

Proposed Rules

Federal Register

Vol. 73, No. 188

Friday, September 26, 2008

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.

OFFICE OF MANAGEMENT AND BUDGET

2 CFR Parts 1 and 182

Guidance for Drug-Free Workplace Requirements (Financial Assistance)

AGENCY: Office of Management and Budget.

ACTION: Proposed guidance.

SUMMARY: The Office of Management and Budget (OMB) is proposing guidance on drug-free workplace requirements for financial assistance. The guidance conforms with the common rule that 31 Federal agencies published on November 26, 2003 and therefore makes no substantive change to Federal policies and procedures in this area. The agencies issued that common rule after resolving public comments received in response to a Notice of Proposed Rulemaking.

OMB is proposing to issue this guidance as an administrative simplification that will streamline the policy framework for drug-free workplace requirements in two ways. First, the guidance is in a form suitable for Federal agency adoption, which will reduce the volume of Federal regulations on drug-free workplace, make it easier for the affected public to use them, and make it easier and less expensive for the Federal Government to maintain them. Second, the guidance is located in the recently established Title 2 of the Code of Federal Regulations (2 CFR). Locating the OMB guidance in 2 CFR will make it easier to find. It also is the first step toward collocating in the same CFR title the agencies' regulations that implement the guidance, a further simplification for the public.

This notice also proposes a minor change to the previously issued 2 CFR part 1, to conform that part with the guidance published today.

DATES: Comments are due on or before October 27, 2008.

ADDRESSES: Due to potential delays in OMB's receipt and processing of mail

sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date.

Comments may be sent to via <http://www.regulations.gov>—a Federal E-Government Web site that allows the public to find, review, and submit comments on documents that agencies have published in the **Federal Register** and that are open for comment. Simply type "drug-free workplace guidance" (in quotes) in the Comment or Submission search box, click Go, and follow the instructions for submitting comments. Comments received by the date specified above will be included as part of the official record.

Comments may be e-mailed to: mpridgen@omb.eop.gov. Please include "drug-free workplace guidance" in the subject line of your e-mail message. Also, please include the full body of your comments in the text of the electronic message, as well as in an attachment. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments may also be submitted via facsimile to (202) 395-3952.

Comments may be mailed to Marguerite Pridgen, Office of Federal Financial Management, Office of Management and Budget, Room 6025, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Marguerite Pridgen, Office of Federal Financial Management, Office of Management and Budget, telephone (202) 395-7844 (direct) or (202) 395-3993 (main office) and e-mail: mpridgen@omb.eop.gov.

SUPPLEMENTARY INFORMATION:

Background. Congress established drug-free workplace requirements for Federal grant recipients in section 5153 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D, which was enacted November 18, 1988). Section 5156 of the Act (41 U.S.C. 705) requires Governmentwide regulations to implement the requirements.

In the initial implementation of the Act, OMB issued guidance (54 FR 4946, January 31, 1989) in conjunction with agencies' issuance of a common rule (54 FR 4947). Each agency adopted the

common rule in a new subpart added to the existing common rule on nonprocurement debarment and suspension. On November 26, 2003 (68 FR 66534), the agencies updated the common rule on drug-free workplace requirements and converted it to plain language. Each agency at that time also relocated the drug-free workplace coverage to its own CFR part and removed it from the subpart in the debarment and suspension common rule.

OMB and an interagency working group helping to implement the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106-107) subsequently proposed a better way to implement Governmentwide requirements, as an alternative to common rules. The alternative is to publish the full text of the implementation as OMB guidance in a form that each agency can adopt in a short regulation, without repeating the full text in the way that a common rule does. The advantages of the approach are to make a rule easier for the affected public to use and easier and less expensive for the Government to maintain. As the first step toward putting this new approach in place, the common rule on nonprocurement debarment and suspension was converted to OMB guidance. The **Federal Register** notices associated with that conversion (70 FR 51863 and 71 FR 66431) provide more details about the advantages of converting from common rules to adoptable OMB guidance.

In conjunction with the shift to adoptable guidance, OMB and the interagency working group also proposed to create a single title in the Code of Federal Regulations (CFR) in which OMB would publish its guidance for grants and agreements and agencies would publish their regulations implementing it. That helps recipients who do business with multiple Federal agencies, by creating one title in which they can find different agencies' regulations that previously were published in many separate CFR titles. On May 11, 2004, OMB established title 2 of the CFR for that purpose [69 FR 26276].

Purpose of this action. Today's notice proposes OMB guidance for drug-free workplace requirements in a new CFR part—2 CFR part 182—and in a form that agencies may adopt. We also will

maintain the guidance at the OMB Web site (http://www.whitehouse.gov/omb/grants/grants_docs.html), for the benefit of individuals who would prefer to access it there.

Once we resolve any comments received on the proposed guidance and issue it in final form, each agency will publish a short regulation adopting the guidance in its chapter of 2 CFR. An agency's regulation will give regulatory effect to the OMB guidance on drug-free workplace for its financial assistance awards and recipients. The agency also will remove the full text of the current common rule on drug-free workplace from its CFR title.

Structure and content of the guidance. Our intent is to issue OMB guidance that is substantively unchanged from the drug-free workplace common rule that the agencies issued in November 2003. We modified some of the structure and language of the common rule, however, to create a part that reads properly as OMB guidance to agencies rather than an agency regulation.

The most significant structural changes are in sections 182.5 to 182.40, which precede subpart A. The primary purpose of those sections is to instruct Federal agencies on the use of 2 CFR part 182. Sections 182.20 through 182.35, for example, tell agencies that they must issue regulations to implement the drug-free workplace guidance, identify required and optional content for those regulations, and specify where and when the agencies must issue the regulations. Most of these sections have no counterparts in the November 2003 common rule because it was designed to be an agency rule rather than OMB guidance.

Subparts A through F of 2 CFR part 182 contain the guidance that an agency will adopt to specify its drug-free

workplace policies and procedures. There is a minor restructuring in subpart A because the first two sections, 182.100 and 182.105, do not have counterparts in the November 2003 common rule. The intent of those added sections is to be helpful to the public reading the guidance. Subpart A also is the only portion of the guidance where section numbers vary from the common rule (due to the added sections at the beginning of the subpart, sections 182.110 through 182.125 correspond to sections _____.100 through _____.115 of the common rule). Other minor wording changes throughout subparts A through F are to make the document read properly as OMB guidance.

Invitation to comment. We are requesting comment on the proposed guidance for 30 days rather than a longer period, because: (1) The agencies published the final common rule in November 2003 after an opportunity for public comment; and (2) we believe that we have made no substantive changes from that common rule. In the future, the process for making any substantive changes to this guidance will include proposing the changes with an opportunity for public comment, in accordance with § 182.40 of the new part 182. In soliciting comments on this proposed guidance, we are not seeking to revisit substantive issues raised by comments and resolved by the agencies during preparation of the November 2003 final rule. However, we invite comments on any unintended changes we have made in the guidance relative to that common rule.

Next steps. We will finalize the guidance after resolving any comments received on the proposed version. At that time, each Federal agency that is a signatory to the drug-free workplace common rule then will issue a brief rule in its chapter of 2 CFR to adopt the

OMB guidance and will remove the November 2003 common rule from its own CFR title. We expect to complete the process in calendar year 2009.

Conforming 2 CFR part 1. We also are updating 2 CFR part 1 to add to the table in § 1.215 a citation to the previous location of the drug-free workplace requirements.

List of Subjects

2 CFR Part 1

Cooperative agreements, Grant programs, Grants administration.

2 CFR Part 182

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

Danny Werfel,

Deputy Controller.

Authority and Issuance

For the reasons set forth above, the Office of Management and Budget amends 2 CFR, subtitle A, as follows:

PART 1—[AMENDED]

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

Authority: 31 U.S.C. 503; 31 U.S.C. 1111; 41 U.S.C. 405; Reorganization Plan No. 2 of 1970; E.O. 11541, 35 FR 10737, 3 CFR, 1966–1970, p. 939.

2. Section 1.215 is revised to read as follows:

§ 1.215 Relationship to previous issuances.

Although some of the guidance was organized differently within OMB circulars or other documents, much of the guidance in this subtitle existed prior to the establishment of title 2 of the CFR. Specifically:

Guidance in . . .	On . . .	Previously was in . . .
(a) Chapter I, part 180	Nonprocurement debarment and suspension	OMB guidance that conforms with the government-wide common rule (see 60 FR 33036, June 26, 1995).
(b) Chapter I, part 182	Drug-free workplace requirements	OMB guidance (54 FR 4946, January 31, 1989) and a government-wide common rule (as amended at 68 FR 66534, November 26, 2003).
(c) Chapter II, part 215	Administrative requirements for grants and agreements.	OMB Circular A–110.
(d) Chapter II, part 220	Cost principles for educational institutions	OMB Circular A–21.
(e) Chapter II, part 225	Cost principles for State, local, and Indian tribal governments.	OMB Circular A–87.
(f) Chapter II, part 230	Cost principles for non-profit organizations	OMB Circular A–122.
(g) [Reserved.]		

Chapter I—[AMENDED]

3. Part 182 is added to Chapter I, to read as follows:

PART 182—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Sec.

- 182.5 What does this part do?
- 182.10 How is this part organized?
- 182.15 To whom does the guidance apply?
- 182.20 What must a Federal agency do to implement the guidance?
- 182.25 What must a Federal agency address in its implementation of the guidance?
- 182.30 Where does a Federal agency implement the guidance?
- 182.35 By when must a Federal agency implement the guidance?
- 182.40 How is the guidance maintained?

Subpart A—Purpose and Coverage

- 182.100 How is this part written?
- 182.105 Do terms in this part have special meanings?
- 182.110 What do subparts A through F of this part do?
- 182.115 Does this part apply to me?
- 182.120 Are any of my Federal assistance awards exempt from this part?
- 182.125 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

- 182.200 What must I do to comply with this part?
- 182.205 What must I include in my drug-free workplace statement?
- 182.210 To whom must I distribute my drug-free workplace statement?
- 182.215 What must I include in my drug-free awareness program?
- 182.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
- 182.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
- 182.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

- 182.300 What must I do to comply with this part if I am an individual recipient?

Subpart D—Responsibilities of Agency Awarding Officials

- 182.400 What are my responsibilities as an agency awarding official?

Subpart E—Violations of this Part and Consequences

- 182.500 How are violations of this part determined for recipients other than individuals?
- 182.505 How are violations of this part determined for recipients who are individuals?
- 182.510 What actions will the Federal Government take against a recipient determined to have violated this part?

- 182.515 Are there any exceptions to those actions?

Subpart F—Definitions

- 182.605 Award.
- 182.610 Controlled substance.
- 182.615 Conviction.
- 182.620 Cooperative agreement.
- 182.625 Criminal drug statute.
- 182.630 Debarment.
- 182.635 Drug-free workplace.
- 182.640 Employee.
- 182.645 Federal agency or agency.
- 182.650 Grant.
- 182.655 Individual.
- 182.660 Recipient.
- 182.665 State.
- 182.670 Suspension.

Authority: 41 U.S.C. 701, *et seq.*

§ 182.5 What does this part do?

This part provides Office of Management and Budget (OMB) guidance for Federal agencies on the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701–707, as amended) that applies to grants. It also applies the provisions of the Act to cooperative agreements and other financial assistance awards, as a matter of Federal Government policy.

§ 182.10 How is this part organized?

This part is organized in two segments.

(a) Sections 182.5 through 182.40 contain general policy direction for Federal agencies' use of the uniform policies and procedures in subparts A through F of this part.

(b) Subparts A through F of this part contain uniform governmentwide policies and procedures for Federal agency use to specify the—

- (1) Types of awards that are covered by drug-free workplace requirements;
- (2) Drug-free workplace requirements with which a recipient must comply;
- (3) Actions required of an agency awarding official; and
- (4) Consequences of a violation of drug-free workplace requirements.

§ 182.15 To whom does the guidance apply?

This part provides OMB guidance only to Federal agencies. Publication of this guidance in the Code of Federal Regulations does not change its nature—it is guidance and not regulation. Federal agencies' implementation of the guidance governs the rights and responsibilities of other persons affected by the drug-free workplace requirements.

§ 182.20 What must a Federal agency do to implement the guidance?

To comply with the requirement in Section 41 U.S.C. 705 for Governmentwide regulations, each

Federal agency that awards grants or cooperative agreements or makes other financial assistance awards that are subject to the drug-free workplace requirements in subparts A through F of the guidance must issue a regulation consistent with those subparts.

§ 182.25 What must a Federal agency address in its implementation of the guidance?

Each Federal agency's implementing regulation:

(a) Must establish drug-free workplace policies and procedures for that agency's awards that are consistent with the guidance in this part. When adopted by a Federal agency, the provisions of the guidance have regulatory effect for that agency's awards.

(b) Must address some matters for which the guidance in this part gives the agency discretion. Specifically, the regulation must—

- (1) State whether the agency:
 - (i) Has a central point to which a recipient may send the notification of a conviction that is required under § 182.225(a) or § 182.300(b); or
 - (ii) Requires the recipient to send the notification to the awarding official for each agency award, or to his or her official designee.

(2) Either:

(i) State that the agency head is the official authorized to determine under § 182.500 or § 182.505 that a recipient has violated the drug-free workplace requirements; or

(ii) Provide the title of the official designated to make that determination.

(c) May also, at the agency's option, identify any specific types of financial assistance awards, in addition to grants and cooperative agreements, to which the Federal agency makes this guidance applicable.

§ 182.30 Where does a Federal agency implement the guidance?

Each Federal agency that awards grants or cooperative agreements or makes other financial assistance awards that are subject to the drug-free workplace guidance in this part must issue a regulation implementing the guidance within its chapter in subtitle B of this title of the Code of Federal Regulations.

§ 182.35 By when must a Federal agency implement the guidance?

Federal agencies must submit proposed regulations to the OMB for review within nine months of the final issuance of this part and issue final regulations within eighteen months of the guidance.

§ 182.40 How is the guidance maintained?

The OMB publishes proposed changes to the guidance in the **Federal Register** for public comment, considers comments with the help of appropriate interagency working groups, and then issues any changes to the guidance in final form.

Subpart A—Purpose and Coverage**§ 182.100 How is this part written?**

(a) This part uses a “plain language” format to make it easier for the general public and business community to use and understand. The section headings and text, often in the form of questions and answers, must be read together.

(b) Pronouns used within this part, such as “I” and “you,” change from subpart to subpart depending on the audience being addressed.

§ 182.105 Do terms in this part have special meanings?

This part uses terms that have special meanings. Those terms are defined in subpart F of this part.

§ 182.110 What do subparts A through F of this part do?

Subparts A through F of this part specify standard policies and procedures to carry out the Drug-Free Workplace Act of 1988 for financial assistance awards.

§ 182.115 Does this part apply to me?

(a) Portions of this part apply to you if you are either—

(1) A recipient of a Federal assistance award (see definitions of award and recipient in §§ 182.605 and 182.660, respectively); or

(2) A Federal agency awarding official.

(b) The following table shows the subparts that apply to you:

If you are . . .	see subparts . . .
(1) a recipient who is not an individual.	A, B and E.
(2) a recipient who is an individual.	A, C and E.
(3) a Federal agency awarding official.	A, D and E.

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

This part does not apply to any award to which the agency head, or his or her designee, determines that the application of this part would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government.

§ 182.125 Does this part affect the Federal contracts that I receive?

This part will affect future contract awards indirectly if you are debarred or suspended for a violation of the requirements of this part, as described in § 182.510(c). However, this part does not apply directly to procurement contracts. The portion of the Drug-Free Workplace Act of 1988 that applies to Federal procurement contracts is carried out through the Federal Acquisition Regulation in chapter 1 of Title 48 of the Code of Federal Regulations (the drug-free workplace coverage currently is in 48 CFR part 23, subpart 23.5).

Subpart B—Requirements for Recipients Other Than Individuals**§ 182.200 What must I do to comply with this part?**

There are two general requirements if you are a recipient other than an individual.

(a) First, you must make a good faith effort, on a continuing basis, to maintain a drug-free workplace. You must agree to do so as a condition for receiving any award covered by this part. The specific measures that you must take in this regard are described in more detail in subsequent sections of this subpart. Briefly, those measures are to—

(1) Publish a drug-free workplace statement and establish a drug-free awareness program for your employees (see §§ 182.205 through 182.220); and

(2) Take actions concerning employees who are convicted of violating drug statutes in the workplace (see § 182.225).

(b) Second, you must identify all known workplaces under your Federal awards (see § 182.230).

§ 182.205 What must I include in my drug-free workplace statement?

You must publish a statement that—
(a) Tells your employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in your workplace;

(b) Specifies the actions that you will take against employees for violating that prohibition; and

(c) Lets each employee know that, as a condition of employment under any award, he or she:

(1) Will abide by the terms of the statement; and

(2) Must notify you in writing if he or she is convicted for a violation of a criminal drug statute occurring in the workplace and must do so no more than five calendar days after the conviction.

§ 182.210 To whom must I distribute my drug-free workplace statement?

You must require that a copy of the statement described in § 182.205 be given to each employee who will be engaged in the performance of any Federal award.

§ 182.215 What must I include in my drug-free awareness program?

You must establish an ongoing drug-free awareness program to inform employees about—

(a) The dangers of drug abuse in the workplace;

(b) Your policy of maintaining a drug-free workplace;

(c) Any available drug counseling, rehabilitation, and employee assistance programs; and

(d) The penalties that you may impose upon them for drug abuse violations occurring in the workplace.

§ 182.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?

If you are a new recipient that does not already have a policy statement as described in § 182.205 and an ongoing awareness program as described in § 182.215, you must publish the statement and establish the program by the time given in the following table:

If . . .	Then you . . .
(a) the performance period of the award is less than 30 days	must have the policy statement and program in place as soon as possible, but before the date on which performance is expected to be completed.
(b) the performance period of the award is 30 days or more	must have the policy statement and program in place within 30 days after award.
(c) you believe there are extraordinary circumstances that will require more than 30 days for you to publish the policy statement and establish the awareness program.	may ask the agency awarding official to give you more time to do so. The amount of additional time, if any, to be given is at the discretion of the awarding official.

§ 182.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?

There are two actions you must take if an employee is convicted of a drug violation in the workplace:

(a) First, you must notify Federal agencies if an employee who is engaged in the performance of an award informs you about a conviction, as required by § 182.205(c)(2), or you otherwise learn of the conviction. Your notification to the Federal agencies must—

- (1) Be in writing;
- (2) Include the employee's position title;
- (3) Include the identification number(s) of each affected award;
- (4) Be sent within ten calendar days after you learn of the conviction; and
- (5) Be sent to every Federal agency on whose award the convicted employee was working. It must be sent to every awarding official or his or her official designee, unless the Federal agency has specified a central point for the receipt of the notices.

(b) Second, within 30 calendar days of learning about an employee's conviction, you must either—

- (1) Take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended; or
- (2) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for these purposes by a Federal, State or local health, law enforcement, or other appropriate agency.

§ 182.230 How and when must I identify workplaces?

(a) You must identify all known workplaces under each agency award. A failure to do so is a violation of your drug-free workplace requirements. You may identify the workplaces—

- (1) To the agency official that is making the award, either at the time of application or upon award; or
- (2) In documents that you keep on file in your offices during the performance of the award, in which case you must make the information available for inspection upon request by agency officials or their designated representatives.

(b) Your workplace identification for an award must include the actual address of buildings (or parts of buildings) or other sites where work under the award 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).

(c) If you identified workplaces to the agency awarding official at the time of application or award, as described in paragraph (a)(1) of this section, and any workplace that you identified changes during the performance of the award, you must inform the agency awarding official.

Subpart C—Requirements for Recipients Who Are Individuals

§ 182.300 What must I do to comply with this part if I am an individual recipient?

As a condition of receiving a Federal agency award, if you are an individual recipient, you must agree that—

- (a) You will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity related to the award; and
- (b) If you are convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity, you will report the conviction:

- (1) In writing.
- (2) Within 10 calendar days of the conviction.
- (3) To the Federal agency awarding official or other designee for each award that you currently have, unless the agency designates a central point for the receipt of the notices, either in the award document or its regulation implementing the guidance in this part. When notice is made to a central point, it must include the identification number(s) of each affected award.

Subpart D—Responsibilities of Agency Awarding Officials

§ 182.400 What are my responsibilities as an agency awarding official?

As a Federal agency awarding official, you must obtain each recipient's agreement, as a condition of the award, to comply with the requirements in—

- (a) Subpart B of this part, if the recipient is not an individual; or
- (b) Subpart C of this part, if the recipient is an individual.

Subpart E—Violations of This Part and Consequences

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

A recipient other than an individual is in violation of the requirements of this part if the agency head or his or her designee determines, in writing, that—

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

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

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

An individual recipient is in violation of the requirements of this part if the agency head or his or her designee determines, in writing, that—

- (a) The recipient has violated the requirements of Subpart C of this part; or
- (b) The recipient is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity.

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

If a recipient is determined to have violated this part, as described in § 182.500 or § 182.505, the agency may take one or more of the following actions—

- (a) Suspension of payments under the award;
- (b) Suspension or termination of the award; and
- (c) Suspension or debarment of the recipient under the agency's regulation implementing the OMB guidance on nonprocurement debarment and suspension (2 CFR part 180), for a period not to exceed five years.

§ 182.515 Are there any exceptions to those actions?

The agency head may waive with respect to a particular award, in writing, a suspension of payments under an award, suspension or termination of an award, or suspension or debarment of a recipient 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.

Subpart F—Definitions

§ 182.605 Award.

Award means an award of financial assistance by a Federal agency directly to a recipient.

(a) The term award includes:

- (1) A Federal grant or cooperative agreement, in the form of money or property in lieu of money.
- (2) A block grant or a grant in an entitlement program, whether or not the grant is exempted from coverage under the Governmentwide rule that implements OMB Circular A-102 (for availability of OMB circulars, see 5 CFR 1310.3) and specifies uniform administrative requirements.

(b) The term award does not include:

- (1) Technical assistance that provides services instead of money.
- (2) Loans.
- (3) Loan guarantees.
- (4) Interest subsidies.
- (5) Insurance.
- (6) Direct appropriations.
- (7) 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).

§ 182.610 Controlled substance.

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 at 21 CFR 1308.11 through 1308.15.

§ 182.615 Conviction.

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.

§ 182.620 Cooperative agreement.

Cooperative agreement means an award of financial assistance that, consistent with 31 U.S.C. 6305, is used to enter into the same kind of relationship as a grant (see definition of grant in § 182.650), except that substantial involvement is expected between the Federal agency and the recipient when carrying out the activity contemplated by the award. The term does not include cooperative research and development agreements as defined in 15 U.S.C. 3710a.

§ 182.625 Criminal drug statute.

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance.

§ 182.630 Debarment.

Debarment means an action taken by a Federal agency to prohibit a recipient from participating in Federal Government procurement contracts and covered nonprocurement transactions. A recipient so prohibited is debarred, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and agency regulations implementing the OMB guidance on nonprocurement debarment and suspension (2 CFR part 180, which implements Executive Orders 12549 and 12689).

§ 182.635 Drug-free workplace.

Drug-free workplace means a site for the performance of work done in connection with a specific award at which employees of the recipient are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

§ 182.640 Employee.

(a) Employee means the employee of a recipient directly engaged in the performance of work under the award, including—

- (1) All direct charge employees;
- (2) All indirect charge employees, unless their impact or involvement in the performance of work under the award is insignificant to the performance of the award; and
- (3) Temporary personnel and consultants who are directly engaged in the performance of work under the award and who are on the recipient's payroll.

(b) This definition does not include workers not on the payroll of the recipient (*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).

§ 182.645 Federal agency or agency.

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.

§ 182.650 Grant.

Grant means an award of financial assistance that, consistent with 31 U.S.C. 6304, is used to enter into a relationship—

(a) The principal purpose of which is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States, rather than to acquire property or services for the Federal Government's direct benefit or use; and

(b) In which substantial involvement is not expected between the Federal agency and the recipient when carrying out the activity contemplated by the award.

§ 182.655 Individual.

Individual means a natural person.

§ 182.660 Recipient.

Recipient means any individual, corporation, partnership, association,

unit of government (except a Federal agency) or legal entity, however organized, that receives an award directly from a Federal agency.

§ 182.665 State.

State means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

§ 182.670 Suspension.

Suspension means an action taken by a Federal agency that immediately prohibits a recipient from participating in Federal Government procurement contracts and covered nonprocurement transactions for a temporary period, pending completion of an investigation and any judicial or administrative proceedings that may ensue. A recipient so prohibited is suspended, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and agency regulations implementing the OMB guidance on nonprocurement debarment and suspension (2 CFR part 180, which implements Executive Orders 12549 and 12689). Suspension of a recipient is a distinct and separate action from suspension of an award or suspension of payments under an award.

[FR Doc. E8–22717 Filed 9–25–08; 8:45 am]

BILLING CODE 3110–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0018; Directorate Identifier 2007–NM–145–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes and Model A300–600 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: The FAA is revising an earlier NPRM for an airworthiness directive (AD) that applies to all Airbus Model A310 series airplanes and Model A300–600 series airplanes. The original NPRM would have required superseding two existing ADs. One existing AD applies to certain Airbus Model A310 series airplanes and currently requires