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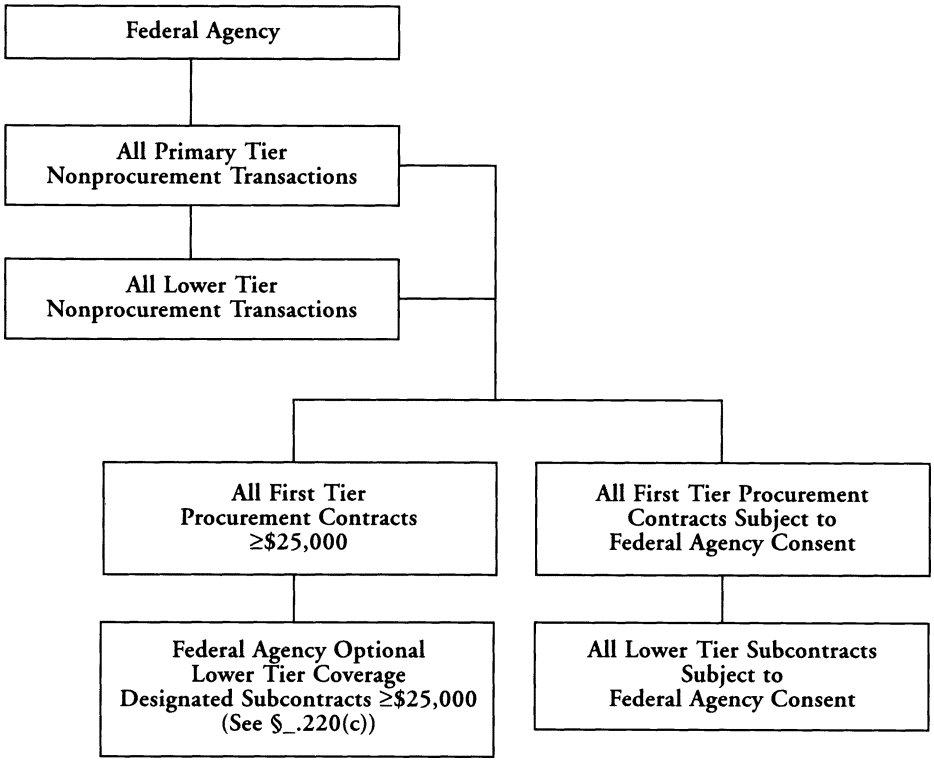
APPENDIX TO PART 19—COVERED TRANSACTIONS

COVERED TRANSACTIONS



PART 20—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

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AUTHORITY: 41 U.S.C. 701, *et seq.*

SOURCE: 68 FR 66557, 66607, Nov. 26, 2003, unless otherwise noted.

Subpart A—Purpose and Coverage

§ 20.100 What does this part do?

This part carries out the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*, as amended) that applies to grants. It also applies the provisions of the Act to cooperative agreements and other financial assistance awards, as a matter of Federal Government policy.

§ 20.105 Does this part apply to me?

(a) Portions of this part apply to you if you are either—

(1) A recipient of an assistance award from the Department of the Treasury; or

(2) A(n) Department of the Treasury awarding official. (See definitions of award and recipient in §§ 20.605 and 20.660, respectively.)

(b) The following table shows the subparts that apply to you:

If you are . . .	see subparts . . .
(1) A recipient who is not an individual	A, B and E.
(2) A recipient who is an individual	A, C and E.
(3) A(n) Department of the Treasury awarding official	A, D and E.

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

This part does not apply to any award that the Secretary of the Treasury determines that the application of this part would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government.

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

It will affect future contract awards indirectly if you are debarred or suspended for a violation of the requirements of this part, as described in § 20.510(c). However, this part does not apply directly to procurement contracts. The portion of the Drug-Free Workplace Act of 1988 that applies to Federal procurement contracts is carried out through the Federal Acquisition Regulation in chapter 1 of Title 48 of the Code of Federal Regulations (the drug-free workplace coverage currently is in 48 CFR part 23, subpart 23.5).

Subpart B—Requirements for Recipients Other Than Individuals

§ 20.200 What must I do to comply with this part?

There are two general requirements if you are a recipient other than an individual.

(a) First, you must make a good faith effort, on a continuing basis, to maintain a drug-free workplace. You must agree to do so as a condition for receiving any award covered by this part.

The specific measures that you must take in this regard are described in more detail in subsequent sections of this subpart. Briefly, those measures are to—

(1) Publish a drug-free workplace statement and establish a drug-free awareness program for your employees (see §§ 20.205 through 20.220); and

(2) Take actions concerning employees who are convicted of violating drug statutes in the workplace (see § 20.225).

(b) Second, you must identify all known workplaces under your Federal awards (see § 20.230).

§ 20.205 What must I include in my drug-free workplace statement?

You must publish a statement that—

(a) Tells your employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in your workplace;

(b) Specifies the actions that you will take against employees for violating that prohibition; and

(c) Lets each employee know that, as a condition of employment under any award, he or she:

(1) Will abide by the terms of the statement; and

(2) Must notify you in writing if he or she is convicted for a violation of a criminal drug statute occurring in the workplace and must do so no more than five calendar days after the conviction.

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

You must require that a copy of the statement described in § 20.205 be given to each employee who will be engaged in the performance of any Federal award.

§ 20.215 What must I include in my drug-free awareness program?

You must establish an ongoing drug-free awareness program to inform employees about—

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

(b) Your policy of maintaining a drug-free workplace;

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

(d) The penalties that you may impose upon them for drug abuse violations occurring in the workplace.

§ 20.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?

If you are a new recipient that does not already have a policy statement as described in § 20.205 and an ongoing awareness program as described in § 20.215, you must publish the statement and establish the program by the time given in the following table:

If . . .	then you . . .
(a) The performance period of the award is less than 30 days	must have the policy statement and program in place as soon as possible, but before the date on which performance is expected to be completed.
(b) The performance period of the award is 30 days or more ...	must have the policy statement and program in place within 30 days after award.
(c) You believe there are extraordinary circumstances that will require more than 30 days for you to publish the policy statement and establish the awareness program.	may ask the Department of the Treasury awarding official to give you more time to do so. The amount of additional time, if any, to be given is at the discretion of the awarding official.

§ 20.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?

There are two actions you must take if an employee is convicted of a drug violation in the workplace:

(a) First, you must notify Federal agencies if an employee who is engaged in the performance of an award informs you about a conviction, as required by § 20.205(c)(2), or you otherwise learn of the conviction. Your notification to the Federal agencies must__

(1) Be in writing;

(2) Include the employee's position title;

(3) Include the identification number(s) of each affected award;

(4) Be sent within ten calendar days after you learn of the conviction; and

(5) Be sent to every Federal agency on whose award the convicted employee was working. It must be sent to every awarding official or his or her official designee, unless the Federal agency has specified a central point for the receipt of the notices.

(b) Second, within 30 calendar days of learning about an employee's conviction, you must either—

(1) Take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended; or

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

§ 20.230 How and when must I identify workplaces?

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

(1) To the Department of the Treasury official that is making the award, either at the time of application or upon award; or

(2) In documents that you keep on file in your offices during the performance of the award, in which case you must make the information available for inspection upon request by Department of the Treasury officials or their designated representatives.

(b) Your workplace identification for an award must include the actual address of buildings (or parts of buildings) or other sites where work under the award takes place. Categorical descriptions may be used (*e.g.*, all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

(c) If you identified workplaces to the Department of the Treasury awarding official at the time of application or award, as described in paragraph (a)(1) of this section, and any workplace that you identified changes during the performance of the award, you must inform the Department of the Treasury awarding official.

Subpart C—Requirements for Recipients Who Are Individuals

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

As a condition of receiving a(n) Department of the Treasury award, if you are an individual recipient, you must agree that—

(a) You will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity related to the award; and

(b) If you are convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity, you will report the conviction:

(1) In writing.

(2) Within 10 calendar days of the conviction.

(3) To the Department of the Treasury awarding official or other designee for each award that you currently have, unless § 20.301 or the award document designates a central point for the receipt of the notices. When notice is made to a central point, it must include the identification number(s) of each affected award.

§ 20.301 [Reserved]

Subpart D—Responsibilities of Department of the Treasury Awarding Officials

§ 20.400 What are my responsibilities as a(n) Department of the Treasury awarding official?

As a(n) Department of the Treasury awarding official, you must obtain each recipient's agreement, as a condition of the award, to comply with the requirements in—

(a) Subpart B of this part, if the recipient is not an individual; or

(b) Subpart C of this part, if the recipient is an individual.

Subpart E—Violations of this Part and Consequences

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

A recipient other than an individual is in violation of the requirements of this part if the Secretary of the Treasury determines, in writing, that—

(a) The recipient has violated the requirements of subpart B of this part; or

(b) The number of convictions of the recipient's employees for violating criminal drug statutes in the workplace is large enough to indicate that the recipient has failed to make a good faith effort to provide a drug-free workplace.

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

An individual recipient is in violation of the requirements of this part if the Secretary of the Treasury determines, in writing, that—

(a) The recipient has violated the requirements of subpart C of this part; or

(b) The recipient is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity.

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

If a recipient is determined to have violated this part, as described in § 20.500 or § 20.505, the Department of the Treasury may take one or more of the following actions—

(a) Suspension of payments under the award;

(b) Suspension or termination of the award; and

(c) Suspension or debarment of the recipient under 22 CFR Part 19, for a period not to exceed five years.

§ 20.515 Are there any exceptions to those actions?

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

Subpart F—Definitions

§ 20.605 Award.

Award means an award of financial assistance by the Department of the Treasury or other Federal agency directly to a recipient.

(a) The term award includes:

(1) A Federal grant or cooperative agreement, in the form of money or property in lieu of money.

(2) [Reserved]

(b) The term award does not include:

(1) Technical assistance that provides services instead of money.

(2) Loans.

(3) Loan guarantees.

(4) Interest subsidies.

(5) Insurance.

(6) Direct appropriations.

(7) Veterans' benefits to individuals (*i.e.*, any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States).

§ 20.610 Controlled substance.

Controlled substance means a controlled substance in schedules I through V of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15.

§ 20.615 Conviction.

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

§ 20.620 Cooperative agreement.

Cooperative agreement means an award of financial assistance that, consistent with 31 U.S.C. 6305, is used to enter into the same kind of relationship as a grant (see definition of grant in § 20.650), except that substantial involvement is expected between the Federal agency and the recipient when carrying out the activity contemplated

by the award. The term does not include cooperative research and development agreements as defined in 15 U.S.C. 3710a.

§ 20.625 Criminal drug statute.

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance.

§ 20.630 Debarment.

Debarment means an action taken by a Federal agency to prohibit a recipient from participating in Federal Government procurement contracts and covered nonprocurement transactions. A recipient so prohibited is debarred, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and the common rule, Government-wide Debarment and Suspension (Nonprocurement), that implements Executive Order 12549 and Executive Order 12689.

§ 20.635 Drug-free workplace.

Drug-free workplace means a site for the performance of work done in connection with a specific award at which employees of the recipient are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

§ 20.640 Employee.

(a) *Employee* means the employee of a recipient directly engaged in the performance of work under the award, including—

(1) All direct charge employees;

(2) All indirect charge employees, unless their impact or involvement in the performance of work under the award is insignificant to the performance of the award; and

(3) Temporary personnel and consultants who are directly engaged in the performance of work under the award and who are on the recipient's payroll.

(b) This definition does not include workers not on the payroll of the recipient (*e.g.*, volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the payroll; or employees of subrecipients or subcontractors in covered workplaces).

§ 20.645 Federal agency or agency.

Federal agency or agency means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency.

§ 20.650 Grant.

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

(a) The principal purpose of which is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States, rather than to acquire property or services for the Federal Government's direct benefit or use; and

(b) In which substantial involvement is not expected between the Federal agency and the recipient when carrying out the activity contemplated by the award.

§ 20.655 Individual.

Individual means a natural person.

§ 20.660 Recipient.

Recipient means any individual, corporation, partnership, association, unit of government (except a Federal agency) or legal entity, however organized, that receives an award directly from a Federal agency.

§ 20.665 State.

State means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

§ 20.670 Suspension.

Suspension means an action taken by a Federal agency that immediately prohibits a recipient from participating in Federal Government procurement contracts and covered nonprocurement transactions for a temporary period, pending completion of

an investigation and any judicial or administrative proceedings that may ensue. A recipient so prohibited is suspended, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and the common rule, Government-wide Debarment and Suspension (Nonprocurement), that implements Executive Order 12549 and Executive Order 12689. Suspension of a recipient is a distinct and separate action from suspension of an award or suspension of payments under an award.

PART 21—NEW RESTRICTIONS ON LOBBYING

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APPENDIX A TO PART 21—CERTIFICATION REGARDING LOBBYING
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AUTHORITY: Sec. 319, Pub. L. 101–121 (31 U.S.C. 1352); 31 U.S.C. 321.

SOURCE: 55 FR 6737, 6751, Feb. 26, 1990, unless otherwise noted.

CROSS REFERENCE: See also Office of Management and Budget notice published at 54 FR 52306, December 20, 1989.

Subpart A—General

§ 21.100 Conditions on use of funds.

(a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative ageement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, set forth in Appendix A, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.

(c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form, set forth in Appendix B, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.

(d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, set forth in Appendix A, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

(e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with