants, loans, cooperative agreements, loan insurance commitments, and loan guarantee commitments that were or are entered into more than 60 days after the date of the enactment of the Act, i.e., December 23, 1989.

Section 1352 required the Director of the Office of Management and Budget (OMB) to issue governmentwide guidance for agency implementation of, and compliance with, the requirements of this section. The Conference Report

indicated that the conferees "expect that all agencies shall expeditiously promulgate regulations to implement the requirements of this section, and that all such regulations shall be uniform and shall comply with the government-wide guidance issued by the Office of Management and Budget pursuant to paragraph (b)(7). Also, major agencies, as designated by OMB, shall issue a common rule complying with the guidance issued by OMB."

On December 18, 1989, OMB issued interim final governmentwide guidance. This guidance was published on December 20, 1989 (54 FR 52306-52332). In OMB's guidance, the following 29 major agencies were identified: Departments of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, Interior, Justice, Labor, State, Transportation, Treasury, Veterans Affairs; ACTION, Agencies for International Development, Environmental Protection Agency, Export-Import Bank of the United States, Federal Emergency Management Agency, General Services Administration, National Aeronautics and Space Administration, National Endowment for the Arts, National Endowment for the Humanities, National Science Foundation, Overseas Private Investment Corporation, Peace Corps, Small Business Administration, Tennessee Valley Authority and United States Information Agency.

A second interim final common rule, part of the Federal Acquisition Regulation [FAR], for most contracts was published on January 30, 1990 (55 FR 3190). The FAR rule, this common rule, and OMB's interim final guidance will share a public docket. The final versions of all three will be published simultaneously.

Submission of Appendix A, Certification for Contracts, Grants, Loans, and Cooperative Agreements or Statement for Loan Guarantees and Loan Insurance, does not bind the Federal Government to award a contract, grant, loan, or cooperative agreement, or to make a commitment for a loan guarantee or loan insurance.

B. Regulatory Process Matters

This rule is not a major rule under Executive Order 12291. The Act requires certifications and disclosures to be made by all types of entities, including State agencies. For this reason, the agencies have determined that the rule will not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment under Executive Order 12612.

As a statutory matter, this rule applies to all entities, regardless of size.

The agencies find that publishing a notice of proposed rulemaking on this matter would be impracticable, unnecessary, and contrary to the public interest, since it would prevent compliance with the statutory deadline (60 days from the statute's date of enactment) for issuance of OMB's governmentwide guidance and the governmentwide effective date.

Consequently, this rule is published as an interim final rule. As an interim final rule, this regulation is fully in effect and binding. No further regulatory action by the agencies is essential to the legal effectiveness of the rule. In order to benefit from comments that interested parties and the public may make however, the agencies will keep the rulemaking docket open for 60 days. Comments are invited, on all portions of the rulemaking, through April 27, 1990. Following the close of the comment period, OMB and the agencies will respond to the comments and, if appropriate, amend provisions of OMB's governmentwide guidance and this rule.

C. Paperwork Reduction Act

This rule contains information collection requirements subject to the Paperwork Reduction Act. A Paperwork Reduction Act emergency approval was requested by OMB pursuant to 44 U.S.C. 3507(g) and 5 CFR 1320.18 and was granted under OMB control number 0348-0046. OMB estimates the reporting burden for this information collection to average 30 minutes per response. The time necessary for filing the first disclosure may differ from that for the subsequent disclosures. However, in the absence of experience with such reporting, OMB does not have sufficient data to determine the universe of total covered Federal actions or the volume of activity that will be affected by this rule. Therefore, an estimate of the total burden of this information collection requirement is not provided at this time. Public comment is requested to assist in accurately estimating the burden of this information collection, including: (1) Estimates of the amount of time required to comply with this reporting requirement, (2) estimates of the number of expected disclosure reports, and (3) the basis for these estimates.

Text of the Common Rule

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

PART _____—NEW RESTRICTIONS ON LOBBYING

Subpart A—General

- Sec.
- _____100 Conditions on use of funds.
 - _____105 Definitions.
 - _____110 Certification and disclosure.

Subpart B—Activities by Own Employees

- _____200 Agency and legislative liaison.
- _____205 Professional and technical services.
- _____210 Reporting.

Subpart C—Activities by Other than Own Employees

- _____300 Professional and technical services.

Subpart D—Penalties and Enforcement

- _____400 Penalties.
- _____405 Penalty procedures.
- _____410 Enforcement.

Subpart E—Exemptions

- _____500 Secretary of Defense.

Subpart F—Agency Reports

- _____600 Semi-annual compilation.
- _____605 Inspector General report.

Appendix A to Part _____—Certification Regarding Lobbying

Appendix B to Part _____—Disclosure Form to Report Lobbying

Authority: Section 319, Public Law 101-121 (31 U.S.C. 1352); [citation to Agency rulemaking authority].

Cross reference: See also Office of Management and Budget notice published at 54 FR 52306, December 20, 1989.

Subpart A—General

- § _____100 Conditions on use of funds.

(a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, set forth in Appendix A, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.

indicated that the conferees "expect that all agencies shall expeditiously promulgate regulations to implement the requirements of this section, and that all such regulations shall be uniform and shall comply with the government-wide guidance issued by the Office of Management and Budget pursuant to paragraph (b)(7). Also, major agencies, as designated by OMB, shall issue a common rule complying with the guidance issued by OMB."

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Authority: Section 319, Public Law 101-121 (31 U.S.C. 1352); [citation to Agency rulemaking authority].

Cross reference: See also Office of Management and Budget notice published at 54 FR 52306, December 20, 1989.

Subpart A—General

§ _____100 Conditions on use of funds.

(a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, set forth in Appendix A, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.

(c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form, set forth in Appendix B, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.

(d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, set forth in Appendix A, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

(e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form, set forth in Appendix B, if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

§ 105 Definitions.

For purposes of this part:

(a) *Agency*, as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

(b) *Covered Federal action* means any of the following Federal actions:

- (1) The awarding of any Federal contract;
- (2) The making of any Federal grant;
- (3) The making of any Federal loan;
- (4) The entering into of any cooperative agreement; and,
- (5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan. Loan guarantees and loan insurance are addressed independently within this part.

(c) *Federal contract* means an acquisition contract awarded by an agency, including those subject to the Federal Acquisition Regulation (FAR),

and any other acquisition contract for real or personal property or services not subject to the FAR.

(d) *Federal cooperative agreement* means a cooperative agreement entered into by an agency.

(e) *Federal grant* means an award of financial assistance in the form of money, or property in lieu of money, by the Federal Government or a direct appropriation made by law to any person. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, loan insurance, interest subsidies, insurance, or direct United States cash assistance to an individual.

(f) *Federal loan* means a loan made by an agency. The term does not include loan guarantee or loan insurance.

(g) *Indian tribe* and *tribal organization* have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

(h) *Influencing or attempting to influence* means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

(i) *Loan guarantee* and *loan insurance* means an agency's guarantee or insurance of a loan made by a person.

(j) *Local government* means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

(k) *Officer or employee of an agency* includes the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under title 5, U.S. Code, including a position under a temporary appointment;
- (2) A member of the uniformed services as defined in section 101(3), title 37, U.S. Code;
- (3) A special Government employee as defined in section 202, title 18, U.S. Code; and,
- (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, U.S. Code appendix 2.

(l) *Person* means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(m) *Reasonable compensation* means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

(n) *Reasonable payment* means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

(o) *Recipient* includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(p) *Regularly employed* means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or a commitment providing for the United States to insure or guarantee a loan, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, cooperative agreement, loan insurance commitment, or loan guarantee commitment. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

(q) *State* means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or

interstate entity having governmental duties and powers.

§ 110 Certification and disclosure.

(a) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:

(1) Award of a Federal contract, grant, or cooperative agreement exceeding \$100,000; or

(2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.

(b) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:

(1) A Federal contract, grant, or cooperative agreement exceeding \$100,000; or

(2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000, unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.

(c) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:

(1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(d) Any person who requests or receives from a person referred to in paragraphs (a) or (b) of this section:

(1) A subcontract exceeding \$100,000 at any tier under a Federal contract;

(2) A subgrant, contract, or subcontract exceeding \$100,000 at any tier under a Federal grant;

(3) A contract or subcontract exceeding \$100,000 at any tier under a Federal loan exceeding \$150,000; or

(4) A contract or subcontract exceeding \$100,000 at any tier under a Federal cooperative agreement,

shall file a certification, and a disclosure form, if required, to the next tier above.

(e) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person shall forward all disclosure forms to the agency.

(f) Any certification or disclosure form filed under paragraph (e) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.

(g) For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989 effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within 90 days.

(h) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either Subpart B or C.

Subpart B—Activities by Own Employees

§ 200 Agency and legislative liaison.

(a) The prohibition on the use of appropriated funds, in § 100 (a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(b) For purposes of paragraph (a) of this section, providing any information specifically requested by an agency or Congress is allowable at any time.

(c) For purposes of paragraph (a) of this section, the following agency and legislative liaison activities are allowable at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) For purposes of paragraph (a) of this section, the following agencies and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and,

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.

(e) Only those activities expressly authorized by this section are allowable under this section.

§ 205 Professional and technical services.

(a) The prohibition on the use of appropriated funds, in § 100 (a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or an extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) For purposes of paragraph (a) of this section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of

a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by this section are allowable under this section.

§ _____ 210 Reporting.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

Subpart C—Activities by Other Than Own Employees

§ _____ 300 Professional and technical services.

(a) The prohibition on the use of appropriated funds, in § _____ 100 (a), does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements

imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) The reporting requirements in § _____ 110 (a) and (b) regarding filing a disclosure form by each person, if required, shall not apply with respect to professional or technical services rendered directly in the preparation, submission, or negotiation of any commitment providing for the United States to insure or guarantee a loan.

(c) For purposes of paragraph (a) of this section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(d) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(e) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(f) Only those services expressly authorized by this section are allowable under this section.

Subpart D—Penalties and Enforcement

§ _____ 400 Penalties.

(a) Any person who makes an expenditure prohibited herein shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

(b) Any person who fails to file or amend the disclosure form (see Appendix B) to be filed or amended if required herein, shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(c) A filing or amended filing on or after the date on which an administrative action for the imposition of a civil penalty is commenced does not prevent the imposition of such civil penalty for a failure occurring before that date. An administrative action is commenced with respect to a failure when an investigating official determines in writing to commence an investigation of an allegation of such failure.

(d) In determining whether to impose a civil penalty, and the amount of any such penalty, by reason of a violation by any person, the agency shall consider the nature, circumstances, extent, and gravity of the violation, the effect on the ability of such person to continue in business, any prior violations by such person, the degree of culpability of such person, the ability of the person to pay the penalty, and such other matters as may be appropriate.

(e) First offenders under paragraphs (a) or (b) of this section shall be subject to a civil penalty of \$10,000, absent aggravating circumstances. Second and subsequent offenses by persons shall be subject to an appropriate civil penalty between \$10,000 and \$100,000, as determined by the agency head or his or her designee.

(f) An imposition of a civil penalty under this section does not prevent the United States from seeking any other remedy that may apply to the same conduct that is the basis for the imposition of such civil penalty.

§ _____ 405 Penalty procedures.

Agencies shall impose and collect civil penalties pursuant to the provisions of the Program Fraud and Civil Remedies Act, 31 U.S.C. sections 3803 (except subsection (c)), 3804, 3805, 3806, 3807, 3808, and 3812, insofar as these

provisions are not inconsistent with the requirements herein.

§ 410 Enforcement.

The head of each agency shall take such actions as are necessary to ensure that the provisions herein are vigorously implemented and enforced in that agency.

Subpart E—Exemptions

§ 500 Secretary of Defense.

(a) The Secretary of Defense may exempt, on a case-by-case basis, a covered Federal action from the prohibition whenever the Secretary determines, in writing, that such an exemption is in the national interest. The Secretary shall transmit a copy of each such written exemption to Congress immediately after making such a determination.

(b) The Department of Defense may issue supplemental regulations to implement paragraph (a) of this section.

Subpart F—Agency Reports

§ 600 Semi-annual compilation.

(a) The head of each agency shall collect and compile the disclosure reports (see Appendix B) and, on May 31 and November 30 of each year, submit to the Secretary of the Senate and the Clerk of the House of Representatives a report containing a compilation of the information contained in the disclosure reports received during the six-month period ending on March 31 or September 30, respectively, of that year.

(b) The report, including the compilation, shall be available for public inspection 30 days after receipt of the report by the Secretary and the Clerk.

(c) Information that involves intelligence matters shall be reported only to the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the Committees on Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees. Such information shall not be available for public inspection.

(d) Information that is classified under Executive Order 12356 or any successor order shall be reported only to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives or the Committees on Armed Services of the Senate and the House of Representatives (whichever such committees have jurisdiction of matters involving such information) and to the Committees on Appropriations of the

Senate and the House of Representatives in accordance with procedures agreed to by such committees. Such information shall not be available for public inspection.

(e) The first semi-annual compilation shall be submitted on May 31, 1990, and shall contain a compilation of the disclosure reports received from December 23, 1989 to March 31, 1990.

(f) Major agencies, designated by the Office of Management and Budget (OMB), are required to provide machine-readable compilations to the Secretary of the Senate and the Clerk of the House of Representatives no later than with the compilations due on May 31, 1991. OMB shall provide detailed specifications in a memorandum to these agencies.

(g) Non-major agencies are requested to provide machine-readable compilations to the Secretary of the Senate and the Clerk of the House of Representatives.

(h) Agencies shall keep the originals of all disclosure reports in the official files of the agency.

§ 905 Inspector General report.

(a) The Inspector General, or other official as specified in paragraph (b) of this section, of each agency shall prepare and submit to Congress each year, commencing with submission of the President's Budget in 1991, an evaluation of the compliance of that agency with, and the effectiveness of, the requirements herein. The evaluation may include any recommended changes that may be necessary to strengthen or improve the requirements.

(b) In the case of an agency that does not have an Inspector General, the agency official comparable to an Inspector General shall prepare and submit the annual report, or, if there is no such comparable official, the head of the agency shall prepare and submit the annual report.

(c) The annual report shall be submitted at the same time the agency submits its annual budget justifications to Congress.

(d) The annual report shall include the following: All alleged violations relating to the agency's covered Federal actions during the year covered by the report, the actions taken by the head of the agency in the year covered by the report with respect to those alleged violations and alleged violations in previous years, and the amounts of civil penalties imposed by the agency in the year covered by the report.

**Appendix A to Part —
Certification Regarding Lobbying**

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil

penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Appendix B to Part _____--Disclosure Form to Report Lobbying

BILLING CODES 3410-01-00; 8450-01-00; 8880-01-00;
8025-01-00; 7510-01-00; 8810-PE-00; 8120-01-00; 4710-
24-00; 5110-01-00; 8851-01-00; 8230-01-00; 3210-01-00;
4210-32-00; 4410-13-00; 4610-23-00; 4810-25-00; 3801-01-
00; 4000-01-00; 3870-01-00; 8880-10-00; 8830-01-00; 4310-
PW-00; 8710-01-00; 4100-04-00; 7650-01-00; 7837-01-00;
7530-01-00; 8050-20-00; 8800-00-00

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0346-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

<p>1. Type of Federal Action:</p> <p><input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance</p>	<p>2. Status of Federal Action:</p> <p><input type="checkbox"/> a. bid offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award</p>	<p>3. Report Type:</p> <p><input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change</p> <p>For Material Change Only: year _____ quarter _____ date of last report _____</p>
<p>4. Name and Address of Reporting Entity:</p> <p><input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known:</p> <p>Congressional District, if known: _____</p>	<p>5. If Reporting Entity in No. 4 is Subawardee. Enter Name and Address of Prime:</p> <p>Congressional District, if known: _____</p>	
<p>6. Federal Department/Agency:</p>	<p>7. Federal Program Name/Description:</p> <p>CFDA Number, if applicable: _____</p>	
<p>8. Federal Action Number, if known:</p>	<p>9. Award Amount, if known:</p> <p>\$ _____</p>	
<p>10. a. Name and Address of Lobbying Entity (if individual, last name, first name, MI):</p> <p>_____</p> <p style="text-align: center;"><i>(attach Continuation Sheet(s) SF-LLL-A, if necessary)</i></p>		
<p>b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):</p> <p>_____</p>		
<p>11. Amount of Payment (check all that apply):</p> <p>\$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned</p>	<p>13. Type of Payment (check all that apply):</p> <p><input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other; specify: _____</p>	
<p>12. Form of Payment (check all that apply):</p> <p><input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ value _____</p>	<p>14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s)/ employee(s), or Member(s) contacted, for Payment Indicated in Item 11:</p> <p>_____</p> <p style="text-align: center;"><i>(attach Continuation Sheet(s) SF-LLL-A, if necessary)</i></p>	
<p>15. Continuation Sheet(s) SF-LLL-A attached: <input type="checkbox"/> Yes <input type="checkbox"/> No</p>		
<p>16. Information requested through this form is authorized by Title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the law-abiding when the transaction was made or entered into. The disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</p>		
<p>Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Telephone No: _____ Date: _____</p>		<p>Federal Use Only:</p> <p>Authorized for Local Reproduction Standard Form - LLL</p>

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503

**DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET**

Approved by OMB
0-448-0044

Reporting Entity: _____

Page _____ of _____

BILLING CODES 3410-01-C; 3450-01-C; 3490-01-C;
3025-01-C; 7510-01-C; 3510-FE-C; 3120-01-C; 4710-24-
C; 3115-01-C; 3051-01-C; 3230-01-C; 3210-01-C; 4210-
32-C; 4410-18-C; 4510-23-C; 4810-25-C; 3401-01-C;
4800-01-C; 3830-01-C; 3860-00-C; 3420-01-C; 4310-RF-
C; 3718-01-C; 4150-94-C; 7555-01-C; 7537-01-C; 7336-
01-C; 3050-28-C; 4910-62-C

Authorized for Local Reproduction
Standard Form - ULL-A

Adoption of the Common Rule

The agency specific preambles adopting the text of the common rule appear below.

DEPARTMENT OF AGRICULTURE**7 CFR Part 3018**

FOR FURTHER INFORMATION CONTACT: Joseph J. Daragan, 202-447-5729 or Tresa Matthews, 202-382-8978.

ADDITIONAL SUPPLEMENTARY INFORMATION: Title IV, section 401 of the Housing and Urban Development Reform Act of 1989, Pub. L. 101-235, enacted December 15, 1989, amended the Housing Act of 1949, 42 U.S.C. 1471, to add a new section 536 regarding Accountability in Awards of Assistance; Remedies and Penalties under the Rural Housing Program. Among other things, section 536 requires any person engaged for monetary consideration or for any consideration for the purpose of attempting to influence any award or allocation of assistance to register with the Secretary of Agriculture and to disclose such purposes and consideration received for the duration of the activity.

When implemented as a final rule, the requirements of section 401 will be set forth in 7 CFR part 1944. It is the intention of the Department to reconcile, at that time, the sometimes parallel requirements of today's rule and the upcoming revisions to 7 CFR part 1944.

List of Subjects in 7 CFR Part 3018

Contract programs, Grant programs, Loan programs, Lobbying.

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

Jack C. Parnell,
Deputy Secretary of Agriculture.

Part 3018 is added to read as set forth at the end of the common preamble.

PART 3018—NEW RESTRICTIONS ON LOBBYING**Subpart A—General**

Sec.
3018.100 Conditions on use of funds.
3018.105 Definitions.
3018.110 Certification and disclosure.

Subpart B—Activities by Own Employees

3018.200 Agency and legislative liaison.
3018.205 Professional and technical services.
3018.210 Reporting.

Subpart C—Activities by Other Than Own Employees

3018.300 Professional and technical services.

Subpart D—Penalties and Enforcement

3018.400 Penalties.
3018.405 Penalty procedures.
3018.410 Enforcement.

Subpart E—Exemptions

3018.500 Secretary of Defense.

Subpart F—Agency Reports

3018.600 Semi-annual compilation.
3018.605 Inspector General report.

Appendix A to Part 3018—Certification Regarding Lobbying**Appendix B to Part 3018—Disclosure Form to Report Lobbying**

Authority: Section 319, Public Law 101-121 (31 U.S.C. 1352); 5 U.S.C. 301.

Cross reference: See also Office of Management and Budget notice published at 54 FR 52306, December 20, 1989.

DEPARTMENT OF ENERGY**10 CFR Parts 600 and 601**

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

ADDITIONAL SUPPLEMENTARY INFORMATION: Because the New Restrictions on Lobbying, contained in section 319 of Public Law 101-121, also apply to other nonprocurement transactions not covered in 10 CFR part 600 (grants and cooperative agreements), the Department of Energy (DOE) is implementing the common rule in a new part, 10 CFR part 601. Since nearly all of DOE nonprocurement applicants and awardees are subject to 10 CFR part 600, a new § 600.34 is also being included to reference the requirements of this common rule.

List of Subjects

10 CFR Part 600
Financial assistance rules.

10 CFR Part 601

Contract programs, Grant programs, Loan programs, Lobbying.

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

Barton J. Roth,
Director, Directorate of Procurement and Assistance Management.

PART 600—FINANCIAL ASSISTANCE RULES

1. The authority citation of part 600 continues to read as follows:

Authority: Secs. 644 and 646, Pub. L. 95-91, 91 Stat. 599 (42 U.S.C. 7254 and 7256); Pub. L. 97-258, 96 Stat. 1003-1005 (31 U.S.C. 6301-6308).

2. A new § 600.34 is added as set forth below.

§ 600.34 New restrictions on lobbying.

Each DOE solicitation involving a new Federal commitment in excess of \$100,000 shall provide a full text copy of the certification requirement set forth in appendix A of 10 CFR part 601 and Disclosure of Lobbying Activities Standard Form—LLL. DOE Contracting Officers shall assure that any award in excess of the \$100,000 threshold shall contain, as a term and condition of award, the requirement to comply with the certification and disclosure provision of 10 CFR 601.110. Upon receipt, the original copy of each disclosure form shall be kept with the official award file. One copy of each form shall be forwarded to the Director or designee.

3. Part 601 is added to read as set forth at the end of the common preamble.

PART 601—NEW RESTRICTIONS ON LOBBYING**Subpart A—General**

Sec.
601.100 Conditions on use of funds.
601.105 Definitions.
601.110 Certification and disclosure.

Subpart B—Activities by Own Employees

601.200 Agency and legislative liaison.
601.205 Professional and technical services.
601.210 Reporting.

Subpart C—Activities by Other Than Own Employees

601.300 Professional and technical services.

Subpart D—Penalties and Enforcement

601.400 Penalties.
601.405 Penalty procedures.
601.410 Enforcement.

Subpart E—Exemptions

601.500 Secretary of Defense.

Subpart F—Agency Reports

601.600 Semi-annual compilation.
601.605 Inspector general report.

Appendix A to Part 601—Certification Regarding Lobbying**Appendix B to Part 601—Disclosure Form to Report Lobbying**

Authority: Section 319, Public Law 101-121 (31 U.S.C. 1352); Secs. 644 and 646, Pub. L. 95-91, 91 Stat. 599 (42 U.S.C. 7254 and 7256); Pub. L. 96-258, 96 Stat. 1003-1005 (31 U.S.C. 6301-6308).

Cross reference: See also Office of Management and Budget notice published at 54 FR 52306, December 20, 1989.

EXPORT-IMPORT BANK OF THE UNITED STATES**12 CFR Part 411**

FOR FURTHER INFORMATION CONTACT:
Robert J. McKinsey 566-8823.

List of Subjects in 12 CFR Part 411

Contract programs. Grant programs.
Loan programs. Lobbying.

Title 12-Chapter IV of the Code of Federal Regulations is amended as set forth below.

Hart Fessenden,
General Counsel.

Part 411 is added to read as set forth at the end of the common preamble.

PART 411—NEW RESTRICTIONS ON LOBBYING**Subpart A—General**

Sec.

- 411.100 Conditions on use of funds.
- 411.105 Definitions.
- 411.110 Certification and disclosure.

Subpart B—Activities by Own Employees

- 411.200 Agency and legislative liaison.
- 411.205 Professional and technical services.
- 411.210 Reporting.

Subpart C—Activities by Other Than Own Employees

- 411.300 Professional and technical services.

Subpart D—Penalties and Enforcement

- 411.400 Penalties.
- 411.405 Penalty procedures.
- 411.410 Enforcement.

Subpart E—Exemptions

- 411.500 Secretary of Defense.

Subpart F—Agency Reports

- 411.600 Semi-annual compilation.
- 411.605 Inspector General report.

Appendix A to Part 411—Certification Regarding Lobbying**Appendix B to Part 411—Disclosure Form to Report Lobbying**

Authority: Section 319, Public Law 101-121 (31 U.S.C. 1352); 5 U.S.C. 552a.

Cross reference: See also Office of Management and Budget notice published at 54 FR 52306, December 20, 1989.

SMALL BUSINESS ADMINISTRATION**13 CFR Part 146**

FOR FURTHER INFORMATION CONTACT:
Patricia R. Forbes, Chief Counsel for Legislation, U.S. Small Business Administration, (202) 653-6573.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Small Business Administration (SBA) has determined

that its Surety Bond Guarantee, Lease Guarantee and certain aspects of its Small Business Investment Company programs are not subject to the provisions of section 319 as implemented by this interim final rule.

Section 319 prohibits the recipients of a "Federal contract" from using appropriated funds to pay for influencing activities. This interim final rule defines Federal contract as "an acquisition contract awarded by an agency, including those subject to the Federal Acquisition Regulation (FAR), and any other acquisition contract for real or personal property or services not subject to the FAR." (emphasis added) The Surety Bond Guarantee (SBC) contract between SBA and a Surety guarantees the Surety against a stated percentage of any loss, if the surety issues a bond for the benefit of a small concern bidding for or performing a contract with a governmental or non-governmental customer (15 U.S.C. 694b). Accordingly, SBA is not acquiring either property or services. Similarly, under its Lease Guarantee program, SBA is assuring a landlord that a small concern will fulfill the payment conditions of its lease (15 U.S.C. 692). SBA is not acquiring either property or services. Therefore, neither SBA's SBC program or Lease Guarantee program are subject to the requirements of this rule.

For the following reasons SBA has determined that section 319 applies to SBA's guarantee of regular (Section 301(c)) and specialized (Section 301(d)) Small Business Investment Company (SBIC) debentures, but does not apply to SBA's acquisition of preferred stock from specialized SBIC's.

Under section 303 of the Small Business Investment Act, 15 U.S.C. 683, SBA is authorized to purchase or to guarantee the debentures of SBIC's licensed under the Act. SBA guarantees the sale of an SBIC's debentures to investors by means of the issuance of guaranteed participation certificates backed by a pool of guaranteed debentures. The guaranteed debentures of specialized SBIC's may be included in such pools. These transactions fall within section 319, as loan guarantees, and are therefore subject to these new restrictions on influencing activities.

Section 303(c)(1) of the Small Business Investment Act (15 U.S.C. 683(c)(1)) authorizes SBA to purchase shares of non-voting preferred stock from specialized SBIC's. These purchases are neither loans nor loan guarantees, nor acquisition contracts for real or personal property or services.

Finally, SBA has determined that Service Corps of Retired Executives

(SCORE) and Active Corps Executives (ACE) are not "officer(s) or employee(s) of an agency" to which the prohibition on influencing by use of appropriated funds applies. This interim final rule defines "officers and employees of an agency" to include Federal employees appointed under Title 5 of the U.S. Code, members of the uniformed services, special Government employees as defined in 18 U.S.C. 202 and Federal advisory committee members under Title 5 U.S. Code appendix 2. SCORE and ACE volunteers do not fall within any of these categories, including "special government employees." 18 U.S.C. 202 only applies to specific sections within Title 18 of the Code concerning bribery, graft and conflicts of interest, and only concerns employees appointed for a period not to exceed 130 days in any consecutive 365 day period. In addition, section 8(b)(1)(C)(i) of the Small Business Act (15 U.S.C. 637(b)(1)(C)(i)) states that SCORE and ACE volunteers are deemed to be Federal employees only for purposes of worker's compensation and the Federal Tort Claims Act.

List of Subjects in 13 CFR Part 146

Contract programs. Grant programs.
Loan programs. Lobbying.

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

Susan S. Engeliter,
Administrator.

Part 146 is added to read as set forth at the end of the common preamble.

PART 146—NEW RESTRICTIONS ON LOBBYING**Subpart A—General**

- 146.100 Conditions on use of funds.
- 146.105 Definitions.
- 146.110 Certification and disclosure.

Subpart B—Activities by Own Employees

- 146.200 Agency and legislative liaison.
- 146.205 Professional and technical services.
- 146.210 Reporting.

Subpart C—Activities by Other Than Own Employees

- 146.300 Professional and technical services.

Subpart D—Penalties and Enforcement

- 146.400 Penalties.
- 146.405 Penalty procedures.
- 146.410 Enforcement.

Subpart E—Exemptions

- 146.500 Secretary of Defense.

Subpart F—Agency Reports

- 146.600 Semi-annual compilation.
- 146.605 Inspector General report.

Appendix A to Part 146—Certification Regarding Lobbying**Appendix B to Part 146—Disclosure Form to Report Lobbying**

Authority: Section 319, Pub. L. 101-121 (31 U.S.C. 1352); 15 U.S.C. 634(b)(6).

Cross reference: See also Office of Management and Budget notice published at 54 FR 52306, December 20, 1989.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**14 CFR Part 1271**

FOR FURTHER INFORMATION CONTACT: W.A. Greene, Chief, Regulations Development Branch, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546. Telephone: (202) 453-8923.

ADDITIONAL SUPPLEMENTARY INFORMATION: Internal NASA implementation procedures, required by § 1271.410, shall be established in accordance with NASA grant regulations at 14 CFR part 1260 (the NASA Grant and Cooperative Agreement Regulation).

Lists of Subjects in 14 CFR Part 1271

Contract programs, Cooperative agreements, Grant programs, Grants, Loan programs, Lobbying.

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

S.J. Evans,

Assistant Administrator for Procurement.

Part 1271 is added to read as set forth at the end of the common preamble.

PART 1271—NEW RESTRICTIONS ON LOBBYING**Subpart A—General**

Sec.
1271.100 Conditions on use of funds.
1271.105 Definitions.
1271.110 Certification and disclosure.

Subpart B—Activities by Own Employees

1271.200 Agency and legislative liaison.
1271.205 Professional and technical services.
1271.210 Reporting.

Subpart C—Activities by Other Than Own Employees

1271.300 Professional and technical services.

Subpart D—Penalties and Enforcement

1271.400 Penalties.
1271.405 Penalty procedures.
1271.410 Enforcement.

Subpart E—Exemptions

1271.500 Secretary of Defense.

Subpart F—Agency Reports

1271.600 Semi-annual compilation.
1271.605 Inspector General report.

Appendix A to Part 1271—Certification Regarding Lobbying**Appendix B to Part 1271—Disclosure Form to Report Lobbying**

Authority: Section 319, Public Law 101-121 (31 U.S.C. 1352); Public Law 97-258 (31 U.S.C. 6301 et seq.)

Cross reference: See also Office of Management and Budget notice published at 54 FR 52306, December 20, 1989.

DEPARTMENT OF COMMERCE**15 CFR Part 28**

FOR FURTHER INFORMATION CONTACT: Barbara L. Splthas, Telephone: (202) 377-5817.

List of Subjects in 15 CFR Part 28

Contract programs, Grant programs, Loan programs, Lobbying.

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

Sonya G. Stewart,

Director for Finance and Federal Assistance.

Part 28 is added to read as set forth at the end of the common preamble.

PART 28—NEW RESTRICTIONS ON LOBBYING**Subpart A—General**

Sec.
28.100 Conditions on use of funds.
28.105 Definitions.
28.110 Certification and disclosure.

Subpart B—Activities by Own Employees

28.200 Agency and legislative liaison.
28.205 Professional and technical services.
28.210 Reporting.

Subpart C—Activities by Other Than Own Employees

28.300 Professional and technical services.

Subpart D—Penalties and Enforcement

28.400 Penalties.
28.405 Penalty procedures.
28.410 Enforcement.

Subpart E—Exemptions

28.500 Secretary of Defense.

Subpart F—Agency Reports

28.600 Semi-annual compilation.
28.605 Inspector General report.

Appendix A to Part 28—Certification Regarding Lobbying**Appendix B to Part 28—Disclosure Form to Report Lobbying**

Authority: Section 319, Public Law 101-121 (31 U.S.C. 1352); 5 U.S.C. 301.

Cross reference: See also Office of Management and Budget notice published at 54 FR 52306, December 20, 1989.

TENNESSEE VALLEY AUTHORITY**18 CFR Part 1315**

FOR FURTHER INFORMATION CONTACT: Charles L. Young, 615 632-7305.

List of Subjects in 18 CFR Part 1315

Contract programs, Grant programs, Loan programs, Lobbying.

Title 18 of the Code of Federal Regulations is amended as set forth below.

W.F. Willis,

Executive Vice President and Chief Operating Officer.

Part 1315 is added to read as set forth at the end of the common preamble.

PART 1315—NEW RESTRICTIONS ON LOBBYING**Subpart A—General**

Sec.
1315.100 Conditions on use of funds.
1315.105 Definitions.
1315.110 Certification and disclosure.

Subpart B—Activities by Own Employees

1315.200 Agency and legislative liaison.
1315.205 Professional and technical services.
1315.210 Reporting.

Subpart C—Activities by Other Than Own Employees

1315.300 Professional and technical services.

Subpart D—Penalties and Enforcement

1315.400 Penalties.
1315.405 Penalty procedures.
1315.410 Enforcement.

Subpart E—Exemptions

1315.500 Secretary of Defense.

Subpart F—Agency Reports

1315.600 Semi-annual compilation.
1315.605 Inspector General report.

Appendix A to Part 1315—Certification Regarding Lobbying**Appendix B to Part 1315—Disclosure Form to Report Lobbying**

Authority: Section 319, Public Law 101-121 (31 U.S.C. 1352); 18 U.S.C. 631-631dd.

Cross reference: See also Office of Management and Budget notice published at 54 FR 52306, December 20, 1989.

DEPARTMENT OF STATE**22 CFR Part 138**

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

List of Subjects in 22 CFR Part 138

Contract programs, Grant programs, Loan programs, Lobbying.

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

John J. Conway,
Procurement Executive.

Part 138 is added to read as set forth at the end of the common preamble.

PART 138—NEW RESTRICTIONS ON LOBBYING**Subpart A—General**

Sec.
138.100 Conditions on use of funds.
138.105 Definitions.
138.110 Certification and disclosure.

Subpart B—Activities by Own Employees

138.200 Agency and legislative liaison.
138.205 Professional and technical services.
138.210 Reporting.

Subpart C—Activities by Other Than Own Employees

138.300 Professional and technical services.

Subpart D—Penalties and Enforcement

138.400 Penalties.
138.405 Penalty procedures.
138.410 Enforcement.

Subpart E—Exemptions

138.500 Secretary of Defense.

Subpart F—Agency Reports

138.600 Semi-annual compilation.
138.605 Inspector General report.

Appendix A to Part 138—Certification Regarding Lobbying**Appendix B to Part 138—Disclosure Form to Report Lobbying**

Authority: Section 319, Public Law 101-121 (31 U.S.C. 1352); 22 U.S.C. 2658.

Cross reference: See also Office of Management and Budget notice published at 54 FR 52306, December 20, 1989.

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY**Agency for International Development****22 CFR Part 227**

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

List of Subjects in 22 CFR Part 227

Contract programs, Grant programs, Loan programs, Lobbying.

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

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

Part 227 is added to read as set forth at the end of the common preamble.

PART 227—NEW RESTRICTIONS ON LOBBYING**Subpart A—General**

Sec.
227.100 Conditions on use of funds.
227.105 Definitions.
227.110 Certification and disclosure.

Subpart B—Activities by Own Employees

227.200 Agency and legislative liaison.
227.205 Professional and technical services.
227.210 Reporting.

Subpart C—Activities by Other Than Own Employees

227.300 Professional and technical services.

Subpart D—Penalties and Enforcement

227.400 Penalties.
227.405 Penalty procedures.
227.410 Enforcement.

Subpart E—Exemptions

227.500 Secretary of Defense.

Subpart F—Agency Reports

227.600 Semi-annual compilation.
227.605 Inspector General report.

Appendix A to Part 227—Certification Regarding Lobbying**Appendix B to Part 227—Disclosure Form to Report Lobbying**

Authority: Section 319, Public Law 101-121 (31 U.S.C. 1352); Sec. 621, Foreign Assistance Act of 1961, as amended, 75 Stat. 445 (22 U.S.C. 2381).

Cross reference: See also Office of Management and Budget notice published at 54 FR 52306, December 20, 1989.

PEACE CORPS**22 CFR Part 311**

FOR FURTHER INFORMATION CONTACT: Kirby Mullen, (202) 254-3114.

ADDITIONAL SUPPLEMENTARY INFORMATION: Peace Corps has determined that Peace Corps Volunteers are not "Officer(s) or employee(s) of an agency" to which the prohibition on influencing by use of appropriated funds applies. This interim final rule defines "officers and employees of an agency" to include Federal employees appointed under Title 5 of the U.S. Code, members of the uniformed services, special Government employees as defined in 18 U.S.C. 202 and Federal advisory committee members under Title 5 U.S.

Code Appendix 2, Peace Corps Volunteers do not fall within any of these categories, including "special government employees." 18 U.S.C. 202 only applies to specific sections within Title 18 of the Code concerning bribery, graft and conflicts of interest, and only concerns employees appointed for a period not to exceed 130 days in any consecutive 365 day period. In addition, Peace Corps Volunteers are only deemed to be Federal employees for purposes of worker's compensation. 5 U.S.C. 8142, the Federal Tort Claims Act and other purposes as detailed in 22 U.S.C. 2504.

List of Subjects in 22 CFR Part 311

Contract programs, Cooperative agreements, Grant programs, Loan programs, Lobbying.

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

Paul D. Coverdell,
Director.

Part 311 is added to read as set forth at the end of the common preamble.

PART 311—NEW RESTRICTIONS ON LOBBYING**Subpart A—General**

Sec.
311.100 Conditions on use of funds.
311.105 Definitions.
311.110 Certification and disclosure.

Subpart B—Activities by Own Employees

311.200 Agency and legislative liaison.
311.205 Professional and technical services.
311.210 Reporting.

Subpart C—Activities by Other than Own Employees

311.300 Professional and technical services.

Subpart D—Penalties and Enforcement

311.400 Penalties.
311.405 Penalty procedures.
311.410 Enforcement.

Subpart E—Exemptions

311.500 Secretary of Defense.

Subpart F—Agency Reports

311.600 Semi-annual compilation.
311.605 Inspector General report.

Appendix A to Part 311—Certification Regarding Lobbying**Appendix B to Part 311—Disclosure Form to Report Lobbying**

Authority: Section 319, Public Law 101-121 (31 U.S.C. 1352); 22 U.S.C. 2503.

Cross reference: See also Office of Management and Budget notice published at 54 FR 52306, December 20, 1989.

UNITED STATES INFORMATION AGENCY**22 CFR Part 519**

FOR FURTHER INFORMATION CONTACT:
Darwin Roberts, United States Information Agency, Office of Contracts, Policy and Procedures Staff, Room 1811, 330 C Street, SW., Washington, DC 20547, Telephone: (202) 485-6401

List of Subjects in 22 CFR Part 519

Contract programs, Grant programs, Loan programs, Lobbying.

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

Henry E. Hockeimer,
Associate Director for Management.

Part 519 is added to read as set forth at the end of the common preamble.

PART 519—NEW RESTRICTIONS ON LOBBYING**Subpart A—General**

Sec.
519.100 Conditions on use of funds.
519.105 Definitions.
519.110 Certification and disclosure.

Subpart B—Activities by Own Employees

519.200 Agency and legislative liaison.
519.205 Professional and technical services.
519.210 Reporting.

Subpart C—Activities by Other Than Own Employees

519.300 Professional and technical services.

Subpart D—Penalties and Enforcement

519.400 Penalties.
519.405 Penalty procedures.
519.410 Enforcement.

Subpart E—Exemptions

519.500 Secretary of Defense.

Subpart F—Agency Reports

519.600 Semi-annual compilation.
519.605 Inspector General report.

Appendix A to Part 519—Certification Regarding Lobbying**Appendix B to Part 519—Disclosure Form to Report Lobbying**

Authority: Section 319, Public Law 101-121 (31 U.S.C. 1352); 41 U.S.C. 701 et seq.

Cross reference: See also Office of Management and Budget notice published at 54 FR 52306, December 20, 1989.

OVERSEAS PRIVATE INVESTMENT CORPORATION**22 CFR Part 712**

FOR FURTHER INFORMATION CONTACT:
James R. Offutt, Senior Counsel for

Legislative and Administrative Affairs,
202-457-7038.

List of Subjects in 22 CFR Part 712

Contract programs, Grant programs, Guarantees, Insurances, Loan guarantees, Loan insurance, Loans, Lobbying.

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

James R. Offutt,
Senior Counsel for Legislative and Administrative Affairs.

Part 712 is added to read as set forth at the end of the common preamble.

PART 712—NEW RESTRICTIONS ON LOBBYING**Subpart A—General**

Sec.
712.100 Conditions on use of funds.
712.105 Definitions.
712.110 Certification and disclosure.

Subpart B—Activities by Own Employees

712.200 Agency and legislative liaison.
712.205 Professional and technical services.
712.210 Reporting.

Subpart C—Activities by Other Than Own Employees

712.300 Professional and technical services.

Subpart D—Penalties and Enforcement

712.400 Penalties.
712.405 Penalty procedures.
712.410 Enforcement.

Subpart E—Exemptions

712.500 Secretary of Defense.

Subpart F—Agency Reports

712.600 Semi-annual compilation.
712.605 Inspector General report.

Appendix A to Part 712—Certification Regarding Lobbying**Appendix B to Part 712—Disclosure Form to Report Lobbying**

Authority: Section 319, Public Law 101-121 (31 U.S.C. 1352).

Cross reference: See also Office of Management and Budget notice published at 54 FR 52306, December 20, 1989.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**Office of the Secretary****24 CFR Part 87**

FOR FURTHER INFORMATION CONTACT:
Roosevelt Jones, Acting Director, Office of Ethics, Room 10110, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 755-4250 (this is not a toll-free number).

ADDITIONAL SUPPLEMENTARY INFORMATION: Section 112 of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101-235, approved December 15, 1989, amended the Department of Housing and Urban Development Act, 42 U.S.C. 3531, to add a new section 13 regarding the registration of consultants. Among other things, section 112 requires any person making an expenditure to influence a departmental decision with respect to the award of any financial assistance or management action that changes the terms and conditions or status of the financial assistance to keep records on all such expenditures. This requirement does not apply to expenditures incurred in complying with conditions, requirements, or procedures imposed by the Secretary of HUD with respect to the financial assistance. Section 112 also requires each person receiving payment or any consideration to influence a departmental decision to register with the Secretary of HUD.

When implemented as a final rule, the requirements of section 112 will be set forth in part 86. It is the intention of the Department to reconcile, at that time, the sometimes parallel requirements of today's rule and the upcoming part 86 HUD rule.

List of Subjects in 24 CFR Part 87

Contract programs, Grant programs, Loan programs, Lobbying.

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

Jack Kamp,
Secretary.

Part 87 is added to read as set forth at the end of the common preamble.

PART 87—NEW RESTRICTIONS ON LOBBYING**Subpart A—General**

Sec.
87.100 Conditions on use of funds.
87.105 Definitions.
87.110 Certification and disclosure.

Subpart B—Activities by Own Employees

87.200 Agency and legislative liaison.
87.205 Professional and technical services.
87.210 Reporting.

Subpart C—Activities by Other Than Own Employees

87.300 Professional and technical services.

Subpart D—Penalties and Enforcement

87.400 Penalties.
87.405 Penalty procedures.
87.410 Enforcement.

Subpart E—Exemptions

87.500 Secretary of Defense.

Subpart F—Agency Reports

87.800 Semi-annual compilation.
87.805 Inspector General report.

Appendix A to Part 87—Certification Regarding Lobbying

Appendix B to Part 87—Disclosure Form to Report Lobbying

Authority: Section 319, Public Law 101-121 (31 U.S.C. 1352); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Cross reference: See also OMB notice published at 54 FR 52306, December 20, 1989.

DEPARTMENT OF JUSTICE

28 CFR Part 69

[Atty. Gen. Order No. 1397-90]

FOR FURTHER INFORMATION CONTACT: Cynthia J. Schwimer (202) 724-3186.

List of Subjects in 28 CFR Part 69

Administrative practice and procedures, Contract programs, Grant programs, Loan programs, Lobbying, Reporting and recordkeeping requirements.

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

Dick Thornburgh,
Attorney General.

Part 69 is added to read as set forth at the end of the common preamble.

PART 69—NEW RESTRICTIONS ON LOBBYING

Subpart A—General

Sec.
69.100 Conditions on use of funds.
69.105 Definitions.
69.110 Certification and disclosure.

Subpart B—Activities by Own Employees

69.200 Agency and legislative liaison.
69.205 Professional and technical services.
69.210 Reporting.

Subpart C—Activities by Other Than Own Employees

69.300 Professional and technical services.

Subpart D—Penalties and Enforcement

69.400 Penalties.
69.405 Penalty procedures.
69.410 Enforcement.

Subpart E—Exemptions

69.500 Secretary of Defense.

Subpart F—Agency Reports

69.600 Semi-annual compilation.
69.605 Inspector General report.

Appendix A to Part 69—Certification Regarding Lobbying

Appendix B to Part 69—Disclosure Form to Report Lobbying

Authority: Section 319, Public Law 101-121 (31 U.S.C. 1352); 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.

Cross reference: See also Office of Management and Budget notice published at 54 FR 52306, December 20, 1989.

DEPARTMENT OF LABOR

29 CFR Part 93

FOR FURTHER INFORMATION CONTACT: Adam W. Hare, Room S-1522, U.S. Department of Labor, Washington, DC 20210. Telephone: (202) 523-9174.

List of Subjects in 29 CFR Part 93

Contract programs, Grant programs, Loan programs, Lobbying.

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

Elizabeth H. Dole,
Secretary of Labor.

Part 93 is added to read as set forth at the end of the common preamble.

PART 93—NEW RESTRICTIONS ON LOBBYING

Subpart A—General

Sec.
93.100 Conditions on use of funds.
93.105 Definitions.
93.110 Certification and disclosure.

Subpart B—Activities by Own Employees

93.200 Agency and legislative liaison.
93.205 Professional and technical services.
93.210 Reporting.

Subpart C—Activities by Other Than Own Employees

93.300 Professional and technical services.

Subpart D—Penalties and Enforcement

93.400 Penalties.
93.405 Penalty procedures.
93.410 Enforcement.

Subpart E—Exemptions

93.500 Secretary of Defense.

Subpart F—Agency Reports

93.600 Semi-annual compilation.
93.605 Inspector General Report.

Appendix A to Part 93—Certification Regarding Lobbying

Appendix B to Part 93—Disclosure Form to Report Lobbying

Authority: Section 319, Public Law 101-121 (31 U.S.C. 1352); 5 U.S.C. 301, Reorganization Plan Number 6 of 1950.

Cross reference: See also Office of Management and Budget notice published at 54 FR 52306, December 20, 1989.

DEPARTMENT OF THE TREASURY

31 CFR Part 21

FOR FURTHER INFORMATION CONTACT: Cathy Thomas, (202) 343-0249.

List of Subjects in 31 CFR Part 21

Contract programs, Grant programs, Loan programs, Lobbying.

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

Linda M. Combs,
Assistant Secretary (Management).

Part 21 is added to read as set forth at the end of the common preamble.

PART 21—NEW RESTRICTIONS ON LOBBYING

Subpart A—General

Sec.
21.100 Conditions on use of funds.
21.105 Definitions.
21.110 Certification and disclosure.

Subpart B—Activities by Own Employees

21.200 Agency and legislative liaison.
21.205 Professional and technical services.
21.210 Reporting.

Subpart C—Activities by Other Than Own Employees

21.300 Professional and technical services.

Subpart D—Penalties and Enforcement

21.400 Penalties.
21.405 Penalty procedures.
21.410 Enforcement.

Subpart E—Exemptions

21.500 Secretary of Defense.

Subpart F—Agency Reports

21.600 Semi-annual compilation.
21.605 Inspector General report.

Appendix A to Part 21—Certification Regarding Lobbying

Appendix B to Part 21—Disclosure Form to Report Lobbying

Authority: Section 319, Public Law 101-121 (31 U.S.C. 1352); 31 U.S.C. 321.

Cross reference: See also Office of Management and Budget notice published at 54 FR 52306, December 20, 1989.

DEPARTMENT OF DEFENSE**Office of the Secretary****32 CFR Part 282**

FOR FURTHER INFORMATION CONTACT: Mr. F. Sobieszczyk, Office of the Deputy Director, Defense Research and Engineering (Research and Advanced Technology) (ODDDR&E/R&AT), Room 3E114, the Pentagon, telephone 202-694-0205.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Defense (DoD) is adopting the following interim final rule establishing new restrictions on lobbying and will proceed with internal agency coordination, the results of which will be reflected in the final common rule. It is DoD's objective to establish uniform practices within the Office of the Secretary of Defense, the Military Departments and the Defense Agencies that would be consistent with those being established by other Executive Departments and Agencies in adopting this government-wide common rule.

List of Subjects in 32 CFR Part 282

Administrative practice and procedures, Contract programs, Grant programs, Loan programs, Lobbying, Reporting and recordkeeping requirements.

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

Patricia H. Maass,
*OSD Federal Register Liaison Officer,
Department of Defense.*

Part 282 is added to read as set forth at the end of the common preamble.

PART 282—NEW RESTRICTIONS ON LOBBYING**Subpart A—General**

- Sec.
282.100 Conditions on use of funds.
282.105 Definitions.
282.110 Certification and disclosure.

Subpart B—Activities by Own Employees

- 282.200 Agency and legislative liaison.
282.205 Professional and technical services.
282.210 Reporting.

Subpart C—Activities by Other Than Own Employees

- 282.300 Professional and technical services.

Subpart D—Penalties and Enforcement

- 282.400 Penalties.
282.405 Penalty procedures.
282.410 Enforcement.

Subpart E—Exemptions

- 282.500 Secretary of Defense.

Subpart F—Agency Reports

- 282.600 Semi-annual compilation.

282.605 Inspector General report.

Appendix A to Part 282—Certification Regarding Lobbying**Appendix B to Part 282—Disclosure Form to Report Lobbying**

Authority: Section 319, Public Law 102-121 (31 U.S.C. 1352); 5 U.S.C. Section 301; 10 U.S.C. 113.

Cross reference: See also Office of Management and Budget notice published at 54 FR 52306, December 20, 1989.

DEPARTMENT OF EDUCATION**34 CFR Part 82**

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 the Department of Education contact person. A document announcing the effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Greg Vick, (202) 732-7400.

List of Subjects in 34 CFR Part 82

Grant programs, Loan programs, Lobbying.

Title 34 of the Code of Federal Regulations is amended as set forth below.

Lauro F. Cavazos,
Secretary of Education.

Part 82 is added to read as set forth at the end of the common preamble.

PART 82—NEW RESTRICTIONS ON LOBBYING**Subpart A—General**

- Sec.
82.100 Conditions on use of funds.
82.105 Definitions.
82.110 Certification and disclosure.

Subpart B—Activities by Own Employees

- 82.200 Agency and legislative liaison.
82.205 Professional and technical services.
82.210 Reporting.

Subpart C—Activities by Other Than Own Employees

- 82.300 Professional and technical services.

Subpart D—Penalties and Enforcement

- 82.400 Penalties.
82.405 Penalty procedures.
82.410 Enforcement.

Subpart E—Exemptions

- 82.500 Secretary of Defense.

Subpart F—Agency Reports

- 82.600 Semi-annual compilation.
82.605 Inspector General report.

Appendix A to Part 82—Certification Regarding Lobbying**Appendix B to Part 82—Disclosure Form to Report Lobbying**

Authority: Section 319, Public Law 101-121 (31 U.S.C. 1352); 20 U.S.C. 3474.

Cross reference: See also Office of Management and Budget notice published at 54 FR 52306, December 20, 1989.

DEPARTMENT OF VETERANS AFFAIRS**38 CFR Part 45**

FOR FURTHER INFORMATION CONTACT: Mrs. Lynn H. Covington, Director, Paperwork Management and Regulations Service (70Y73), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 (202) 233-3618.

List of Subjects in 38 CFR Part 45

Administrative practices and procedures, Contract programs, Grant programs, Loan programs, Lobbying.

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

Edward G. Derwinski,
Secretary of Veterans Affairs.

Part 45 is added to read as set forth at the end of the common preamble.

PART 45—NEW RESTRICTIONS ON LOBBYING**Subpart A—General**

- Sec.
45.100 Conditions on use of funds.
45.105 Definitions.
45.110 Certification and disclosure.

Subpart B—Activities by Own Employees

- 45.200 Agency and legislative liaison.
45.205 Professional and technical services.
45.210 Reporting.

Subpart C—Activities by Other Than Own Employees

- 45.300 Professional and technical services.

Subpart D—Penalties and Enforcement

- 45.400 Penalties.
45.405 Penalty procedures.
45.410 Enforcement.

Subpart E—Exemptions

- 45.500 Secretary of Defense.

Subpart F—Agency Reports

- 45.600 Semi-annual compilation.
45.605 Inspector General report.

Appendix A to Part 45—Certification Regarding Lobbying

Appendix B to Part 45—Disclosure Form to Report Lobbying

Authority: Section 319, Public Law 101-121 (31 U.S.C. 1352); 38 U.S.C. 210(c).

Cross reference: See also Office of Management and Budget notice published at 54 FR 52306, December 20, 1989.

U.S.C. 2801 et seq.; 42 U.S.C. 6801 et seq.; 20 U.S.C. 4011 et seq.; 33 U.S.C. 1401 et seq.

Cross reference: See also Office of Management and Budget notice published at 54 FR 52306, December 20, 1989.

GENERAL SERVICES ADMINISTRATION

41 CFR Part 105-69

FOR FURTHER INFORMATION CONTACT: Ida M. Ustad at 202-566-1224 (FTS 566-1224).

List of Subjects in 41 CFR Part 105-69

Grant programs, Lobbying.

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

Richard G. Austin,
Acting Administrator.

Part 105-69 is added to read as set forth at the end of the common preamble.

PART 105-69—NEW RESTRICTIONS ON LOBBYING

Subpart A—General

Sec.
105-69.100 Conditions on use of funds.
105-69.105 Definitions.
105-69.110 Certification and disclosure.

Subpart B—Activities by Own Employees

105-69.200 Agency and legislative liaison.
105-69.205 Professional and technical services.
105-69.210 Reporting.

Subpart C—Activities by Other Than Own Employees

105-69.300 Professional and technical services.

Subpart D—Penalties and Enforcement

105-69.400 Penalties.
105-69.405 Penalty procedures
105-69.410 Enforcement.

Subpart E—Exemptions

105-69.500 Secretary of Defense.

Subpart F—Agency Reports

105-69.600 Semi-annual compilation.
105-69.605 Inspector General report.

Appendix A to Part 105-69—Certification Regarding Lobbying

Appendix B to Part 105-69—Disclosure Form to Report Lobbying

Authority: Section 319, Public Law 101-121 (31 U.S.C. 1352); 40 U.S.C. 488(c).

Cross reference: See also Office of Management and Budget notice published at 54 FR 52306, December 20, 1989.

DEPARTMENT OF THE INTERIOR

43 CFR Part 18

RIN 1090-AA26

FOR FURTHER INFORMATION CONTACT: Cecel Coleman at (202) 343-6431.

ADDITIONAL SUPPLEMENTARY

INFORMATION: The Department of the Interior will be using DI 1963 (Jan 90) "Certification Regarding Lobbying Form," for Federal contracts, grants, and cooperative agreements exceeding \$100,000 as required by § 18.110. The "Statement for Loan Guarantees and Loan Insurance Form," DI 1962 (Jan 90) will be used for loan guarantees and loan insurance exceeding \$150,000 as required by § 18.110. This certification and statement are identical to that included in the Office of Management and Budget (OMB) interim final guidance, dated December 18, 1989.

Under Section 18.405, penalty procedures to be used will be based on the Department's implementation of the Program Fraud and Civil Remedies Act of 1985 which is found at 43 CFR part 35

List of Subject in 43 CFR Part 18

Contract programs, Cooperative agreements, Grant programs, Loan programs, Lobbying.

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

Dated: February 15, 1990.

Lou Gallegos,
Assistant Secretary, Policy, Budget and Administration.

1. Part 18 is added to read as set forth at the end of the common preamble.

PART 18—NEW RESTRICTIONS ON LOBBYING:

Subpart A—General

Sec.
18.100 Conditions on use of funds.
18.105 Definitions.
18.110 Certification and disclosure.

Subpart B—Activities by Own Employees

18.200 Agency and legislative liaison.
18.205 Professional and technical services.
18.210 Reporting.

Subpart C—Activities by Other Than Own Employees

18.300 Professional and technical services

Subpart D—Penalties and Enforcement

18.400 Penalties.
18.405 Penalty procedures.
18.410 Enforcement.

Subpart E—Exemptions

18.500 Secretary of Defense.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 34

FOR FURTHER INFORMATION CONTACT:

Richard Mitchell, Grants Administration Division (PM-216F), (202) 245-4078 (This is not a toll free number.)

List of Subjects in 40 CFR Part 34

Contract programs, Grant programs, Loan programs, Lobbying, Reporting and recordkeeping requirements.

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

Dated: February 9, 1989.

William K. Rellly,
Administrator.

Part 34 is added to read as set forth at the end of the common preamble.

PART 34—NEW RESTRICTIONS ON LOBBYING

Subpart A—General

Sec.
34.100 Conditions on use of funds.
34.105 Definitions.
34.110 Certification and disclosure.

Subpart B—Activities by Own Employees

34.200 Agency and legislative liaison.
34.205 Professional and technical services.
34.210 Reporting.

Subpart C—Activities by Other Than Own Employees

34.300 Professional and technical services.

Subpart D—Penalties and Enforcement

34.400 Penalties.
34.405 Penalty procedures.
34.410 Enforcement.

Subpart E—Exemptions

34.500 Secretary of Defense.

Subpart F—Agency Reports

34.600 Semi-annual compilation.
34.605 Inspector General report.

Appendix A to Part 34—Certification Regarding Lobbying

Appendix B to Part 34—Disclosure Form to Report Lobbying

Authority: Section 319, Public Law 101-121 (31 U.S.C. 1352); 33 U.S.C. 1251 et seq.; 42 U.S.C. 7401 et seq.; 42 U.S.C. 6901 et seq.; 42 U.S.C. 300f et seq.; 7 U.S.C. 136 et seq.; 15

Subpart F—Agency Reports

- 18.600 Semi-annual compilation.
18.605 Inspector General report.

Appendix A to Part 18—Certification Regarding Lobbying**Appendix B to Part 18—Disclosure Form to Report Lobbying**

Authority: Section 319, Public Law 101-121 (31 U.S.C. 1352); 5 U.S.C. 301.

Cross reference: See also Office of Management and Budget notice published at 54 FR 52306, December 20, 1989.

2. Part 18 is further amended as follows:

a. Section 18.405 is amended by adding paragraph (a) to read as follows:

§ 18.405 Penalty procedures.

(a) The Department of the Interior implementation of the Program Fraud and Civil Remedies Act of 1985 is found at 43 CFR part 35.

FEDERAL EMERGENCY MANAGEMENT AGENCY**44 CFR Part 18**

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

List of Subjects in 44 CFR Part 18

Contract programs, Grant programs, Loan programs, Lobbying.

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

Arthur E. Curry,
Chief, Policy Division, Office of the Comptroller.

Part 18 is added to read as set forth at the end of the common preamble.

PART 18—NEW RESTRICTIONS ON LOBBYING**Subpart A—General**

- Sec.
18.100 Conditions on use of funds.
18.105 Definitions.
18.110 Certification and disclosure.

Subpart B—Activities by Own Employees

- 18.200 Agency and legislative liaison.
18.205 Professional and technical services.
18.210 Reporting.

Subpart C—Activities by Other Than Own Employees

- 18.300 Professional and technical services.

Subpart D—Penalties and Enforcement

- 18.400 Penalties.
18.405 Penalty procedures.
18.410 Enforcement.

Subpart E—Exemptions

- 18.500 Secretary of Defense.

Subpart F—Agency Reports

- 18.600 Semi-annual compilation.
18.605 Inspector General report.

Appendix A to Part 18—Certification Regarding Lobbying**Appendix B to Part 18—Disclosure Form to Report Lobbying**

Authority: Section 319, Public Law 101-121 (31 U.S.C. 1352); 5 U.S.C. 551, 552, 553; 5 U.S.C. 601, et seq.; E.O. 13291, Reorganization Plan No. 3 of 1978, E.O. 12127, E.O. 12148, E.O. 12657, E.O. 12699.

Cross reference: See also Office of Management and Budget notice published at 54 FR 52306, December 20, 1989.

DEPARTMENT OF HEALTH AND HUMAN SERVICES**45 CFR Part 93**

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

List of Subjects in 45 CFR Part 93

Contract programs, Grant programs, Loan programs, Lobbying.

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

Dated: February 13, 1990.

Louis W. Sullivan,

Secretary, Department of Health and Human Services.

Part 93 is added to read as set forth at the end of the common preamble.

PART 93—NEW RESTRICTIONS ON LOBBYING**Subpart A—General**

- Sec.
93.100 Conditions on use of funds.
93.105 Definitions.
93.110 Certification and disclosure.

Subpart B—Activities by Own Employees

- 93.200 Agency and legislative liaison.
93.205 Professional and technical services.
93.210 Reporting.

Subpart C—Activities by Other Than Own Employees

- 93.300 Professional and technical services.

Subpart D—Penalties and Enforcement

- 93.400 Penalties.
93.405 Penalty procedures.
93.410 Enforcement.

Subpart E—Exemptions

- 93.500 Secretary of Defense.

Subpart F—Agency Reports

- 93.600 Semi-annual compilation.
93.605 Inspector General report.

Appendix A to Part 93—Certification Regarding Lobbying**Appendix B to Part 93—Disclosure Form to Report Lobbying**

Authority: Section 319, Public Law 101-121 (31 U.S.C. 1352); 5 U.S.C. 301.

Cross reference: See also Office of Management and Budget notice published at 54 FR 52306, December 20, 1989.

NATIONAL SCIENCE FOUNDATION**45 CFR Part 604**

FOR FURTHER INFORMATION CONTACT: Jodi Condes, 357-7880.

List of Subjects in 45 CFR Part 604

Contract programs, Grant programs, Loan programs, Lobbying.

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

William S. Kirby,

Procurement Executive.

Part 604 is added to read as set forth at the end of the common preamble.

PART 604—NEW RESTRICTIONS ON LOBBYING**Subpart A—General**

- Sec.
604.100 Conditions on use of funds.
604.105 Definitions.
604.110 Certification and disclosure.

Subpart B—Activities by Own Employees

- 604.200 Agency and legislative liaison.
604.205 Professional and technical services.
604.210 Reporting.

Subpart C—Activities by Other Than Own Employees

- 604.300 Professional and technical services.

Subpart D—Penalties and Enforcement

- 604.400 Penalties.
604.405 Penalty procedures.
604.410 Enforcement.

Subpart E—Exemptions

- 604.500 Secretary of Defense.

Subpart F—Agency Reports

- 604.600 Semi-annual compilation.
604.605 Inspector General report.

Appendix A to Part 604—Certification Regarding Lobbying**Appendix B to Part 604—Disclosure Form to Report Lobbying**

Authority: Section 319, Public Law 101-121 (31 U.S.C. 1352); 42 U.S.C. 1870.

Cross reference: See also Office of Management and Budget notice published at 54 FR 52306, December 20, 1989.

NATIONAL FOUNDATION ON THE ARTS OF THE HUMANITIES**National Endowment for the Arts****45 CFR Part 1158**

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

List of Subjects in 45 CFR Part 1158

Contract programs, Grant programs, Loan programs, Lobbying.

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

Cynthia Rand,

Deputy Chairman for Management.

Part 1158 is added to read as set forth at the end of the common preamble.

PART 1158—NEW RESTRICTIONS ON LOBBYING**Subpart A—General**

Sec.
1158.100 Conditions on use of funds.
1158.105 Definitions.
1158.110 Certification and disclosure.

Subpart B—Activities by Own Employees

1158.200 Agency and legislative liaison.
1158.205 Professional and technical services.
1158.210 Reporting.

Subpart C—Activities by Other Than Own Employees

1158.300 Professional and technical services.

Subpart D—Penalties and Enforcement

1158.400 Penalties.
1158.405 Penalty procedures.
1158.410 Enforcement.

Subpart E—Exemptions

1158.500 Secretary of Defense.

Subpart F—Agency Reports

1158.600 Semi-annual compilation.
1158.605 Inspector General report.

Appendix A to Part 1158—Certification Regarding Lobbying**Appendix B to Part 1158—Disclosure Form to Report Lobbying**

Authority: Section 319, Public Law 101-121 (31 U.S.C. 1352); 20 U.S.C. 959.

Cross reference: See also Office of Management and Budget notice published at 54 FR 52306, December 20, 1989.

National Endowment for the Humanities**45 CFR Part 1168**

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

List of Subjects in 45 CFR Part 1168

Contract programs, Grant programs, Loan programs, Lobbying.

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

Lynne V. Cheney,

Chairman, National Endowment for the Humanities.

Part 1168 is added to read as set forth at the end of the common preamble.

PART 1168—NEW RESTRICTIONS ON LOBBYING**Subpart A—General**

Sec.
1168.100 Conditions on use of funds.
1168.105 Definitions.
1168.110 Certification and disclosure.

Subpart B—Activities by Own Employees

1168.200 Agency and legislative liaison.
1168.205 Professional and technical services.
1168.210 Reporting.

Subpart C—Activities by Other Than Own Employees

1168.300 Professional and technical services.

Subpart D—Penalties and Enforcement

1168.400 Penalties.
1168.405 Penalty procedures.
1168.410 Enforcement.

Subpart E—Exemptions

1168.500 Secretary of Defense.

Subpart F—Agency Reports

1168.600 Semi-annual compilation.
1168.605 Inspector General report.

Appendix A to Part 1168—Certification Regarding Lobbying**Appendix B to Part 1168—Disclosure Form to Report Lobbying**

Authority: Section 319, Public Law 101-121 (31 U.S.C. 1352); 20 U.S.C. 959 (a) (1).

Cross reference: See also Office of Management and Budget notice published at 54 FR 52306, December 20, 1989.

ACTION**45 CFR Part 1230**

FOR FURTHER INFORMATION CONTACT: Margaret M. McHale, Telephone (202) 634-9150.

List of Subjects in 45 CFR Part 1230

Contract programs, Grant programs, Loan programs, Lobbying.

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

Jane Kenny,

Director, ACTION.

Part 1230 is added to read as set forth at the end of the common preamble.

PART 1230—NEW RESTRICTIONS ON LOBBYING**Subpart A—General**

Sec.
1230.100 Conditions on use of funds.
1230.105 Definitions.
1230.110 Certification and disclosure.

Subpart B—Activities by Own Employees

1230.200 Agency and legislative liaison.
1230.205 Professional and technical services.
1230.210 Reporting.

Subpart C—Activities by Other Than Own Employees

1230.300 Professional and technical services.

Subpart D—Penalties and Enforcement

1230.400 Penalties.
1230.405 Penalty procedures.
1230.410 Enforcement.

Subpart E—Exemptions

1230.500 Secretary of Defense.

Subpart F—Agency Reports

1230.600 Semi-annual compilation.
1230.605 Inspector General report.

Appendix A to Part 1230—Certification Regarding Lobbying**Appendix B to Part 1230—Disclosure Form to Report Lobbying**

Authority: Section 319, Public Law 101-121 (31 U.S.C. 1352); Public Law 93-113, 43 U.S.C. 4951 et seq.; 42 U.S.C. 506c.

Cross reference: See also Office of Management and Budget notice published at 54 FR 52306, December 20, 1989.

DEPARTMENT OF TRANSPORTATION**Office of the Secretary****49 CFR Part 20****RIN 2105-AB57**

FOR FURTHER INFORMATION CONTACT: Robert C. Taylor, Department of Transportation, Office of Acquisition and Grant Management—M-62, 400 Seventh Street, SW., Room 9401, Washington, DC 20590, (202) 366-4286.

List of Subjects in 49 CFR Part 20

Contract programs, Grant programs, Loan programs, Lobbying.

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

Issued this 16th day of February 1990 at Washington, DC.

Samuel K. Skinner,
Secretary of Transportation.

Part 20 is added to read as set forth at the end of the common preamble.

PART 20—NEW RESTRICTIONS ON LOBBYING

Subpart A—General

Sec.

- 20.100 Conditions on use of funds.
- 20.105 Definitions.
- 20.110 Certification and disclosure.

Subpart B—Activities by Own Employees

- 20.200 Agency and legislative liaison.
- 20.205 Professional and technical services.
- 20.210 Reporting.

Subpart C—Activities by Other Than Own Employees

- 20.300 Professional and technical services.

Subpart D—Penalties and Enforcement

- 20.400 Penalties.
- 20.405 Penalty procedures.
- 20.410 Enforcement.

Subpart E—Exemptions

- 20.500 Secretary of Defense.

Subpart F—Agency Reports

- 20.600 Semi-annual compilation.
- 20.605 Inspector General report.

Appendix A to Part 20—Certification Regarding Lobbying

Appendix B to Part 20—Disclosure Form to Report Lobbying

Authority: Section 319, Public Law 101-121 (31 U.S.C. 1352); 49 U.S.C. 322(a).

Cross reference: See also Office of Management and Budget notice published at 54 FR 52300, December 20, 1989.

[FR Doc. 90-4117 Filed 2-23-90; 8:45 am]

BILLING CODES 3410-01-M; 6450-01-M; 6600-01-M; 6625-01-M; 7570-01-M; 3510-FE-M; 0120-01-M; 4710-24-M; 0118-01-M; 8051-01-M; 0730-01-M; 3270-01-M; 4210-32-M; 4410-10-M; 4510-23-M; 4810-25-M; 3801-01-M; 4000-01-M; 3020-01-M; 0560-50-M; 6820-01-M; 4310-RF-M; 0710-01-M; 4150-04-M; 7565-01-M; 7537-01-M; 7539-01-M; 9050-23-M; 4910-02-M



Federal Register

**Friday
June 15, 1990**

Part X

**Office of
Management and
Budget**

**Governmentwide Guidance for New
Restrictions on Lobbying; Notice**

OFFICE OF MANAGEMENT AND BUDGET
Governmentwide Guidance for New Restrictions on Lobbying

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: This Notice provides further information about OMB's interim final guidance, published December 20, 1989, as called for by Section 319 of Public Law 101-121.

DATE: The effective date of the interim final guidance was December 23, 1989.

FOR FURTHER INFORMATION CONTACT: For grants and loans, contact Barbara P. Kaldow, Financial Management Division, OMB (telephone: 202-395-3053). For contracts, contact Richard C. Loeb, Office of Federal Procurement Policy, OMB (telephone: 202-395-3300).

SUPPLEMENTARY INFORMATION: On October 23, 1989, the President signed into law the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 ("the Act"). Section 319 of the Act amended title 31, United States Code, by adding a new Section 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions." Section 1352 took effect with respect to Federal contracts, grants, loans, cooperative agreements, loan insurance commitments, and loan guarantee commitments that were entered into or made more than 60 days after the date of the enactment of the Act, i.e., December 23, 1989.

Section 1352 required the Director of the Office of Management and Budget (OMB) to issue governmentwide guidance for agency implementation of, and compliance with, the requirements of this section. Interim final guidance was issued on December 18, 1989 and published on December 20, 1989 (54 FR 52306).

This Notice is to inform the public about certain clarifications which OMB has made since the December 20, 1989 publication. These include replies to two letters addressed to OMB from Members of Congress. Both letters are reproduced herein as well as OMB's replies. In addition, OMB has issued an internal government memorandum which is reproduced herein.

Allan V. Swanson,
Administrator for Federal Procurement Policy.

Susan Gaffney,
Acting Assistant Director for Financial Management.

Herein follows the text of the first letter and OMB's reply:

United States House of Representatives
Employment and Housing Subcommittee of the Committee on Government Operations
May 9, 1990.

Richard Darman,
Director, Office of Management and Budget,
10300 New Executive Office Building,
Washington, D.C. 20503.

Dear Mr. Darman: As the House sponsor of the Clean Consultants Act of 1990, for which you are now writing regulations, I would like to encourage you to consider and include clarification in the implementation of this law to state that it does not preclude legitimate functions of local governments which includes contact with Federal agencies.

A priority in the case of cities and counties is the ability to contact Federal agencies for information concerning grants. At present, Federal agencies are not responding because there is either confusion on the part of Federal employees concerning how to deal with direct contact from local governments and their representatives, or there is a policy of no response to requests for information or clarification from local government representatives because of an extremely strict definition of what the new law does and does not allow. OMB should direct all Federal agencies to continue past practices of providing information to local governments and their representatives until final regulations make clear and uniform the appropriate parameters for contacts among local officials, their representatives and Federal employees. I cannot stress enough how important it is for local government to receive timely and accurate information on Federal programs. Providing information is clearly not within the realm of 'influence peddling' or lobbying to which the new law addresses itself.

In relation to drafting of regulations, I urge you to consider comments to clarify potential problems which surfaced in the NPRM. Among my concerns and the concerns of local government are:

1. The unnecessary inclusion of entitlement programs in reporting requirements. Entitlement programs do not fall under the category of programs which could be 'brokered' in the manner of discretionary grant programs. The Clean Consultants Act as its focus, the process of obtaining discretionary grants by the use of undue influence. Entitlements do not go through the same kind of process and therefore I do not understand why recipients would need to follow disclosure regulations as applicants and recipients of discretionary monies would need to follow.

2. Grants management is, for all practical

purposes, a general duty job with most cities and counties. Whether that individual is a direct employee, or holds a long-term bona fide consultant contract, the duties involved in grants management often include the need to monitor the grants program from which the city or county benefits. Seeking information in this role, a grants manager would not appear to be using undue influence to obtain funding—rather, it seems an informed manager serves a function for the best use of funds from the perspective of the Federal government as well as the local government entity. Therefore, contacts with the Federal government by grants managers would seem to be an appropriate action and one not prohibited under the lobbying portions of the new law.

The intent of the law is to either disallow those receiving Federal funds from using employees on that grants to solicit other Federal monies, and to make public those individuals hired with non-Federal funds to obtain a Federal grant. The law makes a clear distinction which singles out the special arrangement or contract individual hired to secure specific program funding. Abuses in this area are the focus and the background of the law. A local government employee or a long-term Washington agent for a local government clearly does not fit into the same abusive pattern.

During the period regulations to make this distinction are being written, and safeguards are put in place to cut abuse, local governments should not be shackled by a loss of opportunity to use informed employees and other legitimate representatives in grants application and management when they seek information on grant opportunities. The current unresponsiveness of many Federal agencies, which appears to be a reaction in advance of final regulations, acts as a veil behind which grant-making agencies decline to provide any information to local officials or their representatives. This seems a needless impediment for appropriate actions by local governments competing for existing programs of Federal assistance.

In your writing of regulations, I trust you will define terms to clarify problems which present themselves in the NPRM in the context of current practice. Special project lobbyists and 'influence peddling' as exemplified in the HUD hearings conducted by the Employment and Housing Subcommittee of the House Government Operations Committee, which I chair, define themselves. Specifically, the \$300,000 phone calls to HUD and the contracting of well-connected Washington operatives for specific projects are the target of the new law. Day-to-day grants managers and long-term bona fide general interest consultants perform a service different from those abusive actions which have been uncovered during our HUD hearings. This distinction between individuals and actions should be made clear—which does not appear to be the case in the NPRM.

I appreciate your attention to my comments and hope that you will contact me or have your staff contact Lisa Phillips on my

Subcommittee staff (225-6751) if you have any questions. I am particularly interested in the issue of information availability and ask that your office contact me in the next ten days to advise on how Federal agencies are provided guidance on the new law while regulations are being finalized.

Sincerely,

Tom Lantos,
Chairman.

Executive Office of the President

Office of Management and Budget

May 21, 1990.

Honorable Tom Lantos,
Chairman, Employment and Housing
Subcommittee, Committee on
Government Operations, U.S. House of
Representatives, Washington, DC 20515.

Dear Chairman Lantos: This responds to your letter of May 9, 1990, concerning Section 319 of Public Law 101-121 and the Office of Management and Budget's (OMB's) interim final guidance entitled "Governmentwide Guidance for New Restrictions on Lobbying." Your letter raises concerns about "legitimate functions of local governments which include contact with Federal agencies."

First, your letter raises concerns about Federal agencies' responsiveness to requests from cities and counties for information or clarification about grants. Nothing in the statute or OMB's guidance limits Federal agencies from continuing to respond to such informational requests. However, as your letter indicates, there appears to be a need to better inform the agencies with respect to this aspect of OMB's guidance. Therefore, we will be raising this issue with the agencies during the interagency common rulemaking process which is proceeding with work on the final version of the OMB guidance. We want to insure that the guidance does not inappropriately impose a chilling effect on communications between Federal agencies and their grantees. As agencies become more familiar with this new law and OMB's guidance, questions about responding to these types of requests should be eliminated.

Several commenters included in the docket of public comments on OMB's interim final guidance, as well as your letter, raise concerns about the appropriateness of requiring disclosure of routine and ongoing post-award administration of grants. After consideration of these concerns, we intend to indicate in OMB's final guidance that such activities fall within the exemption for "Professional and Technical Services."

Also, your letter raises concerns about the applicability of the law, as well as OMB's guidance, to entitlement programs. Neither the statute nor OMB's guidance exempts any particular grant programs. We believe that coverage of mandatory awards, including the entitlement programs (e.g., grants for State administration of Medicaid) and formula grants, is appropriate, since subawards under these grant programs are discretionary. For example, contractors are competitively selected by State grantees for electronic data processing of Medicaid claims.

Lastly, your letter raises concerns about ways to clarify or more specifically target OMB's guidance to better capture the types of

activities which this new law was intended to curb. We are carefully considering ways to improve this aspect of OMB's guidance along the lines that you raised, as well as in response to the public comments that we have received.

We have every intention of achieving reasonable implementation of this law, within the context of the statutory framework provided by Congress. I hope this letter fully meets the concerns raised in your letter. If you have additional questions, please do not hesitate to call me.

Sincerely,

Frank Hodsoll,
Executive Associate Director.

Herein follows the text of the second letter and OMB's reply:

United States House of Representatives

May 10, 1990.

Mr. Richard Darman,
Director, Office of Management and Budget,
Old Executive Office Bldg., Washington,
D.C. 20503.

Dear Mr. Darman: When Congress passed the appropriations bill for the Department of the Interior, the intent of Section 319 was to prohibit the use of federally appropriated funds to lobby Congress or federal agencies in connection with federal grants, contracts, loans, or cooperative agreements.

However, I fear that the interim final rule unnecessarily affects state agency communications with Congress and federal agencies in the course of administering ongoing programs. These communications are appropriate, they foster more efficient and effective program implementation and benefit all levels of government.

I ask that you consider re-examining section 319 in light of these concerns. Thank you for your attention.

Sincerely,

Timothy J. Penny,
Member of Congress.

Executive Office of the President
Office of Management and Budget
June 8, 1990.

Honorable Timothy J. Penny,
U.S. House of Representatives,
Washington, DC 20515.

Dear Congressman Penny: This responds to your letter of May 10, 1990, concerning Section 319 of Public Law 101-121 and the Office of Management and Budget's (OMB's) "Governmentwide Guidance for New Restrictions on Lobbying." Your letter raises concerns about "State agency communications with Congress and Federal agencies in the course of administering ongoing programs."

We are sensitive to the concerns you raised and those raised by State and local officials and their interest groups. We are attempting to address all of these concerns in finalizing OMB's guidance.

Several commenters on OMB's interim final guidance pointed out the inequity of requiring disclosure by a grantee or a contractor's newly-hired employees who are expected to become employed over 133 days, including

newly-elected State officials. After consideration of these concerns, we expect that OMB's final guidance will expand the regulatory definition of "regularly employed" so as to no longer require disclosure by such persons.

In addition, several commenters, as well as your letter raised concerns about the appropriateness of requiring disclosure of routine and ongoing post-award activities to administer grants and contracts. These activities are not influencing activities. After consideration of these concerns, we intend to indicate in OMB's final guidance that such activities fall within the exemption for "Professional and Technical Services."

We have every intention of achieving reasonable implementation of this law, within the context of the statutory framework provided by Congress. I hope this letter fully meets the concerns raised in your letter. If you have any questions, please do not hesitate to call me.

Sincerely,

Frank Hodsoll,
Executive Associate Director.

Herein follows the text of OMB's clarification memorandum to the agencies: June 12, 1990.

Memorandum for Assistant Secretaries for Management and Agency Senior Procurement Executives

From:

Allan V. Burman, Administrator for Federal Procurement Policy
Susan Gaffney, Acting Assistant Director for Financial Management
Subject: Clarification Regarding "Governmentwide Guidance for New Restrictions on Lobbying"

On December 20, 1989, the Office of Management and Budget's (OMB's) interim final "Governmentwide Guidance for New Restrictions on Lobbying" was published in the Federal Register. The effective date of the guidance was December 23, 1989. Included in the guidance at Appendix A are the "Certification Regarding Lobbying" and the "Statement for Loan Guarantees and Loan Insurance." This memorandum provides clarifications concerning the guidance and the "Certification" and "Statement." Please alert your headquarters and field staffs to them.

First, the Certification and the Statement are intended to apply only to the instant Federal transaction for which a Certification or Statement is being obtained: the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into of a cooperative agreement, or the making of a Federal commitment for a loan guarantee or loan insurance.

Second, the final version of the Certification and Statement will reference OMB's guidance, including Subparts B and C, which specify certain "Agency and Legislative Liaison" and "Professional and Technical Services" activities which are allowable with appropriated funds and for which no disclosure is necessary.

Third, only bids, offers, applications and awards, submitted or made on or after the

December 23, 1989 effective date of the restrictions need to contain certifications or statements and disclosures, if required, i.e., awards and commitments made before December 23, 1989, but modified, amended, extended, continued or renewed after that date do not need certifications or statements unless they are modified or amended beyond the scope of the award. An existing Federal grant, loan, or cooperative agreement with such a modification or amendment needs to contain a certification and disclosure form, if required. A bilateral modification to an existing Federal contract which requires justification and approval pursuant to Federal Acquisition Regulation (FAR) section 8.303, citing the authorities in FAR section 8.302, and which exceeds the \$100,000 threshold needs a certification and disclosure form, if required.

Fourth, only Federal transactions over the \$100,000 (contracts, grants, cooperative agreements) or \$150,000 (loans, loan guarantees, loan insurance) thresholds need certifications or statements and disclosures, if required.

Fifth, contracts subject to the FAR are covered by the January 30, 1990 FAR interim final rule (Federal Acquisition Circular 84-55), not the February 28, 1990 common rule. The February 28, 1990 rule applies only to contracts not subject to the FAR (generally nonprocurement contracts) as well as to grants, loans, cooperative agreements, loan guarantee commitments, and loan insurance commitments.

Sixth, nothing contained in Subpart C of the guidance, Activities by Other Than Own Employees, applies to selling activities by independent sales representatives before an agency provided that the selling activities are prior to formal solicitation by an agency. Such selling activities are:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

Note that the activities in (1) and (2) above are specifically limited to the merits of the matter. An independent sales representative who engages in selling activities described above, prior to the issuance of a formal solicitation by an agency, is not deemed to be engaged in influencing with regard to a particular contract and will not need to disclose such activities.

Seventh, under subsections ____ 205(b) and ____ 300(c), the examples cited are not intended, in any way, to be all inclusive, to limit the application of the "Professional and technical services" exemption provided in the law, or to limit the exemption to licensed professionals. "Professional and technical services" shall be advice and analysis directly applying any professional or technical expertise. Note that the "Professional and technical services"

exemption is specifically limited to the merits of the matter.

Lastly, the following clarify OMB's interim final guidance:

(1) To the extent a person can demonstrate that the person has sufficient monies, other than Federal appropriated funds, the Federal Government shall assume that these other monies were spent for any influencing activities unallowable with Federal appropriated funds. This assumption applies equally to persons who do and do not submit to the Federal Government cost or pricing data. Where no cost or pricing data are submitted, the Federal Government shall assume that monies spent are a reduction from profits otherwise available.

(2) Profits and fees earned under Federal contracts (see FAR subpart 15.8) are not considered appropriated funds. Profits, and fees that constitute profits, earned under Federal grants, loans, and cooperative agreements are not considered appropriated funds.

(3) Nothing in OMB's interim final guidance requires a person to make any changes to that person's existing accounting systems.

(4) The prohibition on use of Federal appropriated funds does not apply to influencing activities not in connection with a specific covered Federal action. These activities include those related to legislation and regulations for a program versus a specific covered Federal action.

[FR Doc. 90-13999 Filed 6-14-90; 8:45 am]
BILLING CODE 3110-01-26

Federal Register

Friday
May 25, 1990

Part II

Drug-Free Workplace Requirements; Notice and Final Rules

Office of Management and Budget

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
International Development Cooperation Agency
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 Foundation on the Arts and the Humanities
National Endowment for the Arts
National Endowment for the Humanities
National Science Foundation
Peace Corps
Small Business Administration
United States Information Agency
Department of Defense/General Services Administration/National Aeronautics and Space Administration

OFFICE OF MANAGEMENT AND BUDGET**Governmentwide Implementation of the Drug-Free Workplace Act of 1988**

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: This Notice provides information, in the form of nonbinding questions and answers, to assist the public in meeting the requirements of the Drug-Free Workplace Act of 1988. The Office of Management and Budget (OMB) coordinated regulatory development with over 30 Federal agencies to ensure uniform, governmentwide implementation of this Act. As a consequence, OMB is offering this governmentwide non-regulatory guidance.

Part of the omnibus drug legislation enacted November 18, 1988 is the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, title V, subtitle D). This statute requires contractors and grantees of Federal agencies to certify that they will provide drug-free workplaces. Making the required certification is a precondition of receiving a contract or grant from a Federal agency after March 18, 1989.

Regulatory requirements pertaining to contractors are detailed in a final rule appearing in today's *Federal Register*. This rule amends the Federal Acquisition Regulation (FAR). Regulatory requirements pertaining to grantees are detailed in a final common rule also appearing in today's *Federal Register*. The preamble to the grantee common rule answers questions pertaining to grants or to contracts-and-grants, but does not address questions pertaining only to contracts.

FOR FURTHER INFORMATION CONTACT: For grants, contact Barbara F. Kahlow, Financial Management Division, OMB, (telephone 202-395-3053). For contracts, contact Robert Neal, Office of Federal Procurement Policy, OMB, (telephone 202-395-6810).

SUPPLEMENTARY INFORMATION:**Response to Questions**

See the common preamble to the grantee final common rule for detailed response to most questions on requirements on contractors and grantees.

1. Question—What is a minimum set of components for an employer program to meet the requirements of the Drug-Free Workplace Act?

Answer—Each employer must meet the specific requirements of the Act with a good faith effort, including having a

policy statement and a drug awareness program. Neither the law nor the final rules require employers to establish an Employee Assistance Program (EAP), to conduct any drug testing, or to incorporate any particular component in an employer's program.

2. Question—What are examples of other possible components of an employer drug-free workplace program for contractors and grantees?

Answer—Here is a partial list of other possible components of an employer program. The list is provided for information only; there is no intention for the Federal Government to require any particular component.

Employee Education

- Conduct education/outreach of employees/families via:
 - Discussion groups on drug abuse/company policy
 - Videotapes/pamphlets on drugs in workplace
 - Brown bag lunch discussions
 - Communication of available employee assistance
 - Communication of available health benefits for drug/alcohol treatment

Employee Assistance

- Establish an EAP
- Identify treatment resources
- Assemble resource file on providers of assistance
 - Provide problem assessments
 - Provide confidential counselling
 - Provide referral to counselling and/or treatment
 - Provide crisis intervention
 - Establish hot-line
 - Provide family support services
 - Conduct followup during and after treatment
- Conduct evaluation of job performance pre- and post-program contact
 - Review insurance coverage (to include outpatient as well as inpatient treatment)
 - Institute mechanism to review employee complaints

Supervisory Training

- Conduct management/supervisory/union training on:
 - Drug Abuse education
 - Signs and symptoms of drug use
 - Company policy on drug use
 - Employee assistance resources
 - How to deal with an employee suspected of drug use
 - How and when to take disciplinary action

Drug Detection

- Institute a program of drug testing of:
 - All employees—testing of applicants or pre-employment; testing of employees based on reasonable suspicion, post accident, during and after counselling and/or rehabilitation
 - Employees in health and safety or national security sensitive positions—random unannounced testing
 - Increase security

3. Question—What are examples of some model drug-free workplace programs?

Answer—Both the Department of Health and Human Services' National Institute on Drug Abuse (NIDA) and the U.S. Chamber of Commerce have identified several model programs. For further information on these or other models or on programs to combat drug abuse in the workplace, call the NIDA toll-free employer help-line on: 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. Currently, the Federal Government does not have an example of a model program for a small employer.

Examples include the following:
A large chemical company—EAP contracted out, including: seminars, assessment, short-term counselling and referral, supervisory training, and followup monitoring; some local sites have drug testing for cause, post accident, and for safety-critical jobs.

A large automotive manufacturing company—EAP contracted out, including: crisis intervention and treatment for employees and immediate family, counselling, referral to counselors/therapists or inpatient; outpatient treatment; hotline; considering drug testing.

A major contractor—EAP for employees and their dependents, including: education, counselling, assessment, referral, hotline; management/supervisory training; alcohol/drug testing of applicants; alcohol/drug testing of employees based on reasonable suspicion or for cause; preventive alcohol/drug testing of corporate officers, employees in safety-sensitive or security-sensitive positions; inspections; trained dogs.

A mid-sized electrical company—EAP including counselling and management/supervisory training, drug testing of applicants and of employees for cause.

4. Question—Is the retail purchase of utility services by the Federal Government covered by the FAR and, therefore, subject to the Act?

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 1.7 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 lumber 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. 4330 (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 Offenses Denial of Federal Benefits Project, Office of Justice Programs, Department of Justice, 633 Indiana Avenue, NW, Washington, DC 20531; telephone: 202-507-4960.

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 23, 1990.

Frank Hausoil,

Executive Associate Director

(FR Doc. 90-12186 Filed 5-24-90; 8:45 am)

BILLING CODE 3110-01-M

Department of Agriculture	National Archives and Records Administration
7 CFR PART 3017	36 CFR PART 1208
Department of Energy	Department of Veterans Affairs
10 CFR PART 1036	38 CFR PART 44
Small Business Administration	Environmental Protection Agency
13 CFR PART 145	40 CFR PART 32
National Aeronautics and Space Administration	General Services Administration
14 CFR PART 1255	41 CFR PART 105-65
Department of Commerce	Department of the Interior
15 CFR PART 20	43 CFR PART 12
Department of State	Federal Emergency Management Agency
22 CFR PART 137	44 CFR PART 17
International Development Cooperation Agency	Department of Health and Human Services
Agency for International Development	45 CFR PART 70
22 CFR PART 208	National Science Foundation
Peace Corps	45 CFR PART 620
22 CFR PART 310	National Foundation on the Arts and the Humanities
United States Information Agency	National Endowment for the Arts
22 CFR PART 513	45 CFR PART 1154
Inter-American Foundation	National Endowment for the Humanities
22 CFR PART 1008	45 CFR PART 1160
African Development Foundation	Institute of Museum Services
22 CFR PART 1508	45 CFR PART 1185
Department of Housing and Urban Development	ACTION
24 CFR PART 24	45 CFR PART 1228
Department of Justice	Commission on the Bicentennial of the United States Constitution
28 CFR PART 87	48 CFR PART 2018
Department of Labor	Department of Transportation
29 CFR PART 98	49 CFR PART 20
Federal Mediation and Conciliation Service	Government-Wide Requirements for Drug-Free Workplace (Grants)
29 CFR PART 1471	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
Department of the Treasury	
31 CFR PART 10	
Department of Defense	
32 CFR PART 280	
Department of Education	
34 CFR PART 85	

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.

DATE: 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 (33 FR 4946), requesting public comments on it. The requirements of the interim final rule became applicable on March 18, 1989. The agencies received 25 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 _____ 505 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-37, 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 _____ 510 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 _____ 515 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 § _____ 820, 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 in subparagraphs (1) and (2) of a new paragraph (b) concerning grantees other than individuals.

Section _____ 519 Certification Requirements and Procedures

This new section replaces the former § _____ 520 (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 non-cost time extension for such a grant. There is a non-automatic continuation of 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 form 48 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 _____835 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 § _____835(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 § _____835(b).

Response to Comments

The following portion of the preamble lists the issues raised by public comments to the docket for the January 31, 1990, 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 90 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 90 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 § _____ 835(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 § _____.805(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 90 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 0991-0062.

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.

- _____600 Purpose.
- _____605 Definitions.
- _____610 Coverage.
- _____615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
- _____620 Effect of violation.
- _____625 Exception provision.
- _____630 Certification requirements and procedures.
- _____635 Reporting of and employee sanctions for convictions of criminal drug offenses.

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

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 1986 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 1986 for contractors with the agency are found at 48 CFR subparts 9.4, 23.5, and 33.2.

§ _____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. 312), 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.

§ 800.510 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.

§ 800.515 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 § 800.830;

(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.

§ 800.520 Effect of violation.

(a) In the event of a violation of this subpart as provided in § 800.515, 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 § 800.320(a)(2) of this part).

§ 800.525 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.

§ 800.830 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.

(c) 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.

(3) 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 0991-0902.)

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).

3. 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 (25 CFR 1009.11 through 1009.15).

"Conviction" means a finding of guilt (including a plea of not guilty) 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 subcontractors 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 employee 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. Employees 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 30 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 3017.830, 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 1388, South Building, Washington, DC 20250.

Under § 3017.835(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 § 3017.835(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)

Sec.
3017.800 Purpose.
3017.805 Definitions.
3017.810 Coverage.

Sec.
3017.815 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
3017.820 Effect of violation.
3017.825 Exception provision.
3017.830 Certification requirements and procedures.
3017.835 Reporting of and employee sanctions for convictions of criminal drug offenses.

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 23, 1990.

DEPARTMENT OF ENERGY

10 CFR Part 1036

RIN 1981-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. 95-61, 91 Stat. 599 (42 U.S.C. 7254 and 7256); Pub. L. 97-258, 98 Stat. 1063-1065 (31 U.S.C. 6301-6309).

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.
1036.800 Purpose.
1036.805 Definitions.
1036.810 Coverage.

9-2.

- 126.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
- 126.620 Effect of violation.
- 126.625 Exception provision.
- 126.630 Certification requirements and procedures.
- 126.635 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 708, Washington, DC 20416, (202) 653-6189.

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 Engelleiter,
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.); 5 U.S.C. 6347b(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.

B. 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. 205(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. Spiibas, Director, Office of Federal Assistance, HCIB 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)

- Sec.
- 26.600 Purpose.
- 26.605 Definitions.
- 26.610 Coverage.
- 26.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
- 26.620 Effect of violation.
- 26.625 Exception provision.
- 26.630 Certification requirements and procedures.
- 26.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

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) 875–7048.

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; 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.); 22 U.S.C. 2655a.

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)

- Sec.
- 137.600 Purpose.
- 137.605 Definitions.
- 137.610 Coverage.
- 137.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
- 137.620 Effect of violation.
- 137.625 Exception provision.
- 137.630 Certification requirements and procedures.
- 137.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

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; 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.); Sec. 821, Foreign Assistance Act of 1961, 22 U.S.C. 2091.

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)

Sec.	
208.600	Purpose.
208.605	Definitions.
208.610	Coverage.
208.615	Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
208.620	Effect of violation.
208.625	Exception provision.
208.630	Certification requirements and procedures.
208.635	Reporting of and employee sanctions for convictions of criminal drug offenses.

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.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.	
310.600	Purpose.
310.605	Definitions.
310.610	Coverage.
310.615	Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
310.620	Effect of violation.
310.625	Exception provision.
310.630	Certification requirements and procedures.
310.635	Reporting of and employee sanctions for convictions of criminal drug offenses.

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.

2. Subpart F and Appendix C to part 313 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.	
513.600	Purpose.
513.605	Definitions.
513.610	Coverage.
513.615	Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
513.620	Effect of violation.
513.625	Exception provision.
513.630	Certification requirements and procedures.
513.635	Reporting of and employee sanctions for convictions of criminal drug offenses.

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.

PEACE CORPS**22 CFR Part 310**

RIN 0420-AA05

FOR FURTHER INFORMATION CONTACT: John K. Scales, General Counsel, 202-688-3114.

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. Caverdell,
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. 5151-5180 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.

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 1811, 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. 485(c); Sec. 5151-5180 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.)

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. 5151-5180 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.