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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

2 CFR Part 382

45 CFR Part 82

Implementation of OMB Guidance on Drug-Free Workplace Requirements

AGENCY: Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services (HHS or the Department) is removing its regulation implementing the Governmentwide common rule on drug-free workplace requirements for financial assistance, and issuing a new regulation to adopt 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 HHS policy or procedures for drug-free workplace.

DATES: This final rule is effective on January 11, 2010 without further action. Written comments must be received on or before 5 p.m. (Eastern Standard Time) on December 14, 2009 on any unintended changes this action makes in HHS policies and procedures for drug-free workplace. All comments on unintended changes will be considered and, if warranted, HHS will revise the rule.

ADDRESSES: You may submit comments by either of the following methods: E-mail: *Nancy.Weisman@hhs.gov,* or by mail: Nancy Weisman, HHS, Office of Grants Policy, Oversight and Evaluation, 200 Independence Ave., SW., Room 514–D Hubert H. Humphrey Building, Washington, DC 20201. Please state ''2 CFR part 382'' on the subject line.

FOR FURTHER INFORMATION CONTACT: Nancy Weisman at (202) 260–4573, or e-mail her at *Nancy.Weisman@hhs.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 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].

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 suspension and debarment common rule.

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 co-locates OMB's guidance and all of the agencies' implementing regulations in 2 CFR.

The Current Regulatory Actions

As the OMB guidance requires, HHS is taking two regulatory actions. First, we are removing the drug-free workplace common rule from 45 CFR part 82. Second, to replace the common rule, we are issuing a brief regulation in 2 CFR part 382 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 changes 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 82.

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 HHS 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 January 11, 2010 without further action, unless we receive adverse comment by December 14, 2009. 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 proposed 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 proposed 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 382

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

45 CFR Part 82

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

Dated: November 2, 2009.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

■ Accordingly, for the reasons set forth in the preamble, and under the authority of 5 U.S.C. 301, HHS amends the Code of Federal Regulations, Title 2, Subtitle B, chapter III, and Title 45 CFR, chapter I, part 82, as follows:

Title 2—Grants and Agreements

■ 1. Add part 382 in Subtitle B, Chapter III, to read as follows:

Sec.

PART 382—REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Authority: 41 U.S.C. 701–707.

§ 382.10 What does this part do?

This part requires that the award and administration of HHS 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 HHS grants and cooperative agreements; and

(b) Establishes HHS 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.

§ 382.20 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 an HHS grant or cooperative agreement; or

(b) HHS awarding official.

§ 382.30 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)	§ 382.225	Whom in HHS a recipient other than an individual must notify if an employee is convicted for a violation of a criminal drug statute in the workplace.
(2) 2 CFR 182.300(b)	§ 382.300	Whom in HHS 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	§ 382.500	Who in HHS 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.

Section of OMB guidance	Section in this part where supplemented	What the supplementation clarifies
(4) 2 CFR 182.505	§ 382.505	Who in HHS 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, HHS policies and procedures are the same as those in the OMB guidance.

Subpart A—[Reserved]

Subpart B—Requirements for Recipients Other Than Individuals

§ 382.225 Whom in HHS does a recipient other than an individual notify about a criminal 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 HHS office from which it currently has an award.

Subpart C—Requirements for Recipients Who Are Individuals

§ 382.300 Whom in HHS 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 HHS office from which it currently has an award.

Subpart D—Responsibilities of Agency Awarding Officials

§ 382.400 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 part 382, 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

§ 382.500 Who in HHS determines that a recipient other than an individual violated the requirements of this part?

The agency head is the official authorized to make the determination under 2 CFR 182.500.

§ 382.505 Who in HHS determines that a recipient who is an individual violated the requirements of this part?

The agency head is the official authorized to make the determination under 2 CFR 182.505.

Subpart F—(Reserved)

Title 45—Public Welfare

CHAPTER I—DEPARTMENT OF HEALTH AND HUMAN SERVICES

PART 82—[REMOVED]

■ 2. Under the authority of 5 U.S.C. 301, remove part 82.

[FR Doc. E9–27024 Filed 11–10–09; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0687; Directorate Identifier 2009–NM–033–AD; Amendment 39–16080; AD 2009–23–08]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronáutica S.A. (EMBRAER) Model ERJ 170 and ERJ 190 Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

It has been found the occurrence of two events of aircraft being dispatched with the cargo door opened without indication. In one of the events the aircraft took off with the cargo door opened.

* * * * *

The unsafe condition is a cargo door opening during flight, which could result in reduced structural integrity and consequent rapid decompression of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective December 17, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 17, 2009.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kenny Kaulia, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2848; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on August 18, 2009 (74 FR 41642), and proposed to supersede AD 2007–06–53, Amendment 39–15035 (72 FR 21088, April 30, 2007). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

It has been found the occurrence of two events of aircraft being dispatched with the cargo door opened without indication. In one of the events the aircraft took off with the cargo door opened.

The unsafe condition is a cargo door opening during flight, which could result in reduced structural integrity and consequent rapid decompression of the airplane. Required actions include repetitive inspections of the forward and aft cargo doors to detect signs of interference between the lock handle and the aft edge liner assembly and