U.S. Department of Transportation
Federal Aviation Administration

Memorandum

Subject: Program Guidance Letter 89-3

Date: MAR 13 1989

From: Manager, Grants-in-Aid Division, APP-500

Reply to Attn. of:

To: PGL Distribution List

89-3.1 Controlled Access to Airport Secured Areas - Ben Castellano (267-8822)

On January 6, 1989, the Federal Register contained the final rule amending 14 CFR Part 107, Airport Security. The rule, which was effective February 8, requires certain airports to amend their Security programs to include a controlled access system to the secured areas of the airports. Category 1 and 2 airports shall submit their amended security programs to FAA no later than August 8, 1989 and shall have their system operational within 18 months and 24 months, respectively, after FAA approval of their amended program. Category 3 and 4 airports have until February 8, 1990 to submit their amended programs and have their systems operational 30 months after FAA approval. See Attachment A.

On Oct. 24, 1988, APP-1 and ACS-1 signed a memo to all Civil Aviation Security Division managers and to all Airports Division managers regarding the funding of security equipment (Attachment B). Any differences of opinions which can not be settled at the regional level should be forwarded to APP-510 for discussion with ACS-100.

89-3.2 Drug-Free Workplace Act of 1988 - Ben Castellano (267-8822).

On January 31, 1989, OMB published in the Federal Register a common rule implementing the Drug-Free Workplace Act of 1988. DOT has adopted this rule as an amendment to 49 CFR Part 29, the current nonprocurement suspension and debarment rule (Attachment C). A sponsor, when submitting an application after March 18, 1989, must provide the certification set out in Attachment D. Regions may reproduce this certification locally and provide to sponsors.

89-3.3 Instrument Landing Systems - Ben Castellano (267-8822).

In the conference report for the FY89 DOT Appropriations bill, Congress directed the FAA to allocate up to $20 million for the procurement and installation of ILS's at several place-named locations. Two lists of locations were included in the report: the first named 9 locations which FAA was directed to fund; the second list place-named 8 locations which FAA was to give priority consideration for funding. As of March 1, the $20 million has been allocated as follows:

LOCATION	TYPE	FED SHARE
Orlando, FL	CAT III	$2.80 mil
Memphis, TN	CAT III	2.80
Nashville, TN	CAT I/III	5.70
Miami, FL	GS/MALSR	0.54
Covington, KY (Cincinnati)	CAT I/III	4.00
Indianapolis, IN	CAT I/III	4.00
	TOTAL	$19.84

Lowell H. Johnson

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 107

[Docket No. 25568; Amdt. No. 107-4]

RIN 2120-AC69

Access to Secured Areas of Airports

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes a requirement for certain airport operators to submit to the Director of Civil Aviation Security, for approval and inclusion in their approved security programs, amendments to ensure that only those persons authorized to have access to secured areas of an airport are able to obtain that access and, also, to ensure that such access is denied immediately to individuals whose authority to have access changes. The rule provides for the installation and use of a system, method, or procedure that meets certain performance standards, or the use of an approved alternative system, method, or procedure for controlling access to secured areas of airports. This rule is needed to improve control of the locations that provide access to secured areas of airports. It is intended to enhance airport security by precluding access to these areas by unauthorized persons.

EFFECTIVE DATE: February 8, 1989.

FOR FURTHER INFORMATION CONTACT: Quinten T. Johnson, Civil Aviation Security Division (ACS-100), Office of Civil Aviation Security, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 267-3370.

SUPPLEMENTARY INFORMATION:

Background

The Federal Aviation Administration's (FAA) Civil Aviation Security Program was initiated in 1973. Part 107 of the Federal Aviation Regulations was promulgated to provide a secure environment in which air carriers can operate. Airport operators are required by Part 107 to have an FAA-approved airport security program. The approved security program must describe the functions and procedures to control access to certain areas of the airport and to control movement of persons and vehicles within those areas.

The Personnel Identification Procedures contained in airport security programs provide a means of control once an individual has gained access to a restricted area. The FAA is concerned that these procedures could allow an individual using forged, stolen, or noncurrent identification to compromise the secured areas. The FAA is also concerned that former employees could use their familiarity with airline and airport procedures to succeed in entering a secured area and possibly commit a criminal act on board an aircraft.

The December 7, 1987, tragedy involving Pacific Southwest Airlines (PSA) Flight 1771, in which 38 passengers and 5 crewmembers were killed after departing Los Angeles International Airport, highlighted FAA's interest in improving the control of access to secured areas of an airport. An airport area where access to aircraft and airport facilities is possible should be accessible only to an individual who is authorized to be in that area. These areas should be controlled carefully to prevent tampering with aircraft and airport facilities and to preclude tragic consequences.

The FAA accelerated its efforts to head off the type of situation potentially reflected by the crash of PSA Flight 1771 and to improve the level of security generally. This acceleration resulted in the promulgation of an emergency final rule amending the preboarding screening procedures contained in Parts 108 and 129 of the Federal Aviation Regulations (52 FR 48508; December 22, 1987). To complement the procedures required by that emergency regulation and to expand the performance standards of security systems at airports, on March 11, 1988, the FAA issued Notice of Proposed Rulemaking (Notice) No. 88-6 (53 FR 9094; March 16, 1988). That notice proposed that airport operators, whose airports met certain criteria, be required to submit to the Administrator, for approval and inclusion in their approved security programs, amendments to their programs that ensure that only those persons authorized to have access to secured areas of an airport are able to obtain that access and also ensure that such access is denied immediately to individuals whose authority to have access changes. It further proposed that the program provide for a means to differentiate between persons authorized to have access to only a particular portion of the secured area and persons authorized to have access only to other portions or to the entire secured area. To provide this increased control of locations on the airport, the FAA proposed in Notice No. 88-6 the installation of a computer-controlled card access system. The notice also proposed that airport operators be allowed to install alternative systems which, in the Administrator's judgment, would have the same capabilities as the computer-card system and would provide an equivalent level of security.

Additionally, Notice No. 88-6 specifically stated that the proposal would supplement, not replace, the existing photo identification system required by an airport operator's approved security program. The continuous display of the individual identification in secured areas is necessary so that unauthorized individuals can be challenged in accordance with § 107.13. However, the notice proposed that the airport operator be given the option of integrating the system proposed by Notice No. 88-6 with the photo identification system and issuing a single credential.

The anticipated capabilities of a computer-controlled card access system were discussed in Notice No. 88-6. In addition to being able to monitor each location where access to the secured area is permitted by means of a "card reader" linked to the control computer, the system would be designed to provide for unique coding for each card. The system would also be capable of performing other functions that can improve an airport's security profile including the ability to cause an alert when access is denied to a person who attempts to use an invalid card and to establish a log of the system's activity. The notice intentionally did not address the details regarding the actual locations of the card readers and the operational methods to be employed by the system since each individual airport would employ a system specific to its needs.

In Notice No. 88-6, the FAA proposed a 4-phase schedule for airport operators to submit to the Administrator amendments to their security programs. The phases were based on the total number of persons screened annually at an airport. (The preamble to the proposed rule incorrectly stated "number of passengers screened" annually.)

The notice proposed that, upon approval of the amendment by the Administrator, airport operators would fully implement their systems within 6 months from the date of approval. However, the Administrator could allow up to an additional 6 months for implementation of the system at certain locations on each airport. The intent was to ensure implementation at the most critical airport locations and to allow additional time for implementation at locations that provide access to more remote locations on the airport.

Discussion of Comments

As of May 31, 1988, the FAA received 122 written comments in response to Notice No. 88-6 from organizations representing the aviation industry, air carriers, individuals, manufacturers, and airports. The majority of the commenters object to the proposal either in part or in its entirety. They believe the proposal to be premature and lacking in its evaluation of complex issues. Numerous commenters support the intent of the proposed rule but express concern because it lacked specificity about the requirements and because they made incorrect assumptions about the scope of the requirements. The following discussion is intended to address the comments and explain the FAA's response to the concerns identified in the 122 comments received through May 31, 1988. The FAA has reviewed and considered late-filed comments to determine if any new issues were raised or any significant, new factual information was provided.

Six commenters request a 60-day extension of the May 2, 1988, closing date for comments on Notice No. 88-6 including requests from the American Association of Airport Executives (AAAE), the Airport Operators Council International (AOCI), and the Regional Airline Association (RAA). A letter was also received from the Air Transport Association (ATA) in support of the AAAE and AOCI requests. They comment that, considering the magnitude of the issue, more time is needed to allow for wider distribution and discussion, to prepare additional information concerning the costs associated with the proposed system, and to allow maximum comments and facilitate an open exchange of ideas. The FAA denied the requests for extension. However, the FAA continued to consider late-filed comments beyond July 2, the date on which the requested extension period would have expired.

Twelve commenters are recommending that Notice No. 88-6 be withdrawn to allow time for the FAA, airport operators and tenants, and other interested parties to explore the total security problem that might exist at airports. At least three commenters are requesting a public hearing which they believe will allow them to air their concerns and expose pertinent issues thereby providing the FAA and the aviation community with necessary information. Ten commenters specifically request the FAA to conduct a study of the technology that is available regarding automated access control systems to determine the most appropriate system to accomplish the objective of the proposals. Several commenters, including the ATA and AAAE, recommend that the FAA conduct a pilot program at several airports to evaluate more realistically the issues involved in this rulemaking.

While worthy of merit under less compelling circumstances, the implementation of any of these recommendations would result in the postponement of a security measure intended to promote the safety of air transportation and therefore must be balanced carefully against that goal. The information that would be provided to the FAA through a public hearing would duplicate, to a large extent, that already contained in Docket No. 25568. Through its experience at more than a dozen major airports and other facilities, the FAA has been made aware of most of the existing technology regarding computerized access control systems and is confident that technology is available to meet the requirements of this final rule. Additionally, the FAA historically has been reviewing and evaluating all aspects of an airport operator's security program to ensure that it is commensurate with the size, layout, location, and activity level of the particular airport. Consequently, the FAA fully expects to be involved early on regarding the scope and design of a system that meets the required performance standards or an approved alternative that will comply with the final rule. From its historical role, as well as its early participation in the process outlined in this final rule, the FAA believes that the requirements of this rulemaking are both realistic and supportable.

The FAA plans also to issue general guidelines to assist airport operators in their selection of a system, method, or procedure and preparation of an amendment. The guidelines also will assist FAA personnel in their review and approval of the amendment containing an airport operator's proposed strategy to install and implement a system, method, or procedure that meets the performance standards or an approved alternative. In summary, the FAA's input and involvement at the very early stage will address many of the commenters' concerns that might otherwise argue for delaying final action.

Funding was another concern identified by 46 commenters. Most of them indicate that the Airport Improvement Program (AIP) would be their only source of funding. Many airport managers make reference to the notice which states that the proposed system would be eligible for funding under AIP; however, their concern is that the amount of AIP funding available would not cover all costs. Commenters also express concern that other airport improvement projects would be impeded due to the diversion of AIP funds. Several of the commenters recommend that the FAA consider making other funds available if a final rule is issued. Lastly, the commenters state that the short implementation schedule proposed in the notice could make AIP funding impossible due to the amount of time needed to process such requests.

The majority of the airports covered by this rule are primary airports. These airports, particularly the larger ones, have historically funded much or most of their capital development without Federal financial aid. In addition, primary airports receive entitlement funds each year under the AIP. It is expected that these airport sponsors would use the AIP entitlements or their own resources to fund required security capital costs. To the extent that these resources are not adequate at smaller airports and depending on the availability of other funding sources within the AIP, the FAA would consider supporting the program with funding, as necessary. Since the final rule includes a revised implementation schedule, the FAA believes that normal funding within the AIP should be sufficient to aid airports, and a "set aside" fund is not necessary.

Fifty-eight commenters are concerned about the costs that would be involved to achieve compliance with the requirement being proposed. They believe the cost figures reflected in the notice to be underestimated. Several commenters, including the ATA, AAAE, and AOCI, provide details of estimated costs. Those organizations indicate that the FAA cost estimates are underestimated by as much as a factor of 10. For that reason, the commenters believe that the Regulatory Evaluation is not accurate. They also state that the regulation being proposed meets the criteria for a major regulation under Executive Order 12291 and, therefore, requires a Regulatory Impact Analysis.

In response to the concerns regarding the estimated costs of the proposal, the FAA reviewed further the data contained in its Regulatory Evaluation. The results of that review are reflected in the evaluation for the final rule. A summary of the Regulatory Evaluation is included in this preamble under the heading "Economic Summary."

The concerns identified by the commenters regarding the implementation of the proposal reflect the extremely tight timeframe proposed

in Notice No. 88–6. Twenty-nine commenters contend that the unrealistic schedule makes compliance impossible considering the time-consuming process involved for budgeting, designing, bidding, procuring, and installing a system. Several commenters are recommending 2 years in addition to the time proposed in Notice No. 88–6. One commenter recommends that the compliance time for this requirement be 3 years following the allocation of dedicated AIP funds.

The FAA agrees with the commenters regarding their concerns about the implementation schedule proposed in Notice No. 88–6. Accordingly, the final rule contains a revised implementation schedule. The revised schedule constitutes a significant change from the language proposed in Notice No. 88–6.

Thirteen commenters express concern for the effectiveness of a system that airport operators might be forced to implement if they are subject to the schedule proposed in the notice. If 269 airports were required to comply with the schedule as proposed in the notice, the overdemand for qualified vendors would require using inexperienced contractors and companies. The commenters are in favor of extending the time period for implementation since compliance with the proposed schedule could have a detrimental effect on the system quality and reliability, especially at medium- and small-sized airports.

The FAA considers these concerns to be valid, and as stated above, the schedule contained in the final rule is revised. Current data indicate that 270 airports would be required to comply with a final rule.

The performance standards associated with a computer-controlled card access system causes serious concerns for at least 14 of the commenters. Nine commenters believe the time-date requirement for controlling access to be impractical due to necessary adjustments in work schedules to meet demands. Their specific concern is for the impact it will have on day-to-day operations; e.g., reassigning staff personnel, using different gates for delayed flights, working overtime, and changing workshifts.

If a computer-controlled card system is selected by an airport operator to meet the requirements of the final rule, the FAA anticipates that the system would be designed to have unique coding for each card so that the computer can be reprogrammed in minutes to revise the access authorized by a specific card. Such details will be developed in the context of the amendment to an airport's approved security program and will take into account the need for operational flexibility. The FAA plans to issue general guidelines on system operation.

Many of the commenters express concern for terminology contained in the notice. "Secured area" is not defined in Part 107 or 108 of the FAR. Two commenters request a definition of "immediately" which is stated in the proposal to indicate when access should be denied to individuals whose authority changes. Other commenters express concern regarding the use of the word "airports" versus "airport operators" in the preamble to Notice No. 88–6. Twenty commenters are concerned about an apparent conflict that centers around the airport operator's responsibilities for security under Part 107 and those of air carriers subject to Part 108 who have entered into exclusive use agreements with airport operators. The commenters urge the FAA to clarify this issue before proceeding with a final rule. One commenter requests standardization by the FAA in its interpretation of a final rule.

The FAA intentionally did not define "secured area" in the notice, nor is it defined in the final rule. To do so could result in the compromise of airport operators' security programs. Use of the term "immediately" is intended to stress the urgency with which an airport operator should act to deny access to secured areas by unauthorized individuals. The preamble to Notice No. 88–6 used the phrase "in a matter of minutes." Although the FAA has not further defined this term in the final rule, the FAA believes that the time interval should be the reasonable minimum time necessary to adjust the database to deny access to an individual. Regarding the use of the word "airport," the FAA agrees that the preamble statement referenced by the commenters creates confusion. However, the proposed rule and the final rule clearly establish that the regulated entity is the airport operator. Finally, the FAA does not view the use of the term "airport operator" as being inappropriate notwithstanding that an airport operator may have entered into an exclusive use agreement with an air carrier. When entering into an exclusive use agreement, the air carrier must accept the controls and procedures levied upon it by the airport operator. In such a case, the airport operator may be required to establish additional controls or modify existing ones for selected areas of an airport to comply with this final rule.

The FAA agrees with the commenter who requests that the FAA standardize its interpretation of a final rule to prevent serious differences in its implementation. The FAA will accomplish the requested standardization through the issuance of guidance to the various FAA regions for dissemination to the civil aviation security inspectors.

A number of commenters express concern that individuals who ordinarily have access at several airports (such as crewmembers or officials of a multiairport jurisdiction) would need a card for each airport. At least five commenters recommend that a commonality exist among the systems to preclude possible confusion and inconvenience stemming from individual systems which deny access to the above individuals. The commenters, in essence, recommend that the FAA require access control systems that are compatible on a national basis.

The FAA does not agree at this time that imposing uniformity is warranted. First, it would require imposing a uniform type of system, e.g., a computer-controlled card system. Moreover, requiring each airport to have a system with nationwide capacity and compatibility (capable of storing hundreds of thousands of names) would drive system costs up and would benefit only a small segment of the individuals who are associated with the regulated entities. Moreover, since the final rule expands the opportunity to use an alternative system, method, or procedure in response to the comments, nationwide uniformity is not practicable. However, an effort is underway to study the feasibility of an access system with multiairport capabilities. The FAA anticipates that operational issues will be identified in the study.

Twenty commenters address the issue of alternative access control systems that provide an equivalent level of security. Many of these commenters, including operators of small airports, state that nonautomated systems should be permitted. They believe that the requirement for the alternative to have the same capabilities as a computer-controlled card system is too restrictive. Ten comments were received from people who are in the business of providing systems for access control. The intent of these commenters is to make the FAA aware of technologies that are available, and, more importantly, to recommend that a final rule not require one type of system while allowing others to be used by exception as proposed in Notice No. 88–6.

The FAA agrees that, in addition to the specific technology identified in Notice No. 88–6, others may be available

to meet the objectives of the proposal. The FAA also envisions that operators of the smaller airports may be able to meet the requirements of this final rule with minimal or no computer-assisted hardware installation. The final rule is revised accordingly.

The lack of specificity regarding the doors, gates, or other locations that would be involved in the implementation of the proposed system is of concern to 24 commenters. They contend that the number of access points to be controlled will significantly impact the cost of the system. They also express concern about the applicability of a rule to those points that give access to various suppliers who are making daily deliveries to tenants in a restricted area and to the current escort procedures that provide construction workers with daily or temporary access to restricted areas. Seven commenters believe the proposal to be in conflict with fire codes.

For the same reason that "secured area" was not defined, the FAA was not specific regarding doors, gates, and other locations to be controlled. To do so would compromise an airport operator's security program. For that reason, the FAA specifically requested that airport operators not discuss in their comments specific details of current or proposed security arrangements. The FAA-planned guidance for the various FAA regions will assist the FAA personnel and airport operators in the identification of those access points that should be subject to control by the system, method, or procedure required by this final rule. The FAA does not envision that every door or other access point will need the enhanced access controls. In response to the concern regarding suppliers, the intended effect of the requirement proposed by the notice will not allow the FAA to consider the inconvenience of such a requirement to any one group. Escort procedures are associated with an airport's identification system, and Notice No. 88-6 stated that the proposal would supplement, not replace, an existing identification system required by an airport operator's security program. Escorting of persons will continue to be permitted under the rule.

Twenty-nine commenters state that the complicated and expensive automated security measures proposed by the notice are not necessary at small airports since small airports experience different types of problems than do large airports. Nineteen commenters specifically state that the current procedures are adequate and that the level of security anticipated by the FAA through the final rule can only be obtained via greater discipline of personnel and more training on security issues. Six commenters recommend an evaluation of different airports to determine the scope of security needs and to give consideration to the complexity of operations before effecting a rule to require all airports to have a complex and expensive computer-controlled system.

The FAA agrees with the commenters and recognizes that security varies from airport to airport. The final rule is revised to permit FAA approval of an alternative system, method, or procedure that provides an appropriate level of security commensurate with an airport's needs.

At least three commenters express concern that Notice No. 88-6 does not address the impact on fixed based operators (FBO) and request clarification of this issue. Eleven commenters express the same concern for general aviation (GA) operations.

Upon adoption of a final rule, the airport operator would be the regulated party. As tenants of the airport, FBO's and GA operations would be subject to the control procedures identified by the airport operator.

Seventeen commenters state that the required system will not prevent a person from violating security measures if that person has such a desire. At least three commenters state that the required system will not prevent the PSA Flight 1771 type of tragedy.

The FAA believes that the emergency final rule amending the preboarding screening procedures complemented by the requirements of this rule to require airport operators to implement a positive access control system will substantially increase the overall level of security and will minimize the likelihood of a PSA Flight 1771 type of situation.

Finally, 11 persons comment that the proposed regulation will, at the very least, enhance security to a minimal degree. They contend that in some cases security will deteriorate if all issues involved at any one airport are not considered in the system design and implementation.

The FAA believes that the final rule will enhance airport security beyond a minimal degree since its intent is to preclude access to secured areas by unauthorized persons. Since the commenters did not identify the specific issues to be considered to prevent a deterioration of security, the FAA cannot adequately respond to that concern.

Discussion of the Rule

After considering the comments, the FAA is amending Part 107 to add a new § 107.14 to require improved access control to secured areas of certain airports. The final rule revises the proposed rule in several significant respects as a result of the comments received.

Section 107.14(a). Paragraph (a) of § 107.14 is revised in three ways from the proposal. First, the amendment to an airport operator's approved security program is to be submitted to the Director of Civil Aviation Security rather than the Administrator. The substitution of the Director of Civil Aviation Security for the Administrator has been made throughout § 107.14. Second, the last two sentences of proposed paragraph (a), dealing with the timeframe for implementation of a required system, have been deleted. The implementation schedule is found in paragraph (c) of § 107.14 of the final rule and is discussed below. Third, the requirement of paragraph (a) that certain airport operators submit, for approval and inclusion in their approved security programs, amendments that provide for the installation and use of a computer-controlled card system for access to secured areas of the airport, has been modified. Paragraph (a) now requires the installation and use of a system, method, or procedure that meets specified performance standards to control access to secured areas of the airport. This change allows the installation and use of systems, methods, or procedures other than computer-controlled card systems which may be currently available or that become available in the future as technology evolves and that meet the performance standards.

Section 107.14(b). Paragraph (b) of § 107.14 addresses the approval of alternative systems, methods, or procedures. The final rule reflects major changes from the proposed rule as a result of comments received. Approval of an alternative under the final rule is not tied to having the same capabilities as the system, method, or procedure meeting the performance standards of paragraph (a). This permits approval of other than automated systems. However, the critical element for approval of any alternative is the same in the final rule as it was in the proposed rule; the alternative must provide an overall level of security equal to that which would be provided by the type of system, method, or procedure described in paragraph (a).

Section 107.14(c). Paragraph (c) of the proposed rule sets forth the schedule for airport operators to submit the amendments to their approved security programs required by paragraph (a) or (b). The final rule retains the 4-phase approach and the timeframes for airports subject to each phase to submit their amendments. Airport operators may submit their amendments prior to the date required by this final rule. For example, since some airport operators will be able to meet the requirements of the rule without installing a system, method, or procedure that meets the performance standards of paragraph (a), and will be able to meet the intent of the rule on a much faster timeframe, they are encouraged to submit their plans before the dates required by the final rule.

Operators of Phase I airports, where 25 million or more persons are screened annually or as designated by the Director of Civil Aviation Security, must submit amendments by 6 months after the effective date of the final rule. Operators of Phase II airports, where more than 2 million persons are screened annually, must submit amendments by 6 months after the effective date of the final rule. Operators of Phase III airports, where 500,000 to 2 million persons are screened annually, must submit amendments by 12 months after the effective date of the final rule. Operators of Phase IV airports, where less than 500,000 persons are screened annually, must submit amendments by 12 months after the effective date of the final rule.

Paragraph (c) of the final rule also includes an implementation schedule. The implementation timeframe, which was in paragraph (a) of the proposed rule, is substantially revised in the final rule. The proposed rule provided that "the system must be in use within 6 months" after approval of an airport operator's amendment to its approved security program. The proposed rule also provided for an additional 6 months at certain locations on an airport. The short timeframe of the proposed rule applied to airports in all four phases.

The final rule is different in several major respects. First, the implementation schedule is now linked to the phases. The final rule provides that the system, method, or procedure must be fully operational within 18 months after approval of an airport operator's amendment to its approved security program only at Phase I airports. Operators of Phase II airports have 24 months after approval of the amendments to their approved security programs. Operators of Phase III and IV airports have 30 months. The approved amendment for each airport shall specify how the system, method, or procedure will be fully operational within the appropriate timeframe.

Finally, paragraph (c) has added language to address the situation where an existing airport becomes subject to the requirements of § 107.14 after the effective date of the final rule. The timeframes for such an airport operator to submit an amendment to its approved security program and to specify that the system, method, or procedure must be fully operational depend on the phase that is applicable to the airport.

Section 107.14(d). A new paragraph (d) is included in the final rule to address the situation of brand new airports commencing operations after December 31, 1990. It is FAA's view that new airports should meet the requirements of section 107.14 when they commence operations since the improved access control requirements of the rule can be included in the design for these new airports and at a lower cost than a subsequent retrofit.

Economic Summary

The following is a summary of the final cost impact and benefit assessment of this rule amending Part 107 of the Federal Aviation Regulations to provide enhanced control of access to secured areas at certain U.S. airports. A full regulatory evaluation has been inserted into the public docket for this rulemaking.

For purposes only of this evaluation, the projected economic impact of the rule is based on the costs of installing and operating a computer-controlled card access system. Other access control systems, methods, or procedures may be permitted as a means of compliance with this rule subject to the approval of the Director of Civil Aviation Security.

Fifty-eight of the 122 written comments received as of May 31, 1988, in response to Notice No. 88-6 published in the **Federal Register** on March 18, 1988, pertain to the economic impact of the proposal. These comments were submitted by industry associations, individual airport authorities, air services, and producers of airport security equipment. The vast majority of these comments generally state that the FAA had underestimated the total costs required for compliance with the proposed rule.

Many of these comments are premised on two basic assumptions: (1) That the FAA underestimated the cost per access point, and (2) that the FAA underestimated the number of access points requiring enhanced control at airports.

The FAA has carefully reviewed its own cost estimates in light of comments received and does not agree that it underestimated the cost per access point. The FAA's estimates of design, testing, hardware, installation, maintenance, software update, and security card replacement costs were based on price quotes of manufacturers of computer card access systems. Cost per access area will differ for airports of different sizes, due to the large number of variables in required equipment, labor and maintenance and structural alterations associated with retrofit of existing systems. Thus, it is misleading to estimate total costs of the proposed rulemaking based on the cost per access area of one or two airports, as was done by some commenters.

Regarding the number of access points, the FAA believes that several commenters misunderstand the scope of the proposed rulemaking and have therefore overestimated the number of access points that the rule would require to have enhanced access controls (system, method, or procedure). In determining the number of doors that would be affected, the FAA did not envision that every door in a terminal area would need to be so controlled. Rather, the design of many airport buildings permits a "funneling through" effect which would minimize the number of doors requiring such enhanced control. In general, funnelling persons through a single point with enhanced access controls to an area would eliminate the need to have such controls at subsequent doors.

Therefore, for its economic analysis of the final rule, the FAA has not revised its estimates of the average number of access points that would need to be controlled in the four categories of airports. The number of access points for airports of each phase remains as follows in the economic analysis of the final rule:

Phase I: 128 access points
Phase II: 60 access points
Phase III: 25 access points
Phase IV: 10 access points

Several airport operators comment that the cost of the required security measure described in Notice No. 88-6 is excessive and would impose a heavy financial burden on them. The FAA recognizes these concerns and has therefore emphasized in the final rule that an airport operator may submit an amendment to its security program for approval by the Director of Civil Aviation Security, which does not

necessarily require a computer card or automated system. The Director of Civil Aviation Security may approve such an alternative system, method, or procedure if, in the Director's judgment, it provides an overall level of security equal to that of a system, method or procedure meeting the performance standards outlined in the final rule. These performance standards, although stringent, do not specifically require use of a computerized or automated system.

In addition, the implementation schedule for affected airports has been revised in the final rule to allow more time for compliance, particularly for medium- and small-sized airports. One positive effect of this change may be to spread up-front costs for installation over a longer period of time, easing the burden on many airport operators.

Costs

This analysis of the costs of compliance with the final rule is premised on the assumption that all 270 airports will install computer-controlled card access systems. In actuality, many airport operators, particularly of medium- and small-sized airports in Phases III and IV, may install alternative access control systems, methods, or procedures, with the approval of the Director of Civil Aviation Security, that may prove to be less costly than the computer card systems. Therefore, the actual costs of this rule may be less than the estimated costs in this analysis.

Estimated costs of implementing controlled access systems at 270 airports in the United States, in accordance with the specifications and revised schedule of new § 107.14, are $169.9 million in 1987 dollars, and $119.1 million discounted present value (employing a 10 percent discount rate), for the 10-year evaluation period from 1989–1998. For Phase I airports, average hardware and installation costs are expected to be $1,465,600, with average annual recurring costs of approximately $126,600. For Phase II airports, average hardware and installation costs are expected to be $732,000, with annual recurring costs of approximately $88,730. For Phase III airports, average hardware and installation costs are expected to be $245,000, with annual recurring costs of approximately $42,969. For Phase IV airports, average hardware and installation costs are expected to be $56,000, with annual recurring costs of approximately $3,100. Table I shows the total of these costs by phase of airport and by year for the 270 airports affected by this rule.

The revised implementation schedules specified in this rule for airports of the four phases, permitting installation, maintenance and labor costs to commence later than indicated in the Initial Regulatory Evaluation, have the effect of slightly reducing the present value of total costs. Nonetheless, overall estimated costs of compliance have increased from estimates in the Initial Regulatory Evaluation, as a result of an increase in the number of airports in each phase. According to a recent review, there are 17 rather than 16 airports in Phase I, 54 rather than 48 airports in Phase II, 46 rather than 45 airports in Phase III, and 153 rather than 160 airports in Phase IV.

Benefits

The primary benefit of this rule will be the prevention of potential fatalities and injuries and the destruction of property resulting from a criminal act or an act of air piracy. The tragic loss on December 7, 1987, of 38 passengers and 5 crewmembers aboard PSA Flight 1771, serves as a basis for focusing on the type of catastrophic event that may be prevented by adopting new security regulations. It is important to recognize that the PSA Flight 1771 incident involved a smaller aircraft and passenger load than a typical Part 121 air carrier operation. If such a criminal act were perpetrated in a larger or more heavily loaded aircraft, the casualty loss would have been significantly higher.

The estimated $119.1 million cost (discounted present value) of this rule can be recovered fully if one incident, involving the loss of 170 lives and a wide-bodied jet transport of the type typically used in domestic operations, is prevented as a result of requiring improved security programs at U.S. airports during the 10 years following adoption of this rule. This determination is based upon a minimum value of $1.0 million per life saved, used in FAA regulatory evaluations, and an aircraft hull value of approximately $30.0 million, discounted from the middle of the 10-year evaluation period to account for the uncertainty of when such an incident may be prevented.

Regulatory Flexibility Determination

This amendment would affect 270 of the 427 airports subject to the security provisions of Part 107. The FAA's small entity size standards criterion define a small airport as one owned by a county, city, town or other jurisdiction with a population of 49,999 or less. Applying the FAA's size threshold criterion, 76 of the 427 airports are small. Since only 22 of the 270 airports that would be required to comply with this proposal are small, the requirement for the enhanced access controls will not affect a substantial number (at least one third) of the 76 small airports subject to Part 107. Therefore, this final rule will not have a significant economic impact, positive or negative, on a substantial number of small entities.

TABLE I.—COST OF COMPUTER-CONTROLLED CARD ACCESS SYSTEMS FOR YEARS 1989–1998

Year	Phase I	Phase II	Phase III	Phase IV	Total Costs
1989	[2] $9,444,067	$13,417,920			$22,861,987
1990	[2] 18,599,133	[2] 24,312,420	[2] 5,359,491		48,271,044
1991	[1] 1,989,000	[2] 14,430,420	[2] 5,646,991		22,066,411
1992	1,989,000	[1] 4,548,420	[2] 5,646,991	[2] 8,698,050	20,882,461
1993	1,989,000	4,548,420	[1] 1,890,324	[1] 359,550	8,787,294
1994	2,641,800	4,548,420	1,890,324	359,550	9,440,094
1995	1,989,000	5,520,420	1,890,324	359,550	9,759,294
1996	1,989,000	4,548,420	2,235,324	818,550	9,591,294
1997	1,989,000	4,548,420	1,890,324	359,550	8,787,294
1998	2,641,800	4,548,420	1,890,324	359,550	9,440,094
Total Cost (1987 dollars)	45,260,800	84,971,700	28,340,416	11,314,350	169,887,266
Total Cost (present value; 10% discount rate)	33,345,586	60,267,176	18,312,651	7,224,445	119,149,858

[1] Recurring annual costs include security access card replacement, computer maintenance, software update and support, and additional labor. Recurring costs also include card readers maintenance every 4th year.

[2] One-time installation costs include planning and procurement of computers, peripheral equipment, card readers, security access cards, engineering site survey and design, and Manager/Operator training.

Trade Impact Statement

This rule is expected to have no impact on trade opportunities for both U.S. firms doing business overseas and foreign firms doing business in the United States. This amendment affects only certain domestic airports subject to Part 107 of the FAR. Since there is virtually no foreign competition for the services provided by U.S. domestic airports, there is expected to be no impact on trade opportunities for either U.S. firms overseas or foreign firms in the United States.

Reporting and Recordkeeping

The requirements in the current regulations (Part 107) for an airport operator to submit an airport security program and amendments to the FAA for approval were approved by the Office of Management and Budget (OMB) under Control No. 2120-0075. Pursuant to this final rule, the FAA forwarded an amendment to Control No. 2120-0075 to OMB in accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511). OMB approved the FAA's amendment of Control No. 2120-0075 on January 3, 1989.

deralism Implications

The FAA believes that airport operators and sponsors will not be unduly burdened by the requirements of the final rule based on (1) the availability of AIP funding; (2) potential lower costs associated with alternative systems, methods, or procedures; and (3) the extended implementation schedule providing amortization of installations costs. On these bases, the FAA has determined that this regulation will not have a substantial direct effect 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. Therefore, in accordance with Executive Order 12612, preparation of a Federalism assessment is not warranted.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not major under Executive Order 12291. In addition, it is certified that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act of 1980. Because of the substantial public interest resulting from Notice No. 88-6, this rule is considered significant under the DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final regulatory evaluation of the rule, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT".

List of Subjects in 14 CFR Part 107

Transportation, Air safety, Safety, Aviation safety, Air transportation, Air carriers, Aircraft, Airports, Airplanes, Airlines, Aviation security, Secured areas.

The Amendment

Accordingly, Part 107 of the Federal Aviation Regulations (14 CFR Part 107) is amended as follows:

PART 107—AIRPORT SECURITY

1. The authority citation for Part 107 continues to read as follows:

Authority: 49 U.S.C. 1354, 1356, 1357, 1358, and 1421; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449; January 12, 1983).

2. By adding a new § 107.14 to read as follows:

§ 107.14 Access control system.

(a) Except as provided in paragraph (b) of this section, each operator of an airport regularly serving scheduled passenger operations conducted in airplanes having a passenger seating configuration (as defined in § 108.3 of this chapter) of more than 60 seats shall submit to the Director of Civil Aviation Security, for approval and inclusion in its approved security program, an amendment to provide for a system, method, or procedure which meets the requirements specified in this paragraph for controlling access to secured areas of the airport. The system, method, or procedure shall ensure that only those persons authorized to have access to secured areas by the airport operator's security program are able to obtain that access and shall specifically provide a means to ensure that such access is denied immediately at the access point or points to individuals whose authority to have access changes. The system, method, or procedure shall provide a means to differentiate between persons authorized to have access to only a particular portion of the secured areas and persons authorized to have access only to other portions or to the entire secured area. The system, method, or procedure shall be capable of limiting an individual's access by time and date.

(b) The Director of Civil Aviation Security will approve an amendment to an airport operator's security program that provides for the use of an alternative system, method, or procedure if, in the Director's judgment, the alternative would provide an overall level of security equal to that which would be provided by the system, method, or procedure described in paragraph (a) of this section.

(c) Each airport operator shall submit the amendment to its approved security program required by paragraph (a) or (b) of this section according to the following schedule:

(1) By August 8, 1989, or by 6 months after becoming subject to this section, whichever is later, for airports where at least 25 million persons are screened annually or airports that have been designated by the Director of Civil Aviation Security. The amendment shall specify that the system, method, or procedure must be fully operational within 18 months after the date on which an airport operator's amendment to its approved security program is approved by the Director of Civil Aviation Security.

(2) By August 8, 1989, or by 6 months after becoming subject to this section, whichever is later, for airports where more than 2 million persons are screened annually. The amendment shall specify that the system, method, or procedure must be fully operational within 24 months after the date on which an airport operator's amendment to its approved security program is approved by the Director of Civil Aviation Security.

(3) By February 8, 1990, or by 12 months after becoming subject to this section, whichever is later, for airports where at least 500,000 but not more than 2 million persons are screened annually. The amendment shall specify that the system, method, or procedure must be fully operational within 30 months after the date on which an airport operator's amendment to its approved security program is approved by the Director of Civil Aviation Security.

(4) By February 8, 1990, or by 12 months after becoming subject to this section, whichever is later, for airports where less than 500,000 persons are screened annually. The amendment shall specify that the system, method, or procedure must be fully operational within 30 months after the date on which an airport operator's amendment to its approved security program is approved by the Director of Civil Aviation Security.

(d) Notwithstanding paragraph (c) of this section, an airport operator of a

newly constructed airport commencing initial operation after December 31, 1990, as an airport subject to paragraph (a) of this section, shall include as part of its original airport security program to be submitted to the FAA for approval a fully operational system, method, or procedure in accordance with this section.

Issued in Washington, DC, on January 3, 1989.

T. Allan McArtor,

Administrator.

[FR Doc. 89-279 Filed 1-4-89; 9:48 am]

BILLING CODE 4910-13-M

ATTACHMENT B

U.S. Department of Transportation
Federal Aviation Administration

Memorandum

Subject: AIP Funding of Security Equipment

Date: 24 OCT 1988

Reply to Attn. of

From: Director of Civil Aviation Security, ACS-1
Director, Office of Airport Planning and Programming, APP-1

To: Managers, Civil Aviation Security Divisions
Managers, Airports Divisions

The Airport and Airway Improvement Act of 1982 (AAIA), as did the Airport and Airway Development Act of 1970 (as amended in 1973), contains language indicating that "... security equipment required by the Secretary by rule or regulation for the safety or security of persons and property at such airport..." is an element of airport development, and the cost of such equipment is eligible for funding under the Airport Improvement Program (AIP). However, it is anticipated that Federal Aviation Regulation (FAR) Part 107 will rarely list the specific types of security equipment required at each airport. It directs the sponsor/operator to "... adopt and put into use facilities and procedures designed to prevent or deter persons and vehicles from unauthorized access to air operations area." To meet this requirement, the airport operator must design an Airport Security Program subject to the approval of the FAA. Airport operators should be encouraged to develop funding resources for security equipment and installations with significant reliance on contributions from air carriers and other lessees at the airport. However, it is the consensus of the Office of Airport Planning and Programming and the Office of Civil Aviation Security that equipment required for effective implementation of an approved Security Program is required by "rule or regulation" within the meaning of the AAIA. Thus, in general, security equipment required to establish and maintain the provisions of the Airport Security Program and specifically described or named in the Program (e.g., fencing, lighting, ID equipment, alarms, etc.) is eligible for programming under AIP.

FAR Part 107 requires the airport operator to design a security program acceptable to the FAA. But, obviously, this requirement establishes minimum standards only; and an operator's program could contain procedures, facilities, and equipment that exceed those which would be required for safety and security purposes. Therefore, any equipment in excess of the minimum required for safety and security purposes is not required security equipment within the meaning of FAR Part 107. While an airport operator may weigh aesthetic and other considerations when purchasing security equipment, the cost of that equipment, to the extent that it exceeds the reasonable cost of the minimum equipment required, will not be eligible for funding. It is imperative that the proposed security

programs and security program amendments be carefully reviewed by the Civil Aviation Security Field Offices (CASFO), not only to assure the acceptableness of the procedure, but to identify that equipment, if any, which exceeds that required for security purposes.

Where such equipment is identified, the operator should be notified and the notification made a matter of record. In general, if the equipment is directly supportive of a security procedure which is needed to make the security program acceptable at that particular airport, it is security equipment required by rule or regulation. This rationale would also be used to decide if the equipment is necessary and/or if its design or specification exceeds minimum standards, and to what extent it may exceed such requirements. It also must be recognized that some equipment may serve a variety of uses and that only a part of the equipment's use is supportive of the airports's FAR 107 security program. Again, an evaluation to determine the extent and amount of such support must be made, and funding made available pro rata to the extent the equipment supports or relates to the Security Program required by Part 107. ACS-1 will soon provide a variety of materials to security personnel which will assist in making the above analyses and determinations.

The appropriate Airports field office will coordinate all AIP projects affecting security with the Civil Aviation Security Field Office assigned the security responsibility for the airport involved. This coordination will include a determination by the CASFO that the equipment requested by the sponsor is that which is reasonable and necessary to meet the minimum requirements of FAR Part 107. Only after this determination is made shall the Airports field office process the preapplication.

Paul L. Galis

Paul L. Galis

Raymond A. Salazar

Raymond A. Salazar

federal register

Tuesday
January 31, 1989

Part II

Drug-Free Workplace Requirements; Notice and Interim Final Rules

OFFICE OF MANAGEMENT AND BUDGET

Governmentwide Implementation of the Drug-Free Workplace Act of 1988

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: This Notice provides information, in the form of nonbinding questions and answers, to assist the public in meeting the requirements of the Drug-Free Workplace Act of 1988. The Office of Management and Budget (OMB) has coordinated regulatory development with over 30 Federal agencies to ensure uniform, governmentwide implementation of this Act. As a consequence, OMB is offering this non-regulatory guidance.

Part of the omnibus drug legislation enacted November 18, 1988 is the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D). This statute requires contractors and grantees of Federal agencies to certify that they will provide drug-free workplaces. Making the required certification is a precondition of receiving a contract or grant from a Federal agency beginning on March 18, 1989.

Regulatory requirements pertaining to contractors are detailed in an interim final rule appearing in today's **Federal Register**. This rule amends the Federal Acquisition Regulation (FAR) at 48 CFR Subparts 9.4, 23.5 and 52.2. Regulatory requirements pertaining to grantees are detailed in an interim final common rule also appearing in today's **Federal Register**. The grantee common rule, unlike the contractor FAR rule, includes an extensive common preamble which addresses in detail the application and requirements for grantees. The common rule amends the governmentwide nonprocurement debarment and suspension common rule. Under the Drug-Free Workplace Act, the ultimate consequence of noncompliance with the Act's requirements is debarment or suspension.

FOR FURTHER INFORMATION CONTACT: For grants, contact Barbara P. Kahlow, Financial Management Division, 10225 New Executive Office Building, OMB, Washington, DC 20503 (telephone 202-395-3053). For contracts, contact Donna Fossum, Office of Federal Procurement Policy, 9025 New Executive Office Building, OMB, Washington, DC 20503 (telephone 202-395-3300).

SUPPLEMENTARY INFORMATION: See the common preamble and the common rule for detailed information on requirements for grantees.

1. *Question*—What contracts are covered under the Drug-Free Workplace Act?

Answer—Under the Act, only procurement contracts, including purchase orders, awarded pursuant to the provisions of the Federal Acquisition Regulation (FAR) that are to be performed, in whole or in part, in the United States are subject to the Act. In addition, under the Act, there is a $25,000 threshold for contracts subject to the Act, except for contracts awarded to individuals for whom all contracts are covered.

2. *Question*—Are contracts performed partly inside the U.S. and partly outside the U.S. covered by the Drug-Free Workplace Act?

Answer—Yes. OMB reads the statute to require a contractor to have a Drug-Free Workplace program for those portions of the contract performed inside the United States.

3. *Question*—Are Medicare third-party reimbursements to hospitals covered by the Drug-Free Workplace Act?

Answer—No, because such third party reimbursements are not made via a procurement contract or a grant. However, hospitals that receive procurement contracts or grants must meet the requirements of the Act.

4. *Question*—Are banks and other financial institutions selling U.S. Treasury bonds covered by the Drug-Free Workplace Act?

Answer—No, because such sales are not made via a procurement contract or a grant. However, such institutions that receive procurement contracts or grants must meet the requirements of the Act.

5. *Question*—Under what circumstances will an existing contract become subject to the requirements of the Drug-Free Workplace Act?

Answer—OMB reads the statute to require that if a contract is modified on or after March 18, 1989, in such a manner that it would be considered a new commitment, the requirements of the Drug-Free Workplace Act apply.

6. *Question*—Are contracts awarded with non-appropriated funds subject to the provisions of the Drug-Free Workplace Act?

Answer—No. Only those funds explicitly identified as non-appropriated are excluded from the FAR and, therefore, are not subject to the Drug-Free Workplace Act.

7. *Question*—Are contractors or grantees performing work in Federal facilities required to have Drug-Free Workplace programs?

Answer—Yes.

8. *Question*—Will additional regulations governing suspension and debarment actions be issued as a result of section 5152(b)(2)(B) of the Drug-Free Workplace Act?

Answer—OMB is unaware of any plans to do so.

9. *Question*—How do the provisions of the Drug-Free Workplace Act relate to the provisions contained in section 628 of the Treasury/Postal Service Appropriations Act (Pub. L. 100-440)?

Answer—Section 5159 of the Drug-Free Workplace Act repealed section 628(b) of the Treasury/Postal Service Appropriations Act which, like the Drug-Free Workplace Act, also contained drug-free workplace requirements pertaining to Federal contractors and grantees. Section 628(a) of the Treasury/Postal Service Appropriations Act, which contains drug-free workplace requirements for Federal departments, agencies, and instrumentalities, went into effect January 16, 1989. Several authorization acts contain sections similar to section 628(b). OMB reads the legislative history of these collective acts such that the requirements of those sections may be met by complying with the Drug-Free Workplace Act.

10. *Question*—Do either the Drug-Free Workplace Act or its implementing regulations published today require contractors or grantees to conduct drug tests of employees?

Answer—No.

11. *Question*—What is the status of the September 28, 1988, Department of Defense interim rule detailing drug-free workforce requirements on a select group of contractors?

Answer—The interim rule became effective October 31, 1988, and only pertains to selected Defense contractors and their employees in sensitive positions. Both rules, published in today's **Federal Register**, implementing the Drug-Free Workplace Act apply governmentwide to Defense *and* other Federal agencies, and cover contractors *and* grantees and their employees in nonsensitive *and* sensitive positions. Only the Defense interim rule requires drug testing.

12. *Question*—Are there any other agency-specific (versus governmentwide) rules with drug-free workplace requirements?

Answer—Not at this time.

Date: January 19, 1989.

Joseph R. Wright, Jr.,
Director.

[FR Doc. 89-2064 Filed 1-30-89; 8:45 am]
BILLING CODE 3110-01-M

Governmentwide Requirements for Drug-Free Workplace (Grants)

AGENCIES: Department of Agriculture, Department of Commerce, Department of Defense, Department of Education, Department of Energy, Department of Health and Human Services, Department of Housing and Urban Development, Department of the Interior, Department of Justice, Department of Labor, Department of State, Department of Transportation, Department of the Treasury, ACTION, African Development Foundation, Agency for International Development, Commission on the Bicentennial of the United States Constitution, Environmental Protection Agency, Federal Emergency Management Agency, Federal Home Loan Bank Board, Federal Mediation and Conciliation Service, General Services Administration, Institute of Museum Services, Inter-American Foundation, National Aeronautics and Space Administration, National Archives and Records Administration, National Endowment for the Arts, National Endowment for the Humanities, National Science Foundation, Peace Corps, Small Business Administration, United States Information Agency, Veterans Administration.

ACTION: Interim final rule; request for comments.

SUMMARY: Congress recently enacted the Drug-Free Workplace Act of 1988. This statute requires that all grantees receiving grants from any Federal agency certify to that agency that they will maintain a drug-free workplace, or, in the case of a grantee who is an individual, certify to the agency that his or her conduct of grant activity will be drug-free. This governmentwide rule is for the purpose of implementing the statutory requirements. It directs that grantees take steps to provide a drug-free workplace in accordance with the Act.

DATES: This rule is effective March 18, 1989. Comments should be received by April 3, 1989. Late-filed comments will be considered to the extent practicable.

ADDRESS: Comments should be sent to Docket Clerk, Docket No. 46084, Department of Transportation, 400 7th Street SW., Room 4107, Washington, DC 20590. Commenters are requested to provide an original and four copies of their comments. Commenters wishing to have their comments acknowledged should enclose a stamped, self-addressed postcard with their comment. The docket clerk will time and date stamp the card and return it to the commenter.

FOR FURTHER INFORMATION CONTACT: See agency-specific preambles for the contact person for each agency.

SUPPLEMENTARY INFORMATION: As part of the omnibus drug legislation enacted

November 18, 1988, Congress passed the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D). This statute requires contractors and grantees of Federal agencies to certify that they will provide drug-free workplaces. Making the required certification is a precondition for receiving a contract or grant from a Federal agency.

Requirements pertaining to contractors will be found in a separate interim final rule amending the Federal Acquisition Regulation (FAR; 48 CFR Subparts 9.4, 23.5, and 52.2). This governmentwide common rulemaking concerns only grants (including cooperative agreements). This common rule will be the sole authority for implementing the Act, i.e., there will be no separate agency guidance issued. Because the statute makes use of existing suspension and debarment remedies for noncompliance with drug-free workplace requirements, the agencies have determined to implement the statute through an amendment to the existing governmentwide nonprocurement suspension and debarment common rule. Using this vehicle will allow the agencies to take advantage of existing administrative procedures and definitions, minimizing regulatory duplication.

In a matter unrelated to the Drug-Free Workplace Act, the May 26, 1988, common rule on nonprocurement suspension and debarment (53 FR 19161) contained interim final language concerning coverage of international transactions. The comment period on this language ended July 25, 1988. There were no comments. As a result, the international transactions language will remain unchanged.

Section-by-Section Analysis

The core of the drug-free workplace rule is a new Subpart F, which will be added to the current nonprocurement suspension and debarment common rule. Conforming changes are being made to other affected portions of the nonprocurement suspension and debarment common rule. The title of the part, as well as the authority citations, are being modified to refer to the drug-free workplace requirements being added to the regulation. Section ____.305, which concerns grounds for debarment, is being amended to add violation of drug-free workplace requirements as a ground for debarment.

Section ____.320, concerning the period of debarment, is being amended to conform with the longer period for debarment authorized by the statute for a violation of drug-free workplace requirements. Generally, debarments for other than a violation of the drug-free workplace requirements do not exceed three years. In view of the seriousness with which Congress takes drug abuse, Congress authorized debarments of up to five years for a violation of drug-free workplace requirements.

Subpart F is intended to carry out the Drug-Free Workplace Act of 1988, as it applies to Federal grant programs. Section ____.600, "Purpose," states this intent, indicating the requirement for both individuals and other grantees to make the certification required by the statute.

Section ____.605 includes several definitions. Since Subpart F is part of the suspension and debarment regulation, the definitions of the overall regulation (from § ____.105) apply to Subpart F, except where amended in this section.

The definitions of "controlled substance," "conviction," "criminal drug statute" and "employee" are taken verbatim from the statute. The definition of "drug-free workplace" is also taken directly from the statute, with the word "grantee" used in place of the undefined statutory "entity" in order to ensure terminological consistency throughout the regulation. The term "site for the performance of work" within this definition is not further defined. It is intended that the grantee will determine what the "site for the performance of work" is and specify such in the grantee's certification.

The definition of "grant" is adapted from the definition of this term in the grants management governmentwide common rule ("Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"). Four points should be highlighted. First, for the purpose of the Drug-Free Workplace Act, grants include block grants and entitlement grant programs, whether or not exempted from coverage under the grants management common rule. Second, nonprocurement transactions entered into under Pub. L. 93-638, the "Indian Self-Determination and Education Assistance Act," are included under the subpart's requirements. Third, the term grant includes *only* assistance from an agency *directly* to a grantee. That is, if a Federal agency provides financial assistance to a State agency, which in turn passes through the assistance to several local agencies, only the State agency that receives the assistance directly from the Federal agency, and not the local agency, gets a "grant."

Consequently, it is only the State agency that is required to make a drug-free workplace certification under the regulation.

Fourth, section 5301 of Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (Pub. L. 100-690) specifies that "Federal benefits" may (or shall) be withheld, in certain circumstances, from convicted drug offenders. The term "Federal benefit," however, is defined by section 5301(d) to exclude "any * * * veterans benefits," a term which is defined, in turn, to include "all benefits provided to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States." Consequently, it is clear that, under Public Law 100-690, Federal agencies may not deny veterans' benefits to individuals on the basis of actual drug convictions.

Consistent with the intent of section 5301, the agencies have determined that veterans' benefits may not be denied to individuals on the basis of drug abuse which does not result in a conviction for violating a criminal drug statute or on the basis of the individual's failure to certify that he or she will refrain from drug abuse. Consequently, the definition of the term grant specifically excludes "any veterans' benefits to individuals—i.e., any benefit provided to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States."

"Grantee" is defined as a person who applies for or receives a grant directly from a Federal agency. This definition clarifies the statutory definition of this term, which refers to "the department, division, or other unit of a person responsible for section. "Individual" is defined in this section, however, to mean "a natural person." This wording emphasizes that an individual differs both from an organization made up of more than one individual and from corporations, which can be regarded as a single "person" for some legal purposes. An individual who receives a grant directly from a Federal agency (e.g., the individual gets a Federal agency award and grant check made out in his or her name) is covered by this rule, and must make the certification provided for grantees who are individuals, even if another party (e.g., a university) has a purely administrative role in distributing the funds. The agencies intend that a "principal investigator" in a research or similar grant be viewed as an individual only if the grant is awarded directly to the investigator (as distinct from being awarded to a university or other organization).

The § ____.105 definition of "person," it should be pointed out, includes

individuals. Since a "grantee" is a "person" who applies for or receives a grant, a grantee may be either an individual or an organization. When context requires, as in distinguishing between the certifications that individuals and organizations must submit, phrases like "grantees, other than individuals" and "grantees who are individuals" are used.

The definition of "Federal agency" or "agency" is taken from 5 U.S.C. 552(f) and is intended to cover a bread range of government entities. In various places in the regulation, "the agency" is used in the context of a particular grantor agency (e.g., § ____.630(a); "each grantee shall make the appropriate performance under the grant." The agencies view the regulatory definition as avoiding confusion among the terms "grantee," "person" and "individual" that might otherwise occur.

At the same time, the use of "grantee" in this regulation is intended to be consistent with the statutory sense of the term. For example, in determining the level of organization at which a sanction should be imposed in case of a violation of the requirements of this subpart, the agencies intend, where appropriate, to focus on the "department, division, or other unit" of the grantee responsible for performance under the grant. For example, if several different organizational units of a State agency receive grants from a Federal agency, and one of the State organizational units violates a requirement of the regulation, sanctions could be imposed on that organizational unit, not on the entire State agency. On the other hand, where it is appropriate, in the context of a particular Federal grant program, to view the entire grantee organization as responsible for the implementation of drug-free workplace requirements under this rule, the entire grantee organization could be subject to sanctions.

As in the definition of "grant," the use of the word "directly" emphasizes that it is only a "prime grantee," and not "subgrantees," who are covered by requirements under this subpart. This is true even when the prime grantee is only an office that passes Federal funds through to subgrantees who actually do the work of the program.

Words like "State" and "person" are already defined in § ____.105, so definitions of these terms are not repeated in this certification to the agency"). In such contexts, the term is not intended to mean Federal agencies in general.

Section § ____.610 applies the provisions of the subpart to any grantee of an agency. The remainder of the suspension and debarment rule applies to suspensions and debarments under subpart F. In the event of any conflict or inconsistency, subpart F provisions are deemed to control with respect to drug-free workplace matters.

Section ____.615 lists the grounds for which sanctions can be imposed. The imposition of sanctions requires a written determination of violation from the "agency head" or designee.

The first ground for which a grantee can be sanctioned is for making a false certification. The second ground is to violate the certification by failing to comply with the requirements of the certification (e.g., an organization that never publishes a drug-free workplace statement).

The third ground for sanctions is that "such a number of employees of the grantee" have been convicted of criminal drug 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." This is a standard that must be applied by agencies on a case-by-case basis. The facts and circumstances of grantees and employee drug problems vary so much that it would be virtually impossible to prescribe an across-the-board standard for how many convictions it would take before an agency would find a grantee in violation. It is clear, however, that criminal drug violations by employees not occurring in the workplace would not trigger this determination. Likewise, evidence of drug abuse by employees in the workplace that does not result in criminal convictions would not trigger this determination.

Section ____.620 provides three kinds of sanctions for grantees who are found in violation under § ____.615. The first is suspension (i.e., withholding) of payments under the grant. The second is suspension or termination of the grant itself. The third is suspension or debarment of the grantee. The decision of which sanction or sanctions to apply in a particular case is left to the discretion of the Federal grantor agency. As with other debarments, the debarred grantee is ineligible for any grant award from any Federal agency during the term of the debarment, which may be up to five years in the case of a debarment for a violation of this subpart.

Section ____.625 allows the agency head—but no other official in the agency—to waive a sanction imposed under § ____.620 if the agency head finds the sanction to be not in the public interest. The determination of the "public interest" ground for the waiver is within the discretion of the agency head. The waiver must be in writing.

Section ____.630 establishes what grantees must do in order to receive grants, in light of drug-free workplace requirements. Each grantee shall make the appropriate certification (as set forth in Appendix C) as a "prior condition" of being awarded a grant. This means that the agencies may not award the grant unless the certification has been made. Normally, the agencies would make the certification part of the grant application or proposal process, so that each grantee would make the certification in the process of seeking to obtain the funds.

The agencies are aware that, in some grant programs, there are no formal applications or proposals for funding in which a certification could be included (e.g., formula grant programs in which grantees are entitled to receive Federal funds). Also, as this regulation goes into effect, applications will already have been submitted for some grant programs, and only the actual award has to take place before the grant becomes effective. In both cases, grantees are required to make their certifications before the actual award of a grant can take place.

A grantee is required to make the required certification for each grant. The one exception to this rule is for a grantee which is a State (as defined in § ____.105), including a State agency. A State may elect to make a single annual certification to each agency from which it obtains grants, rather than making a separate certification for each grant or each workplace. Only one such annual certification need be made to each Federal grantor agency, which would cover all of that State agency's workplaces. Consequently, if a State agency receives grants under a number of different programs from the same Federal agency, only one certification, rather than multiple, annual certifications, has to be made to that Federal agency.

Grantees are not required to make certifications in order to continue receiving payments under existing grants. That is, if a grant has been approved and awarded before the effective date of this regulation, the grantee does not have to take any action under this regulation in order to continue receiving payments under the grant. On the same rationale, grantees would not be required to make a certification before a no-cost time extension of an existing grant. The requirements of this rule operate only prospectively.

The text of the certification required to be submitted by § ____.630 is found in Appendix C. There are two different

versions of the Appendix C certification. One of them is for grantees other than individuals; the other is for individuals. Grantees must choose the appropriate certification and make it as provided in § ____.630.

The Appendix C certification for grantees other than individuals (Alternate I) incorporates the statutory requirements for a drug-free workplace program. These requirements are largely self-explanatory. Grantee's costs incurred specifically to comply with the requirements of subpart F are regarded as allowable costs under the grant. The agencies point out that, under subparagraph (f)(2), employers are not required by the common rule to provide or pay for rehabilitation programs.

The applicable Appendix C certification for grantees who are individuals (Alternate II) provides that the individual will not engage in prohibited practices with respect to drugs in conducting any activity with the grant. Again, this certification simply incorporates the statutory requirement for individual grantees.

Regulatory Process Matters

This rule is a non-major rule under Executive Order 12291. The agencies have evaluated the rule under Executive Order 12612, pertaining to Federalism. The statute requires drug-free workplace certifications to be made by all grantees, including State agencies. The rule does reduce burdens on State grantees by allowing State agencies to elect an annual certification to each Federal grantor agency in lieu of a certification for every grant. For these reasons, the agencies have determined that the rule will not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

As a statutory matter, this rule must apply to all grantees, regardless of size. (The statute does provide a shorter, less burdensome certification to be made by grantees who are individuals, however.) Costs incurred by grantees for drug-free workplace programs are directly mandated by statute; the agencies have minimal regulatory discretion in designing this regulation.

This rule contains information collection requirements subject to the Paperwork Reduction Act. The information collection requirements concern employees reporting drug offense convictions to grantees, grantees reporting these convictions to the agencies, and grantees listing the location(s) of their workplace(s) as part of the certification. These requirements have been reviewed and approved by the Office of Management and Budget, with OMB Control Number 0991-0002.

The agencies find that publishing a notice of proposed rulemaking on this matter would be impracticable, unnecessary, and contrary to the public interest, since it would prevent compliance with the statutory deadline (90 days from the statute's date of enactment) for issuance of final rules. This finding is also based on the agencies' view that, given the urgency of implementing appropriate means to combat the nation's serious drug problem, the additional time involved with the publication of a notice of proposed rulemaking would adversely affect the achievement of the national objective established by Congress.

In addition, this rulemaking pertains only to agency grants. For this reason, under 5 U.S.C. 553(a)(2), the rulemaking is exempt from the requirement for prior notice and comment (except for those agencies that do not assert this exemption).

Consequently, this rule is published as an interim final rule. As an interim final rule, this regulation is fully in effect and binding after its effective date. No further regulatory action by the agencies is essential to the legal effectiveness of the rule. In order to benefit from comments that interested parties and the public may make, however, the agencies will keep the rulemaking docket open for 60 days. Comments are invited, on all portions of the rulemaking, through April 3, 1989. Following the close of the comment period, the agencies will publish a notice responding to the comments and, if appropriate, amending provisions of this rule.

Text of the Common Rule

The text of the common rule, as adopted by the agencies in this document, appears below.

PART ____—GOVERNMENTWIDE DEPARTMENT AND SUSPENSION (NON-PROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

§ ____.305 Causes for debarment.

* * * * *

(c) * * *

(5) Violation of any requirement of Subpart F of this part, relating to providing a drug-free workplace, as set forth in § ____.615 of this part.

* * * * *

§ ____.320 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(1) Debarment for causes other than those related to a violation of the requirements of Subpart F of this part generally should not exceed three years. Where circumstances warrant, a longer period of debarment may be imposed.

(2) In the case of a debarment for a violation of the requirements of Subpart F of this part (*see* ____.305(c)(5)), the period of debarment shall not exceed five years.

* * * * *

Subpart F—Drug-Free Workplace Requirements (Grants)

Subpart F—Drug-Free Workplace Requirements (Grants)

§ ____.600 Purpose.

(a) The purpose of this subpart 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.

§ ____.605 Definitions.

(a) Except as amended in this section, the definitions of § ____.105 apply to this subpart.

(b) For purposes of this subpart—

(1) "Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1300.11 through 1300.15.

(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, distribution, 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 pursuant to the provisions of the grant;

(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 governmentwide regulation ("Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"). The term does not include technical assistance which 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;

(9) "Individual" means a natural person.

§ ____.610 Coverage.

(a) This subpart applies to any grantee of the agency.

(b) This subpart applies to any grant, except where application of this subpart would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government.

(c) The provisions of Subparts A, B, C, D and E of this part apply to matters covered by this subpart, except where specifically modified by this subpart. In the event of any conflict between provisions of this subpart and other provisions of this part, the provisions of this subpart are deemed to control with respect to the implementation of drug-free workplace requirements concerning grants.

§ ____.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 this subpart if the agency head or his or her official designee determines, in writing, that—

(a) The grantee has made a false certificaiton under § ____.630;

(b) The grantee has violated the certification by failing to carry out the requirements of subparagraphs (A.)(a)-(g) of the certification for grantees other than individuals (Alternate I to Appendix C) or by failing to carry out the requirements of the certification for grantees who are individuals (Alternate II to Appendix C); or

(c) 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.

§ ____.620 Effect of violation.

(a) In the event of a violation of this subpart as provided in § ____.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 this part.

(b) Upon issuance of any final decision under this part 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 exceed five years (*see* § ____.320(a)(2) of this part).

§ ____.625 Exception provision.

The agency head may waive with respect to a particular grant, in writing, a suspension of payments under a grant, suspension or termination of a grant, or suspension or debarment of a grantee if the agency head determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

§ ____.630 Grantees' responsibilities.

(a) As a prior condition of being awarded a grant, each grantee shall make the appropriate certification to the agency, as provided in Appendix C to this part.

(b) Except as provided in this paragraph, a grantee shall make the required certification for each grant. A grantee that is a State may elect to submit an annual certification to each Federal agency from which it obtains grants in lieu of certifications for each grant during the year covered by the certification.

(c) Grantees are not required to provide a certification in order to continue receiving funds under a grant awarded before the effective date of this subpart or under a no-cost time extension of any grant.

Appendix C to Part ____—Certification Regarding Drug-Free Workplace Requirements

Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance was placed when the agency determined to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

Certification Regarding Drug-Free Workplace Requirements

Alternate I

A. The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance

of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee shall insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Alternate II

The grantee certifies 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.

Adoption of Common Rule

The text of the common rule, as adopted by the agencies in this document, appears below.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 3017

FOR FURTHER INFORMATION CONTACT: Julius Jimeno, Chief, Resources Management and Analysis Division, Office of Finance and Management, (202) 382–6989.

ADDITIONAL SUPPLEMENTARY INFORMATION: Any State agency electing to submit an annual drug-free workplace certification to the U.S. Department of Agriculture (USDA), as specified in § 3017.630(b), should forward its certification to: U.S. Department of Agriculture, Office of Finance and Management, Federal Assistance Team, Room 1361, South Building, Washington, DC 20250–9020.

List of Subjects in 7 CFR Part 3017

Grant programs (Agriculture), Debarment and suspension (nonprocurement), Drug abuse.

Title 7 of the Code of Federal Regulations is amended as set forth below.

January 19, 1989.

Peter C. Myers,

Deputy Secretary.

PART 3017—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 3017 is revised to read as set forth above.

2. The authority citation for Part 3017 is revised to read as follows:

Authority: E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 5 U.S.C. 301.

§ 3017.305 [Amended]

3. Section 3017.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

§ 3017.320 [Amended]

4. Section 3017.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 3017 to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.

DEPARTMENT OF ENERGY

10 CFR Part 1036

FOR FURTHER INFORMATION CONTACT: Edward F. Sharp, (202) 586–8192.

ADDITIONAL SUPPLEMENTARY INFORMATION: In the Department of Energy's (DOE) implementation of the Nonprocurement Debarment and Suspension common rule, a Subpart F was included providing for additional DOE procedures not included in the common rule. Because the common rule for the Drug-Free Workplace Act makes changes to the nonprocurement debarment and suspension common rule by adding a Subpart F, DOE is amending its version of the common rule to designate old Subpart F as Subpart G and to incorporate the new Subpart F.

DOE joins in the determination by the agencies in the preamble to the common rule that publication of a notice of proposed rulemaking would be impracticable and contrary to the public interest. In addition, pursuant to 42 U.S.C. 7191(c), DOE hereby concludes that an opportunity for oral presentation of comments is not necessary because there are neither substantial issues of law or fact nor likely substantial impacts on the nation's economy or on large numbers of individuals or businesses of which DOE independently could take account consistent with the Drug-Free Workplace Act of 1988.

List of Subjects in 10 CFR Part 1036

Debarment and suspension (nonprocurement), Drug abuse, Grant programs, Copyrights.

Title 10 of the Code of Federal Regulations is amended as set forth below.

Berton J. Roth,

Deputy Assistant Secretary for Procurement and Assistance Management.

PART 1036—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 1036 is revised as set forth above.

2. The authority citation for Part 1036 is revised to read as follow:

Authority: E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); Secs. 644 and 646, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254 and 7256); Pub. L. 97–258, 96 Stat. 1003–1005 (31 U.S.C.) 6301–6308.

§ 1036.305 [Amended]

3. Section 1036.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read

and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

§ 2016.320 [Amended]

4. Section 2016.320 (a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 2016 to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.
2016.600 Purpose.
2016.605 Definitions.
2016.610 Coverage.
2016.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
2016.620 Effect of violation.
2016.625 Exception provisions.
2016.630 Grantees' responsibilities.
* * * * *
Appendix C to Part 2016—Certification Regarding Drug-Free Workplace Requirements

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DEPARTMENT OF TRANSPORTATION

49 CFR Part 29

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, (202) 366-9306.

List of Subjects in 49 CFR Part 29

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 49 of the Code of Federal Regulations is amended as set forth below.

Jim Burnley,
Secretary.

Part 29—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 29 is revised to read as set forth above.

2. The authority citation for Part 29 is revised to read as follows:

Authority: E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq); 49 CFR Part 322.

§ 29.305 [Amended]

3. Section 29.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

§ 29.320 [Amended]

4. Section 29.320 (a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 29 to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.
29.600 Purpose.
29.605 Definitions.
29.610 Coverage.
29.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
29.620 Effect of violation.
29.625 Exception provisions.
29.630 Grantees' responsibilities.
* * * * *
Appendix C to Part 29—Certification Regarding Drug-Free Workplace Requirements

[FR Doc. 89–2085 Filed 1–30–89; 8:45 am]

BILLING CODES 3410–90–M; 6450–01–M; 6720–01–M; 8025–01–M; 7510–01–M; 3510–FE–M; 4710–24–M; 8115–01–M; 6051–01–M; 8230–01–M; 7025–01–M; 8117–01–M; 4310–32–M; 4810–29–M; 4410–18–M; 4510–23–M; 6372–01–M; 3801–01–M; 4000–01–M; 7515–01–M; 8320–01–M; 6560–50–M; 6820–61–M; 4310–RF–M; 8710–01–M; 6150–04–M; 7555–01–M; 7537–01–M; 7536–01–M; 7535–01–M; 8050–28–M; 8340–01–M; 4910–62–M.

ATTACHMENT D

INSTRUCTIONS FOR CERTIFICATION

1. By signing and\or submitting this application or grant agreement, the sponsor is providing the certification set out on page 2.

2. The certification is a material representation of fact upon which reliance was placed when the FAA determined to award the grant. If it is later determined that the sponsor knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the FAA, in addition to other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

CERTIFICATION REGARDING DRUG-FREE
WORKPLACE REQUIREMENTS

A. The sponsor certifies that it will provide a drug-free workplace by:

a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the sponsor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

b. Establishing a drug-free awareness program to inform employees about -

(1) The dangers of drug abuse in the workplace;

(2) The sponsor's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

c. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph a;

d. Notifying the employee in the statement required by paragraph a. that , as a condition of employment under the grant, the employee will -

(1) Abide by the terms of the statement; and

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.

e. Notifying the FAA within ten days after receiving notice under subparagraph d(2), from an employee or otherwise receiving actual notice of such equipment;

f. Taking one of the following actions within 30 days of receiving notice under subparagraph d(2), with respect to any employee who is so convicted -

(1) Taking appropriate personnel action against such employees, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a

Federal, State or local health, law enforcement, or other appropriate agency;

g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs a through f.

B. The sponsor shall insert in the space provided below the site(s) for the performance of the work done in connection with the specific grant:

Place of Performance (see 49 CFR 29.605(b)(4))