

§ 12.600

lower tier covered transactions shall provide the same updated notice to the participant to which it submitted its proposals.

DRUG-FREE WORKPLACE REQUIREMENTS (GRANTS)

SOURCE: 55 FR 21688, 21701, May 25, 1990, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes for §§ 12.600 through 12.635 appear at 55 FR 21702, May 25, 1990.

§ 12.600 Purpose.

(a) The purpose of the drug-free workplace requirements for grants is to carry out the Drug-Free Workplace Act of 1988 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 1988 for contractors with the agency are found at 48 CFR subparts 9.4, 23.5, and 52.2.

§ 12.605 Definitions.

(a) Except as amended in this section, the definitions of § 12.105 apply to the drug-free workplace requirements for grants.

(b) For purposes of the drug-free workplace requirements for grants—

(1) *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;

(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, distribu-

43 CFR Subtitle A (10-1-02 Edition)

tion, 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.

§ 12.610 Coverage.

(a) The drug-free workplace requirements for grants applies to any grantee of the agency.

(b) The drug-free workplace requirements for grants applies to any grant, except where application of the drug-free workplace requirements for grants 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 subpart D apply to matters covered by the drug-free workplace requirements for grants, except where specifically modified by the drug-free workplace requirements for grants. In the event of any conflict between provisions of the drug-free workplace requirements for grants and other provisions of subpart D, the provisions of the drug-free workplace requirements for grants are deemed to control with respect to the implementation of drug-free workplace requirements concerning grants.

[55 FR 21688, 21701, May 25, 1990]

§ 12.615 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 the drug-free workplace requirements for grants if the agency head or his or her official designee determines, in writing, that—

(a) The grantee has made a false certification under § 12.630;

(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 paragraphs (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.

§ 12.620 Effect of violation.

(a) In the event of a violation of the drug-free workplace requirements for grants as provided in § 12.615, 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 subpart D.

(b) Upon issuance of any final decision under subpart D 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