



[7537-01]

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

2 CFR Part 3256

45 CFR Part 1155

RIN 3135-AA24

Implementation of OMB Guidance on Drug-Free Workplace
Requirements

AGENCY: National Endowment for the Arts.

ACTION: Final rule.

SUMMARY: The National Endowment for the Arts (NEA) is adopting the Office of Management and Budget (OMB) guidance on drug-free workplace requirements for financial assistance. It is removing its regulation implementing the Governmentwide common rule and issuing a new regulation to adopt the 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 regulatory actions constitute an administrative simplification that would make no substantive change in NEA's policy or procedures for drug-free workplace.

DATES: This rule is effective on *[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]*.

FOR FURTHER INFORMATION CONTACT: Sarah Weingast, Assistant General Counsel, (202) 682-5796.

SUPPLEMENTARY INFORMATION: Please note that the proposed rule for this regulatory change, filed March 23, 2015, originally designated 2 CFR part 3255 for the Implementation of the OMB Guidance. No comments were received regarding the proposed rule during the 30 day comment period. This final rule, however has redesignated this Implementation of OMB Guidance to part 3256 so that the originally-designated part may be used for other regulations.

A. Background

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.) as a part of omnibus drug legislation. 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 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).

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

B. The Current Regulatory Actions

As the OMB guidance requires, the NEA is taking two regulatory actions. First, we are removing the drug-free workplace common rule from 45 CFR part 1155. Second, to replace the common rule, we are issuing a brief regulation in 2 CFR part 3256 to adopt the Governmentwide policies and procedures in the OMB guidance.

Please note that the proposed rule for this regulatory change, filed March 23, 2015, originally designated 2 CFR part 3255 for the Implementation of the OMB Guidance. No comments were received regarding the proposed rule during the 30 day comment period. The final rule, however has redesignated this Implementation of OMB Guidance to part 3256 so that the originally-designated part may be used for other regulations.

1. 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 did not seeking to revisit substantive issues that were resolved during the development of the final common rule in 2003. We invited 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 1155. No comments were received by the close of the thirty day comment period.

2. 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 final rule is solely an administrative simplification that would make no substantive change in the NEA policy or procedures for drug-free workplace. We therefore believe that the rule is noncontroversial and did not expect to receive adverse comments, although we are invited comments on any unintended substantive change this rule makes. No comments were received by the close of the thirty-day comment period and this rule becomes effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further action.

3. Executive Order 12866

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

4. 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.

5. 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.

6. 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.

7. 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 3256

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

45 CFR Part 1155

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

For the reasons stated in the preamble, the National Endowment for the Arts amends 2 CFR chapter XXXII and 45 CFR chapter XI as follows:

Title 2--Grants and Agreements

Chapter XXXII--National Endowment for the Arts

1. In title 2, chapter XXXII, add part 3256 to read as follows:

PART 3256--REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Sec.

3256.100 What does this part do?

3256.105 Does this part apply to me?

3256.110 What policies and procedures must I follow?

Subpart A--[Reserved]

Subpart B--Requirements for Recipients Other Than Individuals

3256.200 Whom in the NEA does a recipient other than an individual notify about a criminal drug conviction?

Subpart C--Requirements for Recipients Who Are Individuals

3256.300 Whom in the NEA does a recipient who is an individual notify about a criminal drug conviction?

Subpart D--Responsibilities of NEA Awarding Officials

3256.400 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

3256.500 Who in the NEA determines that a recipient other than an individual violated the requirements of this part?

3256.505 Who in the NEA determines that a recipient who is an individual violated the requirements of this part?

Subpart F--[Reserved]

Authority: 41 U.S.C. 701 et seq.

§ 3256.100 What does this part do?

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

(b) Establishes NEA 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.

§ 3256.105 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 (see table at 2 CFR 182.115(b)) apply to you if you are a—

(a) Recipient of an NEA grant or cooperative agreement; or

(b) NEA awarding official.

§ 3256.110 What policies and procedures must I follow?

(a) General. You must follow the policies and procedures specified in the 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 guidance in 2 CFR part 182, this part supplements four sections of that 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)	§3256.200	Whom in the NEA 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)	§3256.300	Whom in the NEA 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 ...	§3256.500	Who in the NEA 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 ...	§3256.505	Who in the NEA 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.
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(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 NEA's policies and procedures are the same as those in the OMB guidance.

Subpart A--[Reserved]

Subpart B--Requirements for Recipients Other Than Individuals

§3256.200 Whom in the NEA 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 NEA awarding official or other designee for each award that it currently has.

Subpart C--Requirements for Recipients Who Are Individuals

§3256.300 Whom in the NEA 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 NEA awarding official or other designee for each award that he or she currently has.

Subpart D--Responsibilities of NEA Awarding Officials

§3256.400 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 this part, 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

§3256.500 Who in the NEA determines that a recipient other than an individual violated the requirements of this part?

The Chairman of the National Endowment for the Arts is the official authorized to make the determination under 2 CFR 182.500.

§3256.505 Who in the NEA determines that a recipient who is an individual violated the requirements of this part?

The Chairman of the National Endowment for the Arts is the official authorized to make the determination under 2 CFR 182.505.

Subpart F--[Reserved]

Title 45--Public Welfare

PART 1155--[REMOVED]

2. Under the authority of 20 U.S.C. 959(a)(1), part 1155 is removed.

Kathy N. Daum,
Director,
Office of Administrative Services.

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