

OFFICE OF PERSONNEL MANAGEMENT	DEPARTMENT OF THE TREASURY	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 Transportation; Department of the Treasury; Department of Veterans Affairs; African Development Foundation; Agency for International Development, International Development Cooperation Agency; Corporation for National and Community Service; Environmental Protection Agency; Federal Emergency Management Agency; Federal Mediation and Conciliation Service; General Services Administration; Institute of Museum Services, National Foundation on the Arts and Humanities (NFAH); Inter-American Foundation; National Aeronautics and Space Administration; National Archives and Records Administration; National Endowment for the Arts, NFAH; National Endowment for the Humanities, NFAH; National Science Foundation; Office of National Drug Control Policy; Office of Personnel Management; Peace Corps; Small Business Administration; United States Information Agency. ACTION: Final Regulations and, for the Department of Transportation only, Interim Final Regulations with an opportunity to comment.
5 CFR Part 970	31 CFR Part 19	
DEPARTMENT OF AGRICULTURE	DEPARTMENT OF DEFENSE	
7 CFR Part 3017	32 CFR Part 25	
DEPARTMENT OF ENERGY	DEPARTMENT OF EDUCATION	
10 CFR Part 1036	34 CFR Parts 85, 668, and 682	
SMALL BUSINESS ADMINISTRATION	NATIONAL ARCHIVES AND RECORDS ADMINISTRATION	
13 CFR Part 145	36 CFR Part 1209	
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION	DEPARTMENT OF VETERANS AFFAIRS	
14 CFR Part 1265	38 CFR Part 44	
DEPARTMENT OF COMMERCE	ENVIRONMENTAL PROTECTION AGENCY	
15 CFR Part 26	40 CFR Part 32	
OFFICE OF NATIONAL DRUG CONTROL POLICY	GENERAL SERVICES ADMINISTRATION	
21 CFR Part 1404	41 CFR Part 105-68	
DEPARTMENT OF STATE	DEPARTMENT OF THE INTERIOR	
22 CFR Part 137	43 CFR Part 12	
INTERNATIONAL DEVELOPMENT COOPERATION AGENCY	FEDERAL EMERGENCY MANAGEMENT AGENCY	
Agency for International Development	44 CFR Part 17	
22 CFR Part 208	DEPARTMENT OF HEALTH AND HUMAN SERVICES	
PEACE CORPS	45 CFR Part 76	
22 CFR Part 310	NATIONAL SCIENCE FOUNDATION	
UNITED STATES INFORMATION AGENCY	45 CFR Part 620	
22 CFR Part 513	NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES	
INTER-AMERICAN FOUNDATION	National Endowment for the Arts	
22 CFR Part 1006	45 CFR Part 1154	
AFRICAN DEVELOPMENT FOUNDATION	National Endowment for the Humanities	
22 CFR Part 1508	45 CFR Part 1169	
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT	Institute of Museum Services	
24 CFR Part 24	45 CFR Part 1185	
DEPARTMENT OF JUSTICE	CORPORATION FOR NATIONAL AND COMMUNITY SERVICE	
28 CFR Part 67	45 CFR Part 2542	
DEPARTMENT OF LABOR	DEPARTMENT OF TRANSPORTATION	
29 CFR Part 98	49 CFR Part 29	
FEDERAL MEDIATION AND CONCILIATION SERVICE	Nonprocurement Debarment and Suspension	
29 CFR Part 1471	AGENCIES: Department of Agriculture; Department of Commerce; Department	

SUMMARY: This revision to the nonprocurement common rule is issued in response to Executive Order (E.O.) 12689 and section 2455 of the Federal Acquisition Streamlining Act of 1994. E.O. 12689 requires agencies to establish regulations for reciprocal governmentwide effect across procurement and nonprocurement debarment and suspension actions, after technical differences between the procurement and nonprocurement regulations governing debarments and suspensions are resolved. Section 2455 provides that the debarment, suspension, or other exclusion of a participant in a procurement activity under the Federal Acquisition Regulation, or in a nonprocurement activity under regulations issued pursuant to Executive Order 12549, shall be given reciprocal governmentwide effect. The final regulation establishes reciprocity between the procurement and nonprocurement debarment and suspension systems.

DATES: These final regulations and the Department of Transportation's (DOT's) interim final regulations become effective August 25, 1995. For comment

information on DOT's interim final regulations, see DOT's agency-specific preamble.

FOR FURTHER INFORMATION CONTACT: See preambles of individual agencies below.

SUPPLEMENTARY INFORMATION: On December 20, 1994, all but one of the agencies participating in the development of this final rule published a notice of proposed rulemaking (NPRM) that proposed to make changes to the nonprocurement debarment and suspension Common Rule (Common Rule) to provide for reciprocal effect between procurement and nonprocurement debarments, suspensions, and other exclusionary actions. The history of the nonprocurement debarment and suspension system and of the effort to establish reciprocity between the procurement and nonprocurement debarment and suspension systems was described in the December 20, 1994 NPRM. See 59 FR 65607.

The Department of Transportation, which did not join in publishing the NPRM, is joining in the publication of this regulation as an interim final rule. See the Department of Transportation's preamble to this regulation for a discussion regarding its participation in the Common Rule.

Technical changes to the regulations are generally not discussed in this preamble. The notice of proposed rulemaking (NPRM) proposed amendments to the Common Rule only as necessary to achieve the objectives of reciprocity or to correct printing errors in the original regulations. The NPRM used this approach to focus attention on those substantive matters that were directly affected by the reciprocity rule. In this final regulation, fuller text is provided, including, at a minimum, the entire paragraph where any change is made, so that readers may see the amendments in context. The text of the Common Rule amendments is set out at the end of this preamble and is followed by the agency-specific preambles and any agency-specific amendments to the Common Rule.

Response to Comments

Five commenters provided their views on the proposed amendments to the Common Rule. Eight comments were also submitted regarding the effect of the proposed rule on specific agencies or regarding specific additional changes to the Common Rule that were proposed by certain agencies. Those comments are addressed in the agency-specific preambles that follow the amendments to the Common Rule.

Request for Future Rulemaking

The Administrative Conference of the United States (ACUS) submitted a comment supporting the proposed reciprocity amendments and asked that the agencies participating in this rulemaking effort initiate a subsequent rulemaking effort to consider additional changes to the Common Rule and the Federal Acquisition Regulation (FAR), consistent with ACUS Recommendation 95-2, which that agency adopted on January 19, 1995. Another commenter mentioned the ACUS recommendation and asked that it be considered in a future rulemaking action, noting particularly that part of the recommendation regarding the need for agencies to consider mitigating and aggravating circumstances. The agencies participating in this rulemaking action agree that additional changes to the Common Rule should be considered and will consider Recommendation 95-2 along with other proposed changes to the Common Rule before the end of this year.

Should the FAR be amended so that proposed debarments would not be effective?

Comment: Three of the commenters were concerned about a difference between the procurement and nonprocurement rules that was not addressed by the NPRM. Under the FAR subpart 9.4, *Debarment, Suspension, and Ineligibility*, a proposed debarment has the effect of excluding a party from receiving a contract. In contrast, under the Common Rule, a proposed debarment has no effect on a person's eligibility to participate in a nonprocurement program. In each of the three comments, the commenter asked that the FAR rule be amended so that proposed debarments under subpart 9.4 would have no effect.

Discussion: While the three comments request changes to the FAR and do not technically request any change to the Common Rule, the agencies participating in this rulemaking action agree that there is no need to change either rule so that the effect of a proposed debarment is the same under both debarment and suspension systems. The request to make the two rules the same on this matter misconstrues the purpose and effect of the reciprocity effort.

The purpose of the proposed reciprocity rule is to ensure that, once one agency takes action to exclude a person and that person is placed on the *List of Parties Excluded from Federal Procurement and Nonprocurement Programs*, all agencies will honor that determination. In deciding whether to

take an action to exclude a person, the agency considers whether a person's present responsibility is affected such that the person poses a risk to the Federal Government. The agencies did not intend that the decision to give reciprocity would require the agencies to change the two debarment and suspension systems and establish identical procedures for excluding persons under both the FAR and the Common Rule.

Change: None.

Comment: One commenter thought that the nonprocurement common rule's recognition of proposed debarments under the FAR went beyond the authority in section 2455 of the *Federal Acquisition Streamlining Act*, which provides that "Regulations shall be issued providing that provisions for the debarment, suspension, or other exclusion of a participant in a procurement activity under the Federal Acquisition Regulation (FAR), or in a nonprocurement activity under regulations issued pursuant to Executive Order 12549, shall have government-wide effect." The commenter pointed out that this statute does not list proposed debarments specifically and, therefore, argued that the nonprocurement rule could not give effect to proposed debarments entered under the FAR. The commenter suggested that the phrase "other exclusion" probably referred to voluntary exclusions under section 2455.210 of the common rule.

Discussion: Section 2455 does not limit, as suggested by the commenter, the scope of the amendments that agencies may make to the Common Rule. The passage quoted by the commenter states that agencies shall give effect under the Common Rule to "debarment, suspension, or other exclusion of a participant in a procurement activity under the Federal Acquisition Regulation (FAR)" (emphasis added). A proposed debarment is an exclusion under the FAR, thus, section 2455 of the Streamlining Act authorizes agencies to promulgate nonprocurement rules that give effect to proposed debarments under the FAR. The commenter's suggestion that "other exclusion" referred to voluntary exclusions does not bear weight. There is no history that Congress intended to limit that term to a unique exclusion that exists in only one system. Rather, "other exclusion" must refer to any exclusion that has effect under either system.

Change: None.

Comment: One commenter raised a hypothetical situation which it believed demonstrated a difficulty between the

two rules regarding the enforceability under the common rule of proposed debarments entered under the FAR. In the commenter's example, two dairy companies (Dairy X and Dairy Y) are attempting to enter into like transactions with the Federal Government. Dairy X has been proposed for debarment under the FAR while Dairy Y has been proposed for debarment under the nonprocurement regulations. Under the proposed regulations, Dairy Y could be considered for a contract under the FAR but Dairy X could not be considered for a contract under the FAR. The commenter was uncomfortable with the alleged disparate treatment of the two dairies.

Discussion: The commenter is correct that Dairy X would be excluded but Dairy Y would not be excluded. However, if Dairy Y posed an immediate threat to the Federal Government, the agency that proposed its debarment under the nonprocurement regulations could suspend Dairy Y under those regulations. In short, while the two systems use slightly different mechanisms to protect the Federal Government, those differences do not need to be eliminated in order to give reciprocity for actions taken under the two systems.

Change: None.

Section _____.100 Purpose

Comment: One commenter noted that the list of excluded persons under paragraph (c) of section _____.100 differed from the list included in the definition for the *List of Parties Excluded from Federal Procurement and Nonprocurement Programs* included in § _____.105, focusing on the fact that paragraph (c) in section _____.100 did not mention voluntarily excluded persons.

Discussion: A review of the Common Rule, including those portions not amended by the proposed rule reveals that the purpose section does mention voluntary exclusions in its more detailed provisions implementing Executive Order 12549 (See section _____.100(b)(3)). These detailed provisions did not need to be set out again to indicate the actions under the FAR that would be added to the *List* as a result of the reciprocity rule.

Change: None.

Section _____.105 Definitions

Comment: One commenter noted differences between the FAR definition and the Common Rule definition for the *List of Parties Excluded from Federal Procurement and Nonprocurement Programs* and requested that the Common Rule use the FAR language.

This commenter also asked that the nonprocurement Common Rule definition of the *List* not refer to the authorizing executive orders because the authority for a debarment or suspension would be the regulations of the agency that took the action.

Discussion: The substance of the two definitions is identical and the reason for the different language used in the two definitions is the different contexts in which the definitions appear. The FAR definition refers to "parties" while the nonprocurement Common Rule refers to "persons." The term "parties" is used throughout the FAR to refer to contractors. The Common Rule refers to "persons" because many of the entities covered by a nonprocurement debarment or suspension do not have a relationship of privity with the Federal Government.

Regarding the request not to refer to the executive orders, no change is made because these executive orders address substantive, not merely procedural authority for the agency regulations under which a debarment or suspension is entered.

Change: None.

Section _____.110, Coverage.

Comment: One commenter asked that the references to the executive orders and to section 2455 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355) be removed from the proposed reciprocity rule in § _____.110(c).

Discussion: The agencies participating in this rulemaking action believe that it is appropriate to cite the substantive authority for reciprocity in the actual paragraph that gives effect to that authority.

Change: None.

Comment: One commenter thought that a suspension imposed different burdens than a debarment. Thus, the commenter was concerned that the reciprocity phrase requiring a FAR debarment or suspension to "be recognized * * * as an exclusion" should be changed to require that a FAR debarment or suspension "be recognized * * * as a comparable action." This commenter had a similar concern regarding the recognition of governmentwide nonprocurement exclusions under the FAR.

Discussion: This comment starts from a mistaken view. Once a person or party is excluded from participation in a nonprocurement transaction or from entering into a contract, that person is treated the same way, whether the person entered that excluded state by being suspended or debarred. Thus, once a party or person is excluded, no

agency may do business with the party or person unless the agency affirmatively makes a decision under the exception provision in § _____.215 and states the need for the exception. Because all persons or parties on the *List* are treated the same, there is no need to make the requested change.

Change: None.

Comment: One commenter suggested that the phrase "after [the effective date of this rule]" be added after the phrase "imposed under this regulation" so that the reciprocity provision regarding FAR recognition of nonprocurement exclusions would be parallel to the reciprocity provision regarding nonprocurement recognition of FAR exclusions.

Discussion: The agencies agree.

Change: The phrase "after [date 60 days after publication]" will be added after the phrase "imposed under this regulation" in the second sentence of § _____.110(c).

Comment: One commenter noted that the proposed reciprocity rule did not address how actions will be treated that are in process when the rule becomes effective. The commenter thought that these actions should be "grandfathered" under the current rule.

Discussion: Actions initiated by notices of proposed debarments or suspensions sent to respondents before the date this rule becomes effective generally will not be given reciprocity because these regulations require a notice of proposed debarment to specify the potential effect of a debarment or suspension (See § _____.312(e) and § _____.411(g)). However, some agencies already run simultaneous actions under both the FAR and the Common Rule, citing the authority of both and giving notice that the action will be effective under both the FAR and the Common Rule. For these agencies, their actions will be effective on both sides. Once the rule becomes effective, these agencies will no longer need to afford to respondents the procedures of both rules in order to give effect on both sides. However, after the effective date of these regulations, agencies will have to give notice that actions initiated under the Common Rule will affect an entity's ability to receive contracts under the FAR.

In order to clarify this result, § _____.110(c) is amended to state that the new rule applies to actions "initiated" after the effective date of the rule rather than applying the new reciprocity rule to actions "imposed" after the effective date of the reciprocity rule. A proposed debarment or suspension is initiated when an agency

sends notice of the action to the respondent.

Change: Section _____.110(c), as added by this rulemaking action, is amended to apply the new regulation to actions initiated on or after the effective date of the regulation.

Section _____.200 Debarment or Suspension

Comment: One commenter was particularly concerned about the differences in the flow down of an action under the FAR and the Common Rule. Under § _____.200(b), a debarment affects a person's ability to participate in lower tier covered transactions. In contrast, under the FAR rule, a debarment affects a party's ability to enter into contracts and places limitations on a Federal Government prime contractor's ability to contract with first tier subcontractors who have been debarred, suspended or proposed for debarment. The commenter wanted to know whether a debarment entered under the FAR would be limited in its flow down under the Common Rule and, conversely, whether a debarment entered under the Common Rule would have to be honored at a lower level under the FAR.

Discussion: The Reciprocity rule established under this rulemaking effort does not affect the flow down of either the FAR or the Common Rule. Once a person is excluded, that person will be treated the same under these regulations as any other person for purposes of determining the entity's ability to participate in any nonprocurement covered transaction. The fact that the person was excluded as a result of an action taken under the FAR does not make the person eligible under these regulations to enter into lower tier covered transactions. The same is true for treatment of a debarment under the FAR; the fact that a debarment was entered under the Common Rule does not prohibit the excluded person from entering into a first tier subcontract provided the Federal Government prime contractor notifies the Contracting Officer of its compelling reasons for doing business with the otherwise excluded subcontractor.

Change: For clarification, Section _____.200 is amended to add proposed for debarment under the FAR.

Section _____.215 Exception Provision.

Comment: One commenter recommended that the exception provision be amended to ensure that, under the Common Rule, agencies could give an exception permitting

participation by a party that is proposed for debarment under the FAR.

Discussion: The agencies participating in this rulemaking effort agree with the concern that an agency should have the same amount of discretion to permit participation in a covered transaction of a party that has been proposed for debarment under the FAR as it would to permit participation by any other excluded entity.

Change: Section _____.215 is amended so that parties proposed for debarment under the FAR can be considered for participation in covered transactions under the exception rule.

Section _____.220 Continuation of covered transactions.

Comment: One commenter noted that a party that is proposed for debarment under the FAR should be treated the same as other excluded parties in that the party's proposed debarment should not affect the party's ability to participate in a covered transaction entered into before the proposed debarment was issued.

Discussion: The agencies participating in this rulemaking agree.

Change: Section _____.220 is amended to ensure that parties that have been proposed for debarment under the FAR will be treated the same under § _____.220 as other persons who have been excluded.

Appendices A and B

Discussion: Certain changes have been made in Appendices A and B, which contain the instructions for certifications and certifications for primary and lower tier participants. These technical changes recognize that proposed debarments entered under the FAR will be given effect under the Common Rule.

Change: A reference to proposed debarments initiated under the FAR has been added in appropriate places throughout the instructions in Appendices A and B.

Text of the Common Rule

The text of the common rule appears below:

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

1. Section _____.100 is revised to read as follows:

§ _____.100 Purpose.

(a) Executive Order (E.O.) 12549 provides that, to the extent permitted by

law, Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have governmentwide effect.

(b) These regulations implement section 3 of E.O. 12549 and the guidelines promulgated by the Office of Management and Budget under section 6 of the E.O. by:

(1) Prescribing the programs and activities that are covered by the governmentwide system;

(2) Prescribing the governmentwide criteria and governmentwide minimum due process procedures that each agency shall use;

(3) Providing for the listing of debarred and suspended participants, participants declared ineligible (see definition of "ineligible" in § _____.105), and participants who have voluntarily excluded themselves from participation in covered transactions;

(4) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion; and

(5) Offering such other guidance as necessary for the effective implementation and administration of the governmentwide system.

(c) These regulations also implement Executive Order 12689 (3 CFR, 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Public Law 103-355, sec. 2455, 108 Stat. 3327) by—

(1) Providing for the inclusion in the *List of Parties Excluded from Federal Procurement and Nonprocurement Programs* all persons proposed for debarment, debarred or suspended under the Federal Acquisition Regulation, 48 CFR Part 9, subpart 9.4; persons against which governmentwide exclusions have been entered under this part; and persons determined to be ineligible; and

(2) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion.

(d) Although these regulations cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

2. Section _____.105 is amended by adding introductory text, removing paragraph designations for the definitions and placing them in alphabetical order, removing the

definition for "Nonprocurement List", adding, in alphabetical order, a definition for "List of Parties Excluded from Federal Procurement and Nonprocurement Programs", and revising the definitions for "Affiliate", "Conviction", and "Legal proceedings" to read as follows:

§ _____.105 Definitions.

The following definitions apply to this part:

Affiliate. Persons are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or, a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person.

* * * * *

Conviction. A judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

* * * * *

Legal proceedings. Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

List of Parties Excluded from Federal Procurement and Nonprocurement Programs. A list compiled, maintained and distributed by the General Services Administration (GSA) containing the names and other information about persons who have been debarred, suspended, or voluntarily excluded under Executive Orders 12549 and 12689 and these regulations or 48 CFR part 9, subpart 9.4, persons who have been proposed for debarment under 48 CFR part 9, subpart 9.4, and those persons who have been determined to be ineligible.

* * * * *

3. Section _____.110 is amended by revising paragraph (c) to read as follows:

§ _____.110 Coverage.

* * * * *

(c) **Relationship to Federal procurement activities.** In accordance with E.O. 12689 and section 2455 of

Public Law 103-355, any debarment, suspension, proposed debarment or other governmentwide exclusion initiated under the Federal Acquisition Regulation (FAR) on or after August 25, 1995 shall be recognized by and effective for Executive Branch agencies and participants as an exclusion under this regulation. Similarly, any debarment, suspension or other governmentwide exclusion initiated under this regulation on or after August 25, 1995 shall be recognized by and effective for those agencies as a debarment or suspension under the FAR.

4. Section _____.200 is revised to read as follows:

§ _____.200 Debarment or suspension.

(a) **Primary covered transactions.** Except to the extent prohibited by law, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the Executive Branch of the Federal Government for the period of their debarment, suspension, or the period they are proposed for debarment under 48 CFR part 9, subpart 9.4. Accordingly, no agency shall enter into primary covered transactions with such excluded persons during such period, except as permitted pursuant to § _____.215.

(b) **Lower tier covered transactions.** Except to the extent prohibited by law, persons who have been proposed for debarment under 48 CFR part 9, subpart 9.4, debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (see § _____.110(a)(1)(ii)) for the period of their exclusion.

(c) **Exceptions.** Debarment or suspension does not affect a person's eligibility for—

(1) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;

(3) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility

(but benefits received in an individual's business capacity are not excepted);

(4) Federal employment;

(5) Transactions pursuant to national or agency-recognized emergencies or disasters;

(6) Incidental benefits derived from ordinary governmental operations; and

(7) Other transactions where the application of these regulations would be prohibited by law.

5. Section _____.215 is revised to read as follows:

§ _____.215 Exception provision.

[Agency] may grant an exception permitting a debarred, suspended, or voluntarily excluded person, or a person proposed for debarment under 48 CFR part 9, subpart 9.4, to participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549 and § _____.200. However, in accordance with the President's stated intention in the Executive Order, exceptions shall be granted only infrequently. Exceptions shall be reported in accordance with § _____.505(a).

6. Section _____.220 is revised to read as follows:

§ _____.220 Continuation of covered transactions.

(a) Notwithstanding the debarment, suspension, proposed debarment under 48 CFR part 9, subpart 9.4, determination of ineligibility, or voluntary exclusion of any person by an agency, agencies and participants may continue covered transactions in existence at the time the person was debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, ineligible or voluntarily excluded, except as provided in § _____.215.

7. Section _____.225 is revised to read as follows:

§ _____.225 Failure to adhere to restrictions.

(a) Except as permitted under § _____.215 or § _____.220, a participant shall not knowingly do

business under a covered transaction with a person who is—

(1) Debarred or suspended;
(2) Proposed for debarment under 48 CFR part 9, subpart 9.4; or

(3) Ineligible for or voluntarily excluded from the covered transaction.

(b) Violation of the restriction under paragraph (a) of this section may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies as appropriate.

(c) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, ineligible, or voluntarily excluded from the covered transaction (See Appendix B of these regulations), unless it knows that the certification is erroneous. An agency has the burden of proof that a participant did knowingly do business with a person that filed an erroneous certification.

8. Appendix A is revised to read as follows:

Appendix A to Part _____—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms *covered transaction*, *debarred*, *suspended*, *ineligible*, *lower tier covered*

transaction, *participant*, *person*, *primary covered transaction*, *principal*, *proposal*, and *voluntarily excluded*, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

9. Appendix B is revised to read as follows:

Appendix B to Part _____—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms *covered transaction*, *debarred*, *suspended*, *ineligible*, *lower tier covered transaction*, *participant*, *person*, *primary covered transaction*, *principal*, *proposal*, and *voluntarily excluded*, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that,

should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Adoption of Common Rule

The agency-specific adoptions of the common rule, which appears at the end of the common preamble, appear below.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 970

RIN 3206-AG51

FOR FURTHER INFORMATION CONTACT: Murray M. Meeker, Attorney, Office of the General Counsel, (202) 606-1980.

List of Subjects in 5 CFR Part 970

Administrative practice and procedure, Contract programs, Grant programs.

Lorraine A. Green,
Deputy Director.

Title 5 of the Code of Federal Regulations, part 970 is amended as follows.

PART 970—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

1. The authority for part 970 continues to read as follows:

Authority: Executive Order 12549 (51 FR 6370-71).

2. Section 970.100 is revised as set forth at the end of the common preamble.

3. Sections 970.105 and 970.110 are amended as set forth at the end of the common preamble.

4. Sections 970.200, 970.215, 970.220, and 970.225 and Appendices A and B to Part 970 are revised as set forth at the end of the common preamble.

BILLING CODE: 6325-01

DEPARTMENT OF AGRICULTURE

7 CFR Part 3017

RIN 0503-AA11

FOR FURTHER INFORMATION CONTACT: Gary W. Butler, Deputy Assistant General Counsel, Office of the General Counsel, (202) 720-2577.

List of Subjects in 7 CFR Part 3017

Administrative practice and procedure, Contract programs, Grant programs—Agriculture, Grants administration.

Dated: June 8, 1995.

Dan Glickman,
Secretary of Agriculture.

Title 7 of the Code of Federal Regulations, part 3017 is amended as follows.

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

1. The authority for part 3017 continues 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.

2. Section 3017.100 is revised as set forth at the end of the common preamble.

3. Sections 3017.105 and 3017.110 are amended as set forth at the end of the common preamble.

4. Sections 3017.200, 307.215, 3017.220, and 3017.225 and Appendices A and B to Part 3017 are revised as set forth at the end of the common preamble.

BILLING CODE: 3420-01-M

DEPARTMENT OF ENERGY

10 CFR Part 1036

RIN 1991-AA69

FOR FURTHER INFORMATION CONTACT: Cynthia Yee, Office of Clearance and Support, Office of Procurement and Assistance Management, Human Resources and Administration, 202-586-1140.

List of Subjects in 10 CFR Part 1036

Administrative practice and procedures, Contract programs, Grant programs.

Richard H. Hopf,
Deputy Assistant Secretary for Procurement and Assistance Management.

Title 10 of the Code of Federal Regulations, part 1036 is amended as follows:

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

1. The authority for part 1036 continues to read as follows:

Authority: E.O. 12689; 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, 98 Stat. 1003-1005 (31 U.S.C. 6301-6308).

2. Section 1036.100 is revised as set forth at the end of the common preamble.

3. Sections 1036.105 and 1036.110 are amended as set forth at the end of the common preamble.

4. Sections 1036.200, 1036.215, 1036.220, and 1036.225 and Appendices A and B to part 1036 are revised as set forth at the end of the common preamble.

BILLING CODE: 6450-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 145

RIN 3245-AD46

FOR FURTHER INFORMATION CONTACT: John W. Klein, Chief Counsel for Special Programs, Office of General Counsel, U.S. Small Business Administration, 409 3rd Street, SW, Washington, DC 20416, (202) 205-6645.

ADDITIONAL SUPPLEMENTARY INFORMATION: As stated in the supplementary information to the common rule, the purpose of this rule is to give reciprocal governmentwide effect to both nonprocurement and procurement debarment and suspension actions. SBA reads revised § 145.110(c) as having no effect on the exceptions from coverage already provided for in §§ 145.110(a)(2), 145.215, and 145.220. These exemptions include SBA disaster assistance.

List of Subjects in 13 CFR Part 145

Administrative practice and procedure, Contract programs, Debarment and suspension (nonprocurement), Grant programs, Loan programs—business.

Dated: June 2, 1995.

Philip Lader,
Administrator.

Title 13 of the Code of Federal Regulations, Part 145 is amended as follows:

PART 145—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for Part 145 continues to read as follows:

Authority: E.O. 12549; Secs. 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.*); 15 U.S.C. 634(b)(6).

2. Section 145.100 is revised as set forth at the end of the common preamble.

3. Sections 145.105 and 145.110 are amended as set forth at the end of the common preamble.

4. Sections 145.200, 145.215, 145.220, and 145.225 and Appendices A and B

to Part 145 are revised as set forth at the end of the common preamble.

BILLING CODE: 8025-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1265

RIN 2700-AB99

FOR FURTHER INFORMATION CONTACT: Thomas J. Wheland, NASA Headquarters, Acquisition Liaison Division (Code HP), (202) 358-0475.

List of Subjects in 14 CFR Part 1265

Administrative practice and procedure, Contract programs, Cooperative agreements, Debarment and suspension (nonprocurement), Grant programs.

Tom Luedtke,
Deputy Associate Administrator for Procurement.

Title 14 of the Code of Federal Regulations, Part 1265 is amended as follows.

PART 1265—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 1265 continues to read as follows:

Authority: E.O. 12549; Secs. 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.*); National Aeronautics and Space Act, Pub. L. 85-568, July 29, 1958, as amended, sec. 203(c)(1).

2. Section 1265.100 is revised as set forth at the end of the common preamble.

3. Sections 1265.105 and 1265.110 are amended as set forth at the end of the common preamble.

4. Sections 1265.200, 1265.215, 1265.220 and 1265.225 and Appendices A and B to Part 1265 are revised as set forth at the end of the common preamble.

BILLING CODE: 7510-01-M

DEPARTMENT OF COMMERCE

15 CFR Part 26

RIN 0605-AA02

FOR FURTHER INFORMATION CONTACT: John J. Phelan, III, 202-482-4115.

List of Subjects in 15 CFR Part 26

Administrative practice and procedure, Contract programs, Grant administration, Grant programs,

Reporting and recordkeeping requirements.

Sonya G. Stewart,
Director for Executive Budgeting and Assistance Management.

Title 15 of the Code of Federal Regulations, part 26 is amended as follows.

PART 26—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT—AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS))

1. The authority for part 26 is revised to read as follows:

Authority: 5 U.S.C. 301; 41 U.S.C. 701 *et seq.*; Sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549, 3 CFR, 1986 comp., p. 189; E.O. 12689, 3 CFR, 1989 comp., p. 235.

2. Section 26.100 is revised as set forth at the end of the common preamble.

3. Sections 26.105 and 26.110 are amended as set forth at the end of the common preamble.

4. Sections 26.200, 26.215, 26.220, and 26.225 and Appendices A and B to part 26 are revised as set forth at the end of the common preamble.

BILLING CODE: 3510-(FA)-M

OFFICE OF NATIONAL DRUG CONTROL POLICY

21 CFR Part 1404

RIN 3201-ZA00

FOR FURTHER INFORMATION CONTACT: Edward H. Jurith, General Counsel, (202) 395-6709.

List of Subjects in 21 CFR Part 1404

Administrative practice and procedure, Contract programs, Grant programs.

Lee P. Brown,
Director.

Title 21 of the Code of Federal Regulations, part 1404, is amended as follows:

PART 1404—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 1404 continues to read as follows:

Authority: Executive Order 12549, 3 CFR, 1986 Comp., p. 189; 5 U.S.C. 301; Sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D, 102 Stat. 4304; 41 U.S.C. 701 *et seq.*).

2. Section 1404.100 is revised as set forth at the end of the common preamble.

3. Sections 1404.105 and 1404.110 are amended as set forth at the end of the common preamble.

4. Sections 1404.200, 1404.215, 1404.220, and 1404.225 and Appendices A and B to part 1404 are revised as set forth at the end of the common preamble.

BILLING CODE: 3180-02-M

DEPARTMENT OF STATE

22 CFR Part 137

RIN 1400-AA55

FOR FURTHER INFORMATION CONTACT: Robert E. Lloyd, Office of the Procurement Executive, 703-516-1690.

List of Subjects in 22 CFR Part 137

Administrative practice and procedure, Contract programs, Grant programs.

Lloyd W. Pratsch,
Procurement Executive.

Title 22 of the Code of Federal Regulations, part 137, is amended as follows:

PART 137—GOVERNMENTWIDE DEPARTMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 137 continues 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.); 22 U.S.C. 2658.

2. Section 137.100 is revised as set forth at the end of the common preamble.

3. Sections 137.105 and 137.110 are amended as set forth at the end of the common preamble.

4. Sections 137.200, 137.215, 137.220, and 137.225 and Appendices A and B to Part 137 are revised as set forth at the end of the common preamble.

BILLING CODE: 4710-24-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Part 208

RIN 0412-AA24

FOR FURTHER INFORMATION CONTACT: Kathleen J. O'Hara, M/OP/P, Telephone (703) 875-1534.

List of Subjects in 22 CFR Part 208

Administrative practice and procedure, Contract programs, Grant programs—foreign relations, Grant programs, Loan programs—foreign relations.

Marcus L. Stevenson,
Acting Procurement Executive.

Title 22 of the Code of Federal Regulations, part 208, is amended as follows:

PART 208—GOVERNMENTWIDE DEPARTMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 208 continues 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.); Sec. 621, Foreign Assistance Act of 1961, 22 U.S.C. 2381.

2. Section 208.100 is revised as set forth at the end of the common preamble.

3. Sections 208.105 and 208.110 are amended as set forth at the end of the common preamble.

4. Sections 208.200, 208.215, 208.220, and 208.225 and Appendices A and B to Part 208 are revised as set forth at the end of the common preamble.

BILLING CODE: 6116-01-M

PEACE CORPS

22 CFR Part 310

RIN 0420-AA13

FOR FURTHER INFORMATION CONTACT: Kirby Mullen, 202-606-3114

List of Subjects in 22 CFR Part 310

Administrative practice and procedure, Contract programs, Grant programs.

Charles R. Baquet, III,
Acting Director.

Title 22 of the Code of Federal Regulations, part 310 is amended as follows:

PART 310—GOVERNMENTWIDE DEPARTMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 310 continues 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.); 22 U.S.C. 2503.

2. Section 310.100 is revised as set forth at the end of the common preamble.

3. Sections 310.105 and 310.110 are amended as set forth at the end of the common preamble.

4. Sections 310.200, 300.215, 310.220, and 310.225 and Appendices A and B to Part 310 are revised as set forth at the end of the common preamble.

BILLING CODE: 6051-01-M

UNITED STATES INFORMATION AGENCY

22 CFR Part 513

RIN 3116-AA07

FOR FURTHER INFORMATION CONTACT: GEORGIA HUBERT ON (202) 205-5404.

List of Subjects in 22 CFR Part 513 Administrative practice and procedure, Contract programs, Grant programs.

Henry Howard, Jr.,
Associate Director for Management.

The 22 of the code of Federal Regulations, Part 513 is amend as follows.

PART 513—GOVERNMENTWIDE DEPARTMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 513 is revised to read as follows:

Authority: 40 U.S.C. 486 (c); 41 U.S.C. 701 et seq.; Sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); E. O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 comp., p. 235.

2. Section 513.100 is revised as set forth at the end of the common preamble.

3. Sections 513.105 and 513.110 are amended as set forth at the end of the common preamble.

4. Sections 513.200, 513.215, 515.220, and 513.225 and Appendices A and B to Part 513 are revised as set forth at the end of the common preamble.

BILLING CODE: 8230-01-M

INTER-AMERICAN FOUNDATION

22 CFR Part 1006

FOR FURTHER INFORMATION CONTACT: Adolfo A. Franco, 703-841-3894.

List of Subjects in 22 CFR Part 1006

Administrative practice and procedure, Contract programs, Grant programs.

Adolfo A. Franco,
General Counsel.

Title 22 of the Code of Federal Regulations, part 1006 is amended as follows.

PART 1006—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 1006 continues 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.); 22 U.S.C. 290f.

2. Section 1006.100 is revised as set forth at the end of the common preamble.

3. Sections 1006.105 and 1006.110 are amended as set forth at the end of the common preamble.

4. Sections 1006.200, 1006.215, 1006.220 and 1006.225 and Appendices A and B to Part 1006 are revised as set forth at the end of the common preamble.

BILLING CODE: 7025–01–M

AFRICAN DEVELOPMENT FOUNDATION

22 CFR Part 1508

FOR FURTHER INFORMATION CONTACT: Paul S. Magid, (202) 673–3916.

List of Subjects in 22 CFR Part 1508

Administrative practice and procedure, Contract programs, Grant programs—foreign relations.

William R. Ford,
President.

Title 22 of the Code of Federal Regulations, Part 1508 is amended as follows:

PART 1508—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 1508 is revised to read as follows:

Authority: 22 U.S.C. 290h; 41 U.S.C. 701 et seq.; E.O. 12549, 3 CFR, 1986 comp., p. 189.

2. Section 1508.100 is revised as set forth at the end of the common preamble.

3. Section 1508.105 and 1508.110 are amended as set forth at the end of the common preamble.

4. Sections 1508.200, 1508.215, 1508.220, and 1508.225 and Appendices A and B to Part 1508 are revised as set forth at the end of the common preamble.

BILLING CODE: 6117–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 24

RIN 2501–AB24

FOR FURTHER INFORMATION CONTACT: Emmett N. Roden, Assistant General Counsel for Administrative Proceedings, Office of General Counsel, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Room 10251, Washington, DC 20410, telephone (202) 708–2350. The telephone number for the hearing impaired (TDD) is (202) 708–9300. These are not toll-free numbers.

ADDITIONAL SUPPLEMENTARY INFORMATION: In accordance with Executive Order 12549, the Department, along with other Federal agencies, promulgated governmentwide nonprocurement debarment and suspension regulations. The common rule, which is identical to the Office of Management and Budget's final guidelines, and the various agency-specific supplements to the common rule were published at the same time on May 26, 1988 (53 FR 19161). The provisions of the common rule that provide nonprocurement participants with the opportunity to contest suspensions and proposed debarments and the procedures by which suspending and debarment officials make final agency determinations are substantially similar to the procedures applicable to procurement contractors under the Federal Acquisition Regulation (FAR, 48 CFR, especially subpart 9.4 thereof). Although the Department adopted verbatim significant portions of the common rule, it did not include all of the provisions concerning suspension and debarment hearing procedures or the reconsideration or appeal of post-hearing determinations.

Executive Order 12689, issued in 1989, and section 2455 of the Federal Acquisition Streamlining Act of 1994 require that the debarment, suspension, or other exclusion of a participant in a procurement activity under the FAR, or in a nonprocurement activity under an

agency's debarment regulations, shall, after regulations are issued, have the governmentwide effect of excluding the participant from both procurement and nonprocurement activities. Under current HUD rules, a debarment of a nonprocurement participant does not affect such person's participation in procurement activities with other agencies.

On December 20, 1994, HUD and other agencies participating in the development of this final rule published a notice of proposed rulemaking to implement Executive Order 12689 and section 2455 of the Federal Acquisition Streamlining Act. HUD's portion of the proposed rule, published at 59 FR 65612, also included revisions to conform the Department's hearing procedures to those of the common rule.

The Department's current hearing procedures, which depart from the generally applicable governmentwide provisions, have adversely affected the Department's ability to process suspensions and debarments in an efficient and cost-effective manner. The amount of time and expense currently involved in the Department's suspension and debarment proceedings benefit neither the Department nor the persons who are subject to such sanctions. In addition, the Department notes that the common rule procedures have not been successfully challenged in Federal court since their implementation in 1988.

The issuance of this rule will simplify and streamline the suspension, debarment, and limited denial of participation processes at HUD. Therefore, this rule will reduce, rather than increase, the regulatory burden on contractors and participants in the Department's programs.

The Department considers these changes necessary to comply with the President's directive to streamline agency operations throughout the Executive Branch. The revisions are also an element in the Government reinvention process at the Department.

Effective date: The final rule shall apply to notices of proposed debarment, suspension and limited denial of participation that are issued on or after the effective date of this rule.

Discussion of Public Comments

Comments on the proposed rule were received from one Federal Government organization, from one private professional organization, and from three individuals. The issues raised by the commenters are summarized below.

Recommendations by the Administrative Conference of the United States (ACUS)

Comment: Four of the five commenters refer to recommendations recently issued by ACUS (Recommendation 95-2, "Debarment and Suspension from Federal Programs," adopted January 19, 1995) and urge that HUD conform its regulations to the ACUS Recommendations. In particular, the commenters urge compliance with item II of the Recommendations. This item recommends that cases involving disputed issues of material fact be referred to administrative law judges, military judges, administrative judges of boards of contract appeals or similarly independent hearing officers for hearings and preparation of (1) findings of fact certified to the debarring official, or (2) a recommended decision to the debarring official, or (3) an initial decision, subject to agency appeal. Item II of the ACUS Recommendations also recommends that debarring officials be senior agency officials who are guaranteed sufficient independence to provide due process, and that such officials ensure that information used as the basis for a sanction appear in the administrative record of the decision.

The commenters expressed concern that the use of "hearing officials" who are not administrative judges would result in the deprivation of due process. They criticized these officials as being neither trained in the law nor versed in HUD's programs.

One commenter also urged HUD to adopt item III of the ACUS Recommendation. Item III lists various recommendations for future rulemaking: (1) that entities coordinating the FAR and the common rule, and individual agencies, provide for a list of mitigating and aggravating factors; (2) establishment of a process for determining a lead agency when a person deals with more than one agency; (3) minimum evidentiary thresholds for procurement debarment; (4) notice to affected persons of the impact of sanctions; and (5) use of "show cause" warning letters.

Response: The rule satisfies the ACUS recommendation that debarring officials be senior, independent agency officials. Notices of suspension and proposed debarment are, under delegations by the Secretary of HUD, issued by Assistant Secretaries, the Inspector General, and the President of the Government National Mortgage Association. These officials are the highest responsible officials for major components of the Department. They report directly to the

Secretary. These officials are not subject to the supervision of, nor do they directly supervise, agency personnel who carry out investigative or prosecutive activities. Their ability to make independent debarment decisions is thus evident from their position.

The Department has revised the rule to address the comments concerning referral of disputes of material fact. The revision deletes the references to "hearing official." The specific HUD-only additions to the common rule, at §§ 24.314(b)(2)(i) and 24.413(b)(3), clarify that disputes of material fact may be referred to "hearing officers" who are defined as administrative law judges or members of the HUD Board of Contract Appeals. In accordance with the first option listed in ACUS Recommendation item II, the hearing officers will provide findings of fact to the suspending or debarring official. In addition, the final rule provides that the suspending or debarring official may, in his or her discretion, refer cases based upon indictment, conviction or civil judgment, or cases in which there is no dispute of material fact, to the hearing officer for appropriate findings.

The final rule is in conformity with the other elements of ACUS Recommendation 95-2 to the extent possible in the context of a coordinated governmentwide system. Recommendation item IV urges that all federal agencies adopt the common rule. By conforming its hearing procedures to those of the common rule, HUD has followed the ACUS suggestion. By coordinating procurement and non-procurement suspension and debarment, HUD has followed the suggestion of ACUS in Recommendation item I.

HUD has agreed to consider ACUS Recommendation item III, along with other proposed changes to the common rule, before the end of this year. Certain of the item III suggestions, such as appropriate notice to respondents and the use of "show cause" letters, will in any event be considered by HUD as new procedures are adopted under the regulatory revision.

Finally, ACUS Recommendation item V addresses Congress rather than the executive branch agencies.

Consideration of Mitigating Factors in Debarment Proceedings

Comment: Two commenters asserted that the proposed rule had eliminated all references to mitigating factors as an element of the suspension and debarment process.

Response: These comments may be based on the elimination of paragraph (d) in 24 C.F.R. § 24.115, which refers to

consideration of mitigating factors in the debarment of contractors. This deletion is the result of coordination of procurement and non-procurement debarment.

Mitigation will, necessarily, continue to be an element in HUD's suspension and debarment process. Most importantly, 24 C.F.R. § 24.300 will continue to require consideration of the seriousness of the "person's" acts and "any mitigating factors." In addition, the provisions of 24 C.F.R. § 24.314, referring to the inclusion of "any evidence of mitigating circumstances," are expanded under the proposed rule and this final rule by requiring consideration of "any information and argument" submitted by the respondent. (See §§ 24.313(a) and 24.314(a) and (b)(1).) The opportunity to submit, for review, evidence of mitigation as well as any other information is thus well preserved.

Limits on Discovery and Use of Alternative Dispute Resolution

Comment: Two commenters proposed that the Department impose limits on discovery as a means of streamlining the hearing process. One commenter further recommended that the rule provide for the use of alternative dispute resolution. The commenters stated that these changes would reduce costs to the Department and to participants while increasing efficiency.

Response: The Department's current rule allows the use of discovery pursuant to the provisions of 24 CFR Part 26. In the final rule, cases that the suspending or debarring official does not refer to hearing officers shall not be subject to formal discovery, but instead shall be limited to information in the administrative record, including any submissions by the respondent. (See §§ 24.314(a) and (b) and 24.413(a) and (b).)

The discovery provisions of Part 26 shall continue to apply to those cases that are referred to a hearing officer for findings of fact. (See §§ 24.314(b)(2)(i) and 24.413(b)(3).) However, 24 CFR § 26.17 provides that "discovery shall not be permitted where it will unduly delay the hearing, thereby resulting in prejudice to the public interest or the rights of the parties." In addition, the final rule procedures at §§ 24.314(b)(2)(ii) and 24.413(b)(4) will require that the hearing in a case referred to the hearing officer commence within 45 days of referral, unless both parties agree to an extension of time. The Department is also required to compile an administrative record prior to hearing, and to provide a copy to the respondent. This record will contain all

information that the debarring official relied upon in issuing the suspension or proposed debarment.

The 45-day requirement and use of an administrative record, coupled with the existing part 26 restrictions, should eliminate protracted discovery. At the same time, the rule is sufficiently flexible to allow an extended period of discovery if the parties mutually agree to extend the 45-day limit. However, if these provisions prove inadequate, the Department agrees to consider limitations on discovery in future rulemaking.

The Department agrees with the comment recommending alternative dispute resolution. Provisions for voluntary use of alternative dispute resolution have been added to the final rule. The Department has determined that this section does not impose any restrictions on existing rights of HUD participants, but rather serves to expand the methods for resolving disputes. Accordingly, the Department believes there is good cause for promulgating this provision in a final rule, rather than through a proposed rule.

Creation of an Office To Chair Informal Conferences for Limited Denials of Participation

Comment: One commenter proposed that the Department establish a new office to chair informal conferences for limited denials of participation. The commenter stated that, under the existing process, the official presiding over the conference is often the person who initiated the sanction, and therefore may be biased against the respondent.

Response: The Department has addressed this concern by revising the proposed rule to allow the respondent to by-pass the informal conference and proceed directly to a hearing before a hearing officer.

List of Subjects in 24 CFR Part 24

Administrative practice and procedure, Contract programs, Drug abuse, Government contracts, Grant programs, Government procurement, Loan programs, Reporting and recordkeeping requirements.

Henry G. Cisneros,
Secretary.

Title 24 of the Code of Federal Regulations, part 24 is amended as follows:

PART 24—GOVERNMENT DEBARMENT AND SUSPENSION AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 24 is revised to read as follows:

Authority: 41 U.S.C. 701 *et seq.*; 42 U.S.C. 3535(d); E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 54 FR 34131, 3 CFR, 1989 Comp., p. 235.

2. Section 24.100 is revised as set forth at the end of the common preamble.

3. Sections 24.105 and 24.110 are amended as set forth at the end of the common preamble.

4. Sections 24.200, 24.215, 24.220, 24.225 and Appendices A and B to Part 24 are revised as set forth at the end of the common preamble.

5. Section 24.100 is further amended by adding paragraphs (e) and (f), to read as follows:

§ 24.100 Purpose.

* * * * *

(e) These regulations also:

(1) Prescribe policies and procedures governing the debarment and suspension of contractors and the limited denial of participation of participants and contractors;

(2) Provide for the listing of debarred, suspended and ineligible contractors; and

(3) Set forth the consequences of such listing.

(f) Although this part covers the listing of ineligible contractors, it does not prescribe policies and procedures governing declarations of ineligibility.

6. Section 24.105 is further amended by removing paragraphs (1) and (2) under the definitions of "Debarment," "Suspension" and "Voluntary exclusion or voluntarily excluded" and by revising the definitions for "Limited denial of participation," and "Respondent" to read as follows:

§ 24.105 Definitions.

* * * * *

Limited denial of participation. An action taken by a HUD official, in accordance with subpart G of these regulations, that immediately excludes or restricts a person from participating in HUD program(s) within a defined geographic area.

* * * * *

Respondent. A person against whom a debarment or suspension action has been initiated.

(1) A respondent is also a person against whom a limited denial of participation has been initiated.

(2) [Reserved].

* * * * *

7. Section 24.110 is further amended by adding a paragraph (a)(1)(i)(A)(3) and a paragraph (a)(3), and by revising the last sentence of paragraph (d), to read as follows:

§ 24.110 Coverage.

(a) * * *

(1) *Covered transaction.* * * *

(i) * * *

(A) * * *

(3) Any procurement transaction between HUD and a person.

* * * * *

(3) *Other exceptions.* (i) Sanctions against participants whose only involvement in HUD programs is as ultimate beneficiaries, such as subsidized tenants and subsidized mortgagors, may be taken only upon commission of one of the offenses set forth in § 24.305(a), unless the participant has otherwise been debarred or suspended by another Federal agency.

(ii) Sanctions under this part against mortgagees approved by HUD to participate in Federal Housing Administration programs may be initiated only with the approval of the Mortgagee Review Board.

* * * * *

(d) * * * The consequences of a debarment or suspension as set forth in § 24.200 apply to contractors in Federal procurement programs, and §§ 24.325 and 24.420 govern the extent to which a specific contractor or its organizational elements would be included within a debarment or suspension action.

* * * * *

§ 24.115 [Amended]

8. In § 24.115, paragraph (d) is removed.

9. Section 24.200 is further amended by adding new paragraphs (c)(8), (c)(9) and (d), to read as follows:

§ 24.200 Debarment or suspension.

* * * * *

(c) *Exceptions.* * * *

* * * * *

(8) Debarment for any of the causes set forth in § 24.305(f) shall have no governmentwide effect.

(9) Sanctions imposed on an individual participant under this part shall not preclude the participant from selling his or her principal residence to a purchaser using HUD/FHA financing.

(d) *Relationship to HUD*

administrative sanction procedures.— (1) *Sanctions provided pursuant to contract provisions.* Nothing in this part

shall impair or limit the right to impose any sanction provided for by contract, including guaranty agreements with the Government National Mortgage Association.

(2) *Other Departmental sanctions.* Where an office of the Department is required by statute, regulation, or Executive Order to follow administrative sanction procedures that may differ from the requirements of this part, the requirements of the statute, regulation, or Executive Order shall take precedence. These alternative procedures include, but are not limited to: 24 CFR part 200 Previous Participation Review and Clearance procedures, 24 CFR part 25 Mortgagee Review Board administrative actions, and 24 CFR part 570 Community Development Block Grant corrective and remedial actions.

10. In § 24.305, paragraph (d) is revised to read as follows:

§ 24.305 Causes for debarment.

* * * * *

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a person.

* * * * *

11. Section 24.313 is revised to read as follows:

§ 24.313 Opportunity to contest proposed debarment.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(1) The information and argument should be addressed to the Debarment Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

(2) If the respondent does not contest the proposed debarment within the 30 day period, the proposed debarment shall become final.

(3) If the respondent desires a hearing, it shall submit a written request to the Debarment Docket Clerk within the 30-day period following receipt of the notice of proposed debarment.

(4) The parties may agree to engage in an alternative dispute resolution, including informal conference, mediation, conciliation, summary trial with binding decision, minitrial, or use of a settlement judge.

(b) *Additional proceedings as to disputed material facts.* (1) In actions not based upon a conviction or civil judgment, if the debarring official finds that the respondent's submission in opposition raises a genuine dispute over

facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents.

(2) A transcribed record of any additional proceedings shall be made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

(i) Upon the agreement of the parties, the additional proceedings may be recorded using audiotape without transcription. The audiotape shall be made available at cost to the respondent.

(ii) [Reserved].

12. Section 24.314 is revised to read as follows:

§ 24.314 Debarring official's decision.

(a) *No additional proceedings necessary.* In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(1) The debarring official may, in his or her discretion, refer actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, to a hearing officer or other official for review of the administrative record and appropriate findings. The hearing officer or other official shall issue such findings within 45 days after the referral, and the debarring official shall issue a decision within 15 days after the date of the findings, unless such periods are extended for good cause.

(2) [Reserved].

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after

specifically determining them to be arbitrary and capricious or clearly erroneous.

(i) The debarring official may refer disputed material facts and issues of law to a hearing officer for findings of fact and conclusions of law.

(A) No appeal to the Secretary may be taken under §§ 26.24 through 26.26 of this title with respect to any order or decision by a hearing officer or other official.

(B) The debarring official shall provide the hearing officer or other official with all the information in the administrative record, including any information and argument submitted by the respondent. The administrative record and any documents admitted at the hearing shall constitute the exhibits in evidence.

(ii) Unless the parties mutually agree to extend this period, a proceeding before a hearing officer or other official shall commence within 45 days after referral of the case by the debarring official. The hearing officer or other official shall issue findings of fact within 30 days after the conclusion of such additional proceedings. The time limitations of this subparagraph may be extended upon issuance, by the debarring official, hearing officer or other official, of a written notice describing good cause for such extension.

(3) The debarring official's decision shall be made after the conclusion of the proceedings with respect to the disputed facts.

(i) Such decision shall be made within 15 days after the hearing officer or other official issues findings of fact.

(ii) [Reserved].

(c)(1) *Standard of proof.* In any debarment action, the cause for debarment must be established by a preponderance of the evidence. Where the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(2) *Burden of proof.* The burden of proof is on the agency proposing debarment.

(d) *Notice of debarring official's decision.* (1) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates; and

(iv) Advising that the debarment is effective for covered transactions throughout the executive branch of the

Federal Government unless an agency head or an authorized designee makes the determination referred to in § 24.215.

(A) Where a debarment is based solely on § 24.305(f), the notice of the debarring official's decision shall advise that the debarment is effective for programs or activities of the Department.

(B) [Reserved].

(2) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

§ 24.400 [Amended]

13. In § 24.400, paragraph (d) is removed.

§ 24.410 [Amended]

14. In § 24.410, paragraph (c) is removed.

15. Section 24.411 is revised to read as follows:

§ 24.411 Notice of suspension.

When a respondent is suspended, notice shall immediately be given:

(a) That the suspension has been imposed;

(b) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;

(c) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) relied upon under § 24.405 for imposing suspension;

(e) That the suspension is for a temporary period pending the completion of an investigation or ensuing legal, debarment or Program Fraud Civil Remedies Act proceedings;

(f) Of the provisions of §§ 24.411 through 24.413 and any other HUD procedures, if applicable, governing suspension decisionmaking; and

(g) Of the effect of the suspension.

16. Section 24.412 is revised to read as follows:

§ 24.412 Opportunity to contest suspension.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(1) The information and argument should be addressed to the Debarment Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

(2) If the respondent does not contest the suspension within the 30 day period, the suspension shall become final.

(3) If the respondent desires a hearing, it shall submit a written request to the Debarment Docket Clerk within the 30-day period following receipt of the notice of suspension.

(4) The parties may agree to engage in an alternative dispute resolution, including informal conference, mediation, conciliation, summary trial with binding decision, minitrial, or use of a settlement judge.

(b) *Additional proceedings as to disputed material facts.* (1) If the suspending official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witnesses the agency presents, unless:

(i) The action is based on an indictment, conviction or civil judgment; or

(ii) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(2) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

(i) Upon the agreement of the parties, the additional proceedings may be recorded using audiotape without transcription. The audiotape shall be made available at cost to the respondent.

(ii) [Reserved].

17. Section 24.413 is revised to read as follows:

§ 24.413 Suspending official's decision.

The suspending official may modify or terminate the suspension (see § 24.320(c) for reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency. The decision shall be rendered

in accordance with the following provisions:

(a) *No additional proceedings necessary.* In actions based upon an indictment, conviction, or civil judgment, in which there is no genuine dispute over material facts, or in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(1) The suspending official may, in his or her discretion, refer actions based upon an indictment, conviction or civil judgment, or in which there is no genuine dispute over material facts, to a hearing officer or other official for review of the administrative record and appropriate findings. The hearing officer or other official shall issue such findings within 45 days after the referral, and the suspending official shall issue a decision within 15 days after the date of such findings, unless such periods are extended for good cause.

(2) [Reserved].

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary or capricious or clearly erroneous.

(3) The suspending official may refer disputed material facts and issues of law to a hearing officer for findings of fact and conclusions of law.

(i) No appeal to the Secretary may be taken under §§ 26.24 through 26.26 of this title with respect to any order or decision by a hearing officer or other official.

(ii) The suspending official shall provide the hearing officer or other official with all the information in the administrative record, including any information and argument submitted by

the respondent. The administrative record and any documents admitted at the hearing shall constitute the exhibits in evidence.

(4) Unless the parties mutually agree to extend this period, a proceeding before a hearing officer or other official shall commence within 45 days after referral of disputed material facts and issues of law by the suspending official. The hearing officer or other official shall issue findings of fact within 30 days after the conclusion of such additional proceedings. The time limitations of this subparagraph may be extended upon issuance, by the suspending official, other official or hearing officer, of a written notice describing good cause for such extension.

(5) The suspending official's decision shall be made within 15 days after the hearing officer or other official issues findings of fact.

(c) *Notice of suspending official's decision.* Prompt written notice of the suspending official's decision shall be sent to the respondent.

§ 24.415 [Amended]

18. In § 24.415, paragraph (d) is removed.

§ 24.705 [Amended]

19. In § 24.705, paragraph (c) is amended to remove the words "regional or field".

§ 24.710 [Amended]

20. In § 24.710, paragraph (a)(3) is amended to remove the words "the Deputy Assistant Secretary for Single Family Housing" and add, in their place, the words "an Assistant Secretary or Deputy Assistant Secretary".

21. Section 24.711 is revised to read as follows:

§ 24.711 Notice of limited denial of participation.

A limited denial of participation shall be made effective by advising the participant or contractor, and any specifically named affiliate, by mail, return receipt requested:

- (a) That the limited denial of participation is being imposed;
- (b) Of the cause(s) under § 24.705 for the sanction;
- (c) Of the potential effect of the sanction, including the length of the sanction and the HUD program(s) and geographic area affected by the sanction;
- (d) Of the right to request, in writing, within 30 days of receipt of the notice, a conference under § 24.712; and
- (e) Of the right to contest the limited denial of participation under § 24.713.

22. Section 24.712 is revised to read as follows:

§ 24.712 Conference.

Within 30 days after receiving a notice of limited denial of participation, the respondent may request a conference with the official who issued such notice. If the respondent does not request a conference, the respondent shall nevertheless have the right to contest the limited denial of participation under the provisions of § 24.713. The conference shall be held within 15 days after the Department's receipt of the request for a conference, unless the respondent waives this time limit. The official who imposed the sanction, or his or her designee, shall preside. At the conference, the respondent may appear with a representative and may present all relevant information and materials to the official or designee. Within 20 days after the conference, or within 20 days after any agreed upon extension of time for submission of additional materials by the respondent, the official or designee shall, in writing, advise the respondent of the decision to terminate, modify, or affirm the limited denial of participation. If all or a portion of the remaining period of exclusion is affirmed, the notice of affirmation shall advise the respondent of the opportunity to contest the notice pursuant to § 24.713. If the official or designee does not issue a decision within the 20-day period, the respondent may contest the sanction under § 24.713.

23. Section 24.713 is revised to read as follows:

§ 24.713 Opportunity to contest the limited denial of participation.

(a) *Submission in opposition.* (1) The respondent may request a hearing before a hearing officer:

(i) Within 30 days after receipt of a notice of affirmation of all or a portion of the remaining period of exclusion under a limited denial of participation; or

(ii) Within 30 days after receipt of a notice of a limited denial of participation where the respondent elects not to request a conference under § 24.712.

(2) The request must be addressed to the Debarment Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

(3) If the respondent does not submit the request within the 30-day period, the sanction shall become final.

(b) *Procedures.* The hearing shall be conducted in accordance with the procedures of §§ 24.313 and 24.314. Within 15 days of the hearing officer's issuance of findings of fact and a

recommended decision, the official who issued the limited denial of participation shall issue a decision.

(c) *Effect of suspension or debarment on limited denial of participation.* If a respondent has submitted a request for a hearing pursuant to paragraph (a) of this section, and if the respondent has also received, pursuant to subpart C or D of this part, a notice of proposed debarment or suspension that is based on the same transaction(s) or conduct as the limited denial of participation, the following rules shall apply:

(1) If the respondent has not contested the proposed debarment pursuant to § 24.313(a) or the suspension pursuant to § 24.412(a), the final imposition of the debarment or suspension shall also constitute a final decision with respect to the limited denial of participation to the extent that the debarment or suspension is based on the same transaction(s) or conduct as the limited denial of participation.

(2) If the respondent has contested the proposed debarment pursuant to § 24.313(a), or the suspension pursuant to § 24.412(a), the proceedings shall be consolidated and the debarment or suspending official shall issue a final decision as to both the limited denial of participation and the debarment or suspension.

24. A new section 24.714 is added to read as follows:

§ 24.714 Reporting of limited denial of participation.

When a limited denial of participation has been made final, or the period for requesting a conference pursuant to § 24.712 has expired without receipt of such a request, the official imposing the limited denial of participation shall notify the Director of the Participation and Compliance Division in the Office of Housing of the scope of the limited denial of participation.

BILLING CODE: 4210-32-P

DEPARTMENT OF JUSTICE

28 CFR Part 67

[A.G. Order No. 1972-95]

FOR FURTHER INFORMATION CONTACT:
Cynthia J. Schwimer, Director, Financial Management Division, 202-307-3186.

List of Subjects in 28 CFR Part 67

Administrative practice and procedure, Contract programs, Grant programs.

Dated: June 1, 1995.

Janet Reno,

Attorney General.

Title 28 of the Code of Federal Regulations, part 67, is amended as follows:

PART 67—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 67 continues 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.*), Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3711 *et seq.* (as amended); Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601 *et seq.* (as amended); Victims of Crime Act of 1984, 42 U.S.C. 10601 *et seq.* (as amended); 18 U.S.C. 4042; and 18 U.S.C. 4351–4353.

2. Section 67.100 is revised as set forth at the end of the common preamble.

3. Sections 67.105 and 67.110 are amended as set forth at the end of the common preamble.

4. Sections 67.200, 67.215, 67.220, and 67.225 and Appendices A and B to Part 67 are revised as set forth at the end of the common preamble.

BILLING CODE: 4410–18–M

DEPARTMENT OF LABOR

29 CFR Part 98

RIN 1291–AA23

FOR FURTHER INFORMATION CONTACT: Melvin Goldberg, Chief, Division of Procurement and Grant Policy, (202) 219–9174.

List of Subjects in 29 CFR Part 98

Administrative practice and procedure, Contract programs, Grants programs.

Cynthia A. Metzler,

Assistant Secretary for Administration and Management.

Title 27 of the Code of Federal Regulations, part 98, is amended as follows:

PART 98—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 98 continues 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. 552–556.

2. Section 98.100 is revised as set forth at the end of the common preamble.

3. Sections 98.105 and 98.110 are amended as set forth at the end of the common preamble.

4. Sections 98.200, 98.215, 98.220, and 98.225 and Appendices A and B to Part 98 are revised as set forth at the end of the common preamble.

BILLING CODE: 4510–23–M

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Part 1471

RIN 3076–AA03

FOR FURTHER INFORMATION CONTACT: Peter Regner, (202) 606–8181.

List of Subjects in 29 CFR Part 1471

Administrative practice and procedure, Contract programs, Grant programs.

Floyd L. Wood,

Deputy Director.

Title 29 of the Code of Federal Regulations, part 1471 is amended as follows.

PART 1471—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 1471 continues to read as follows:

Authority: E.O. 12549; secs. 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.*); Pub. L. 95–524, Oct. 27, 1978, 29 U.S.C. 175a.

2. Section 1471.100 is revised as set forth at the end of the common preamble.

3. Sections 1471.105 and 1471.110 are amended as set forth at the end of the common preamble.

4. Sections 1471.200, 1471.215, 1471.220, and 1471.225 and Appendices A and B to Part 1471 are revised as set forth at the end of the common preamble.

BILLING CODE: 6372–01–M

DEPARTMENT OF THE TREASURY

31 CFR Part 19

RIN 1505–AA57

FOR FURTHER INFORMATION CONTACT: William Murphy at (202) 622–0450.

List of Subjects in 31 CFR Part 19

Administrative practice and procedure, Contract programs, Grant programs.

George Muñoz,

Assistant Secretary for Management.

Title 31 of the Code of Federal Regulations, part 19 is amended as follows.

PART 19—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 19 continues to read as follows:

Authority: E.O. 12549; secs. 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.*); 31 U.S.C. 321.

2. Section 19.100 is revised as set forth at the end of the common preamble.

3. Sections 19.105 and 19.110 are amended as set forth at the end of the common preamble.

4. Sections 19.200, 19.215, 19.220, and 19.225 and Appendices A and B to Part 19 are revised as set forth at the end of the common preamble.

BILLING CODE: 4810–251–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 25

RIN 0790–AF68

FOR FURTHER INFORMATION CONTACT: Mark Herbst, (703) 614–0205.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Defense adopts this amendment to the Governmentwide common rule on debarment and suspension for nonprocurement transactions. In adopting this rule, the Office of the Secretary of Defense, the Military Departments and the Defense Agencies will maintain uniform policies and procedures that are consistent with those of other Executive Departments and Agencies.

The Department of Defense originally codified this Governmentwide rule on May 26, 1988 (53 FR 19190 and 19204), at 32 CFR Part 280. On February 21,

1992 57 FR 6199), Part 280 was redesignated as Part 25. This rulemaking amends the redesignated part 25.

List of Subjects in 32 CFR Part 25

Administrative practice and procedure, Contract programs, Grant programs.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Title 32 of the Code of Federal Regulations, part 25 is amended as follows.

PART 25—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 25 is revised to read as follows:

Authority: 41 U.S.C. 701 *et seq.*; sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549, 3 CFR, 1986 Comp.; 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

2. Section 25.100 is revised as set forth at the end of the common preamble.

3. Sections 25.105 and 25.110 are amended as set forth at the end of the common preamble.

4. Sections 25.200, 25.215, 25.220, and 25.225 and Appendices A and B to Part 25 are amended as set forth at the end of the common preamble.

5. Section 25.105 is amended further by adding paragraphs (1) and (2) to the definition for *Agency*, by adding paragraph (3) to the definition for *Debarring official*, and by adding paragraph (3) to the definition for *Suspending official* to read as follows:

§ 25.105 Definitions.

* * * * *

Agency. * * *

(1) The meaning of *agency* in Subpart F of this part, Drug-Free Workplace Requirements, is given at § 25.605(b)(6) and is different than the meaning given in this section for subparts A through E of this part. *Agency* in Subpart F of this part means the Department of Defense or a Military Department only, and does not include any Defense Agency.

(2) [Reserved]

* * * * *

Debarring official. * * *

(3) DoD Components' debarring officials for nonprocurement transactions are the same officials identified in 48 CFR part 209, subpart 209.4, as debarring officials for procurement contracts.

* * * * *

Suspending official. * * *

(3) DoD Components' suspending officials for nonprocurement transactions are the same officials identified in 48 CFR part 209, subpart 209.4, as suspending officials for procurement contracts.

* * * * *

6. Section 25.610 is amended by adding paragraph (b)(1) to read as follows and by reserving paragraph (b)(2):

§ 25.610 Coverage.

* * * * *

(b) * * *

(1) Heads of Defense Agencies, Heads of DoD Field Activities, and their designees are authorized to make such determinations on behalf of the Secretary of Defense.

(2) [Reserved]

* * * * *

7. Section 25.616 is added to read as follows:

§ 25.616 Determinations of grantee violations.

Heads of Defense Agencies, Heads of DoD Field Activities, and their designees are authorized to make determinations of grantee violations under § 25.615.

BILLING CODE 5000.4-M

DEPARTMENT OF EDUCATION

34 CFR Parts 85, 668, and 682

RIN 1880-AA51

FOR FURTHER INFORMATION CONTACT:

Mary Jane Kane, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3636 ROB-3, Washington, D.C. 20202-4700. Telephone: 708-7802. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

ADDITIONAL SUPPLEMENTARY INFORMATION:

In addition to the amendments made by all participating agencies for the common rule, the Secretary amends the Department's debarment and suspension procedures to reflect certain changes made by the Higher Education Amendments of 1992 to those provisions of title IV of the Higher Education Act of 1965, as amended (title IV, HEA) that govern administrative proceedings to limit or terminate the eligibility of participants in programs under that title. The Secretary also amends subpart G of part 668, which contains the Department's procedures for Fine, Limitation, Suspension, and

Termination proceedings, to do the following: make technical amendments to reflect the 1992 amendments to the HEA as they affect actions under that part giving effect to debarments or suspensions; amend subpart G of Part 682 in order to apply the same procedures to debarments or suspensions of lenders or loan servicers under the Federal Family Education Loan Programs (FFELP); and prescribe the weight to be accorded a debarment or suspension by the hearing official in proceedings under both subparts when the termination or suspension is based on an action under Executive Order 12549 (3 CFR, 1986 Comp., p. 189) or the Federal Acquisition Regulation (FAR), 48 CFR part 9, subpart 9.4.

The preamble to the notice of proposed rulemaking (NPRM) provided information about the background for this rulemaking action, including a discussion regarding the need to make changes to the Department's amendments that were made to the Common Rule when it was issued in 1988.

Educational institutions participating in the Title IV, HEA programs must execute a program participation agreement that includes, as Schedule Z, a certification by the institution that neither it nor its principals are currently debarred or suspended, and that it will obtain a similar certification from those parties, such as third-party servicers, with which it contracts. Those parties must notify the institution if they are subsequently debarred or suspended; however, the Department has no written agreement with servicers, or with lenders under the Federal Family Education Loan Program, in which a certification like that made by the institution could be included. The Secretary is considering the desirability of including in Title IV, HEA regulations a requirement that a debarred or suspended lender or servicer promptly report that action to the Department, and will take up this issue at the time that the Interagency Committee considers further amendments to the nonprocurement Debarment and Suspension Common Rule (See the response to the comments of the Administrative Conference of the United States in the preamble to the Common Rule.).

Technical Amendments

The Secretary makes certain technical amendments to the regulations in Part 85 that were not addressed in the preamble or set out in the text of the proposed amendments. These amendments are needed because the final common regulatory amendments

revise entire paragraphs rather than setting out only the text of those changes needed to achieve reciprocity (as was done in the NPRM). As a result, some of the Department's agency-specific amendments to the original debarment and suspension regulation needed to be restated to preserve their inclusion in the revised regulation. Other technical amendments are made to the final regulations to reflect the policies proposed in the NPRM, as discussed in the following analysis of the comments.

Analysis of Comments and Responses

Section 85.201 Treatment of Title IV, HEA Participation.

Comment: Several commenters urged that § 85.201 articulate the specific standards that the Secretary would use to determine whether the procedures used by another Federal agency to debar or suspend a lender, third-party servicer, or institution provided equivalent due process protections to those available under subpart G of Part 668 and Part 682.

Discussion: The comment is well-taken. Prior to the amendments made to the HEA in 1992, proceedings under subpart G of Parts 668 or 682 to suspend or terminate the participation of lenders, servicers, and institutions were required to be conducted "on the record" in accordance with the requirements of 5 U.S.C. 554-557. These regulations have since been modified to remove the provisions referring to the proceedings as conducted "on the record" and to the presiding official as an "administrative law judge," and may be further modified in the future.

The Secretary intends to give effect to debarments or suspensions by other agencies that provide the same level of due process to affected entities, without requiring that those procedures mirror each feature of subpart G procedures as they now stand or may stand in the future. The subpart G regulations assure affected entities certain procedural protections before actions that had the effect of suspending or terminating their Title IV, HEA participation could become effective. Where those protections have been made available under procedures used by another agency, the affected entity has no claim to any additional procedural protections under Title IV, HEA regulations before these actions are given effect with regard to Title IV, HEA activities.

This approach is consistent with the way courts treat the judgment of an administrative agency acting in an adjudicative capacity, regarding the adjudicative action as sufficient to bar

the respondent from relitigating that matter in another proceeding either before the court or another agency. Courts do not require that the procedures used by the deciding agency mirror judicial procedures in order to bar relitigation of the matter, so long as the deciding agency follows typical adjudicative procedures. If adjudicative procedures are followed by the deciding agency, moreover, it is immaterial whether the entity subject to debarment or suspension under those procedures actually contested the action or made use of particular opportunities available under those procedures.

Consistent with the approach taken by courts in deciding whether an agency's procedures suffice to bar relitigation of its decision elsewhere, the Secretary identifies those procedural steps sufficient to make other agency procedures comparable to subpart G procedures as including: (1) written notice specifying the grounds on which action is taken; (2) an opportunity to present evidence and legal argument in opposition to the action and have that opposition considered by an impartial trier of fact not responsible for the investigation or prosecution of the action; (3) an opportunity, where material facts are in dispute, for an oral evidentiary hearing at which the agency bears the burden of persuasion by a preponderance of the evidence, at which the respondent may, where the hearing official considers such testimony needed in light of other available evidence and witnesses, obtain the presence of agency witnesses with personal knowledge of material facts, and of which a transcribed record is available; and (4) a written decision based on the evidence and argument presented that states the facts and legal conclusions on which the decision is based.

In determining whether the other agency's procedure comports with these standards, the Secretary will apply case precedent relevant to characterizing pertinent agency procedures in other, similar contexts. For example, as noted in *Withrow v. Larkin*, 421 U.S. 57, 56 (1975), an administrative official does not become an investigator or prosecutor simply by the act of determining that a notice of proposed debarment is supported by sufficient allegations and evidence to warrant issuance; that function resembles the traditional judicial function of considering and ruling on motions to dismiss.

Changes: The final rule articulates in § 85.201 the elements described here as those that the Secretary will consider sufficient to provide the same level of

procedural due process to make another Federal agency exclusionary action binding with respect to Title IV, HEA participation. Conforming changes are made in §§ 668.82, 682.705, and 682.706. The regulations do not require that these elements be articulated in the other agency's published regulations, and the Secretary intends to consider whether a particular element, although not stated in agency regulations, is, in practice, part of the agency internal process used to decide the case in question. The regulations are further amended to state that the Secretary will notify an affected entity whether the debarment or suspension is regarded by the Department as binding with respect to Title IV, HEA participation, and specify the effective date of the action.

The rule provides no opportunity for an administrative appeal of that determination, and the Secretary therefore considers that determination to be the final action of the Department.

Section 668.90 Initial and Final Decisions.

Comment: Several commenters objected to the proposal in the NPRM to treat a proposed debarment under the FAR, when imposed under procedures considered equivalent to those in subpart G of Parts 668 and 682, as sufficient action to suspend the participation in Title IV, HEA programs of a lender, servicer, or institution.

Discussion: Both a proposed debarment under the FAR and a suspension under E.O. 12549 have the effect of suspending the entity as of the date on which the department or agency initiated the action by sending notice of the action to the respondent. This immediate effect differs from either termination or suspension actions under subpart G of Parts 668 or 682; the latter both assure the entity an opportunity to dispute the action prior to its taking effect, unless an emergency action is simultaneously taken against the entity. However, this difference does not necessarily prevent these debarment or suspension procedures from being considered equivalent to subpart G procedures.

If the agency's procedures otherwise provide the procedural due process protections described in § 85.201, this lack of an opportunity to object prior to the suspension taking effect becomes moot in two instances. First, if the respondent does not object to the action in a timely manner in accordance with the agency procedures, the suspension continues in effect by what can either be characterized as a default judgment or implicit consent by the respondent. Second, if the respondent timely objects

and the debarment or suspending agency issues a decision rejecting that objection, the suspension thereafter continues in effect by virtue of that decision and not by virtue of the mere initiation of the action.

Changes: The final rule provides, in §§ 85.201(a), 668.82(f)(2), and 682.705 that if another agency, using procedures comparable to those under subpart G of Parts 668 or 682, has proposed debarment under the Federal Acquisition Regulation (FAR) or suspended an entity, the Secretary gives effect to that action as suspending the Title IV, HEA participation of a lender, servicer, or institution only after he determines either that the entity has not timely objected to the action, or has objected and received a decision from the agency upholding the action.

In addition, the final regulation has been revised to give finality only to those agency decisions that meet subpart G standards. Sections 668.90, 682.705 and 682.706 have been revised to provide that a debarment or suspension by another agency under procedures that the Secretary determines do not meet these standards does not bar the affected entity from contesting the grounds and justification for the suspension or debarment under subpart G procedures. However, the other agency's decision is at very least strong evidence that debarment or suspension is warranted, and the final regulations now provide that the decision constitutes a *prima facie* case that the comparable action is warranted under Department procedures.

Therefore, although the designated Department official continues to bear the burden of persuasion in actions to debar, terminate, or suspend a lender, servicer, or institution, the fact of suspension or debarment by another agency shifts to the respondent the burden of producing some credible evidence that the action is not warranted with respect to the Title IV, HEA programs. The designated Department official may then introduce rebuttal evidence to sustain his or her burden of proof; that evidence may include the evidence on which the other Federal agency relied in imposing the debarment or suspension.

Sections 668.90, 682.705, 682.706
Effective Date and Duration of
Suspension or Termination Based on
Suspension or Debarment

Comment: Several commenters urged that the regulations clarify the period for which the suspension or termination taken on the basis of a debarment, suspension or proposed debarment would be effective.

Discussion: Subpart G of Part 668, as amended April 29, 1994, 59 FR 22444, provides in § 668.82(f)(2) that a suspension by another agency under procedures comparable to those in subpart G suspends the participation of an institution or third-party servicer for 60 days from the date of that agency's action, unless the Secretary commences a limitation or termination action under subpart G within that period. In other instances, the commencement and duration of a suspension imposed by the Secretary is stated in § 668.85(b), which provides that the suspension commences 20 days after notice of the proposed suspension is mailed, unless the respondent timely objects and requests a hearing, and expires 60 days after it takes effect unless the Secretary commences a limitation or termination action within that period.

The duration of a termination on the basis of a debarment is similarly addressed in current §§ 668.82(f)(1) and 668.96(b)(2), which provide that a debarment under procedures comparable to subpart G procedures is effective as a termination for at least the duration of the debarment or 18 months, whichever is greater, after which the institution or servicer may request reinstatement.

The commencement and duration of suspensions and terminations with respect to lenders and loan servicers are similarly stated in current regulations. 34 CFR §§ 682.705, 682.706, and 682.711. These regulations do not specifically address the commencement and duration of a suspension or termination action taken based on actions pursuant to Executive Order 12549 or the FAR. Generally, current regulations provide and the proposed rule provided that a suspension or termination based on a suspension or debarment by another agency under procedures comparable to those provided under the respective subparts G of 34 CFR Parts 668 and 682 is effective, with respect to Title IV, HEA program transactions, on the date on which the other agency's action is effective. Under the proposed rule, the Secretary would notify the affected party whether that action had been taken under subpart G—type procedures. If the debarment or suspension had been taken under such procedures, the action would have been effective with respect to Title IV, HEA program transactions already taken by the party; if it had not, the Secretary would then bring an action under subpart G to suspend or terminate the party's participation; unless emergency action were taken, Title IV, HEA program transactions by that party

would not be effected until the subpart G proceeding was complete. Under the proposed rule, then, the debarred or suspended party would not know whether it could properly initiate new Title IV, HEA program transactions—awarding and disbursing grant, loan, or work study funds, or certifying new loan applications—after the date of the other agency action until it received notice of the Secretary's determination.

The Secretary has decided to change this outcome so that a debarment or suspension entered by another agency under procedures that meet the standards in § 85.201 will not be effective against an institution or other affected entity until 20 days after the Department mails notice of its determination that the other agency's action would be recognized under Title IV, HEA.

Changes: Section 85.201 is amended in the final rule to provide that where the Secretary gives effect to a suspension or debarment pursuant to the action of another agency, the notice of that determination will state the effective date and duration of those actions. The effective date in such instances will be 20 days after the date the notice is mailed. No revision is needed to address the commencement and duration of other actions initiated by the Secretary consistent with subpart G of Part 668. Changes are made in 34 CFR §§ 682.705 and 682.711 to conform the periods of exclusion from FFELP participation to those under Part 668. In addition, the final rule revises §§ 85.201 and 85.220 to clarify the effect of debarment on Title IV, HEA participation by stating that the particular transactions from which a debarred or suspended entity is excluded under Title IV, HEA are the loans, grants, or work study assistance disbursed, awarded, acquired or serviced by that entity. Thus, only those transactions listed in revised § 85.201 are fully subject to debarment and termination. The revised § 85.220 also addresses the effect of the debarment and termination on continuing transactions by referring to current provisions of 34 CFR 668.26, 682.702, and 668.94, which describe the kinds of actions that an affected party may take after the effective date of its termination.

List of Subjects in 34 CFR Part 85

Administrative practice and procedure, Contract programs, Grant programs, Grant administration Grant programs—education.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities,

Consumer protection, Grant programs—education, Loan programs—education, Student aid.

List of Subjects in 34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Richard W. Riley,
Secretary of Education.

Title 34 of the Code of Federal Regulations, Parts 85, 668, and 682 are amended as follows.

PART 85—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 85 is revised to read as follows:

Authority: 20 U.S.C. 1221e-3 and 3474; 41 U.S.C. 701 *et. seq.*; sec. 2455, Pub. L. 103-355, 108 Stat. 3243 at 3327; E.O. 12549, 3 CFR, 198.6 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

2. Section 85.100 is revised as set forth at the end of the common preamble.

3. Sections 85.105 and 85.110 are amended as set forth at the end of the common preamble.

4. Sections 85.200, 85.215, 85.220, and 85.225 and Appendices A and B to Part 85 are revised as set forth at the end of the common preamble.

5. Section 85.100 is further amended by revising paragraph (a) and the authority citation to read as follows:

§ 85.100 Purpose.

(a) Executive Order (E.O.) 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Except as provided in § 85.200, Debarment or Suspension, § 85.201, Treatment of Title IV HEA participation, and § 85.215, Exception provision, debarment or suspension of a participant in a program by one agency shall have governmentwide effect.

* * * * *

(Authority: E.Os. 12549 and 12689; 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455, Pub. L. 103-355, 108 Stat. 3243 at 3327)

6. Section 85.200 is further amended by revising paragraphs (a) and (b) and the authority citation to read as follows:

§ 85.200 Debarment or suspension.

(a) *Primary covered transactions.* Except to the extent prohibited by law and subject to § 85.201, Treatment of Title IV HEA participation, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the executive branch of the Federal Government for the period of their debarment, suspension or the period they are proposed for debarment under 48 CFR part 9, subpart 9.4. Accordingly, ED shall not enter into primary covered transactions with such excluded persons during such period, except as permitted pursuant to § 85.215.

(b) *Lower tier covered transactions.* Except to the extent prohibited by law and subject to § 85.201, Treatment of Title IV HEA participation, persons who have been proposed for debarment under 48 CFR part 9, subpart 9.4, debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (see § 85.110(a)(1)(ii)) for the period of their exclusion. Such persons shall also be excluded from all contracts to provide federally-required audit services, regardless of contract amount.

* * * * *

(Authority: E.Os. 12549 and 12689; 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455, Pub. L. 103-355, 108 Stat. 3243 at 3327)

7. Section 85.201 is revised to read as follows:

§ 85.201 Treatment of Title IV, HEA participation.

(a)(1) The debarment of an educational institution, lender, or third party servicer under E.O. 12549 by an agency other than the Department pursuant to procedures described in paragraph (c) of this section terminates the eligibility of the entity to enter into transactions under any student financial assistance program authorized by Title IV of the Higher Education Act of 1965, as amended, for the duration of the debarment.

(2)(i) The suspension of an educational institution, lender, or servicer under E.O. 12549 or pursuant to a proposed debarment under the Federal Acquisition Regulation (FAR), 48 CFR part 9, subpart 9.4, by an agency other than the Department under procedures described in paragraph (c) of this section suspends the eligibility of the entity to enter into transactions under any student financial assistance

program authorized by Title IV of the Higher Education Act of 1965, as amended.

(ii) The suspension of Title IV eligibility as a result of a suspension described in paragraph (a)(2) of this section lasts for a period of 60 days, beginning on the later of the date of the decision of the suspending official of the other agency in response to an objection to the suspension or, if no objection to that suspension was raised, on the 35th day after the notice of suspension was issued by that agency. The suspension described here does not expire on the 60th day if the suspended entity and the Secretary agree to an extension or if the Secretary initiates a limitation or termination proceeding against the entity under 34 CFR Part 668, subpart G, or Part 682, subpart G, as applicable, prior to the 60th day.

(3) A transaction under a Title IV, HEA program includes—

(i) The disbursement or delivery of funds provided under a Title IV, HEA program to a student or borrower;

(ii) The certification by an educational institution of eligibility for a loan under a Title IV, HEA program;

(iii) The acquisition of a loan made under a Title IV, HEA program; and

(iv) The acquisition of any servicing responsibility for a grant, loan, or work study assistance under a Title IV, HEA program.

(b)(1) The Secretary notifies the institution, lender, or servicer that has been debarred or suspended by another Federal agency whether the debarment or suspension takes effect in accordance with paragraph (a) of this section and states the effective date and duration of that action.

(2)(i) If the Secretary proposes to give effect to a suspension or debarment against an educational institution, lender, or third-party servicer that does not meet the standards in paragraph (c) of this section, the Secretary initiates a debarment or suspension proceeding under § 85.316 or § 85.414, respectively, against that entity.

(ii) The effective date of a debarment or suspension that takes effect under paragraph (a) of this section shall be 20 days after the date the notice is mailed. The Secretary gives effect to a suspension described in paragraph (a)(2) of this section only after the suspending official of the other agency has issued a decision in response to an objection to the suspension or, if no objection to that suspension was raised, on the 35th day after the notice of suspension was issued by that agency. The suspension lasts for a period of 60 days, beginning on the effective date specified in the notice, unless the suspended entity and

the Secretary agree to an extension or the Secretary initiates a limitation or termination proceeding against the entity under 34 CFR Part 668, subpart G, or Part 682, subpart G, as applicable, prior to the 60th day.

(3) If an institution, lender, or a third party servicer is suspended by ED or another Federal agency, the Secretary determines whether grounds exist for the initiation of an emergency action against the entity under 34 CFR Part 668, subpart G, or Part 682, subpart G, as applicable.

(c) An institution, lender, or third-party servicer that is debarred or suspended by another agency, or proposed for debarment under 48 CFR part 9, subpart 9.4 by another Federal agency, is debarred, terminated or suspended, as provided under this part, 34 CFR part 668, and 34 CFR part 682, as applicable, if that agency took this action under procedures that afforded the excluded party the following:

(1) Notice of the proposed action;

(2) An opportunity to submit and have considered evidence and argument in opposition to the proposed action;

(3) An opportunity to obtain a hearing on its objection—

(i) At which the agency bears the burden of persuasion, by a preponderance of the evidence;

(ii) Conducted by an impartial person who does not also exercise prosecutorial or investigative responsibilities with respect to that action;

(iii) At which the entity may, unless the hearing official determines that no genuine dispute of material fact exists, present testimony and secure the attendance of those agency witnesses with personal knowledge of material facts whose testimony the hearing official determines to be needed, in light of other available evidence and witnesses; and

(iv) Of which a transcribed record is available upon request; and

(4) A written decision stating findings of fact and conclusions of law on which the decision is rendered.

(d) The Title IV, HEA programs are those programs listed in 34 CFR 668.1(c).

(Authority: E.Os. 12549 and 12689; 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455, Pub. L. 103-355, 108 Stat. 3243 at 3327)

8. Section 85.220 is revised to read as follows:

§ 85.220 Continuation of covered transactions.

(a) Notwithstanding the debarment, suspension, proposed debarment under 48 CFR part 9, subpart 9.4, determination of ineligibility, or

voluntary exclusion of any person by an agency and except as provided in § 85.201, agencies and participants may continue covered transactions in existence at the time the person was debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, ineligible or voluntarily excluded, except as provided in § 85.215.

(c) An educational institution, lender, or servicer may continue a Title IV, HEA transaction after the effective date of a debarment as determined under § 85.201 only as provided in 34 CFR 668.26, 682.702, or 668.94, as applicable.

(Authority: E.Os. 12549 and 12689; 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455, Pub. L. 103-355, 108 Stat. 3243 at 3327)

9. Section 85.314 is amended by revising paragraph (d) and the authority citation to read as follows:

§ 85.314 Debarring official's decision.

* * * * *

(d) Notice of debarring official's decision.

(1) If the debarring official decides to impose debarment, the respondent shall be given prompt notice—

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates; and

(iv) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or authorized designee makes the determination referred to in § 85.215.

(2) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

(Authority: E.Os. 12549 and 12689; 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455, Pub. L. 103-355, 108 Stat. 3243 at 3327)

10. Section 85.316 is revised to read as follows:

§ 85.316 Procedures for Title IV, HEA debarments.

(a) If the Secretary initiates a debarment action against an educational institution, lender or third-party servicer under E.O. 12549, the Secretary uses the following procedures in connection with the debarment to ensure that the debarment also precludes participation under Title IV of the Higher Education Act of 1965, as amended:

(1) The procedures in § 85.312, Notice of proposed debarment, and § 85.314(d), Notice of debarring official's decision.

(2) Instead of the procedures in § 85.313 and § 85.314(a)-(c), the procedures in 34 CFR part 668, subpart G, or 34 CFR part 682, subpart G, as applicable.

(b) On appeal from a decision debarring an educational institution, lender, or third-party servicer, the Secretary issues a final decision after all parties have filed their written materials with the Secretary.

(c) In a proceeding under this section, in addition to the findings and conclusions required by 34 CFR part 668, subpart G, or 682, subpart G, the debarring official, and, on appeal, the Secretary, determine whether there exist sufficient grounds for debarment as set forth in § 85.305.

(Authority: E.Os. 12549 and 12689; 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455, Pub. L. 103-355, 108 Stat. 3243 at 3327)

11. Section 85.414 is revised to read as follows:

§ 85.414 Procedures for Title IV, HEA suspensions under E.O. 12549.

(a) *Title IV E.O. 12549 suspensions.*

(1) If the Secretary initiates a suspension against an educational institution, lender or third-party servicer under E.O. 12549, the Secretary uses the following procedures in connection with the suspension to ensure that the suspension precludes participation under Title IV of the Higher Education Act of 1965, as amended:

(i) The procedures in § 85.411, Notice of suspension.

(ii) Instead of the procedures in §§ 85.412, 85.413 and 85.415, the procedures in 34 CFR part 668, subpart G, or 34 CFR part 682, subpart G, as applicable.

(2) In a proceeding under this section, in addition to the findings and conclusions required by 34 CFR part 668, subpart G, or 34 CFR part 682, subpart G, the suspending official, and, on appeal, the Secretary, determine whether there exist sufficient grounds for suspension as set forth in § 85.405.

(b) *Continued assistance under Title IV, HEA.* The institution, lender, or

third-party servicer may continue its participation in the Title IV programs until the procedures described in paragraph (a) of this section, except for those relating to appeals to the Secretary, have been completed, unless the Secretary takes an emergency action under 34 CFR part 668, subpart G, or 34 CFR part 682, subpart G.

(Authority: E.Os. 12549 and 12689; 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455, Pub. L. 103-355, 108 Stat. 3243 at 3327)

12. Insert "ED" where [agency] appears in § 85.215.

13. The authority citation for sections 85.105, 85.110, 85.115, 85.205, 85.210, 85.215, 85.225, 85.300, 85.305, 85.310, 85.311, 85.312, 85.313, 85.315, 85.320, 85.325, 85.400, 85.405, 85.410, 85.411, 85.412, 85.413, 85.415, 85.420, 85.500, 85.505, and 85.510, is revised to read as follows:

(Authority: E.Os. 12549 and 12689; 20 U.S.C. 1221e-3 and 3474; Sec. 2455, Pub. L. 103-355, 108 Stat. 3243 at 3327)

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099c, and 1141, unless otherwise noted.

2. Section 668.82 is amended by removing from paragraph (f)(1) introductory text the words "that comply with 5 U.S.C. 554-557 (formal adjudication requirements under the Administrative Procedure Act)," and adding, in their place, "described in 34 CFR 85.201(c)" by removing the words "by the Secretary" in paragraphs (f)(1) introductory text and (f)(2)(i) introductory text, by removing from paragraph (f)(2)(i) introductory text "that comply with 5 U.S.C. 554-557" and adding, in their place, "described in 34 CFR § 85.201(c)" and by revising paragraph (f)(2)(ii) introductory text and adding a new paragraph (f)(3), to read as follows:

§ 668.82 Standard of conduct.

* * * * *

- (f) * * *
- (2) * * *

(ii) A suspension described in paragraph (f)(2) of this section lasts for a period of 60 days, beginning on the effective date specified in the notice by the Secretary under 34 CFR 85.201(b), unless—

* * * * *

(3) A debarment or suspension not described in (f)(1) or (f)(2) of this section of a participating institution or third-

party servicer by another Federal agency constitutes prima facie evidence in a proceeding under this subpart that cause for suspension or debarment and termination, as applicable, exists.

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAMS

1. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087-2, unless otherwise noted.

2. Section 682.705 is amended by redesignating paragraphs (c)(6), (c)(7), and (c)(8) as paragraphs (c)(7), (c)(8), and (c)(9), respectively, and adding new paragraphs (a)(3) and (c)(6), to read as follows:

§ 682.705 Suspension proceedings.

(a) * * *

(3) A suspension described in 34 CFR 85.201(c) lasts for a period of 60 days, beginning on the effective date specified in the notice by the Secretary under 34 CFR 85.201(b), except as provided in paragraph (a)(1)(i) or (ii) of this section.

* * * * *

(c) * * *

(6) In a suspension action against a lender or third-party servicer based on a suspension under Executive Order 12549 or a proposed debarment under the Federal Acquisition Regulation (FAR), 48 CFR part 9, subpart 9.4, that does not meet the standards described in 34 CFR 85.201(c), the presiding official finds that the suspension or proposed debarment constitutes prima facie evidence that cause for suspension under this subpart exists.

* * * * *

3. Section 682.706 is amended by redesignating paragraphs (b)(7), (b)(8), and (b)(9) as paragraphs (b)(8), (b)(9), and (b)(10), respectively, and adding a new paragraph (b)(7), to read as follows:

§ 682.706 Limitation or termination proceedings.

* * * * *

(b) * * *

(7) In a termination action against a lender or third-party servicer based on a debarment under Executive Order 12549 or under the Federal Acquisition Regulation (FAR), 48 CFR part 9, subpart 9.4 that does not meet the standards described in 34 CFR 85.201(c), the presiding official finds that the debarment constitutes prima facie evidence that cause for debarment and termination under this subpart exists.

* * * * *

4. Section 682.711 is amended by revising paragraph (a) to read as follows:

§ 682.711 Reinstatement after termination.

(a) A lender or third-party servicer whose eligibility has been terminated by the Secretary in accordance with the procedures of this subpart may request reinstatement of its eligibility after the later of—

(1) Eighteen months from the effective date of the termination; or

(2) The expiration of the period of debarment under Executive Order 12459 or the Federal Acquisition Regulation (FAR), 48 CFR part 9, subpart 9.4.

* * * * *

BILLING CODE: 4000-01-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1209

RIN 3095-AA38

FOR FURTHER INFORMATION CONTACT: Mary Ann Hadyka, Policy and Information Resources Management, 301-713-6730.

List of Subjects in 36 CFR Part 1209

Administrative practice and procedure, Contract programs, Grant programs—archives and records.

Trudy Huskamp Peterson,
Acting Archivist of the United States.

Title 36 of the Code of Federal Regulations, part 1209 is amended as follows.

PART 1209—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 1209 continues to read as follows:

Authority: E.O. 12549; sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 101-690, title V, subtitle D; 41 U.S.C. 701 *et seq.*); 44 U.S.C. 2104(a).

2. Section 1209.100 is revised as set forth at the end of the common preamble.

3. Section 1209.105 and 1209.110 are amended as set forth at the end of the common preamble.

4. Sections 1209.200, 1209.215, 1209.220, and 1209.225 and Appendices A and B to Part 1209 are revised as set forth at the end of the common preamble.

BILLING CODE: 7515-01

DEPARTMENT OF VETERANS AFFAIRS**38 CFR Part 44**

FOR FURTHER INFORMATION CONTACT: Ms. Judith A. Caden, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington, DC 20420, (202) 273-7368.

List of Subjects in 38 CFR Part 44

Administrative practice and procedure, Contract programs, Grant programs, Housing, Loan Programs-housing and community development, Reporting and recordkeeping requirements, Veterans.

Jesse Brown,

Secretary of Veterans Affairs.

Title 38 of the Code of Federal Regulations, part 44 is amended as follows.

PART 44—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 44 continues to read as follows:

Authority: 38 U.S.C. 501(a) and 3703(c); E.O. 12549; E.O. 12689.

2. Section 44.100 is revised as set forth at the end of the common preamble.

3. Sections 44.105 and 44.110 are amended as set forth at the end of the common preamble.

4. Sections 44.200, 44.215, 44.220, and 44.225 and Appendices A and B to Part 44 are revised as set forth at the end of the common preamble.

BILLING CODE: 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 32**

RIN 2030-AA39

FOR FURTHER INFORMATION CONTACT: Robert F. Meunier, Director, Suspension and Debarment Division (3902F), 401 M Street, S.W., Washington, D.C. 20460, telephone: (202) 260-8025.

ADDITIONAL SUPPLEMENTARY INFORMATION: Inquiries may also be submitted via electronic mail (e-mail) to: meunier.robert@epamail.epa.gov. Electronic inquiries must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Inquiries will also be

accepted on disks in WordPerfect in 5.1 file format or ASCII file format. No Confidential Business Information (CBI) should be submitted through e-mail.

List of Subjects in 40 CFR Part 32

Administrative practice and procedure, Contract programs, Debarment and suspension, Grant programs.

Dated: May 26, 1995.

Carol M. Browner,
Administrator.

Title 40 of the Code of Federal Regulations, Part 32 is amended as follows:

PART 32—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for Part 32 is revised to read as follows:

Authority: 7 U.S.C. 136 *et seq.*; 15 U.S.C. 2601 *et seq.*; 20 U.S.C. 4011 *et seq.*; 33 U.S.C. 1251 *et seq.*; 41 U.S.C. 701 *et seq.*; 42 U.S.C. 300f, 4901, 6901, 7401, 9801; sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549, 3 CFR, 1986 Comp.; 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

2. Section 32.100 is revised as set forth at the end of the common preamble.

3. Sections 32.105 and 32.110 are amended as set forth at the end of the common preamble.

4. Sections 32.200, 32.215, 32.220, and 32.225 and Appendices A and B to Part 32 are revised as set forth at the end of the common preamble.

BILLING CODE: 6560-50-M

GENERAL SERVICES ADMINISTRATION**41 CFR Part 105-68**

RIN 3090-AF65

FOR FURTHER INFORMATION CONTACT: Donald Suda, (202) 501-1224.

List of Subjects in 41 CFR Part 105-68

Administrative practice and procedure, Contract programs, Grant programs.

Roger W. Johnson,
Administrator.

Title 41 of the Code of Federal Regulations, Part 105-68 is amended as follows.

PART 105-68—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 105-68 continues 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.*); 40 U.S.C. 486(c).

2. Section 105-68.100 is revised as set forth at the end of the common preamble.

3. Sections 105-68.105 and 105-68.110 are amended as set forth at the end of the common preamble.

4. Sections 105-68.200, 105-68.215, 105-68.220, and 105-68.225 and Appendices A and B to Part 105-68 are revised as set forth at the end of the common preamble.

BILLING CODE: 6820-61-M

DEPARTMENT OF THE INTERIOR**Office of the Secretary****43 CFR Part 12**

RIN 1090-AA49

FOR FURTHER INFORMATION CONTACT: Dean A. Titcomb, (Chief, Acquisition and Assistance Division), (202) 208-6431.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department published an agency-specific preamble as part of the final nonprocurement debarment and suspension common rule on May 26, 1988 (53 FR 19159), which indicated that, due to the expanded scope of transactions covered under the rule, coverage of its nonprocurement debarment and suspension system was limited to transactions included in section 12.110(a)(1) of its proposed rule (52 FR 39042).

The Department also indicated that a review of the Department's other nonprocurement program activities would be made to determine whether such activities would be included in the coverage. The review was made; however, plans to issue a notice of proposed rulemaking to obtain public comment on covered transactions on or before October 1, 1988, were dropped.

Issues of concern to the Department were addressed through the subcommittee of the Interagency Committee on Debarment and Suspension (Interagency Group) which reviewed the scope of the nonprocurement debarment system. Although the revision of the proposed

common rule did not address the issue of scope, the Department proposed to include the results of the resolution of this issue as part of the December 20, 1994, publication as discussed below.

New exceptions for certain types of transactions under natural resource management programs were proposed. These exceptions attempted to make clear that permits, licenses, exchanges and other acquisitions of real property, rights-of-way, and easements, under natural resource management programs were excluded from coverage.

For example, when the Federal Government seeks to acquire real property, including through use of an exchange of real property elsewhere, the transaction will not be subject to these regulations. In such cases, where the success of the agency program depends on a specific parcel of land, the application of the debarment and suspension system could harm the public interest. Moreover, public land management activities require the use of certain transactions for land and resource management without regard to the identity of the recipient. Accordingly, range management transactions, such as grazing permits and rights-of-way, are excluded by the proposed exception language. Similarly, virtually all recreation management and public land access transactions are not covered.

In addition, the Department proposed to amend section 12.110(a)(3) of its final rule to include nonprocurement debarment system coverage for Federal acquisition of a leasehold interest or any other interest in real property, concession contracts, and disposition of Federal real and personal property and natural resources.

The scope of the Department's nonprocurement debarment system will include transactions associated with natural resources management programs and the disposition of natural resources with the following exceptions: permits, licenses, exchanges and other acquisitions of real property, rights-of-way, easements, mineral patent claims administered by the Bureau of Land Management and water service contracts and repayment contracts awarded by the Bureau of Reclamation. Patents issued under the Mining Law of 1872, 30 U.S.C. 22 *et seq.*, as amended are statutory entitlements and, therefore, are exempt under the terms of Executive Order 12549. The award of water service contracts and repayment contracts is mandatory, provided by the Reclamation Project Act of 1939, as amended, set forth at 43 U.S.C. 485.

One comment was received from the private sector, and one comment was

received from another Federal agency in response to the proposed rule. The private sector commenter stated that the Department's proposal to include nonprocurement debarment system coverage for disposition of Federal real and personal property and natural resources was unwarranted and that the preamble provided no articulated basis for the proposal. The commenter also stated that the Department was under no statutory compulsion to make this change. The commenter stated that there is no policy basis for including asset sales in the nonprocurement debarment system, particularly given the expanded scope of the system to include reciprocal procurement and nonprocurement government-wide effect. The commenter expressed the view that including asset sales in the nonprocurement debarment system works a punishment on potential buyers who would be deemed ineligible, contrary to the express purposes of the nonprocurement system.

The amendment of section 12.110(a)(3) as to covered transactions does not add disposition of real and personal property and natural resources. It is our interpretation that these transactions were already covered as part of the general language adopted in the final common rule published on May 26, 1988. Because of new exceptions from coverage, as set forth in section 12.110(a)(2), however, the language in section 12.110(a)(3) was added to attempt to clarify those covered transactions previously excluded.

The U.S. Forest Service (USFS) addressed the compatibility of this rule with the debarment provisions of the Forest Resources Conservation and Shortage Relief Act of 1990 (Export Act). USFS states that in enacting the Export Act, Congress "anticipated no governmentwide effect would be imposed on persons debarred pursuant to the Export Act." USFS relies for this proposition solely on the provision of the Export Act that debarment thereunder may be decided only by the Secretaries of Commerce and of the Interior. We reject this interpretation. By participating in this common rule making, agencies are agreeing only to give reciprocal effect to debarments and suspensions effectuated by other agencies. This is not the same as the other agencies debarring or suspending a party under the Export Act. Similarly, the Export Act gives both Commerce and Interior discretion to deny applications for unprocessed timber that are filed under the Export Act. Accordingly, we see no prohibition in that Act against giving reciprocal effect

to governmentwide debarments or suspensions to applications under the Export Act.

USFS also stated a concern that due to differing requirements of this rule and the Export Act, separate debarment systems will have to be maintained, and that all timber-related debarments should be "under one system." We do not understand what USFS intends when it refers to separate debarment systems. As long as the source of the debarment is apparent, we see no reason why the differing effects of debarments under the Export Act and this rule would require the maintenance of two separate systems.

Next, USFS queries whether sale of miscellaneous forest products, such as Christmas trees, posts and poles, and boughs, will be covered. We would exclude such sales as incidental benefits.

Finally, USFS recommends that there should only be a self-certification process for individuals and families, not also a check by Federal agencies of the *List of Parties Excluded from Federal Procurement and Nonprocurement Programs* for the individual or corporation and all its aliases or affiliates. We believe that Federal agencies have an obligation to ensure that the Federal Government is only doing business with responsible parties; therefore, we are not changing the Common Rule's requirement for Federal agencies to check the List.

Therefore, the Department will exclude all transactions concerning permits, licenses, exchanges and other acquisitions of real property, rights-of-way, easements, mineral patent claims, water service contracts, and repayment contracts from its nonprocurement debarment and suspension system.

A corresponding change is also being made in Section 12.200(c) to add a reference to these excluded transactions.

List of Subjects in 43 CFR Part 12

Administrative practice and procedure, Contract programs, Cooperative agreements, Grant programs, Grants administration, Reporting and recordkeeping requirements.

Dated: May 25, 1995.

Bonnie R. Cohen,

Assistant Secretary—Policy, Management and Budget.

Title 43 of the Code of Federal Regulations, part 12 is amended as follows:

PART 12—ADMINISTRATIVE AND AUDIT REQUIREMENTS AND COST PRINCIPLES FOR ASSISTANCE PROGRAMS

1. The authority for part 12 is revised to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 6101 note, 7501; 41 U.S.C. 252a, 701 *et seq.*; sec. 501, Pub.L. 103-316, 108 Stat. 1723; sec. 307, Pub.L. 103-332, 108 Stat. 2499; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12674, 3 CFR, 1989 Comp., p. 215; E.O. 12689, 3 CFR, 1989 Comp., p. 235; E.O. 12731, 3 CFR, 1990 Comp., p. 306; OMB Circular A-102; OMB Circular A-110; OMB Circular A-128; and OMB Circular A-133.

Subpart D—Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)

2. Section 12.100 is revised as set forth at the end of the common preamble.

3. Sections 12.105 and 12.110 are amended as set forth at the end of the common preamble.

4. Sections 12.200, 12.215, 12.220, and 12.225 and Appendices A and B to Subpart D of Part 12 are revised as set forth at the end of the common preamble.

5. Section 12.110 is further amended by adding paragraphs (a)(2)(ix), (x), and (xi), and revising paragraph (a)(3) to read as follows:

§ 12.110 Coverage.

(a) * * *

(2) * * *

(ix) Under natural resources management programs, permits, licenses, exchanges and other acquisitions of real property, rights-of-way, and easements.

(x) Transactions concerning mineral patent claims entered into pursuant to 30 U.S.C. 22 *et seq.*

(xi) Water service contracts and repayment contracts entered into pursuant to 43 U.S.C. 485.

(3) Department of the Interior covered transactions. These Department of the Interior regulations apply to the Department's domestic assistance covered transactions (whether by a Federal agency, recipient, subrecipient, or intermediary) including, except as noted in paragraph (a)(2) of this section: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements, Federal acquisition of a leasehold interest or any other interest in real property, concession contracts,

dispositions of Federal real and personal property and natural resources, subawards, subcontracts and transactions at any tier that are charged as direct or indirect costs, regardless of type (including subtier awards under awards which are statutory entitlement or mandatory awards), and any other nonprocurement transactions between the Department and a person.

* * * * *

6. Section 12.200 is further amended by adding paragraphs (c) (8), (9), (10), and (11) as follows:

§ 12.200 Debarment or suspension.

* * * * *

(c) * * *

(8) Transactions entered into pursuant to Public Law 93-638, 88 Stat. 2203.

(9) Under natural resources management programs, permits, licenses, exchanges and other acquisitions of real property, rights-of-way, and easements.

(10) Mineral patent claims entered into pursuant to 30 U.S.C. 33 *et seq.*

(11) Water service contracts and repayment contracts entered into pursuant to 43 U.S.C. 485.

BILLING CODE: 4310-RF-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 17

FOR FURTHER INFORMATION CONTACT: Robert R. Boyer, Operations Support Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-2976.

List of Subjects in 44 CFR Part 17

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

Dated: June 7, 1995.

Harvey G. Ryland,
Deputy Director.

Title 44 of the Code of Federal Regulations, part 17 is amended as follows.

PART 17—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 17 is revised to read as follows:

Authority: 41 U.S.C. 701 *et seq.*; E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 54 FR 34131, 3 CFR, 1989 Comp., p. 235.

2. Section 17.100 is revised as set forth at the end of the common preamble.

3. Sections 17.105 and 17.110 are amended as set forth at the end of the common preamble.

4. Sections 17.200, 17.215, 17.220, and 17.225, and Appendices A and B to part 17 are revised as set forth at the end of the common preamble.

BILLING CODE 6718-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 76

RIN 0991-AA78

FOR FURTHER INFORMATION CONTACT: Neil Steyskal, Office of Grants and Acquisition Management, 202-690-5729; TDD 202-690-6415.

ADDITIONAL SUPPLEMENTARY INFORMATION: On January 29, 1992, HHS published a final rule governing the Department's exclusion and civil monetary penalty authorities, as codified by the Medicare and Medicaid Patient and Program Protection Act of 1987, Pub. L. 100-93. These authorities have been delegated to the Inspector General for implementation. 42 CFR 1001.1901 implements Executive Order 12549 which provides that debarments, suspensions, and other exclusionary actions taken by any Federal agency will have governmentwide effect with respect to all nonprocurement programs. Specifically, 42 CFR 1001.1901 makes clear that exclusions from Medicare and State health care programs under Title XI of the Social Security Act, 42 U.S.C. 1320a-7, are also applicable with respect to "all other Federal nonprocurement programs."

With the enactment of the Federal Acquisition Streamlining Act of 1994 (FASA), Pub. L. 103-355, Congress mandated and expanded the governmentwide effect of debarments, suspensions, and other exclusionary actions to procurement as well as nonprocurement programs. In addition to the amendments to the Common Rule which the enactment of FASA necessitates, we are also taking this opportunity to codify in the Department's adoption of the Common Rule, the Department's policy that exclusions imposed under Title XI of the Social Security Act have the same governmentwide effect as debarments initiated under the Common Rule, and shall be recognized and given effect, not only for all Departmental programs, but also for all other Executive Branch procurement and nonprocurement programs and activities. Moreover,

because full due process is provided under the statute and the implementing regulations for those excluded under Title XI, including the right to an administrative hearing and judicial review, additional due process under the Common Rule is not necessary nor available to excluded individuals and entities beyond that set forth in 42 CFR Parts 1001 and 1005.

List of Subjects in 45 CFR Part 76

Administrative practice and procedure, Contract programs, Grant programs.

Dated: June 5, 1995.

Donna A. Shalala,
Secretary.

Title 45 of the Code of Federal Regulations, part 76 is amended as follows.

PART 76—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 76 is revised to read as follows:

Authority: 5 U.S.C. 301; 41 U.S.C. 701 *et seq.*; Sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

2. Section 76.100 is revised as set forth at the end of the common preamble.

3. Sections 76.105 and 76.110 are amended as set forth at the end of the common preamble.

4. Sections 76.200, 76.215, 76.220, and 76.225 and Appendices A and B to Part 76 are revised as set forth at the end of the common preamble.

5. Section 74.110 is further amended by adding a new paragraph (d) to read as follows:

§74.110 Coverage.

* * * * *

(d) *Relationship to Medicare and State Health Care Program Exclusions.* Any exclusion from Medicare and State health care program participation by HHS under Title XI of the Social Security Act, 42 U.S.C. 1320a-7, (see also 42 CFR 1001.1901) on or after August 25, 1995 shall be recognized by and effective, not only for all HHS programs, but also for all other Executive Branch procurement and nonprocurement activities.

BILLING CODE: 4150-04-M

NATIONAL SCIENCE FOUNDATION

45 CFR Part 620

RIN 3145-AA28

FOR FURTHER INFORMATION CONTACT: Anita Eisenstadt, Assistant General Counsel, Office of the General Counsel, 703-306-1060.

List of Subjects in 22 CFR Part 620

Administrative practice and procedure, Contract programs, Grant programs.

Lawrence Rudolph,
General Counsel.

Title 45 of the Code of Federal Regulations, part 620 is amended as follows.

PART 620—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 620 is revised to read as follows:

Authority: 41 U.S.C. 701 *et seq.*; 42 U.S.C. 1870(a); E.O. 12549, 3 CFR, 1986 Comp., p. 189.

2. Section 620.100 is revised as set forth at the end of the common preamble.

3. Sections 620.105 and 620.110 are amended as set forth at the end of the common preamble.

4. Sections 620.200, 620.215, 620.220, and 620.225 and Appendices A and B to Part 620 are revised as set forth at the end of the common preamble.

BILLING CODE: 7555-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

45 CFR Part 1154

RIN 3135-AA12

FOR FURTHER INFORMATION CONTACT: Ms. Donna DiRicco, Acting Grants Officer, National Endowment for the Arts, (202) 682-5403.

List of Subjects in 45 CFR Part 1154

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

Laurence Baden,
Deputy Chairman for Management.

Title 45 of the Code of Federal Regulations, Part 1154 is amended as follows.

PART 1154—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 1154 is revised to read as follows:

Authority: 20 U.S.C. 959(a)(1); 41 U.S.C. 701 *et seq.*; E.O. 12549, 3 CFR, 1986 comp., p. 189.

2. Section 1154.100 is revised as set forth at the end of the common preamble.

3. Sections 1154.105 and 1154.110 are amended as set forth at the end of the common preamble.

4. Sections 1154.200, 1154.215, 1154.220, and 1154.225 and Appendices A and B to Part 1154 are revised as set forth at the end of the common preamble.

BILLING CODE 7537-01-M

National Endowment for the Humanities

45 CFR Part 1169

RIN 3136-AA20

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Deputy General Counsel, National Endowment for the Humanities, Room 530, Washington, DC 20506, (202) 606-8322.

List of Subjects in 45 CFR Part 1169

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

Sheldon Hackney,
Chairman.

Title 45 of the Code of Federal Regulations, part 1169 is amended as follows.

PART 1169—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 1169 is revised to read as follows.

Authority: 20 U.S.C. 959(a)(1); 41 U.S.C. 701 *et seq.*; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

2. Section 1169.100 is revised as set forth at the end of the common preamble.

3. Sections 1169.105 and 1169.110 are amended as set forth at the end of the common preamble.

4. Sections 1169.200, 1169.215, 1169.220 and 1169.225 and Appendices A and B to Part 1169 are revised as set forth at the end of the common preamble.

BILLING CODE 7036-01-M

INSTITUTE OF MUSEUM SERVICES

45 CFR Part 1185

FOR FURTHER INFORMATION CONTACT: Rebecca Danvers, Program Director, 202-606-8539.

List of subjects in 45 CFR Part 1185

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

Diane B. Frankel,
Director.

Title 45 of the Code of Federal Regulations, Part 1185 is amended as follows.

PART 1185—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 1185 is revised to read as follows:

Authority: 20 U.S.C. 961-968; 41 U.S.C. 701 *et seq.*; E.O. 12549, 3 CFR, 1986 Comp., p. 189.

2. Section 1185.100 is revised as set forth at the end of the common preamble.

3. Sections 1185.105 and 1185.110 are amended as set forth at the end of the common preamble.

4. Sections 1185.200, 1180.215, 1190.220, and 118.225 and Appendices A and B to Part 1185 are revised as set forth at the end of the common preamble.

BILLING CODE 7036-01-M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Part 2542

RIN 3045-AA11

FOR FURTHER INFORMATION CONTACT: Michael Kenefick, Director of Grants and Contracts, 202-606-5000 ext. 101.

List of Subjects in 45 CFR Part 2542

Administrative practice and procedure, Contract programs, Government contracts, Grant programs.

Gary Kowalczyk,
Acting Chief Financial Officer.

Title 45 of the Code of Federal Regulations, part 2542 is amended as follows.

PART 2542—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority for part 2542 continues to read as follows:

Authority: 42 U.S.C. 12501 *et seq.*

2. Section 2542.10 [_____.100] is revised as set forth at the end of the common preamble.

3. Sections 2542.20 [_____.105] and 2542.30 [_____.110] are amended as set forth at the end of the common preamble.

4. Sections 2542.100 [_____.200], 2542.130 [_____.215], 2542.140 [_____.220], and 2542.150 [_____.225] and Appendices A and B to Part 2542 are revised as set forth at the end of the common preamble.

5. Section 2542.10 is further amended in paragraph (b)(3) by removing “§_____.105” and adding “§2542.20” in its place.

6. Section 2542.100 is further amended in paragraph (a) by removing “§_____.215” and adding “§2542.130” in its place and in paragraph (c) by removing “§_____.110(a)(1)(ii)” and adding “§2542.30(a)(1)(ii)” in its place.

7. Section 2542.130 is further amended by removing “§_____.200” and “§_____.505(a)” and adding “§2542.100” and “§2542.410(a)”, respectively.

8. Section 2542.140 is further amended in paragraph (b) by removing “§_____.215” and adding “§2542.130” in its place.

9. Section 2542.150 is further amended in paragraph (a) by removing “§_____.215 or §_____.220” and adding “§2542.130” or “§2542.140” in its place.

BILLING CODE 6050-28-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 29

RIN 2105-AC25

ACTION: Interim final rule with an opportunity to comment.

DATES: This interim final rule is effective August 25, 1995. Comments should be received by July 26, 1995. Late filed comments will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Paul B. Larsen, Office of the General Counsel, C-10, Room 10102, (202) 366-9161, or Ladd Hakes, Office of Acquisition and Grants Management, M-62, Room 9401, (202) 366-4268, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590.

ADDITIONAL SUPPLEMENTARY INFORMATION:

Background

The Department of Transportation's implementation of the governmentwide common rule adds a requirement for reciprocity between procurement and nonprocurement debarment and suspension actions.

The Department's rule is interim final because the Department did not clear the governmentwide Notice of Proposed Rule Making (NPRM) in time for publication. For the sake of uniformity and to avoid confusion, the Department now needs to join in the governmentwide rule.

The Department of Transportation is responsible for administering both procurement and nonprocurement debarment and suspension actions. Prior to October 1, 1994, the individual DOT Operating Administrations administered both procurement and nonprocurement actions. Beginning October 1, 1994, the DOT Office of Acquisition and Grant Management became responsible for administering procurement actions.

List of Subjects in 49 CFR Part 29

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

Federico Peña,
Secretary of Transportation.

Title 49 of the Code of Federal Regulations, part 29 is amended as follows.

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

1. The authority for part 29 is revised to read as follows:

Authority: 41 U.S.C. 701 *et seq.*; 49 U.S.C. 322(a); E.O. 12549, 3 CFR, 1986 Comp., p. 189.

2. Section 29.100 is revised as set forth at the end of the common preamble.

3. Sections 29.105 and 29.110 are amended as set forth at the end of the common preamble.

4. Sections 29.200, 29.215, 29.220, and 29.225, and Appendices A and B to Part 29 are revised as set forth at the end of the common preamble.

[FR Doc. 95-14725 Filed 6-23-95; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 9, 22, 28, 44, and 52

[FAC 90-28; FAR Case 94-801]

RIN 9000-AG22

Federal Acquisition Regulation; Debarment, Suspension, and Ineligibility (Ethics)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994, Public Law 103-355 (the Act). The Federal Acquisition Regulatory Council is amending the Federal Acquisition Regulation (FAR) to reflect the policy of ensuring that suspensions, debarments, and other exclusions from procurement and nonprocurement activities receive reciprocal Government-wide effect as directed by Executive Order (E.O.) 12689, dated August 16, 1989, and Section 2455, Uniform Suspension and Debarment, of the Act. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: August 25, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Julius Rothlein, Ethics Team Leader, at (703) 697-4349 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAC 90-28, FAR case 94-801.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act (FASA) of 1994, Pub. L. 103-355 (the Act), provides authorities that streamline the acquisition process and minimize burdensome Government-unique requirements. Major changes in the acquisition process as a result of the Act's implementation include changes in the areas of Commercial Item Acquisition, Simplified Acquisition Procedures, the Truth in Negotiations Act, and introduction of the Federal Acquisition Computer Network (FACNET). In order to promptly achieve the benefits of the provisions of the Act, the Government is issuing implementing regulations on an expedited basis.

FAR case 94-801 originated because Section 2455 of Public Law 103-355 was enacted to remedy the current situation where suspensions, debarments, and other exclusions from procurement and nonprocurement activities do not have reciprocal Government-wide effect. The concept of reciprocity for procurement and nonprocurement suspension and debarment actions is not new. Since August 1989 there has been an effort to do by executive order (*i.e.*, E.O. 12689), what section 2455 now prescribes by law. That earlier effort was worked on by a committee known as the "Interagency Committee on Debarment and Suspension." This Interagency Committee is made up of 16 of the Federal executive agencies that impose nonprocurement suspensions and debarments. By October 1994 the agencies in an ad hoc group reached agreement on the language that would implement the concept of reciprocity and be consistent with the principles of the *National Performance Review*. The language in FAR 9.401, Applicability, has been coordinated with the ad hoc group of agencies. The changes to the procurement and nonprocurement rules implement Section 2455 and E.O. 12689 by ensuring that suspensions, debarments, and other exclusions from procurement and nonprocurement activities have reciprocal Government-wide effect.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because only a very small percentage of Federal contractors are debarred or suspended.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Public Comments

A proposed rule was published on December 20, 1994, at 59 FR 65623. Ten substantive comments were received from six commenters. The FASA Implementation Team fully considered all comments received. However, no changes to the case were considered necessary as a result of the public comments. The team's full analysis and disposition of the comments may be obtained from the FAR Secretariat. The most significant comment and its disposition follows:

Comment: One commenter recommended the deletion of the category "proposed for debarment" from the FAR procurement procedures, in order to ensure consistency with the nonprocurement rule which does not place that category on the GSA List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

Response: Disagree. The agencies do not believe there is a need to change the rule so that the effect of a proposed debarment is the same under both debarment and suspension systems. The request to make the two rules the same on this matter misconstrues the purpose and effect of the reciprocity effort.

The purpose of the proposed reciprocity rule is to ensure that, once one agency takes action to exclude a person and that person is placed on the *List of Parties Excluded from Federal Procurement and Nonprocurement Programs*, all agencies will honor that determination. In deciding whether to take an action to exclude a person, the agency considers whether a person's present responsibility is affected such that the person poses a risk to the