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SOCIAL SECURITY ADMINISTRATION

2 CFR Part 2339 and 20 CFR Part 439

[Docket No. SSA-2009-0054]

RIN 0960-AH14

Social Security Administration Implementation of OMB Guidance for Drug-Free Workplace Requirements

AGENCY: Social Security Administration.

ACTION: Final rule with request for comments.

SUMMARY: The Office of Management and Budget (OMB) is consolidating all Federal regulations concerning drug-free workplace requirements for recipients of financial assistance. Accordingly, we are removing our regulation on this subject currently located within title 20 of the Code of Federal Regulations (CFR) and issuing a new regulation to adopt the OMB guidance at 2 CFR part 182. The new regulation makes no substantive change to our policy or procedures for a drug-free workplace.

DATES: This direct to final rule is effective on August 2, 2010 without further action. Submit comments by July 6, 2010 on any unintended changes this action makes in our policies and procedures for drug-free workplace. All comments on unintended changes will be considered and, if warranted, we will revise the rule.

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA-2009-0054 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments

any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comment via the Internet. Please visit the Federal eRulemaking portal at <http://www.regulations.gov>. Use the *Search* function to find docket number SSA-2009-0054. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 966-2830.

3. *Mail:* Mail your comments to the Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401.

Comments are available for public viewing on the Federal eRulemaking portal at <http://www.regulations.gov> or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Fran O. Thomas, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 966-9822. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at <http://www.gpoaccess.gov/fr/index.html>.

Background

Congress passed the Drug-Free Workplace Act of 1988 as part of omnibus drug legislation. Public Law 100-690, title V, Subtitle D; 41 U.S.C. 701, *et seq.* This statute requires that recipients of grants and parties to cooperative agreements must provide a drug-free workplace. Federal agencies issued an interim final common rule to implement the act as it applied to grants. 54 FR 4946, January 31, 1989. 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. 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.

When it established 2 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 non-procurement 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 number 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, we are taking two regulatory actions. First, we are removing the drug-free workplace common rule from 20 CFR part 439. Second, to replace the common rule, we are issuing a brief regulation in 2 CFR part 2339 to adopt the Government-wide policies and procedures in the OMB guidance.

Invitation To Comment

This regulatory action is solely an administrative simplification and does

not make any substantive change in our policies or procedures. While we invite your comments on this action, we will not revisit substantive issues that were resolved during the development of the final common rule in 2003. Please limit your comments to any specific unintended changes in substantive content that the new regulation would make.

Regulatory Procedures

We follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of our regulations. 205(a), 702(a)(5), and 1631(d)(1) of the Act, 42 U.S.C. 405(a), 902(a)(5), 1383(d)(1). The APA provides exceptions to its prior notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest.

This final rule is solely an administrative simplification that makes no substantive changes to our policy or

procedures for drug-free workplace. We therefore believe that the rule is noncontroversial and do not expect to receive any adverse comments, although we are inviting comments on any unintended substantive change this rule may make.

Accordingly, we find that the solicitation of public comments on this 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 August 2, 2010. If any comment on unintended effects is received, we will consider it and, if warranted, publish a timely revision of the rule.

Executive Order 12866

We have consulted with OMB and determined that this final rule does not meet the criteria for a significant regulatory action under Executive Order 12866 and is not subject to OMB review.

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

This final rule will not have a significant economic impact on a

substantial number of small entities. Therefore, we did not prepare a regulatory flexibility analysis.

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

This final rule does not contain a Federal mandate that will result in the expenditure by State, local, or 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)

These final rules contain a public reporting requirement in the regulation section listed below. Since the inception of these rules in 1988, we have not received any notifications from any of our 167 grantees; therefore, we do not expect to receive any notifications in the future. However, since there is a public reporting requirement that affects the grantees, we inserted a 1-hour placeholder burden for this section.

Regulation section	Description of public reporting requirement	Total number of grantees	Number of respondents (annually)	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
2 CFR 2339.225	A recipient other than an individual must notify the Commissioner of Social Security about an employee's conviction for a criminal drug offense.	167	1 hour

We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated techniques or other forms of information technology. If you would like to submit comments, please send them to the following locations:

Office of Management and Budget, Attn: Desk Officer for SSA, Fax Number: 202-395-6974, E-mail address: OIRA_Submission@omb.eop.gov.

Social Security Administration, Attn: Reports Clearance Officer, 1333 Annex, 6401 Security Blvd., Baltimore, MD 21235-0001, Fax Number: 410-965-6400, E-mail: OPLM.RCO@ssa.gov.

You can submit comments until August 2, 2010, which is 60 days after the publication of this notice. However, your comments will be most useful if you send them to SSA by July 6, 2010, which is 30 days after publication. To receive a copy of the OMB clearance package, contact the SSA Reports Clearance Officer using any of the above

contact methods. We prefer to receive comments by e-mail or fax.

Federalism (Executive Order 13132)

This final rule 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 Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 2 CFR Part 2339 and 20 CFR Part 439

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

Michael J. Astrue,
Commissioner of Social Security.

■ Accordingly, for the reasons set forth in the preamble, and under the authority of 5 U.S.C. 301, SSA is amending the Code of Federal Regulations, title 2, Subtitle B, Chapter

XXIII, and title 20, chapter III, part 439, as follows:

Title 2—Grants and Agreements

■ 1. Add part 2339 in Subtitle B, Chapter XXIII of 2 CFR, to read as follows:

PART 2339—REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

- Sec. 2339.10 What does this part do?
- 2339.20 Does this part apply to me?
- 2339.30 What policies and procedures must I follow?

Subpart A—[Reserved]

Subpart B—Requirements for Recipients Other Than Individuals

2339.225 Who in the Social Security Administration does a recipient other than an individual notify about a criminal drug conviction?

Subpart C—[Reserved]

Subpart D—Responsibilities of Agency Awarding Officials

2339.400 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

2339.500 Who in the Social Security Administration determines that a recipient other than an individual violated the requirements of this part?

Subpart F—[Reserved]

Authority: 41 U.S.C. 701–707.

§ 2339.10 What does this part do?

This part requires that the award and administration of Social Security Administration (SSA) 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 SSA's grants and cooperative agreements; and

(b) Establishes SSA'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.

§ 2339.20 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 SSA grant or cooperative agreement; or
- (b) An SSA awarding official.

§ 2339.30 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.

Section of OMB guidance in 2 CFR	Section in this part where supplemented, 2 CFR	What the supplementation clarifies
(1) 182.225(a)	§ 2339.225	Who in SSA 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) 182.300(b)	§ 2339.300	Who in SSA 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) 182.500	§ 2339.500	Who in SSA 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) 182.505	§ 2339.505	Who in SSA 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.* Our policies and procedures are the same as those in the OMB guidance for any section not included in the table in paragraph (b) of this section.

Subpart A—[Reserved.]

Subpart B—Requirements for Recipients Other Than Individuals

§ 2339.225 Who in the Social Security Administration 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 Commissioner of Social Security or designee.

Subpart C—[Reserved.]

Subpart D—Responsibilities of Agency Awarding Officials

§ 2339.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

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, 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

§ 2339.500 Who in the Social Security Administration determines that a recipient other than an individual violated the requirements of this part?

The Commissioner of Social Security or designee will make the determination.

Subpart F—[Reserved]

Title 20—Employees' Benefits

Chapter III—Social Security Administration

PART 439—[REMOVED]

■ 2. Remove Part 439.

[FR Doc. 2010–13093 Filed 6–2–10; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Doc. No. AMS–FV–09–0091; FV10–916/917–2 FR]

Nectarines and Peaches Grown in California; Increased Assessment Rates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.