

# Rules and Regulations

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## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

#### 2 CFR Part 1401

#### 43 CFR Part 43

#### RIN 1093-AA12

### Department of the Interior Implementation of OMB Guidance on Drug-Free Workplace Requirements (Financial Assistance)

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Final rule with request for comments.

**SUMMARY:** The Department of the Interior (DOI) is removing its regulation implementing the government-wide common rule on drug-free workplace requirements for financial assistance and issuing a new regulation to adopt the Office of Management and Budget (OMB) guidance. This regulatory action implements the OMB's initiative to streamline and consolidate into one title of the **Code of Federal Regulations** all Federal regulations on drug-free workplace requirements for financial assistance. These changes constitute an administrative simplification that will make no substantive change in DOI policy or procedures for drug-free workplace.

**DATES:** This final rule is effective on January 21, 2011 without further action. Submit comments by December 22, 2010 on any unintended changes this action makes in Department of the Interior policies and procedures for drug-free workplace. All comments on unintended changes will be considered and, if warranted, DOI will revise the rule.

**ADDRESSES:** You may submit comments, on the rulemaking through the Federal eRulemaking Portal at <http://www.regulations.gov>. Please use the

Regulation Identifier Number (RIN) 1093-AA12 in your message. Follow the instructions on the Web site for submitting comments.

**FOR FURTHER INFORMATION CONTACT:**  
Anita Hairston, Financial Assistance Program Manager, Department of the Interior, Office of Acquisition and Property Management, telephone (202) 208-3433, fax (202) 219-4244, or e-mail [anita\\_hairston@ios.doi.gov](mailto:anita_hairston@ios.doi.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 [53 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]. The updated common rule was redrafted in plain language and adopted as a separate part, independent from the common rule on nonprocurement suspension and debarment. 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 cooperative 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 [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, DOI is taking two regulatory actions. First, we are removing the drug-free workplace common rule from 43 CFR part 43. Second, to replace the common rule, we are issuing a brief regulation in 2 CFR, Subtitle B, Chapter XIV, part 1401 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 DOI common rule at 43 CFR part 43.

### 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 DOI 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). This rule will be effective on January 21, 2011 without further action, unless we receive adverse comment by December 22, 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**

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues.

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

DOI certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

#### **Small Business Regulatory Enforcement Fairness Act (SBREFA)**

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of \$100 million or more.

b. Does not represent a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

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

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act, 2 U.S.C. 1531 *et seq.*, is not required.

#### **Takings (E.O. 12630)**

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required.

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

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83-I is not required.

#### **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.

#### **Civil Justice Reform (E.O. 12988)**

In accordance with Executive Order 12988, this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

#### **List of Subjects**

##### **2 CFR Part 1401**

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

##### **43 CFR Part 43**

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

**Pamela Haze,**

*Acting Assistant Secretary for Policy, Management and Budget.*

■ Accordingly, for the reasons set forth in the preamble, and under the authority of 5 U.S.C. 301, the Department of the Interior amends 2 CFR, Subtitle B, Chapter XIV, part 1401, and 43 CFR part 43 as follows:

## **TITLE 2—GRANTS AND AGREEMENTS**

■ 1. In Subtitle B, Chapter XIV, add new part 1401 to read as follows:

### **PART 1401—REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)**

Sec.

#### **Subpart A—Purpose and Coverage**

1401.100 What does this part do?  
1401.105 Does this part apply to me?  
1401.110 What policies and procedures must I follow?  
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#### **Subpart B—Definitions**

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1401.210 Controlled substance.  
1401.215 Conviction.  
1401.220 Cooperative agreement.  
1401.225 Criminal drug statute.  
1401.230 Debarment.  
1401.235 Drug-free workplace.  
1401.240 Employee.  
1401.245 Federal agency or agency.  
1401.250 Grant.  
1401.255 Individual.  
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1401.325 What actions must I take concerning employees who are convicted of drug violations in the workplace?  
1401.330 How and when must I identify workplaces?  
1401.335 Whom in the DOI does a recipient other than an individual notify about a criminal drug conviction?

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

1401.400 What must I do to comply with this part if I am an individual recipient?  
1401.401 Whom in the DOI does a recipient who is an individual notify about a criminal drug conviction?

#### **Subpart E—Responsibilities of Department of the Interior Awarding Officials**

1401.500 What are my responsibilities as a DOI awarding official?

#### **Subpart F—Violations of this Part and Consequences**

1401.600 How are violations of this part determined for recipients other than individuals?

1401.605 How are violations of this part determined for recipients who are individuals?

1401.610 What actions will the Federal Government take against a recipient determined to have violated this part?

1401.615 Are there any exceptions to those actions?

**Authority:** 5 U.S.C. 301; 31 U.S.C. 6101 note, 7501; 41 U.S.C. 252a; 41 U.S.C. 701–707.

## Subpart A—Purpose and Coverage

### § 1401.100 What does this part do?

This part requires that the award and administration of the DOI 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 (hereinafter, “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 DOI’s grants and cooperative agreements; and

(b) Establishes DOI 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.

### § 1401.105 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 apply if you are—

(a) A recipient of an assistance award from the Department of the Interior; or

(b) The Department of the Interior awarding official.

The following table (will be incorporated into 2 CFR part 182) shows the subparts that apply to you:

If you are	See subparts
(1) A recipient who is not an individual.	A, C and F.
(2) A recipient who is an individual.	A, D and F.
(3) A Department of the Interior awarding official.	A, E and F.

### § 1401.110 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) In implementing 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 set forth 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) .....	§ 1401.335	Whom in the DOI 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) .....	§ 1401.401	Whom in the DOI 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 .....	§ 1401.600	Who in the DOI 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 .....	§ 1401.605	Who in the DOI 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, DOI policies and procedures are the same as those in the OMB guidance.

### § 1401.115 Are any of my Federal assistance awards exempt from this part?

This part does not apply to any award if the Director, Office of Acquisition and Property Management (PAM), 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.

### § 1401.120 Does this part affect the Federal contracts that I receive?

It will affect future contract awards indirectly if you are debarred or suspended for a violation of the requirements of this part, as described in § 1401.610(c). However, this part does not directly apply 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 48 CFR part 23, subpart 23.5.

## Subpart F—Definitions

### § 1401.205 Award.

*Award* means an award of financial assistance by DOI or other 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 Departmental rules at 43 CFR part 12, subpart C, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.”

(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).

### § 1401.210 Controlled substance.

*Controlled substance* means any controlled substance identified in schedules I through V of the Controlled Substances Act, 21 U.S.C. 812, and as further defined by regulations at 21 CFR 1308.11 through 1308.15.

### § 1401.215 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.

### § 1401.220 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 section 1401.250), 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.

**§ 1401.225 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.

**§ 1401.230 Debarment.**

*Debarment* means an action taken by a Federal agency to prohibit a recipient from participating in Federal Government procurement contracts and covered non-procurement 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 2 CFR part 180.

**§ 1401.235 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.

**§ 1401.240 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 sub-recipients or subcontractors in covered workplaces).

**§ 1401.245 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.

**§ 1401.250 Grant.**

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

(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.

**§ 1401.255 Individual.**

*Individual* means a natural person.

**§ 1401.260 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.

**§ 1401.265 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.

**§ 1401.270 Suspension.**

*Suspension* means an action taken by a Federal agency that immediately prohibits a recipient from participating in Federal Government procurement contracts and covered non-procurement 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 2 CFR part 180. Suspension of a recipient is a distinct and separate action from suspension of an award or suspension of payments under an award.

**Subpart C—Requirements for Recipients Other Than Individuals**

**§ 1401.300 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; and

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

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

**§ 1401.305 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.

**§ 1401.310 To whom must I distribute my drug-free workplace statement?**

You must require that a copy of the statement described in § 1401.305 be given to each employee who will be engaged in the performance of any Federal award.

**§ 1401.315 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.

**§ 1401.320 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 § 1401.305 and an ongoing

awareness program as described in § 1401.315, 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 Department of the Interior 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.

**§ 1401.325 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 § 1401.305(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.

**§ 1401.330 How and when must I identify workplaces?**

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

(1) To the DOI 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 DOI 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 DOI 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 DOI awarding official.

**§ 1401.335 Whom in the DOI does a recipient other than an individual notify about a criminal drug conviction?**

The DOI is not designating a central location for the receipt of these reports. Therefore you shall provide this report to every grant officer, or other designee within a bureau or office of the Department on whose grant activity the convicted employee was working.

**Subpart D—Requirements for Recipients Who Are Individuals**

**§ 1401.400 What must I do to comply with this part if I am an individual recipient?**

As a condition of receiving a DOI 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 Department of the Interior awarding official or other designee for each award that you currently have, unless § 1401.401 or the award document designates a central point for the receipt of the notices. When notice is made to a central point, it must include the identification number(s) of each affected award.

**§ 1401.401 Whom in the DOI does a recipient who is an individual notify about a criminal drug conviction?**

The DOI is not designating a central location for the receipt of these reports. Therefore you shall provide this report to every grant officer, or other designee within a bureau or office of the Department on whose grant activity the convicted employee was working.

**Subpart E—Responsibilities of DOI Awarding Officials**

**§ 1401.500 What are my responsibilities as a DOI awarding official?**

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 1401, which adopts the government-wide implementation of 2 CFR part 182; sections 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 F—Violations of this Part and Consequences**

**§ 1401.600 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 Director, PAM 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.

**§ 1401.605 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 Director, PAM 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.

**§ 1401.610 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 § 1401.600 or § 1401.605, DOI 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 2 CFR part 180, for a period not to exceed five years.

**§ 1401.615 Are there any exceptions to those actions?**

The Secretary of the Interior 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 Secretary of the Interior determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

**TITLE 43—PUBLIC LANDS**

- 2. In title 43, remove part 43.

[FR Doc. 2010-29371 Filed 11-19-10; 8:45 am]

**BILLING CODE 4310-RK-P**

**FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL**

**12 CFR Part 1101**

**[FFIEC-2010-0002]**

**Description of Office, Procedures, and Public Information**

**AGENCY:** Federal Financial Institutions Examination Council.

**ACTION:** Final rule.

**SUMMARY:** The Federal Financial Institutions Examination Council (Council or FFIEC), on behalf of its members, is amending its Freedom of Information Act (FOIA) regulations. Among other things, this final rule revises the procedures to be used by members of the public in requesting records maintained by the Council, the time limits in which the Council must make a determination on disclosure in response to a request for records, and the time period in which a requester has the right to administratively appeal any adverse determination made on a request for records, and provides procedures to be used to request expedited processing of FOIA requests.

**DATES:** Effective November 22, 2010.

**FOR FURTHER INFORMATION CONTACT:** Paul Sanford, Executive Secretary, Federal Financial Institutions Examination Council, via telephone: (703) 516-5590, or via e-mail: [PaSanford@FDIC.gov](mailto:PaSanford@FDIC.gov).

**SUPPLEMENTARY INFORMATION:** The Council is publishing a final rule revising its regulations implementing the FOIA. On September 3, 2010, the Council published for comment a notice of proposed rulemaking (NPRM) in the **Federal Register** that proposed revisions to the Council's regulations at 12 CFR part 1101, implementing the FOIA, 5 U.S.C. 552, as amended. 75 FR 54052, September 3, 2010. Interested persons were afforded an opportunity to participate in the rulemaking process through submission of written comments on the NPRM. The Council received no public comments. The Council has reviewed the proposed regulations and adopts them in this final rule.

**I. Background**

The Council makes a number of substantive and technical changes to its regulations implementing the FOIA (5 U.S.C. 552, as amended) that fall within two general categories. First, the Council modifies its existing regulations to reflect the amendments to the FOIA contained in the Electronic Freedom of Information Act Amendments of 1996, Public Law 104-231, 110 Stat. 3048, and the OPEN Government Act, Public Law 110-175, 121 Stat. 2524. The Electronic Freedom of Information Act Amendments increased the FOIA's basic time limit for agency responses to FOIA requests, and provided for expedited processing of FOIA requests under certain conditions, among other procedural revisions. The OPEN Government Act also amended various FOIA administrative procedures, such

as when an agency may toll the statutory time for responding to FOIA requests, and how to indicate exemptions authorizing deletion of materials under the FOIA on a responsive record.

Second, the Council revises its regulations to further clarify its policies and procedures relating to the processing of FOIA requests and the administration of its FOIA operations.

**II. Section-by-Section Analysis**

In 12 CFR 1101.3(e), the Council revises the paragraph by providing the current address of the Council's offices.

In 12 CFR 1101.4(a), the Council revises the paragraph by providing the current address of the Council's offices and clarifying that Council policies and interpretations may be withheld from disclosure under exemptions to the FOIA.

In 12 CFR 1101.4(b), the Council revises the wording of the section heading.

In 12 CFR 1101.4(b)(1), the Council revises the wording of the paragraph to explain that Council records that are not published in the **Federal Register** or available for inspection and copying at the Council's offices are available to the public upon request, except to the extent that such records are exempt from disclosure under the FOIA.

In 12 CFR 1101.4(b)(1)(i), the Council capitalizes the word "Order" when referring to an Executive Order.

In 12 CFR 1101.4(b)(1)(v), the Council adds language to protect from disclosure records of deliberations and meetings of the Council, its committees, and staff, that are not subject to the Government in the Sunshine Act, 5 U.S.C. 552b.

In 12 CFR 1101.4(b)(1)(vii), the Council revises the paragraph by substituting a reference to the statutory citation for Exemption 7 of the FOIA, 5 U.S.C. 552(b)(7), for the list of the specific substantive provisions of the exemption in the existing regulation. In addition, the term "state or federal" has been inserted to clarify that records of state financial regulatory agencies in the possession of the Council are exempt from disclosure under Exemption 7, as are the records of federal regulatory agencies.

In 12 CFR 101.4(b)(1)(viii), the Council revises the paragraph by eliminating a listing of the types of financial institutions covered by Exemption 8 of the FOIA, 5 U.S.C. 552(b)(8), and inserting the term "state or federal" to clarify that records of state financial regulatory agencies in the possession of the Council are exempt from disclosure under Exemption 8.