

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF COMMERCE

### Office of the Secretary

#### 2 CFR Part 1329

#### 15 CFR Part 29

[Docket No. 0907271171-91172-01]

RIN 0605-AA28

### U.S. Department of Commerce Implementation of OMB Guidance on Drug-Free Workplace Requirements

**AGENCY:** U.S. Department of Commerce, Office of the Secretary.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Department of Commerce is proposing to remove its regulation implementing the Governmentwide common rule on drug-free workplace requirements for financial assistance, and issuing a new regulation to adopt the Office of Management and Budget (OMB) guidance. This regulatory action implements the OMB's initiative to streamline and consolidate into one title of the CFR all Federal regulations on drug-free workplace requirements for financial assistance. These changes constitute an administrative simplification that would make no substantive change in U.S. Department of Commerce policy or procedures for drug-free workplace.

**DATES:** Submit comments by June 24, 2010 on any unintended changes this action makes in U.S. Department of Commerce policies and procedures for drug-free workplace. All comments on unintended changes will be considered and, if warranted, U.S. Department of Commerce will revise the rule.

**ADDRESSES:** You may submit comments, identified by RIN 0605-AA28, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Gary Johnson, Office of Acquisition Management, U.S. Department of Commerce, Room

H-6412, 1401 Constitution Avenue, NW., Washington, DC 20230.

• *Hand Delivery/Courier:* Same Address as Above.

*Instructions:* All submissions received must include the agency name and Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to Regulations.gov, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Gary Johnson, [Gjohnso3@doc.gov](mailto:Gjohnso3@doc.gov), 202 482-1679.

#### SUPPLEMENTARY INFORMATION:

##### Background

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

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

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

nonprocurement suspension and debarment in 2 CFR part 180.

As the next step in that process, OMB proposed for comment (73 FR 55776, September 26, 2008) and finalized (74 FR 28149, June 15, 2009) Governmentwide guidance with policies and procedures to implement drug-free workplace requirements for financial assistance. The guidance requires each agency to replace the common rule on drug-free workplace requirements that the agency previously issued in its own CFR title with a brief regulation in 2 CFR adopting the Governmentwide policies and procedures. One advantage of this approach is that it reduces the total volume of drug-free workplace regulations. A second advantage is that it collocates OMB's guidance and all of the agencies' implementing regulations in 2 CFR.

#### The Current Regulatory Actions

As the OMB guidance requires, the Department of Commerce is taking two regulatory actions. First, we are proposing to remove the drug-free workplace common rule from 15 CFR Part 29. Second, to replace the common rule, we propose to issue a brief regulation in 2 CFR Part 1329 to adopt the Governmentwide policies and procedures in the OMB guidance.

#### Invitation to Comment

Taken together, these regulatory actions are solely an administrative simplification and are not intended to make any substantive change in policies or procedures. In soliciting comments on these actions, we therefore are not seeking to revisit substantive issues that were resolved during the development of the final common rule in 2003. We are inviting comments specifically on any unintended changes in substantive content that the new part in 2 CFR would make relative to the common rule at 15 CFR part 29.

#### Executive Order 12866

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

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

Pursuant to section 605(b), the Chief Council for Regulations certified to the Chief Council for Advocacy at the Small Business Administration that the attached proposed rule, if adopted, will

not have a significant economic impact on a substantial number of small entities.

The U.S. Department of Commerce is proposing to remove its regulation implementing the Governmentwide common rule on drug-free workplace requirements for financial assistance, currently located within part 29 of title 15 of the Code of Federal Regulations (CFR), and issuing a new regulation to adopt the Office of Management and Budget (OMB) guidance at 2 CFR part 182. This regulatory action implements the OMB's initiative to streamline and consolidate into one title of the CFR all Federal regulations on drug-free workplace requirements for financial assistance. This regulatory change does not impact any small entities as these changes constitute an administrative simplification that would make no substantive change in U.S. Department of Commerce policy or procedures for a drug-free workplace. For the reasons set forth above, this action will not have a significant impact on a substantial number of small entities.

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

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

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

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

**Federalism (Executive Order 13132)**

This proposed regulatory action does not have Federalism implications, as set forth in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

**List of Subjects**

*2 CFR Part 1329*

Administrative practice and procedure, Drug abuse, Grant programs,

Reporting and recordkeeping requirements.

*15 CFR Part 29*

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

Issued on May 20, 2010 at Washington, DC.

**Helen Hurcombe,**

*Director for Acquisition Management and Procurement Executive.*

Accordingly, for the reasons set forth in the preamble, and under the authority of 5 U.S.C. 301 and 41 U.S.C. 701 *et seq.*, the U. S. Department of Commerce proposes to add 2 CFR 1329 and remove 15 CFR 29 as follows:

**Title 2**

1. Add part 1329 in subtitle B, chapter 13, to read as follows:

**PART 1329—REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)**

Sec.

1329.10 What does this part do?

1329.20 Does this Part apply to me?

1329.30 What policies and procedures must I follow?

**Subpart A—[Reserved]**

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

1329.225 Whom in the Department of Commerce does a recipient other than an individual notify about a criminal drug conviction?

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

1329.300 Whom in the Department of Commerce does a recipient who is an individual notify about a criminal drug conviction?

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

1329.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

**Subpart E—Violations of This Part and Consequences**

1329.500 Who in the Department of Commerce determines that a recipient other than an individual violated the requirements of this part?

1329.505 Who in the Department of Commerce determines that a recipient

who is an individual violated the requirements of this part?

**Subpart F—[Reserved]**

**Authority:** 5 U.S.C. 301; 41 U.S.C. 701–707.

**§ 1329.10 What does this part do?**

This part requires that the award and administration of Department of Commerce grants and cooperative agreements comply with Office of Management and Budget (OMB) guidance implementing the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701–707, as amended, hereafter referred to as “the Act”) that applies to grants. It thereby—

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

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

**§ 1329.20 Does this part apply to me?**

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

(a) Recipient of a Department of Commerce grant or cooperative agreement; or

(b) Department of Commerce awarding official.

**§ 1329.30 What policies and procedures must I follow?**

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

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

Section of OMB guidance	Section in this part where supplemented	What the supplementation clarifies
(1) 2 CFR 182.225(a) .....	§ 1329.225 .....	Whom in the Department of Commerce a recipient other than an individual must notify if an employee is convicted for a violation of a criminal drug statute in the workplace.

Section of OMB guidance	Section in this part where supplemented	What the supplementation clarifies
(2) 2 CFR 182.300(b) .....	§ 1329.300 .....	Whom in the Department of Commerce a recipient who is an individual must notify if he or she is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity.
(3) 2 CFR 182.500 .....	§ 1329.500 .....	Who in the Department of Commerce is authorized to determine that a recipient other than an individual is in violation of the requirements of 2 CFR part 182, as implemented by this Part.
(4) 2 CFR 182.505 .....	§ 1329.505 .....	Who in the Department of Commerce is authorized to determine that a recipient who is an individual is in violation of the requirements of 2 CFR part 182, as implemented by this Part.

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

#### Subpart A—[Reserved]

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

##### § 1329.225 Whom in the Department of Commerce does a recipient other than an individual notify about a criminal drug conviction?

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

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

##### § 1329.300 Whom in the Department of Commerce does a recipient who is an individual notify about a criminal drug conviction?

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

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

##### § 1329.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

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

*Drug-free workplace.* You as the recipient must comply with drug-free workplace requirements in subpart B (or subpart C, if the recipient is an

individual) of 2 CFR part 1329, which adopts the Governmentwide implementation (2 CFR part 182) of sec. 5152–5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701–707).

#### Subpart E—Violations of This Part and Consequences

##### § 1329.500 Who in the Department of Commerce determines that a recipient other than an individual violated the requirements of this Part?

The Secretary of Commerce or designee.

##### § 1329.505 Who in the Department of Commerce determines that a recipient who is an individual violated the requirements of this Part?

The Secretary of Commerce or designee.

#### Subpart F—Definitions [Reserved]

#### Title 15, Commerce and Foreign Trade

#### PART 29—[REMOVED AND RESERVED]

##### 2. Remove and reserve part 29.

[FR Doc. 2010–12536 Filed 5–24–10; 8:45 am]

BILLING CODE 3510–03–P

#### DEPARTMENT OF JUSTICE

#### 28 CFR Part 26

[Docket No. OJP 1464; AG Order No. 3157–2010]

RIN 1121–AA76

#### Office of the Attorney General; Certification Process for State Capital Counsel Systems; Removal of Final Rule

**AGENCY:** Office of the Attorney General, Department of Justice.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Pursuant to the USA PATRIOT Improvement and Reauthorization Act of 2005, the Department of Justice promulgated a

final rule to implement certification procedures for States seeking to qualify for the special Federal habeas corpus review procedures in capital cases afforded under chapter 154 of title 28 of the United States Code. *See Certification Process for State Capital Counsel Systems*, 73 FR 75327 (Dec. 11, 2008). A Federal district court issued an injunction requiring the Department to provide an additional public comment period and publish a response to any comments received during that period. The Department then solicited further public comments. By this proposed rule, the Department is proposing to remove the December 11, 2008 regulations. The Department will issue new regulations on this subject by separate rulemaking after the December 2008 regulations are removed.

**DATES:** Written comments must be postmarked and electronic comments must be submitted on or before June 24, 2010. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after Midnight Eastern Time on the last day of the comment period.

**ADDRESSES:** Comments may be mailed to Regulations Docket Clerk, Office of Legal Policy, Department of Justice, 950 Pennsylvania Avenue, NW., Room 4234, Washington, DC 20530. To ensure proper handling, please reference OAG Docket No. 1464 on your correspondence. You may submit comments electronically or view an electronic version of this proposed rule at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Molly J. Moran, Office of Legal Policy, at (202) 514–4601 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

*Posting of Public Comments.* Please note that all comments received are considered part of the public record and made available for public inspection online at <http://www.regulations.gov>. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.