

# Rules and Regulations

Federal Register

Vol. 75, No. 81

Wednesday, April 28, 2010

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### 2 CFR Part 2245

### 45 CFR Part 2545

RIN 3045-AA53

### Implementation of OMB Guidance on Drug-Free Workplace Requirements

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Final rule.

**SUMMARY:** The Corporation for National and Community Service (CNCS or the Corporation) is removing its regulation implementing the Government-wide common rule on drug-free workplace requirements for financial assistance, currently located within part 2545 of title 45 of the Code of Federal Regulations (CFR), and issuing a new regulation to adopt the Office of Management and Budget (OMB) guidance at 2 CFR part 182. This regulatory action implements the OMB's initiative to streamline and consolidate into one title of the CFR all federal regulations on drug-free workplace requirements for financial assistance. These changes constitute an administrative simplification that would make no substantive change in the Corporation's policy or procedures for drug-free workplace.

**DATES:** This final rule is effective on June 28, 2010 without further action. Submit comments by May 28, 2010 on any unintended changes this action makes in the Corporation's policies and procedures for drug-free workplace. All comments on unintended changes will be considered and, if warranted, the Corporation will revise the rule.

**ADDRESSES:** You may submit comments, identified by the title of this rulemaking, by either of the following methods:

(1) Electronically through the Federal government's one-stop rulemaking Web site at <http://www.regulations.gov>.

(2) By mail sent to: Irshad Abdal-Haqq, Office of the General Counsel, Corporation for National and Community Service, 1201 New York Ave. NW., Room 10609, Washington, DC 20525

(3) By hand delivery or by courier to the Corporation's mailroom at Room 8100 using the name and mailing address in paragraph (2) above, between 9 a.m. and 4 p.m., Monday through Friday, except on Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Irshad Abdal-Haqq at 202-606-6675, or by e-mail at [iabdal-haqq@cns.gov](mailto:iabdal-haqq@cns.gov).

#### SUPPLEMENTARY INFORMATION:

#### Background

The Drug-Free Workplace Act of 1988 [Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701, *et seq.*] was enacted as a part of omnibus drug legislation on November 18, 1988. Federal agencies issued an interim final common rule to implement the act as it applied to grants [54 FR 4946, January 31, 1989]. The rule was a subpart of the Government-wide 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]. At that time, the updated common rule was redrafted in plain language and each agency relocated the drug-free workplace coverage to its own CFR part and removed it from the subpart in the suspension and debarment common rule. 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] Government-wide 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] Government-wide 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 Government-wide 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 Corporation is taking two regulatory actions. First, we are removing the drug-free workplace common rule from 45 CFR part 2545. Second, to replace the common rule, we are issuing a brief regulation in 2 CFR part 2245 to adopt the Government-wide 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 45 CFR part 2545.

#### Administrative Procedure Act

Under the Administrative Procedure Act (5 U.S.C. 553), agencies generally propose a regulation and offer interested parties the opportunity to comment before it becomes effective. However, as described in the "Background" section

of this preamble, the policies and procedures in this regulation have been proposed for comment two times—one time by federal agencies as a common rule in 2002 and a second time by OMB as guidance in 2008—and adopted each time after resolution of the comments received.

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

Accordingly, we find that the solicitation of public comments on this direct final rule is unnecessary and that “good cause” exists under 5 U.S.C. 553(b)(B) and 553(d) to make this rule effective on June 28, 2010 without further action, unless we receive adverse comment by May 28, 2010. If any comment on unintended changes is received, it will be considered and, if warranted, we will publish a timely revision of the rule.

#### Executive Order 12866

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

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

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

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

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

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

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

#### Federalism (Executive Order 13132)

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

substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

#### List of Subjects

##### 2 CFR Part 2245

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

##### 45 CFR Part 2545

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

■ Accordingly, for the reasons set forth in the preamble, and under the authority of 5 U.S.C. 301 and 42 U.S.C. 12561c(c), the Corporation amends the Code of Federal Regulations, Title 2, subtitle B, chapter XXII, and Title 45, chapter XXV, part 2545, as follows:

#### Title 2—Grants and Agreements

■ 1. Add part 2245 in Subtitle B, Chapter XXII, to read as follows:

#### PART 2245—REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Sec.

2245.10 What does this part do?

2245.20 Does this part apply to me?

2245.30 What policies and procedures must I follow?

#### Subpart A—[Reserved]

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

2245.225 Whom in the Corporation does a recipient other than an individual notify about a criminal drug conviction?

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

2245.300 Whom in the Corporation does a recipient who is an individual notify about a criminal drug conviction?

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

2245.400 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

2245.500 Who in the Corporation determines that a recipient other than an

individual violated the requirements of this part?

2245.505 Who in the Corporation determines that a recipient who is an individual violated the requirements of this part?

#### Subpart F—[Reserved]

**Authority:** 41 U.S.C. 701–707; 42 U.S.C. 12644.

#### § 2245.10 What does this part do?

This part requires that the award and administration of the Corporation's 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 Corporation's grants and cooperative agreements; and

(b) Establishes the Corporation's 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 Government-wide implementing regulations.

#### § 2245.20 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 Corporation grant or cooperative agreement; or

(b) A Corporation awarding official.

#### § 2245.30 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) ....	§ 2245.225	Whom in the Corporation 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) ....	§ 2245.300	Whom in the Corporation 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 .....	§ 2245.500	Who in the Corporation 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 .....	§ 2245.505	Who in the Corporation 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, the Corporation's policies and procedures are the same as those in the OMB guidance.

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

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

##### **§ 2245.225 Whom in the Corporation does a recipient other than an individual notify about a criminal drug conviction?**

A recipient other than an individual that is required under 2 CFR 182.225(a) to notify Federal agencies about an employee's conviction for a criminal drug offense must notify the Corporation's awarding official or other designee.

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

##### **§ 2245.300 Whom in the Corporation does a recipient who is an individual notify about a criminal drug conviction?**

A recipient who is an individual and is required under 2 CFR 182.300(b) to notify Federal agencies about a conviction for a criminal drug offense must notify the Corporation's awarding official or other designee.

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

##### **§ 2245.400 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 obtain each recipient's agreement, as a condition of the award, to comply with the requirements in subpart B (or subpart C, if the recipient is an individual) of 2245, which adopts the Government-wide 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**

##### **§ 2245.500 Who in the Corporation determines that a recipient other than an individual violated the requirements of this part?**

The Corporation's Chief Executive Officer or designee is authorized to make the determination under 2 CFR 182.500.

##### **§ 2245.505 Who in the Corporation determines that a recipient who is an individual violated the requirements of this part?**

The Corporation's Chief Executive Officer or designee is authorized to make the determination under 2 CFR 182.500.

#### **Subpart F—[Reserved]**

#### **Title 45—Public Welfare**

#### **Chapter XXV—Corporation for National and Community Service**

#### **PART 2545—[REMOVED]**

■ 2. Under the authority of 5 U.S.C. 301, and 42 U.S.C. 12651c(c), remove part 2545.

Dated: April 14, 2010.

Frank R. Trinity,  
General Counsel.

[FR Doc. 2010–8989 Filed 4–27–10; 8:45 am]

BILLING CODE 6050–SS–P

#### **DEPARTMENT OF AGRICULTURE**

#### **Animal and Plant Health Inspection Service**

#### **7 CFR Part 319**

[Docket No. APHIS-2008-0050]

RIN 0579-AC95

#### **Importation of Papayas From Colombia and Ecuador**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the fruits and vegetables regulations to allow, under certain conditions, the importation of commercial shipments of fresh papayas from Colombia and Ecuador into the continental United States. The conditions for the importation of papayas from Colombia and Ecuador include requirements for field sanitation, hot water treatment, and fruit fly trapping in papaya production areas. This action allows for the importation of papayas from Colombia and Ecuador while continuing to provide protection against the introduction of injurious plant pests into the continental United States.

**DATES:** *Effective Date:* May 28, 2010.

**FOR FURTHER INFORMATION CONTACT:** Ms. Dorothy C. Wayson, Regulatory Coordination Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1231; (301) 734-0772.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Under the regulations in “Subpart-Fruits and Vegetables” (7 CFR 319.56 through 319.56-50, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

On April 21, 2009, we published in the **Federal Register** (74 FR 18161-18166, Docket No. APHIS-2008-0050) a proposal<sup>1</sup> to amend the regulations in § 319.56-25 to allow the importation of commercial consignments of fresh papayas from Colombia and Ecuador subject to a systems approach. Section 319.56-25 currently sets out conditions for the importation of papayas from Central America and Brazil; we

<sup>1</sup> To view the proposed rule and the comments we received, go to (<http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0050>).