

<b>OFFICE OF PERSONNEL MANAGEMENT</b>	<b>NATIONAL ARCHIVES AND RECORDS ADMINISTRATION</b>	Administration; Department of Commerce; Social Security Administration; Office of National Drug Control Policy; Department of State; Agency for International Development; Peace Corps; Inter-American Foundation; African Development Foundation; Department of Labor; Federal Mediation and Conciliation Service; Department of Defense; Department of Education; National Archives and Records Administration; Department of Veterans Affairs; Environmental Protection Agency; General Services Administration; Department of the Interior; Federal Emergency Management Agency; Department of Health and Human Services; National Science Foundation; National Foundation on the Arts and the Humanities, National Endowment for the Arts, National Endowment for the Humanities, Institute of Museum and Library Services; Corporation for National and Community Service, and Department of Transportation.
5 CFR Part 970	36 CFR Parts 1209 and 1212	<b>ACTION:</b> Notice of proposed rulemaking.
<b>DEPARTMENT OF AGRICULTURE</b>	<b>DEPARTMENT OF VETERANS AFFAIRS</b>	
7 CFR Parts 3017 and 3021	38 CFR Parts 44 and 48	
<b>DEPARTMENT OF ENERGY</b>	<b>ENVIRONMENTAL PROTECTION AGENCY</b>	
10 CFR Parts 606, 607, and 1036	40 CFR Parts 32 and 36	
<b>SMALL BUSINESS ADMINISTRATION</b>	<b>GENERAL SERVICES ADMINISTRATION</b>	
13 CFR Parts 145 and 147	41 CFR Parts 105–68 and 105–74	
<b>NATIONAL AERONAUTICS AND SPACE ADMINISTRATION</b>	<b>DEPARTMENT OF THE INTERIOR</b>	
14 CFR Parts 1265 and 1267	43 CFR Parts 12, 42 and 43	
<b>DEPARTMENT OF COMMERCE</b>	<b>FEDERAL EMERGENCY MANAGEMENT AGENCY</b>	
15 CFR Parts 26 and 29	44 CFR Parts 17 and 21	
<b>SOCIAL SECURITY ADMINISTRATION</b>	<b>DEPARTMENT OF HEALTH AND HUMAN SERVICES</b>	
20 CFR Parts 436 and 439	45 CFR Parts 76 and 82	
<b>OFFICE OF NATIONAL DRUG CONTROL POLICY</b>	<b>NATIONAL SCIENCE FOUNDATION</b>	
21 CFR Parts 1404 and 1405	45 CFR Parts 620 and 630	
<b>DEPARTMENT OF STATE</b>	<b>NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES</b>	
22 CFR Parts 137 and 139	National Endowment for the Arts	
<b>AGENCY FOR INTERNATIONAL DEVELOPMENT</b>	45 CFR Parts 1154 and 1155	
22 CFR Parts 208 and 210	National Endowment for the Humanities	
<b>PEACE CORPS</b>	45 CFR Parts 1169 and 1173	
22 CFR Parts 310 and 312	Institute of Museum and Library Services	
<b>INTER-AMERICAN FOUNDATION</b>	45 CFR Parts 1185 and 1186	
22 CFR Parts 1006 and 1008	<b>CORPORATION FOR NATIONAL AND COMMUNITY SERVICE</b>	
<b>AFRICAN DEVELOPMENT FOUNDATION</b>	45 CFR Parts 2542 and 2545	
22 CFR Parts 1508 and 1509	<b>DEPARTMENT OF TRANSPORTATION</b>	
<b>DEPARTMENT OF LABOR</b>	49 CFR Parts 29 and 32	
29 CFR Parts 94 and 98	<b>Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)</b>	
<b>FEDERAL MEDIATION AND CONCILIATION SERVICE</b>	<b>AGENCIES:</b> Office of Personnel Management; Department of Agriculture; Department of Energy; Small Business Administration; National Aeronautics and Space	
29 CFR Parts 1471 and 1472		
<b>DEPARTMENT OF DEFENSE</b>		
32 CFR Parts 25 and 26		
<b>DEPARTMENT OF EDUCATION</b>		
34 CFR Parts 84, 85, 668 and 682		

**SUMMARY:** This document proposes substantive changes and amendments to the governmentwide nonprocurement common rule for debarment and suspension and the governmentwide rule implementing the Drug-Free Workplace Act of 1988. The most significant changes are—

First, this proposed common rule on debarment and suspension would limit the mandatory lower tier application of an exclusion to the first procurement level under a nonprocurement covered transaction. If an agency decides that its nonprocurement activities are sufficiently vulnerable to misconduct, poor performance or abuse at levels below the first procurement, the agency may add agency-specific language to the proposed common rule to prohibit lower-tier procurement transactions with excluded persons. Agencies that do not have sufficient vulnerability at lower levels to justify the devotion of resources to enforce exclusions at lower levels need not add language to the common rule.

Second, this proposed common rule on debarment and suspension would set the dollar threshold on prohibited lower-tier procurement transactions with excluded persons at \$25,000. This should help clarify an ambiguity in the current common rule created when Congress, in enacting the Federal Acquisition Streamlining Act of 1994, elected to change the terminology in the direct Federal acquisition law from “small purchase threshold” to “simplified acquisition threshold” and increased the level from \$25,000 to

\$100,000. The ambiguity was created because the current common rule is linked to the small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g), but states the current level to be \$25,000.

Third, both this proposed rule on debarment and suspension and the proposed rule on drug-free workplace requirements would eliminate the mandate for agencies and participants to obtain written certifications from awardees or persons with whom they propose to enter into covered transactions. The proposed rules will allow agencies and participants the flexibility to use other means if they so choose, such as award conditions or electronic access to the GSA List on the internet, to enforce compliance with the rules.

Fourth, the proposed rule on drug-free workplace requirements would be separated from this proposed rule on debarment and suspension. The drug-free workplace requirements currently are in subpart F of the Debarment and Suspension Nonprocurement Common Rule. Moving those requirements to a separate part will allow them to appear in a more appropriate location nearer other requirements used predominately by award officials.

Finally, this document is prepared in plain language text and format to make it easier to read and use.

Under the provisions of section 7(o) of the Department of Housing and Urban Development Act (42 U.S.C. 2535(o)), any Department of Housing and Urban Development (HUD) proposed or interim rule that is issued for public comment is subject to pre-publication Congressional review for a period of 15 days. Therefore, HUD is not joining in today's publication but will propose the common amendments in a separate rulemaking.

**DATES:** Comments must be received on or before March 25, 2002.

**ADDRESSES:** Comments on these proposed rules should be addressed to: Robert F. Meunier, Office of Grants and Debarment (3901-R), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460. Comments may be submitted via e-mail ([meunier.robert@epa.gov](mailto:meunier.robert@epa.gov)), but must be made in the text of the message and not as an attachment.

**FOR FURTHER INFORMATION CONTACT:** Robert F. Meunier, Debarring Official, Environmental Protection Agency, by phone at (202) 564-5399 or by e-mail ([meunier.robert@epa.gov](mailto:meunier.robert@epa.gov)). Information about the Interagency Committee on Debarment and Suspension can be found on their home page ([http://](http://www.dot.gov/ost/m60/grant/net.htm)

[www.dot.gov/ost/m60/grant/net.htm](http://www.dot.gov/ost/m60/grant/net.htm)). A chart showing where each agency has codified the common rule may be obtained by accessing the Office of Management and Budget's home page (<http://www.whitehouse.gov/omb>), under the heading "Grants Management."

**SUPPLEMENTARY INFORMATION:**

**A. Background**

Executive Order 12549, "Debarment and Suspension," issued February 18, 1986 (3 CFR 1986 Comp., p. 189) authorized a governmentwide system for debarment and suspension under Federal nonprocurement activities. The Office of Management and Budget (OMB) published initial guidelines to all Executive branch agencies in 1986 and the agencies published a common rule on May 26, 1988 (53 FR 19160). The common rule provides uniform requirements for debarment and suspension by Executive branch agencies to protect assistance, loans, benefits and other nonprocurement activities from waste, fraud, abuse and poor performance, similar to the system used for Federal procurement activities under Subpart 9.4 of the Federal Acquisition Regulation (FAR).

On January 31, 1989, the agencies amended the common rule by adding a new subpart F to implement the Drug-Free Workplace Act of 1988. (See 54 FR 4946.)

On August 16, 1989, Executive Order 12689, "Debarment and Suspension," (3 CFR 1989 Comp., p. 235) directed agencies to reconcile technical differences existing between the procurement and nonprocurement debarment systems, and to give exclusions under either system reciprocal effect across procurement and nonprocurement activities. In 1994 Congress passed the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355, 108 Stat. 3327) mandating reciprocity for exclusions issued under the procurement and nonprocurement debarment systems.

On April 12, 1999, OMB asked the Interagency Suspension and Debarment Committee (ISDC) to review the common rule and propose amendments that would: (a) resolve unnecessary technical differences between the procurement and nonprocurement systems; (b) revise the current rule in a plain language style and format; and (c) make other improvements to the common rule consistent with the purpose of the suspension and debarment system. The ISDC's proposed amendments form the basis of this Notice of Proposed Rulemaking.

*Format of the Proposed Debarment and Suspension Common Rule*

The proposed rule adopts a different approach to the structure and format of the common rule. It is formatted so that matters common to a particular class of readers, or to a particular subject, appear together. This allows readers easy access to information that may be of particular importance to them. The rule also contains tables and a chart to assist the reader in locating or clarifying information presented in the text of the rule.

The proposed rule uses fewer legal terms, and uses more commonly understood words along with shorter sentences. It also presents information in a question-and-answer format. Wherever possible, the rule uses the active voice.

Due to the new format of the proposed rule, requirements would appear in a different order than they do under the current common rule. The following table will assist you in locating and comparing the requirements under both rules.

Proposed non-procurement debarment and suspension common rule sections	Current nonprocurement debarment and suspension common rule sections
__25 .....	none
__50 .....	none
__75 .....	none
Subpart A:	
__100 .....	__100
__105 .....	none
__110 .....	__100, __115
__115 .....	__200
__120 .....	__215
__125 .....	__110(c)
__130 .....	__110(c)
__135 .....	__110(a)
__140 .....	__210
__145 .....	__105 (ineligible)
Subpart B:	
__200 .....	__110(a)
__205 .....	__225
__210 .....	__110(a)(1)
__215 .....	__110(a)(2)
__220 .....	__110(a)(1)(ii)
__225 .....	none
Subpart C:	
__300 .....	__220(b), __225
__305 .....	__220(b)
__310 .....	__220
__315 .....	__510
__320 .....	__225
__325 .....	__510
__330 .....	__510, Appendix A
__335 .....	__510, Appendix B
__340 .....	Appendix A, Appendix B
__345 .....	__510(c)
__350 .....	__510(c)
__355 .....	__510, Appendix B
__360 .....	__510(c)
Subpart D:	
__400 .....	__200, __215
__405 .....	__200(a)

Proposed non-procurement debarment and suspension common rule sections	Current nonprocurement debarment and suspension common rule sections	Proposed non-procurement debarment and suspension common rule sections	Current nonprocurement debarment and suspension common rule sections
_.410 .....	_.200(b)	_.870 .....	_.314(a) & (d)
_.415 .....	_.220	_.875 .....	_.320(c)
_.420 .....	_.200(b)	_.880 .....	_.320(c)
_.425 .....	_.505(d), (e)	_.885 .....	_.320(b)
_.430 .....	_.505(d), (e)	Subpart	
_.435 .....	_.115(a), .510	I Definitions	
_.440 [Reserved].		_.900—_.1020	_.105
_.445 .....	_.225(b)		
_.450 .....	_.510 Appendix A		
_.455 .....	_.510 Appendix B		
Subpart E:			
_.500 .....	_.105, .500		
_.505 .....	_.505, .510		
_.510 .....	_.105, .500		
_.515 .....	_.500		
_.520 .....	_.505		
_.525 .....	_.505(c)		
_.530 .....	none		
Subpart F:			
_.600 .....	_.311, .410(a)		
_.605 .....	_.300, .400		
_.610 .....	_.310, .410		
_.615 .....	_.312, .411		
_.620 .....	_.115		
_.625 .....	_.325, .420		
_.630 .....	_.325, .420		
_.635 .....	_.315		
_.640 .....	_.315		
_.645 .....	_.315		
Subpart G:			
_.700 .....	_.400(a) & (b)		
_.705 (a) .....	_.400(c)		
_.705 (b) .....	_.412(b)(1)(i) & .413(a)		
_.705 (c) .....	none		
_.710 .....	none		
_.715 .....	_.411		
_.720 .....	_.412(a)		
_.725(a) .....	_.412(a)		
_.725(b) .....	_.105, definition of Notice, second sentence; none		
_.730 .....	none		
_.735 .....	_.412(b), .413(b), none		
_.740(a) .....	_.410(b)		
_.740(b) .....	_.412(b)		
_.745 .....	_.413(b)(1), .412(b)(2)		
_.750 .....	_.413(b)		
_.755 .....	_.413(a) & (c)		
_.760 .....	_.415		
Subpart H:			
_.800 .....	_.305		
_.805 .....	_.312		
_.810 .....	none		
_.815 .....	_.313(a)		
_.820 .....	_.313(a); .105, definition of Notice, none		
_.825 .....	none		
_.830 .....	_.313(b), .314(b), none		
_.835 .....	_.310		
_.840 .....	_.313(b)		
_.845 .....	none, .314(a) & (b)(1)		
_.850 .....	_.314(c)(1)		
_.855 .....	_.314(c)(2), none		
_.860 .....	none, See 48 CFR 9.406–1(a)		
_.865 .....	_.320(a)		

*Reconciliation of Technical Differences*

The proposed rule incorporates some changes that are designed to bring the procurement and nonprocurement debarment rules into greater conformity with each other. However, the ISDC recommended against issuing a single consolidated rule, or adopting uniform application of the rule as impractical and confusing. This decision was based on the ISDC's view that the procurement and nonprocurement communities have sufficiently different relationships with participants, distinct methods to procure services or to provide benefits or support, varying options for dealing with waste, fraud, abuse, and poor performance, and very different types of exposure to risk.

The ISDC therefore focused its attention on ensuring that both the procurement and nonprocurement rules contained the same level of substantive due process in: (a) Applying the same minimum criteria to suspend or propose debarment; (b) notifying respondents of actions; (c) making a record to support a decision; (d) providing for fact-finding; (e) addressing mitigating and other factors; (f) applying evidentiary standards; and (g) issuing decisions.

Section .220 of the proposed rule would bring the common rule into closer conformity with the FAR by limiting the mandatory down-tier application of an exclusion under the common rule to the first procurement level. Unless Federal consent is required at a lower level, if an agency wishes to apply an exclusion at levels lower than the first procurement level (e.g., to subcontractors or suppliers), the agency must specifically include that option in its published version of the common rule. The ISDC recommended this change because it recognizes that some agencies' nonprocurement transactions are highly vulnerable to the impact of misconduct and poor performance at levels below the first procurement, while other agencies' transactions are not. This approach allows those Federal agencies with vulnerability at lower tiers to prohibit those transactions, while providing flexibility to those agencies whose programs' exposure

does not merit the additional administrative burden of enforcing exclusions at lower tiers.

In addition, the threshold level for application of an exclusion for all procurement-type transactions under a nonprocurement transaction would be set at \$25,000. This corrects confusion created when the term "small purchase threshold," formerly found at 10 U.S.C. 2304(g) and 41 U.S.C. 403(11) (set at \$25,000), was changed under the Federal Acquisition Streamlining Act of 1994 to "simplified acquisition threshold" and set at \$100,000. Because the current common rule uses the "small purchase threshold," as the point beneath which an exclusion does not apply, it has caused confusion as to whether the exclusion level is \$25,000 or \$100,000. The procurement debarment system has already made regulatory changes to subpart 9.4 of the FAR to keep its exclusion level at \$25,000.

In addition to "suspension" and "debarment," the common rule recognizes a status called "voluntary exclusion." Subpart 9.4 of the FAR makes no reference to such a status. The status of voluntary exclusion is a remnant from older rules and practices in the nonprocurement community that pre-date the Governmentwide suspension and debarment system. It was once used because respondents found the "voluntary" nature of the prohibition to be more acceptable. It was, in fact, a special term used for those who accepted ineligibility pursuant to an administrative agreement. The ISDC found that there are benefits to the nonprocurement community in retaining the ability of Federal agencies to accept voluntary exclusion agreements in place of debarment or suspension. However, with the creation of the Governmentwide system, voluntary exclusion agreements that offer protection only to the agency initiating action in the matter, are inconsistent with the purposes of the Governmentwide system. Accordingly, under the proposed rule agencies may still negotiate voluntary exclusion agreements; however, those exclusions must apply equally to all Federal agencies.

Section .860 of the proposed rule is new to the common rule. This section identifies factors that a debarring official may regard as mitigating or aggravating factors. It includes factors that currently appear under § 9.406–1(a) of the FAR. These factors currently offer useful guidance to the Government and contractors with respect to matters the

debarment official should consider in making a debarment decision.

#### *Enhancements to the Proposed Debarment and Suspension Common Rule*

This proposed rule would make several modifications to the existing common rule to enhance the effectiveness of, cure some gaps in, or clarify requirements and processes under the existing rule. None of these changes are intended to alter the fundamental principles inherent to debarment and suspension actions. All information related to the purposes and procedures applicable to the current rule as reflected in its preambles at 53 FR 19160–19171 (May 26, 1988), and 60 FR 33036–33040 (June 26, 1995), shall continue to apply under this proposed and/or any final rule unless otherwise stated, or inconsistent with these provisions. Therefore, notwithstanding the technical existence of any cause for debarment, affiliation, imputable conduct, or other actionable condition, debarment or suspension may not be used to punish. Nor may it be used to coerce a respondent into accepting criminal, civil or administrative sanctions. An agency may address its legitimate suspension and debarment concerns before, after or in conjunction with sanctions, so long as suspension or debarment is otherwise appropriate to protect the Federal Government. In all cases, suspending and debarment officials must use business judgment and discretion in electing to use the suspension and debarment authority under this rule to protect government activities from potential waste, fraud, abuse, poor performance and non-compliance with applicable laws, regulations or conditions related to nonprocurement transactions. Where an agency has the authority to act under either the procurement or nonprocurement rule, it may act under either rule to avoid confusion or duplication.

The proposed rule would move definitions from Subpart A of the current rule to Subpart I. Under the proposed rule, a new term is used to refer to ineligibility that arises from sources other than discretionary actions taken under either the common rule or subpart 9.4 of the FAR. This type of ineligibility may arise by operation of a statute, executive order, or other directive and may not be subject to the discretion of the agency suspending or debarment official. In addition, it may have special attributes that are inconsistent with the discretionary actions initiated under the common rule or the FAR. For example, persons

convicted under the Clean Air Act or Clean Water Act are automatically ineligible for procurement and nonprocurement participation at the violating facility which gave rise to the conviction until the EPA Debarment Official certifies that the conditions giving rise to the conviction have been corrected. The proposed rule refers to these and other special forms of ineligibility as “disqualifications.” Disqualifications must be listed on the General Services Administration (GSA), *List of Parties Excluded or Disqualified from Federal Procurement and Nonprocurement Programs* (List), but are not subject to the uniform procedural requirements of this rule. (Note that agencies with special provisions related to disqualification may, at their option, include those requirements in subpart J or other subparts appended to this rule as a convenience to the agency or the public.) For discretionary actions that result in ineligibility under the uniform suspension and debarment procedures covered by the common rule and the FAR, this proposed rule uses the term “exclusion.” Therefore, an ineligibility may result from either a disqualification or an exclusion.

The proposed rule adds a new definition for “agent or representative” as is used under the FAR and clarifies the definition of “participant.” It also proposes a more useful definition of the types of activities that are encompassed within the term “principal.”

The term “voluntary exclusion” is narrowed under this proposed rule to conform to the principles of governmentwide protection and give it the same scope of coverage as other exclusions.

One significant change to the definitions under the proposed common rule relates to the term “conviction.” Previously, the common rule defined conviction as a judgment that had to be “entered” by the court before it was recognized as constituting a ground for suspension or debarment. In recent years, courts have used many vehicles to conclude criminal matters short of “entry” of a judgment of conviction, such as probation before judgment, pre-trial diversion, and simply withholding final judgment upon satisfaction of certain conditions in lieu of incarceration or payment of a fine. Currently, the withholding of entry of the judgment in a criminal matter often means that a respondent remains under a temporary suspension until criminal proceedings are concluded. This does not benefit either the government or the respondent because the government is unable to conclude the matter by final

decision or with a compliance agreement with any certainty that a baseline for risk assessment can be finally established. From a business point of view, the withholding of an “entry” of judgment under these conditions should not preclude Federal agencies from taking appropriate action to protect the government. It makes no sense for an agency to have to prove the underlying misconduct or conditions all over again, merely because the court decided not to “enter” its judgment. Under the proposed rule, the suspending or debarment official would be able to consider criminal matters resolved by means short of dismissal as final so that appropriate administrative action can be taken, or a remedial plan of compliance concluded. This change would benefit both the government and a respondent.

The proposed rule would significantly clarify confusion under the existing rule as to who may be suspended or debarred and the impact of that decision on a suspended or debarred person. An agency may exclude any “person” as defined in the rule that may be reasonably expected to participate in a “covered transaction” (see § \_\_.135).

Even if a person is excluded, agencies could still award a covered transaction to that person when it is in the best interest of the government to do so. The proposed rule sets forth more clearly the two situations that allow an otherwise excluded person to participate in a nonprocurement transaction. The first is when an agency grants an exception to the excluded person to participate in a covered transaction (see § \_\_.120). Exceptions are transaction-specific decisions that the designated agency official must justify in writing. The second situation that allows an excluded person to participate in a transaction is when an agency is entering into an exempt transaction (see § \_\_.215). Exempt transactions have special status and are not regarded as covered transactions. Exempt transactions may or may not be transaction-specific, and do not require the written justification of a designated agency official before entering into them. Each agency is responsible for clarifying the applicability or non-applicability of an exemption to any of its transactions in its agency-specific rule.

Proposed § \_\_.215 contains a new exemption that has been added at paragraph (e). This exemption is proposed because most often the transactions listed within this paragraph are regulatory vehicles that should not be automatically precluded to an otherwise excluded person. In cases

where an agency uses a "permit," "license" or other similar transaction to approve or authorize government-regulated activity, but desires to subject issuance of the transaction to the GSA List, it must do so in its regulations or other guidance.

Sections \_\_.615, \_\_.715 and \_\_.805 of the proposed rule would amend the notice provisions of the existing rule. The proposed rule would authorize an agency to use facsimile and e-mail to notify a respondent of debarment or suspension actions affecting that person. The proposed modification to the existing rule would recognize the advances made in communications technology since the original rule was published and would provide a better system for confirming receipt of notices that were sent.

The current common rule identifies the two conclusions that a suspending official must make before imposing a suspension. While the current rule provides some guidance as to how a suspending official may conclude that "adequate evidence" of a cause for action may exist, it is silent as to how the official may conclude that "immediate action" is necessary to protect the public interest. The proposed rule would add information at § \_\_.705(c) that reflects the court's decision in *Coleman American Moving Services, Inc. v. Weinberger*, 716 F. Supp. 1405 (M. D. Ala. 1989), that a suspending official need not make a separate and specific finding as to immediate need, but may reach that conclusion from inferences reasonably drawn from the facts and circumstances present.

Also, § \_\_.735 of the proposed rule would authorize the suspending official to preclude fact-finding where a State attorney general's office, State or local prosecutor advises that conducting fact-finding would prejudice substantial interests of the State or local government in pending or contemplated legal proceedings based upon the same facts as the suspension. This language is necessary to close a gap in the current rule that allows a Federal agency to suspend on the basis of a Federal, State or local indictment, but only addresses denial of fact-finding in the context of advice received from Federal officials. In suspension and debarment matters, there is no distinction made between indictments issued at the Federal, state or local level. All indictments for alleged misconduct relevant to nonprocurement and procurement risks provide a basis for Federal concern. Therefore, where the prospect of an administrative fact-finding proceeding could prejudice the outcome of a matter

at the state or local level, the suspending official must have the same authority to deny fact-finding to protect those proceedings as for matters based upon actions initiated at the Federal level. Accordingly, §§ \_\_.735 and \_\_.760 of the proposed rule would reflect equality of treatment to be given to our respective levels of government in suspension matters.

Proposed §§ \_\_.730 and \_\_.825 would identify information that a respondent must provide the suspending or debarment official when contesting a suspension or proposed debarment. This information is relevant to the official's decision and is frequently requested during the presentation of matters in opposition. By highlighting this requirement in the rule, a respondent can be prepared in advance to address the issue at the time of the respondent's initial written submission, or during the oral presentation if one is made. These sections of the proposed rule also clarify that a general denial of allegations contained in the notice of action is insufficient to establish a genuine dispute over a material fact. A suspending or debarment official can only determine if a respondent is entitled to a fact-finding proceeding if the respondent's submission in opposition contains enough specific information to identify the issue in question and establish a basis for dispute.

Section \_\_.515(b) of the proposed rule includes additional information to be contained on the GSA List or within its database. Under the current rule, other than the name and address of an excluded person, there is currently insufficient information on the List or in the GSA database that can be used to confirm the identity of a listed person under a commonly used name. Confirmation requires contact with the designated Federal official by telephone or other means, a search of records if available, and confirmation in accordance with that agency's Routine Use Notice. The proposed rule would permit the database for the electronic version of the GSA List to include a field for Taxpayer Identification Numbers (TINs) and Social Security Numbers (SSNs) if legally appropriate. The List and current database contains names of individuals, business entities and organizations that can be the same or confusingly similar. The current commercial world uses TINs and SSNs widely and freely to confirm identities for all kinds of transactions.

The proposed rule would position GSA to compile that information in the event the law should allow public access to it. Otherwise, the current

system will remain commercially inefficient. We specifically invite comment on the proposed inclusion of this provision in the common rule.

The proposed rule would also eliminate a requirement under the current rule that the exclusions be enforced through a chain of paper certifications submitted to an agency or between participants under a covered transaction. Certification as a means of enforcement has proven to be administratively awkward and impossible for some transactions that do not even involve an "award." Advancements in technology allow anyone with access to a personal computer to receive up-to-date information about a person's eligibility by accessing the GSA list on line. This makes the certification process largely obsolete. The proposed rule would allow agencies to employ any method of enforcement of the GSA List that is administratively and commercially feasible. This change is consistent with Congress' intent under the Federal Acquisition Reform Act of 1994 (Public Law 104-208), to eliminate unnecessary certifications.

#### *Proposed Separate Part To Implement the Drug-Free Workplace Act*

Finally, this document proposes to establish a separate part for the drug-free workplace requirements that are in subpart F of the existing rule. The only requirement of the Drug Free Workplace Act of 1988 that relates to suspension and debarment is incorporated into the causes for debarment. The remaining provisions of subpart F are used predominantly by recipients of Federal assistance awards and by Federal officials who make and administer those awards, which distinguishes them from the common rule that is used mainly by Federal suspension and debarment officials and respondents. Moving the requirements of the current subpart F into a part separate from the common rule allows each Federal agency to place it in an appropriate location within the Code of Federal Regulations where it may be more easily used by recipients and Federal awarding and administering officials.

The proposed separate part to incorporate the provisions of Subpart F, like the proposed update to the debarment and suspension common rule, is reformatted and rewritten in plain language. Due to the proposed reformatting, requirements would appear in a different order than they do in the current Subpart F. The following table will assist you in locating and comparing the requirements under both rules.

Proposed drug-free workplace common rule sections	Current drug-free workplace common rule sections	Proposed drug-free workplace common rule sections	Current drug-free workplace common rule sections
.100	.600(a)		Appendix C. 3
.105(a)(1)	.610(a)		Appendix C. 4
.105(a)(2)	none		Appendix C. 8
.105(b)	none		
.110	.610(b)		
.115	.600(b)		
.200	.630(a)(1)		
.200(a)	certification alt I. A. (g)	<p>The proposed separate part would make one substantive change to the current subpart F. The proposed substantive change would require Federal agencies to obtain recipients' assurances of compliance with drug-free workplace requirements and not require them to obtain certifications from recipients. This substantive change implements section 809 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85, 111 Stat. 1838-1839) that amended the Drug-Free Workplace Act of 1988. The body of the proposed separate part therefore includes the substantive requirements for recipients that now are in the text of the drug-free workplace certification in appendix C to the common rule.</p> <p>The proposed separate part also would make some definitional changes to the current subpart F. First, it includes a definition of "debarment," since it no longer would be a subpart within the common rule that relies on the definitions in that part. Second, the proposed separate part uses the term "award," rather than the term "grant," to include the grants, cooperative agreements, and other assistance instruments covered by the drug-free workplace requirements. The term "grant" then is proposed to be redefined to bring it into conformance with the use of that term established by the Federal Grant and Cooperative Agreement Act (currently at 31 U.S.C. chapter 63). Doing so should help avoid confusion about the applicability of the drug-free workplace requirements to assistance instruments other than grants. To accommodate the change to the term "award," the proposed separate part includes a definition for the term "cooperative agreement" and uses the term "recipient," rather than "grantee."</p> <p><i>Impact Analysis—Executive Order 12866</i></p> <p>This is not a significant regulatory action under section 3(f)(4) of Executive Order 12866, "Regulatory Planning and Review."</p> <p><b>B. Regulatory Flexibility Act</b></p> <p>The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires that, for each</p>	
.200(b)	certification alt I. B.		
.205(a)	certification alt I. A. (a)		
.205(b)	certification alt I. A. (a)		
.205(c)	certification alt I. A. (d)		
.210	certification alt I. A. (c)		
.215	certification alt I. A. (b)		
.220	.630 (e)		
.225(a)	.635 (a)(1)		
.225(a)	certification alt I. A. (e)		
.225(b)	.635(a)(2)		
.225(b)	certification alt I. A. (f)		
.230(a)	appendix C. 5		
.230(b)	Appendix C. 6		
.230(c)	Appendix C. 7		
.300	.630(a)(1)		
.300	certification alt II.		
.300(b)	.635(b)		
.400(a)	none		
.400(b)	none		
.500	.615(b)		
.505	.615(c)		
.510	.620(a)		
.510			
.515	.625		
.605	.605(b)(7)		
.610	.605(b)(1)		
.615	.605(b)(2)		
.620	none		
.625	.605(b)(3)		
.630	D&S common rule		
.635	.605(b)(4)		
.640	.605(b)(5)		
.645	.605(b)(6)		
.650	none		
.655	.605(b)(9)		
.660	.605(b)(8)		
.665	.605(b)(10)		
.670	D&S common rule		
	.600(a)(1)		
	.600(a)(2)		
	.610(c)		
	.615(a)		
	.620(b)		
	.630(a)(2)		
	.630(b)		
	.630(c)		
	.630(d)		
	Appendix C. 1		
D&S common rule			

rule with a "significant economic impact on a substantial number of small entities," an analysis must be prepared describing the rule's impact on small entities and identifying any significant alternatives to the rule that would minimize the economic impact on small entities.

The participating agencies certify that this proposed rule, if published as a final rule, would not have a significant impact on a substantial number of small entities. This proposed rule addresses Federal agency procedures for suspension and debarment. It clarifies current requirements under the Nonprocurement Common Rule for Debarment and Suspension by reorganizing information and presenting that information in a plain language, question-and-answer format.

**C. Unfunded Mandates Act of 1995**

The Unfunded Mandates Act of 1995 (Public Law 104-4) requires agencies to prepare several analytic statements before proposing any rule that may result in an annual expenditures of \$100 million by State, local, Indian Tribal governments or the private sector. Since this proposed rule, if published as a final rule, would not result in expenditures of this magnitude, the participating agencies certify that such statements are not necessary.

**D. Paperwork Reduction Act**

The participating agencies certify that this proposed rule, if published as a final rule, would not impose additional reporting or record-keeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

**E. Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, (5 U.S.C. 804). This proposed rule, if published as a final rule, would not: Result in an annual effect on the economy of \$100 million or more; result in an increase in cost or prices; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

**F. Executive Order 13132: Federalism**

This proposed rule, if published as a final rule, would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the

distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the participating agencies have determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

### Text of the Proposed Common Rules

The text of the proposed common rules appear below:

1. [Part/Subpart] \_\_ is revised to read as follows:

### [PART/SUBPART] \_\_ GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

- \_\_ .25 How is this part organized?
- \_\_ .50 How is this part written?
- \_\_ .75 Do terms in this part have special meanings?

#### Subpart A—General

- \_\_ .100 What does this part do?
- \_\_ .105 Does this part apply to me?
- \_\_ .110 What is the purpose of the nonprocurement debarment and suspension system?
- \_\_ .115 How does an exclusion restrict a person's involvement in covered transactions?
- \_\_ .120 May we grant an exception to let an excluded person participate in a covered transaction?
- \_\_ .125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?
- \_\_ .130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
- \_\_ .135 May the [Agency noun] exclude a person who is not currently participating in a nonprocurement transaction?
- \_\_ .140 How do I know if a person is excluded?
- \_\_ .145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

#### Subpart B—Covered Transactions

- \_\_ .200 What is a covered transaction?
- \_\_ .205 Why is it important to know if a particular transaction is a covered transaction?
- \_\_ .210 Which nonprocurement transactions are covered transactions?
- \_\_ .215 Which nonprocurement transactions are not covered transactions?
- \_\_ .220 Are any procurement contracts included as covered transactions?
- \_\_ .225 How do I know if a transaction in which I may participate is a covered transaction?

#### Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

- \_\_ .300 May I enter into a covered transaction with an excluded or disqualified person?
- \_\_ .305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
- \_\_ .310 May I use the services of an excluded person under a covered transaction?
- \_\_ .315 Must I verify that principals of my covered transactions are eligible to participate?
- \_\_ .320 What happens if I do business with an excluded person in a covered transaction?
- \_\_ .325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

#### Disclosing Information—Primary Tier Participants

- \_\_ .330 What information must I provide before entering into a covered transaction with the [Agency noun]?
- \_\_ .335 If I disclose unfavorable information required under § \_\_.330 will I be prevented from entering into the transaction?
- \_\_ .340 What happens if I fail to disclose the information required under § \_\_.330?
- \_\_ .345 What must I do if I learn of the information required under § \_\_.330 after entering into a covered transaction with the [Agency noun]?

#### Disclosing Information—Lower Tier Participants

- \_\_ .350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
- \_\_ .355 What happens if I fail to disclose the information required under § \_\_.350?
- \_\_ .360 What must I do if I learn of information required under § \_\_.350 after entering into a covered transaction with a higher tier participant?

#### Subpart D—Responsibilities of [Agency adjective] Officials Regarding Transactions

- \_\_ .400 May I enter into a transaction with an excluded or disqualified person?
- \_\_ .405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
- \_\_ .410 May I approve a participant's use of the services of an excluded person?
- \_\_ .415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
- \_\_ .420 May I approve a transaction with an excluded or disqualified person at a lower tier?
- \_\_ .425 When do I check to see if a person is excluded or disqualified?
- \_\_ .430 How do I check to see if a person is excluded or disqualified?
- \_\_ .435 What must I require of a primary tier participant?
- \_\_ .440 [Reserved]
- \_\_ .445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?

- \_\_ .450 What action may I take if a primary tier participant fails to disclose the information required under § \_\_.330?
- \_\_ .455 What may I do if a lower tier participant fails to disclose the information required under § \_\_.350 to the next higher tier?

#### Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs

- \_\_ .500 What is the purpose of the List?
- \_\_ .505 Who uses the List?
- \_\_ .510 Who maintains the List?
- \_\_ .515 What specific information is on the List?
- \_\_ .520 Who gives the GSA the information that it puts on the List?
- \_\_ .525 Whom do I ask if I have questions about a person on the List?
- \_\_ .530 Where can I get the List?

#### Subpart F—General Principles Relating to Suspension and Debarment Actions

- \_\_ .600 How do suspension and debarment actions start?
- \_\_ .605 How does suspension differ from debarment?
- \_\_ .610 What procedures does the [Agency noun] use in suspension and debarment actions?
- \_\_ .615 How does the [Agency noun] notify a person of suspension and debarment actions?
- \_\_ .620 Do Federal agencies coordinate suspension and debarment actions?
- \_\_ .625 What is the scope of a suspension or debarment action?
- \_\_ .630 May the [Agency noun] impute the conduct of one person to another?
- \_\_ .635 May the [Agency noun] settle a debarment or suspension action?
- \_\_ .640 May a settlement include a voluntary exclusion?
- \_\_ .645 Do other Federal agencies know if the [Agency noun] agrees to a voluntary exclusion?

#### Subpart G—Suspension

- \_\_ .700 When may the suspending official issue a suspension?
- \_\_ .705 What does the suspending official consider in issuing a suspension?
- \_\_ .710 When does a suspension take effect?
- \_\_ .715 What notice does the suspending official give me if I am suspended?
- \_\_ .720 How may I contest a suspension?
- \_\_ .725 How much time do I have to contest a suspension?
- \_\_ .730 What information must I provide to the suspending official if I contest a suspension?
- \_\_ .735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- \_\_ .740 Are suspension proceedings formal?
- \_\_ .745 Is a record made of fact-finding proceedings?
- \_\_ .750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- \_\_ .755 When will I know whether the suspension is continued or terminated?
- \_\_ .760 How long may my suspension last?

**Subpart H—Debarment**

- \_\_ .800 What are the causes for debarment?
- \_\_ .805 What notice does the debarring official give me if I am proposed for debarment?
- \_\_ .810 When does a debarment take effect?
- \_\_ .815 How may I contest a proposed debarment?
- \_\_ .820 How much time do I have to contest a proposed debarment?
- \_\_ .825 What information must I provide to the debarring official if I contest a proposed debarment?
- \_\_ .830 Under what conditions do I get an additional opportunity to challenge the facts on which a proposed debarment is based?
- \_\_ .835 Are debarment proceedings formal?
- \_\_ .840 Is a record made of fact-finding proceedings?
- \_\_ .845 What does the debarring official consider in deciding whether to debar me?
- \_\_ .850 What is the standard of proof in a debarment action?
- \_\_ .855 Who has the burden of proof in a debarment action?
- \_\_ .860 What factors may influence the debarring official's decision?
- \_\_ .865 How long may my debarment last?
- \_\_ .870 When do I know if the debarring official debars me?
- \_\_ .875 May I ask the debarring official to reconsider a decision to debar me?
- \_\_ .880 What factors may influence the debarring official during reconsideration?
- \_\_ .885 May the debarring official extend a debarment?

**Subpart I—Definitions**

- \_\_ .900 Adequate evidence.
- \_\_ .905 Affiliate.
- \_\_ .910 Agency.
- \_\_ .915 Agent or representative.
- \_\_ .920 Civil judgment.
- \_\_ .925 Conviction.
- \_\_ .930 Debarment.
- \_\_ .935 Debarring official.
- \_\_ .940 Disqualified.
- \_\_ .945 Excluded or exclusion.
- \_\_ .950 Indictment.
- \_\_ .955 Ineligible or ineligibility.
- \_\_ .960 Legal proceedings.
- \_\_ .965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.
- \_\_ .970 Nonprocurement transaction.
- \_\_ .975 Notice.
- \_\_ .980 Participant.
- \_\_ .985 Person.
- \_\_ .990 Preponderance of the evidence.
- \_\_ .995 Principal.
- \_\_ 1000 Respondent.
- \_\_ .1005 State.
- \_\_ .1010 Suspending official.
- \_\_ .1015 Suspension.
- \_\_ .1020 Voluntary exclusion or voluntarily excluded.

**Subpart J—[Reserved]**

**Appendix to Part \_\_ Covered Transactions**

**Authority:** Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp.,

p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

**§ \_\_.25 How is this part organized?**

(a) This part is subdivided into ten subparts. Each subpart contains information related to a broad topic or specific audience with special responsibilities, as shown in the following table:

In subpart ...	You will find provisions related to ...
A .....	general information about this rule.
B .....	the types of [Agency adjective] transactions that are covered by the Governmentwide nonprocurement suspension and debarment system.
C .....	the responsibilities of persons who participate in covered transactions.
D .....	the responsibilities of [Agency adjective] officials who are authorized to enter into covered transactions.
E .....	the responsibilities of Federal agencies for the <i>List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs</i> (Published by the General Services Administration).
F .....	the general principles governing suspension, debarment, voluntary exclusion and settlement.
G .....	suspension actions.
H .....	debarment actions.
I .....	definitions of terms used in this part.
J .....	[Reserved]

(b) The following table shows which subparts may be of special interest to you, depending on who you are:

If you are ...	see subpart(s) ...
(1) a participant or principal in a nonprocurement transaction.	A, B, C and I.
(2) a respondent in a suspension action.	A, B, F, G and I.
(3) a respondent in a debarment action.	A, B, F, H and I.
(4) a suspending official.	A, B, E, F, G and I.
(5) a debarring official.	A, B, D, F, H and I.

If you are ...	see subpart(s) ...
(6) a(n) [Agency adjective] official authorized to enter into a covered transaction.	A, B, D, E and I.
(7) Reserved ..	J.

**§ \_\_.50 How is this part written?**

(a) This part uses a “plain language” format to make it easier for the general public and business community to use. The section headings and text, often in the form of questions and answers, must be read together.

(b) Pronouns used within this part, such as “I” and “you,” change from subpart to subpart depending on the audience being addressed. The pronoun “we” always is the [Agency noun].

(c) The “Covered Transactions” chart in the appendix to this part shows the levels or “tiers” at which the [Agency noun] enforces an exclusion under this part.

**§ \_\_.75 Do terms in this part have special meanings?**

This part uses terms throughout the text that have special meaning. Those terms are defined in Subpart I of this part. For example, three important terms are—

(a) *Exclusion* or *excluded*, which refers only to discretionary actions taken by a suspending or debarring official under this part or the Federal Acquisition Regulation (48 CFR part 9, subpart 9.4);

(b) *Disqualification* or *disqualified*, which refers to prohibitions under specific statutes, executive orders (other than Executive Order 12549 and Executive Order 12689), or other authorities. Disqualifications frequently are not subject to the discretion of an agency official, may have a different scope than exclusions, or have special conditions that apply to the disqualification; and

(c) *Ineligibility* or *ineligible*, which generally refers to a person who is either excluded or disqualified.

**Subpart A—General**

**§ \_\_.100 What does this part do?**

This part adopts a governmentwide system of debarment and suspension for [Agency adjective] nonprocurement activities. It also provides for reciprocal exclusion of persons who have been excluded under the Federal Acquisition Regulation, and provides for the consolidated listing of all persons who are excluded, or disqualified by statute, executive order, or other legal authority.

This part satisfies the requirements in section 3 of Executive Order 12549, "Debarment and Suspension" (3 CFR 1986 Comp., p. 189), Executive Order 12689, "Debarment and Suspension" (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

**§ .105 Does this part apply to me?**

Portions of this part (see table at § .25(b)) apply to you if you are a(n):

- (a) Participant or principal in a covered transaction;
- (b) Respondent (a person against whom the [Agency noun] has initiated a debarment or suspension action);
- (c) [Agency adjective] debarment or suspending official; or
- (d) [Agency adjective] official who is authorized to enter into covered transactions with non-Federal parties.

**§ .110 What is the purpose of the nonprocurement debarment and suspension system?**

(a) To protect the public interest, the Federal Government ensures the integrity of Federal programs by conducting business only with responsible persons.

(b) A Federal agency uses the nonprocurement debarment and suspension system to exclude persons from Federal programs persons who are not presently responsible.

(c) An exclusion is a serious action that a Federal agency may take only to protect the public interest. A Federal agency may not exclude a person or commodity for the purposes of punishment.

**§ .115 How does an exclusion restrict a person's involvement in covered transactions?**

With the exceptions stated in §§ .120, .315, and .420, a person who is excluded by the [Agency noun] or any other Federal agency may not:

- (a) Be a participant in a(n) [Agency adjective] transaction that is a covered transaction under Subpart B of this part;
- (b) Be a participant in a transaction of any other Federal agency that is a covered transaction under that agency's regulation for debarment and suspension; or
- (c) Act as a principal of a person participating in one of those covered transactions.

**§ .120 May we grant an exception to let an excluded person participate in a covered transaction?**

(a) The [Agency head or designee] may grant an exception permitting an excluded person to participate in a particular covered transaction. If the [Agency head or designee] grants an

exception, the exception must be in writing and state the reason(s) for deviating from the governmentwide policy in Executive Order 12549.

(b) An exception granted by one agency for an excluded person does not extend to the covered transactions of another agency.

**§ .125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?**

If any Federal agency excludes a person under its nonprocurement common rule on or after August 25, 1995, the excluded person is also ineligible to participate in Federal procurement transactions under the FAR. Therefore, an exclusion under this part has reciprocal effect in Federal procurement transactions.

**§ .130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?**

If any Federal agency excludes a person under the FAR on or after August 25, 1995, the excluded person is also ineligible to participate in nonprocurement covered transactions under this part. Therefore, an exclusion under the FAR has reciprocal effect in Federal nonprocurement transactions.

**§ .135 May the [Agency noun] exclude a person who is not currently participating in a nonprocurement transaction?**

Given a cause that justifies an exclusion under this part, we may exclude any person who has participated, is currently participating, or may reasonably be expected to participate in a covered transaction.

**§ .140 How do I know if a person is excluded?**

Check the Governmentwide *List of Parties Excluded or Disqualified from Federal Procurement and Nonprocurement Programs (List)* to determine whether a person is excluded. The General Services Administration (GSA) maintains the *List* and makes it available, as detailed in Subpart E of this part. When a Federal agency takes an action to exclude a person under the nonprocurement or procurement debarment and suspension system, the agency sends information about the excluded person to the GSA for inclusion on the *List*.

**§ .145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?**

Except if provided for in Subpart J of this part, this part—

(a) Addresses disqualified persons only to—

(1) Provide for their inclusion on the *List*; and

(2) State responsibilities of Federal agencies and participants to check for disqualified persons before entering into covered transactions.

(b) Does not specify the—

(1) [Agency adjective] transactions for which a disqualified person is ineligible. Those transactions vary on a case-by-case basis, because they depend on the language of the specific statute, Executive order, or regulation that caused the disqualification;

(2) Entities to which the disqualification applies; or

(3) Process that the agency uses to disqualify a person. Unlike exclusion, disqualification is frequently not a discretionary action that a Federal agency takes.

**Subpart B—Covered Transactions**

**§ .200 What is a covered transaction?**

A covered transaction is a nonprocurement or procurement transaction that is subject to the prohibitions of this part. It may be a transaction at—

(a) The primary tier, between a Federal agency and a person (see appendix to this part); or

(b) A lower tier, between a participant in a covered transaction and another person.

**§ .205 Why is it important if a particular transaction is a covered transaction?**

The importance of a covered transaction depends upon who you are.

(a) As a participant in the transaction, you have the responsibilities laid out in Subpart C of this part. Those include responsibilities to the person or Federal agency at the next higher tier from whom you received the transaction, if any. They also include responsibilities if you subsequently enter into other covered transactions with persons at the next lower tier.

(b) As a Federal official who enters into a primary tier transaction, you have the responsibilities laid out in subpart D of this part.

(c) As an excluded person, you may not be a participant or principal in the transaction unless—

(1) The person who entered into the transaction with you allows you to continue your involvement in a transaction that predates your exclusion, as permitted under § .305 or § .415; or

(2) A(n) [Agency adjective] official obtains an exception from the [Agency head or designee] to allow you to be

involved in the transaction, as permitted under § .120.

**§ .210 Which nonprocurement transactions are covered transactions?**

All nonprocurement transactions, as defined in § .970, are covered transactions unless listed in § .215. (See appendix to this part.)

**§ .215 Which nonprocurement transactions are not covered transactions?**

The following types of nonprocurement transactions are not covered transactions:

- (a) A direct award to—
  - (1) A foreign government or foreign governmental entity;
  - (2) A public international organization;
  - (3) An entity owned (in whole or in part) or controlled by a foreign government; or
  - (4) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.

(b) A benefit 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). For example, if a person receives social security benefits under the Supplemental Security Income provisions of the Social Security Act, 42 U.S.C. 1301 *et seq.*, those benefits are not covered transactions and, therefore, are not affected if the person is excluded.

(c) Federal employment.

(d) A transaction that the [Agency noun] needs to respond to a national or agency-recognized emergency or disaster.

(e) A permit, license, certificate, or similar instrument issued as a means to regulate public health, safety, or the environment, unless the [Agency noun] specifically designates it to be a covered transaction.

(f) An incidental benefit that results from ordinary governmental operations.

(g) Any other transaction if the application of an exclusion to the transaction is prohibited by law.

**§ .220 Are any procurement contracts included as covered transactions?**

Covered transactions under this part do not include any procurement contracts awarded directly by a Federal agency (those transactions are covered under the Federal Acquisition Regulation), but they do include some procurement contracts awarded by non-Federal participants in nonprocurement covered transactions (see appendix to this part). Specifically, a contract for goods or services is a covered

transaction if any of the following applies:

(a) The contract is awarded by a participant in a nonprocurement transaction that is covered under § .210, and the amount of the contract is expected to equal or exceed \$25,000.

(b) The contract requires the consent of a(n) [Agency adjective] official. In that case, the contract, regardless of the amount, always is a covered transaction, and it does not matter who awarded it. For example, it could be a subcontract awarded by a contractor at a tier below a nonprocurement transaction, as shown in the appendix to this part.

(c) The contract is for federally-required audit services.

**§ .225 How do I know if a transaction in which I may participate is a covered transaction?**

As a participant in a transaction, you will know that it is a covered transaction because the agency regulations governing the transaction, the appropriate agency official, or participant at the next higher tier who enters into the transaction with you, will tell you that you must comply with applicable portions of this part.

**Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons**

**§ .300 May I enter into a covered transaction with an excluded or disqualified person?**

(a) You as a participant may not enter into a covered transaction with an excluded person, unless the [Agency noun] grants an exception under § .120.

(b) You may not enter into any transaction with a person who is disqualified from that transaction, unless you have obtained an exception under the disqualifying statute, Executive order, or regulation.

**§ .305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?**

(a) You as a participant may continue covered transactions with an excluded person if the transactions were in existence when the agency excluded the person. However, you are not required to continue the transactions, and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded

person, unless the [Agency noun] grants an exception under § .120.

**§ .310 May I use the services of an excluded person under a covered transaction?**

(a) You as a participant may continue to use the services of an excluded person as a principal under a covered transaction if you were using the services of that person in the transaction before the person was excluded. However, you are not required to continue using that person's services as a principal.

(b) You may not begin to use the services of an excluded person as a principal under a covered transaction unless the [Agency noun] grants an exception under § .120.

**§ .315 Must I verify that principals of my covered transactions are eligible to participate?**

Yes, you as a participant are responsible for determining whether any principal of your covered transactions is excluded or disqualified from participating in the transaction.

You may decide the method and frequency by which you do so. You may, but you are not required to, check the governmentwide *List*.

**§ .320 What happens if I do business with an excluded person in a covered transaction?**

If as a participant you knowingly do business with an excluded person, we may disallow costs, annul or terminate the transaction, issue a stop work order, debar or suspend you, or take other remedies as appropriate.

**§ .325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?**

Before entering into a covered transaction with a participant at the next lower tier, you must require that participant to:

(a) Comply with this subpart as a condition of participation in the transaction. You may do so using any method(s), unless § .430 requires you to use specific methods.

(b) Pass the requirement to comply with this subpart to each person with whom the participant enters into a covered transaction at the next lower tier.

**Disclosing Information—Primary Tier Participants**

**§ .330 What information must I provide before entering into a covered transaction with the [Agency noun]?**

Before you enter into a covered transaction at the primary tier, you as the participant must notify the [Agency

adjective] office that is entering into the transaction with you, if you know that you or any of the principals for that covered transaction:

(a) Are presently excluded or disqualified;

(b) Have been convicted within the preceding three years of any of the offenses listed in § \_\_.800(a) or had a civil judgment rendered against you for one of those offenses within that time period;

(c) Are presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, state or local) with commission of any of the offenses listed in § \_\_.800(a); or

(d) Have had one or more public transactions (Federal, state, or local) terminated within the preceding three years for cause or default.

**§ \_\_.335 If I disclose unfavorable information required under § \_\_.330, will I be prevented from participating in the transaction?**

As a primary tier participant, your disclosure of unfavorable information about yourself or a principal under § \_\_.330 will not necessarily cause us to deny your participation in the covered transaction. We will consider the information when we determine whether to enter into the covered transaction. We also will consider any additional information or explanation that you elect to submit with the disclosed information.

**§ \_\_.340 What happens if I fail to disclose information required under § \_\_.330?**

If we later determine that you failed to disclose information under § \_\_.330 that you knew at the time you entered into the covered transaction, we may

(a) Terminate the transaction for material failure to comply with the terms and conditions of the transaction; or

(b) Pursue any other available remedies, including suspension and debarment.

**§ \_\_.345 What must I do if I learn of information required under § \_\_.330 after entering into a covered transaction with the [Agency noun]?**

At any time after you enter into a covered transaction, you must give immediate written notice to the [Agency adjective] office with which you entered into the transaction if you learn either that—

(a) You failed to disclose information earlier, as required by § \_\_.330; or

(b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § \_\_.330.

**Disclosing Information—Lower Tier Participants**

**§ \_\_.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?**

Before you enter into a covered transaction with a person at the next higher tier, you as a lower tier participant must notify that person if you know that you or any of the principals are presently excluded or disqualified.

**§ \_\_.355 What happens if I fail to disclose information required under § \_\_.350?**

If we later determine that you failed to tell the person at the higher tier that you were excluded or disqualified at the time you entered into the covered transaction with that person, we may pursue any available remedies, including suspension and debarment.

**§ \_\_.360 What must I do if I learn of information required under § \_\_.350 after entering into a covered transaction with a higher tier participant?**

At any time after you enter into a lower tier covered transaction with a person at a higher tier, you must provide immediate written notice to that person if you learn either that—

(a) You failed to disclose information earlier, as required by § \_\_.350; or

(b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § \_\_.350.

**Subpart D—Responsibilities of [Agency adjective] Officials Regarding Transactions**

**§ \_\_.400 May I enter into a transaction with an excluded or disqualified person?**

(a) You as an agency official may not enter into a covered transaction with an excluded person unless you obtain an exception under § \_\_.120.

(b) You may not enter into any transaction with a person who is disqualified from that transaction, unless you obtain a waiver or exception under the statute, Executive order, or regulation that is the basis for the person's disqualification.

**§ \_\_.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?**

As an agency official, you may not enter into a covered transaction with a participant if you know that a principal of the transaction is excluded, unless you obtain an exception under § \_\_.120.

**§ \_\_.410 May I approve a participant's use of the services of an excluded person?**

After entering into a covered transaction with a participant, you as an

agency official may not approve a participant's use of an excluded person as a principal under that transaction, unless you obtain an exception under § \_\_.120.

**§ \_\_.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?**

(a) You as an agency official may continue covered transactions with an excluded person, or under which an excluded person is a principal, if the transactions were in existence when the person was excluded. You are not required to continue the transactions, however, and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, or under which an excluded person is a principal, unless you obtain an exception under § \_\_.120.

**§ \_\_.420 May I approve a transaction with an excluded or disqualified person at a lower tier?**

If a transaction at a lower tier is subject to your approval, you as an agency official may not approve—

(a) A covered transaction with a person who is currently excluded, unless you obtain an exception under § \_\_.120; or

(b) A transaction with a person who is disqualified from that transaction, unless you obtain a waiver or exception under the statute, Executive order, or regulation that is the basis for the person's disqualification.

**§ \_\_.425 When do I check to see if a person is excluded or disqualified?**

As an agency official, you must check to see if a person is excluded or disqualified before you—

(a) Enter into a primary tier covered transaction;

(b) Approve a principal in a primary tier covered transaction;

(c) Approve a lower tier participant if agency approval of the lower tier participant is required; or

(d) Approve a principal in connection with a lower tier transaction if agency approval of the principal is required.

**§ \_\_.430 How do I check to see if a person is excluded or disqualified?**

You check to see if a person is excluded or disqualified in two ways:

(a) You as an agency official must check the governmentwide List when you take any action listed in § \_\_.425.

(b) You must review information that a participant gives you, as required by § \_\_.330, about its status or the status of the principals of a transaction.

**§ \_\_.435 What must I require of a primary tier participant?**

You as an agency official must require each participant in a primary tier covered transaction to—

(a) Comply with subpart C of this part as a condition of participation in the transaction; and

(b) Communicate the requirement to comply with Subpart C of this part to persons at the next lower tier with whom the primary tier participant enters into covered transactions.

**§ \_\_.440 [Reserved]**

**§ \_\_.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?**

If a participant knowingly does business with an excluded or disqualified person, you as an agency official may refer the matter for suspension and debarment consideration.

You may also disallow costs, annul or terminate the transaction, issue a stop work order, or take any other appropriate remedy.

**§ \_\_.450 What action may I take if a primary tier participant fails to disclose the information required under § \_\_.330?**

If you as an agency official determine that a participant failed to disclose information, as required by § \_\_.330, at the time it entered into a covered transaction with you, you may—

(a) Terminate the transaction for material failure to comply with the terms and conditions of the transaction; or

(b) Pursue any other available remedies, including suspension and debarment.

**§ \_\_.455 What may I do if a lower tier participant fails to disclose the information required under § \_\_.350 to the next higher tier?**

If you as an agency official determine that a lower tier participant failed to disclose information, as required by § \_\_.350, at the time it entered into a covered transaction with a participant at the next higher tier, you may pursue any remedies available to you, including the initiation of a suspension or debarment action.

**Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs**

**§ \_\_.500 What is the purpose of the List?**

The *List* is a widely available source of the most current information about persons who are excluded or disqualified from covered transactions.

**§ \_\_.505 Who uses the List?**

(a) Federal agency officials use the *List* to determine whether to enter into a transaction with a person, as required under § \_\_.410.

(b) Participants also may, but are not required to, use the *List* to determine if—

(1) Principals of their transactions are excluded or disqualified, as required under § \_\_.315; or

(2) Persons with whom they are entering into covered transactions at the next lower tier are excluded or disqualified.

(c) The *List* is available to the general public.

**§ \_\_.510 Who maintains the List?**

In accordance with the OMB guidelines, the General Services Administration (GSA) compiles, maintains and distributes the *List*.

**§ \_\_.515 What specific information is on the List?**

(a) At a minimum, the *List* indicates—

(1) The full name (where available) and address of each excluded and disqualified person, in alphabetical order, with cross references if more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for the action;

(6) The agency and name and telephone number of the agency point of contact for the action; and

(7) The Contractor and Government Establishment (CAGE) code or other similar code approved by the GSA, of the excluded or disqualified person, if available.

(b)(1) The database for the electronic version of the *List* includes a field for the Taxpayer Identification Number (TIN) (the social security number (SSN) for an individual) of an excluded or disqualified person.

(2) GSA discloses the SSN of an individual to verify the identity of an individual, only if permitted under the Privacy Act of 1974 and, if appropriate, the Computer Matching and Privacy Protection Act of 1988, as codified in 5 U.S.C. 552a.

**§ \_\_.520 Who gives the GSA the information that it puts on the List?**

Federal officials who take actions to exclude persons under this part or officials who are responsible for identifying disqualified persons must provide current information about those persons to the GSA. They must give the GSA—

(a) Information required by § \_\_.515(a);

(b) The Taxpayer Identification Number (TIN) of the excluded or disqualified person, including the social security number (SSN) for an individual, if the number is available and may be disclosed under law;

(c) Information about an excluded or disqualified person within five working days, unless the GSA agrees to an alternative schedule, after—

(1) Taking an exclusion action;

(2) Modifying or rescinding an exclusion action;

(3) Finding that a person is disqualified; or

(4) Finding that there has been a change in the status of a person who is listed as disqualified.

**§ \_\_.525 Whom do I ask if I have questions about a specific person on the List?**

If you have questions about a listed person, ask the Federal agency that took the action placing the person's name on the *List*.

**§ \_\_.530 Where can I get the List?**

You can get the information contained on the *List* in two ways.

(a) You may subscribe to a printed version which you may obtain by purchasing a yearly subscription. A Federal agency may subscribe through its printing and distribution office. The public may obtain a subscription from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by calling the Government Printing Office Inquiry and Order Desk at (202) 783-3238.

(b) You may access the *List* through the Internet, currently at <http://epls.arnet.gov>.

**Subpart F—General Principles Relating to Suspension and Debarment Actions**

**§ \_\_.600 How do suspension and debarment actions start?**

When we receive information from any source concerning a cause for suspension or debarment, we will promptly report and investigate it. We refer the question of whether to suspend or debar you to our suspending or debarring official for consideration, if appropriate.

**§ .605 How does suspension differ from debarment?**

Suspension differs from debarment in that:

A suspending official . . .	A debaring official . . .
(a) Imposes suspension as a temporary status of ineligibility for procurement and nonprocurement transactions, pending completion of an investigation or legal proceedings.	Imposes debarment for a specified period as a final determination that a person is not presently responsible.
(b) Must— (1) Have <i>adequate evidence</i> that there may be a cause for debarment of an individual or business; and (2) Conclude that there is an <i>immediate need</i> to take action to protect the Federal interest.	Must conclude, based on a <i>preponderance of the evidence</i> , that the individual or business has engaged in conduct that warrants debarment.
(c) Usually imposes the suspension <i>first</i> , and promptly notifies the suspended person, giving the person an opportunity to contest the suspension and have it lifted.	Imposes debarment <i>after</i> giving the respondent notice of the action and an opportunity to contest the proposed debarment.

**§ .610 What procedures does the [Agency noun] use in suspension and debarment actions?**

In deciding whether to suspend or debar you, we handle the actions as informally as practicable, consistent with principles of fundamental fairness.

(a) For suspension actions, we use the procedures in this subpart and Subpart G of this part.

(b) For debarment actions, we use the procedures in this subpart and Subpart H of this part.

**§ .615 How does the [Agency noun] notify a person of suspension and debarment actions?**

The suspending or debaring official sends a written notice to you, your identified counsel, your agent for service of process, or any of your partners, officers, directors, owners, or joint venturers to the last known street address, facsimile number, or e-mail address. The notice is effective if sent to any of these persons.

**§ .625 Do Federal agencies coordinate suspension and debarment actions?**

Yes, when more than one Federal agency has an interest in a suspension or debarment, the agencies may consider designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their suspension and debarment actions.

**§ .625 What is the scope of a suspension or debarment?**

If you are suspended or debarred, the suspension or debarment is effective as follows:

(a) Your suspension or debarment constitutes suspension or debarment of all of your divisions and other organizational elements from all covered transactions, unless the suspension or debarment decision is limited—

(1) By its terms to one or more specifically identified individuals, divisions, or other organizational elements; or

(2) To specific types of transactions.

(b) Any affiliate of a participant may be included in a suspension or debarment action if the suspending or debaring official—

(1) Officially names the affiliate in the notice; and

(2) Gives the affiliate an opportunity to contest the action.

**§ .630 May the [Agency noun] impute conduct of one person to another?**

For purposes of determining the scope of your suspension or debarment, we may impute conduct as follows:

(a) *Conduct imputed to participant.* We may impute the fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval or acquiescence. The participant's acceptance of the benefits derived from the conduct is evidence of knowledge, approval or acquiescence.

(b) *Conduct imputed to individuals associated with participant.* We may impute the fraudulent, criminal, or other seriously improper conduct of a participant to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of or had reason to know of the participant's conduct.

(c) *Conduct of one participant imputed to other participants in a joint venture.* We may impute the fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture, grant pursuant to a joint

application, or similar arrangement to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application or similar arrangement, or with the knowledge, approval, or acquiescence of those participants. Acceptance of the benefits derived from the conduct is evidence of knowledge, approval, or acquiescence.

**Settlement and Voluntary Exclusion**

**§ .635 May the [Agency noun] settle a debarment or suspension action?**

Yes, we may settle a debarment or suspension action at any time if it is in the best interests of the Federal Government.

**§ .640 May a settlement include a voluntary exclusion?**

Yes, if we enter into a settlement with you in which you agree to be excluded, it is called a voluntary exclusion and has governmentwide effect.

**§ .645 Do other Federal agencies know if the [Agency noun] agrees to a voluntary exclusion?**

(a) Yes, we send information regarding a voluntary exclusion to the General

Services Administration for entry into the *List*.

(b) Also, any agency or person may contact us to find out the details of a voluntary exclusion.

**Subpart G—Suspension**

**§ .700 When may the suspending official issue a suspension?**

Suspension is a serious action. Using the procedures of this subpart and Subpart F of this part, the suspending official may impose suspension only when that official determines that—

(a) There exists adequate evidence to suspect that a cause for debarment under § .800 may exist; and

(b) Immediate action is necessary to protect the public interest.

**§ .705 What does the suspending official consider in issuing a suspension?**

(a) In determining the adequacy of the evidence to support the suspension, the suspending official considers how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. During this assessment, the suspending official may examine the basic documents, including grants, cooperative agreements, loan authorizations, contracts, and other relevant documents.

(b) An indictment, conviction, civil judgment, or other official findings by Federal, State, or local bodies that determine factual and/or legal matters, constitutes adequate evidence for purposes of suspension actions.

(c) In deciding whether immediate action is needed to protect the public interest, the suspending official has wide discretion. For example, the suspending official may infer the necessity for immediate action to protect the public interest either from the nature of the circumstances giving rise to a cause for suspension or from potential business relationships or involvement with a program of the Federal Government.

**§ .710 When does a suspension take effect?**

A suspension is effective when the suspending official signs the decision to suspend.

**§ .715 What notice does the suspending official give me if I am suspended?**

After deciding to suspend you, the suspending official promptly sends you a Notice of Suspension advising you—

- (a) That you have been suspended;
- (b) That your suspension is based on—
  - (1) An indictment;
  - (2) A conviction;
  - (3) Other adequate evidence that you have committed irregularities which seriously reflect on the propriety of further Federal Government dealings with you; or
  - (4) Conduct of another person that has been imputed to you, or your affiliation with a suspended or debarred person;
- (c) Of any other irregularities in terms sufficient to put you on notice without disclosing the Federal Government's evidence;
- (d) Of the cause(s) upon which we relied under § .700 for imposing suspension;

(e) That your suspension is for a temporary period pending the completion of an investigation or resulting legal or debarment proceedings;

(f) Of the applicable provisions of this subpart, Subpart F of this part, and any other [Agency adjective] procedures governing suspension decision making; and

(g) Of the governmentwide effect of your suspension from procurement and nonprocurement programs and activities.

**§ .720 How may I contest a suspension?**

If you as a respondent wish to contest a suspension, you or your representative must provide the suspending official with information in opposition to the suspension.

You may do this orally or in writing, but any information provided orally that you consider important must also be submitted in writing for the official record.

**§ .725 How much time do I have to contest a suspension?**

(a) As a respondent you or your representative must either send, or make arrangements to appear and present, the information and argument to the suspending official within 30 days after you receive the Notice of Suspension.

(b) We consider the notice to be received by you—

(1) When delivered, if we mail the notice to the last known street address, or five days after we send it if the letter is undeliverable;

(2) When sent, if we send the notice by facsimile or five days after we send it if the facsimile is undeliverable; or

(3) When delivered, if we send the notice by e-mail or five days after we send it if the e-mail is undeliverable.

**§ .730 What information must I provide to the suspending official if I contest the suspension?**

(a) In addition to any information and argument in opposition, as a respondent your submission to the suspending official must identify—

(1) Specific facts that contradict the statements contained in the Notice of Suspension. A general denial is insufficient to raise a genuine dispute over facts material to the suspension;

(2) All existing, proposed, or prior exclusions under regulations implementing Executive Order 12549 and all similar actions taken by Federal, state, or local agencies, including administrative agreements that affect only those agencies;

(3) All criminal and civil proceedings not included in the Notice of Suspension that grew out of facts

relevant to the cause(s) stated in the notice; and

(4) All of your affiliates.

(b) If you fail to disclose this information, or provide false information, the [Agency noun] may seek further criminal, civil or administrative action against you, as appropriate.

**§ .735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?**

(a) You as a respondent will not have an additional opportunity to challenge the facts if the suspending official determines that—

(1) Your suspension is based upon an indictment, conviction, civil judgment, or other finding by a Federal, State, or local body for which an opportunity to contest the facts was provided;

(2) Your presentation in opposition contains only general denials to information contained in the Notice of Suspension;

(3) The issues raised in your presentation in opposition to the suspension are not factual in nature, or are not material to the suspending official's initial decision to suspend, or the official's decision whether to continue the suspension; or

(4) On the basis of advice from the Department of Justice, an office of the United States Attorney, a State attorney general's office, or a State or local prosecutor's office, that substantial interests of the government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced by conducting fact-finding.

(b) You will have an opportunity to challenge the facts if the suspending official determines that—

(1) The conditions in paragraph (a) of this section do not exist; and

(2) Your presentation in opposition raises a genuine dispute over facts material to the suspension.

(c) If you have an opportunity to challenge disputed material facts under this section, the suspending official or designee must conduct additional proceedings to resolve those facts.

**§ .740 Are suspension proceedings formal?**

(a) Suspension proceedings are conducted in a fair and informal manner. The suspending official may use flexible procedures to allow you to present matters in opposition. In so doing, the suspending official is not required to follow formal rules of evidence or procedure in creating an official record upon which the official will base a final suspension decision.

(b) You as a respondent or your representative must submit any documentary evidence you want the suspending official to consider. In addition, you may present witnesses and confront any person the agency presents as a witness against you.

**§ .745 Is a record made of fact-finding proceedings?**

(a) Where fact-finding is conducted, the fact-finder must prepare written findings of fact for the record.

(b) A transcribed record of fact-finding proceedings must be made, unless you as a respondent and the [Agency noun] agree to waive it in advance. If you want a copy of the transcribed record, you may purchase it.

**§ .750 What does the suspending official consider in deciding whether to continue or terminate my suspension?**

(a) The suspending official bases the decision on all information contained in the official record. The record includes—

(1) All information in support of the suspending official's initial decision to suspend you;

(2) Any further information and argument presented in support of, or opposition to, the suspension; and

(3) Any transcribed record of fact-finding proceedings.

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

**§ .755 When will I know whether the suspension is continued or terminated?**

(a) Where no additional fact-finding is conducted, the suspending official must make the decision whether to continue, modify, or terminate your suspension within 45 days of closing the official record. The official may extend that period for good cause. If fact-finding is conducted, the suspending official must make the final decision as promptly as possible after the record is closed.

(b) In any event, the suspending official must prepare a written final decision and notify you of the decision and the reasons for it. (See § .615.)

**§ .760 How long may my suspension last?**

(a) If legal or debarment proceedings are initiated at the time of, or during your suspension, the suspension may continue until the conclusion of those proceedings. However, if proceedings are not initiated, a suspension may not exceed 12 months.

(b) The suspending official may extend the 12 month limit under paragraph (a) of this section for an additional 6 months if an office of a U.S. Assistant Attorney General, U.S. Attorney, or other responsible prosecuting official requests an extension in writing. In no event may a suspension exceed 18 months without initiating proceedings under paragraph (a) of this section.

(c) The suspending official must notify the appropriate officials under paragraph

(b) of this section of an impending termination of a suspension at least 30 days before the 12 month period expires to allow the officials an opportunity to request an extension.

**Subpart H—Debarment**

**§ .800 What are the causes for debarment?**

We may debar a person for—

(a) Conviction of or civil judgment for—

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects your present responsibility;

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as—

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction;

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, or a procurement debarment by any Federal agency taken pursuant to 48 CFR part 9, subpart 9.4, before August 25, 1995;

(2) Knowingly doing business with an ineligible person, except as permitted under § .120 or § .305;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

(4) Violation of a material provision of a voluntary exclusion agreement entered into under § .640 or of any settlement of a debarment or suspension action; or

(5) Violation of the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701); or

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

**§ .805 What notice does the debarring official give me if I am proposed for debarment?**

After consideration of the causes in § .800 of this subpart, if the debarring official proposes to debar you, the official sends you a Notice of Proposed Debarment, pursuant to § .615, advising you—

(a) That the debarring official is considering debarring you;

(b) Of the reasons for proposing to debar you in terms sufficient to put you on notice of the conduct or transactions upon which the proposed debarment is based;

(c) Of the cause(s) under § .800 upon which the debarring official relied for proposing your debarment;

(d) Of the applicable provisions of this subpart, Subpart F of this part, and any other [Agency adjective] procedures governing debarment; and

(e) Of the governmentwide effect of a debarment from procurement and nonprocurement programs and activities.

**§ .810 When does a debarment take effect?**

Unlike suspension, a debarment is not effective until the debarring official issues a decision. The debarring official does not issue a decision until the respondent has had an opportunity to contest the proposed debarment.

**§ .815 How may I contest a proposed debarment?**

If you as a respondent wish to contest a proposed debarment, you or your representative must provide the debarring official with information in opposition to the proposed debarment. You may do this orally or in writing, but

any information provided orally that you consider important must also be submitted in writing for the official record.

**§ .820 How much time do I have to contest a proposed debarment?**

(a) As a respondent you or your representative must either send, or make arrangements to appear and present, the information and argument to the debaring official within 30 days after you receive the Notice of Proposed Debarment.

(b) We consider the Notice of Proposed Debarment to be received by you—

(1) When delivered, if we mail the notice to the last known street address, or five days after we send it if the letter is undeliverable;

(2) When sent, if we send the notice by facsimile or five days after we send it if the facsimile is undeliverable; or

(3) When delivered, if we send the notice by e-mail or five days after we send it if the e-mail is undeliverable.

**§ .825 What information must I provide to the debaring official if I contest a proposed debarment?**

(a) In addition to any information and argument in opposition, as a respondent your submission to the debaring official must identify—

(1) Specific facts that contradict the statements contained in the Notice of Proposed Debarment. Include any information about any of the factors listed in § .860. A general denial is insufficient to raise a genuine dispute over facts material to the debarment;

(2) All existing, proposed, or prior exclusions under regulations implementing Executive Order 12549 and all similar actions taken by Federal, State, or local agencies, including administrative agreements that affect only those agencies;

(3) All criminal and civil proceedings not included in the Notice of Proposed Debarment that grew out of facts relevant to the cause(s) stated in the notice; and

(4) All of your affiliates.

(b) If you fail to disclose this information, or provide false information, the [Agency noun] may seek further criminal, civil or administrative action against you, as appropriate.

**§ .830 Under what conditions do I get an additional opportunity to challenge the facts on which a proposed debarment is based?**

(a) You as a respondent will not have an additional opportunity to challenge the facts if the debaring official determines that—

(1) Your debarment is based upon a conviction or civil judgment;

(2) Your presentation in opposition contains only general denials to information contained in the Notice of Proposed Debarment; or

(3) The issues raised in your presentation in opposition to the proposed debarment are not factual in nature, or are not material to the debaring official's decision whether to debar.

(b) You will have an additional opportunity to challenge the facts if the debaring official determines that—

(1) The conditions in paragraph (a) of this section do not exist; and

(2) Your presentation in opposition raises a genuine dispute over facts material to the proposed debarment.

(c) If you have an opportunity to challenge disputed material facts under this section, the debaring official or designee must conduct additional proceedings to resolve those facts.

**§ .835 Are debarment proceedings formal?**

(a) Debarment proceedings are conducted in a fair and informal manner. The debaring official may use flexible procedures to allow you as a respondent to present matters in opposition. In so doing, the debaring official is not required to follow formal rules of evidence or procedure in creating an official record upon which the official will base the decision whether to debar.

(b) You or your representative must submit any documentary evidence you want the debaring official to consider. In addition, you may present witnesses and confront any person the agency presents as a witness against you.

**§ .840 Is a record made of fact-finding proceedings?**

(a) Where fact-finding is conducted, the fact-finder must prepare written findings of fact for the record.

(b) A transcribed record of fact-finding proceedings must be made, unless you as a respondent and the [Agency noun] agree to waive it in advance. If you want a copy of the transcribed record, you may purchase it.

**§ .845 What does the debaring official consider in deciding whether to debar me?**

(a) The debaring official may debar you for any of the causes in § .800. However, the official need not debar you even if a cause for debarment exists. The official may consider the seriousness of your acts or omissions and the mitigating or aggravating factors set forth at § .860.

(b) The debaring official bases the decision on all information contained in

the official record. The record includes—

(1) All information in support of the debaring official's proposed debarment;

(2) Any further information and argument presented in support of, or in opposition to, the proposed debarment; and

(3) Any transcribed record of fact-finding proceedings.

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

**§ .850 What is the standard of proof in a debarment action?**

(a) In any debarment action, we must establish the cause for debarment by a preponderance of the evidence.

(b) If the proposed debarment is based upon a conviction or civil judgment, the standard of proof is met.

**§ .855 Who has the burden of proof in a debarment action?**

(a) We have the burden to prove that a cause for debarment exists.

(b) Once a cause for debarment is established, you as a respondent have the burden of demonstrating to the satisfaction of the debaring official that you are presently responsible and that debarment is not necessary.

**§ .860 What factors may influence the debaring official's decision?**

This section lists the mitigating and aggravating factors that the debaring official may consider in determining whether to debar you and the length of your debarment period. The debaring official may consider other factors if appropriate in light of the circumstances of a particular case. The existence or nonexistence of any factor, such as one of those set forth in this section, is not necessarily determinative of your present responsibility. In making a debarment decision, the debaring official may consider the following factors:

(a) The actual or potential harm or impact that results or may result from the wrongdoing.

(b) The frequency of incidents and/or duration of the wrongdoing.

(c) Whether there is a pattern or prior history of wrongdoing. For example, if you have been found by another Federal agency or a State agency to have engaged in wrongdoing similar to that found in the debarment action, the existence of this fact may be used by the debaring official in determining that

you have a pattern or prior history of wrongdoing.

(d) Whether you are or have been excluded or disqualified by an agency of the Federal Government or have not been allowed to participate in State or local contracts or assistance agreements on a basis of conduct similar to one or more of the causes for debarment specified in this part.

(e) Whether you have entered into an administrative agreement with a Federal agency or a State or local government that is not governmentwide but is based on conduct similar to one or more of the causes for debarment specified in this part.

(f) Whether and to what extent you planned, initiated, or carried out the wrongdoing.

(g) Whether you have accepted responsibility for the wrongdoing and recognize the seriousness of the misconduct that led to the cause for debarment.

(h) Whether you have paid or agreed to pay all criminal, civil and administrative liabilities for the improper activity, including any investigative or administrative costs incurred by the government, and have made or agreed to make full restitution.

(i) Whether you have cooperated fully with the government agencies during the investigation and any court or administrative action. In determining the extent of cooperation, the debaring official may consider when the cooperation began and whether you disclosed all pertinent information known to you.

(j) Whether the wrongdoing was pervasive within your organization.

(k) The kind of positions held by the individuals involved in the wrongdoing.

(l) Whether your organization took appropriate corrective action or remedial measures, such as establishing ethics training and implementing programs to prevent recurrence.

(m) Whether your principals tolerated the offense.

(n) Whether you brought the activity cited as a basis for the debarment to the attention of the appropriate government agency in a timely manner.

(o) Whether you have fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debaring official.

(p) Whether you had effective standards of conduct and internal control systems in place at the time the questioned conduct occurred.

(q) Whether you have taken appropriate disciplinary action against the individuals responsible for the

activity which constitutes the cause for debarment.

(r) Whether you have had adequate time to eliminate the circumstances within your organization that led to the cause for the debarment.

(s) Other factors that are appropriate to the circumstances of a particular case.

#### **§ .865 How long may my debarment last?**

(a) If the debaring official decides to debar you, your period of debarment will be based on the seriousness of the cause(s) upon which your debarment is based. Generally, debarment should not exceed three years. However, if circumstances warrant, the debaring official may impose a longer period of debarment.

(b) In determining the period of debarment, the debaring official may consider the factors in § .860. If a suspension has preceded your debarment, the debaring official must consider the time you were suspended.

(c) If the debarment is for a violation of the provisions of the Drug-Free Workplace Act of 1988, your period of debarment may not exceed five years.

#### **§ .870 When do I know if the debaring official debars me?**

(a) Where no additional fact-finding is conducted, the debaring official must make the decision whether to debar you within 45 days of closing the official record. The debaring official may extend that period for good cause. If fact-finding is conducted, the debaring official must make the final decision as promptly as possible after the record is closed.

(b) The debaring official sends you written notice, pursuant to § .615 that the official decided, either—

(1) Not to debar you; or

(2) To debar you. In this event, the notice:

(i) Refers to the Notice of Proposed Debarment;

(ii) Specifies the reasons for your debarment;

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

(iv) Advises you that your debarment is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulation (48 CFR chapter 1), throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception.

#### **§ .875 May I ask the debaring official to reconsider a decision to debar me?**

Yes, as a debarred person you may ask the debaring official to reconsider the debarment decision or to reduce the

time period or scope of the debarment. However, you must put your request in writing and support it with documentation.

#### **§ .880 What factors may influence the debaring official during reconsideration?**

The debaring official may reduce or terminate your debarment based on—

(a) Newly discovered material evidence;

(b) A reversal of the conviction or civil judgment upon which your debarment was based;

(c) A *bona fide* change in ownership or management;

(d) Elimination of other causes for which the debarment was imposed; or

(e) Other reasons the debaring official finds appropriate.

#### **§ .885 May the debaring official extend a debarment period?**

(a) Yes, the debaring official may extend a debarment for an additional period, if that official determines that an extension is necessary to protect the public interest.

(b) However, the debaring official may not extend a debarment solely on the basis of the facts and circumstances upon which the initial debarment action was based.

(c) If the debaring official decides that a debarment for an additional period is necessary, the debaring official must follow the applicable procedures in this subpart, and Subpart F of this part, to extend the debarment.

### **Subpart I—Definitions**

#### **§ .900 Adequate evidence.**

Adequate evidence means information sufficient to support the reasonable belief that a particular act or omission has occurred.

#### **§ .905 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. The ways we use to determine control include, but are not limited to—

(a) Interlocking management or ownership;

(b) Identity of interests among family members;

(c) Shared facilities and equipment;

(d) Common use of employees; or

(e) A business entity which has been organized following the exclusion of a person which has the same or similar management, ownership, or principal employees as the excluded person.

#### **§ .910 Agency.**

*Agency* means any United States executive department, military

department, defense agency, or any other agency of the executive branch. The independent regulatory agencies are not considered "agencies" for purposes of this part.

**§ .915 Agent or representative.**

*Agent or representative* means any person who acts on behalf of, or who is authorized to commit a participant in a covered transaction.

**§ .920 Civil judgment.**

*Civil judgment* means the disposition of a civil action by any court of competent jurisdiction, whether by verdict, decision, settlement, stipulation, other disposition which creates a civil liability for the complained of wrongful acts, or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801–3812).

**§ .925 Conviction.**

*Conviction* means a judgment or any other determination of guilt of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea, including a plea of nolo contendere, or any other resolution, including probation before judgment and deferred prosecution.

**§ .930 Debarment.**

*Debarment* means an action taken by a debarring official under Subpart H of this part to exclude a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1). A person so excluded is debarred.

**§ .935 Debarring official.**

(a) *Debarring official* means an agency official who is authorized to impose debarment. A debarring official is either—

- (1) The agency head; or
- (2) An official designated by the agency head.

(b) [Reserved]

**§ .940 Disqualified.**

*Disqualified* means that a person is prohibited from participating in specified Federal procurement or nonprocurement transactions as required under a statute, Executive order (other than Executive Orders 12549 and 12689) or other authority. Examples of disqualifications include persons prohibited under—

(a) The Davis-Bacon Act (40 U.S.C. 276(a));

(b) The equal employment opportunity acts and Executive orders; or

(c) The Clean Air Act (42 U.S.C. 7606), Clean Water Act (33 U.S.C. 1368) and Executive Order 11738 (3 CFR, 1973 Comp., p. 799).

**§ .945 Excluded or exclusion.**

*Excluded or exclusion* means—

(a) That a person or commodity is prohibited from being a participant in covered transactions, whether the person has been suspended; debarred; proposed for debarment under 48 CFR part 9, subpart 9.4; voluntarily excluded; or

(b) The act of excluding a person.

**§ .950 Indictment.**

*Indictment* means an indictment for a criminal offense. A presentment, information, or other filing by a competent authority charging a criminal offense shall be given the same effect as an indictment.

**§ .955 Ineligible or ineligibility.**

*Ineligible or ineligibility* means that a person or commodity is prohibited from covered transactions because of an exclusion or disqualification.

**§ .960 Legal proceedings.**

*Legal proceedings* means any criminal proceeding or any civil judicial proceeding, including a proceeding under the Program Fraud Civil Remedies Act (31 U.S.C. 3801–3812), to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term also includes appeals from those proceedings.

**§ .965 List of Parties Excluded or Disqualified from Federal Procurement and Nonprocurement Programs.**

*List of Parties Excluded or Disqualified from Federal Procurement and Nonprocurement Programs (List)* means the list compiled, maintained, and distributed by the General Services Administration (GSA) containing the names and other information about persons who are ineligible.

**§ .970 Nonprocurement transaction.**

(a) *Nonprocurement transaction* means any transaction, regardless of type (except procurement contracts), including, but not limited to the following:

- (1) Grants.
- (2) Cooperative agreements.
- (3) Scholarships.
- (4) Fellowships.
- (5) Contracts of assistance.
- (6) Loans.
- (7) Loan guarantees.
- (8) Subsidies.
- (9) Insurances.
- (10) Payments for specified uses.

(11) Donation agreements.

(b) A nonprocurement transaction at any tier does not require the transfer of Federal funds.

**§ .975 Notice.**

*Notice* means a written communication served in person, sent by certified mail or its equivalent, or sent electronically by e-mail or facsimile. (See § .615.)

**§ .980 Participant.**

*Participant* means any person who submits a proposal for or who enters into a covered transaction, including an agent or representative of a participant.

**§ .985 Person.**

*Person* means any individual, corporation, partnership, association, unit of government, or legal entity, however organized.

**§ .990 Preponderance of the evidence.**

*Preponderance of the evidence* means proof by information that, compared with information opposing it, leads to the conclusion that the fact at issue is more probably true than not.

**§ .995 Principal.**

*Principal* means—

(a) An officer, director, owner, partner, principal investigator, or other person within a participant with management or supervisory responsibilities related to a covered transaction; or

(b) A consultant or other person, whether or not employed by the participant or paid with Federal funds, who—

(1) Is in a position to handle Federal funds;

(2) Is in a position to influence or control the use of those funds; or,

(3) Occupies a technical or professional position capable of influencing the development or outcome of an activity that affects a covered transaction.

**§ .1000 Respondent.**

*Respondent* means a person against whom an agency has initiated a debarment or suspension action.

**§ .1005 State.**

(a) *State* means—

(1) Any of the States of the United States;

(2) The District of Columbia;

(3) The Commonwealth of Puerto Rico;

(4) Any territory or possession of the United States; or

(5) Any agency or instrumentality of a *State*.

(b) For purposes of this part, *State* does not include institutions of higher

education, hospitals, or units of local government.

**§ \_\_.1010 Suspending official.**

(a) *Suspending official* means an agency official who is authorized to impose suspension. The suspending official is either:

- (1) The agency head; or
  - (2) An official designated by the agency head.
- (b) [Reserved]

**§ \_\_.1015 Suspension.**

*Suspension* is an action taken by a suspending official under subpart G of this part that immediately prohibits a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1) for a temporary period, pending completion of an agency investigation and any judicial or administrative proceedings that may ensue. A person so excluded is suspended.

**§ \_\_.1020 Voluntary exclusion or voluntarily excluded.**

(a) *Voluntary exclusion* means a person's agreement to be excluded under the terms of a settlement between the person and one or more agencies. Voluntary exclusion must have governmentwide effect.

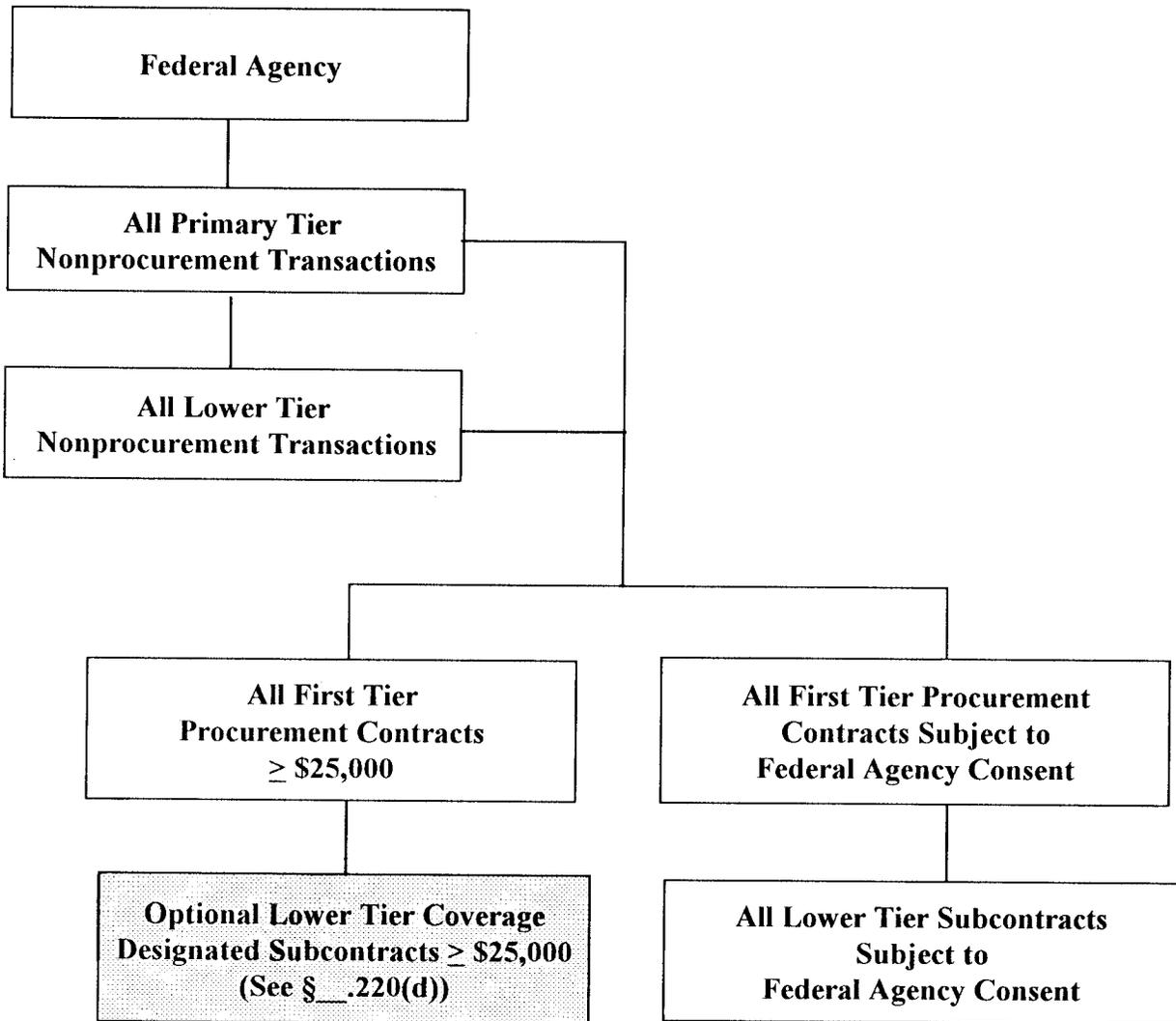
(b) *Voluntarily excluded* means the status of a person who has agreed to a voluntary exclusion.

**BILLING CODES 6325-01-P et al.**

**Subpart J - [Reserved]**

**Appendix to [ Part/Subpart] \_\_\_ – Covered Transactions**

**COVERED TRANSACTIONS**



2. [Part/Subpart] \_\_ is added to read as follows:

**[Part/Subpart] \_\_—Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)**

**Subpart A—Purpose and Coverage**

Sec.

- \_\_ .100 What does this part do?
- \_\_ .105 Does this part apply to me?
- \_\_ .110 Are any of my Federal assistance awards exempt from this part?
- \_\_ .115 Does this part affect the Federal contracts that I receive?

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

- \_\_ .200 What must I do to comply with this part?
- \_\_ .205 What must I include in my drug-free workplace statement?
- \_\_ .210 To whom must I distribute my drug-free workplace statement?
- \_\_ .215 What must I include in my drug-free awareness program?
- \_\_ .220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
- \_\_ .225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
- \_\_ .230 How and when must I identify workplaces?

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

- \_\_ .300 What must I do to comply with this part if I am an individual recipient?
- \_\_ .301 [Reserved]

**Subpart D—Responsibilities of [Agency adjective] Awarding Officials**

- \_\_ .400 What are my responsibilities as a(n) [Agency adjective] awarding official?

**Subpart E—Violations of this Part and Consequences**

- \_\_ .500 How are violations of this part determined for recipients other than individuals?
- \_\_ .505 How are violations of this part determined for recipients who are individuals?
- \_\_ .510 What actions will the Federal Government take against a recipient determined to have violated this part?
- \_\_ .515 Are there any exceptions to those actions?

**Subpart F—Definitions**

- \_\_ .605 Award.
- \_\_ .610 Controlled substance.
- \_\_ .615 Conviction.
- \_\_ .620 Cooperative agreement.
- \_\_ .625 Criminal drug statute.
- \_\_ .630 Debarment.
- \_\_ .635 Drug-free workplace.
- \_\_ .640 Employee.
- \_\_ .645 Federal agency or agency.
- \_\_ .650 Grant.
- \_\_ .655 Individual.
- \_\_ .660 Recipient.
- \_\_ .665 State.
- \_\_ .670 Suspension

**Subpart A—Purpose and Coverage**

**§ \_\_.100 What does this part do?**

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

**§ \_\_.105 Does this part apply to me?**

- (a) Portions of this part apply to you if you are either
  - (1) A recipient of an assistance award from the [Agency noun]; or
  - (2) A(n) [Agency adjective] awarding official. (*See* definitions of *award* and *recipient* in §§ \_\_.605 and \_\_.660, respectively.)
- (b) The following table shows the subparts that apply to you:

If you are ...	see subparts ...
(1) a recipient who is <i>not</i> an individual.	A, B and E.
(2) a recipient who is an individual.	A, C and E.
(3) a(n) [Agency adjective] awarding official.	A, D and E.

**§ \_\_.110 Are any of my Federal assistance awards exempt from this part?**

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

**§ \_\_.115 Does this part affect the Federal contracts that I receive?**

It will affect future contract awards indirectly if you are debarred or suspended for a violation of the requirements of this part, as described in § \_\_.510(c). However, this part does not apply directly to procurement contracts. The portion of the Drug-Free Workplace Act of 1988 that applies to Federal procurement contracts is carried out through the Federal Acquisition Regulation in chapter 1 of Title 48 of the Code of Federal Regulations (the drug-free workplace coverage currently is in 48 CFR part 23, subpart 23.5).

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

**§ \_\_.200 What must I do to comply with this part?**

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

- (a) First, you must make a good faith effort, on a continuing basis, to maintain

a drug-free workplace. You must agree to do so as a condition for receiving any award covered by this part. The specific measures that you must take in this regard are described in more detail in subsequent sections of this subpart. Briefly, those measures are to—

- (1) Publish a drug-free workplace statement and establish a drug-free awareness program for your employees (see §§ \_\_.205 through \_\_.220); and
- (2) Take actions concerning employees who are convicted of violating drug statutes in the workplace (see § \_\_.225).

(b) Second, you must identify all known workplaces under your Federal awards (see § \_\_.230).

**§ \_\_.205 What must I include in my drug-free workplace statement?**

You must publish a statement that

- (a) Tells your employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in your workplace;
- (b) Specifies the actions that you will take against employees for violating that prohibition; and
- (c) Lets each employee know that, as a condition of employment under any award, he or she:

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

**§ \_\_.210 To whom must I distribute my drug-free workplace statement?**

You must require that a copy of the statement described in § \_\_.205 be given to each employee who will be engaged in the performance of any Federal award.

**§ \_\_.215 What must I include in my drug-free awareness program?**

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

- (a) The dangers of drug abuse in the workplace;
- (b) Your policy of maintaining a drug-free workplace;
- (c) Any available drug counseling, rehabilitation, and employee assistance programs; and
- (d) The penalties that you may impose upon them for drug abuse violations occurring in the workplace.

**§ \_\_.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?**

If you are a new recipient that does not already have a policy statement as

described in § \_\_.205 and an ongoing awareness program as described in § \_\_.215, you must publish the statement and establish the program by the time given in the following table:

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

**§ \_\_.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?**

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

(a) First, you must notify Federal agencies if an employee who is engaged in the performance of an award informs you about a conviction, as required by § \_\_.205(c)(2), or you otherwise learn of the conviction. Your notification to the Federal agencies must—

- (1) Be in writing;
- (2) Include the employee's position title;
- (3) Include the identification number(s) of each affected award;
- (4) Be sent within ten calendar days after you learn of the conviction; and
- (5) Be sent to every Federal agency on whose award the convicted employee was working. It must be sent to every awarding official or his or her official designee, unless the Federal agency has specified a central point for the receipt of the notices.

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

- (1) Take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended; or
- (2) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program

approved for these purposes by a Federal, State or local health, law enforcement, or other appropriate agency.

**§ \_\_.230 How and when must I identify workplaces?**

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

- (1) To the [Agency adjective] official that is making the award, either at the time of application or upon award; or
- (2) In documents that you keep on file in your offices during the performance of the award, in which case you must make the information available for inspection upon request by [Agency adjective] officials or their designated representatives.

(b) Your workplace identification for an award must include the actual address of buildings (or parts of buildings) or other sites where work under the award takes place.

Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

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

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

**§ \_\_.300 What must I do to comply with this part if I am an individual recipient?**

As a condition of receiving a(n) [Agency adjective] award, if you are an individual recipient, you must agree that—

- (a) You will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity related to the award; and
- (b) If you are convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity, you will report the conviction:
  - (1) In writing.
  - (2) Within 10 calendar days of the conviction.
  - (3) To the [Agency adjective] awarding official or other designee for

each award that you currently have, unless § \_\_.301 or the award document designates a central point for the receipt of the notices. When notice is made to a central point, it must include the identification number(s) of each affected award.

**§ \_\_.301 [Reserved]**

**Subpart D—Responsibilities of [Agency adjective] Awarding Officials**

**§ \_\_.400 What are my responsibilities as a(n) [Agency adjective] awarding official?**

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

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

**Subpart E—Violations of this Part and Consequences**

**§ \_\_.500 How are violations of this part determined for recipients other than individuals?**

A recipient other than an individual is in violation of the requirements of this part if the [Agency head or designee] determines, in writing, that—

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

**§ \_\_.505 How are violations of this part determined for recipients who are individuals?**

An individual recipient is in violation of the requirements of this part if the [Agency head or designee] determines, in writing, that—

- (a) The recipient has violated the requirements of Subpart C of this part; or
- (b) The recipient is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity.

**§ \_\_.510 What actions will the Federal Government take against a recipient determined to have violated this part?**

If a recipient is determined to have violated this part, as described in § \_\_.500 or § \_\_.505, the [Agency noun] may take one or more of the following actions—

- (a) Suspension of payments under the award;
- (b) Suspension or termination of the award; and

(c) Suspension or debarment of the recipient under [CFR citation for the Federal agency's regulations implementing Executive Order 12549 and Executive Order 12689], for a period not to exceed five years.

**§ .515 Are there any provision for exceptions to those actions?**

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

**Subpart F—Definitions**

**§ .605 Award.**

*Award* means an award of financial assistance by the [Agency noun] or other Federal agency directly to a recipient.

(a) The term *award* includes:

- (1) A Federal grant or cooperative agreement, in the form of money or property in lieu of money.
- (2) A block grant or a grant in an entitlement program, whether or not the grant is exempted from coverage under the Governmentwide rule [Agency-specific CFR citation] that implements OMB Circular A-102 (for availability, see 5 CFR 1310.3) and specifies uniform administrative requirements.

(b) The term *award* does not include:

- (1) Technical assistance that provides services instead of money.
- (2) Loans.
- (3) Loan guarantees.
- (4) Interest subsidies.
- (5) Insurance.
- (6) Direct appropriations.
- (7) Veterans' benefits to individuals (*i.e.*, any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States).

**§ .610 Controlled substance.**

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

**§ .615 Conviction.**

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

**§ .620 Cooperative agreement.**

*Cooperative agreement* means an award of financial assistance that, consistent with 31 U.S.C. 6305, is used to enter into the same kind of relationship as a grant (*see* definition of *grant* in § .650), except that substantial involvement is expected between the Federal agency and the recipient when carrying out the activity contemplated by the award. The term does not include *cooperative research and development agreements* as defined in 15 U.S.C. 3710a.

**§ .625 Criminal drug statute.**

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

**§ .630 Debarment.**

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

**§ .635 Drug-free workplace.**

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

**§ .640 Employee.**

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

- (1) All direct charge employees;
- (2) All indirect charge employees, unless their impact or involvement in the performance of work under the award is insignificant to the performance of the award; and
- (3) Temporary personnel and consultants who are directly engaged in the performance of work under the award and who are on the recipient's payroll.

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

not on the payroll; or employees of subrecipients or subcontractors in covered workplaces).

**§ .645 Federal agency or agency.**

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

**§ .650 Grant.**

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

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

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

**§ .655 Individual.**

*Individual* means a natural person.

**§ .660 Recipient.**

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

**§ .665 State.**

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

**§ .670 Suspension.**

*Suspension* means an action taken by a Federal agency that immediately prohibits a recipient from participating in Federal Government procurement contracts and covered nonprocurement transactions for a temporary period, pending completion of an investigation and any judicial or administrative proceedings that may ensue. A recipient so prohibited is suspended, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and the common rule, Government-wide Debarment and Suspension (Nonprocurement), that implements Executive Order 12549 and Executive Order 12689. Suspension of a recipient

is a distinct and separate action from suspension of an award or suspension of payments under an award.

### Adoption of Proposed Common Rules

The adoption of the proposed common rules by the participating agencies, as modified by agency-specific text is set forth below:

#### OFFICE OF PERSONNEL MANAGEMENT

#### 5 CFR Part 970

#### RIN 3206-AJ31

**FOR FURTHER INFORMATION CONTACT:** J. David Cope, Debarment Official, Office of the Inspector General, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, e-mail [debar@opm.gov](mailto:debar@opm.gov), fax (202) 606-2153.

**ADDITIONAL SUPPLEMENTARY INFORMATION:** The Office of Personnel Management adopted the Nonprocurement Debarment and Suspension Common Rule on May 17, 1993, following the text of the governmentwide rule as published on May 26, 1988 (53 FR 19160). OPM did not adopt subpart F of the common rule, pertaining to requirements for drug-free workplace (grants), because the agency did not issue assistance awards, grants, or other forms of financial or nonfinancial assistance that would be covered by those provisions. For the same reasons, OPM is not adopting the separate regulatory part on drug-free workplace requirements that has been developed as part of this governmentwide regulatory package.

#### List of Subjects in 5 CFR Part 970

Administrative practice and procedure, Government employees, Grant programs, Loan programs, Hostages, Iraq, Kuwait, Lebanon.

Approved: Office of Personnel Management.

**Kay Cole James,**

*Director.*

For the reasons stated in the common preamble, the Office of Personnel Management proposes to amend part 970 of title 5, Code of Federal Regulations as follows:

1. Part 970 is revised as set forth in instruction 1 at the end of the common preamble.:

#### PART 970—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

970.25 How is this part organized?

970.50 How is this part written?

970.75 Do terms in this part have special meanings?

#### Subpart A—General

970.100 What does this part do?

970.105 Does this part apply to me?

970.110 What is the purpose of the nonprocurement debarment and suspension system?

970.115 How does an exclusion restrict a person's involvement in covered transactions?

970.120 May we grant an exception to let an excluded person participate in a covered transaction?

970.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?

970.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?

970.135 May the OPM exclude a person who is not currently participating in a nonprocurement transaction?

970.140 How do I know if a person is excluded?

970.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

#### Subpart B—Covered Transactions

970.200 What is a covered transaction?

970.205 Why is it important to know if a particular transaction is a covered transaction?

970.210 Which nonprocurement transactions are covered transactions?

970.215 Which nonprocurement transactions are not covered transactions?

970.220 Are any procurement contracts included as covered transactions?

970.225 How do I know if a transaction in which I may participate in is a covered transaction?

#### Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

970.300 May I enter into a covered transaction with an excluded or disqualified person?

970.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?

970.310 May I use the services of an excluded person under a covered transaction?

970.315 Must I verify that principals of my covered transactions are eligible to participate?

970.320 What happens if I do business with an excluded person in a covered transaction?

970.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

#### Disclosing Information Primary Tier Participants

970.330 What information must I provide before entering into a covered transaction with the OPM?

970.335 If I disclose unfavorable information required under § 970.330

will I be prevented from entering into the transaction?

970.340 What happens if I fail to disclose the information required under § 970.330?

970.345 What must I do if I learn of the information required under § 970.330 after entering into a covered transaction with the OPM?

#### Disclosing Information—Lower Tier Participants

970.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?

970.355 What happens if I fail to disclose the information required under § 970.350?

970.360 What must I do if I learn of information required under § 970.350 after entering into a covered transaction with a higher tier participant?

#### Subpart D—Responsibilities of OPM Officials Regarding Transactions

970.400 May I enter into a transaction with an excluded or disqualified person?

970.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?

970.410 May I approve a participant's use of the services of an excluded person?

970.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?

970.420 May I approve a transaction with an excluded or disqualified person at a lower tier?

970.425 When do I check to see if a person is excluded or disqualified?

970.430 How do I check to see if a person is excluded or disqualified?

970.435 What must I require of a primary tier participant?

970.440 What method do I use to communicate those requirements to participants?

970.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?

970.450 What action may I take if a primary tier participant fails to disclose the information required under § 970.330?

970.455 What may I do if a lower tier participant fails to disclose the information required under § 970.350 to the next higher tier?

#### Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs

970.500 What is the purpose of the List?

970.505 Who uses the List?

970.510 Who maintains the List?

970.515 What specific information is on the List?

970.520 Who gives the GSA the information that it puts on the List?

970.525 Whom do I ask if I have questions about a person on the List?

970.530 Where can I get the List?

**Subpart F—General Principles Relating to Suspension and Debarment Actions**

- 970.600 How do suspension and debarment actions start?
- 970.605 How does suspension differ from debarment?
- 970.610 What procedures does the OPM use in suspension and debarment actions?
- 970.615 How does the OPM notify a person of suspension and debarment actions?
- 970.620 Do Federal agencies coordinate suspension and debarment actions?
- 970.625 What is the scope of a suspension or debarment action?
- 970.630 May the OPM impute the conduct of one person to another?
- 970.635 May the OPM settle a debarment or suspension action?
- 970.640 May a settlement include a voluntary exclusion?
- 970.645 Do other Federal agencies know if the OPM agrees to a voluntary exclusion?

**Subpart G—Suspension**

- 970.700 When may the suspending official issue a suspension?
- 970.705 What does the suspending official consider in issuing a suspension?
- 970.710 When does a suspension take effect?
- 970.715 What notice does the suspending official give me if I am suspended?
- 970.720 How may I contest a suspension?
- 970.725 How much time do I have to contest a suspension?
- 970.730 What information must I provide to the suspending official if I contest a suspension?
- 970.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 970.740 Are suspension proceedings formal?
- 970.745 Is a record made of fact-finding proceedings?
- 970.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 970.755 When will I know whether the suspension is continued or terminated?
- 970.760 How long may my suspension last?

**Subpart H—Debarment**

- 970.800 What are the causes for debarment?
- 970.805 What notice does the debarring official give me if I am proposed for debarment?
- 970.810 When does a debarment take effect?
- 970.815 How may I contest a proposed debarment?
- 970.820 How much time do I have to contest a proposed debarment?
- 970.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 970.830 Under what conditions do I get an additional opportunity to challenge the facts on which a proposed debarment is based?
- 970.835 Are debarment proceedings formal?
- 970.840 Is a record made of fact-finding proceedings?
- 970.845 What does the debarring official consider in deciding whether to debar me?

- 970.850 What is the standard of proof in a debarment action?
- 970.855 Who has the burden of proof in a debarment action?
- 970.860 What factors may influence the debarring official's decision?
- 970.865 How long may my debarment last?
- 970.870 When do I know if the debarring official debars me?
- 970.875 May I ask the debarring official to reconsider a decision to debar me?
- 970.880 What factors may influence the debarring official during reconsideration?
- 970.885 May the debarring official extend a debarment?

**Subpart I—Definitions**

- 970.900 Adequate evidence.
- 970.905 Affiliate.
- 970.910 Agency.
- 970.915 Agent or representative.
- 970.920 Civil judgment.
- 970.925 Conviction.
- 970.930 Debarment
- 970.935 Debarring official.
- 970.940 Disqualified.
- 970.945 Excluded or exclusion.
- 970.950 Indictment.
- 970.955 Ineligible or ineligibility.
- 970.960 Legal proceedings.
- 970.965 List of Parties Excluded or Disqualified from Federal Procurement and Nonprocurement Programs.
- 970.970 Nonprocurement transaction.
- 970.975 Notice.
- 970.980 Participant
- 970.985 Person.
- 970.990 Preponderance of the evidence.
- 970.995 Principal.
- 970.1000 Respondent.
- 970.1005 State.
- 970.1010 Suspending official.
- 970.1015 Suspension.
- 970.1020 Voluntary exclusion or voluntarily excluded.

**Subpart J [Reserved]****Appendix to Part 970—Covered Transactions**

**Authority:** Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

2. Part 970 is further amended as set forth below.

a. “[Agency noun]” is removed and “OPM” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “OPM” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “Debarring Official” is added in its place wherever it occurs.

3. Section 970.440 is added to read as follows:

**§ 970.440 What method do I use to communicate those requirements to participants?**

To communicate the requirement, you must include a term or condition in the transaction requiring the participants’

compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

**DEPARTMENT OF AGRICULTURE****7 CFR Parts 3017 and 3021****RIN 0505–AA11**

**ADDRESSES:** Comments on the Department of Agriculture’s additional provisions should be addressed to Patricia E. Healy, Acting Chief Financial Officer, U.S. Department of Agriculture, Room 143–W, Whitten Building, 1400 Independence Avenue, SW., Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Gerald Miske, Fiscal Policy Division, Office of the Chief Financial Officer, 202–720–1553.

**ADDITIONAL SUPPLEMENTARY INFORMATION:** The Department of Agriculture (USDA) is publishing these proposed rules in order to update these two regulations, and to maintain governmentwide uniformity in grants management policy that is a primary objective of Pub. L. 106–107, “The Federal Financial Assistance Management Improvement Act of 1999.”

The requirements for maintaining a drug-free workplace are being removed as a subpart in the current debarment and suspension common rule, and re-codified as a separate part 3021.

The appendix that is referenced in § 3017.50 contains a model for covered transactions that would be accurate for all USDA agencies if USDA had not added certain exclusions in §§ 3017.215 and 3017.220. Therefore, it is necessary to clarify that the appendix contains a general model that will vary for certain categories of transactions in accordance with the exclusions from covered transactions in §§ 3017.215 and 3017.220.

USDA has limited covered transactions under its current debarment and suspension regulation (7 CFR part 3017) to primary tier transactions for all of its export and foreign assistance programs. USDA proposes to retain this limited coverage for most of its export and foreign assistance programs but to expand the coverage slightly for certain market development and foreign assistance programs. The coverage would be expanded to include: (1) Any lower tiers non procurement transaction between a nonprofit trade association or state regional group and a U.S. entity under the Market Excess Program; and (2) any procurement contract for ocean transportation under USDA’s foreign assistance programs. The types of lower

tier transactions that would be covered would be those in which the Department of Agriculture would be making an identifiable payment, directly or indirectly, to the participant in the specific lower tier transaction. In accordance with §§ 3017.215 (i) and 3017.220 (d), these two types of transactions would be the only lower tier nonprocurement or procurement transactions in USDA's export and foreign assistance programs that would be covered transactions under this regulation.

USDA has identified in § 3017.215 certain nonprocurement transactions that will not be covered by this regulation.

Under § 3017.220, USDA has included certain procurement contracts as covered transactions when the contract is for the procurement of ocean transportation in connection with USDA's export and foreign assistance programs.

In order to communicate requirements to lower-tier covered transactions, USDA has added § 3017.440 requiring USDA agencies to include a term in each agreement for participants' compliance with Subpart C.

In §§ 3017.755 (a) and 3017.870 (a) USDA has added the requirement that the record remain open for a full 30 days after the respondent receives the notice of suspension or debarment even if a submission in opposition is made before the 30 days expire. This requirement was included in order to make the timing of these actions clear.

USDA does not have a centralized appeal process and therefore has retained in § 3017.765 the appeal process established in the current USDA regulation on debarment.

#### List of Subjects

##### 7 CFR Part 3017

Administrative practice and procedure, Debarment and suspension, Grant programs-agriculture, Loan programs-agriculture, Reporting and recordkeeping requirements.

##### 7 CFR Part 3021

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

Dated: June 1, 2001.

**Patricia E. Healy,**  
*Acting, Chief Financial Officer.*

Dated: June 6, 2001.

**Ann M. Veneman,**  
*Secretary of Agriculture.*

For the reasons stated in the common preamble, the United States Department of Agriculture proposes to amend 7 CFR Chapter XXX as follows:

1. Part 3017 is revised to read as set forth in instruction 1 at the end of the common preamble.

#### **PART 3017—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

Sec.

3017.25 How is this part organized?

3017.50 How is this part written?

3017.75 Do terms in this part have special meanings?

##### **Subpart A—General**

3017.100 What does this part do?

3017.105 Does this part apply to me?

3017.110 What is the purpose of the nonprocurement debarment and suspension system?

3017.115 How does an exclusion restrict a person's involvement in covered transactions?

3017.120 May we grant an exception to let an excluded person participate in a covered transaction?

3017.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?

3017.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?

3017.135 May the Department of Agriculture exclude a person who is not currently participating in a nonprocurement transaction?

3017.140 How do I know if a person is excluded?

3017.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

##### **Subpart B—Covered Transactions**

3017.200 What is a covered transaction?

3017.205 Why is it important to know if a particular transaction is a covered transaction?

3017.210 Which nonprocurement transactions are covered transactions?

3017.215 Which nonprocurement transactions are not covered transactions?

3017.220 Are any procurement contracts included as covered transactions?

3017.225 How do I know if a transaction that I may participate in is a covered transaction?

#### **Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons**

3017.300 May I enter into a covered transaction with an excluded or disqualified person?

3017.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?

3017.310 May I use the services of an excluded person under a covered transaction?

3017.315 Must I verify that principals of my covered transactions are eligible to participate?

3017.320 What happens if I do business with an excluded person in a covered transaction?

3017.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

##### **Disclosing Information—Primary Tier Participants**

3017.330 What information must I provide before entering into a covered transaction with the Department of Agriculture.

3017.335 If I disclose unfavorable information required under § 3017.330 will I be prevented from entering into the transaction?

3017.340 What happens if I fail to disclose the information required under § 3017.330?

3017.345 What must I do if I learn of the information required under § 3017.330 after entering into a covered transaction with the Department of Agriculture?

##### **Disclosing Information—Lower Tier Participants**

3017.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?

3017.355 What happens if I fail to disclose the information required under § 3017.350?

3017.360 What must I do if I learn of information required under § 3017.350 after entering into a covered transaction with a higher tier participant?

#### **Subpart D—Responsibilities of Department of Agriculture Officials Regarding Transactions**

3017.400 May I enter into a transaction with an excluded or disqualified person?

3017.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?

3017.410 May I approve a participant's use of the services of an excluded person?

3017.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?

3017.420 May I approve a transaction with an excluded or disqualified person at a lower tier?

3017.425 When do I check to see if a person is excluded or disqualified?

3017.430 How do I check to see if a person is excluded or disqualified?

- 3017.435 What must I require of a primary tier participant?
- 3017.440 What method do I use to communicate those requirements to participants?
- 3017.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
- 3017.450 What action may I take if a primary tier participant fails to disclose the information required under § 3017.330?
- 3017.455 What may I do if a lower tier participant fails to disclose the information required under § 3017.350 to the next higher tier?

**Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs**

- 3017.500 What is the purpose of the List?
- 3017.505 Who uses the List?
- 3017.510 Who maintains the List?
- 3017.515 What specific information is on the List?
- 3017.520 Who gives the GSA the information that it puts on the List?
- 3017.525 Whom do I ask if I have questions about a person on the List?
- 3017.530 Where can I get the List?

**Subpart F—General Principles Relating to Suspension and Debarment Actions**

- 3017.600 How do suspension and debarment actions start?
- 3017.605 How does suspension differ from debarment?
- 3017.610 What procedures does the Department of Agriculture use in suspension and debarment actions?
- 3017.615 How does the Department of Agriculture notify a person of suspension and debarment actions?
- 3017.620 Do Federal agencies coordinate suspension and debarment actions?
- 3017.625 What is the scope of a suspension or debarment action?
- 3017.630 May the Department of Agriculture impute the conduct of one person to another?
- 3017.635 May the Department of Agriculture settle a debarment or suspension action?
- 3017.640 May a settlement include a voluntary exclusion?
- 3017.645 Do other Federal agencies know if the Department of Agriculture agrees to a voluntary exclusion?

**Subpart G—Suspension**

- 3017.700 When may the suspending official issue a suspension?
- 3017.705 What does the suspending official consider in issuing a suspension?
- 3017.710 When does a suspension take effect?
- 3017.715 What notice does the suspending official give me if I am suspended?
- 3017.720 How may I contest a suspension?
- 3017.725 How much time do I have to contest a suspension?
- 3017.730 What information must I provide to the suspending official if I contest a suspension?

- 3017.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 3017.740 Are suspension proceedings formal?
- 3017.745 Is a record made of fact-finding proceedings?
- 3017.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 3017.755 When will I know whether the suspension is continued or terminated?
- 3017.760 How long may my suspension last?
- 3017.765 How may I appeal my suspension?

**Subpart H—Debarment**

- 3017.800 What are the causes for debarment?
- 3017.805 What notice does the debarring official give me if I am proposed for debarment?
- 3017.810 When does a debarment take effect?
- 3017.815 How may I contest a proposed debarment?
- 3017.820 How much time do I have to contest a proposed debarment?
- 3017.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 3017.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
- 3017.835 Are debarment proceedings formal?
- 3017.840 Is a record made of fact-finding proceedings?
- 3017.845 What does the debarring official consider in deciding whether to debar me?
- 3017.850 What is the standard of proof in a debarment action?
- 3017.855 Who has the burden of proof in a debarment action?
- 3017.860 What factors may influence the debarring official's decision?
- 3017.865 How long may my debarment last?
- 3017.870 When do I know if the debarring official debar me?
- 3017.875 May I ask the debarring official to reconsider a decision to debar me?
- 3017.880 What factors may influence the debarring official during reconsideration?
- 3017.885 May the debarring official extend a debarment?
- 3017.890 How may I appeal my debarment?

**Subpart I—Definitions**

- 3017.900 Adequate evidence.
- 3017.905 Affiliate.
- 3017.910 Agency.
- 3017.915 Agent or representative.
- 3017.920 Civil judgment.
- 3017.925 Conviction.
- 3017.930 Debarment.
- 3017.935 Debarring official.
- 3017.940 Disqualified.
- 3017.945 Excluded or exclusion.
- 3017.950 Indictment.
- 3017.955 Ineligible or ineligibility.
- 3017.960 Legal proceedings.

- 3017.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.
- 3017.970 Nonprocurement transaction.
- 3017.975 Notice.
- 3017.980 Participant.
- 3017.985 Person.
- 3017.990 Preponderance of the evidence.
- 3017.995 Principal.
- 3017.1000 Respondent.
- 3017.1005 State.
- 3017.1010 Suspending official.
- 3017.1015 Suspension.
- 3017.1020 Voluntary exclusion or voluntarily excluded.

**Subpart J [Reserved]**

**Appendix to Part 3017—Covered Transactions**

**Authority:** 5 U.S.C. 301; Pub. L. 101–576, 104 Stat. 2838; 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. 12698 (3 CFR, 1989 Comp., p. 235); 7 CFR part 2, subpart D, § 2.28.

2. Part 3017 is further amended as set forth below:

a. “[Agency noun]” is removed and “Department of Agriculture” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “Department of Agriculture” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “the Secretary of Agriculture or designee” is added in its place wherever it occurs.

3. Section 3017.50 is further amended by adding a sentence to the end of paragraph (c) to read as follows:

**§ 3017.50 How is this part written?**

(c) \* \* \* The “Covered Transactions” chart in the appendix to this part shows the general model for the levels or “tiers” at which the Department of Agriculture enforces an exclusion under this part. However, the chart in the appendix shows only the general model and the model will vary for certain categories of transactions in accordance with the exclusions from covered transactions in §§ 3017.215 and 3017.220.

4. Section 3017.215 is further amended by adding paragraphs (h) through (p) to read as follows:

**§ 3017.215 Which nonprocurement transactions are not covered transactions?**

\* \* \* \* \*

(h) An entitlement or mandatory award required by a statute, including a lower tier entitlement or mandatory award that is required by a statute.

(i) With respect to the Department of Agriculture’s export and foreign assistance programs, any transaction below the primary tier covered transaction other than a nonprocurement transaction under the

Market Access Program between a nonprofit trade association or state regional group and a U.S. entity, as defined in part 1485 of this title.

(j) Any transaction under the Department of Agriculture's conservation programs, warehouse licensing programs, or programs that provide statutory entitlements and make available loans to individuals and entities in their capacity as producers of agricultural commodities.

(k) The export or substitution of Federal timber governed by the Forest Resources Conservation and Shortage Relief Act of 1990, 16 U.S.C. 620 *et seq.* (The "Export Act"), which provides separate statutory authority to debar.

(l) The receipt of licenses, permits, certificates, and indemnification under regulatory programs conducted in the interest of public health and safety, and animal and plant health and safety.

(m) The receipt of official grading and inspection services, animal damage control services, public health and safety inspection services, and animal and plant health and safety inspection services.

(n) If the person is a State or local government, the provision of official grading and inspection services, animal damage control services, animal and plant health and safety inspection services.

(o) The receipt of licenses, permit, or certificates under regulatory programs conducted in the interest of ensuring fair trade practices.

(p) Permits, licenses, exchanges and other acquisitions of real property, rights of way, and easements under natural resource management programs.

5. Section 3017.220 is amended by adding paragraph (d) to read as follows:

**§ 3017.220 Are any procurement contracts included as covered transactions?**

\* \* \* \* \*

(d) The contract is for the procurement of ocean transportation in connection with the Department of Agriculture's foreign assistance programs. With respect to the Department of Agriculture's export and foreign assistance programs, such contracts are the only procurement contracts included as covered transactions, notwithstanding the provisions in paragraphs (a) through (c) of this section.

6. Section 3017.440 is added to read as follows:

**§ 3017.440 What method do I use to communicate those requirements to participants?**

To communicate the requirement, you must include a term or condition in the

transaction requiring the participants' compliance with Subpart C of this part and requiring them to include similar term or condition in lower-tier covered transactions.

7. Section 3017.755 is further amended by adding a sentence at the end of paragraph (a) to read as follows:

**§ 3017.755 When will I know whether the suspension is continued or terminated?**

(a) \* \* \* However, the record will remain open for the full 30 days, as called for in § 3017.725, even when you make a submission before the 30 days expire.

\* \* \* \* \*

8. Section 3017.765 is added to subpart G to read as follows:

**§ 3017.765 How may I appeal my suspension?**

(a) An appeal may be filled only after the respondent has exhausted the option to contest the suspension in § 3017.720. The appeal must be filed within 30 days of receiving the decision required § 3017.755 and it must specify the basis of the appeal. The respondent must file the appeal in writing to the Hearing Clerk in the Office of Administrative Law Judges (OALJ), United States Department of Agriculture (USDA), Washington, DC 20250. The decision of a suspending official under § 3017.700 may be vacated by the assigned appeals officer only if the officer determines that the decision is:

- (1) Not in accordance with law;
- (2) Not based on the applicable standard of evidence; or
- (3) Arbitrary and capricious and an abuse of discretion.

(b) The appeals officer will base the decision solely on the administrative record.

(c) Within 90 days of the date the appeal is filed with USDA's OALJ Hearing Clerk, the appeals officer will notify, in writing, the respondent(s) and the suspending official, who took the action being appealed, of the decision.

(d) The appeals officer's decision is final and it not appealable within USDA.

9. Section 3017.800 is further amended by adding paragraph (e) to read as follows:

**§ 3017.800 What are the causes of debarment?**

\* \* \* \* \*

(e) Notwithstanding paragraph (c) (1) of this section, within the Department of Agriculture a nonprocurement debarment by any Federal agency taken before March 1, 1989.

10. Section 3017.870 is further amended by adding a sentence to the end of paragraph (a) to read as follows:

**§ 3017.870 When do I know if the debarring official debar me?**

(a) \* \* \* However, the record will remain open for the full 30 days, as called for in § 3017.820, even when you make a submission before the 30 days expire.

\* \* \* \* \*

11. Section 3017.890 is added to subpart H to read as follows:

**§ 3017.890 How may I appeal my debarment?**

(a) An appeal may be filed only after the respondent has exhausted the option to contest the debarment in § 3017.815. The appeal must be filed within 30 days of receiving the decision required § 3017.870 and it must specify the basis of the appeal. The respondent must file the appeal in writing to the Hearing Clerk in the Office of Administrative Law Judges (OALJ), United States Department of Agriculture (USDA), Washington, DC 20250. The decision of a debarring official under § 3017.800 may be vacated by the assigned appeals officer only if the officer determines that the decision is:

- (1) Not in accordance with law;
- (2) Not based on the applicable standard of evidence; or
- (3) Arbitrary and capricious and an abuse of discretion.

(b) The appeals officer will base the decision solely on the administrative record.

(c) Within 90 days of the date the appeal is filed with USDA's OALJ Hearing

Clerk, the appeals officer will notify, in writing, the respondent(s) and the debarring official, who took the action being appealed, of the decision.

(d) The appeals officer's decision is final and it not appealable within USDA.

12. Section 3017.935 is further amended by adding paragraph (b) to read as follows:

**§ 3017.935 Debarring official.**

\* \* \* \* \*

(b) Within USDA, the Secretary has designated the Administrators of program agencies to be the debarring official, *i.e.* Administrator, Food and Nutrition Service. Further, the Secretary authorizes these officials to delegate any and all functions except for making the final decision. Final decision includes the decision to initiate, maintain, or continue a debarment.

13. Section 3017.1010 is further amended by adding paragraph (b) to read as follows:

**§ 3017.1010 Suspending official.**

\* \* \* \* \*

(b) Within USDA, the Secretary has designated the Administrators of program agencies to be the suspending official, *i.e.* Administrator, Food and Nutrition Service. Further, the Secretary authorizes these officials to delegate any and all functions except for making the final decision. Final decision includes the decision to initiate, maintain, or continue a suspension.

14. Part 3021 is added to read as set forth in instruction 2 at the end of the common preamble.

## **PART 3021—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)**

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

Sec.

- 3021.100 What does this part do?  
 3021.105 Does this part apply to me?  
 3021.110 Are any of my Federal assistance awards exempt from this part?  
 3021.115 Does this part affect the Federal contracts that I receive?

### **Subpart B—Requirements for Recipients Other Than Individuals**

- 3021.200 What must I do to comply with this part?  
 3021.205 What must I include in my drug-free workplace statement?  
 3021.210 To whom must I distribute my drug-free workplace statement?  
 3021.215 What must I include in my drug-free awareness program?  
 3021.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?  
 3021.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?  
 3021.230 How and when must I identify workplaces?

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

- 3021.300 What must I do to comply with this part if I am an individual recipient?  
 3021.301 [Reserved]

### **Subpart D—Responsibilities of Department of Agriculture Awarding Officials**

- 3021.400 What are my responsibilities as a Department of Agriculture awarding official?

### **Subpart E—Violations of This Part and Consequences**

- 3021.500 How are violations of this part determined for recipients other than individuals?  
 3021.505 How are violations of this part determined for recipients who are individuals?  
 3021.510 What actions will the Federal Government take against a recipient determined to have violated this part?  
 3021.515 Are there any exceptions to those actions?

### **Subpart F—Definitions**

- 3021.605 Award.

- 3021.610 Controlled substance.  
 3021.615 Conviction.  
 3021.620 Cooperative agreement.  
 3021.625 Criminal drug statute.  
 3021.630 Debarment.  
 3021.635 Drug-free workplace.  
 3021.640 Employee.  
 3021.645 Federal agency or agency.  
 3021.650 Grant.  
 3021.655 Individual.  
 3021.660 Recipient.  
 3021.665 State.  
 3021.670 Suspension.

**Authority:** 5 U.S.C. 301; 41 U.S.C. 701, *et seq.*; Pub. L. 101–576, 104 Stat. 2838; 7 CFR Part 2, Subpart D, § 2.28.

15. Part 3021 is further amended as set forth below:

a. “[Agency noun]” is removed and “Department of Agriculture” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “Department of Agriculture” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “the Secretary of Agriculture or designee” is added in its place wherever it occurs.

d. “[Agency head]” is removed and “the Secretary of Agriculture” is added in its place wherever it occurs.

16. Section 3021.510(c) is further amended by removing “[CFR citation for the Federal Agency’s regulations implementing Executive Order 12549 and Executive Order 12689]” and adding “7 CFR part 3017” in its place.

17. Section 3021.605 (a)(2) is further amended by removing “[Agency-specific CFR citation]” and adding “7 CFR part 3016” in its place.

## **DEPARTMENT OF ENERGY**

### **10 CFR Parts 606, 607 and 1036**

#### **RIN 1991–AB56**

#### **FOR FURTHER INFORMATION CONTACT:**

Cynthia G. Yee, 202–586–1140;  
*cynthia.yee@hq.doe.gov.*

#### **ADDITIONAL SUPPLEMENTARY INFORMATION:**

The administrative practices and procedures for suspension and debarment are being removed from part 1036 and recodified in part 606. The requirements for maintaining a drug-free workplace are being removed as a subpart in the current debarment and suspension common rule, part 1036, and recodified as a separate part 607.

#### **List of Subjects**

##### *10 CFR Part 606*

Administrative practice and procedure, Debarment and suspension, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements.

##### *10 CFR Part 607*

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

Dated: June 29, 2001.

**Spencer Abraham,**

*Secretary of Energy.*

Accordingly, as set forth in the common preamble, and under the authority of 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*, the Department of Energy proposes to amend 10 CFR chapters II and X as follows.

1. Part 606 is added to subchapter H to read as set forth in instruction 1 at the end of the common preamble.

## **PART 606—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

- 606.25 How is this part organized?  
 606.50 How is this part written?  
 606.75 Do terms in this part have special meanings?

### **Subpart A—General**

- 606.100 What does this part do?  
 606.105 Does this part apply to me?  
 606.110 What is the purpose of the nonprocurement debarment and suspension system?  
 606.115 How does an exclusion restrict a person’s involvement in covered transactions?  
 606.120 May we grant an exception to let an excluded person participate in a covered transaction?  
 606.125 Does an exclusion under the nonprocurement system affect a person’s eligibility to participate in Federal procurement contracts?  
 606.130 Does an exclusion under the Federal procurement system affect a person’s eligibility to participate in nonprocurement transactions?  
 606.135 May the Department of Energy exclude a person who is not currently participating in a nonprocurement transaction?  
 606.140 How do I know if a person is excluded?  
 606.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

### **Subpart B—Covered Transactions**

- 606.200 What is a covered transaction?  
 606.205 Why is it important to know if a particular transaction is a covered transaction?  
 606.210 Which nonprocurement transactions are covered transactions?  
 606.215 Which nonprocurement transactions are not covered transactions?  
 606.220 Are any procurement contracts included as covered transactions?  
 606.225 How do I know if a transaction that I may participate in is a covered transaction?

**Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons**

- 606.300 May I enter into a covered transaction with an excluded or disqualified person?
- 606.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
- 606.310 May I use the services of an excluded person under a covered transaction?
- 606.315 Must I verify that principals of my covered transactions are eligible to participate?
- 606.320 What happens if I do business with an excluded person in a covered transaction?
- 606.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

**Disclosing Information—Primary Tier Participants**

- 606.330 What information must I provide before entering into a covered transaction with the Department of Energy?
- 606.335 If I disclose unfavorable information required under § 606.330 will I be prevented from entering into the transaction?
- 606.340 What happens if I fail to disclose the information required under § 606.330?
- 606.345 What must I do if I learn of the information required under § 606.330 after entering into a covered transaction with the Department of Energy?

**Disclosing information—Lower Tier Participants**

- 606.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
- 606.355 What happens if I fail to disclose the information required under § 606.350?
- 606.360 What must I do if I learn of information required under § 606.350 after entering into a covered transaction with a higher tier participant?

**Subpart D—Responsibilities of DOE Officials Regarding Transactions**

- 606.400 May I enter into a transaction with an excluded or disqualified person?
- 606.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
- 606.410 May I approve a participant's use of the services of an excluded person?
- 606.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
- 606.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
- 606.425 When do I check to see if a person is excluded or disqualified?
- 606.430 How do I check to see if a person is excluded or disqualified?
- 606.435 What must I require of a primary tier participant?

- 606.440 What method do I use to communicate to participants the requirement to comply with Subpart C?
- 606.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
- 606.450 What action may I take if a primary tier participant fails to disclose the information required under § 606.330?
- 606.455 What may I do if a lower tier participant fails to disclose the information required under § 606.350 to the next higher tier?

**Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs**

- 606.500 What is the purpose of the List?
- 606.505 Who uses the List?
- 606.510 Who maintains the List?
- 606.515 What specific information is on the List?
- 606.520 Who gives the GSA the information that it puts on the List?
- 606.525 Whom do I ask if I have questions about a person on the List?
- 606.530 Where can I get the List?

**Subpart F—General Principles Relating to Suspension and Debarment Actions**

- 606.600 How do suspension and debarment actions start?
- 606.605 How does suspension differ from debarment?
- 606.610 What procedures does the Department of Energy use in suspension and debarment actions?
- 606.615 How does the Department of Energy notify a person of suspension and debarment actions?
- 606.620 Do Federal agencies coordinate suspension and debarment actions?
- 606.625 What is the scope of a suspension or debarment action?
- 606.630 May the Department of Energy impute the conduct of one person to another?
- 606.635 May the Department of Energy settle a debarment or suspension action?
- 606.640 May a settlement include a voluntary exclusion?
- 606.645 Do other Federal agencies know if the Department of Energy agrees to a voluntary exclusion?

**Subpart G—Suspension**

- 606.700 When may the suspending official issue a suspension?
- 606.705 What does the suspending official consider in issuing a suspension?
- 606.710 When does a suspension take effect?
- 606.715 What notice does the suspending official give me if I am suspended?
- 606.720 How may I contest a suspension?
- 606.725 How much time do I have to contest a suspension?
- 606.730 What information must I provide to the suspending official if I contest a suspension?
- 606.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 606.740 Are suspension proceedings formal?

- 606.745 Is a record made of fact-finding proceedings?
- 606.746 Who conducts fact-finding conferences for DOE?
- 606.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 606.755 When will I know whether the suspension is continued or terminated?
- 606.760 How long may my suspension last?

**Subpart H—Debarment**

- 606.800 What are the causes for debarment?
- 606.805 What notice does the debarring official give me if I am proposed for debarment?
- 606.810 When does a debarment take effect?
- 606.815 How may I contest a proposed debarment?
- 606.820 How much time do I have to contest a proposed debarment?
- 606.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 606.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
- 606.835 Are debarment proceedings formal?
- 606.836 Who conducts fact-finding conferences for DOE?
- 606.840 Is a record made of fact-finding proceedings?
- 606.845 What does the debarring official consider in deciding whether to debar me?
- 606.850 What is the standard of proof in a debarment action?
- 606.855 Who has the burden of proof in a debarment action?
- 606.860 What factors may influence the debarring official's decision?
- 606.865 How long may my debarment last?
- 606.870 When do I know if the debarring official debars me?
- 606.875 May I ask the debarring official to reconsider a decision to debar me?
- 606.880 What factors may influence the debarring official during reconsideration?
- 606.885 May the debarring official extend a debarment?

**Subpart I—Definitions**

- 606.900 Adequate evidence.
- 606.905 Affiliate.
- 606.910 Agency.
- 606.915 Agent or representative.
- 606.920 Civil judgment.
- 606.925 Conviction.
- 606.930 Debarment.
- 606.935 Debarring official.
- 606.936 Director, Office of Procurement and Assistance Management.
- 606.940 Disqualified.
- 606.945 Excluded or exclusion.
- 606.950 Indictment.
- 606.955 Ineligible or ineligibility.
- 606.960 Legal proceedings.
- 606.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.
- 606.970 Nonprocurement transaction.
- 606.975 Notice.
- 606.980 Participant.

- 606.985 Person.  
 606.990 Preponderance of the evidence.  
 606.995 Principal.  
 606.1000 Respondent.  
 606.1005 State.  
 606.1010 Suspending official.  
 606.1015 Suspension.  
 606.1020 Voluntary exclusion or voluntarily excluded.

#### Subpart J [Reserved]

#### Appendix to Part 606—Covered Transactions

**Authority:** E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

2. Part 606 is further amended as set forth below.

a. “[Agency noun]” is removed and “Department of Energy” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “DOE” is added in its place wherever it occurs. c. “[Agency head or designee]” is removed and “Director, Office of Procurement and Assistance Management” is added in its place wherever it occurs.

3. Section 606.440 is added to read as follows:

#### § 606.440 What method do I use to communicate to participants the requirement to comply with subpart C?

To communicate the requirements, you must include a term or condition in the transaction requiring the participants’ compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

4. Section 606.746 is added to read as follows:

#### § 606.746 Who conducts fact-finding conferences for DOE?

The Energy Board of Contract Appeals conducts fact-finding conferences for DOE, in accordance with the rules promulgated by the Energy Board of Contract Appeals.

5. Section 606.836 is added to read as follows:

#### § 606.836 Who conducts fact-finding conferences for DOE?

The Energy Board of Contract Appeals conducts fact-finding conferences for DOE, in accordance with the rules promulgated by the Energy Board of Contract Appeals.

6. Section 606.910 is further amended by adding a definition for Department of Energy in alphabetical order to read as follows:

#### § 606.910 Agency.

\* \* \* \* \*

Department of Energy includes the National Nuclear Security

Administration (NNSA), and the Federal Energy Regulatory Commission (FERC).

7. Section 606.935 is further amended by adding paragraph (b) to read as follows:

#### § 606.935 Debarring official.

\* \* \* \* \*

(b) The DOE debarring official is the Director, Office of Procurement and Assistance Management, DOE.

8. Section 606.936 is added to read as follows:

#### § 606.936 Director, Office of Procurement and Assistance Management.

*Director, Office of Procurement and Assistance Management* means the Director, Office of Procurement and Assistance Management, DOE, or the Director, Office of Procurement and Assistance Management, NNSA, as appropriate.

9. Section 606.1010 is further amended by adding paragraph (b) to read as follows:

#### § 606.1010 Suspending official.

\* \* \* \* \*

(b) The DOE suspending official is the Director, Office of Procurement and Assistance Management, DOE.

10. Part 607 is added to subchapter H to read as set forth in instruction 2 at the end of the common preamble.

### PART 607—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

#### Subpart A—Purpose and Coverage

- 607.100 What does this part do?  
 607.105 Does this part apply to me?  
 607.110 Are any of my Federal assistance awards exempt from this part?  
 607.115 Does this part affect the Federal contracts that I receive?

#### Subpart B—Requirements for Recipients Other Than Individuals

- 607.200 What must I do to comply with this part?  
 607.205 What must I include in my drug-free workplace statement?  
 607.210 To whom must I distribute my drug-free workplace statement?  
 607.215 What must I include in my drug-free awareness program?  
 607.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?  
 607.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?  
 607.230 How and when must I identify workplaces?

#### Subpart C—Requirements for Recipients Who Are Individuals

- 607.300 What must I do to comply with this part if I am an individual recipient?  
 607.301 [Reserved]

#### Subpart D—Responsibilities of DOE Awarding Officials

- 607.400 What are my responsibilities as a DOE awarding official?

#### Subpart E—Violations of This Part and Consequences

- 607.500 How are violations of this part determined for recipients other than individuals?  
 607.505 How are violations of this part determined for recipients who are individuals?  
 607.510 What actions will the Federal Government take against a recipient determined to have violated this part?  
 607.515 Are there any exceptions to those actions?

#### Subpart F—Definitions

- 607.605 Award.  
 607.610 Controlled substance.  
 607.615 Conviction.  
 607.620 Cooperative agreement.  
 607.625 Criminal drug statute.  
 607.630 Debarment.  
 607.631 Director, Office of Procurement and Assistance Management.  
 607.635 Drug-free workplace.  
 607.640 Employee.  
 607.645 Federal agency or agency.  
 607.650 Grant.  
 607.655 Individual.  
 607.660 Recipient.  
 607.665 State.  
 607.670 Suspension.

**Authority:** 41 U.S.C. 701, *et seq.*; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

11. Part 607 is further amended as set forth below.

a. “[Agency noun]” is removed and “Department of Energy” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “DOE” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “Director, Office of Procurement and Assistance Management” is added in its place wherever it occurs.

d. “[Agency head]” is removed and “Secretary of Energy” is added in its place wherever it occurs.

12. Section 607.510(c) is further amended by removing “[CFR citation for the Federal agency’s regulations implementing Executive order 12549 and Executive Order 12689]” and adding “10 CFR part 606” in its place.

13. Section 607.605(a)(2) is further amended by removing “[Agency-specific CFR citation]” and adding “10 CFR Part 600” in its place.

14. Section 607.631 is added to read as follows:

#### § 607.631 Director, Office of Procurement and Assistance Management.

*Director, Office of Procurement and Assistance Management* means the Director, Office of Procurement and

Assistance Management, DOE, or the Director, Office of Procurement and Assistance Management, NNSA, as appropriate.

15. Section 607.645 is further amended by adding the definition for Department of Energy in alphabetical order to read as follows:

**§ 607.645 Federal Agency or agency.**

*Department of Energy* includes the National Nuclear Security Administration (NNSA), and the Federal Energy Regulatory Commission (FERC).

\* \* \* \* \*

**PART 1036 [REMOVED]**

16. Part 1036 is removed.

**SMALL BUSINESS ADMINISTRATION**

**13 CFR Parts 145 and 147**

**RIN 3245-AE61**

**FOR FURTHER INFORMATION CONTACT:** Cory Whitehead, SBA Debarring Official, Acting Assistant Administrator for Administration (5331), U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416, (202) 205-6630, e-mail: [cory.whitehead@sba.gov](mailto:cory.whitehead@sba.gov)

or Michael Campilongo, Office of General Counsel, 409 Third Street, SW, Washington, DC 20416, (202) 205-6879, e-mail: [michael.campilongo@sba.gov](mailto:michael.campilongo@sba.gov).

**ADDITIONAL SUPPLEMENTARY INFORMATION:**

This part proposes optional lower tier suspension and debarment coverage by including a paragraph (d) in § 145.220 for all contracts that equal or exceed the \$25,000 award threshold under SBA nonprocurement transactions. This election maintains the SBA's present practice under the common rule.

In addition, § 145.440 proposes to use terms or conditions to the award transaction as a means to enforce exclusions under SBA transactions rather than written certifications. This alternative available under the common rule is more efficient than the SBA's current certification process for prospective recipients and participants.

Sections 145.765 and 145.890 are included as additional sections under part 145 and propose to permit persons who have been suspended or debarred by the SBA Debarring Official to obtain a review of that decision on a limited basis as is currently available under SBA's existing rule. These sections propose to delegate the authority to issue a stay on a suspension or debarment decision to the reviewing official. These changes from current practice reflect a more practical approach to matters accepted for review.

Sections 145.935(b) and 145.1010(b) are added to designate the Assistant

Administrator for Administration as the SBA debarring and suspending official for SBA programs other than financial assistance. For that program, the SBA debarring and suspending official will be the Assistant Administrator for Financial Assistance.

Section 145.995 of the debarment and suspension common rule defines the term "principal." Agencies implementing the common rule are permitted to provide additional examples of principals that are commonly involved in their covered transactions. SBA is proposing to include several examples by adding a paragraph (c) to this section for the benefit of individuals who may be excluded, or employers who may have an individual employee who is excluded.

The requirements for maintaining a drug-free workplace are being removed as Subpart F in the current debarment and suspension common rule, and re-codified as a separate part 147.

**List of Subjects**

*13 CFR Part 145*

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements, Small businesses.

*13 CFR Part 147*

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

Dated: June 15, 2001.

**John Whitmore,**

*Acting Administrator, U.S. Small Business Administration.*

For the reasons stated in the common preamble, the U.S. Small Business Administration proposes to amend 13 CFR chapter I as follows:

1. Part 145 is revised to read as set forth in instruction 1 at the end of the common preamble.

**PART 145—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

Sec.

145.25 How is this part organized?

145.50 How is this part written?

145.75 Do terms in this part have special meanings?

**Subpart A—General**

145.100 What does this part do?

145.105 Does this part apply to me?

145.110 What is the purpose of the nonprocurement debarment and suspension system?

145.115 How does an exclusion restrict a person's involvement in covered transactions?

145.120 May we grant an exception to let an excluded person participate in a covered transaction?

145.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?

145.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?

145.135 May the SBA exclude a person who is not currently participating in a nonprocurement transaction?

145.140 How do I know if a person is excluded?

145.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

**Subpart B—Covered Transactions**

145.200 What is a covered transaction?

145.205 Why is it important to know if a particular transaction is a covered transaction?

145.210 Which nonprocurement transactions are covered transactions?

145.215 Which nonprocurement transactions are not covered transactions?

145.220 Are any procurement contracts included as covered transactions?

145.225 How do I know if a transaction that I may participate in is a covered transaction?

**Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons**

145.300 May I enter into a covered transaction with an excluded or disqualified person?

145.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?

145.310 May I use the services of an excluded person under a covered transaction?

145.315 Must I verify that principals of my covered transactions are eligible to participate?

145.320 What happens if I do business with an excluded person in a covered transaction?

145.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

**Disclosing Information—Primary Tier Participants**

145.330 What information must I provide before entering into a covered transaction with the SBA?

145.335 If I disclose unfavorable information required under § 145.330 will I be prevented from entering into the transaction?

145.340 What happens if I fail to disclose the information required under § 145.330?

145.345 What must I do if I learn of the information required under § 145.330?

after entering into a covered transaction with the SBA?

#### Disclosing Information—Lower Tier Participants

- 145.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
- 145.355 What happens if I fail to disclose the information required under § 145.350?
- 145.360 What must I do if I learn of information required under § 145.350 after entering into a covered transaction with a higher tier participant?

#### Subpart D—Responsibilities of SBA Officials Regarding Transactions

- 145.400 May I enter into a transaction with an excluded or disqualified person?
- 145.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
- 145.410 May I approve a participant's use of the services of an excluded person?
- 145.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
- 145.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
- 145.425 When do I check to see if a person is excluded or disqualified?
- 145.430 How do I check to see if a person is excluded or disqualified?
- 145.435 What must I require of a primary tier participant?
- 145.440 What method do I use to communicate § 145.335 requirements to participants?
- 145.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
- 145.450 What action may I take if a primary tier participant fails to disclose the information required under § 145.330?
- 145.455 What may I do if a lower tier participant fails to disclose the information required under § 145.350 to the next higher tier?

#### Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs

- 145.500 What is the purpose of the List?
- 145.505 Who uses the List?
- 145.510 Who maintains the List?
- 145.515 What specific information is on the List?
- 145.520 Who gives the GSA the information that it puts on the List?
- 145.525 Whom do I ask if I have questions about a person on the List?
- 145.530 Where can I get the List?

#### Subpart F—General Principles Relating to Suspension and Debarment Actions

- 145.600 How do suspension and debarment actions start?
- 145.605 How does suspension differ from debarment?
- 145.610 What procedures does the SBA use in suspension and debarment actions?
- 145.615 How does the SBA notify a person of suspension and debarment actions?

- 145.620 Do Federal agencies coordinate suspension and debarment actions?
- 145.625 What is the scope of a suspension or debarment action?
- 145.630 May the SBA impute the conduct of one person to another?
- 145.635 May the SBA settle a debarment or suspension action?
- 145.640 May a settlement include a voluntary exclusion?
- 145.645 Do other Federal agencies know if the SBA agrees to a voluntary exclusion?

#### Subpart G—Suspension

- 145.700 When may the suspending official issue a suspension?
- 145.705 What does the suspending official consider in issuing a suspension?
- 145.710 When does a suspension take effect?
- 145.715 What notice does the suspending official give me if I am suspended?
- 145.720 How may I contest a suspension?
- 145.725 How much time do I have to contest a suspension?
- 145.730 What information must I provide to the suspending official if I contest a suspension?
- 145.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 145.740 Are suspension proceedings formal?
- 145.745 Is a record made of fact-finding proceedings?
- 145.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 145.755 When will I know whether the suspension is continued or terminated?
- 145.760 How long may my suspension last?
- 145.765 How may I appeal my suspension?

#### Subpart H—Debarment

- 145.800 What are the causes for debarment?
- 145.805 What notice does the debarring official give me if I am proposed for debarment?
- 145.810 When does a debarment take effect?
- 145.815 How may I contest a proposed debarment?
- 145.820 How much time do I have to contest a proposed debarment?
- 145.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 145.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
- 145.835 Are debarment proceedings formal?
- 145.840 Is a record made of fact-finding proceedings?
- 145.845 What does the debarring official consider in deciding whether to debar me?
- 145.850 What is the standard of proof in a debarment action?
- 145.855 Who has the burden of proof in a debarment action?
- 145.860 What factors may influence the debarring official's decision?
- 145.865 How long may my debarment last?
- 145.870 When do I know if the debarring official debars me?

- 145.875 May I ask the debarring official to reconsider a decision to debar me?
- 145.880 What factors may influence the debarring official during reconsideration?
- 145.885 May the debarring official extend a debarment?
- 145.890 How may I appeal my debarment?

#### Subpart I—Definitions

- 145.900 Adequate evidence.
- 145.905 Affiliate.
- 145.910 Agency.
- 145.915 Agent or representative.
- 145.920 Civil judgment.
- 145.925 Conviction.
- 145.930 Debarment.
- 145.935 Debarring official.
- 145.940 Disqualified.
- 145.945 Excluded or exclusion.
- 145.950 Indictment.
- 145.955 Ineligible or ineligibility.
- 145.960 Legal proceedings.
- 145.965 List of parties excluded or disqualified from federal procurement and nonprocurement programs.
- 145.970 Nonprocurement transaction.
- 145.975 Notice.
- 145.980 Participant.
- 144.985 Person.
- 145.990 Preponderance of the evidence.
- 145.995 Principal.
- 145.1000 Respondent.
- 145.1005 State.
- 145.1010 Suspending official.
- 145.1015 Suspension.
- 145.1020 Voluntary exclusion or voluntarily excluded.

#### Subpart J [Reserved]

#### Appendix to Part 145—Covered Transactions

**Authority:** 5 U.S.C. 301 *et seq.*; 15 U.S.C. 631 *et seq.*; Sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 11738, 3 CFR, 1973 Comp., p. 799; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

2. Part 145 is further amended as set forth below.

a. “[Agency noun]” is removed and the “SBA” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and the “SBA” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and the “SBA Debarring Official” is added in its place wherever it occurs.

3. Section 145.220 is further amended by adding a paragraph (d) to read as follows:

#### § 145.220 Are any procurement contracts included as covered transactions?

\* \* \* \* \*

(d) The contract is awarded by any contractor, subcontractor, supplier, consultant or its agent or representative in any transaction, regardless of tier, to be funded or provided by the SBA under a nonprocurement transaction

that is expected to equal or exceed \$25,000. (See optional lower tier coverage shown in the diagram in the appendix to this part.)

4. Section 145.440 is added to read as follows:

**§ 145.440 What method do I use to communicate § 145.435 requirements to participants?**

To communicate the requirements in § 145.435 to participants, you must include a term or condition in the transaction requiring the participant's compliance with Subpart C of this part and requiring them to include a similar term or condition in lower tier covered transactions.

5. Section 145.765 is added to subpart G to read as follows:

**§ 145.765 How may I appeal my suspension?**

(a) If the SBA suspending official issues a decision under § 145.755 to continue your suspension after you present information in opposition to that suspension under § 145.720, you can ask for review of the suspending official's decision in two ways:

(1) You may ask the suspending official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; and/or

(2) You may request that the SBA Office of Hearings and Appeals (OHA), review the suspending official's decision to continue your suspension within 30 days of your receipt of the suspending official's decision under § 145.755 or paragraph (a)(1) of this section. However, OHA can reverse the suspending official's decision only where OHA finds that the decision is based on a clear error of material fact or law, or where OHA finds that the suspending official's decision was arbitrary, capricious, or an abuse of discretion.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in error; and include the reasons or legal bases for your position.

(c) OHA, in its discretion, may stay the suspension pending review of the suspending official's decision.

(d) The SBA suspending official and OHA must notify you of their decisions under this section, in writing, using the notice procedures at §§ 145.615 and 145.975.

6. Section 145.890 is added to subpart H to read as follows:

**§ 145.890 How may I appeal my debarment?**

(a) If the SBA debaring official issues a decision under § 145.870 to debar you

after you present information in opposition to a proposed debarment under § 145.815, you can ask for review of the debaring official's decision in two ways:

(1) You may ask the debaring official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; and/or

(2) You may request that the SBA Office of Hearings and Appeals (OHA), review the debaring official's decision to debar you within 30 days of your receipt of the debaring official's decision under § 145.870 or paragraph (a)(1) of this section. However, OHA can reverse the debaring official's decision only where OHA finds that the decision is based on a clear error of material fact or law, or where OHA finds that the debaring official's decision was arbitrary, capricious, or an abuse of discretion.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in error; and include the reasons or legal bases for your position.

(c) OHA may, in its discretion, stay the debarment pending review of the debaring official's decision.

(d) The SBA debaring official and OHA must notify you of their decisions under this section, in writing, using the notice procedures at §§ 145.615 and 145.975.

7. Section 145.935 is further amended by adding a paragraph (b) to read as follows:

**§ 145.935 Debaring official.**

\* \* \* \* \*

(b) For SBA, the suspending official for financial assistance programs means the Assistant Administrator for Financial Assistance; for all other programs, the suspending official means the Assistant Administrator for Administration.

8. Section 145.995 is further amended by adding a paragraph (c) to read as follows:

**§ 145.995 Principal.**

\* \* \* \* \*

(c) Other examples of individuals who are principals in SBA covered transactions include:

(1) Principal investigators.  
 (2) Securities brokers and dealers under the section 7(a) Loan, Certified Development Company (CDC) and Small Business Investment Company (SBIC) programs.

(3) Applicant representatives under the section 7(a) Loan, Certified Development Company (CDC), Small Business Investment Company (SBIC),

Small Business Development Center (SBDC), and section 7(j) programs.

(4) Providers of professional services under section 7(a) Loan, Certified Development Company (CDC), Small Business Investment Company (SBIC), Small Business Development Center (SBDC), and section 7(j) programs.

(5) Individuals that certify, authenticate or authorize billings.

9. Section 145.1010 is further amended by adding a paragraph (b) to read as follows:

**§ 145.1010 Suspending official.**

\* \* \* \* \*

(b) For SBA, the debaring official for financial assistance programs means the Assistant Administrator for Financial Assistance; for all other programs, the debaring official means the Assistant Administrator for Administration.

10. Part 147 is added to read as set forth in instruction 2 at the end of the common preamble.

**PART 147—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (NONPROCUREMENT)**

**Subpart A—Purpose and Coverage**

Sec.

147.100 What does this part do?

147.105 Does this part apply to me?

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

147.115 Does this part affect the Federal contracts that I receive?

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

147.200 What must I do to comply with this part?

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

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

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

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

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

147.230 How and when must I identify workplaces?

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

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

147.301 [Reserved]

**Subpart D—Responsibilities of SBA Awarding Officials**

147.400 What are my responsibilities as an SBA awarding official?

**Subpart E—Violations of This Part and Consequences**

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

- 147.505 How are violations of this part determined for recipients who are individuals?
- 147.510 What actions will the Federal Government take against a recipient determined to have violated this part?
- 147.515 Are there any exceptions to those actions?

#### Subpart F—Definitions

- 147.605 Award.
- 147.610 Controlled substance.
- 147.615 Conviction.
- 147.620 Cooperative agreement.
- 147.625 Criminal drug statute.
- 147.630 Debarment.
- 147.635 Drug-free workplace.
- 147.640 Employee.
- 147.645 Federal agency or agency.
- 147.650 Grant.
- 147.655 Individual.
- 147.660 Recipient.
- 147.665 State.
- 147.670 Suspension.

**Authority:** 41 U.S.C. 701–707.

11. Part 147 is further amended as set forth below.

a. “[Agency noun]” is removed and the “SBA” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and the “SBA” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and the “SBA Administrator or designee” is added in its place wherever it occurs.

d. “[Agency head]” is removed and the “SBA Administrator” is added in its place wherever it occurs.

12. Section 147.510(c) is further amended by removing “[CFR citation for the Federal Agency’s regulations implementing Executive Order 12549 and Executive Order 12689]” and adding “13 CFR part 145” in its place.

13. Section 147.605(a)(2) is amended by removing “[Agency specific CFR citation]” and adding “13 CFR part 147” in its place.

#### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

##### 14 CFR Parts 1265 and 1267

##### RIN 2700–AC43

#### FOR FURTHER INFORMATION CONTACT:

Diane Thompson, NASA Headquarters, Office of Procurement, Analysis Division (Code HC), Washington, DC 20456–0001, (202) 358–0514, e-mail: [diane.thompson@hq.nasa.gov](mailto:diane.thompson@hq.nasa.gov).

#### List of Subjects

##### 14 CFR Part 1265

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

##### 14 CFR Part 1267

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

#### Anne Guenther,

*Acting Associate Administrator for Procurement.*

For the reasons stated in the common preamble, the National Aeronautics and Space Administration proposes to amend 14 CFR chapter V as follows:

1. Part 1265 is revised to read as set forth in instruction 1 at the end of the common preamble.

#### PART 1265—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

- 1265.25 How is this part organized?
- 1265.50 How is this part written?
- 1265.75 Do terms in this part have special meanings?

#### Subpart A—General

- 1265.100 What does this part do?
- 1265.105 Does this part apply to me?
- 1265.110 What is the purpose of the nonprocurement debarment and suspension system?
- 1265.115 How does an exclusion restrict a person’s involvement in covered transactions?
- 1265.120 May we grant an exception to let an excluded person participate in a covered transaction?
- 1265.125 Does an exclusion under the nonprocurement system affect a person’s eligibility to participate in Federal procurement contracts?
- 1265.130 Does an exclusion under the Federal procurement system affect a person’s eligibility to participate in nonprocurement transactions?
- 1265.135 May NASA exclude a person who is not currently participating in a nonprocurement transaction?
- 1265.140 How do I know if a person is excluded?
- 1265.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

#### Subpart B—Covered Transactions

- 1265.200 What is a covered transaction?
- 1265.205 Why is it important to know if a particular transaction is a covered transaction?
- 1265.210 Which nonprocurement transactions are covered transactions?
- 1265.215 Which nonprocurement transactions are not covered transactions?
- 1265.220 Are any procurement contracts included as covered transactions?
- 1265.225 How do I know if a transaction that I may participate in is a covered transaction?

#### Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

- 1265.300 May I enter into a covered transaction with an excluded or disqualified person?
- 1265.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
- 1265.310 May I use the services of an excluded person under a covered transaction?
- 1265.315 Must I verify that principals of my covered transactions are eligible to participate?
- 1265.320 What happens if I do business with an excluded person in a covered transaction?
- 1265.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

#### Disclosing Information Primary Tier Participants

- 1265.330 What information must I provide before entering into a covered transaction with NASA?
- 1265.335 If I disclose unfavorable information required under § 1265.330 will I be prevented from entering into the transaction?
- 1265.340 What happens if I fail to disclose the information required under § 1265.330?
- 1265.345 What must I do if I learn of the information required under § 1265.330 after entering into a covered transaction with NASA?

#### Disclosing Information—Lower Tier Participants

- 1265.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
- 1265.355 What happens if I fail to disclose the information required under § 1265.350?
- 1265.360 What must I do if I learn of information required under § 1265.350 after entering into a covered transaction with a higher tier participant?

#### Subpart D—Responsibilities of NASA Officials Regarding Transactions

- 1265.400 May I enter into a transaction with an excluded or disqualified person?
- 1265.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
- 1265.410 May I approve a participant’s use of the services of an excluded person?
- 1265.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
- 1265.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
- 1265.425 When do I check to see if a person is excluded or disqualified?
- 1265.430 How do I check to see if a person is excluded or disqualified?
- 1265.435 What must I require of a primary tier participant?

- 1265.440 What method do I use to communicate those requirements to participants?
- 1265.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
- 1265.450 What action may I take if a primary tier participant fails to disclose the information required under § 1265.330?
- 1265.455 What may I do if a lower tier participant fails to disclose the information required under § 1265.350 to the next higher tier?

**Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs**

- 1265.500 What is the purpose of the List?
- 1265.505 Who uses the List?
- 1265.510 Who maintains the List?
- 1265.515 What specific information is on the List?
- 1265.520 Who gives the GSA the information that it puts on the List?
- 1265.525 Whom do I ask if I have questions about a person on the List?
- 1265.530 Where can I get the List?

**Subpart F—General Principles Relating to Suspension and Debarment Actions**

- 1265.600 How do suspension and debarment actions start?
- 1265.605 How does suspension differ from debarment?
- 1265.610 What procedures does NASA use in suspension and debarment actions?
- 1265.615 How does NASA notify a person of suspension and debarment actions?
- 1265.620 Do Federal agencies coordinate suspension and debarment actions?
- 1265.625 What is the scope of a suspension or debarment action?
- 1265.630 May NASA impute the conduct of one person to another?
- 1265.635 May NASA settle a debarment or suspension action?
- 1265.640 May a settlement include a voluntary exclusion?
- 1265.645 Do other Federal agencies know if NASA agrees to a voluntary exclusion?

**Subpart G—Suspension**

- 1265.700 When may the suspending official issue a suspension?
- 1265.705 What does the suspending official consider in issuing a suspension?
- 1265.710 When does a suspension take effect?
- 1265.715 What notice does the suspending official give me if I am suspended?
- 1265.720 How may I contest a suspension?
- 1265.725 How much time do I have to contest a suspension?
- 1265.730 What information must I provide to the suspending official if I contest a suspension?
- 1265.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 1265.740 Are suspension proceedings formal?
- 1265.745 Is a record made of fact-finding proceedings?

- 1265.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 1265.755 When will I know whether the suspension is continued or terminated?
- 1265.760 How long may my suspension last?
- 1265.765 How may I appeal my suspension?

**Subpart H—Debarment**

- 1265.800 What are the causes for debarment?
- 1265.805 What notice does the debarring official give me if I am proposed for debarment?
- 1265.810 When does a debarment take effect?
- 1265.815 How may I contest a proposed debarment?
- 1265.820 How much time do I have to contest a proposed debarment?
- 1265.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 1265.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
- 1265.835 Are debarment proceedings formal?
- 1265.840 Is a record made of fact-finding proceedings?
- 1265.845 What does the debarring official consider in deciding whether to debar me?
- 1265.850 What is the standard of proof in a debarment action?
- 1265.855 Who has the burden of proof in a debarment action?
- 1265.860 What factors may influence the debarring official's decision?
- 1265.865 How long may my debarment last?
- 1265.870 When do I know if the debarring official debars me?
- 1265.875 May I ask the debarring official to reconsider a decision to debar me?
- 1265.880 What factors may influence the debarring official during reconsideration?
- 1265.885 May the debarring official extend a debarment?
- 1265.890 How may I appeal my debarment?

**Subpart I—Definitions**

- 1265.900 Adequate evidence.
- 1265.905 Affiliate.
- 1265.910 Agency.
- 1265.915 Agent or representative.
- 1265.920 Civil judgment.
- 1265.925 Conviction.
- 1265.930 Debarment.
- 1265.935 Debarring official.
- 1265.940 Disqualified.
- 1265.945 Excluded or exclusion.
- 1265.950 Indictment.
- 1265.955 Ineligible or ineligibility.
- 1265.960 Legal proceedings.
- 1265.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.
- 1265.970 Nonprocurement transaction.
- 1265.975 Notice.
- 1265.980 Participant.
- 1265.985 Person.

- 1265.990 Preponderance of the evidence.
- 1265.995 Principal.
- 1265.1000 Respondent.
- 1265.1005 State.
- 1265.1010 Suspending official.
- 1265.1015 Suspension.
- 1265.1020 Voluntary exclusion or voluntarily excluded.

**Subpart J [Reserved]**

**Appendix to Part 1265 Covered Transactions**

**Authority:** Sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 11738, 3 CFR, 1973 Comp., p. 799; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235; 42 U.S.C. 2473(c)(1).

2. Part 1265 is further amended as set forth below.

a. "The [Agency noun]" is removed and "NASA" is added in its place wherever it occurs.

b. "[Agency adjective]" is removed and "NASA" is added in its place wherever it occurs.

c. "[Agency head or designee]" is removed and "Associate Administrator for Procurement" is added in its place wherever it occurs.

3. Section 1265.440 is added to read as follows:

**§ 1265.440 What method do I use to communicate the requirements to participants?**

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participant's compliance with Subpart C of this part and requiring them to include a similar term or condition in lower tier covered transactions.

4. Part 1267 is added to read as set forth in instruction 2 at the end of the common preamble.

**PART 1267—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)**

**Subpart A—Purpose and Coverage**

Sec.

- 1267.100 What does this part do?
- 1267.105 Does this part apply to me?
- 1267.110 Are any of my Federal assistance awards exempt from this part?
- 1267.115 Does this part affect the Federal contracts that I receive?

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

- 1267.200 What must I do to comply with this part?
- 1267.205 What must I include in my drug-free workplace statement?
- 1267.210 To whom must I distribute my drug-free workplace statement?
- 1267.215 What must I include in my drug-free awareness program?

- 1267.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
- 1267.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
- 1267.230 How and when must I identify workplaces?

#### Subpart C—Requirements for Recipients Who Are Individuals

- 1267.300 What must I do to comply with this part if I am an individual recipient?
- 1267.301 [Reserved]

#### Subpart D—Responsibilities of NASA Awarding Officials

- 1267.400 What are my responsibilities as a NASA awarding official?

#### Subpart E—Violations of This Part and Consequences

- 1267.500 How are violations of this part determined for recipients other than individuals?
- 1267.505 How are violations of this part determined for recipients who are individuals?
- 1267.510 What actions will the Federal Government take against a recipient determined to have violated this part?
- 1267.515 Are there any exceptions to those actions?

#### Subpart F—Definitions

- 1267.605 Award.
- 1267.610 Controlled substance.
- 1267.615 Conviction.
- 1267.620 Cooperative agreement.
- 1267.625 Criminal drug statute.
- 1267.630 Debarment.
- 1267.635 Drug-free workplace.
- 1267.640 Employee.
- 1267.645 Federal agency or agency.
- 1267.650 Grant.
- 1267.655 Individual.
- 1267.660 Recipient.
- 1267.665 State.
- 1267.670 Suspension.

**Authority:** 41 U.S.C. 701 *et seq.*; 42 U.S.C. 2473c.

5. Part 1267 is further amended as set forth below.

a. “The [Agency noun]” is removed and “NASA” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “NASA” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “Associate Administrator for Procurement” is added in its place wherever it occurs.

d. “[Agency head]” is removed and “Associate Administrator for Procurement” is added in its place wherever it occurs.

6. Section 1267.510(c) is further amended by removing “[CFR citation for the Federal Agency’s regulations implementing Executive Order 12549 and Executive Order 12689]” and adding “14 CFR part 1265” in its place.

7. Section 1267.605(a)(2) is further amended by removing “[Agency-specific CFR citation]” and adding “14 CFR part 1273” in its place.

### DEPARTMENT OF COMMERCE

#### 15 CFR Parts 26 and 29

[Docket No. 950601145–5145–01]

RIN 0605–AA02

#### FOR FURTHER INFORMATION CONTACT:

Elizabeth L. Dorfman, Office of Executive Assistance Management, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room HCHB 6022, Washington, DC 20230, 202–482–4115, e-mail: EDorfman@doc.gov.

#### ADDITIONAL SUPPLEMENTARY INFORMATION:

The Department of Commerce (DoC) proposes this amendment to the governmentwide common rules on debarment and suspension (nonprocurement) and requirements for drug-free workplace (financial assistance). The DoC will maintain uniform procedures that are consistent with those of other Executive Departments and Agencies. The DoC has reviewed its programs and determined that those identified at § 26.215 (d), (f) and (g) are excluded from coverage under the debarment and suspension regulations. The DoC has elected to add paragraph (d) in § 26.220 so that the coverage of § 26.220 (a) is extended to one additional tier of contracts. As specified in § 26.440, DoC will use a term or condition as a means to communicate requirements to participants.

#### List of Subjects

15 CFR Part 26

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

15 CFR Part 29

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

Approved: June 4, 2001.

**Robert F. Kugelman,**

Director, Office of Executive Budgeting and Assistance Management, Department of Commerce.

Accordingly, as set forth in the common preamble, 15 CFR subtitle A is proposed to be amended as follows:

1. Part 26 is revised to read as set forth in instruction 1 at the end of the common preamble.

### PART 26—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

- 26.25 How is this part organized?
- 26.50 How is this part written?
- 26.75 Do terms in this part have special meanings?

#### Subpart A—General

- 26.100 What does this part do?
- 26.105 Does this part apply to me?
- 26.110 What is the purpose of the nonprocurement debarment and suspension system?
- 26.115 How does an exclusion restrict a person’s involvement in covered transactions?
- 26.120 May we grant an exception to let an excluded person participate in a covered transaction?
- 26.125 Does an exclusion under the nonprocurement system affect a person’s eligibility to participate in Federal procurement contracts?
- 26.130 Does an exclusion under the Federal procurement system affect a person’s eligibility to participate in nonprocurement transactions?
- 26.135 May the Department of Commerce exclude a person who is not currently participating in a nonprocurement transaction?
- 26.140 How do I know if a person is excluded?
- 26.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

#### Subpart B—Covered Transactions

- 26.200 What is a covered transaction?
- 26.205 Why is it important to know if a particular transaction is a covered transaction?
- 26.210 Which nonprocurement transactions are covered transactions?
- 26.215 Which nonprocurement transactions are not covered transactions?
- 26.220 Are any procurement contracts included as covered transactions?
- 26.225 How do I know if a transaction that I may participate in is a covered transaction?

#### Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

- 26.300 May I enter into a covered transaction with an excluded or disqualified person?
- 26.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
- 26.310 May I use the services of an excluded person under a covered transaction?
- 26.315 Must I verify that principals of my covered transactions are eligible to participate?
- 26.320 What happens if I do business with an excluded person in a covered transaction?

26.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

#### Disclosing Information—Primary Tier Participants

- 26.330 What information must I provide before entering into a covered transaction with the Department of Commerce?
- 26.335 If I disclose unfavorable information required under § 26.330 will I be prevented from entering into the transaction?
- 26.340 What happens if I fail to disclose the information required under § 26.330?
- 26.345 What must I do if I learn of the information required under § 26.330 after entering into a covered transaction with the Department of Commerce?

#### Disclosing information—Lower Tier Participants

- 26.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
- 26.355 What happens if I fail to disclose the information required under § 26.350?
- 26.360 What must I do if I learn of information required under § 26.350 after entering into a covered transaction with a higher tier participant?

#### Subpart D—Responsibilities of DoC Officials Regarding Transactions

- 26.400 May I enter into a transaction with an excluded or disqualified person?
- 26.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
- 26.410 May I approve a participant's use of the services of an excluded person?
- 26.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
- 26.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
- 26.425 When do I check to see if a person is excluded or disqualified?
- 26.430 How do I check to see if a person is excluded or disqualified?
- 26.435 What must I require of a primary tier participant?
- 26.440 What method do I use to communicate those requirements to participants?
- 26.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
- 26.450 What action may I take if a primary tier participant fails to disclose the information required under § 26.330?
- 26.455 What may I do if a lower tier participant fails to disclose the information required under § 26.350 to the next higher tier?

#### Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs

- 26.500 What is the purpose of the List?
- 26.505 Who uses the List?
- 26.510 Who maintains the List?

26.515 What specific information is on the List?

- 26.520 Who gives the GSA the information that it puts on the List?
- 26.525 Whom do I ask if I have questions about a person on the List?
- 26.530 Where can I get the List?

#### Subpart F—General Principles Relating to Suspension and Debarment Actions

- 26.600 How do suspension and debarment actions start?
- 26.605 How does suspension differ from debarment?
- 26.610 What procedures does the Department of Commerce use in suspension and debarment actions?
- 26.615 How does the Department of Commerce notify a person of suspension and debarment actions?
- 26.620 Do Federal agencies coordinate suspension and debarment actions?
- 26.625 What is the scope of a suspension or debarment action?
- 26.630 May the Department of Commerce impute the conduct of one person to another?
- 26.635 May the Department of Commerce settle a debarment or suspension action?
- 26.640 May a settlement include a voluntary exclusion?
- 26.645 Do other Federal agencies know if the Department of Commerce agrees to a voluntary exclusion?

#### Subpart G—Suspension

- 26.700 When may the suspending official issue a suspension?
- 26.705 What does the suspending official consider in issuing a suspension?
- 26.710 When does a suspension take effect?
- 26.715 What notice does the suspending official give me if I am suspended?
- 26.720 How may I contest a suspension?
- 26.725 How much time do I have to contest a suspension?
- 26.730 What information must I provide to the suspending official if I contest a suspension?
- 26.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 26.740 Are suspension proceedings formal?
- 26.745 Is a record made of fact-finding proceedings?
- 26.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 26.755 When will I know whether the suspension is continued or terminated?
- 26.760 How long may my suspension last?

#### Subpart H—Debarment

- 26.800 What are the causes for debarment?
- 26.805 What notice does the debarring official give me if I am proposed for debarment?
- 26.810 When does a debarment take effect?
- 26.815 How may I contest a proposed debarment?
- 26.820 How much time do I have to contest a proposed debarment?
- 26.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 26.830 Under what conditions do I get an additional opportunity to challenge the

facts on which the proposed debarment is based?

- 26.835 Are debarment proceedings formal?
- 26.840 Is a record made of fact-finding proceedings?
- 26.845 What does the debarring official consider in deciding whether to debar me?
- 26.850 What is the standard of proof in a debarment action?
- 26.855 Who has the burden of proof in a debarment action?
- 26.860 What factors may influence the debarring official's decision?
- 26.865 How long may my debarment last?
- 26.870 When do I know if the debarring official debars me?
- 26.875 May I ask the debarring official to reconsider a decision to debar me?
- 26.880 What factors may influence the debarring official during reconsideration?
- 26.885 May the debarring official extend a debarment?

#### Subpart I—Definitions

- 26.900 Adequate evidence.
- 26.905 Affiliate.
- 26.910 Agency.
- 26.915 Agent or representative.
- 26.920 Civil judgment.
- 26.925 Conviction.
- 26.930 Debarment.
- 26.935 Debarring official.
- 26.940 Disqualified.
- 26.945 Excluded or exclusion.
- 26.950 Indictment.
- 26.955 Ineligible or ineligibility.
- 26.960 Legal proceedings.
- 26.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.
- 26.970 Nonprocurement transaction.
- 26.975 Notice.
- 26.980 Participant.
- 26.985 Person.
- 26.990 Preponderance of the evidence.
- 26.995 Principal.
- 26.1000 Respondent.
- 26.1005 State.
- 26.1010 Suspending official.
- 26.1015 Suspension.
- 26.1020 Voluntary exclusion or voluntarily excluded.

#### Subpart J [Reserved]

#### Appendix to Part 26—Covered Transactions

**Authority:** 5 U.S.C. 301; 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. Part 26 is further amended as set forth below.

a. “[Agency noun]” is removed and “Department of Commerce” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “DoC” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “Director, Office of Executive Budgeting and Assistance Management” is added in its place wherever it occurs.

3. Section 26.215 is amended as follows:

a. Add paragraph (d)(1) and add and reserve paragraph (d)(2).

b. Add paragraph (f)(1) and add and reserve paragraph (f)(2).

c. Add paragraph (g)(1) and add and reserve paragraph (g)(2).

The additions read as follows:

**§ 26.215 Which nonprocurement transactions are not covered transactions?**

\* \* \* \* \*

(d) \* \* \*

(1) Fisherman's Contingency Fund

(2) [Reserved]

\* \* \* \* \*

(f) \* \* \*

(1) For purposes of the DoC this means:

(i) Export Promotion, Trade Information and Counseling, and Trade Policy.

(ii) Geodetic Surveys and Services (Specialized Services).

(iii) Fishery Products Inspection Certification.

(iv) Standard Reference Materials.

(v) Calibration, Measurement and Testing.

(vi) Critically Evaluated Data (Standard Reference Data).

(vii) Phoenix Data System.

(viii) The sale or provision of products, information, and services to the general public.

(2) [Reserved]

(g) \* \* \*

(1) For purposes of the DoC this means:

(i) The Administration of the Antidumping and Countervailing Duty Statutes.

(ii) The Export Trading Company Act Certificate of Review Program.

(iii) Trade Adjustment Assistance Program Certification.

(iv) Foreign Trade Zones Act of 1934, as amended.

(v) Statutory Import Program.

(2) [Reserved]

4. Section 26.220 is amended to add paragraph (d) to read as follows:

**§ 26.220 Are any procurement contracts included as covered transactions?**

\* \* \* \* \*

(d) The contract is a subcontract awarded by a participant in a procurement transaction that is covered under paragraph (a) of this section, and the amount of the contract exceeds or is expected to exceed \$25,000. This extends the coverage of paragraph (a) of this section to one additional tier of contracts, as shown in the diagram in the Appendix to this part.

5. Section 26.440 is added to read as follows:

**§ 26.440 What method do I use to communicate those requirements to participants?**

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participants' compliance with Subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

6. Section 26.970 is amended to add paragraphs (a)(12) through (a)(16) to read as follows:

**§ 26.970 Nonprocurement transaction.**

(a) \* \* \*

(12) Joint Project Agreements under 15 U.S.C. 1525.

(13) Cooperative research and development agreements.

(14) Joint statistical agreements.

(15) Patent licenses under 35 U.S.C. 207.

(16) NTIS joint ventures, 15 U.S.C. 3704b.

\* \* \* \* \*

7. Part 29 is added to read as set forth in instruction 2 at the end of the common preamble.

**PART 29—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)**

**Subpart A—Purpose and Coverage**

29.100 What does this part do?

29.105 Does this part apply to me?

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

29.115 Does this part affect the Federal contracts that I receive?

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

29.200 What must I do to comply with this part?

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

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

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

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

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

29.230 How and when must I identify workplaces?

**Subpart C—Requirements for Recipients Who are Individuals**

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

29.301 [Reserved]

**Subpart D—Responsibilities of DoC Awarding Officials**

29.400 What are my responsibilities as a DoC awarding official?

**Subpart E—Violations of This Part and Consequences**

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

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

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

29.515 Are there any exceptions to those actions?

**Subpart F—Definitions**

29.605 Award.

29.610 Controlled substance.

29.615 Conviction.

29.620 Cooperative agreement.

29.625 Criminal drug statute.

29.630 Debarment.

29.635 Drug-free workplace.

29.640 Employee.

29.645 Federal agency or agency.

29.650 Grant.

29.655 Individual.

29.660 Recipient.

29.665 State.

29.670 Suspension.

**Authority:** 5 U.S.C. 301; 41 U.S.C. 701 *et seq.*

8. Part 29 is further amended as set forth below.

a. “[Agency noun]” is removed and “Department of Commerce” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “DoC” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “Director, Office of Executive Budgeting and Assistance Management” is added in its place wherever it occurs.

d. “[Agency head]” is removed and “Secretary of Commerce” is added in its place wherever it occurs.

9. Section 29.510(c) is further amended by removing “[CFR citation for the Federal agency's regulations implementing Executive Order 12549 and Executive Order 12689]” and adding “15 CFR part 26” in its place.

10. Section 29.605(a)(2) is further amended by removing “[Agency-specific CFR citation]” and adding “15 CFR part 24” in its place.

**SOCIAL SECURITY ADMINISTRATION**

**20 CFR Parts 436 and 439**

**RIN 0096-AE27**

**FOR FURTHER INFORMATION CONTACT:** Phyllis Y. Smith, Grants Management Officer, Office of Acquisition and Grants, Grants Management Team, 1710 Gwynn Oak Ave Baltimore, MD 21207, (410) 965-9518, e-mail: phyllis.y.smith@ssa.gov.

**ADDITIONAL SUPPLEMENTARY INFORMATION:** Prior to March 31, 1995, SSA was an

operating component of the Department of Health and Human Services (HHS). As a result of Public Law 103–296, the Social Security Administration (SSA) became an independent agency on March 31, 1995. However, pursuant to section 106(b) of that law, the HHS regulations at 45 CFR part 76 dealing with nonprocurement, debarment and suspension, and the requirements for a drug-free workplace have remained applicable to SSA. In order to implement its own set of regulations on these topics, SSA proposes to adopt the common rules on nonprocurement, debarment and suspension, and requirements for a drug-free workplace with one amendment as new parts 436 and 439 in title 20 of the Code of Federal Regulations. HHS regulations at 45 CFR part 76 will cease to be applicable to SSA on the effective date of these regulations, in accordance with section 106(b) of Pub. L. 103–296. Under the proposed amendment, § 436.440 would use terms or conditions to the award transaction as a means to enforce exclusions under SSA transactions rather than written certifications. This alternative available under the common rule is more efficient than SSA's current certification process for prospective recipients and participants.

#### Paperwork Reduction Act

SSA will clear separately the reporting and recordkeeping requirements in proposed 20 CFR parts 436 and 439 in accordance with the requirements of 44 U.S.C. chapter 35 prior to effectuating its own rules incorporating the proposed common rule. When effective, the proposed SSA rules will not actually impose any additional reporting or recordkeeping burden on the public since SSA has been following the requirements in the HHS rules in 45 CFR part 76 that were in effect on March 31, 1995, the date SSA became an independent agency, and SSA is making no substantive changes to those requirements. However, clearance is necessary to reflect that adoption of the common rule as a final rule by SSA will transfer from HHS to SSA the authority for the reporting and recordkeeping requirements SSA has been imposing on the public under the HHS rules.

#### List of Subjects

##### 20 CFR Part 436

Administrative practice and procedures, Debarment and suspension, Grant programs, and reporting and Recordkeeping requirements.

##### 20 CFR Part 439

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

Larry G. Massanari,

Acting Commissioner of Social Security.

For the reasons stated in the common preamble, we propose to amend chapter III of title 20 of the Code of Federal Regulations as follows:

1. Part 436 is added to read as set forth in instruction 1 at the end of the common preamble.

#### PART 436—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

436.25 How is this part organized?

436.50 How is this part written?

436.75 Do terms in this part have special meanings?

##### Subpart A—General

436.100 What does this part do?

436.105 Does this part apply to me?

436.110 What is the purpose of the nonprocurement debarment and suspension system?

436.115 How does an exclusion restrict a person's involvement in covered transactions?

436.120 May we grant an exception to let an excluded person participate in a covered transaction?

436.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?

436.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?

436.135 May the SSA exclude a person who is not currently participating in a nonprocurement transaction?

436.140 How do I know if a person is excluded?

436.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

##### Subpart B—Covered Transactions

436.200 What is a covered transaction?

436.205 Why is it important to know if a particular transaction is a covered transaction?

436.210 Which nonprocurement transactions are covered transactions?

436.215 Which nonprocurement transactions are not covered transactions?

436.220 Are any procurement contracts included as covered transactions?

436.225 How do I know if a transaction that I may participate in is a covered transaction?

#### Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

436.300 May I enter into a covered transaction with an excluded or disqualified person?

436.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?

436.310 May I use the services of an excluded person under a covered transaction?

436.315 Must I verify that principals of my covered transactions are eligible to participate?

436.320 What happens if I do business with an excluded person in a covered transaction?

436.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

#### Disclosing Information—Primary Tier Participants

436.330 What information must I provide before entering into a covered transaction with the SSA?

436.335 If I disclose unfavorable information required under § 436.330, will I be prevented from entering into the transaction?

436.340 What happens if I fail to disclose the information required under § 436.330?

436.345 What must I do if I learn of information required under § 436.330 after entering into a covered transaction with the SSA?

#### Disclosing Information—Lower Tier Participants

436.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?

436.355 What happens if I fail to disclose the information required under § 436.350?

436.360 What must I do if I learn of information required under § 436.350 after entering into a covered transaction with a higher tier participant?

#### Subpart D—Responsibilities of SSA Officials Regarding Transactions

436.400 May I enter into a transaction with an excluded or disqualified person?

436.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?

436.410 May I approve a participant's use of the services of an excluded person?

436.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?

436.420 May I approve a transaction with an excluded or disqualified person at a lower tier?

436.425 When do I check to see if a person is excluded or disqualified?

436.430 How do I check to see if a person is excluded or disqualified?

436.435 What must I require of a primary tier participant?

- 436.440 What method do I use to communicate those requirements to participants?
- 436.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
- 436.450 What action may I take if a primary tier participant fails to disclose the information required under § 436.330?
- 436.455 What may I do if a lower tier participant fails to disclose the information required under § 436.350 to the next higher tier?

**Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs**

- 436.500 What is the purpose of the List?
- 436.505 Who uses the List?
- 436.510 Who maintains the List?
- 436.515 What specific information is on the List?
- 436.520 Who gives the GSA the information that it puts on the List?
- 436.525 Whom do I ask if I have questions about a person on the List?
- 436.530 Where can I get the List?

**Subpart F—General Principles Relating to Suspension and Debarment Actions**

- 436.600 How do suspension and debarment actions start?
- 436.605 How does suspension differ from debarment?
- 436.610 What procedures does the SSA use in suspension and debarment actions?
- 436.615 How does the SSA notify a person of suspension and debarment actions?
- 436.620 Do Federal agencies coordinate suspension and debarment actions?
- 436.625 What is the scope of a suspension or debarment action?
- 436.630 May the SSA impute the conduct of one person to another?
- 436.635 May the SSA settle a debarment or suspension action?
- 436.640 May a settlement include a voluntary exclusion?
- 436.645 Do other Federal agencies know if the SSA agrees to a voluntary exclusion?

**Subpart G—Suspension**

- 436.700 When may the suspending official issue a suspension?
- 436.705 What does the suspending official consider in issuing a suspension?
- 436.710 When does a suspension take effect?
- 436.715 What notice does the suspending official give me if I am suspended?
- 436.720 How may I contest a suspension?
- 436.725 How much time do I have to contest a suspension?
- 436.730 What information must I provide to the suspending official if I contest a suspension?
- 436.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 436.740 Are suspension proceedings formal?
- 436.745 Is a record made of fact-finding proceedings?
- 436.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?

- 436.755 When will I know whether the suspension is continued or terminated?
- 436.760 How long may my suspension last?

**Subpart H—Debarment**

- 436.800 What are the causes for debarment?
- 436.805 What notice does the debarring official give me if I am proposed for debarment?
- 436.810 When does a debarment take effect?
- 436.815 How may I contest a proposed debarment?
- 436.820 How much time do I have to contest a proposed debarment?
- 436.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 436.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
- 436.835 Are debarment proceedings formal?
- 436.840 Is a record made of fact-finding proceedings?
- 436.845 What does the debarring official consider in deciding whether to debar me?
- 436.850 What is the standard of proof in a debarment action?
- 436.855 Who has the burden of proof in a debarment action?
- 436.860 What factors may influence the debarring official's decision?
- 436.865 How long may my debarment last?
- 436.870 When do I know if the debarring official debar me?
- 436.875 May I ask the debarring official to reconsider a decision to debar me?
- 436.880 What factors may influence the debarring official during reconsideration?
- 436.885 May the debarring official extend a debarment?

**Subpart I—Definitions**

- 436.900 Adequate evidence.
- 436.905 Affiliate.
- 436.910 Agency.
- 436.915 Agent or representative.
- 436.920 Civil judgment.
- 436.925 Conviction.
- 436.930 Debarment.
- 436.935 Debarring official.
- 436.940 Disqualified.
- 436.945 Excluded or exclusion.
- 436.950 Indictment.
- 436.955 Ineligible or ineligibility.
- 436.960 Legal proceedings.
- 436.965 List of Parties Excluded or Disqualified from Federal Procurement and Nonprocurement Programs.
- 436.970 Nonprocurement transaction.
- 436.975 Notice.
- 436.980 Participant.
- 436.985 Person.
- 436.990 Preponderance of the evidence.
- 436.995 Principal.
- 436.1000 Respondent.
- 436.1005 State.
- 436.1010 Suspending official.
- 436.1015 Suspension.
- 436.1020 Voluntary exclusion or voluntarily excluded

**Subpart J [Reserved]**

**Appendix to Part 436—Covered Transactions**

**Authority:** 42 U.S.C. 902(a)(5); Sec. 2455, Pub. L. 103-355, 108 Stat. 3327; E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

2. Part 436 is further amended as follows:

a. “[Agency noun]” is removed and “SSA” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “SSA” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “SSA Debarring/Suspension Official” is added in its place wherever it occurs.

3. Section 436.440 is added to read as follows:

**§ 436.440 What method do I use to communicate those requirements to participants?**

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participant's compliance with subpart C of this part and requiring them to include a similar term or condition in lower tier covered transactions.

4. Part 439 is added to read as set forth in instruction 2 at the end of the common preamble.

**PART 439—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)**

**Subpart A—Purpose and Coverage**

Sec.

- 439.100 What does this part do?
- 439.105 Does this part apply to me?
- 439.110 Are any of my Federal assistance awards exempt from this part?
- 439.115 Does this part affect the Federal contracts that I receive?

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

- 439.200 What must I do to comply with this part?
- 439.205 What must I include in my drug-free workplace statement?
- 439.210 To whom must I distribute my drug-free workplace statement?
- 439.215 What must I include in my drug-free awareness program?
- 439.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
- 439.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
- 439.230 How and when must I identify workplaces?

**Subpart C—Requirements for Recipients who are Individuals**

- 439.300 What must I do to comply with this part if I am an individual recipient?  
439.301 [Reserved]

**Subpart D—Responsibilities of SSA Awarding Officials**

- 439.400 What are my responsibilities as an SSA awarding official?

**Subpart E—Violations of This Part and Consequences**

- 439.500 How are violations of this part determined for recipients other than individuals?  
439.505 How are violations of this part determined for recipients who are individuals?  
439.510 What actions will the Federal Government take against a recipient determined to have violated this part?  
439.515 Are there any exceptions to those actions?

**Subpart F—Definitions**

- 439.605 Award.  
439.610 Controlled substance.  
439.615 Conviction.  
439.620 Cooperative agreement.  
439.625 Criminal drug statute.  
439.630 Debarment.  
439.635 Drug-free workplace.  
439.640 Employee.  
439.645 Federal agency or agency.  
439.650 Grant.  
439.655 Individual.  
439.660 Recipient.  
439.665 State.  
439.670 Suspension.

**Authority:** 41 U.S.C. 701 *et seq.*; 42 U.S.C. 902(a)(5).

5. Part 439 is further amended as follows:

a. “[Agency noun]” is removed and “the SSA” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “SSA” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “SSA Official or designee” is added in its place wherever it occurs.

d. “[Agency head]” is removed and “the Commissioner of SSA” is added in its place wherever it occurs.

6. Section 439.510(c) is further amended by removing “[CFR citation for the Federal Agency’s regulations implementing Executive Order 12549 and Executive Order 12689]” and adding “20 CFR part 436” in its place.

7. Section 439.605(a)(2) is further amended by removing “[Agency-specific CFR citation]” and adding “45 CFR part 92” in its place.

**OFFICE OF NATIONAL DRUG CONTROL POLICY****21 CFR Parts 1404 and 1405  
RIN 3201–ZA02****FOR FURTHER INFORMATION CONTACT:**

ONDCP, Attn: Daniel R. Petersen, Washington, DC 20503, (202) 395–6745, [Daniel\\_R\\_Petersen@ondcp.eop.gov](mailto:Daniel_R_Petersen@ondcp.eop.gov).

**List of Subjects***21 CFR Part 1404*

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

*21 CFR Part 1405*

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

**Edward H. Jurith,**

*Acting Director.*

Accordingly, as set forth in the common preamble, 21 CFR chapter III is proposed to be amended as follows.

1. Part 1404 is revised to read as set forth in instruction 1 at the end of the common preamble.

**PART 1404—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)****Sec.**

- 1404.25 How is this part organized?  
1404.50 How is this part written?  
1404.75 Do terms in this part have special meanings?

**Subpart A—General**

- 1404.100 What does this part do?  
1404.105 Does this part apply to me?  
1404.110 What is the purpose of the nonprocurement debarment and suspension system?  
1404.115 How does an exclusion restrict a person’s involvement in covered transactions?  
1404.120 May we grant an exception to let an excluded person participate in a covered transaction?  
1404.125 Does an exclusion under the nonprocurement system affect a person’s eligibility to participate in Federal procurement contracts?  
1404.130 Does an exclusion under the Federal procurement system affect a person’s eligibility to participate in nonprocurement transactions?  
1404.135 May the Office of National Drug Control Policy exclude a person who is not currently participating in a nonprocurement transaction?  
1404.140 How do I know if a person is excluded?  
1404.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

**Subpart B—Covered Transactions**

- 1404.200 What is a covered transaction?  
1404.205 Why is it important to know if a particular transaction is a covered transaction?  
1404.210 Which nonprocurement transactions are covered transactions?  
1404.215 Which nonprocurement transactions are not covered transactions?  
1404.220 Are any procurement contracts included as covered transactions?  
1404.225 How do I know if a transaction that I may participate in is a covered transaction?

**Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons**

- 1404.300 May I enter into a covered transaction with an excluded or disqualified person?  
1404.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?  
1404.310 May I use the services of an excluded person under a covered transaction?  
1404.315 Must I verify that principals of my covered transactions are eligible to participate?  
1404.320 What happens if I do business with an excluded person in a covered transaction?  
1404.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

**Disclosing Information—Primary Tier Participants**

- 1404.330 What information must I provide before entering into a covered transaction with the Office of National Drug Control Policy.  
1404.335 If I disclose unfavorable information required under § 1404.330 will I be prevented from entering into the transaction?  
1404.340 What happens if I fail to disclose the information required under § 1404.330?  
1404.345 What must I do if I learn of the information required under § 1404.330 after entering into a covered transaction with the Office of National Drug Control Policy?

**Disclosing Information—Lower Tier Participants**

- 1404.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?  
1404.355 What happens if I fail to disclose the information required under § 1404.350?  
1404.360 What must I do if I learn of information required under § 1404.350 after entering into a covered transaction with a higher tier participant?

**Subpart D—Responsibilities of Office of National Drug Control Policy Officials Regarding Transactions**

- 1404.400 May I enter into a transaction with an excluded or disqualified person?

- 1404.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
- 1404.410 May I approve a participant's use of the services of an excluded person?
- 1404.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
- 1404.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
- 1404.425 When do I check to see if a person is excluded or disqualified?
- 1404.430 How do I check to see if a person is excluded or disqualified?
- 1404.435 What must I require of a primary tier participant?
- 1404.440 What method do I use to communicate to participants the requirements in § 1404.435?
- 1404.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
- 1404.450 What action may I take if a primary tier participant fails to disclose the information required under § 1404.330?
- 1404.455 What may I do if a lower tier participant fails to disclose the information required under § 1404.350 to the next higher tier?

**Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs**

- 1404.500 What is the purpose of the List?
- 1404.505 Who uses the List?
- 1404.510 Who maintains the List?
- 1404.515 What specific information is on the List?
- 1404.520 Who gives the GSA the information that it puts on the List?
- 1404.525 Whom do I ask if I have questions about a person on the List?
- 1404.530 Where can I get the List?

**Subpart F—General Principles Relating to Suspension and Debarment Actions**

- 1404.600 How do suspension and debarment actions start?
- 1404.605 How does suspension differ from debarment?
- 1404.610 What procedures does the Office of National Drug Control Policy use in suspension and debarment actions?
- 1404.615 How does the Office of National Drug Control Policy notify a person of suspension and debarment actions?
- 1404.620 Do Federal agencies coordinate suspension and debarment actions?
- 1404.625 What is the scope of a suspension or debarment action?
- 1404.630 May the Office of National Drug Control Policy impute the conduct of one person to another?
- 1404.635 May the Office of National Drug Control Policy settle a debarment or suspension action?
- 1404.640 May a settlement include a voluntary exclusion?
- 1404.645 Do other Federal agencies know if the Office of National Drug Control Policy agrees to a voluntary exclusion?

**Subpart G—Suspension**

- 1404.700 When may the suspending official issue a suspension?
- 1404.705 What does the suspending official consider in issuing a suspension?
- 1404.710 When does a suspension take effect?
- 1404.715 What notice does the suspending official give me if I am suspended?
- 1404.720 How may I contest a suspension?
- 1404.725 How much time do I have to contest a suspension?
- 1404.730 What information must I provide to the suspending official if I contest a suspension?
- 1404.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 1404.740 Are suspension proceedings formal?
- 1404.745 Is a record made of fact-finding proceedings?
- 1404.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 1404.755 When will I know whether the suspension is continued or terminated?
- 1404.760 How long may my suspension last?

**Subpart H—Debarment**

- 1404.800 What are the causes for debarment?
- 1404.805 What notice does the debarring official give me if I am proposed for debarment?
- 1404.810 When does a debarment take effect?
- 1404.815 How may I contest a proposed debarment?
- 1404.820 How much time do I have to contest a proposed debarment?
- 1404.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 1404.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
- 1404.835 Are debarment proceedings formal?
- 1404.840 Is a record made of fact-finding proceedings?
- 1404.845 What does the debarring official consider in deciding whether to debar me?
- 1404.850 What is the standard of proof in a debarment action?
- 1404.855 Who has the burden of proof in a debarment action?
- 1404.860 What factors may influence the debarring official's decision?
- 1404.865 How long may my debarment last?
- 1404.870 When do I know if the debarring official debars me?
- 1404.875 May I ask the debarring official to reconsider a decision to debar me?
- 1404.880 What factors may influence the debarring official during reconsideration?
- 1404.885 May the debarring official extend a debarment?
- Subpart I—Definitions**
- 1404.900 Adequate evidence.

- 1404.905 Affiliate.
- 1404.910 Agency.
- 1404.915 Agent or representative.
- 1404.920 Civil judgment.
- 1404.925 Conviction.
- 1404.930 Debarment.
- 1404.935 Debarring official.
- 1404.940 Disqualified.
- 1404.945 Excluded or exclusion.
- 1404.950 Indictment.
- 1404.955 Ineligible or ineligibility.
- 1404.960 Legal proceedings.
- 1404.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.
- 1404.970 Nonprocurement transaction.
- 1404.975 Notice.
- 1404.980 Participant.
- 1404.985 Person.
- 1404.990 Preponderance of the evidence.
- 1404.995 Principal.
- 1404.1000 Respondent.
- 1404.1005 State.
- 1404.1010 Suspending official.
- 1404.1015 Suspension.
- 1404.1020 Voluntary exclusion or voluntarily excluded.

**Subpart J [Reserved]**

**Appendix to Part 1404—Covered Transactions**

**Authority:** E.O. 12549 3 CFR 1986 Comp., p. 189; E.O. 12689 3 CFR 1989 Comp., p. 235; sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 21 U.S.C. 1701.

2. Part 1404 is further amended as set forth below.

a. “[Agency noun]” is removed and “Office of National Drug Control Policy” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “Office of National Drug Control Policy” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “Director of National Drug Control Policy” is added in its place wherever it occurs.

3. Section 1404.440 is added to read as follows:

**§ 1404.440 What method do I use to communicate to participants the requirements in § 1404.435?**

You must obtain certifications from participants that they will comply with Subpart C of this part and that they will obtain similar certifications from lower-tier participants.

4. Part 1405 is added to read as set forth in instruction 2 at the end of the common preamble.

**PART 1405—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)**

**Subpart A—Purpose and Coverage**

- 1405.100 What does this part do?
- 1405.105 Does this part apply to me?
- 1405.110 Are any of my Federal assistance awards exempt from this part?

1405.115 Does this part affect the Federal contracts that I receive?

**Subpart B—Requirements for Recipients Other than Individuals**

- 1405.200 What must I do to comply with this part?  
 1405.205 What must I include in my drug-free workplace statement?  
 1405.210 To whom must I distribute my drug-free workplace statement?  
 1405.215 What must I include in my drug-free awareness program?  
 1405.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?  
 1405.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?  
 1405.230 How and when must I identify workplaces?

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

- 1405.300 What must I do to comply with this part if I am an individual recipient?  
 1405.301 [Reserved]

**Subpart D—Responsibilities of Office of National Drug Control Policy Awarding Officials**

- 1405.400 What are my responsibilities as an Office of National Drug Control Policy awarding official?

**Subpart E—Violations of This Part and Consequences**

- 1405.500 How are violations of this part determined for recipients other than individuals?  
 1405.505 How are violations of this part determined for recipients who are individuals?  
 1405.510 What actions will the Federal Government take against a recipient determined to have violated this part?  
 1405.515 Are there exceptions to those actions?

**Subpart F—Definitions**

- 1405.605 Award.  
 1405.610 Controlled substance.  
 1405.615 Conviction.  
 1405.620 Cooperative agreement.  
 1405.625 Criminal drug statute.  
 1405.630 Debarment.  
 1405.635 Drug-free workplace.  
 1405.640 Employee.  
 1405.645 Federal agency or agency.  
 1405.650 Grant.  
 1405.655 Individual.  
 1405.660 Recipient.  
 1405.665 State.  
 1405.670 Suspension.

**Authority:** 21 U.S.C. 1701; 41 U.S.C. 701, *et seq.*

5. Part 1405 is further amended as set forth below.

a. “[Agency noun]” is removed and “Office of National Drug Control Policy” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “Office of National Drug Control Policy” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “Director of National Drug Control Policy” is added in its place wherever it occurs.

d. “[Agency head]” is removed and “Director of National Drug Control Policy” is added in its place wherever it occurs.

6. Section 1405.510(c) is further amended by removing “[CFR citation for the Federal Agency’s regulations implementing Executive Order 12549 and Executive Order 12689]” and adding “21 CFR part 1404” in its place.

7. Section 1405.605(a)(2) is further amended by removing “[Agency-specific CFR citation]” and adding “21 CFR part 1403” in its place.

**DEPARTMENT OF STATE  
 22 CFR Parts 133 and 137**

**RIN 1400-AB-33**

**FOR FURTHER INFORMATION CONTACT:**  
 Gladys Gines, Procurement Analyst,  
 Policy Division, Office of the  
 Procurement Executive, U.S.  
 Department of State, Washington, DC  
 20522, (703) 516-1691.

**List of Subjects**

*22 CFR Part 133*

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

*22 CFR Part 137*

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

Approved: August 17, 2001.

**Lloyd W. Pratsch,**

*Procurement Executive, Department of State.*

Accordingly, as set forth in the common preamble, the Department of State proposes to amend 22 CFR chapter I, as follows:

1. Part 133 is added to read as set forth in instruction 2 at the end of the common preamble.

**PART 133—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)**

**Subpart A—Purpose and Coverage**

- 133.100 What does this part do?  
 133.105 Does this part apply to me?  
 133.110 Are any of my Federal assistance awards exempt from this part?  
 133.115 Does this part affect the Federal contracts that I receive?

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

- 133.200 What must I do to comply with this part?

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

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

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

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

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

133.230 How and when must I identify workplaces?

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

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

133.301 [Reserved]

**Subpart D—Responsibilities of Department of State Awarding Officials**

133.400 What are my responsibilities as a Department of State awarding official?

**Subpart E—Violations of This Part and Consequences**

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

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

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

133.515 Are there any exceptions to those actions?

**Subpart F—Definitions**

- 133.605 Award.  
 133.610 Controlled substance.  
 133.615 Conviction.  
 133.620 Cooperative agreement.  
 133.625 Criminal drug statute.  
 133.630 Debarment.  
 133.635 Drug-free workplace.  
 133.640 Employee.  
 133.645 Federal agency or agency.  
 133.650 Grant.  
 133.655 Individual.  
 133.660 Recipient.  
 133.665 State.  
 133.670 Suspension.

**Authority:** 22 U.S.C. 2658; 41 U.S.C. 701, *et seq.*

2. Part 133 is further amended as set forth below.

a. “[Agency noun]” is removed and “Department of State” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “Department of State” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “Procurement Executive” is added in its place wherever it occurs.

d. “[Agency head]” is removed and “Procurement Executive” is added in its place wherever it occurs.

3. Section 133.510(c) is further amended by removing “[CFR citation for the Federal Agency’s regulations

implementing Executive Order 12549 and Executive Order 12689]" and adding "22 CFR part 137" in its place.

4. Section 133.605(a)(2) is further amended by removing "[Agency-specific CFR citation]" and adding "22 CFR part 135" in its place.

5. Part 137 is revised to read as set forth in instruction 1 at the end of the common preamble.

## **PART 137—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

- 137.25 How is this part organized?  
 137.50 How is this part written?  
 137.75 Do terms in this part have special meanings?

### **Subpart A—General**

- 137.100 What does this part do?  
 137.105 Does this part apply to me?  
 137.110 What is the purpose of the nonprocurement debarment and suspension system?  
 137.115 How does an exclusion restrict a person's involvement in covered transactions?  
 137.120 May we grant an exception to let an excluded person participate in a covered transaction?  
 137.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?  
 137.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?  
 137.135 May the Department of State exclude a person who is not currently participating in a nonprocurement transaction?  
 137.140 How do I know if a person is excluded?  
 137.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

### **Subpart B—Covered Transactions**

- 137.200 What is a covered transaction?  
 137.205 Why is it important to know if a particular transaction is a covered transaction?  
 137.210 Which nonprocurement transactions are covered transactions?  
 137.215 Which nonprocurement transactions are not covered transactions?  
 137.220 Are any procurement contracts included as covered transactions?  
 137.225 How do I know if a transaction that I may participate in is a covered transaction?

### **Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons**

- 137.300 May I enter into a covered transaction with an excluded or disqualified person?  
 137.305 What must I do if a Federal agency excludes a person with whom I am

already doing business in a covered transaction?

- 137.310 May I use the services of an excluded person under a covered transaction?  
 137.315 Must I verify that principals of my covered transactions are eligible to participate?  
 137.320 What happens if I do business with an excluded person in a covered transaction?  
 137.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

### **Disclosing Information Primary Tier Participants**

- 137.330 What information must I provide before entering into a covered transaction with the Department of State?  
 137.335 If I disclose unfavorable information required under § 137.330 will I be prevented from entering into the transaction?  
 137.340 What happens if I fail to disclose the information required under § 137.330?  
 137.345 What must I do if I learn of the information required under § 137.330 after entering into a covered transaction with the Department of State?

### **Disclosing Information—Lower Tier Participants**

- 137.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?  
 137.355 What happens if I fail to disclose the information required under § 137.350?  
 137.360 What must I do if I learn of information required under § 137.350 after entering into a covered transaction with a higher tier participant?

### **Subpart D—Responsibilities of Department of State Officials Regarding Transactions**

- 137.400 May I enter into a transaction with an excluded or disqualified person?  
 137.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?  
 137.410 May I approve a participant's use of the services of an excluded person?  
 137.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?  
 137.420 May I approve a transaction with an excluded or disqualified person at a lower tier?  
 137.425 When do I check to see if a person is excluded or disqualified?  
 137.430 How do I check to see if a person is excluded or disqualified?  
 137.435 What must I require of a primary tier participant?  
 137.440 What method do I use to communicate those requirements to participants?  
 137.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?  
 137.450 What action may I take if a primary tier participant fails to disclose the information required under § 137.330?

- 137.455 What may I do if a lower tier participant fails to disclose the information required under § 137.350 to the next higher tier?

### **Subpart E—Governmentwide List of Parties Excluded or Disqualified from Federal Procurement and Nonprocurement Programs**

- 137.500 What is the purpose of the List?  
 137.505 Who uses the List?  
 137.510 Who maintains the List?  
 137.515 What specific information is on the List?  
 137.520 Who gives the GSA the information that it puts on the List?  
 137.525 Whom do I ask if I have questions about a person on the List?  
 137.530 Where can I get the List?

### **Subpart F—General Principles Relating to Suspension and Debarment Actions**

- 137.600 How do suspension and debarment actions start?  
 137.605 How does suspension differ from debarment?  
 137.610 What procedures does the Department of State use in suspension and debarment actions?  
 137.615 How does the Department of State notify a person of suspension and debarment actions?  
 137.620 Do Federal agencies coordinate suspension and debarment actions?  
 137.625 What is the scope of a suspension or debarment action?  
 137.630 May the Department of State impute the conduct of one person to another?  
 137.635 May the Department of State settle a debarment or suspension action?  
 137.640 May a settlement include a voluntary exclusion?  
 137.645 Do other Federal agencies know if the Department of State agrees to a voluntary exclusion?

### **Subpart G—Suspension**

- 137.700 When may the suspending official issue a suspension?  
 137.705 What does the suspending official consider in issuing a suspension?  
 137.710 When does a suspension take effect?  
 137.715 What notice does the suspending official give me if I am suspended?  
 137.720 How may I contest a suspension?  
 137.725 How much time do I have to contest a suspension?  
 137.730 What information must I provide to the suspending official if I contest a suspension?  
 137.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?  
 137.740 Are suspension proceedings formal?  
 137.745 Is a record made of fact-finding proceedings?  
 137.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?  
 137.755 When will I know whether the suspension is continued or terminated?  
 137.760 How long may my suspension last?

**Subpart H—Debarment**

- 137.800 What are the causes for debarment?
- 137.805 What notice does the debarring official give me if I am proposed for debarment?
- 137.810 When does a debarment take effect?
- 137.815 How may I contest a proposed debarment?
- 137.820 How much time do I have to contest a proposed debarment?
- 137.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 137.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
- 137.835 Are debarment proceedings formal?
- 137.840 Is a record made of fact-finding proceedings?
- 137.845 What does the debarring official consider in deciding whether to debar me?
- 137.850 What is the standard of proof in a debarment action?
- 137.855 Who has the burden of proof in a debarment action?
- 137.860 What factors may influence the debarring official's decision?
- 137.865 How long may my debarment last?
- 137.870 When do I know if the debarring official debars me?
- 137.875 May I ask the debarring official to reconsider a decision to debar me?
- 137.880 What factors may influence the debarring official during reconsideration?
- 137.885 May the debarring official extend a debarment?

**Subpart I—Definitions**

- 137.900 Adequate evidence.
- 137.905 Affiliate.
- 137.910 Agency.
- 137.915 Agent or representative.
- 137.920 Civil judgment.
- 137.925 Conviction.
- 137.930 Debarment.
- 137.935 Debarring official.
- 137.940 Disqualified.
- 137.945 Excluded or exclusion.
- 137.950 Indictment.
- 137.955 Ineligible or ineligibility.
- 137.960 Legal proceedings.
- 137.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.
- 137.970 Nonprocurement transaction.
- 137.975 Notice.
- 137.980 Participant.
- 137.985 Person.
- 137.990 Preponderance of the evidence.
- 137.995 Principal.
- 137.1000 Respondent.
- 137.1005 State.
- 137.1010 Suspending official.
- 137.1015 Suspension.
- 137.1020 Voluntary exclusion or voluntarily excluded.

**Subpart J [Reserved]****Appendix to Part 137—Covered Transactions**

**Authority:** 22 U.S.C. 2658; 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.

6. Part 137 is further amended as set forth below.

a. “[Agency noun]” is removed and “Department of State” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “Department of State” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “Procurement Executive” is added in its place wherever it occurs.

7. Section 137.440 is added to read as follows:

**§ 137.440 What method do I use to communicate those requirements to participants?**

To communicate the requirement to participants, you must include a term or condition in the transaction requiring the participant's compliance with Subpart C of this part and requiring them to include a similar term or condition in lower tier covered transactions.

**AGENCY FOR INTERNATIONAL DEVELOPMENT**

**22 CFR Parts 208 and 210**

**RIN 0412-AA47**

**FOR FURTHER INFORMATION CONTACT:**

Kathleen J. O'Hara, M/OP/OD, 1300 Pennsylvania Avenue, NW, Washington, DC 20523-7900, (202) 712-4759.

**ADDITIONAL SUPPLEMENTARY INFORMATION:**

USAID has determined not to require written certifications from awardees or persons with whom they propose to enter into covered transactions. In order to clarify that transactions such as host country contracts and procurements under Commodity Import Programs that USAID finances, but does not award, are covered by this regulation, USAID is adding a sentence to the definition of primary covered transactions in 208.110(a)(1)(i).

**List of Subjects**

*22 CFR Part 208*

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

*22 CFR Part 210*

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

Dated: June 11, 2001.

**Mark S. Ward,**

*Director, Office of Procurement.*

Accordingly, as set forth in the common preamble, 22 CFR chapter II is proposed to be amended as follows:

1. Part 208 is revised to read as set forth in instruction 1 at the end of the common preamble.

**PART 208—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

Sec.

208.25 How is this part organized?

208.50 How is this part written?

208.75 Do terms in this part have special meanings?

**Subpart A—General**

208.100 What does this part do?

208.105 Does this part apply to me?

208.110 What is the purpose of the nonprocurement debarment and suspension systems?

208.115 How does an exclusion restrict a person's involvement in covered transactions?

208.120 May we grant an exception to let an excluded person participate in a covered transaction?

208.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?

208.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?

208.135 May the U.S. Agency for International Development exclude a person who is not currently participating in a nonprocurement transaction?

208.140 How do I know if a person is excluded?

208.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

**Subpart B—Covered Transactions**

208.200 What is a covered transaction?

208.205 Why is it important to know if a particular transaction is a covered transaction?

208.210 Which nonprocurement transactions are covered transactions?

208.215 Which nonprocurement transactions are not covered transactions?

208.220 Are any procurement contracts included as covered transactions?

208.225 How do I know if a transaction that I may participate in is a covered transaction?

**Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons**

208.300 May I enter into a covered transaction with an excluded or disqualified person?

208.305 What must I do if a Federal agency excludes a person with whom I am

- already doing business in a covered transaction?
- 208.310 May I use the services of an excluded person under a covered transaction?
- 208.315 Must I verify that principals of my covered transactions are eligible to participate?
- 208.320 What happens if I do business with an excluded person in a covered transaction?
- 208.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?
- Disclosing Information—Primary Tier Participants**
- 208.330 What information must I provide before entering into a covered transaction with the U.S. Agency for International Development.
- 208.335 If I disclose unfavorable information required under § 208.330 will I be prevented from entering into the transaction?
- 208.340 What happens if I fail to disclose the information required under § 208.330?
- 208.345 What must I do if I learn of the information required under § 208.330 after entering into a covered transaction with the U.S. Agency for International Development?
- Disclosing Information—Lower Tier Participants**
- 208.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
- 208.355 What happens if I fail to disclose the information required under § 208.350?
- 208.360 What must I do if I learn of information required under § 208.350 after entering into a covered transaction with a higher tier participant?
- Subpart D—Responsibilities of USAID Officials Regarding Transactions**
- 208.400 May I enter into a transaction with an excluded or disqualified person?
- 208.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
- 208.410 May I approve a participant's use of the services of an excluded person?
- 208.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
- 208.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
- 208.425 When do I check to see if a person is excluded or disqualified?
- 208.430 How do I check to see if a person is excluded or disqualified?
- 208.435 What must I require of a primary tier participant?
- 208.440 What method do I use to communicate requirements to participants?
- 208.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
- 208.450 What action may I take if a primary tier participant fails to disclose the information required under § 208.330?
- 208.455 What may I do if a lower tier participant fails to disclose the information required under § 208.350 to the next higher tier?
- Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs**
- 208.500 What is the purpose of the List?
- 208.505 Who uses the List?
- 208.510 Who maintains the List?
- 208.515 What specific information is on the List?
- 208.520 Who gives the GSA the information that it puts on the List?
- 208.525 Whom do I ask if I have questions about a person on the List?
- 208.530 Where can I get the List?
- Subpart F—General Principles Relating to Suspension and Debarment Actions**
- 208.600 How do suspension and debarment actions start?
- 208.605 How does suspension differ from debarment?
- 208.610 What procedures does the U.S. Agency for International Development use in suspension and debarment actions?
- 208.615 How does the U.S. Agency for International Development notify a person of suspension and debarment actions?
- 208.620 Do Federal agencies coordinate suspension and debarment actions?
- 208.625 What is the scope of a suspension or debarment action?
- 208.630 May the U.S. Agency for International Development impute the conduct of one person to another?
- 208.635 May the U.S. Agency for International Development settle a debarment or suspension action?
- 208.640 May a settlement include a voluntary exclusion?
- 208.645 Do other Federal agencies know if the U.S. Agency for International Development agrees to a voluntary exclusion?
- Subpart G—Suspension**
- 208.700 When may the suspending official issue a suspension?
- 208.705 What does the suspending official consider in issuing a suspension?
- 208.710 When does a suspension take effect?
- 208.715 What notice does the suspending official give me if I am suspended?
- 208.720 How may I contest a suspension?
- 208.725 How much time do I have to contest a suspension?
- 208.730 What information must I provide to the suspending official if I contest a suspension?
- 208.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 208.740 Are suspension proceedings formal?
- 208.745 Is a record made of fact-finding proceedings?
- 208.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 208.755 When will I know whether the suspension is continued or terminated?
- 208.760 How long may my suspension last?
- Subpart H—Debarment**
- 208.800 What are the causes for debarment?
- 208.805 What notice does the debarring official give me if I am proposed for debarment?
- 208.810 When does a debarment take effect?
- 208.815 How may I contest a proposed debarment?
- 208.820 How much time do I have to contest a proposed debarment?
- 208.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 208.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
- 208.835 Are debarment proceedings formal?
- 208.840 Is a record made of fact-finding proceedings?
- 208.845 What does the debarring official consider in deciding whether to debar me?
- 208.850 What is the standard of proof in a debarment action?
- 208.855 Who has the burden of proof in a debarment action?
- 208.860 What factors may influence the debarring official's decision?
- 208.865 How long may my debarment last?
- 208.870 When do I know if the debarring official debars me?
- 208.875 May I ask the debarring official to reconsider a decision to debar me?
- 208.880 What factors may influence the debarring official during reconsideration?
- 208.885 May the debarring official extend a debarment?
- Subpart I—Definitions**
- 208.900 Adequate evidence.
- 208.905 Affiliate.
- 208.910 Agency.
- 208.915 Agent or representative.
- 208.920 Civil judgment.
- 208.925 Conviction.
- 208.930 Debarment.
- 208.935 Debarring official.
- 208.940 Disqualified.
- 208.945 Excluded or exclusion.
- 208.950 Indictment.
- 208.955 Ineligible or ineligibility.
- 208.960 Legal proceedings.
- 208.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.
- 208.970 Nonprocurement transaction.
- 208.975 Notice.
- 208.980 Participant.
- 208.985 Person.
- 208.990 Preponderance of the evidence.
- 208.995 Principal.
- 208.1000 Respondent.
- 208.1005 State.
- 208.1010 Suspending official.
- 208.1015 Suspension.
- 208.1020 Voluntary exclusion or voluntarily excluded.

**Subpart J [Reserved]****Appendix to Part 208—Covered Transactions**

**Authority:** E.O. 12163, 3 CFR 1979 Comp., p. 435; E.O. 12549 3 CFR 1986 Comp., p. 189; E.O. 12698, 3 CFR 1989 Comp., p. 235; sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); sec. 621, Pub. L. 87-195, 75 Stat. 445 (22 U.S.C. 2381), as amended.

2. Part 208 is further amended as set forth below.

a. “[Agency Noun]” is removed and “U.S. Agency for International Development” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “USAID” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “Director, Office of Procurement” is added in its place wherever it occurs.

3. Section 208.440 is added to read as follows:

**§ 208.440 What method do I use to communicate requirements in § 208.35 to participants?**

To communicate the requirements in § 208.35, you must include a term or condition in the transaction requiring the participants’ compliance with Subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

4. Section 208.935 is further amended by adding paragraph (b) to read as follows:

**§ 208.935 Debarring official.**

\* \* \* \* \*

(b) The U.S. Agency for International Development’s debarring official is the Director of the Office of Procurement.

5. Section 208.1010 is further amended by adding paragraph (b) to read as follows:

**§ 208.1010 Suspending official.**

\* \* \* \* \*

(b) The U.S. Agency for International Development’s suspending official is the Director of the Office of Procurement.

6. Part 210 is added to read as set forth in instruction 2 at the end of the common preamble.

**PART 210—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)**

**Subpart A—Purpose and Coverage**

Sec.

210.100 What does this part do?

210.105 Does this part apply to me?

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

210.115 Does this part affect the Federal contracts that I receive?

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

210.200 What must I do to comply with this part?

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

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

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

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

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

210.230 How and when must I identify workplaces?

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

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

210.301 [Reserved]

**Subpart D—Responsibilities of USAID Awarding Officials**

210.400 What are my responsibilities as a USAID awarding official?

**Subpart E—Violations of This Part and Consequences**

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

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

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

210.515 Are there any provisions for exceptions to those actions?

**Subpart F—Definitions**

210.605 Award.

210.610 Controlled substance.

210.615 Conviction.

210.620 Cooperative agreement.

210.625 Criminal drug statute.

210.630 Debarment.

210.635 Drug-free workplace.

210.640 Employee.

210.645 Federal agency or agency.

210.650 Grant.

210.655 Individual.

210.660 Recipient.

210.665 State.

210.670 Suspension.

**Authority:** 41 U.S.C. 701, *et seq.*; sec. 621, Pub. L. 87-195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, 3 CFR 1979 Comp., p. 435.

7. Part 210 is further amended as set forth below.

a. “[Agency Noun]” is removed and “U.S. Agency for International Development” is added in its place wherever it occurs.

b. “[Agency Adjective]” is removed and “USAID” is added in its place wherever it occurs.

c. “[Agency Head or Designee]” is removed and “Director of the Office of Procurement” is added in its place wherever it occurs.

d. “[Agency head]” is removed and “USAID Administrator or designee” is added in its place wherever it occurs.

8. Section 210.510(c) is further amended by removing “[CFR citation for the Federal Agency’s regulation implementing Executive Order 12549 and Executive Order 12689]” and adding “22 CFR part 208” in its place.

9. Section 210.605 is further amended by adding a paragraph (c) to read as follows:

**§ 210.605 Award.**

\* \* \* \* \*

(c) Notwithstanding paragraph (a)(2) of this section, this paragraph is not applicable to AID.

**PEACE CORPS**

**22 CFR Parts 310 and 312**

**RIN 0420-AA17**

**FOR FURTHER INFORMATION CONTACT:**

Ruth L. Ramsey, Acting General Counsel, Office of the General Counsel, Peace Corps, 1111 20th Street, NW, Washington, DC 20526, (202) 692-2150.

**ADDITIONAL SUPPLEMENTARY INFORMATION:**

This part proposes in § 310.440 to use terms or conditions to the award transaction as a means to enforce exclusions under Peace Corps transactions rather than written certifications. This alternative available under the common rule is more efficient than the Peace Corps’ current certification process for prospective recipients and participants.

In addition, the requirements for maintaining a drug-free workplace are being removed as a subpart in the current debarment and suspension common rule, and are proposed to be recodified as a separate part 312.

**List of Subjects**

*22 CFR Part 310*

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements, Technical assistance.

*22 CFR Part 312*

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

Dated: August 22, 2001.

**Michael J. Kole,**

*Director, Office of Administrative Services,  
Peace Corps.*

For the reasons stated in the common preamble, the Peace Corps proposes to amend 22 CFR chapter III, as follows:

1. Part 310 is revised to read as set forth in instruction 1 at the end of the common preamble.

## **PART 310—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

Sec.

310.25 How is this part organized?

310.50 How is this part written?

310.75 Do terms in this part have special meanings?

### **Subpart A—General**

310.100 What does this part do?

310.105 Does this part apply to me?

310.110 What is the purpose of the nonprocurement debarment and suspension system?

310.115 How does an exclusion restrict a person's involvement in covered transactions?

310.120 May we grant an exception to let an excluded person participate in a covered transaction?

310.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in federal procurement contracts?

310.130 Does an exclusion under the federal procurement system affect a person's eligibility to participate in nonprocurement transactions?

310.135 May the Peace Corps exclude a person who is not currently participating in a nonprocurement transaction?

310.140 How do I know if a person is excluded?

310.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

### **Subpart B—Covered Transactions**

310.200 What is a covered transaction?

310.205 Why is it important to know if a particular transaction is a covered transaction?

310.210 Which nonprocurement transactions are covered transactions?

310.215 Which nonprocurement transactions are not covered transactions?

310.220 Are any procurement contracts included as covered transactions?

310.225 How do I know if a transaction that I may participate in is a covered transaction?

### **Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons**

310.300 May I enter into a covered transaction with an excluded or disqualified person?

310.305 What must I do if a federal agency excludes a person with whom I am

already doing business in a covered transaction?

310.310 May I use the services of an excluded person under a covered transaction?

310.315 Must I verify that principals of my covered transactions are eligible to participate?

310.320 What happens if I do business with an excluded person in a covered transaction?

310.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

### **Disclosing Information—Primary Tier Participants**

310.330 What information must I provide before entering into a covered transaction with the Peace Corps?

310.335 If I disclose unfavorable information required under § 310.330 will I be prevented from entering into the transaction?

310.340 What happens if I fail to disclose the information required under § 310.330?

310.345 What must I do if I learn of the information required under § 310.330 after entering into a covered transaction with the Peace Corps?

### **Disclosing Information—Lower Tier Participants**

310.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?

310.355 What happens if I fail to disclose the information required under § 310.350?

310.360 What must I do if I learn of information required under § 310.350 after entering into a covered transaction with a higher tier participant?

### **Subpart D—Responsibilities of Peace Corps Officials Regarding Transactions**

310.400 May I enter into a transaction with an excluded or disqualified person?

310.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?

310.410 May I approve a participant's use of the services of an excluded person?

310.415 What must I do if a federal agency excludes the participant or a principal after I enter into a covered transaction?

310.420 May I approve a transaction with an excluded or disqualified person at a lower tier?

310.425 When do I check to see if a person is excluded or disqualified?

310.430 How do I check to see if a person is excluded or disqualified?

310.435 What must I require of a primary tier participant?

310.440 What method do I use to communicate those requirements to participants?

310.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?

310.450 What action may I take if a primary tier participant fails to disclose the information required under § 310.330?

310.455 What may I do if a lower tier participant fails to disclose the information required under § 310.350 to the next higher tier?

### **Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs**

310.500 What is the purpose of the List?

310.505 Who uses the List?

310.510 Who maintains the List?

310.515 What specific information is on the List?

310.520 Who gives the GSA the information that it puts on the List?

310.525 Whom do I ask if I have questions about a person on the List?

310.530 Where can I get the List?

### **Subpart F—General Principles Relating to Suspension and Debarment Actions**

310.600 How do suspension and debarment actions start?

310.605 How does suspension differ from debarment?

310.610 What procedures does the Peace Corps use in suspension and debarment actions?

310.615 How does the Peace Corps notify a person of suspension and debarment actions?

310.620 Do federal agencies coordinate suspension and debarment actions?

310.625 What is the scope of a suspension or debarment action?

310.630 May the Peace Corps impute the conduct of one person to another?

310.635 May the Peace Corps settle a debarment or suspension action?

310.640 May a settlement include a voluntary exclusion?

310.645 Do other federal agencies know if the Peace Corps agrees to a voluntary exclusion?

### **Subpart G—Suspension**

310.700 When may the suspending official issue a suspension?

310.705 What does the suspending official consider in issuing a suspension?

310.710 When does a suspension take effect?

310.715 What notice does the suspending official give me if I am suspended?

310.720 How may I contest a suspension?

310.725 How much time do I have to contest a suspension?

310.730 What information must I provide to the suspending official if I contest a suspension?

310.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?

310.740 Are suspension proceedings formal?

310.745 Is a record made of fact-finding proceedings?

310.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?

310.755 When will I know whether the suspension is continued or terminated?

310.760 How long may my suspension last?

### **Subpart H—Debarment**

310.800 What are the causes for debarment?

- 310.805 What notice does the debarring official give me if I am proposed for debarment?
- 310.810 When does a debarment take effect?
- 310.815 How may I contest a proposed debarment?
- 310.820 How much time do I have to contest a proposed debarment?
- 310.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 310.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
- 310.835 Are debarment proceedings formal?
- 310.840 Is a record made of fact-finding proceedings?
- 310.845 What does the debarring official consider in deciding whether to debar me?
- 310.850 What is the standard of proof in a debarment action?
- 310.855 Who has the burden of proof in a debarment action?
- 310.860 What factors may influence the debarring official's decision?
- 310.865 How long may my debarment last?
- 310.870 When do I know if the debarring official debars me?
- 310.875 May I ask the debarring official to reconsider a decision to debar me?
- 310.880 What factors may influence the debarring official during reconsideration?
- 310.885 May the debarring official extend a debarment?

#### Subpart I—Definitions

- 310.900 Adequate evidence.
- 310.905 Affiliate.
- 310.910 Agency.
- 310.915 Agent or representative.
- 310.920 Civil judgment.
- 310.925 Conviction.
- 310.930 Debarment.
- 310.935 Debarring official.
- 310.940 Disqualified.
- 310.945 Excluded or exclusion.
- 310.950 Indictment.
- 310.955 Ineligible or ineligibility.
- 310.960 Legal proceedings.
- 310.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.
- 310.970 Nonprocurement transaction.
- 310.975 Notice.
- 310.980 Participant.
- 310.985 Person.
- 310.990 Preponderance of the evidence.
- 310.995 Principal.
- 310.100 Respondent.
- 310.1005 State.
- 310.1010 Suspending official.
- 310.1015 Suspension.
- 310.1020 Voluntary exclusion or voluntarily excluded.

#### Subpart J [Reserved]

#### Appendix to Part 310—Covered Transactions

**Authority:** 22 U.S.C. 2503; 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).

### PART 310—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

2. Part 310 is further amended as set forth below.

- a. “[Agency noun]” is removed and “Peace Corps” is added in its place wherever it occurs.
- b. “[Agency adjective]” is removed and “Peace Corps” is added in its place wherever it occurs.
- c. “[Agency head or designee]” is removed and “Peace Corps Director or designee” is added in its place wherever it occurs.

3. Section 310.440 is added to read as follows:

#### § 310.440 What method do I use to communicate those requirements to participants?

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participant's compliance with subpart C of this part and requiring them to include a similar term or condition in lower tier covered transactions.

4. Part 312 is added to read as set forth in instruction 2 at the end of the common preamble.

### PART 312—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

#### Subpart A—Purpose and Coverage

Sec.

- 312.100 What does this part do?
- 312.105 Does this part apply to me?
- 312.110 Are any of my federal assistance awards exempt from this part?
- 312.115 Does this part affect the federal contracts that I receive?

#### Subpart B—Requirements for Recipients Other Than Individuals

- 312.200 What must I do to comply with this part?
- 312.205 What must I include in my drug-free workplace statement?
- 312.210 To whom must I distribute my drug-free workplace statement?
- 312.215 What must I include in my drug-free awareness program?
- 312.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
- 312.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
- 312.230 How and when must I identify workplaces?

#### Subpart C—Requirements for Recipients Who Are Individuals

- 312.300 What must I do to comply with this part if I am an individual recipient?
- 312.301 [Reserved]

#### Subpart D—Responsibilities of Peace Corps Awarding Officials

- 312.400 What are my responsibilities as a Peace Corps awarding official?

#### Subpart E—Violations of This Part and Consequences

- 312.500 How are violations of this part determined for recipients other than individuals?
- 312.505 How are violations of this part determined for recipients who are individuals?
- 312.510 What actions will the Federal Government take against a recipient determined to have violated this part?
- 312.515 Are there any exceptions to those actions?

#### Subpart F—Definitions

- 312.605 Award.
- 312.610 Controlled substance.
- 312.615 Conviction.
- 312.620 Cooperative agreement.
- 312.625 Criminal drug statute.
- 312.630 Debarment.
- 312.635 Drug-free workplace.
- 312.640 Employee.
- 312.645 Federal agency or agency.
- 312.650 Grant.
- 312.655 Individual.
- 312.660 Recipient.
- 312.665 State.
- 312.670 Suspension.

**Authority:** 22 U.S.C. 2503(b); 41 U.S.C. 701 *et seq.*

5. Part 312 is further amended as set forth below.

- a. “[Agency noun]” is removed and “Peace Corps” is added in its place wherever it occurs.
- b. “[Agency adjective]” is removed and “Peace Corps” is added in its place wherever it occurs.
- c. “[Agency head or designee]” is removed and “Peace Corps Director or designee” is added in its place wherever it occurs.

d. “[Agency head]” is removed and “Peace Corps Director” is added in its place wherever it occurs.

6. Section 312.510(c) is further amended by removing “[CFR citation for the federal agency's regulations implementing Executive Order 12549 and Executive Order 12689]” and adding “22 CFR part 310” in its place.

7. Section 312.605 is further amended by adding a paragraph (c) to read as follows:

#### § 312.605 Award.

\* \* \* \* \*

(c) Notwithstanding paragraph (a)(2) of this section, this paragraph is not applicable for the Peace Corps.

#### INTER-AMERICAN FOUNDATION 22 CFR Parts 1006 and 1008

**FOR FURTHER INFORMATION CONTACT:**  
Carolyn Karr, General Counsel, Inter-

American Foundation, 901 N. Stuart Street, Arlington, Virginia 22203, (703) 306-4350, [ckarr@iaf.gov](mailto:ckarr@iaf.gov).

### List of Subjects

#### 22 CFR Part 1006

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements, Technical assistance.

#### 22 CFR Part 1008

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

Approved:

**David Valenzuela,**

*President, Inter-American Foundation.*

For the reasons stated in the common preamble, the Inter-American Foundation proposes to amend 22 CFR chapter X, as follows:

1. Part 1006 is revised to read as set forth in instruction 1 at the end of the common preamble.

### **PART 1006—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

Sec.

- 1006.25 How is this part organized?
- 1006.50 How is this part written?
- 1006.75 Do terms in this part have special meanings?

#### **Subpart A—General**

- 1006.100 What does this part do?
- 1006.105 Does this part apply to me?
- 1006.110 What is the purpose of the nonprocurement debarment and suspension system?
- 1006.115 How does an exclusion restrict a person's involvement in covered transactions?
- 1006.120 May we grant an exception to let an excluded person participate in a covered transaction?
- 1006.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?
- 1006.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
- 1006.135 May the Inter-American Foundation exclude a person who is not currently participating in a nonprocurement transaction?
- 1006.140 How do I know if a person is excluded?
- 1006.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

#### **Subpart B—Covered Transactions**

- 1006.200 What is a covered transaction?

- 1006.205 Why is it important to know if a particular transaction is a covered transaction?
- 1006.210 Which nonprocurement transactions are covered transactions?
- 1006.215 Which nonprocurement transactions are not covered transactions?
- 1006.220 Are any procurement contracts included as covered transactions?
- 1006.225 How do I know if a transaction that I may participate in is a covered transaction?

#### **Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons**

- 1006.300 May I enter into a covered transaction with an excluded or disqualified persons?
- 1006.305 Must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
- 1006.310 May I use the services of an excluded person under a covered transaction?
- 1006.315 I verify that principals of my covered transactions are eligible to participate?
- 1006.320 What happens if I do business with an excluded person in a covered transaction?
- 1006.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

#### **Disclosing Information—Primary Tier Participants**

- 1006.330 What information must I provide before entering into a covered transaction with the Inter-American Foundation?
- 1006.335 If I disclose unfavorable information required under § 1006.330 will I be prevented from entering into the transaction?
- 1006.340 What happens if I fail to disclose the information required under § 1006.330?
- 1006.345 What must I do if I learn of the information required under § 1006.330 after entering into a covered transaction with the Inter-American Foundation?

#### **Disclosing Information—Lower Tier Participants**

- 1006.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
- 1006.355 What happens if I fail to disclose the information required under § 1006.350?
- 1006.360 What must I do if I learn of information required under § 1006.350 after entering into a covered transaction with a higher tier participant?

#### **Subpart D—Responsibilities of Inter-American Foundation Officials Regarding Transactions**

- 1006.400 May I enter into a transaction with an excluded or disqualified person?
- 1006.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?

- 1006.410 May I approve a participant's use of the services of an excluded person?
- 1006.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
- 1006.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
- 1006.425 When do I check to see if a person is excluded or disqualified?
- 1006.430 How do I check to see if a person is excluded or disqualified?
- 1006.435 What must I require of a primary tier participant?
- 1006.440 What method do I use to communicate those requirements to participants?
- 1006.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
- 1006.450 What action may I take if a primary tier participant fails to disclose the information required under § 1006.330?
- 1006.455 What may I do if a lower tier participant fails to disclose the information required under § 1006.350 to the next higher tier?

#### **Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs**

- 1006.500 What is the purpose of the List?
- 1006.505 Who uses the List?
- 1006.510 Who maintains the List?
- 1006.515 What specific information is on the List?
- 1006.520 Who gives the GSA the information that it puts on the List?
- 1006.525 Whom do I ask if I have questions about a person on the List?
- 1006.530 Where can I get the List?

#### **Subpart F—General Principles Relating to Suspension and Debarment Actions**

- 1006.600 How do suspension and debarment actions start?
- 1006.605 How does suspension differ from debarment?
- 1006.610 What procedures does the Inter-American Foundation use in suspension and debarment actions?
- 1006.615 How does the Inter-American Foundation notify a person of suspension and debarment actions?
- 1006.620 Do Federal agencies coordinate suspension and debarment actions?
- 1006.625 What is the scope of a suspension or debarment action?
- 1006.630 May the Inter-American Foundation impute the conduct of one person to another?
- 1006.635 May the Inter-American Foundation settle a debarment or suspension action?
- 1006.640 May a settlement include a voluntary exclusion?
- 1006.645 Do other Federal agencies know if the Inter-American Foundation agrees to a voluntary exclusion?

#### **Subpart G—Suspension**

- 1006.700 When may the suspending official issue a suspension?

- 1006.705 What does the suspending official consider in issuing a suspension?
- 1006.710 When does a suspension take effect?
- 1006.715 What notice does the suspending official give me if I am suspended?
- 1006.720 How may I contest a suspension?
- 1006.725 How much time do I have to contest a suspension?
- 1006.730 What information must I provide to the suspending official if I contest a suspension?
- 1006.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 1006.740 Are suspension proceedings formal?
- 1006.745 Is a record made of fact-finding proceedings?
- 1006.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 1006.755 When will I know whether the suspension is continued or terminated?
- 1006.760 How long may my suspension last?

#### Subpart H—Debarment

- 1006.800 What are the causes for debarment?
- 1006.805 What notice does the debarring official give me if I am proposed for debarment?
- 1006.810 When does a debarment take effect?
- 1006.815 How may I contest a proposed debarment?
- 1006.820 How much time do I have to contest a proposed debarment?
- 1006.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 1006.830 Under what conditions do I get an additional opportunity to challenge the fact on which the proposed debarment is based?
- 1006.835 Are debarment proceedings formal?
- 1006.840 Is a record made of fact-finding proceedings?
- 1006.845 What does the debarring official consider in deciding whether to debar me?
- 1006.850 What is the standard of proof in a debarment action?
- 1006.855 Who has the burden of proof in a debarment action?
- 1006.860 What factors may influence the debarring official's decision?
- 1006.865 How long may my debarment last?
- 1006.870 When do I know if the debarring official debars me?
- 1006.875 May I ask the debarring official to reconsider a decision to debar me?
- 1006.880 What factors may influence the debarring official during reconsideration?
- 1006.885 May the debarring official extend a debarment?

#### Subpart I—Definitions

- 1006.900 Adequate evidence.
- 1006.905 Affiliate.
- 1006.910 Agency.
- 1006.915 Agent or representative.

- 1006.920 Civil judgment.
- 1006.925 Conviction.
- 1006.930 Debarment.
- 1006.935 Debarring official.
- 1006.940 Disqualified.
- 1006.945 Excluded or exclusion.
- 1006.950 Indictment.
- 1006.955 Ineligible or ineligibility.
- 1006.960 Legal proceedings.
- 1006.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.
- 1006.970 Nonprocurement transaction.
- 1006.975 Notice.
- 1006.980 Participant.
- 1006.985 Person.
- 1006.990 Preponderance of the evidence.
- 1006.995 Principal.
- 1006.1000 Respondent.
- 1006.1005 State.
- 1006.1010 Suspending official.
- 1006.1015 Suspension.
- 1006.1020 Voluntary exclusion or voluntarily excluded

#### Subpart J [Reserved]

#### Appendix to Part 1006—Covered Transactions

**Authority:** 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. Part 1006 is further amended as set forth below.

a. “[Agency noun]” is removed and “Inter-American Foundation” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “Inter-American Foundation” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “Inter-American Foundation Debarring Official” is added in its place wherever it occurs.

3. Section 1006.440 is added to read as follows:

#### § 1006.440 What method do I use to communicate those requirements to participants?

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participant's compliance with Subpart C of this part and requiring them to include a similar term or condition in lower tier covered transactions.

5. Part 1008 is added to read as set forth in instruction 2 at the end of the common preamble.

#### PART 1008—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

##### Subpart A—Purpose and Coverage

- Sec.
- 1008.100 What does this part do?
- 1008.105 Does this part apply to me?

- 1008.110 Are any of my Federal assistance awards exempt from this part?
- 1008.115 Does this part affect the Federal contracts that I receive?

##### Subpart B—Requirements for Recipients Other Than Individuals

- 1008.200 What must I do to comply with this part?
- 1008.205 What must I include in my drug-free workplace statement?
- 1008.210 To whom must I distribute my drug-free workplace statement?
- 1008.215 What must I include in my drug-free awareness program?
- 1008.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
- 1008.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
- 1008.230 How and when must I identify workplaces?

##### Subpart C—Requirements for Recipients Who Are Individuals

- 1008.300 What must I do to comply with this part if I am an individual recipient?
- 1008.301 [Reserved]

##### Subpart D—Responsibilities of Inter-American Foundation Awarding Officials

- 1008.400 What are my responsibilities as an Inter-American Foundation awarding official?

##### Subpart E—Violations of This Part and Consequences

- 1008.500 How are violations of this part determined for recipients other than individuals?
- 1008.505 How are violations of this part determined for recipients who are individuals?
- 1008.510 What actions will the Federal Government take against a recipient determined to have violated this part?
- 1008.515 Are there any exceptions to those actions?

##### Subpart F—Definitions

- 1008.605 Award.
- 1008.610 Controlled substance.
- 1008.615 Conviction.
- 1008.620 Cooperative agreement.
- 1008.625 Criminal drug statute.
- 1008.630 Debarment.
- 1008.635 Drug-free workplace.
- 1008.640 Employee.
- 1008.645 Federal agency or agency.
- 1008.650 Grant.
- 1008.655 Individual.
- 1008.660 Recipient.
- 1008.665 State.
- 1008.670 Suspension.

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

5. Part 1008 is further amended as set forth below.

a. “[Agency noun]” is removed and “Inter-American Foundation” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “Inter-American Foundation” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “Inter-American

Foundation President or designee" is added in its place wherever it occurs.

d. "[Agency head]" is removed and "Inter-American Foundation" is added in its place wherever it occurs.

6. Section 1008.510(c) is further amended by removing "[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "22 CFR part 1006" in its place.

7. Section 1008.605 is further amended by adding a paragraph (c) to read as follows:

**§ 1008.605 Award.**

\* \* \* \* \*

(c) Notwithstanding paragraph (a)(2) of this section, this paragraph is not applicable for the Inter-American Foundation.

**AFRICAN DEVELOPMENT FOUNDATION**

**22 CFR Parts 1508 and 1509**

**RIN Number 3005-ZA00**

**FOR FURTHER INFORMATION CONTACT:**

Doris Martin at 202-673-3916 (phone) or *domartin@adf.gov*.

**List of Subjects**

*22 CFR Part 1508*

Administrative practice and procedure, Debarment and suspension, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements.

*22 CFR Part 1509*

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

Approved:

**Doris Martin,**

*General Counsel.*

For the reasons stated in the preamble, the African Development Foundation proposes to amend 22 CFR chapter XV as follows:

1. Part 1508 is revised to read as set forth in instruction 1 at the end of the common preamble.

**PART 1508—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

Sec.

- 1508.25 How is this part organized?
- 1508.50 How is this part written?
- 1508.75 Do terms in this part have special meanings?

**Subpart A—General**

- 1508.100 What does this part do?
- 1508.105 Does this part apply to me?

1508.110 What is the purpose of the nonprocurement debarment and suspension system?

1508.115 How does an exclusion restrict a person's involvement in covered transactions?

1508.120 May we grant an exception to let an excluded person participate in a covered transaction?

1508.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?

1508.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?

1508.135 May the African Development Foundation exclude a person who is not currently participating in a nonprocurement transaction?

1508.140 How do I know if a person is excluded?

1508.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

**Subpart B—Covered Transactions**

1508.200 What is a covered transaction?

1508.205 Why is it important to know if a particular transaction is a covered transaction?

1508.210 Which nonprocurement transactions are covered transactions?

1508.215 Which nonprocurement transactions are not covered transactions?

1508.220 Are any procurement contracts included as covered transactions?

1508.225 How do I know if a transaction in which I may participate is a covered transaction?

**Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons**

1508.300 May I enter into a covered transaction with an excluded or disqualified person?

1508.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?

1508.310 May I use the services of an excluded person under a covered transaction?

1508.315 Must I verify that principals of my covered transactions are eligible to participate?

1508.320 What happens if I do business with an excluded person in a covered transaction?

1508.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

**Disclosing Information—Primary Tier Participants**

1508.330 What information must I provide before entering into a covered transaction with the African Development Foundation?

1508.335 If I disclose unfavorable information required under § 1508.330 will I be prevented from entering into the transaction?

1508.340 What happens if I fail to disclose the information required under § 1508.330?

1508.345 What must I do if I learn of the information required under § 1508.330 after entering into a covered transaction with the African Development Foundation?

**Disclosing Information—Lower Tier Participants**

1508.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?

1508.355 What happens if I fail to disclose the information required under § 1508.350?

1508.360 What must I do if I learn of information required under § 1508.350 after entering into a covered transaction with a higher tier participant?

**Subpart D—Responsibilities of ADF Officials Regarding Transactions**

1508.400 May I enter into a transaction with an excluded or disqualified person?

1508.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?

1508.410 May I approve a participant's use of the services of an excluded person?

1508.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?

1508.420 May I approve a transaction with an excluded or disqualified person at a lower tier?

1508.425 When do I check to see if a person is excluded or disqualified?

1508.430 How do I check to see if a person is excluded or disqualified?

1508.435 What must I require of a primary tier participant?

1508.440 What method do I use to communicate those requirements to participants?

1508.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?

1508.450 What action may I take if a primary tier participant fails to disclose the information required under § 1508.330?

1508.455 What may I do if a lower tier participant fails to disclose the information required under § 1508.350 to the next higher tier?

**Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs**

1508.500 What is the purpose of the List?

1508.505 Who uses the List?

1508.510 Who maintains the List?

1508.515 What specific information is on the List?

1508.520 Who gives the GSA the information that it puts on the List?

1508.525 Whom do I ask if I have questions about a person on the List?

1508.530 Where can I get the List?

**Subpart F—General Principles Relating to Suspension and Debarment Actions**

- 1508.600 How do suspension and debarment actions start?
- 1508.605 How does suspension differ from debarment?
- 1508.610 What procedures does the African Development Foundation use in suspension and debarment actions?
- 1508.615 How does the African Development Foundation notify a person of suspension and debarment actions?
- 1508.620 Do Federal agencies coordinate suspension and debarment actions?
- 1508.625 What is the scope of a suspension or debarment action?
- 1508.630 May the African Development Foundation impute the conduct of one person to another?
- 1508.635 May the African Development Foundation settle a debarment or suspension action?
- 1508.640 May a settlement include a voluntary exclusion?
- 1508.645 Do other Federal agencies know if the African Development Foundation agrees to a voluntary exclusion?

**Subpart G—Suspension**

- 1508.700 When may the suspending official issue a suspension?
- 1508.705 What does the suspending official consider in issuing a suspension?
- 1508.710 When does a suspension take effect?
- 1508.715 What notice does the suspending official give me if I am suspended?
- 1508.720 How may I contest a suspension?
- 1508.725 How much time do I have to contest a suspension?
- 1508.730 What information must I provide to the suspending official if I contest a suspension?
- 1508.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 1508.740 Are suspension proceedings formal?
- 1508.745 Is a record made of fact-finding proceedings?
- 1508.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 1508.755 When will I know whether the suspension is continued or terminated?
- 1508.760 How long may my suspension last?

**Subpart H—Debarment**

- 1508.800 What are the causes for debarment?
- 1508.805 What notice does the debarring official give me if I am proposed for debarment?
- 1508.810 When does a debarment take effect?
- 1508.815 How may I contest a proposed debarment?
- 1508.820 How much time do I have to contest a proposed debarment?
- 1508.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 1508.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?

- 1508.835 Are debarment proceedings formal?
- 1508.840 Is a record made of fact-finding proceedings?
- 1508.845 What does the debarring official consider in deciding whether to debar me?
- 1508.850 What is the standard of proof in a debarment action?
- 1508.855 Who has the burden of proof in a debarment action?
- 1508.860 What factors may influence the debarring official's decision?
- 1508.865 How long may my debarment last?
- 1508.870 When do I know if the debarring official debars me?
- 1508.875 May I ask the debarring official to reconsider a decision to debar me?
- 1508.880 What factors may influence the debarring official during reconsideration?
- 1508.885 May the debarring official extend a debarment?

**Subpart I—Definitions**

- 1508.900 Adequate evidence.
- 1508.905 Affiliate.
- 1508.910 Agency.
- 1508.915 Agent or representative.
- 1508.920 Civil judgment.
- 1508.925 Conviction.
- 1508.930 Debarment.
- 1508.935 Debarring official.
- 1508.940 Disqualified.
- 1508.945 Excluded or exclusion.
- 1508.950 Indictment.
- 1508.955 Ineligible or ineligibility.
- 1508.960 Legal proceedings.
- 1508.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.
- 1508.970 Nonprocurement transaction.
- 1508.975 Notice.
- 1508.980 Participant.
- 1508.985 Person.
- 1508.990 Preponderance of the evidence.
- 1508.995 Principal.
- 1508.1000 Respondent.
- 1508.1005 State.
- 1508.1010 Suspending official.
- 1508.1015 Suspension.
- 1508.1020 Voluntary exclusion or voluntarily excluded.

**Subpart J [Reserved]****Appendix to Part 1508—Covered Transactions**

**Authority:** Sec. 2455, Pub.L. 103–355, 108 Stat. 3327; E.O. 12549, 3CFR, 1986 Comp., p.89; E.O. 12689, 3CFR, 1989 Comp., p. 235.

2. Part 1508 is further amended as set forth below:

- a. “[Agency noun]” is removed and “African Development Foundation” is added in its place wherever it occurs.
- b. “[Agency adjective]” is removed and “ADF” is added in its place wherever it occurs.
- c. “[Agency head or designee]” is removed and “ADF President” is added in its place wherever it occurs.

3. Part 1509 is added to read as set forth in instruction 2 at the end of the common preamble.

**PART 1509—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)****Subpart A—Purpose and Coverage****Sec.**

- 1509.100 What does this part do?
- 1509.105 Does this part apply to me?
- 1509.110 Are any of my Federal assistance awards exempt from this part?
- 1509.115 Does this part affect the Federal contracts that I receive?

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

- 1509.200 What must I do to comply with this part?
- 1509.205 What must I include in my drug-free workplace statement?
- 1509.210 To whom must I distribute my drug-free workplace statement?
- 1509.215 What must I include in my drug-free awareness program?
- 1509.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
- 1509.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
- 1509.230 How and when must I identify workplaces?

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

- 1509.300 What must I do to comply with this part if I am an individual recipient?
- 1509.301 [Reserved]

**Subpart D—Responsibilities of ADF Awarding Officials**

- 1509.400 What are my responsibilities as an ADF awarding official?

**Subpart E—Violations of This Part and Consequences**

- 1509.500 How are violations of this part determined for recipients other than individuals?
- 1509.505 How are violations of this part determined for recipients who are individuals?
- 1509.510 What actions will the Federal Government take against a recipient determined to have violated this part?
- 1509.515 Are there any exceptions to those actions?

**Subpart F—Definitions**

- 1509.605 Award.
- 1509.610 Controlled substance.
- 1509.615 Conviction.
- 1509.620 Cooperative agreement.
- 1509.625 Criminal drug statute.
- 1509.630 Debarment.
- 1509.635 Drug-free workplace.
- 1509.640 Employee.
- 1509.645 Federal agency or agency.
- 1509.650 Grant.
- 1509.655 Individual.
- 1509.660 Recipient.
- 1509.665 State.

1509.670 Suspension.

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

4. Part 1509 is further amended as set forth below.

a. “[Agency noun]” is removed and “African Development Foundation” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “ADF” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “ADF President” is added in its place wherever it occurs.

d. “[Agency head]” is removed and “ADF President” is added in its place wherever it occurs.

5. Section 1509.310(c) is further amended by removing “[CFR citation for the Federal Agency’s regulations implementing Executive Order 12549 and Executive Order 12689]” and adding “22 CFR part 1508” in its place.

6. Section 1509.605 is further amended by adding a paragraph (c) to read as follows:

**§ 1509.605 Award.**

\* \* \* \* \*

(c) Notwithstanding paragraph (a)(2) of this section, this paragraph is not applicable for ADF.

**DEPARTMENT OF LABOR**

**29 CFR Part 94 and 98**

**RIN 1291-AA33**

**FOR FURTHER INFORMATION CONTACT:**

Phyllis McMeekin, Director Division of Departmental Procurement Policy, N5425 Washington, DC 20210, (202) 219-9174, email McMeekin-Phyllis@dol.gov

**List of Subjects**

*29 CFR Part 94*

Administrative practices and procedures, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

*29 CFR Part 98*

Administrative practices and procedures, Grant programs, Loan programs, Reporting and recordkeeping requirements.

Dated: June 15, 2001.

**Elaine L. Chao,**  
*Secretary of Labor.*

For the reasons stated in the common preamble, the Department of Labor proposes to amend 29 CFR subtitle A as follows:

Part 94 is added to read as set forth in instruction 2 at the end of the common preamble.

**PART 94—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)**

**Subpart A—Purpose and Coverage**

Sec.

94.100 What does this part do?

94.105 Does this part apply to me?

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

94.115 Does this part affect the Federal contracts that I receive?

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

94.200 What must I do to comply with this part?

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

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

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

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

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

94.230 How and when must I identify workplaces?

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

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

94.301 [Reserved]

**Subpart D—Responsibilities of Department of Labor Awarding Officials**

94.400 What are my responsibilities as a Department of Labor awarding official?

**Subpart E—Violations of this Part and Consequences**

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

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

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

94.515 Is there any provision for exceptions to those actions?

**Subpart F—Definitions**

94.605 Award.

94.610 Controlled substance.

94.615 Conviction.

94.620 Cooperative agreement.

94.625 Criminal drug statute.

94.630 Debarment.

94.635 Drug-free workplace.

94.640 Employee.

94.645 Federal agency or agency.

94.650 Grant.

94.655 Individual.

94.660 Recipient.

94.665 State.

94.670 Suspension.

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

2. Part 94 is further amended as set forth below.

a. “[Agency noun]” is removed and “Department of Labor” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “Department of Labor” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “Secretary of Labor or designee” is added in its place wherever it occurs.

d. “[Agency head]” is removed and “Secretary of Labor or designee” is added in its place wherever it occurs.

3. Section 94.510(c) is further amended by removing “CFR citation for the Federal Agency’s regulations implementing Executive Order 12549 and Executive Order 12689]” and adding “29 CFR Part 98” in its place.

4. Section 98.605(a)(2) is further amended by removing “[Agency-specific CFR citation]” and adding “29 CFR part 97” in its place.

5. Part 98 is revised to read as set forth in instruction 1 at the end of the common preamble.

**PART 98—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

Sec.

98.25 How is this part organized?

98.50 How is this part written?

98.75 Do terms in this part have special meanings?

**Subpart A—General**

98.100 What does this part do?

98.105 Does this part apply to me?

98.110 What is the purpose of the nonprocurement debarment and suspension system?

98.115 How does an exclusion restrict a person’s involvement in covered transactions?

98.120 May we grant an exception to let an excluded person participate in a covered transaction?

98.125 Does an exclusion under the nonprocurement system affect a person’s eligibility to participate in Federal procurement contracts?

98.130 Does an exclusion under the Federal procurement system affect a person’s eligibility to participate in nonprocurement transactions?

98.135 May the U.S. Department of Labor exclude a person who is not currently participating in a nonprocurement transaction?

98.140 How do I know if a person is excluded?

98.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

**Subpart B—Covered Transactions**

98.200 What is a covered transaction?

98.205 Why is it important to know if a particular transaction is a covered transaction?

- 98.210 Which nonprocurement transactions are covered transactions?  
 98.215 Which nonprocurement transactions are not covered transactions?  
 98.220 Are any procurement contracts included as covered transactions?  
 98.225 How do I know if a transaction that I may participate in is a covered transaction?

**Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons**

- 98.300 May I enter into a covered transaction with an excluded or disqualified person?  
 98.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?  
 98.310 May I use the services of an excluded person under a covered transaction?  
 98.315 Must I verify that principals of my covered transactions are eligible to participate?  
 98.320 What happens if I do business with an excluded person in a covered transaction?  
 98.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

**Disclosing Information—Primary Tier Participants**

- 98.330 What information must I provide before entering into a covered transaction with the Department of Labor?  
 98.335 If I disclose unfavorable information required under § 98.330 will I be prevented from entering into the transaction?  
 98.340 What happens if I fail to disclose the information required under § 98.330?  
 98.345 What must I do if I learn of the information required under § 98.330 after entering into a covered transaction with the U.S. Department of Labor?

**Disclosing information—Lower Tier Participants**

- 98.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?  
 98.355 What happens if I fail to disclose the information required under § 98.350?  
 98.360 What must I do if I learn of information required under § 98.350 after entering into a covered transaction with a higher tier participant?

**Subpart D—Responsibilities of the Department of Labor Officials Regarding Transactions**

- 98.400 May I enter into a transaction with an excluded or disqualified person?  
 98.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?  
 98.410 May I approve a participant's use of the services of an excluded person?  
 98.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?

- 98.420 May I approve a transaction with an excluded or disqualified person at a lower tier?  
 98.425 When do I check to see if a person is excluded or disqualified?  
 98.430 How do I check to see if a person is excluded or disqualified?  
 98.435 What must I require of a primary tier participant?  
 98.440 [Reserved]  
 98.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?  
 98.450 What action may I take if a primary tier participant fails to disclose the information required under § 98.330?  
 98.455 What may I do if a lower tier participant fails to disclose the information required under § 98.350 to the next higher tier?

**Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs**

- 98.500 What is the purpose of the List?  
 98.505 Who uses the List?  
 98.510 Who maintains the List?  
 98.515 What specific information is on the List?  
 98.520 Who gives the GSA the information that it puts on the List?  
 98.525 Whom do I ask if I have questions about a person on the List?  
 98.530 Where can I get the List?

**Subpart F—General Principles Relating to Suspension and Debarment Actions**

- 98.600 How do suspension and debarment actions start?  
 98.605 How does suspension differ from debarment?  
 98.610 What procedures does the U.S. Department of Labor use in suspension and debarment actions?  
 98.615 How does the U.S. Department of Labor notify a person of suspension and debarment actions?  
 98.620 Do Federal agencies coordinate suspension and debarment actions?  
 98.625 What is the scope of a suspension or debarment action?  
 98.630 May the U.S. Department of Labor impute the conduct of one person to another?  
 98.635 May the U.S. Department of Labor settle a debarment or suspension action?  
 98.640 May a settlement include a voluntary exclusion?  
 98.645 Do other Federal agencies know if the U.S. Department of Labor agrees to a voluntary exclusion?

**Subpart G—Suspension**

- 98.700 When may the suspending official issue a suspension?  
 98.705 What does the suspending official consider in issuing a suspension?  
 98.710 When does a suspension take effect?  
 98.715 What notice does the suspending official give me if I am suspended?  
 98.720 How may I contest a suspension?  
 98.725 How much time do I have to contest a suspension?  
 98.730 What information must I provide to the suspending official if I contest a suspension?

- 98.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?  
 98.740 Are suspension proceedings formal?  
 98.745 Is a record made of fact-finding proceedings?  
 98.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?  
 98.755 When will I know whether the suspension is continued or terminated?  
 98.760 How long may my suspension last?

**Subpart H—Debarment**

- 98.800 What are the causes for debarment?  
 98.805 What notice does the debarring official give me if I am proposed for debarment?  
 98.810 When does a debarment take effect?  
 98.815 How may I contest a proposed debarment?  
 98.820 How much time do I have to contest a proposed debarment?  
 98.825 What information must I provide to the debarring official if I contest a proposed debarment?  
 98.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?  
 98.835 Are debarment proceedings formal?  
 98.840 Is a record made of fact-finding proceedings?  
 98.845 What does the debarring official consider in deciding whether to debar me?  
 98.850 What is the standard of proof in a debarment action?  
 98.855 Who has the burden of proof in a debarment action?  
 98.860 What factors may influence the debarring official's decision?  
 98.865 How long may my debarment last?  
 98.870 When do I know if the debarring official debars me?  
 98.875 May I ask the debarring official to reconsider a decision to debar me?  
 98.880 What factors may influence the debarring official during reconsideration?  
 98.885 May the debarring official extend a debarment?

**Subpart I—Definitions**

- 98.900 Adequate evidence.  
 98.905 Affiliate.  
 98.910 Agency.  
 98.915 Agent or representative.  
 98.920 Civil judgment.  
 98.925 Conviction.  
 98.930 Debarment.  
 98.935 Debarring official.  
 98.940 Disqualified.  
 98.945 Excluded or exclusion.  
 98.950 Indictment.  
 98.955 Ineligible or ineligibility.  
 98.960 Legal proceedings.  
 98.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.  
 98.970 Nonprocurement transaction.  
 98.975 Notice.  
 98.980 Participant.  
 98.985 Person.  
 98.990 Preponderance of the evidence.  
 98.995 Principal.

- 97.1000 Respondent.  
 98.1005 State.  
 98.1010 Suspending official.  
 98.1015 Suspension.  
 98.1020 Voluntary exclusion or voluntarily excluded.

#### Subpart J [Reserved]

#### Appendix to Part 98—Covered Transactions

**Authority:** 5 U.S.C. 301, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 Note); E.O. 11738, 3 CFR, 1973 Comp., p. 799; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

6. Part 98 is further amended as follows:

a. “[Agency noun]” is removed and “Department of Labor” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “Department of Labor” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “Secretary of Labor or designee” is added in its place wherever it occurs.

#### FEDERAL MEDIATION AND CONCILIATION SERVICE

#### 29 CFR Parts 1471 and 1472

#### RIN 3076-AA08

**FOR FURTHER INFORMATION CONTACT:** Jane Lorber, General Counsel, 2100 K St., NW, Washington, DC 20427, (202) 606–5444, e-mail: jlorber@fmcs.gov.

**ADDITIONAL SUPPLEMENTARY INFORMATION:** This proposed rule relocates the requirements for maintaining a drug-free workplace from 29 CFR part 1471 to 29 CFR part 1472.

#### List of Subjects

#### 29 CFR Part 1471

Administrative practice and procedure, Debarment and suspension, Grant programs, Loan programs, Reporting and recordkeeping requirements.

#### 29 CFR Part 1472

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

Approved:

**C. Richard Barnes,**  
*Director.*

Accordingly, as set forth in the common preamble, the Federal Mediation and Conciliation Service proposes to amend 29 CFR chapter XII, as follows:

1. Part 1471 is revised to read as set forth in instruction 1 at the end of the common preamble.

#### PART 1471—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

- 1471.25 How is this part organized?  
 1471.50 How is this part written?  
 1471.75 Do terms in this part have special meanings?

#### Subpart A—General

- 1471.100 What does this part do?  
 1471.105 Does this part apply to me?  
 1471.110 What is the purpose of the nonprocurement debarment and suspension system?  
 1471.115 How does an exclusion restrict a person's involvement in covered transactions?  
 1471.120 May we grant an exception to let an excluded person participate in a covered transaction?  
 1471.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?  
 1471.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?  
 1471.135 May FMCS exclude a person who is not currently participating in a nonprocurement transaction?  
 1471.140 How do I know if a person is excluded?  
 1471.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

#### Subpart B—Covered Transactions

- 1471.200 What is a covered transaction?  
 1471.205 Why is it important to know if a particular transaction is a covered transaction?  
 1471.210 Which nonprocurement transactions are covered transactions?  
 1471.215 Which nonprocurement transactions are not covered transactions?  
 1471.220 Are any procurement contracts included as covered transactions?  
 1471.225 How do I know if a transaction that I may participate in is a covered transaction?

#### Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

- 1471.300 May I enter into a covered transaction with an excluded or disqualified person?  
 1471.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?  
 1471.310 May I use the services of an excluded person under a covered transaction?  
 1471.315 Must I verify that principals of my covered transactions are eligible to participate?  
 1471.320 What happens if I do business with an excluded person in a covered transaction?

- 1471.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

#### Disclosing Information—Primary Tier Participants

- 1471.330 What information must I provide before entering into a covered transaction with FMCS?  
 1471.335 If I disclose unfavorable information required under § 1471.330 will I be prevented from entering into the transaction?  
 1471.340 What happens if I fail to disclose the information required under § 1471.330?  
 1471.345 What must I do if I learn of the information required under § 1471.330 after entering into a covered transaction with FMCS?

#### Disclosing Information—Lower Tier Participants

- 1471.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?  
 1471.355 What happens if I fail to disclose the information required under § 1471.350?  
 1471.360 What must I do if I learn of information required under § 1471.350 after entering into a covered transaction with a higher tier participant?

#### Subpart D—Responsibilities of FMCS Officials Regarding Transactions

- 1471.400 May I enter into a transaction with an excluded or disqualified person?  
 1471.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?  
 1471.410 May I approve a participant's use of the services of an excluded person?  
 1471.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?  
 1471.420 May I approve a transaction with an excluded or disqualified person at a lower tier?  
 1471.425 When do I check to see if a person is excluded or disqualified?  
 1471.430 How do I check to see if a person is excluded or disqualified?  
 1471.435 What must I require of a primary tier participant?  
 1471.440 What method do I use to communicate those requirements to participants?  
 1471.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?  
 1471.450 What action may I take if a primary tier participant fails to disclose the information required under § 1471.330?  
 1471.455 What may I do if a lower tier participant fails to disclose the information required under § 1471.350 to the next higher tier?

**Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs**

- 1471.500 What is the purpose of the List?  
 1471.505 Who uses the List?  
 1471.510 Who maintains the List?  
 1471.515 What specific information is on the List?  
 1471.520 Who gives the GSA the information that it puts on the List?  
 1471.525 Whom do I ask if I have questions about a person on the List?  
 1471.530 Where can I get the List?

**Subpart F—General Principles Relating to Suspension and Debarment Actions**

- 1471.600 How do suspension and debarment actions start?  
 1471.605 How does suspension differ from debarment?  
 1471.610 What procedures does FMCS use in suspension and debarment actions?  
 1471.615 How does FMCS notify a person of suspension and debarment actions?  
 1471.620 Do Federal agencies coordinate suspension and debarment actions?  
 1471.625 What is the scope of a suspension or debarment action?  
 1471.630 May FMCS impute the conduct of one person to another?  
 1471.635 May FMCS settle a debarment or suspension action?  
 1471.640 May a settlement include a voluntary exclusion?  
 1471.645 Do other Federal agencies know if FMCS agrees to a voluntary exclusion?

**Subpart G—Suspension**

- 1471.700 When may the suspending official issue a suspension?  
 1471.705 What does the suspending official consider in issuing a suspension?  
 1471.710 When does a suspension take effect?  
 1471.715 What notice does the suspending official give me if I am suspended?  
 1471.720 How may I contest a suspension?  
 1471.725 How much time do I have to contest a suspension?  
 1471.730 What information must I provide to the suspending official if I contest a suspension?  
 1471.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?  
 1471.740 Are suspension proceedings formal?  
 1471.745 Is a record made of fact-finding proceedings?  
 1471.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?  
 1471.755 When will I know whether the suspension is continued or terminated?  
 1471.760 How long may my suspension last?

**Subpart H—Debarment**

- 1471.800 What are the causes for debarment?  
 1471.805 What notice does the debarring official give me if I am proposed for debarment?  
 1471.810 When does a debarment take effect?

- 1471.815 How may I contest a proposed debarment?  
 1471.820 How much time do I have to contest a proposed debarment?  
 1471.825 What information must I provide to the debarring official if I contest a proposed debarment?  
 1471.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?  
 1471.835 Are debarment proceedings formal?  
 1471.840 Is a record made of fact-finding proceedings?  
 1471.845 What does the debarring official consider in deciding whether to debar me?  
 1471.850 What is the standard of proof in a debarment action?  
 1471.855 Who has the burden of proof in a debarment action?  
 1471.860 What factors may influence the debarring official's decision?  
 1471.865 How long may my debarment last?  
 1471.870 When do I know if the debarring official debar me?  
 1471.875 May I ask the debarring official to reconsider a decision to debar me?  
 1471.880 What factors may influence the debarring official during reconsideration?  
 1471.885 May the debarring official extend a debarment?

**Subpart I—Definitions**

- 1471.900 Adequate evidence.  
 1471.905 Affiliate.  
 1471.910 Agency.  
 1471.915 Agent or representative.  
 1471.920 Civil judgment.  
 1471.925 Conviction.  
 1471.930 Debarment.  
 1471.935 Debarring official.  
 1471.940 Disqualified.  
 1471.945 Excluded or exclusion.  
 1471.950 Indictment.  
 1471.955 Ineligible or ineligibility.  
 1471.960 Legal proceedings.  
 1471.965 List of parties excluded or disqualified from federal procurement and nonprocurement programs.  
 1471.970 Nonprocurement transaction.  
 1471.975 Notice.  
 1471.980 Participant.  
 1471.985 Person.  
 1471.990 Preponderance of the evidence.  
 1471.995 Principal.  
 1471.1000 Respondent.  
 1471.1005 State.  
 1471.1010 Suspending official.  
 1471.1015 Suspension.  
 1471.1020 Voluntary exclusion or voluntarily excluded.

**Subpart J [Reserved]**

**Appendix to Part 1471—Covered Transactions**

**Authority:** E.O. 12549, 3 CFR 1986 Comp., p. 189; E.O. 12698, 3 CFR 1989 Comp., p. 235; sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); 29 U.S.C. 175a.

2. Part 1471 is further amended as set forth below.

a. “[Agency noun]” is removed and “Federal Mediation and Conciliation Service” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “FMCS” is added in its place wherever it occurs.

c. “[Agency Head or designee]” is removed and “Agency Director” is added in its place wherever it occurs.

3. Section 1471.440 is added to read as follows:

**§ 1471.440 What method do I use to communicate those requirements to participants?**

To communicate the requirement you must include a term or condition in the transaction requiring the participants' compliance with Subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

4. Part 1472 is added to read as set forth in instruction 2 at the end of the common preamble.

**PART 1472—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)**

**Subpart A—Purpose and Coverage**

Sec.

- 1472.100 What does this part do?  
 1472.105 Does this part apply to me?  
 1472.110 Are any of my Federal assistance awards exempt from this part?  
 1472.115 Does this part affect the Federal contracts that I receive?

**Subpart B—Requirements for Recipients Other than Individuals**

- 1472.200 What must I do to comply with this part?  
 1472.205 What must I include in my drug-free workplace statement?  
 1472.210 To whom must I distribute my drug-free workplace statement?  
 1472.215 What must I include in my drug-free awareness program?  
 1472.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?  
 1472.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?  
 1472.230 How and when must I identify workplaces?

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

- 1472.300 What must I do to comply with this part if I am an individual recipient?  
 1472.301 [Reserved]

**Subpart D—Responsibilities of FMCS Awarding Officials**

- 1472.400 What are my responsibilities as an FMCS awarding official?

**Subpart E—Violations of This Part and Consequences**

- 1472.500 How are violations of this part determined for recipients other than individuals?
- 1472.505 How are violations of this part determined for recipients who are individuals?
- 1472.510 What actions will the Federal Government take against a recipient determined to have violated this part?
- 1472.515 Are there any exceptions to those actions?

**Subpart F—Definitions**

- 1472.605 Award.
- 1472.610 Controlled substance.
- 1472.615 Conviction.
- 1472.620 Cooperative agreement.
- 1472.625 Criminal drug statute.
- 1472.630 Debarment.
- 1472.635 Drug-free workplace.
- 1472.640 Employee.
- 1472.645 Federal agency or agency.
- 1472.650 Grant.
- 1472.655 Individual.
- 1472.660 Recipient.
- 1472.665 State.
- 1472.670 Suspension.

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

5. Part 1472 is further amended as set forth below.

a. “[Agency noun]” is removed and “Federal Mediation and Conciliation Service” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “FMCS” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “Agency Director” is added in its place wherever it occurs.

d. “[Agency head]” is removed and “Agency Director” is added in its place wherever it occurs.

6. Section 1472.510 (c) is further amended by removing “[CFR citation for the Federal Agency’s regulations implementing Executive Order 12549 and Executive Order 12689] and adding “29 CFR part 1471” in its place.

7. Section 1472.605(a)(2) is further amended by removing “[Agency-specific CFR citation]” and adding “29 CFR part 1470” in its place.

**DEPARTMENT OF DEFENSE****Office of the Secretary****32 CFR Parts 25 and 26****RIN 0790-AG86****FOR FURTHER INFORMATION CONTACT:**

Mark Herbst, Office of the Deputy Under Secretary of Defense (Science and Technology), 3080 Defense Pentagon, Washington, DC 20301-3080, telephone: (703) 696-0372.

**ADDITIONAL SUPPLEMENTARY INFORMATION:**

The Department of Defense (DoD) proposes to adopt two updated common rules, on nonprocurement debarment

and suspension and on drug-free workplace requirements for grants and agreements. In adopting these rules, the Office of the Secretary of Defense, Military Departments, Defense Agencies, and DoD Field Activities will maintain uniform policies and procedures that are consistent with those of other Executive Departments and Agencies. At the time the final rule is adopted, the DoD will make conforming amendments in other parts of the DoD Grant and Agreement Regulations (32 CFR parts 21, 22, 32, and 34), to update references to the debarment and suspension and the drug-free workplace requirements that currently are in 32 CFR part 25.

**List of Subjects***32 CFR Part 25*

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements

*32 CFR Part 26*

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

Approved: August 22, 2001.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

Accordingly, as set forth in the common preamble, 32 CFR chapter I, subchapter B, is proposed to be amended as follows.

1. Part 25 is revised to read as set forth in instruction 1 at the end of the common preamble.

**PART 25—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

Sec.

- 25.25 How is this part organized?
- 25.50 How is this part written?
- 25.75 Do terms in this part have special meanings?

**Subpart A—General**

- 25.100 What does this part do?
- 25.105 Does this part apply to me?
- 25.110 What is the purpose of the nonprocurement debarment and suspension system?
- 25.115 How does an exclusion restrict a person’s involvement in covered transactions?
- 25.120 May we grant an exception to let an excluded person participate in a covered transaction?
- 25.125 Does an exclusion under the nonprocurement system affect a person’s eligibility to participate in Federal procurement contracts?
- 25.130 Does an exclusion under the Federal procurement system affect a person’s

eligibility to participate in nonprocurement transactions?

- 25.135 May the DoD Component exclude a person who is not currently participating in a nonprocurement transaction?
- 25.140 How do I know if a person is excluded?
- 25.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

**Subpart B—Covered Transactions**

- 25.200 What is a covered transaction?
- 25.205 Why is it important to know if a particular transaction is a covered transaction?
- 25.210 Which nonprocurement transactions are covered transactions?
- 25.215 Which nonprocurement transactions are not covered transactions?
- 25.220 Are any procurement contracts included as covered transactions?
- 25.225 How do I know if a transaction in which I may participate is a covered transaction?

**Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons**

- 25.300 May I enter into a covered transaction with an excluded or disqualified person?
- 25.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
- 25.310 May I use the services of an excluded person under a covered transaction?
- 25.315 Must I verify that principals of my covered transactions are eligible to participate?
- 25.320 What happens if I do business with an excluded person in a covered transaction?
- 25.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

**Disclosing Information—Primary Tier Participants**

- 25.330 What information must I provide before entering into a covered transaction with the DoD Component?
- 25.335 If I disclose unfavorable information required under § 25.330 will I be prevented from entering into the transaction?
- 25.340 What happens if I fail to disclose the information required under § 25.330?
- 25.345 What must I do if I learn of the information required under § 25.330 after entering into a covered transaction with the DoD Component?

**Disclosing information—Lower Tier Participants**

- 25.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
- 25.355 What happens if I fail to disclose the information required under § 25.350?
- 25.360 What must I do if I learn of information required under § 25.350 after

entering into a covered transaction with a higher tier participant?

**Subpart D—Responsibilities of DoD Component Officials Regarding Transactions**

- 25.400 May I enter into a transaction with an excluded or disqualified person?  
 25.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?  
 25.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?  
 25.420 May I approve a transaction with an excluded or disqualified person at a lower tier?  
 25.425 When do I check to see if a person is excluded or disqualified?  
 25.430 How do I check to see if a person is excluded or disqualified?  
 25.435 What must I require of a primary tier participant?  
 25.440 What method do I use to communicate those requirements to participants?  
 25.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?  
 25.450 What action may I take if a primary tier participant fails to disclose the information required under § 25.330?  
 25.455 What may I do if a lower tier participant fails to disclose the information required under § 25.350 to the next higher tier?

**Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs**

- 25.500 What is the purpose of the List?  
 25.505 Who uses the List?  
 25.510 Who maintains the List?  
 25.515 What specific information is on the List?  
 25.520 Who gives the GSA the information that it puts on the List?  
 25.525 Whom do I ask if I have questions about a person on the List?  
 25.530 Where can I get the List?

**Subpart F—General Principles Relating to Suspension and Debarment Actions**

- 25.600 How do suspension and debarment actions start?  
 25.605 How does suspension differ from debarment?  
 25.610 What procedures does the DoD Component use in suspension and debarment actions?  
 25.615 How does the DoD Component notify a person of suspension and debarment actions?  
 25.620 Do Federal agencies coordinate suspension and debarment actions?  
 25.625 What is the scope of a suspension or debarment action?  
 25.630 May the DoD Component impute the conduct of one person to another?  
 25.635 May the DoD Component settle a debarment or suspension action?  
 25.640 May a settlement include a voluntary exclusion?  
 25.645 Do other Federal agencies know if the DoD Component agrees to a voluntary exclusion?

**Subpart G—Suspension**

- 25.700 When may the suspending official issue a suspension?  
 25.705 What does the suspending official consider in issuing a suspension?  
 25.710 When does a suspension take effect?  
 25.715 What notice does the suspending official give me if I am suspended?  
 25.720 How may I contest a suspension?  
 25.725 How much time do I have to contest a suspension?  
 25.730 What information must I provide to the suspending official if I contest a suspension?  
 25.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?  
 25.740 Are suspension proceedings formal?  
 25.745 Is a record made of fact-finding proceedings?  
 25.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?  
 25.755 When will I know whether the suspension is continued or terminated?  
 25.760 How long may my suspension last?

**Subpart H—Debarment**

- 25.800 What are the causes for debarment?  
 25.805 What notice does the debarring official give me if I am proposed for debarment?  
 25.810 When does a debarment take effect?  
 25.815 How may I contest a proposed debarment?  
 25.820 How much time do I have to contest a proposed debarment?  
 25.825 What information must I provide to the debarring official if I contest a proposed debarment?  
 25.830 Under what conditions do I get an additional opportunity to challenge the facts on which a proposed debarment is based?  
 25.835 Are debarment proceedings formal?  
 25.840 Is a record made of fact-finding proceedings?  
 25.845 What does the debarring official consider in deciding whether to debar me?  
 25.850 What is the standard of proof in a debarment action?  
 25.855 Who has the burden of proof in a debarment action?  
 25.860 What factors may influence the debarring official's decision?  
 25.865 How long may my debarment last?  
 25.870 When do I know if the debarring official debars me?  
 25.875 May I ask the debarring official to reconsider a decision to debar me?  
 25.880 What factors may influence the debarring official during reconsideration?  
 25.885 May the debarring official extend a debarment?

**Subpart I—Definitions**

- 25.900 Adequate evidence.  
 25.905 Affiliate.  
 25.910 Agency.  
 25.915 Agent or representative.  
 25.920 Civil judgment.  
 25.925 Conviction.  
 25.930 Debarment.  
 25.935 Debarring official.

- 25.940 Disqualified.  
 25.942 DoD Component.  
 25.945 Excluded or exclusion.  
 25.950 Indictment.  
 25.955 Ineligible or ineligibility.  
 25.960 Legal proceedings.  
 25.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.  
 25.970 Nonprocurement transaction.  
 25.975 Notice.  
 25.980 Participant.  
 25.985 Person.  
 25.990 Preponderance of the evidence.  
 25.995 Principal.  
 25.1000 Respondent.  
 25.1005 State.  
 25.1010 Suspending official.  
 25.1015 Suspension.  
 25.1020 Voluntary exclusion or voluntarily excluded.

**Subpart J [Reserved]**

**Appendix to Part 25—Covered Transactions**

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

2. Part 25 is further amended as set forth below.

a. “[Agency noun]” is removed and “DoD Component” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “DoD Component” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “Head of the DoD Component or his or her designee” is added in its place wherever it occurs.

3. Section 25.440 is added to read as follows:

**§ 25.440 What method do I use to communicate those requirements to participants?**

To communicate the requirement, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

4. Section 25.935 is further amended by adding paragraph (b) to read as follows:

**§ 25.935 Debarring official.**

\* \* \* \* \*

(b) 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.

5. Section 25.942 is added to read as follows:

**§ 25.942 DoD Component.**

*DoD Component* means the Office of the Secretary of Defense, a Military

Department, a Defense Agency, or the Office of Economic Adjustment.

6. Section 25.1010 is further amended by adding a paragraph (b) to read as follows:

**§ 25.1010 Suspending official.**

\* \* \* \* \*

(b) 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.

7. Part 26 is added to read as set forth in instruction 2 at the end of the common preamble.

**PART 26—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)**

**Subpart A—Purpose and Coverage**

Sec.

- 26.100 What does this part do?
- 26.105 Does this part apply to me?
- 26.110 Are any of my Federal assistance awards exempt from this part?
- 26.115 Does this part affect the Federal contracts that I receive?

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

- 26.200 What must I do to comply with this part?
- 26.205 What must I include in my drug-free workplace statement?
- 26.210 To whom must I distribute my drug-free workplace statement?
- 26.215 What must I include in my drug-free awareness program?
- 26.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
- 26.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
- 26.230 How and when must I identify workplaces?

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

- 26.300 What must I do to comply with this part if I am an individual recipient?
- 26.301 [Reserved]

**Subpart D—Responsibilities of DoD Component Awarding Officials**

- 26.400 What are my responsibilities as a DoD Component awarding official?

**Subpart E—Violations of This Part and Consequences**

- 26.500 How are violations of this part determined for recipients other than individuals?
- 26.505 How are violations of this part determined for recipients who are individuals?
- 26.510 What actions will the Federal Government take against a recipient determined to have violated this part?
- 26.515 Are there any exceptions to those actions?

**Subpart F—Definitions**

- 26.605 Award.
- 26.610 Controlled substance.
- 26.615 Conviction.
- 26.620 Cooperative agreement.
- 26.625 Criminal drug statute.
- 26.630 Debarment.
- 26.632 DoD Component.
- 26.635 Drug-free workplace.
- 26.640 Employee.
- 26.645 Federal agency or agency.
- 26.650 Grant.
- 26.655 Individual.
- 26.660 Recipient.
- 26.665 State.
- 26.670 Suspension.

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

8. Part 26 is further amended as set forth below.

a. “[Agency noun]” is removed and “DoD Component” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “DoD Component” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “Head of the DoD Component or his or her designee” is added in its place wherever it occurs.

d. “[Agency head]” is removed and “Secretary of Defense or Secretary of a Military Department” is added in its place wherever it occurs.

9. Section 26.510(c) is further amended by removing “[CFR citation for the Federal agency’s regulations implementing Executive Order 12549 and Executive Order 12689]” and adding “32 CFR part 25” in its place.

10. Section 26.605(a)(2) is further amended by removing “[Agency-specific CFR citation]” and adding “32 CFR part 33” in its place.

11. Section 26.632 is added to read as follows:

**§ 26.632 DoD Component.**

*DoD Component* means the Office of the Secretary of Defense, a Military Department, a Defense Agency, or the Office of Economic Adjustment.

**DEPARTMENT OF EDUCATION**

**34 CFR Parts 84, 85, 668, and 682**

**RIN 1890-AA07**

**FOR FURTHER INFORMATION CONTACT:**

Peter Wathen-Dunn, Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., room 6E211, Washington, DC 20202–2243. Telephone: 202–401–6700 or via e-mail *Peter.Wathen-Dunn@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print,

audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

**ADDITIONAL SUPPLEMENTARY INFORMATION:**

The proposed common rule would provide agencies with certain areas of flexibility in adopting the common rule. An agency can determine the extent to which the effect of a debarment or suspension action flows down to tiers lower than a nonprocurement transaction. Under the original common rule, every procurement below the nonprocurement level is covered if it exceeds the small purchase threshold (\$25,000). The Department of Education has significant vulnerabilities to fraud and abuse below the nonprocurement level, particularly among participants in the financial aid programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. 1070, *et seq.* Thus, the Secretary proposes language for § 85.220(d) that preserves coverage at multiple lower tiers for any contract or subcontract that is greater than \$25,000, and language for § 85.220(e) that reaches contracts for services for title IV HEA programs without regard to dollar amount.

For example, if a subgrantee entered into a contract with a third party and the contract exceeds the \$25,000 threshold, the contract would be covered under the proposed rule and every subcontract after that would be covered if it exceeds that threshold.

The Secretary also proposes to adopt the rule so that direct notice between one tier and the next of the potential for suspension and debarment is not needed to impose coverage. As explained more fully later in this preamble, certain persons pose significant risks to the U.S. Department of Education (ED) funded programs even though in some cases those people receive no funds directly from ED related to the transaction over which they have a significant control or influence.

The Secretary proposes additional changes to the common rule. These changes would clarify the effect of debarment and suspension actions on an institution’s eligibility to participate in student assistance programs authorized under title IV of the HEA, 20 U.S.C. 1070, *et seq.* These changes are consistent with the original common rule, as adopted by the Department in 1988.

The Secretary also proposes to clarify some of the coverage definitions to ensure that any person who has a significant control or influence over an ED transaction would be covered. The

Secretary would also clarify the meaning of "principal" and "participant" in the context of title IV, HEA transactions. The Secretary considers an excluded person to pose significant risk to the integrity of the title IV, HEA programs. Thus, the Secretary proposes changes to the common rule regarding the definition of an excluded "principal." The proposed revised definition would include those persons who would—

- Provide services as third-party servicers to schools, lenders, and guarantors that participate in the title IV, HEA programs.
- Provide counsel or guidance directly to third-party servicers; or
- Provide counsel or guidance through a third-party servicer, indirectly or directly, to the lender, school, or guarantor.

To further clarify this position and to make participants aware of this precaution, the Secretary expressly designates as a covered lower-tier transaction any contract between a third-party servicer and a lender, school, or guarantor, regardless of the amount of the contract.

Parties apparently have structured these types of transactions to avoid the dollar threshold needed to extend coverage to lower-tier procurement transactions. The Secretary proposes this change to avoid attempts by excluded parties to use agreements or arrangements that contain indefinite or ambiguously phrased compensation provisions to evade sanction. In addition, the Secretary considers the dollar amount of the procurement contract for the services of an excluded person to have no necessary connection with the amount of abuse that may be caused by the excluded person.

The proposed changes would make the scope of the exclusion clearer and easier for participants to apply to their transactions.

The common rule allows a participant to continue to use the services of an excluded person on the premise that the transaction or agreement under which a participant operates has a limited duration. However, it is contrary to the intent of the rule, to apply that approach to situations in which the party participates under an agreement or arrangement of extended or even indefinite duration. Several major title IV, HEA agreements have no stated expiration date; others, including program participation agreements with postsecondary institutions, commonly extend for six years.

The Secretary wishes to prevent a title IV, HEA participant from continuing to use the services of an excluded person

under this kind of agreement or arrangement. Thus, the Secretary—solely for the purpose of this rule—proposes to treat these agreements as having limited duration, regardless of other regulatory or contractual provisions that control their duration as between the participant and the Government. The Secretary considers this approach necessary in order to ensure a level of protection for these kinds of transactions or agreements that the common rule is intended to achieve for other Federal agreements.

Thus, for the purposes of title IV, HEA transactions, the Secretary proposes to allow a participant to continue to use the services of the excluded person for a period of 90 days or up to the close of the Federal fiscal year in which the participant learns of the exclusion, whichever is longer. This would give the participant time to arrange for a substitute to perform needed services.

Because this NPRM would reorganize part 85 of title 34 of the Code of Federal Regulations (CFR), some of the cross-references to this part in parts 668 and 682 of the CFR would become obsolete when this rule becomes final. Therefore, the Secretary proposes to make conforming amendments to parts 668 and 682 of the CFR so they refer to the proper provisions in part 85.

Also, the Secretary proposes to remove 34 CFR 682.705(a)(3), which prescribes the duration of a suspension by another Federal agency. Because the period of the suspension is expressly covered in proposed 34 CFR 85.612(b), there is no need to retain the separate explanation.

Finally, we note that the common rule clarifies the conditions under which a Federal agency gives a respondent an opportunity to challenge facts on which the agency based a suspension or proposed debarment.

#### *Assessment of Educational Impact*

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Number 84.032 Federal Family Education Loan Program)

#### **List of Subjects**

##### *34 CFR Part 84*

Debarment and suspension, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

##### *34 CFR Part 85*

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

##### *34 CFR Part 668*

Administrative practice and procedure, Colleges and universities, Consumer protection, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Student aid.

##### *34 CFR Part 682*

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

Dated: September 6, 2001.

#### **Rod Paige,**

*Secretary of Education.*

For the reasons stated in the common preamble and in the specific preamble of the Department of Education (ED), the Secretary proposes to amend title 34 of the Code of Federal Regulations by adding part 84, revising part 85, and amending parts 668 and 682 to read as follows:

1. Part 84 is added to read as set forth in instruction 2 at the end of the common preamble.

#### **PART 84—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)**

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

Sec.

84.100 What does this part do?

84.105 Does this part apply to me?

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

84.115 Does this part affect the Federal contracts that I receive?

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

- 84.200 What must I do to comply with this part?
- 84.205 What must I include in my drug-free workplace statement?
- 84.210 To whom must I distribute my drug-free workplace statement?
- 84.215 What must I include in my drug-free awareness program?
- 84.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
- 84.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
- 84.230 How and when must I identify workplaces?

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

- 84.300 What must I do to comply with this part if I am an individual recipient?
- 84.301 [Reserved]

**Subpart D—Responsibilities of ED Awarding Officials**

- 84.400 What are my responsibilities as an ED awarding official?

**Subpart E—Violations of This Part and Consequences**

- 84.500 How are violations of this part determined for recipients other than individuals?
- 84.505 How are violations of this part determined for recipients who are individuals?
- 84.510 What actions will the Federal Government take against a recipient determined to have violated this part?
- 84.515 Are there any exceptions to those actions?

**Subpart F—Definitions**

- 84.605 Award.
- 84.610 Controlled substance.
- 84.615 Conviction.
- 84.620 Cooperative agreement.
- 84.625 Criminal drug statute.
- 84.630 Debarment.
- 84.635 Drug-free workplace.
- 84.640 Employee.
- 84.645 Federal agency or agency.
- 84.650 Grant.
- 84.655 Individual.
- 84.660 Recipient.
- 84.665 State.
- 84.670 Suspension.
- Authority:** E.O.s 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, unless otherwise noted.

2. Part 84 is further amended as follows:

- a. “[Agency noun]” is removed and “Department of Education” is added in its place wherever it occurs.
- b. “[Agency adjective]” is removed and “ED” is added in its place wherever it occurs.
- c. “[Agency head or designee]” is removed and “ED Deciding Official” is added in its place wherever it occurs.

d. “[Agency head]” is removed and “ED Deciding Official” is added in its place wherever it occurs.

3. Section 84.510(c) is further amended by removing “[CFR citation for the Federal Agency’s regulations implementing Executive Order 12549 and Executive Order 12689]” and adding “34 CFR part 85” in its place.

4. Section 84.605(a)(2) is further amended by removing “[Agency-specific CFR citation]” and adding “34 CFR part 85” in its place.

5. Each section in part 84 is further amended by adding to the end of each section the following authority citation to read:

(Authority: E.O.s 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. Part 85 is revised to read as provided in instruction 1 at the end of the common preamble:

**PART 85—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

Sec.

- 85.25 How is this part organized?
- 85.50 How is this part written?
- 85.75 Do terms in this part have special meanings?

**Subpart A—General**

- 85.100 What does this part do?
- 85.105 Does this part apply to me?
- 85.110 What is the purpose of the nonprocurement debarment and suspension system?
- 85.115 How does an exclusion restrict a person’s involvement in covered transactions?
- 85.120 May we grant an exception to let an excluded person participate in a covered transaction?
- 85.125 Does an exclusion under the nonprocurement system affect a person’s eligibility to participate in Federal procurement contracts?
- 85.130 Does an exclusion under the Federal procurement system affect a person’s eligibility to participate in nonprocurement transactions?
- 85.135 May the Department of Education exclude a person who is not currently participating in a nonprocurement transaction?
- 85.140 How do I know if a person is excluded?
- 85.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

**Subpart B—Covered Transactions**

- 85.200 What is a covered transaction?
- 85.205 Why is it important to know if a particular transaction is a covered transaction?
- 85.210 Which nonprocurement transactions are covered transactions?

- 85.215 Which nonprocurement transactions are not covered transactions?
- 85.220 Are any procurement contracts included as covered transactions?
- 85.225 How do I know if a transaction that I may participate in is a covered transaction?

**Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons**

- 85.300 May I enter into a covered transaction with an excluded or disqualified person?
- 85.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
- 85.310 May I use the services of an excluded person under a covered transaction?
- 85.315 Must I verify that principals of my covered transactions are eligible to participate?
- 85.320 What happens if I do business with an excluded person in a covered transaction?
- 85.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

**Disclosing Information—Primary Tier Participants**

- 85.330 What information must I provide before entering into a covered transaction with the Department of Education?
- 85.335 If I disclose unfavorable information required under § 85.330 will I be prevented from entering into the transaction?
- 85.340 What happens if I fail to disclose the information required under § 85.330?
- 85.345 What must I do if I learn of the information required under § 85.330 after entering into a covered transaction with the Department of Education?

**Disclosing Information—Lower Tier Participants**

- 85.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
- 85.355 What happens if I fail to disclose the information required under § 85.350?
- 85.360 What must I do if I learn of information required under § 85.350 after entering into a covered transaction with a higher tier participant?

**Subpart D—Responsibilities of ED Officials Regarding Transactions**

- 85.400 May I enter into a transaction with an excluded or disqualified person?
- 85.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
- 85.410 May I approve a participant’s use of the services of an excluded person?
- 85.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
- 85.420 May I approve a transaction with an excluded or disqualified person at a lower tier?

- 85.425 When do I check to see if a person is excluded or disqualified?
- 85.430 How do I check to see if a person is excluded or disqualified?
- 85.435 What must I require of a primary tier participant?
- 85.440 What method do I use to communicate those requirements to participants?
- 85.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
- 85.450 What action may I take if a primary tier participant fails to disclose the information required under § 85.330?
- 85.455 What may I do if a lower tier participant fails to disclose the information required under § 85.350 to the next higher tier?

**Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs**

- 85.500 What is the purpose of the List?
- 85.505 Who uses the List?
- 85.510 Who maintains the List?
- 85.515 What specific information is on the List?
- 85.520 Who gives the GSA the information that it puts on the List?
- 85.525 Whom do I ask if I have questions about a person on the List?
- 85.530 Where can I get the List?

**Subpart F—General Principles Relating to Suspension and Debarment Actions**

- 85.600 How do suspension and debarment actions start?
- 85.605 How does suspension differ from debarment?
- 85.610 What procedures does the Department of Education use in suspension and debarment actions?
- 85.611 What procedures do we use for a suspension or debarment action involving title IV, HEA transaction?
- 85.612 When does an exclusion by another agency affect the ability of the excluded person to participate in title IV, HEA transaction?
- 85.615 How does the Department of Education notify a person of suspension and debarment actions?
- 85.620 Do Federal agencies coordinate suspension and debarment actions?
- 85.625 What is the scope of a suspension or debarment action?
- 85.630 May the Department of Education impute the conduct of one person to another?
- 85.635 May the Department of Education settle a debarment or suspension action?
- 85.640 May a settlement include a voluntary exclusion?
- 85.645 Do other Federal agencies know if the Department of Education agrees to a voluntary exclusion?

**Subpart G—Suspension**

- 85.700 When may the suspending official issue a suspension?
- 85.705 What does the suspending official consider in issuing a suspension?
- 85.710 When does a suspension take effect?
- 85.711 When does a suspension affect title IV, HEA transactions?

- 85.715 What notice does the suspending official give me if I am suspended?
- 85.720 How may I contest a suspension?
- 85.725 How much time do I have to contest a suspension?
- 85.730 What information must I provide to the suspending official if I contest a suspension?
- 85.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 85.740 Are suspension proceedings formal?
- 85.745 Is a record made of fact-finding proceedings?
- 85.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 85.755 When will I know whether the suspension is continued or terminated?
- 85.760 How long may my suspension last?

**Subpart H—Debarment**

- 85.800 What are the causes for debarment?
- 85.805 What notice does the debarring official give me if I am proposed for debarment?
- 85.810 When does a debarment take effect?
- 85.811 When does a debarment affect title IV, HEA transactions?
- 85.815 How may I contest a proposed debarment?
- 85.820 How much time do I have to contest a proposed debarment?
- 85.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 85.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
- 85.835 Are debarment proceedings formal?
- 85.840 Is a record made of fact-finding proceedings?
- 85.845 What does the debarring official consider in deciding whether to debar me?
- 85.850 What is the standard of proof in a debarment action?
- 85.855 Who has the burden of proof in a debarment action?
- 85.860 What factors may influence the debarring official's decision?
- 85.865 How long may my debarment last?
- 85.870 When do I know if the debarring official debars me?
- 85.875 May I ask the debarring official to reconsider a decision to debar me?
- 85.880 What factors may influence the debarring official during reconsideration?
- 85.885 May the debarring official extend a debarment?

**Subpart I—Definitions**

- 85.900 Adequate evidence.
- 85.905 Affiliate.
- 85.910 Agency.
- 85.915 Agent or representative.
- 85.920 Civil judgment.
- 85.925 Conviction.
- 85.930 Debarment.
- 85.935 Debarring official.
- 85.940 Disqualified.
- 85.942 ED Deciding Official.
- 85.945 Excluded or exclusion.
- 85.947 HEA.

- 85.950 Indictment.
- 85.955 Ineligible or ineligibility.
- 85.960 Legal proceedings.
- 85.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.
- 85.970 Nonprocurement transaction.
- 85.975 Notice.
- 85.980 Participant.
- 85.985 Person.
- 85.990 Preponderance of the evidence.
- 85.995 Principal.
- 85.1000 Respondent.
- 85.1005 State.
- 85.1010 Suspending official.
- 85.1015 Suspension.
- 85.1016 Title IV, HEA participant.
- 85.1017 Title IV, HEA program.
- 85.1018 Title IV, HEA transaction.
- 85.1020 Voluntary exclusion or voluntarily excluded.

**Subpart J [Reserved]**

**Appendix to Part 85—Covered Transactions**

**Authority:** E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12698 (3 CFR 1989 Comp., p. 235); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e-3, and 3474, unless otherwise noted.

7. Part 85 is further amended as follows:

- a. “[Agency noun]” is removed and “Department of Education” is added in its place wherever it occurs.
- b. “[Agency adjective]” is removed and “ED” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “ED Deciding Official” is added in its place wherever it occurs.

d. Each section in part 85 is further amended by adding to the end of each section the following authority citation to read:

(Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235); 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 further amended by adding new paragraphs (d) and (e) to read as follows.

**§ 85.220 Are any procurement contracts included as covered transactions?**

\* \* \* \* \*

(d) The contract is awarded by any contractor, subcontractor, supplier, consultant or its agent or representative in any transaction, regardless of tier, that is funded or authorized under ED programs and is expected to equal or exceed \$25,000.

(e) The contract is to perform services as a third party servicer in connection with a title IV, HEA program.

9. Section 85.305 is further amended by adding paragraph (c) to read as follows:

**§ 85.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?**

\* \* \* \* \*

(c) If you are a title IV, HEA participant, you may not continue a title IV, HEA transaction with an excluded person after the effective date of the exclusion unless permitted by 34 CFR 668.26, 682.702, or 668.94, as applicable.

10. Section 85.310 is further amended by adding paragraph (c) to read as follows:

**§ 85.310 May I use the services of an excluded person under a covered transaction?**

\* \* \* \* \*

(c) *Title IV, HEA transactions.* If you are a title IV, HEA participant—

(1) You may not renew or extend the term of any contract or agreement for the services of an excluded person as a principal with respect to a title IV, HEA transaction; and

(2) You may not continue to use the services of that excluded person as a principal under this kind of an agreement or arrangement more than 90 days after you learn of the exclusion or after the close of the Federal fiscal year in which the exclusion takes effect, whichever is later.

11. Section 85.415 is further amended by adding a new paragraph (c) to read as follows:

**§ 85.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?**

\* \* \* \* \*

(c) *Title IV, HEA transactions.* If you are a title IV, HEA participant—

(1) You may not renew or extend the term of any contract or agreement for the services of an excluded person as a principal with respect to a title IV, HEA transaction; and

(2) You may not continue to use the services of that excluded person as a principal under this kind of an agreement or arrangement more than 90 days after you learn of the exclusion or after the close of the Federal fiscal year in which the exclusion takes effect, whichever is later.

12. Subpart D of part 85 is further amended by adding § 85.440 to read as follows:

**§ 85.440 What method do I use to communicate those requirements to participants?**

(a) To communicate those requirements, you must include a term or condition in the transaction requiring each participant's compliance with

subpart C of this part and requiring the participant to include a similar term or condition in lower-tier covered transactions.

(b) The failure of a participant to include a requirement to comply with subpart C of this part in the agreement with a lower tier participant does not affect the lower tier participant's responsibilities under this part.

(Authority: E.O. 12549 (3 CFR, 1985 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455 of Pub. L. 103-355, 108 Stat. 3243 at 3327)

13. Subpart F of part 85 is further amended by adding a new § 85.611 to read as follows:

**§ 85.611 What procedures do we use for a suspension or debarment action involving a title IV, HEA transaction?**

(a) If we suspend a title IV, HEA participant under Executive Order 12549, we use the following procedures to ensure that the suspension prevents participation in title IV, HEA transactions:

(1) The notification procedures in § 85.715.

(2) Instead of the procedures in §§ 85.720 through 85.760, the procedures in 34 CFR part 668, subpart G or 34 CFR part 682, subpart D or G as applicable.

(3) In addition to the findings and conclusions required by 34 CFR part 668, subpart G or 34 CFR part 682, subpart D or G, the suspending official, and, on appeal, the Secretary determines whether there is sufficient cause for suspension as explained in § 85.700.

(b) If we debar a title IV, HEA participant under E.O. 12549, we use the following procedures to ensure that the debarment also precludes participation in title IV, HEA transactions:

(1) The notification procedures in §§ 85.805 and 85.870.

(2) Instead of the procedures in §§ 85.810 through 85.885, the procedures in 34 CFR part 668, subpart G or 34 CFR part 682, subpart D or G, as applicable.

(3) On appeal from a decision debarring a title IV, HEA participant, we issue a final decision after we receive any written materials from the parties.

(4) In addition to the findings and conclusions required by 34 CFR part 668, subpart G or 682, subpart D or G, the debarring official, and, on appeal, the Secretary determines whether there is sufficient cause for debarment as explained in § 85.800.

(Authority: E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR Comp., p. 235);

20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455 of Pub. L. 103-355, 108 Stat. 3243 at 3327)

14. Subpart F of Part 85 is further amended by adding § 85.612 to read as follows:

**§ 85.612 When does an exclusion by another agency affect the ability of the excluded person to participate in a title IV, HEA transaction?**

(a) If a title IV, HEA participant is debarred by another agency under E.O. 12549, using procedures described in paragraph (d) of this section, that party is not eligible to enter into title IV, HEA transactions for the duration of the debarment.

(b)(1) If a title IV, HEA participant is suspended by another agency under E.O. 12549 or under a proposed debarment under the Federal Acquisition Regulation (FAR) (48 CFR part 9, subpart 9.4), using procedures described in paragraph (d) of this section, that party is not eligible to enter into title IV, HEA transactions for the duration of the suspension.

(2)(i) The suspension of title IV, HEA eligibility as a result of suspension by another agency lasts for at least 60 days.

(ii) If the excluded party does not object to the suspension, the 60-day period begins on the 35th day after that agency issues the notice of suspension.

(iii) If the excluded party objects to the suspension, the 60-day period begins on the date of the decision of the suspending official.

(3) The suspension of title IV, HEA eligibility does not end on the 60th day if—

(i) The excluded party agrees to an extension; or

(ii) Before the 60th day we begin a limitation or termination proceeding against the excluded party under 34 CFR part 668, subpart G or part 682, subpart D or G.

(c)(1) If a title IV, HEA participant is debarred or suspended by another Federal agency—

(i) We notify the participant whether the debarment or suspension prohibits participation in title IV, HEA transactions; and

(ii) If participation is prohibited, we state the effective date and duration of the prohibition.

(2) If a debarment or suspension by another agency prohibits participation in title IV, HEA transactions, that prohibition takes effect 20 days after we mail notice of our action.

(3) If ED or another Federal agency suspends a title IV, HEA participant, we determine whether grounds exist for an emergency action against the participant under 34 CFR part 668, subpart G or part 682, subpart D or G, as applicable.

(4) We use the procedures in § 85.611 to exclude a title IV, HEA participant excluded by another Federal agency using procedures that did not meet the standards in paragraph (d) of this section.

(d) If a title IV, HEA participant is excluded by another agency, we debar, terminate, or suspend the participant—as provided under this part, 34 CFR part 668, or 34 CFR part 682, as applicable—if that agency followed procedures that gave the excluded party—

(1) Notice of the proposed action;  
(2) An opportunity to submit and have considered evidence and argument to oppose the proposed action;

(3) An opportunity to present its objection at a hearing—

(i) At which the agency has the burden of persuasion by a preponderance of the evidence that there is cause for the exclusion; and

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

(4) An opportunity to present witness testimony, unless the hearing official finds that there is no genuine dispute about a material fact;

(5) An opportunity to have agency witnesses with personal knowledge of material facts in genuine dispute testify about those facts, if the hearing official determines their testimony to be needed, in light of other available evidence and witnesses; and

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

(Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189), E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455 of Pub. L. 103-355, 108 Stat. 3243 at 3327)

15. Subpart G is further amended by adding a new § 85.711, to read as follows:

**§ 85.711 When does a suspension affect title IV, HEA transactions?**

(a) A suspension under § 85.611(a) takes effect immediately if the Secretary takes an emergency action under 34 CFR part 668, subpart G or 34 CFR part 682, subpart D or G at the same time the Secretary issues the suspension.

(b)(1) Except as provided under paragraph (a) of this section, a suspension under § 85.611(a) takes effect 20 days after those procedures are complete.

(2) If the respondent appeals the suspension to the Secretary before the

expiration of the 20 days under paragraph (b)(1) of this section, the suspension takes effect when the respondent receives the Secretary's decision.

(Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189), E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455 of Pub. L. 103-355, 108 Stat. 3243 at 3327)

16. Subpart H is further amended by adding a new § 85.811 to read as follows:

**§ 85.811 When does a debarment affect title IV, HEA transactions?**

(a) A debarment under § 85.611(b) takes effect 30 days after those procedures are complete.

(b) If the respondent appeals the debarment to the Secretary before the expiration of the 30 days under paragraph (a) of this section, the debarment takes effect when the respondent receives the Secretary's decision.

(Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189), E.O. 12689 (3 CFR, Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455 of Pub. L. 103-355, 108 Stat. 3243 at 3327)

17. Subpart I of part 85 is further amended by adding § 85.942 to read as follows:

**§ 85.942 ED Deciding Official.**

The ED Deciding Official is an ED officer who has delegated authority under the procedures of the Department of Education to decide whether to affirm a suspension or enter a debarment.

(Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189), E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455 of Pub. L. 103-355, 108 Stat. 3243 at 3327)

18. Subpart I of part 85 is further amended by adding § 85.947 to read as follows:

**§ 85.947 HEA.**

HEA means the Higher Education Act of 1965, as amended.

19. Section 85.995 is further amended by adding paragraph (c) to read as follows:

**§ 85.995 Principal.**

\* \* \* \* \*

(c) For the purposes of Department of Education title IV, HEA transactions—

(1) A third-party servicer, as defined in 34 CFR 668.2 or 682.200; or

(2) Any person who provides services described in 34 CFR 668.2 or 682.200 to

a title IV, HEA participant, whether or not that person is retained or paid directly by the title IV, HEA participant.

\* \* \* \* \*

20. Subpart I of part 85 is further amended by adding § 85.1016 to read as follows:

**§ 85.1016 Title IV, HEA participant.**

A title IV, HEA participant is—

(a) An institution described in 34 CFR 600.4, 600.5, or 600.6 that provides postsecondary education; or

(b) A lender, third-party servicer, or guaranty agency, as those terms are defined in 34 CFR 668.2 or 682.200.

(Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455 of Pub. L. 103-355, 108 Stat. 3243 at 3327)

21. Subpart I of part 85 is further amended by adding § 85.1017 to read as follows:

**§ 85.1017 Title IV, HEA program.**

A title IV, HEA program includes any program listed in 34 CFR 668.1(c).

(Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455 of Pub. L. 103-355, 108 Stat. 3243 at 3327)

22. Subpart I of part 85 is further amended by adding § 85.1018 to read as follows:

**§ 85.1018 Title IV, HEA transaction.**

A title IV, HEA transaction includes:

(a) A disbursement or delivery of funds provided under a title IV, HEA program to a student or borrower;

(b) A certification by an educational institution of eligibility for a loan under a title IV, HEA program;

(c) Guaranteeing a loan made under a title IV, HEA program; and

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

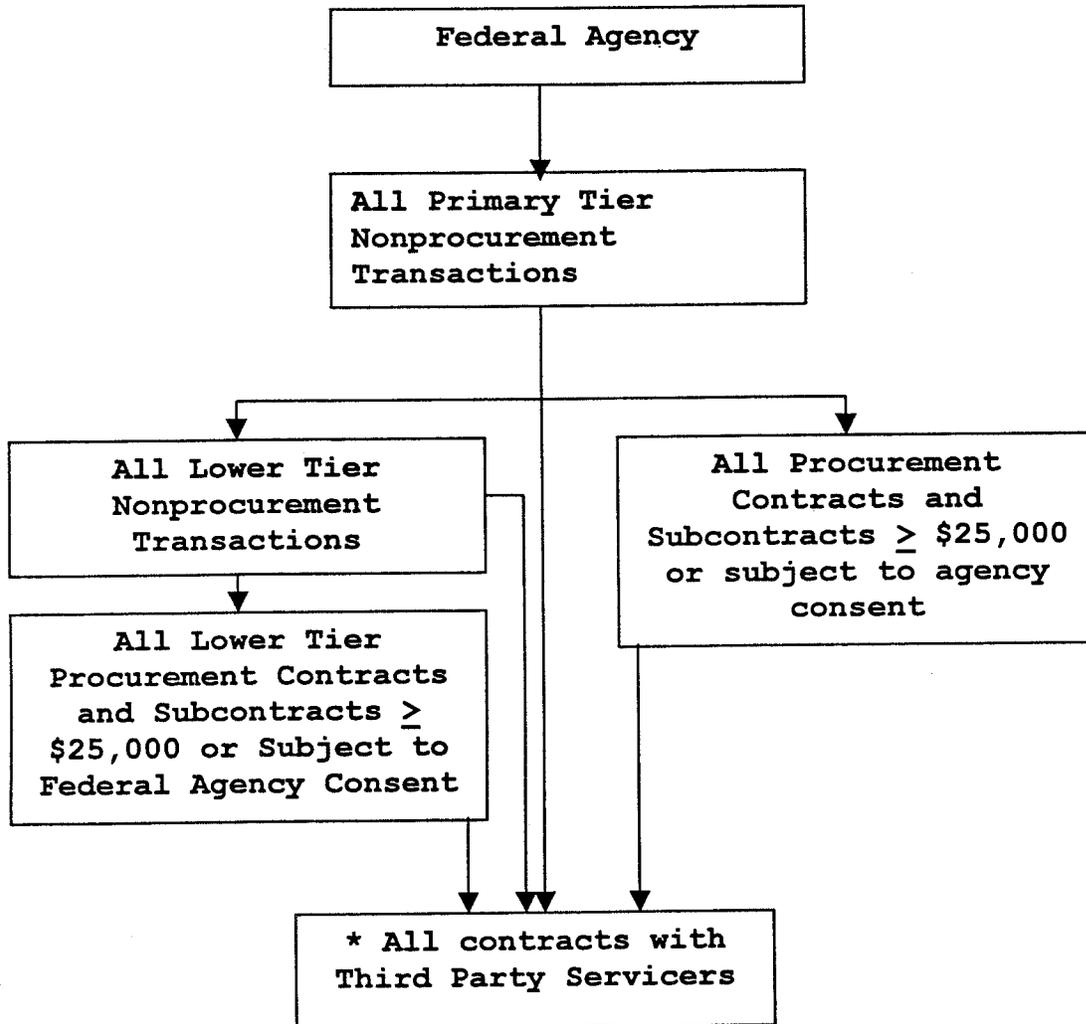
(Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189), E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455 of Pub. L. 103-355, 108 Stat. 3243 at 3327)

23. The appendix to part 85 is amended by removing and reserving the Covered Transactions Chart and by adding a Covered Transactions for ED Chart to read as follows.

BILLING CODE 6325-01-P et al.

## Appendix to Part 85 - Covered Transactions for ED

## Covered Transactions [Reserved]



\* Note: All contracts for third-party servicers are covered transactions, regardless of whether a Title IV, HEA participant has contracted directly or indirectly with the servicer.

## PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

24. The authority citation for part 668 is revised to read as follows:

**Authority:** 20 U.S.C. 1001, 1002, 1003, 1085, 1088, 1091, 1092, 1094, 1099c, and 1099c-1, unless otherwise noted.

### § 668.82 [Amended]

25. Amend § 668.82 as follows:

a. In paragraph (e)(1)(i)(B), by removing the words “Cause exists under 34 CFR 85.305 or 85.405” and adding, in their place, the words “Cause exists under 34 CFR 85.700 or 85.800”.

b. In paragraphs (f)(1) and (f)(2)(i), by removing the citation “34 CFR 85.201(c)” and adding, in its place, the citation “34 CFR 85.612(d)”.

## PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

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

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

### § 682.416 [Amended]

27. Amend § 682.416(d)(1)(ii)(B) by removing the words “cause under 34 CFR 85.305 or 85.405” and adding, in their place, the words “cause under 34 CFR 85.700 or 85.800.”

### § 682.705 [Amended]

28. Amend § 682.705 by removing paragraph (a)(3).

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### 36 CFR Parts 1209 and 1212

#### RIN 3095-AB04

#### FOR FURTHER INFORMATION CONTACT:

Nancy Allard at Policy and Communications Staff (NPOL), Room 4100, 8601 Adelphi Road, College Park, Maryland 20740-6001, 301-713-7360, extension 226, or [comments@nara.gov](mailto:comments@nara.gov).

#### List of Subjects

##### 36 CFR Part 1209

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

##### 36 CFR Part 1212

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

Approved: May 4, 2001.

**John W. Carlin,**

*Archivist of the United States.*

For the reasons stated in the common preamble, the National Archives and

Records Administration amends 36 CFR chapter XII as follows:

1. Part 1209 is revised to read as set forth in instruction 1 at the end of the common preamble.

## PART 1209—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

1209.25 How is this part organized?

1209.50 How is this part written?

1209.75 Do terms in this part have special meanings?

### Subpart A—General

1209.100 What does this part do?

1209.105 Does this part apply to me?

1209.110 What is the purpose of the nonprocurement debarment and suspension system?

1209.115 How does an exclusion restrict a person's involvement in covered transactions?

1209.120 May we grant an exception to let an excluded person participate in a covered transaction?

1209.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?

1209.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?

1209.135 May NARA exclude a person who is not currently participating in a nonprocurement transaction?

1209.140 How do I know if a person is excluded?

1209.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

### Subpart B—Covered Transactions

1209.200 What is a covered transaction?

1209.205 Why is it important to know if a particular transaction is a covered transaction?

1209.210 Which nonprocurement transactions are covered transactions?

1209.215 Which nonprocurement transactions are not covered transactions?

1209.220 Are any procurement contracts included as covered transactions?

1209.225 How do I know if a transaction that I may participate in is a covered transaction?

### Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

1209.300 May I enter into a covered transaction with an excluded or disqualified person?

1209.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?

1209.310 May I use the services of an excluded person under a covered transaction?

1209.315 Must I verify that principals of my covered transactions are eligible to participate?

1209.320 What happens if I do business with an excluded person in a covered transaction?

1209.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

### Disclosing Information—Primary Tier Participants

1209.330 What information must I provide before entering into a covered transaction with NARA?

1209.335 If I disclose unfavorable information required under § 1209.330 will I be prevented from entering into the transaction?

1209.340 What happens if I fail to disclose the information required under § 1209.330?

1209.345 What must I do if I learn of the information required under § 1209.330 after entering into a covered transaction with NARA?

### Disclosing Information—Lower Tier Participants

1209.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?

1209.355 What happens if I fail to disclose the information required under § 1209.350?

1209.360 What must I do if I learn of information required under § 1209.350 after entering into a covered transaction with a higher tier participant?

### Subpart D—Responsibilities of NARA Officials Regarding Transactions

1209.400 May I enter into a transaction with an excluded or disqualified person?

1209.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?

1209.410 May I approve a participant's use of the services of an excluded person?

1209.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?

1209.420 May I approve a transaction with an excluded or disqualified person at a lower tier?

1209.425 When do I check to see if a person is excluded or disqualified?

1209.430 How do I check to see if a person is excluded or disqualified?

1209.435 What must I require of a primary tier participant?

1209.440 What method do I use to communicate those requirements to participants?

1209.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?

1209.450 What action may I take if a primary tier participant fails to disclose the information required under § 1209.330?

1209.455 What may I do if a lower tier participant fails to disclose the

information required under § 1209.350 to the next higher tier?

**Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs**

- 1209.500 What is the purpose of the List?  
 1209.505 Who uses the List?  
 1209.510 Who maintains the List?  
 1209.515 What specific information is on the List?  
 1209.520 Who gives the GSA the information that it puts on the List?  
 1209.525 Whom do I ask if I have questions about a person on the List?  
 1209.530 Where can I get the List?

**Subpart F—General Principles Relating to Suspension and Debarment Actions**

- 1209.600 How do suspension and debarment actions start?  
 1209.605 How does suspension differ from debarment?  
 1209.610 What procedures does NARA use in suspension and debarment actions?  
 1209.615 How does NARA notify a person of suspension and debarment actions?  
 1209.620 Do Federal agencies coordinate suspension and debarment actions?  
 1209.625 What is the scope of a suspension or debarment action?  
 1209.630 May NARA impute the conduct of one person to another?  
 1209.635 May NARA settle a debarment or suspension action?  
 1209.640 May a settlement include a voluntary exclusion?  
 1209.645 Do other Federal agencies know if NARA agrees to a voluntary exclusion?

**Subpart G—Suspension**

- 1209.700 When may the suspending official issue a suspension?  
 1209.705 What does the suspending official consider in issuing a suspension?  
 1209.710 When does a suspension take effect?  
 1209.715 What notice does the suspending official give me if I am suspended?  
 1209.720 How may I contest a suspension?  
 1209.725 How much time do I have to contest a suspension?  
 1209.730 What information must I provide to the suspending official if I contest a suspension?  
 1209.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?  
 1209.740 Are suspension proceedings formal?  
 1209.745 Is a record made of fact-finding proceedings?  
 1209.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?  
 1209.755 When will I know whether the suspension is continued or terminated?  
 1209.760 How long may my suspension last?

**Subpart H—Debarment**

- 1209.800 What are the causes for debarment?  
 1209.805 What notice does the debarring official give me if I am proposed for debarment?

- 1209.810 When does a debarment take effect?  
 1209.815 How may I contest a proposed debarment?  
 1209.820 How much time do I have to contest a proposed debarment?  
 1209.825 What information must I provide to the debarring official if I contest a proposed debarment?  
 1209.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?  
 1209.835 Are debarment proceedings formal?  
 1209.840 Is a record made of fact-finding proceedings?  
 1209.845 What does the debarring official consider in deciding whether to debar me?  
 1209.850 What is the standard of proof in a debarment action?  
 1209.855 Who has the burden of proof in a debarment action?  
 1209.860 What factors may influence the debarring official's decision?  
 1209.865 How long may my debarment last?  
 1209.870 When do I know if the debarring official debars me?  
 1209.875 May I ask the debarring official to reconsider a decision to debar me?  
 1209.880 What factors may influence the debarring official during reconsideration?  
 1209.885 May the debarring official extend a debarment?

**Subpart I—Definitions**

- 1209.900 Adequate evidence.  
 1209.905 Affiliate.  
 1209.910 Agency.  
 1209.915 Agent or representative.  
 1209.920 Civil judgment.  
 1209.925 Conviction.  
 1209.930 Debarment.  
 1209.935 Debarring official.  
 1209.940 Disqualified.  
 1209.945 Excluded or exclusion.  
 1209.950 Indictment.  
 1209.955 Ineligible or ineligibility.  
 1209.960 Legal proceedings.  
 1209.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.  
 1209.970 Nonprocurement transaction.  
 1209.975 Notice.  
 1209.980 Participant.  
 1209.985 Person.  
 1209.990 Preponderance of the evidence.  
 1209.995 Principal.  
 1209.1000 Respondent.  
 1209.1005 State.  
 1209.1010 Suspending official.  
 1209.1015 Suspension.  
 1209.1020 Voluntary exclusion or voluntarily excluded.

**Subpart J [Reserved]**

**Appendix to Part 1209—Covered Transactions**

**Authority:** 44 U.S.C. 2104(a); 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. Part 1209 is further amended as set forth below.

a. “[Agency noun]” is removed and “NARA” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “NARA” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “Archivist of the United States or designee” is added in its place wherever it occurs.

3. Section 1209.440 is added to read as follows:

**§ 1209.440 What method do I use to communicate those requirements to participants?**

To communicate the requirement, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

4. Part 1212 is added to read as set forth in instruction 2 at the end of the common preamble.

**PART 1212—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)**

**Subpart A—Purpose and Coverage**

Sec.

- 1212.100 What does this part do?  
 1212.105 Does this part apply to me?  
 1212.110 Are any of my Federal assistance awards exempt from this part?  
 1212.115 Does this part affect the Federal contracts that I receive?

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

- 1212.200 What must I do to comply with this part?  
 1212.205 What must I include in my drug-free workplace statement?  
 1212.210 To whom must I distribute my drug-free workplace statement?  
 1212.215 What must I include in my drug-free awareness program?  
 1212.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?  
 1212.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?  
 1212.230 How and when must I identify workplaces?

**Subpart C—Requirements for Recipients Who are Individuals**

- 1212.300 What must I do to comply with this part if I am an individual recipient?  
 1212.301 [Reserved]

**Subpart D—Responsibilities of NARA Awarding Officials**

- 1212.400 What are my responsibilities as a NARA awarding official?

**Subpart E—Violations of This Part and Consequences**

- 1212.500 How are violations of this part determined for recipients other than individuals?
- 1212.505 How are violations of this part determined for recipients who are individuals?
- 1212.510 What actions will the Federal Government take against a recipient determined to have violated this part?
- 1212.515 Are there any exceptions to those actions?

**Subpart F—Definitions**

- 1212.605 Award.
- 1212.610 Controlled substance.
- 1212.615 Conviction.
- 1212.620 Cooperative agreement.
- 1212.625 Criminal drug statute.
- 1212.630 Debarment.
- 1212.635 Drug-free workplace.
- 1212.640 Employee.
- 1212.645 Federal agency or agency.
- 1212.650 Grant.
- 1212.655 Individual.
- 1212.660 Recipient.
- 1212.665 State.
- 1212.670 Suspension.

**Authority:** 41 U.S.C. 701, et seq.; 44 U.S.C. 2104(a).

5. Part 1212 is further amended as set forth below.

a. “[Agency noun]” is removed and “NARA” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “NARA” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “Archivist of the United States or designee” is added in its place wherever it occurs.

d. “[Agency head]” is removed and “Archivist of the United States or designee” is added in its place wherever it occurs.

6. Section 1212.510(c) is further amended by removing “[CFR citation for the Federal agency’s regulations implementing Executive Order 12549 and Executive Order 12689]” and adding “36 CFR part 1209” in its place.

7. Section 1212.605(a)(2) is further amended by removing “[Agency-specific CFR citation]” and adding “36 CFR part 1207” in its place .

**DEPARTMENT OF VETERANS AFFAIRS****38 CFR Parts 44 and 48****RIN 2900–AK16**

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert D. Finneran, Assistant Director for Loan Policy and Valuation (262), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington, DC 20420, (202) 273–7369, e-mail: lgyrfinn@vba.va.gov.

**ADDITIONAL SUPPLEMENTARY INFORMATION:**

VA is a party to the proposed common rule with the following differences.

Under proposed § 44.435 for certain nonprocurement transactions, a primary tier participant must communicate to each lower tier participant that the lower tier participant must not have been debarred or suspended. We propose to add § 44.440 to require the communication to be included as a condition in the covered transaction document. We believe this is adequate to ensure that the parties understand and comply with debarment and suspension requirements.

Under the proposed common rule, the debarring and suspending official is the agency head or an official designated by the agency head. We propose at § 44.935 and § 44.1010 of the proposed common rule to add as the debarring and suspending official the following: for the Veterans Health Administration, the Under Secretary for Health; for the Veterans Benefits Administration, the Under Secretary for Benefits; and for the National Cemetery Administration, the Deputy Under Secretary for Operations.

Proposed § 44.995 of the debarment and suspension common rule, defines the term “principal.” A principal is subject to the debarment and suspension requirements. Agencies implementing the common rule are allowed to add principals that are commonly involved in their covered transactions. VA proposes to retain as principals, at proposed § 44.995(c), the positions designated in the current regulation, 38 CFR 44.105. This is intended to include those that have significant responsibilities in real estate transactions affecting VA. We also propose to add mortgage brokers to this list due to their significant responsibilities in real estate transactions with VA.

Requirements to ensure that certain grantees maintain a drug-free workplace currently are set forth at 38 CFR part 44, subpart F. We propose that these provisions, with proposed amendments explained above in the preamble for the common rule, be transferred to a new 38 CFR part 48.

**List of Subjects***38 CFR Part 44*

Administrative practice and procedure, Condominiums, Debarment and suspension, Grant programs, Handicapped, Housing loan programs—housing and community development, Manufactured homes, Reporting and recordkeeping requirements, Veterans.

*38 CFR Part 48*

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

Approved: June 15, 2001.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR chapter I as follows:

1. Part 44 is revised to read as set forth in instruction 1 at the end of the common preamble.

**PART 44—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

Sec.

44.25 How is this part organized?

44.50 How is this part written?

44.75 Do terms in this part have special meanings?

**Subpart A—General**

44.100 What does this part do?

44.105 Does this part apply to me?

44.110 What is the purpose of the nonprocurement debarment and suspension system?

44.115 How does an exclusion restrict a person’s involvement in covered transactions?

44.120 May we grant an exception to let an excluded person participate in a covered transaction?

44.125 Does an exclusion under the nonprocurement system affect a person’s eligibility to participate in Federal procurement contracts?

44.130 Does an exclusion under the Federal procurement system affect a person’s eligibility to participate in nonprocurement transactions?

44.135 May the Department of Veterans Affairs exclude a person who is not currently participating in a nonprocurement transaction?

44.140 How do I know if a person is excluded?

44.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

**Subpart B—Covered Transactions**

44.200 What is a covered transaction?

44.205 Why is it important to know if a particular transaction is a covered transaction?

44.210 Which nonprocurement transactions are covered transactions?

44.215 Which nonprocurement transactions are not covered transactions?

44.220 Are any procurement contracts included as covered transactions?

44.225 How do I know if a transaction that I may participate in is a covered transaction?

**Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons**

- 44.300 May I enter into a covered transaction with an excluded or disqualified person?
- 44.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
- 44.310 May I use the services of an excluded person under a covered transaction?
- 44.315 Must I verify that principals of my covered transactions are eligible to participate?
- 44.320 What happens if I do business with an excluded person in a covered transaction?
- 44.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

**Disclosing Information—Primary Tier Participants**

- 44.330 What information must I provide before entering into a covered transaction with the Department of Veterans Affairs?
- 44.335 If I disclose unfavorable information required under § 44.330 will I be prevented from entering into the transaction?
- 44.340 What happens if I fail to disclose the information required under § 44.330?
- 44.345 What must I do if I learn of the information required under § 44.330 after entering into a covered transaction with the Department of Veterans Affairs?

**Disclosing Information—Lower Tier Participants**

- 44.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
- 44.355 What happens if I fail to disclose the information required under § 44.350?
- 44.360 What must I do if I learn of information required under § 44.350 after entering into a covered transaction with a higher tier participant?

**Subpart D—Responsibilities of Department of Veterans Affairs Officials Regarding Transactions**

- 44.400 May I enter into a transaction with an excluded or disqualified person?
- 44.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
- 44.410 May I approve a participant's use of the services of an excluded person?
- 44.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
- 44.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
- 44.425 When do I check to see if a person is excluded or disqualified?
- 44.430 How do I check to see if a person is excluded or disqualified?
- 44.435 What must I require of a primary tier participant?

- 44.440 What method do I use to communicate those requirements to participants?
- 44.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
- 44.450 What action may I take if a primary tier participant fails to disclose the information required under § 44.330?
- 44.455 What may I do if a lower tier participant fails to disclose the information required under § 44.350 to the next higher tier?

**Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs**

- 44.500 What is the purpose of the List?
- 44.505 Who uses the List?
- 44.510 Who maintains the List?
- 44.515 What specific information is on the List?
- 44.520 Who gives the GSA the information that it puts on the List?
- 44.525 Whom do I ask if I have questions about a person on the List?
- 44.530 Where can I get the List?

**Subpart F—General Principles Relating to Suspension and Debarment Actions**

- 44.600 How do suspension and debarment actions start?
- 44.605 How does suspension differ from debarment?
- 44.610 What procedures does the Department of Veterans Affairs use in suspension and debarment actions?
- 44.615 How does the Department of Veterans Affairs notify a person of suspension and debarment actions?
- 44.620 Do Federal agencies coordinate suspension and debarment actions?
- 44.625 What is the scope of a suspension or debarment action?
- 44.630 May the Department of Veterans Affairs impute the conduct of one person to another?
- 44.635 May the Department of Veterans Affairs settle a debarment or suspension action?
- 44.640 May a settlement include a voluntary exclusion?
- 44.645 Do other Federal agencies know if the Department of Veterans Affairs agrees to a voluntary exclusion?

**Subpart G—Suspension**

- 44.700 When may the suspending official issue a suspension?
- 44.705 What does the suspending official consider in issuing a suspension?
- 44.710 When does a suspension take effect?
- 44.715 What notice does the suspending official give me if I am suspended?
- 44.720 How may I contest a suspension?
- 44.725 How much time do I have to contest a suspension?
- 44.730 What information must I provide to the suspending official if I contest a suspension?
- 44.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 44.740 Are suspension proceedings formal?
- 44.745 Is a record made of fact-finding proceedings?

- 44.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 44.755 When will I know whether the suspension is continued or terminated?
- 44.760 How long may my suspension last?

**Subpart H—Debarment**

- 44.800 What are the causes for debarment?
- 44.805 What notice does the debarring official give me if I am proposed for debarment?
- 44.810 When does a debarment take effect?
- 44.815 How may I contest a proposed debarment?
- 44.820 How much time do I have to contest a proposed debarment?
- 44.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 44.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
- 44.835 Are debarment proceedings formal?
- 44.840 Is a record made of fact-finding proceedings?
- 44.845 What does the debarring official consider in deciding whether to debar me?
- 44.850 What is the standard of proof in a debarment action?
- 44.855 Who has the burden of proof in a debarment action?
- 44.860 What factors may influence the debarring official's decision?
- 44.865 How long may my debarment last?
- 44.870 When do I know if the debarring official debars me?
- 44.875 May I ask the debarring official to reconsider a decision to debar me?
- 44.880 What factors may influence the debarring official during reconsideration?
- 44.885 May the debarring official extend a debarment?

**Subpart I—Definitions**

- 44.900 Adequate evidence.
- 44.905 Affiliate.
- 44.910 Agency.
- 44.915 Agent or representative.
- 44.920 Civil judgment.
- 44.925 Conviction.
- 44.930 Debarment.
- 44.935 Debarring official.
- 44.940 Disqualified.
- 44.945 Excluded or exclusion.
- 44.950 Indictment.
- 44.955 Ineligible or ineligibility.
- 44.960 Legal proceedings.
- 44.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.
- 44.970 Nonprocurement transaction.
- 44.975 Notice.
- 44.980 Participant.
- 44.985 Person.
- 44.990 Preponderance of the evidence.
- 44.995 Principal.
- 44.1000 Respondent.
- 44.1005 State.
- 44.1010 Suspending official.
- 44.1015 Suspension.
- 44.1020 Voluntary exclusion or voluntarily excluded.

**Subpart J [Reserved]****Appendix to Part 44—Covered Transactions**

**Authority:** 38 U.S.C. 501 and 38 U.S.C. 3703(c); Sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 11738 (3 CFR, 1973 Comp., p. 799); E.O. 12549 (3 CFR 1986 comp., p. 189) E.O. 12689 (3 CFR 1989 Comp., p. 235).

**PART 44—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

2. Part 44 is further amended as set forth below.

a. “[Agency noun]” is removed and “Department of Veterans Affairs” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “Department of Veterans Affairs” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “Secretary” is added in its place wherever it occurs.

3. Section 44.440 is added to read as follows:

**§ 44.440 What method do I use to communicate those requirements to participants?**

To communicate the requirement, you must include a term or condition in the transaction requiring the participants’ compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

4. Section 44.935 is further amended by adding paragraph (b) to read as follows:

**§ 44.935 Debarring official.**

\* \* \* \* \*

(b) For the Department of Veterans Affairs the debarring official is:

(1) For the Veterans Health Administration, the Under Secretary for Health;

(2) For the Veterans Benefits Administration, the Under Secretary for Benefits; and

(3) For the National Cemetery Administration, the Deputy Under Secretary for Operations.

5. Section 44.995 is further amended by adding a paragraph (c) to read as follows:

**§ 44.995 Principal.**

\* \* \* \* \*

(c) In the Department of Veterans Affairs loan guaranty program, principals include, but are not limited to the following:

- (1) Loan officers.
- (2) Loan solicitors,
- (3) Loan processors.
- (4) Loan servicers.
- (5) Loan supervisors.
- (6) Mortgage brokers.

(7) Office managers.

(8) Staff appraisers and inspectors.

(9) Fee appraisers and inspectors.

(10) Underwriters.

(11) Bonding companies.

(12) Real estate agents and brokers.

(13) Management and marketing

agents.

(14) Accountants, consultants, investments bankers, architects, engineers, attorneys, and others in a business relationship with participants in connection with a covered transaction under the Department of Veterans Affairs loan guaranty program.

(15) Contractors involved in the construction, improvement or repair of properties financed with Department of Veterans Affairs guaranteed loans.

(16) Closing Agents.

6. Section 44.1010 is further amended by adding paragraph (b) to read as follows:

**§ 44.1010 Suspending official.**

\* \* \* \* \*

(b) For the Department of Veterans Affairs the suspending official is:

(1) For the Veterans Health Administration, the Under Secretary for Health;

(2) For the Veterans Benefits Administration, the Under Secretary for Benefits; and

(3) For the National Cemetery Administration, the Deputy Under Secretary for Operations.

7. Part 48 is added to read as set forth in instruction 2 at the end of the common preamble.

**PART 48—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)****Subpart A—Purpose and Coverage**

Sec.

48.100 What does this part do?

48.105 Does this part apply to me?

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

48.115 Does this part affect the Federal contracts that I receive?

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

48.200 What must I do to comply with this part?

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

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

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

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

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

48.230 How and when must I identify workplaces?

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

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

48.301 [Reserved]

**Subpart D—Responsibilities of the Department of Veterans Affairs Awarding Officials**

48.400 What are my responsibilities as a Department of Veterans Affairs awarding official?

**Subpart E—Violations of This Part and Consequences**

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

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

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

48.515 Are there any exceptions to those actions?

**Subpart F—Definitions**

48.605 Award.

48.610 Controlled substance.

48.615 Conviction.

48.620 Cooperative agreement.

48.625 Criminal drug statute.

48.630 Debarment.

48.635 Drug-free workplace.

48.640 Employee.

48.645 Federal agency or agency.

48.650 Grant.

48.655 Individual.

48.660 Recipient.

48.665 State.

48.670 Suspension.

**Authority:** 41 U.S.C. 701, *et seq.*; 38 U.S.C. 501.

8. Part 48 is further amended as set forth below.

a. “[Agency noun]” is removed and “Department of Veterans Affairs” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “Department of Veterans Affairs” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “Secretary” is added in its place wherever it occurs.

d. “[Agency head]” is removed and “Secretary” is added in its place wherever it occurs.

9. Section 48.510(c) is further amended by removing “[CFR citation for the Federal Agency’s regulations implementing Executive Order 12549 and Executive Order 12689] and adding “38 CFR part 44” in its place.

10. Section 48.605(a)(2) is further amended by removing “[Agency specific CFR citation]” and adding “38 CFR part 43” in its place.

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 32 and 36****[FRL 7075-5]****RIN 2030 AA48****FOR FURTHER INFORMATION CONTACT:**

Robert F. Meunier, EPA Debarment Official, Office of Grants and Debarment (3901R), U. S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460, (202) 564-5399, e-mail: [meunier.robert@epa.gov](mailto:meunier.robert@epa.gov).

**ADDITIONAL SUPPLEMENTARY INFORMATION:***A. Optional Provisions*

This part proposes optional lower tier suspension and debarment coverage by including a paragraph (d) in § 32.220 for all contracts that equal or exceed the \$25,000 award threshold under EPA nonprocurement transactions. This election maintains the EPA's present practice under the common rule.

In addition, § 32.440 proposes to use terms or conditions to award transactions as the ordinary means of enforcing exclusions under EPA transactions rather than obtaining written certifications. This alternative available under the common rule is more efficient than the EPA's current certification process for prospective recipients and participants.

Sections 32.765 and 32.890 are included as additional sections under part 32 to continue the EPA's practice of permitting persons who have been suspended or debarred by the EPA Debarment Official to obtain a limited review of that decision. However, these sections transfer the authority for issuing a stay on a suspension or debarment decision from the debarment official to the review official. This change from current practice reflects a more practical approach to matters accepted for review. A similar provision appears at § 32.1400 of subpart J to this part for persons seeking review of reinstatement denials under the Clean Air Act (CAA) or Clean Water Act (CWA) disqualification provisions.

Section 32.995 of the nonprocurement suspension and debarment common rule defines the term "principal." Agencies implementing the common rule are permitted to provide additional examples of principals that are commonly involved in their covered transactions. EPA is proposing to include several examples by adding a paragraph (c) to this section for the benefit of individuals who may be excluded, or employers who may have employees who are excluded.

*B. Clean Air Act and Clean Water Act Disqualification*

The EPA proposes to include a subpart J in its version of the common rule to address CAA and CWA disqualification and reinstatement. In 1994, the EPA transferred the responsibility for administration of those requirements from the Office of Enforcement and Compliance Assurance to the Office of Administration and Resources Management in an effort to consolidate all of the Agency's statutory and discretionary debarment authority into a single program. In 1996, the EPA removed its regulations at 40 CFR part 15 and amended various provisions within 40 CFR part 32 to accommodate the change. A separate subpart J in part 32 will highlight the various differences between EPA's discretionary and statutory debarment authorities, while retaining these complementary actions under a single program.

*C. Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. The disqualification from procurement and nonprocurement awards of persons who have been convicted of designated offenses under the CAA and CWA are statutorily mandated, as are the requirements for reestablishing procurement and nonprocurement eligibility. This proposed rule sets forth the procedures EPA uses under existing rules to decide petitions for CAA and CWA reinstatement in a separate subpart from those procedures that apply to discretionary debarment

actions, and explains those procedures in a plain language format. Thus, Executive Order 13175 does not apply to this rule.

*D. Drug-Free Workplace Requirements*

This proposed rule relocates the requirements for maintaining a drug-free workplace from 40 CFR part 32 to 40 CFR part 36 and proposes to restate those requirements in plain language format.

**List of Subjects***40 CFR Part 32*

Environmental protection, Administrative practice and procedure, Air pollution control, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements, Technical assistance, Water pollution control.

*40 CFR Part 36*

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

Dated: June 11, 2001.

**David J. O'Connor,**

*Acting Assistant Administrator, Office of Administration and Resources Management, Environmental Protection Agency.*

For the reasons stated in the common preamble, the Environmental Protection Agency proposes to amend 40 CFR chapter I, as follows:

1. Part 32 is revised to read as set forth in instruction 1 at the end of the common preamble.

**PART 32—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

Sec.

32.25 How is this part organized?

32.50 How is this part written?

32.75 Do terms in this part have special meanings?

**Subpart A—General**

32.100 What does this part do?

32.105 Does this part apply to me?

32.110 What is the purpose of the nonprocurement debarment and suspension system?

32.115 How does an exclusion restrict a person's involvement in covered transactions?

32.120 May we grant an exception to let an excluded person participate in a covered transaction?

32.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?

32.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?

- 32.135 May the EPA exclude a person who is not currently participating in a nonprocurement transaction?
- 32.140 How do I know if a person is excluded?
- 32.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

#### Subpart B—Covered Transactions

- 32.200 What is a covered transaction?
- 32.205 Why is it important to know if a particular transaction is a covered transaction?
- 32.210 Which nonprocurement transactions are covered transactions?
- 32.215 Which nonprocurement transactions are not covered transactions?
- 32.220 Are any procurement contracts included as covered transactions?
- 32.225 How do I know if a transaction that I may participate in is a covered transaction?

#### Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

- 32.300 May I enter into a covered transaction with an excluded or disqualified person?
- 32.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
- 32.310 May I use the services of an excluded person under a covered transaction?
- 32.315 Must I verify that principals of my covered transactions are eligible to participate?
- 32.320 What happens if I do business with an excluded person in a covered transaction?
- 32.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

#### Disclosing Information—Primary Tier Participants

- 32.330 What information must I provide before entering into a covered transaction with the EPA?
- 32.335 If I disclose unfavorable information required under § 32.330 will I be prevented from entering into the transaction?
- 32.340 What happens if I fail to disclose the information required under § 32.330?
- 32.345 What must I do if I learn of the information required under § 32.330 after entering into a covered transaction with the EPA?

#### Disclosing Information—Lower Tier Participants

- 32.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
- 32.355 What happens if I fail to disclose the information required under § 32.350?
- 32.360 What must I do if I learn of information required under § 32.350 after entering into a covered transaction with a higher tier participant?

#### Subpart D—Responsibilities of EPA Officials Regarding Transactions

- 32.400 May I enter into a transaction with an excluded or disqualified person?
- 32.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
- 32.410 May I approve a participant's use of the services of an excluded person?
- 32.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
- 32.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
- 32.425 When do I check to see if a person is excluded or disqualified?
- 32.430 How do I check to see if a person is excluded or disqualified?
- 32.435 What must I require of a primary tier participant?
- 32.440 What method do I use to communicate those requirements to participants?
- 32.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
- 32.450 What action may I take if a primary tier participant fails to disclose the information required under § 32.330?
- 32.455 What may I do if a lower tier participant fails to disclose the information required under § 32.350 to the next higher tier?

#### Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs

- 32.500 What is the purpose of the List?
- 32.505 Who uses the List?
- 32.510 Who maintains the List?
- 32.515 What specific information is on the List?
- 32.520 Who gives the GSA the information that it puts on the List?
- 32.525 Whom do I ask if I have questions about a person on the List?
- 32.530 Where can I get the List?

#### Subpart F—General Principles Relating to Suspension and Debarment Actions

- 32.600 How do suspension and debarment actions start?
- 32.605 How does suspension differ from debarment?
- 32.610 What procedures does the EPA use in suspension and debarment actions?
- 32.615 How does the EPA notify a person of suspension and debarment actions?
- 32.620 Do Federal agencies coordinate suspension and debarment actions?
- 32.625 What is the scope of a suspension or debarment action?
- 32.630 May the EPA impute the conduct of one person to another?
- 32.635 May the EPA settle a debarment or suspension action?
- 32.640 May a settlement include a voluntary exclusion?
- 32.645 Do other Federal agencies know if the EPA agrees to a voluntary exclusion?

#### Subpart G—Suspension

- 32.700 When may the suspending official issue a suspension?

- 32.705 What does the suspending official consider in issuing a suspension?
- 32.710 When does a suspension take effect?
- 32.715 What notice does the suspending official give me if I am suspended?
- 32.720 How may I contest a suspension?
- 32.725 How much time do I have to contest a suspension?
- 32.730 What information must I provide to the suspending official if I contest a suspension?
- 32.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 32.740 Are suspension proceedings formal?
- 32.745 Is a record made of fact-finding proceedings?
- 32.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 32.755 When will I know whether the suspension is continued or terminated?
- 32.760 How long may my suspension last?
- 32.765 How may I appeal my suspension?

#### Subpart H—Debarment

- 32.800 What are the causes for debarment?
- 32.805 What notice does the debarring official give me if I am proposed for debarment?
- 32.810 When does a debarment take effect?
- 32.815 How may I contest a proposed debarment?
- 32.820 How much time do I have to contest a proposed debarment?
- 32.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 32.830 Under what conditions do I get an additional opportunity to challenge the facts on which a proposed debarment is based?
- 32.835 Are debarment proceedings formal?
- 32.840 Is a record made of fact-finding proceedings?
- 32.845 What does the debarring official consider in deciding whether to debar me?
- 32.850 What is the standard of proof in a debarment action?
- 32.855 Who has the burden of proof in a debarment action?
- 32.860 What factors may influence the debarring official's decision?
- 32.865 How long may my debarment last?
- 32.870 When do I know if the debarring official debars me?
- 32.875 May I ask the debarring official to reconsider a decision to debar me?
- 32.880 What factors may influence the debarring official during reconsideration?
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- 32.905 Affiliate.
- 32.910 Agency.
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- 32.920 Civil judgment.
- 32.925 Conviction.
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- 32.945 Excluded or exclusion.
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**Subpart J—Statutory Disqualification and Reinstatement Under the Clean Air Act and Clean Water Act**

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- 32.1105 Does this subpart apply to me?
- 32.1110 How will a CAA or CWA conviction affect my eligibility to participate in Federal contracts, subcontracts, assistance, loans and other benefits?
- 32.1115 Can the EPA extend a CAA or CWA disqualification to other facilities?
- 32.1120 What is the purpose of CAA or CWA disqualification?
- 32.1125 How do award officials and others know if I am disqualified?
- 32.1130 How does disqualification under the CAA or CWA differ from a Federal discretionary suspension or debarment action?
- 32.1135 Does CAA or CWA disqualification mean that I must remain ineligible?
- 32.1140 Can an exception be made to allow me to receive an award even though I may be disqualified?
- 32.1200 How will I know if I am disqualified under the CAA or CWA?
- 32.1205 What procedures must I follow to have my procurement and nonprocurement eligibility reinstated under the CAA or CWA?
- 32.1210 Will anyone else provide information to the EPA debarment official concerning my reinstatement request?
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- 32.1300 Can I resolve my eligibility status under terms of an administrative agreement without having to submit a formal reinstatement request?
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- 32.1500 If I am reinstated, when will my name be removed from the GSA List?
- 32.1600 What definitions apply specifically to actions under this subpart?

**Appendix to Part 32—Covered Transactions**

**Authority:** 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 7401 *et seq.*; Sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 11738 (3 CFR, 1973 Comp., p. 799); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

2. Part 32 is further amended as set forth below.

a. “[Agency noun]” is removed and “EPA” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “EPA” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “EPA Debarment Official” is added in its place wherever it occurs.

3. Section 32.220 is further amended by adding a paragraph (d) to read as follows:

**§ 32.220 Are any procurement contracts included as covered transactions?**

\* \* \* \* \*

(d) The contract is awarded by any contractor, subcontractor, supplier, consultant or its agent or representative in any transaction, regardless of tier, to be funded or provided by the EPA under a nonprocurement transaction that is expected to equal or exceed \$25,000. (See optional lower tier coverage shown in the diagram in the appendix to this part.)

4. Section 32.440 is added to read as follows:

**§ 32.440 What method do I use to communicate those requirements to participants?**

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participant’s compliance with subpart C of this part, and requiring them to include a similar term or condition in lower tier covered transactions.

5. Section 32.765 is added to subpart G to read as follows:

**§ 32.765 How may I appeal my suspension?**

(a) If the EPA suspending official issues a decision under § 32.755 to continue your suspension after you present information in opposition to that suspension under § 32.720, you can ask for review of the suspending official’s decision in two ways:

(1) You may ask the suspending official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; and/or

(2) You may request the Director, Office of Grants and Debarment (OGD Director), to review the suspending official’s decision to continue your suspension within 30 days of your receipt of the suspending official’s decision under § 32.755 or paragraph (a)(1) of this section. However, the OGD Director can reverse the suspending official’s decision only where the OGD Director finds that the decision is based on a clear error of material fact or law, or where the OGD Director finds that the suspending official’s decision was arbitrary, capricious, or an abuse of discretion.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in error; and include the reasons or legal bases for your position.

(c) A review under paragraph (a)(2) of this section is solely within the discretion of the OGD Director who may also stay the suspension pending review of the suspending official’s decision.

(d) The EPA suspending official and the OGD Director must notify you of their decisions under this section, in writing, using the notice procedures at §§ 32.615 and 32.975.

6. Section 32.890 is added to subpart H to read as follows:

**§ 32.890 How may I appeal my debarment?**

(a) If the EPA debarment official issues a decision under § 32.870 to debar you after you present information in opposition to a proposed debarment under § 32.815, you can ask for review of the debarment official’s decision in two ways:

(1) You may ask the debarment official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; and/or

(2) You may request the Director, Office of Grants and Debarment (OGD Director), to review the debarment official’s decision to debar you within 30 days of your receipt of the debarment official’s decision under § 32.870 or paragraph (a)(1) of this section.

However, the OGD Director can reverse the debarment official’s decision only where the OGD Director finds that the decision is based on a clear error of material fact or law, or where the OGD Director finds that the debarment official’s decision was arbitrary, capricious, or an abuse of discretion.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in error; and include the reasons or legal bases for your position.

(c) A review under paragraph (a)(2) of this section is solely within the

discretion of the OGD Director who may also stay the debarment pending review of the debarring official's decision.

(d) The EPA debarring official and the OGD Director must notify you of their decisions under this section, in writing, using the notice procedures at §§ 32.615 and 32.975.

7. Section 32.995 is further amended by adding a paragraph (c) to read as follows:

**§ 32.995 Principal.**

\* \* \* \* \*

(c) Other examples of individuals who are principals in EPA covered transactions include:

- (1) Principal investigators;
- (2) Technical or management consultants;
- (3) Individuals performing chemical or scientific analysis or oversight;
- (4) Professional service providers such as doctors, lawyers, accountants, engineers, etc.;
- (5) Individuals responsible for the inspection, sale, removal, transportation, storage or disposal of solid or hazardous waste or materials;
- (6) Individuals whose duties require special licenses;
- (7) Individuals that certify, authenticate or authorize billings; and
- (8) Individuals that serve in positions of public trust.

8. Subpart J is added to read as follows:

**Subpart J—Statutory Disqualification and Reinstatement Under the Clean Air Act and Clean Water Act**

**§ 32.1100 What does this subpart do?**

This subpart explains how the EPA administers section 306 of the Clean Air Act (CAA) (42 U.S.C. 7606), and section 508 of the Clean Water Act (CWA) (33 U.S.C. 1368), which disqualify persons convicted for certain offenses under those statutes (*see* § 32.1105), from eligibility to receive certain contracts, subcontracts, assistance, loans and other benefits (see coverage under the Federal Acquisition Regulation (FAR), 48 CFR part 9, subpart 9.4, and subparts A through I of this part). It also explains: the procedures for seeking reinstatement of a person's eligibility under the CAA or CWA; the criteria and standards that apply to EPA's decision-making process; and requirements of award officials and others involved in Federal procurement and nonprocurement activities in carrying out their responsibilities under the CAA and CWA.

**§ 32.1105 Does this subpart apply to me?**

(a) Portions of this subpart apply to you if you are convicted or likely be

convicted of any offense under section 7413(c) of the CAA or section 1319(c) of the CWA.

(b) Portions of this subpart apply to you if you are the EPA debarring official, a Federal procurement or nonprocurement award official, a participant in a Federal procurement or nonprocurement program that is precluded from entering into a covered transaction with a person disqualified under the CAA or CWA, or if you are a Federal department or agency anticipating issuing an exception to a person otherwise disqualified under the CAA or CWA.

**§ 32.1110 How will a CAA or CWA conviction affect my eligibility to participate in Federal contracts, subcontracts, assistance, loans and other benefits?**

If you are convicted of any offense described in § 32.1105, you are automatically disqualified from eligibility to receive any contract, subcontract, assistance, sub-assistance, loan or other nonprocurement benefit or transaction that is prohibited by a Federal department or agency under the Governmentwide debarment and suspension system (*i.e.*, covered transactions under subparts A through I of this part, or prohibited awards under 48 CFR part 9, subpart 9.4), if you:

- (a) Will perform any part of the transaction or award at the facility giving rise to your conviction (called the violating facility); and
- (b) You own, lease or supervise the violating facility.

**§ 32.1115 Can the EPA extend a CAA or CWA disqualification to other facilities?**

The CAA specifically authorizes the EPA to extend a CAA disqualification to other facilities that are owned or operated by the convicted person. The EPA also has authority under subparts A through I of this part, or under 48 CFR part 9, subpart 9.4, to take discretionary suspension and debarment actions on the basis of misconduct leading to a CAA or CWA conviction, or for activities that the EPA debaring official believes were designed to improperly circumvent a CAA or CWA disqualification.

**§ 32.1120 What is the purpose of CAA or CWA disqualification?**

As provided for in Executive Order 11738 (3 CFR, 1973 Comp., p. 799), the purpose of CAA and CWA disqualification is to enforce the Federal Government's policy of undertaking Federal procurement and nonprocurement activities in a manner that improves and enhances environmental quality by promoting

effective enforcement of the CAA or CWA.

**§ 32.1125 How do award officials and others know if I am disqualified?**

If you are convicted under these statutes, the EPA sends your name and address and that of the violating facility to the General Services Administration (GSA) as soon as possible after the EPA learns of your conviction. The GSA places your name and that of the violating facility on the *List of Parties Excluded from Procurement and Nonprocurement Programs (List)*, along with other information describing the nature of your disqualification. Federal award officials and others who administer Federal programs consult the List before entering into or approving procurement and nonprocurement transactions. Award officials and others, including the public, may obtain a yearly subscription to a printed version of the *List* from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by calling the Government Printing Office Inquiry and Order Desk at (202) 783-3238. As an alternative, anyone may access the *List* through the internet, currently at <http://epls.arnet.gov>.

**§ 32.1130 How does disqualification under the CAA or CWA differ from a Federal discretionary suspension or debarment action?**

(a) CAA and CWA disqualifications are exclusions mandated by statute. In contrast, suspensions and debarments imposed under subparts A through I of this part or under 48 CFR part 9, subpart 9.4, are exclusions imposed at the discretion of Federal suspending or debaring officials. This means that if you are convicted of violating the CAA or CWA provisions described under § 32.1105, ordinarily your name and that of the violating facility is placed on the GSA *List* before you receive a confirmation notice of the listing, or have an opportunity to discuss the disqualification with, or seek reinstatement from, the EPA.

(b) CAA or CWA disqualification applies to both the person convicted of the offense, and to the violating facility during performance of an award or covered transaction under the Federal procurement and nonprocurement suspension and debarment system. It is the EPA's policy to carry out CAA and CWA disqualifications in a manner which integrates the disqualifications into the Governmentwide suspension and debarment system. Whenever the EPA determines that the risk presented to Federal procurement or nonprocurement activities on the basis

of the misconduct which gives rise to a person's CAA or CWA conviction exceeds the coverage afforded by mandatory disqualification, the EPA may use its discretionary authority to suspend or debar a person under subparts A through I of this part, or under 48 CFR part 9, subpart 9.4.

**§ 32.1135 Does CAA or CWA disqualification mean that I must remain ineligible?**

You must remain ineligible until the EPA debarring official certifies that the condition giving rise to your conviction has been corrected. If you desire to have your disqualification terminated, you must submit a written request for reinstatement to the EPA debarring official and support your request with persuasive documentation. For information about the process for reinstatement see §§ 32.1205 and 32.1300.

**§ 32.1140 Can an exception be made to allow me to receive an award even though I may be disqualified?**

(a) After consulting with the EPA debarring official, the head of any Federal department or agency (or designee) may exempt any particular award or a class of awards with that department or agency from the prohibitions otherwise resulting from CAA or CWA disqualification. In the event an exemption is granted, the exemption must:

(1) Be in writing; and  
(2) State why the exemption is in the paramount interests of the United States.

(b) In the event an exemption is granted, the exempting department or agency must send a copy of the exemption decision to the EPA debarring official for inclusion in the official record.

**§ 32.1200 How will I know if I am disqualified under the CAA or CWA?**

There may be several ways that you learn about your disqualification. You are legally on notice by the statutes that a criminal conviction under the CAA or CWA automatically disqualifies you. As a practical matter, you may learn about your disqualification from your defense counsel, a Federal contract or award official, or from someone else who sees your name on the GSA List. As a courtesy, the EPA will attempt to notify you and the owner, lessor or supervisor of the violating facility that your names have been sent to the GSA for inclusion in the List. The EPA will inform you of the procedures for seeking reinstatement and give you the name of a person you can contact to discuss your reinstatement request.

**§ 32.1205 What procedures must I follow to have my procurement and nonprocurement eligibility reinstated under the CAA or CWA?**

(a) You must submit a written request for reinstatement to the EPA debarring official stating what you believe the conditions were that led to your conviction, and how those conditions have been corrected, relieved or addressed. Your request must include documentation sufficient to support all material assertions you make. The debarring official must determine that all the technical and non-technical causes, conditions and consequences of your actions have been sufficiently addressed so that the Government can confidently conduct future business activities with you, and that your future operations will be conducted in compliance with the CAA and CWA.

(b) You may begin the reinstatement process by having informal discussions with the EPA representative named in your notification of listing. Having informal dialogue with that person will make you aware of the EPA concerns that must be addressed. The EPA representative is not required to negotiate conditions for your reinstatement. However, beginning the reinstatement process with informal dialogue increases the chance of achieving a favorable outcome, and avoids unnecessary delay that may result from an incomplete or inadequate reinstatement request. It may also allow you to resolve your disqualification by reaching an agreement with the EPA debarring official under informal procedures. Using your informal option first does not prevent you from submitting a formal reinstatement request with the debarring official at any time.

**§ 32.1210 Will anyone else provide information to the EPA debarring official concerning my reinstatement request?**

If you request reinstatement under § 32.1205, the EPA debarring official may obtain review and comment on your request by anyone who may have information about, or an official interest in, the matter. For example, the debarring official may consult with the EPA Regional offices, the Department of Justice or other Federal agencies, or state, tribal or local governments. The EPA debarring official will make sure that you have an opportunity to address important allegations or information contained in the administrative record before making a final decision on your request for reinstatement.

**§ 32.1215 What happens if I disagree with the information provided by others to the EPA debarring official on my reinstatement request?**

(a) If your reinstatement request is based on factual information (as opposed to a legal matter or discretionary conclusion) that is different from the information provided by others or otherwise contained in the administrative record, the debarring official will decide whether those facts are genuinely in dispute, and material to making a decision. If so, a fact-finding proceeding will be conducted in accordance with §§ 32.830 through 32.840, and the debarring official will consider the findings when making a decision on your reinstatement request.

(b) If the basis for your disagreement with the information contained in the administrative record relates to a legal issue or discretionary conclusion, or is not a genuine dispute over a material fact, you will not have a fact-finding proceeding. However, the debarring official will allow you ample opportunity to support your position for the record and present matters in opposition to your continued disqualification. A summary of any information you provide orally, if not already recorded, should also be submitted to the debarring official in writing to assure that it is preserved for the debarring official's consideration and the administrative record.

**§ 32.1220 What will the EPA debarring official consider in making a decision on my reinstatement request?**

(a) The EPA debarring official will consider all information and arguments contained in the administrative record in support of, or in opposition to, your request for reinstatement, including any findings of material fact.

(b) The debarring official will also consider any mitigating or aggravating factors that may relate to your conviction or the circumstances surrounding it, including any of those factors that appear in § 32.860 that may apply to your situation.

(c) Finally, if disqualification applies to a business entity, the debarring official will consider any corporate or business attitude, policies, practices and procedures that contributed to the events leading to conviction, or that may have been implemented since the date of the misconduct or conviction. You can obtain any current policy directives issued by the EPA that apply to CAA or CWA disqualification or reinstatement by contacting the Office of the EPA Debarring Official, U.S. Environmental Protection Agency, Office of Grants and Debarment (3901-

R), 1200 Pennsylvania Avenue NW., Washington, DC 20460.

**§ 32.1225 When will the EPA debarbing official make a decision on my reinstatement request?**

(a) The EPA debarbing official will make a decision regarding your reinstatement request under § 32.1205(a), when the administrative record is complete, and he or she can determine whether the condition giving rise to the CAA or CWA conviction has been corrected—usually within 45 days of closing the administrative record.

(b) A reinstatement request is not officially before the debarbing official while you are having informal discussions under § 32.1205(b).

**§ 32.1230 How will the EPA debarbing official notify me of the reinstatement decision?**

The EPA debarbing official will notify you of the reinstatement decision in writing, using the same methods for communicating debarment or suspension action notices under § 32.615.

**§ 32.1300 Can I resolve my eligibility status under terms of an administrative agreement without having to submit a formal reinstatement request?**

(a) The EPA debarbing official may, at any time, resolve your CAA or CWA eligibility status under the terms of an administrative agreement. Ordinarily, the debarbing official will not make an offer to you for reinstatement until after the administrative record for decision is complete, or contains enough information to enable him or her to make an informed decision in the matter.

(b) Any resolution of your eligibility status under the CAA or CWA resulting from an administrative agreement must include a certification that the condition giving rise to the conviction has been corrected.

(c) The EPA debarbing official may enter into an administrative agreement to resolve CAA or CWA disqualification issues as part of a comprehensive criminal plea, civil or administrative agreement when it is in the best interest of the United States to do so.

**§ 32.1305 What are the consequences if I mislead the EPA in seeking reinstatement or fail to comply with my administrative agreement?**

(a) Any certification of correction issued by the EPA debarbing official, whether the certification results from a reinstatement decision under §§ 32.1205(a) and 32.1230, or from an administrative agreement under §§ 32.1205(b) and 32.1300, is

conditioned upon the accuracy of the information, representations or assurances made during development of the administrative record.

(b) If the EPA debarbing official finds that he or she has certified correction of the condition giving rise to a CAA or CWA conviction or violation on the basis of a false, misleading, incomplete or inaccurate information; or if a person fails to comply with material condition of an administrative agreement, the EPA debarbing official may revoke the certification of correction and immediately reinstate the CAA or CWA disqualification. In addition, the EPA debarbing official may take suspension or debarment action against the person(s) responsible for the misinformation or noncompliance with the agreement as appropriate. If anyone provides false, inaccurate, incomplete or misleading information to EPA in an attempt to obtain reinstatement, the EPA debarbing official will refer the matter to the EPA Office of the Inspector General for potential criminal or civil action.

**§ 32.1400 How may I appeal a decision denying my request for reinstatement?**

(a) If the EPA debarbing official denies your request for reinstatement under the CAA or CWA, you can ask for review of the EPA debarbing official's decision in two ways:

(1) You may ask the debarbing official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; and/or

(2) You may request the Director, Office of Grants and Debarment (OGD Director), to review the debarbing official's denial within 30 days of your receipt of the debarbing official's decision under § 32.1230 or paragraph (a)(1) of this section. However, the OGD Director can reverse the debarbing official's decision denying reinstatement only where the OGD Director finds that there is a clear error of material fact or law, or where the OGD Director finds that the debarbing official's decision was arbitrary, capricious, or an abuse of discretion.

(b) A request for review under this section must be in writing and state the specific findings you believe to be in error and the reason for your position.

(c) A review by the OGD Director under this section is solely within the discretion of the OGD Director.

(d) The OGD Director must notify you of his or her decision under this section, in writing, using the notice procedures identified at §§ 32.615 and 32.975.

**§ 32.1500 If I am reinstated, when will my name be removed from the GSA List?**

(a) If your eligibility for procurement and nonprocurement participation is restored under the CAA or CWA, whether by decision, appeal, or by administrative agreement, the EPA will notify the GSA within 5 working days of your reinstatement and ask GSA to remove your name and that of the violating facility from the *List*.

(b) You may check the *List* manually or through the internet as stated at § 32.1125, to confirm that your name and that of the violating facility are removed from the *List* following reinstatement. In the event your name is not removed in a timely manner, you should call the EPA debarbing official or the EPA representative identified under the agency contacts section of the *List* to inform them that the listing has not been removed.

**§ 32.1600 What definitions apply specifically to actions under this subpart?**

In addition to definitions under subpart I of this part that apply to this part as a whole, the following two definitions apply specifically to CAA and CWA disqualifications under this subpart:

(a) *Person* means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, or any interstate body.

(b) *Violating facility* means any building, plant, installation, structure, mine, vessel, floating craft, location or site of operations that gives rise to a CAA or CWA conviction, and is a location at which or from which a Federal contract, subcontract, loan, assistance award or other covered transaction may be performed. If a site of operations giving rise to a CAA or CWA conviction contains or includes more than one building, plant, installation, structure, mine, vessel, floating craft, or other operational element, the entire location or site of operation is regarded as the violating facility unless otherwise limited by the EPA.

9. Part 36 is added to read as set forth in instruction 2 at the end of the common preamble.

**PART 36—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)**

**Subpart A—Purpose and Coverage**

Sec.

36.100 What does this part do?

36.105 Does this part apply to me?

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

36.115 Does this part affect the Federal contracts that I receive?

#### Subpart B—Requirements for Recipients Other Than Individuals

- 36.200 What must I do to comply with this part?
- 36.205 What must I include in my drug-free workplace statement?
- 36.210 To whom must I distribute my drug-free workplace statement?
- 36.215 What must I include in my drug-free awareness program?
- 36.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
- 36.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
- 36.230 How and when must I identify workplaces?

#### Subpart C—Requirements for Recipients Who Are Individuals

- 36.300 What must I do to comply with this part if I am an individual recipient?
- 36.301 [Reserved]

#### Subpart D—Responsibilities of EPA Awarding Officials

- 36.400 What are my responsibilities as an EPA awarding official?

#### Subpart E—Violations of This Part and Consequences

- 36.500 How are violations of this part determined for recipients other than individuals?
- 36.505 How are violations of this part determined for recipients who are individuals?
- 36.510 What actions will the Federal Government take against a recipient determined to have violated this part?
- 36.515 Are there any exceptions to those actions?

#### Subpart F—Definitions

- 36.605 Award.
- 36.610 Controlled substance.
- 36.615 Conviction.
- 36.620 Cooperative agreement.
- 36.625 Criminal drug statute.
- 36.630 Debarment.
- 36.635 Drug-free workplace.
- 36.640 Employee.
- 36.645 Federal agency or agency.
- 36.650 Grant.
- 36.655 Individual.
- 36.660 Recipient.
- 36.665 State.
- 36.670 Suspension.

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

10. Part 36 is further amended as set forth below.

a. “[Agency noun]” is removed and “EPA” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “EPA” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “EPA Administrator or designee” is added in its place wherever it occurs.

d. “[Agency head]” is removed and “EPA Administrator” is added in its place wherever it occurs.

11. Section 36.510(c) is further amended by removing “[CFR citation for the Federal Agency’s regulations implementing Executive Order 12549 and Executive Order 12689]” and adding “40 CFR part 32” in its place.

12. Section 36.605(a)(2) is further amended by removing “[Agency-specific CFR citation]” and adding “40 CFR part 31” in its place.

### GENERAL SERVICES ADMINISTRATION

#### 41 CFR Parts 105–68 and 105–74

#### RIN 3090–AH35

#### FOR FURTHER INFORMATION CONTACT:

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#### List of Subjects

##### 41 CFR Part 105–68

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

##### 41 CFR Part 105–74

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

Approved: July 5, 2001.

**Stephen A. Perry,**

*Administrator of General Services.*

For the reasons stated in the preamble, the General Services Administration proposes to amend 41 CFR chapter 105 as follows:

#### CHAPTER 105—[AMENDED]

1. Part 105–68 is revised to read as set forth in instruction 1 at the end of the common preamble.

#### PART 105–68—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

- 105–68.25 How is this part organized?
- 105–68.50 How is this part written?
- 105–68.75 Do terms in this part have special meanings?

#### Subpart A—General

- 105–68.100 What does this part do?
- 105–68.105 Does this part apply to me?
- 105–68.110 What is the purpose of the nonprocurement debarment and suspension system?
- 105–68.115 How does an exclusion restrict a person’s involvement in covered transactions?

105–68.120 May we grant an exception to let an excluded person participate in a covered transaction?

105–68.125 Does an exclusion under the nonprocurement system affect a person’s eligibility to participate in Federal procurement contracts?

105–68.130 Does an exclusion under the Federal procurement system affect a person’s eligibility to participate in nonprocurement transactions?

105–68.135 May the General Services Administration exclude a person who is not currently participating in a nonprocurement transaction?

105–68.140 How do I know if a person is excluded?

105–68.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

#### Subpart B—Covered Transactions

105–68.200 What is a covered transaction?

105–68.205 Why is it important to know if a particular transaction is a covered transaction?

105–68.210 Which nonprocurement transactions are covered transactions?

105–68.215 Which nonprocurement transactions are not covered transactions?

105–68.220 Are any procurement contracts included as covered transactions?

105–68.225 How do I know if a transaction that I may participate in is a covered transaction?

#### Subpart C—Responsibilities of Participants Regarding Transactions

##### Doing Business With Other Persons

105–68.300 May I enter into a covered transaction with an excluded or disqualified person?

105–68.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?

105–68.310 May I use the services of an excluded person under a covered transaction?

105–68.315 Must I verify that principals of my covered transactions are eligible to participate?

105–68.320 What happens if I do business with an excluded person in a covered transaction?

105–68.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

##### Disclosing Information—Primary Tier Participants

105–68.330 What information must I provide before entering into a covered transaction with the General Services Administration?

105–68.335 If I disclose unfavorable information required under § 105–68.330 will I be prevented from entering into the transaction?

105–68.340 What happens if I fail to disclose the information required under § 105–68.330?

105–68.345 What must I do if I learn of the information required under § 105–68.330?

after entering into a covered transaction with the General Services Administration?

#### Disclosing Information Lower—Tier Participants

- 105–68.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
- 105–68.355 What happens if I fail to disclose the information required under § 105–68.350?
- 105–68.360 What must I do if I learn of information required under § 105–68.350 after entering into a covered transaction with a higher tier participant?

#### Subpart D—Responsibilities of GSA Officials Regarding Transactions

- 105–68.400 May I enter into a transaction with an excluded or disqualified person?
- 105–68.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
- 105–68.410 May I approve a participant's use of the services of an excluded person?
- 105–68.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
- 105–68.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
- 105–68.425 When do I check to see if a person is excluded or disqualified?
- 105–68.430 How do I check to see if a person is excluded or disqualified?
- 105–68.435 What must I require of a primary tier participant?
- 105–68.440 What method do I use to communicate those requirements to participants?
- 105–68.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
- 105–68.450 What action may I take if a primary tier participant fails to disclose the information required under § 105–68.330?
- 105–68.455 What may I do if a lower tier participant fails to disclose the information required under § 105–68.350 to the next higher tier?

#### Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs

- 105–68.500 What is the purpose of the List?
- 105–68.505 Who uses the List?
- 105–68.510 Who maintains the List?
- 105–68.515 What specific information is on the List?
- 105–68.520 Who gives the GSA the information that it puts on the List?
- 105–68.525 Whom do I ask if I have questions about a person on the List?
- 105–68.530 Where can I get the List?

#### Subpart F—General Principles Relating to Suspension and Debarment Actions

- 105–68.600 How do suspension and debarment actions start?

- 105–68.605 How does suspension differ from debarment?
- 105–68.610 What procedures does the General Services Administration use in suspension and debarment actions?
- 105–68.615 How does the General Services Administration notify a person of suspension and debarment actions?
- 105–68.620 Do Federal agencies coordinate suspension and debarment actions?
- 105–68.625 What is the scope of a suspension or debarment action?
- 105–68.630 May the General Services Administration impute the conduct of one person to another?
- 105–68.635 May the General Services Administration settle a debarment or suspension action?
- 105–68.640 May a settlement include a voluntary exclusion?
- 105–68.645 Do other Federal agencies know if the General Services Administration agrees to a voluntary exclusion?

#### Subpart G—Suspension

- 105–68.700 When may the suspending official issue a suspension?
- 105–68.705 What does the suspending official consider in issuing a suspension?
- 105–68.710 When does a suspension take effect?
- 105–68.715 What notice does the suspending official give me if I am suspended?
- 105–68.720 How may I contest a suspension?
- 105–68.725 How much time do I have to contest a suspension?
- 105–68.730 What information must I provide to the suspending official if I contest a suspension?
- 105–68.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 105–68.740 Are suspension proceedings formal?
- 105–68.745 Is a record made of fact-finding proceedings?
- 105–68.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 105–68.755 When will I know whether the suspension is continued or terminated?
- 105–68.760 How long may my suspension last?

#### Subpart H—Debarment

- 105–68.800 What are the causes for debarment?
- 105–68.805 What notice does the debarring official give me if I am proposed for debarment?
- 105–68.810 When does a debarment take effect?
- 105–68.815 How may I contest a proposed debarment?
- 105–68.820 How much time do I have to contest a proposed debarment?
- 105–68.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 105–68.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?

- 105–68.835 Are debarment proceedings formal?
- 105–68.840 Is a record made of fact-finding proceedings?
- 105–68.845 What does the debarring official consider in deciding whether to debar me?
- 105–68.850 What is the standard of proof in a debarment action?
- 105–68.855 Who has the burden of proof in a debarment action?
- 105–68.860 What factors may influence the debarring official's decision?
- 105–68.865 How long may my debarment last?
- 105–68.870 When do I know if the debarring official debars me?
- 105–68.875 May I ask the debarring official to reconsider a decision to debar me?
- 105–68.880 What factors may influence the debarring official during reconsideration?
- 105–68.885 May the debarring official extend a debarment?

#### Subpart I—Definitions

- 105–68.900 Adequate evidence.
- 105–68.905 Affiliate.
- 105–68.910 Agency.
- 105–68.915 Agent or representative.
- 105–68.920 Civil judgment.
- 105–68.925 Conviction.
- 105–68.930 Debarment.
- 105–68.935 Debarring official.
- 105–68.940 Disqualified.
- 105–68.945 Excluded or exclusion.
- 105–68.950 Indictment.
- 105–68.955 Ineligible or ineligibility.
- 105–68.960 Legal proceedings.
- 105–68.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.
- 105–68.970 Nonprocurement transaction.
- 105–68.975 Notice.
- 105–68.980 Participant.
- 105–68.985 Person.
- 105–68.990 Preponderance of the evidence.
- 105–68.995 Principal.
- 105–68.1000 Respondent.
- 105–68.1005 State.
- 105–68.1010 Suspending official.
- 105–68.1015 Suspension.
- 105–68.1020 Voluntary exclusion or voluntarily excluded.

#### Subpart J [Reserved]

#### Appendix to Part 105–68—Covered Transactions

**Authority:** Sec. 2455, Pub.L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

2. Part 105–68 is further amended as set forth below.

a. “[Agency noun]” is removed and “General Services Administration” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “GSA” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “Administrator of General Services” is added in its place wherever it occurs.

3. Section 105–68.440 is added to read as follows:

**§ 105–68.440 What method do I use to communicate those requirements to participants?**

To communicate the requirement, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

4. Part 105–74 is added to read as set forth in instruction 2 at the end of the common preamble.

**PART 105–74—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)**

**Subpart A—Purpose and Coverage**

Sec.

- 105–74.100 What does this part do?
- 105–74.105 Does this part apply to me?
- 105–74.110 Are any of my Federal assistance awards exempt from this part?
- 105–74.115 Does this part affect the Federal contracts that I receive?

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

- 105–74.200 What must I do to comply with this part?
- 105–74.205 What must I include in my drug-free workplace statement?
- 105–74.210 To whom must I distribute my drug-free workplace statement?
- 105–74.215 What must I include in my drug-free awareness program?
- 105–74.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
- 105–74.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
- 105–74.230 How and when must I identify workplaces?

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

- 105–74.300 What must I do to comply with this part if I am an individual recipient?
- 105–74.301 [Reserved]

**Subpart D—Responsibilities of GSA Awarding Officials**

- 105–74.400 What are my responsibilities as a GSA awarding official?

**Subpart E—Violations of This Part and Consequences**

- 105–74.500 How are violations of this part determined for recipients other than individuals?
- 105–74.505 How are violations of this part determined for recipients who are individuals?
- 105–74.510 What actions will the Federal Government take against a recipient determined to have violated this part?
- 105–74.515 Are there any exceptions to those actions?

**Subpart F—Definitions**

- 105–74.605 Award.
- 105–74.610 Controlled substance.
- 105–74.615 Conviction.
- 105–74.620 Cooperative agreement.
- 105–74.625 Criminal drug statute.
- 105–74.630 Debarment.
- 105–74.635 Drug-free workplace.
- 105–74.640 Employee.
- 105–74.645 Federal agency or agency.
- 105–74.650 Grant.
- 105–74.655 Individual.
- 105–74.660 Recipient.
- 105–74.665 State.
- 105–74.670 Suspension.

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

5. Part 105–74 is further amended as set forth below.

- a. “[Agency noun]” is removed and “General Services Administration” is added in its place wherever it occurs.
  - b. “[Agency adjective]” is removed and “GSA” is added in its place wherever it occurs.
  - c. “[Agency head or designee]” is removed and “Administrator of General Services” is added in its place wherever it occurs.
  - d. “[Agency head]” is removed and “Administrator of General Services” is added in its place wherever it occurs.
6. Section 105–74.510(c) is further amended by removing “[CFR citation for the Federal agency’s regulations implementing Executive Order 12549 and Executive Order 12689]” and adding “41 CFR part 105–68” in its place.
7. Section 105–74.605(a)(2) is further amended by removing “[Agency-specific CFR citation]” and adding “41CFR part 105–71” in its place.

**DEPARTMENT OF THE INTERIOR**

**43 CFR Parts 12, 42 and 43**

**RIN 1090–AA79**

**FOR FURTHER INFORMATION CONTACT:**

Debra E. Sonderman, Director, Office of Acquisition and Property Management, (202) 208–6431.

**ADDITIONAL SUPPLEMENTARY INFORMATION:**

The Department of the Interior (Department) proposes to adopt the proposed common, governmentwide rule for debarment and suspension, and the common, governmentwide rule implementing the Drug-Free Workplace Act of 1988, with several specific provisions that apply to the Department of the Interior. The two proposed common rules are contained in the Notice of Proposed Rulemaking for a number of agencies, earlier in this document. This preamble for the Department sets out the headings of the sections of the proposed common rules that the Department proposes to adopt, with the appropriate numbering system

for the Department. This preamble also explains the deviations from the proposed common rules.

The Department joined in the publication of the governmentwide common rule which provided requirements for nonprocurement debarment and suspension by Executive branch agencies published on May 26, 1988 (53 FR 19160), found at 43 CFR 12.100 to 12.510. In 43 CFR 12.200(c)(8), the Department excluded from the requirements of the rule any transactions entered into pursuant to Pub. L. 93–638, “Indian Self Determination and Education Assistance Act,” since application of the common rule to such transactions was prohibited by Pub. L. 93–638.

The Department also joined in the January 31, 1989, publication of the amendment to the governmentwide common rule on nonprocurement debarment and suspension and revised Subpart D to implement the Drug-Free Workplace Act of 1988 (54 FR 4946), found at 43 CFR 12.600 to 12.635.

At the time of the revision to the common rule for nonprocurement debarment and suspension which was issued in response to Executive Order 12689 and section 2455 of the Federal Acquisition Streamlining Act of 1994, and published on June 26, 1995 (60 FR 33035), the Department excluded additional transactions from the requirements of the nonprocurement debarment and suspension regulations. Specifically, in 43 CFR 12.200(c)(9)–(11), the Department excluded 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 the nonprocurement debarment and suspension regulations.

In this proposed rule, the Department will continue to exclude all transactions excluded in the current regulations at 43 CFR 12.200(c)(8)–(11). These exclusions are found at 43 CFR 42.215 (h)–(k) in the proposed rule.

In this proposed rule, the Department will discontinue the use of a certification from participants contained in 43 CFR 12.510(a). The Department proposes to include a term or condition in transaction documents which requires the participants' compliance. The term or condition will also require participants to include a similar term or condition in lower-tier covered transactions as well. This new provision is found at 43 CFR 42.440 of the proposed rule.

The requirements for nonprocurement debarment and suspension, currently found at 43 CFR 12.100 to 12.510 are

being removed from 43 CFR part 12 and are proposed to be placed in 43 CFR part 42.

The requirements for maintaining a drug-free workplace, currently found at 43 CFR 12.600 to 12.635, are being removed from 43 CFR part 12 and are proposed to be placed in 43 CFR part 43.

#### *Compliance With Laws, Executive Orders, and Department Policy*

In addition to the certifications stated in the general preamble, the Department is including the following statements:

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. No takings of personal property will occur as a result of this rule.

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

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), 512 DM 2, and Executive Order 13175 (65 FR 67249), we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects on trust resources.

#### **List of Subjects**

##### *43 CFR Part 12*

Administrative practice and procedure, Contract programs, Cooperative agreements, Debarment and suspension, Grant programs, Grant administration.

##### *43 CFR Part 42*

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

##### *43 CFR Part 43*

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

Dated: May 30, 2001.

**Robert J. Lamb,**  
*Acting Assistant Secretary-Policy,*  
*Management and Budget.*

Accordingly, for the reasons stated in the common preamble and in the above additional supplementary information section, 43 CFR subtitle A is proposed to be amended as follows:

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

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

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

2. Part 12, Subpart D is removed and reserved.

3. Part 42 is added to read as set forth in instruction 1 at the end of the common preamble.

#### **PART 42—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

Sec.

42.25 How is this part organized?

42.50 How is this part written?

42.75 Do terms in this part have special meanings?

##### **Subpart A—General**

42.100 What does this part do?

42.105 Does this part apply to me?

42.110 What is the purpose of the nonprocurement debarment and suspension system?

42.115 How does an exclusion restrict a person's involvement in covered transactions?

42.120 May we grant an exception to let an excluded person participate in a covered transaction?

42.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?

42.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?

42.135 May the Department of the Interior exclude a person who is not currently participating in a nonprocurement transaction?

42.140 How do I know if a person is excluded?

42.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

##### **Subpart B—Covered Transactions**

42.200 What is a covered transaction?

42.205 Why is it important to know if a particular transaction is a covered transaction?

42.210 Which nonprocurement transactions are covered transactions?

42.215 Which nonprocurement transactions are not covered transactions?

42.220 Are any procurement contracts included as covered transactions?

42.225 How do I know if a transaction that I may participate in is a covered transaction?

#### **Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons**

42.300 May I enter into a covered transaction with an excluded or disqualified person?

42.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?

42.310 May I use the services of an excluded person under a covered transaction?

42.315 Must I verify that principals of my covered transactions are eligible to participate?

42.320 What happens if I do business with an excluded person in a covered transaction?

42.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

#### **Disclosing Information—Primary Tier Participants**

42.330 What information must I provide before entering into a covered transaction with the Department of the Interior?

42.335 If I disclose unfavorable information required under § 42.330 will I be prevented from entering into the transaction?

42.340 What happens if I fail to disclose the information required under § 42.330?

42.345 What must I do if I learn of the information required under § 42.330 after entering into a covered transaction with the Department of the Interior?

#### **Disclosing Information—Lower Tier Participants**

42.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?

42.355 What happens if I fail to disclose the information required under § 42.350?

42.360 What must I do if I learn of information required under § 42.350 after entering into a covered transaction with a higher tier participant?

#### **Subpart D—Responsibilities of Department of the Interior Officials Regarding Transactions**

42.400 May I enter into a transaction with an excluded or disqualified person?

42.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?

42.410 May I approve a participant's use of the services of an excluded person?

42.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?

- 42.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
- 42.425 When do I check to see if a person is excluded or disqualified?
- 42.430 How do I check to see if a person is excluded or disqualified?
- 42.435 What must I require of a primary tier participant?
- 42.440 What method do I use to communicate those requirements to participants?
- 42.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
- 42.450 What action may I take if a primary tier participant fails to disclose the information required under § 42.330?
- 42.455 What may I do if a lower tier participant fails to disclose the information required under § 42.350 to the next higher tier?

**Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs**

- 42.500 What is the purpose of the List?
- 42.505 Who uses the List?
- 42.510 Who maintains the List?
- 42.520 Who gives the GSA the information that it puts on the List?
- 42.525 Whom do I ask if I have questions about a person on the List?
- 42.530 Where can I get the List?

**Subpart F—General Principles Relating to Suspension and Debarment Actions**

- 42.600 How do suspension and debarment actions start?
- 42.605 How does suspension differ from debarment?
- 42.610 What procedures does the Department of the Interior use in suspension and debarment actions?
- 42.615 How does the Department of the Interior notify a person of suspension and debarment actions?
- 42.620 Do Federal agencies coordinate suspension and debarment actions?
- 42.625 What is the scope of a suspension or debarment action?
- 42.630 May the Department of the Interior impute the conduct of one person to another?
- 42.635 May the Department of the Interior settle a debarment or suspension action?
- 42.640 May a settlement include a voluntary exclusion?
- 42.645 Do other Federal agencies know if the Department of the Interior agrees to a voluntary exclusion?

**Subpart G—Suspension**

- 42.700 When may the suspending official issue a suspension?
- 42.705 What does the suspending official consider in issuing a suspension?
- 42.710 When does a suspension take effect?
- 42.715 What notice does the suspending official give me if I am suspended?
- 42.720 How may I contest a suspension?
- 42.725 How much time do I have to contest a suspension?
- 42.730 What information must I provide to the suspending official if I contest a suspension?

- 42.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 42.740 Are suspension proceedings formal?
- 42.745 Is a record made of fact-finding proceedings?
- 42.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 42.755 When will I know whether the suspension is continued or terminated?
- 42.760 How long may my suspension last?

**Subpart H—Debarment**

- 42.800 What are the causes for debarment?
- 42.805 What notice does the debarring official give me if I am proposed for debarment?
- 42.810 When does a debarment take effect?
- 42.815 How may I contest a proposed debarment?
- 42.820 How much time do I have to contest a proposed debarment?
- 42.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 42.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
- 42.835 Are debarment proceedings formal?
- 42.840 Is a record made of fact-finding proceedings?
- 42.845 What does the debarring official consider in deciding whether to debar me?
- 42.850 What is the standard of proof in a debarment action?
- 42.855 Who has the burden of proof in a debarment action?
- 42.860 What factors may influence the debarring official's decision?
- 42.865 How long may my debarment last?
- 42.870 When do I know if the debarring official debars me?
- 42.875 May I ask the debarring official to reconsider a decision to debar me?
- 42.880 What factors may influence the debarring official during reconsideration?
- 42.885 May the debarring official extend a debarment?

**Subpart I—Definitions**

- 42.900 Adequate evidence.
- 42.905 Affiliate.
- 42.910 Agency.
- 42.915 Agent or representative.
- 42.920 Civil judgment.
- 42.925 Conviction.
- 42.930 Debarment.
- 42.935 Debarring official.
- 42.940 Disqualified.
- 42.945 Excluded or exclusion.
- 42.950 Indictment.
- 42.955 Ineligible or ineligibility.
- 42.960 Legal proceedings.
- 42.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.
- 42.970 Nonprocurement transaction.
- 42.975 Notice.
- 42.980 Participant.
- 42.985 Person.
- 42.990 Preponderance of the evidence.
- 42.995 Principal.

- 42.1000 Respondent.
- 42.1005 State.
- 42.1010 Suspending official.
- 42.1015 Suspension.
- 42.1020 Voluntary exclusion or voluntarily excluded.

**Subpart J [Reserved]**

**Appendix to Part 42—Covered Transactions**

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

4. Part 42 is further amended as set forth below.

a. “[Agency noun]” is removed and “Department of the Interior” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “Department of the Interior” is added in its place where it occurs.

c. “[Agency head or designee]” is removed and “Director, Office of Acquisition and Property Management” is added in its place wherever it occurs.

5. Section 42.215 is further amended by adding paragraphs (h) through (k) to read as follows:

**§ 42.215 Which nonprocurement transactions are not covered transactions?**

\* \* \* \* \*

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

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

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

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

6. Section 42.440 is added to read as follows:

**§ 42.440 What method do I use to communicate those requirements to participants?**

To communicate the requirement to participants, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

7. Section 42.935 is further amended by adding paragraph (b) to read as follows:

**§ 42.935 Debarring official.**

\* \* \* \* \*

(b) The debarring official for the Department of the Interior is the Director, Office of Acquisition and Property Management.

8. Section 42.970 is further amended by adding paragraphs (a)(12) through (a)(15) to read as follows:

**§ 42.970 Nonprocurement transaction.**

\* \* \* \* \*

(a) \* \* \*

(12) Federal acquisition of a leasehold interest or any other interest in real property.

(13) Concession contracts.

(14) Disposition of Federal real and personal property and natural resources.

(15) Any other nonprocurement transactions between the Department and a person.

\* \* \* \* \*

9. Section 42.1010 is further amended by adding paragraph (b) to read as follows:

**§ 42.1010 Suspending official.**

\* \* \* \* \*

(b) The suspending official for the Department of the Interior is the Director, Office of Acquisition and Property Management.

10. Part 43 is added to read as set forth in instruction 2 at the end of the common preamble.

**PART 43—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)**

**Subpart A—Purpose and Coverage**

Sec.

43.100 What does this part do?

43.105 Does this part apply to me?

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

43.115 Does this part affect the Federal contracts that I receive?

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

43.200 What must I do to comply with this part?

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

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

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

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

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

43.230 How and when must I identify workplaces?

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

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

43.301 Is there a central point to which I may report information required by § 43.300?

**Subpart D—Responsibilities of Department of the Interior Awarding Officials?**

43.400 What are my responsibilities as a Department of the Interior awarding official?

**Subpart E—Violations of This Part and Consequences**

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

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

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

43.515 Are there any exceptions to those actions?

**Subpart F—Definitions**

43.605 Award.

43.610 Controlled substance.

43.615 Conviction.

43.620 Cooperative agreement.

43.625 Criminal drug statute.

43.630 Debarment.

43.635 Drug-free workplace.

43.640 Employee.

43.645 Federal agency or agency.

43.650 Grant.

43.655 Individual.

43.660 Recipient.

43.665 State.

43.670 Suspension.

**Authority:** 5 U.S.C. 301; 31 U.S.C. 6101 note, 7501; 41 U.S.C. Sections 252a and 701 *et seq.*

11. Part 43 is further amended as set forth below.

a. “[Agency noun]” is removed and “Department of the Interior” is added in its place where it occurs.

b. “[Agency adjective]” is removed and “Department of the Interior” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “Director, Office of Acquisition and Property Management” is added in its place wherever it occurs.

d. “[Agency head]” is removed and “Secretary of the Interior” is added in its place wherever it occurs.

12. Section 43.301 is added to read as follows:

**§ 43.301 Is there a central point to which I may report information required by § 43.300?**

No. The Department of the Interior is not designating a central location for the receipt of these reports. Therefore you shall provide this report to every grant officer, or other designee within a Bureau/Office of the Department on whose grant activity the convicted employee was working.

13. Section 43.510(c) is further amended by removing “[CFR citation for the Federal Agency’s regulations implementing Executive Order 12549 and Executive Order 12689]” and adding “43 CFR part 42” in its place.

14. Section 43.605(a)(2) is further amended by removing “[Agency-specific CFR citation]” and adding “43 CFR part 12” in its place.

**FEDERAL EMERGENCY MANAGEMENT AGENCY**

**44 CFR Parts 17 and 21**

**RIN 3067–AD15**

**FOR FURTHER INFORMATION CONTACT:**

Edward Broyles, Office of General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3961, e-mail *Edward.Broyles@fema.gov*.

**ADDITIONAL SUPPLEMENTARY INFORMATION:**

This part proposes optional lower tier suspension and debarment coverage by including a paragraph (d) in § 17.220 for all contracts that equal or exceed the \$25,000 award threshold under FEMA nonprocurement transactions. This election maintains FEMA’s present practice under the common rule.

In addition, § 17.440 proposes to use terms or conditions to award transactions as the ordinary means of enforcing exclusions under FEMA transactions rather than obtaining written certifications. This alternative available under the common rule is more efficient than FEMA’s current certification process for prospective recipients and participants.

This proposed rule relocates the requirements for maintaining a drug-free workplace from 44 CFR part 17 to 44 CFR part 21.

**List of Subjects**

**44 CFR Part 17**

Administrative practice and procedure, Grant programs.

**44 CFR Part 21**

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

Dated: June 22, 2001.

**Patricia A. English,**

*Acting Chief Financial Officer, Federal Emergency Management Agency.*

For the reasons stated in the common preamble, the Federal Emergency Management Agency proposes to amend 44 CFR chapter I, as follows:

1. Part 17 is revised to read as set forth in instruction 1 at the end of the common preamble.

**PART 17—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

Sec.

17.25 How is this part organized?

- 17.50 How is this part written?  
 17.75 Do terms in this part have special meanings?

#### Subpart A—General

- 17.100 What does this part do?  
 17.105 Does this part apply to me?  
 17.110 What is the purpose of the nonprocurement debarment and suspension system?  
 17.115 How does an exclusion restrict a person's involvement in covered transactions?  
 17.120 May we grant an exception to let an excluded person participate in a covered transaction?  
 17.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?  
 17.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?  
 17.135 May FEMA exclude a person who is not currently participating in a nonprocurement transaction?  
 17.140 How do I know if a person is excluded?  
 17.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

#### Subpart B—Covered Transactions

- 17.200 What is a covered transaction?  
 17.205 Why is it important if a particular transaction is a covered transaction?  
 17.210 Which nonprocurement transactions are covered transactions?  
 17.215 Which nonprocurement transactions are not covered transactions?  
 17.220 Are any procurement contracts included as covered transactions?  
 17.225 How do I know if a transaction in which I may participate is a covered transaction?

#### Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

- 17.300 May I enter into a covered transaction with an excluded or disqualified person?  
 17.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?  
 17.310 May I use the services of an excluded person under a covered transaction?  
 17.315 Must I verify that principals of my covered transactions are eligible to participate?  
 17.320 What happens if I do business with an excluded person in a covered transaction?  
 17.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

#### Disclosing Information—Primary Tier Participants

- 17.330 What information must I provide before entering into a covered transaction with FEMA?

- 17.335 If I disclose unfavorable information required under § 17.330 will I be prevented from entering into the transaction?

- 17.340 What happens if I fail to disclose the information required under § 17.330?  
 17.345 What must I do if I learn of the information required under § 17.330 after entering into a covered transaction with FEMA?

#### Disclosing Information—Lower Tier Participants

- 17.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?  
 17.355 What happens if I fail to disclose the information required under § 17.350?  
 17.360 What must I do if I learn of information required under § 17.350 after entering into a covered transaction with a higher tier participant?

#### Subpart D—Responsibilities of FEMA Officials Regarding Transactions

- 17.400 May I enter into a transaction with an excluded or disqualified person?  
 17.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?  
 17.410 May I approve a participant's use of the services of an excluded person?  
 17.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?  
 17.420 May I approve a transaction with an excluded or disqualified person at a lower tier?  
 17.425 When do I check to see if a person is excluded or disqualified?  
 17.430 How do I check to see if a person is excluded or disqualified?  
 17.435 What must I require of a primary tier participant?  
 17.440 What method do I use to communicate those requirements to participants?  
 17.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?  
 17.450 What action may I take if a primary tier participant fails to disclose the information required under § 17.330?  
 17.455 What may I do if a lower tier participant fails to disclose the information required under § 17.350 to the next higher tier?

#### Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs

- 17.500 What is the purpose of the List?  
 17.505 Who uses the List?  
 17.510 Who maintains the List?  
 17.515 What specific information is on the List?  
 17.520 Who gives the GSA the information that it puts on the List?  
 17.525 Whom do I ask if I have questions about a person on the List?  
 17.530 Where can I get the List?

#### Subpart F—General Principles Relating to Suspension and Debarment Actions

- 17.600 How do suspension and debarment actions start?  
 17.605 How does suspension differ from debarment?  
 17.610 What procedures does FEMA use in suspension and debarment actions?  
 17.615 How does FEMA notify a person of suspension and debarment actions?  
 17.620 Do Federal agencies coordinate suspension and debarment actions?  
 17.625 What is the scope of a suspension or debarment action?  
 17.630 May FEMA impute the conduct of one person to another?  
 17.635 May FEMA settle a debarment or suspension action?  
 17.640 May a settlement include a voluntary exclusion?  
 17.645 Do other Federal agencies know if FEMA agrees to a voluntary exclusion?

#### Subpart G—Suspension

- 17.700 When may the suspending official issue a suspension?  
 17.705 What does the suspending official consider in issuing a suspension?  
 17.710 When does a suspension take effect?  
 17.715 What notice does the suspending official give me if I am suspended?  
 17.720 How may I contest a suspension?  
 17.725 How much time do I have to contest a suspension?  
 17.730 What information must I provide to the suspending official if I contest a suspension?  
 17.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?  
 17.740 Are suspension proceedings formal?  
 17.745 Is a record made of fact-finding proceedings?  
 17.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?  
 17.755 When will I know whether the suspension is continued or terminated?  
 17.760 How long may my suspension last?

#### Subpart H—Debarment

- 17.800 What are the causes for debarment?  
 17.805 What notice does the debarring official give me if I am proposed for debarment?  
 17.810 When does a debarment take effect?  
 17.815 How may I contest a proposed debarment?  
 17.820 How much time do I have to contest a proposed debarment?  
 17.825 What information must I provide to the debarring official if I contest a proposed debarment?  
 17.830 Under what conditions do I get an additional opportunity to challenge the facts on which a proposed debarment is based?  
 17.835 Are debarment proceedings formal?  
 17.840 Is a record made of fact-finding proceedings?  
 17.845 What does the debarring official consider in deciding whether to debar me?  
 17.850 What is the standard of proof in a debarment action?  
 17.855 Who has the burden of proof in a debarment action?

- 17.860 What factors may influence the debarment of an official's decision?  
 17.865 How long may my debarment last?  
 17.870 When do I know if the debarment official debar me?  
 17.875 May I ask the debarment official to reconsider a decision to debar me?  
 17.880 What factors may influence the debarment of an official during reconsideration?  
 17.885 May the debarment official extend a debarment?

#### Subpart I—Definitions

- 17.900 Adequate evidence.  
 17.905 Affiliate.  
 17.910 Agency.  
 17.915 Agent or representative.  
 17.920 Civil judgment.  
 17.925 Conviction.  
 17.930 Debarment.  
 17.935 Debarment official.  
 17.940 Disqualified.  
 17.945 Excluded or exclusion.  
 17.950 Indictment.  
 17.955 Ineligible or ineligibility.  
 17.960 Legal proceedings.  
 17.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.  
 17.970 Nonprocurement transaction.  
 17.975 Notice.  
 17.980 Participant.  
 17.985 Person.  
 17.990 Preponderance of the evidence.  
 17.995 Principal.  
 17.1000 Respondent.  
 17.1005 State.  
 17.1010 Suspending official.  
 17.1015 Suspension.  
 17.1020 Voluntary exclusion or voluntarily excluded.

#### Subpart J [Reserved]

#### Appendix to Part 17—Covered Transactions

**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., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

2. Part 17 is further amended as set forth below.  
 a. “[Agency noun]” is removed and “FEMA” is added in its place wherever it occurs.  
 b. “[Agency adjective]” is removed and “FEMA” is added in its place wherever it occurs.  
 c. “[Agency head or designee]” is removed and “FEMA Debarment Official” is added in its place wherever it occurs.  
 3. Section 17.220 is further amended by adding a paragraph (d) to read as follows:

#### § 17.220 Are any procurement contracts included as covered transactions?

\* \* \* \* \*

(d) The contract is awarded by any contractor, subcontractor, supplier, consultant or its agent or representative in any transaction, regardless of tier, to

be funded or provided by FEMA under a nonprocurement transaction that is expected to equal or exceed \$25,000. (See optional lower tier coverage shown in the diagram in the appendix to this part.)

4. Section 17.440 is added to read as follows:

#### § 17.440 What method do I use to communicate those requirements to participants?

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participant's compliance with Subpart C of this part, and requiring them to include a similar term or condition in lower tier covered transactions.

5. Part 21 is added to read as set forth in instruction 2 at the end of the common preamble.

### PART 21—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

#### Subpart A—Purpose and Coverage

Sec.

- 21.100 What does this part do?  
 21.105 Does this part apply to me?  
 21.110 Are any of my Federal assistance awards exempt from this part?  
 21.115 Does this part affect the Federal contracts that I receive?

#### Subpart B—Requirements for Recipients Other Than Individuals

- 21.200 What must I do to comply with this part?  
 21.205 What must I include in my drug-free workplace statement?  
 21.210 To whom must I distribute my drug-free workplace statement?  
 21.215 What must I include in my drug-free awareness program?  
 21.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?  
 21.125 What actions must I take concerning employees who are convicted of drug violations in the workplace?  
 21.230 How and when must I identify workplaces?

#### Subpart C—Requirements for Recipients Who Are Individuals

- 21.300 What must I do to comply with this part if I am an individual recipient?  
 21.301 [Reserved]

#### Subpart D—Responsibilities of FEMA Awarding Officials

- 21.400 What are my responsibilities as a FEMA awarding official?

#### Subpart E—Violations of This Part and Consequences

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

- 21.505 How are violations of this part determined for recipients who are individuals?  
 21.510 What actions will the Federal Government take against a recipient determined to have violated this part?  
 21.515 Are there any exceptions to those actions?

#### Subpart F—Definitions

- 21.605 Award.  
 21.610 Controlled substance.  
 21.615 Conviction.  
 21.620 Cooperative agreement.  
 21.625 Criminal drug statute.  
 21.630 Debarment.  
 21.635 Drug-free workplace.  
 21.640 Employee.  
 21.645 Federal agency or agency.  
 21.650 Grant.  
 21.655 Individual.  
 21.660 Recipient.  
 21.665 State.  
 21.670 Suspension.

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

6. Part 21 is further amended as set forth below.

a. “[Agency noun]” is removed and “FEMA” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “FEMA” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “FEMA Director or designee” is added in its place wherever it occurs.

d. “[Agency head]” is removed and “FEMA Director” is added in its place wherever it occurs.

7. Section 21.1510(c) is further amended by removing “[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]” and adding “44 CFR part 17” in its place.

8. Section 21.1605(a)(2) is further amended by removing “[Agency-specific CFR citation]” and adding “44 CFR part 13” in its place.

### DEPARTMENT OF HEALTH AND HUMAN SERVICES

#### 45 CFR Parts 76 and 82

#### RIN 0991-AB12

#### FOR FURTHER INFORMATION CONTACT:

Terrence J. Tychan, Deputy Assistant Secretary, Office of Grants and Acquisition Management, 202-690-6901; for the hearing impaired only: TDD 202-690-6415.

#### ADDITIONAL SUPPLEMENTARY INFORMATION:

The Department of Health and Human Services (HHS) proposes to adopt the common rule on nonprocurement debarment and suspension with a few amendments. The first proposed amendment would cover additional tiers of contracts below covered nonprocurement transactions. The

common rule as drafted includes automatic coverage for any contract at the first tier below a covered nonprocurement transaction, if the amount of the contract is expected to equal or exceed a threshold value of \$25,000. It also includes an option for agencies to extend that coverage to lower tiers of contracts expected to equal or exceed the threshold value of \$25,000. HHS proposes to extend coverage to lower tiers of contracts, but at a higher threshold value equal to the "simplified acquisition threshold" defined at 41 U.S.C. 403(11), which is currently set at \$100,000. At final rulemaking, this proposed amendment would require a conforming change in the illustration at appendix A to the common rule, which shows the \$25,000 threshold amount for optional coverage of lower tier contracts.

In addition, § 76.440 proposes to use terms or conditions to the award transaction as a means to enforce exclusions under HHS transactions rather than written certifications. This alternative available under the common rule is more efficient than HHS's current certification process for prospective recipients and participants.

Section 76.995 of the debarment and suspension common rule defines the term "principal." Agencies implementing the common rule are permitted to provide additional examples of principals that are commonly involved in their covered transactions. HHS is proposing to include several examples by adding a paragraph (c) to this section for the benefit of individuals who may be excluded, or employers who may have an individual employee who is excluded.

In addition to the general regulatory language developed by the Interagency Committee on Debarment and Suspension to be used governmentwide, we are proposing to add clarifying language to the HHS nonprocurement common rule at 45 CFR part 76. This additional language reflects minor changes to address adequately the relationship of the HHS Office of Inspector General's (OIG) program exclusion authorities (42 U.S.C. 1320a-7) to the common rule, and the applicability of these exclusion authorities to participation in Executive branch procurement and nonprocurement programs.

Accordingly, we are proposing the inclusion of the following additional language in 45 CFR part 76:

1. Adding a new § 76.230 in subpart B, Covered Transactions, that would address the relationship between covered transactions and Federal health

care program exclusions under Title XI of the Social Security Act. Specifically, an individual or entity excluded by the OIG from Medicare, Medicaid and other Federal health care program participation would also be prohibited from participating in all other Federal Government procurement and nonprocurement programs.

2. Adding a new section in Subpart D, Responsibilities of Agency (HHS) Officials Regarding Transactions, that would address the obligations of Medicare carriers, intermediaries and other Medicare contractors. Specifically, proposed § 76.460 would state that these entities assume the same responsibilities and obligations for checking the GSA List as Medicare agency officials under this part.

3. Amending the proposed definition of the term "disqualified" in § 76.940 in Subpart I to include direct reference to the OIG exclusion authorities. The amended definition would indicate that an example of disqualifications include persons prohibited under the "\* \* \* program exclusion authorities under Title XI of the Social Security Act (42 U.S.C. 1320a-7) \* \* \*". For purposes of exclusions from participation in Federal health care programs by the HHS OIG, the governing regulations are set forth in 42 CFR part 1001.

In addition, the requirements for maintaining a drug-free workplace are being removed as a subpart in the current debarment and suspension common rule, and re-codified as a new separate part 82.

#### List of Subjects

##### 45 CFR Part 76

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

##### 45 CFR Part 82

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

Approved: June 5, 2001.

**Tommy G. Thompson,**

*Secretary, Department of Health and Human Services.*

For the reasons stated in the common preamble, the Department of Health and Human Services proposes to amend 45 CFR subtitle A as follows:

1. Part 76 is revised to read as set forth in instruction 1 at the end of the common preamble.

## PART 76—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

76.25 How is this part organized?

76.50 How is this part written?

76.75 Do terms in this part have special meanings?

### Subpart A—General

76.100 What does this part do?

76.105 Does this part apply to me?

76.110 What is the purpose of the nonprocurement debarment and suspension system?

76.115 How does an exclusion restrict a person's involvement in covered transactions?

76.120 May we grant an exception to let an excluded person participate in a covered transaction?

76.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?

76.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?

76.135 May HHS exclude a person who is not currently participating in a nonprocurement transaction?

76.140 How do I know if a person is excluded?

76.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

### Subpart B—Covered Transactions

76.200 What is a covered transaction?

76.205 Why is it important to know if a particular transaction is a covered transaction?

76.210 Which nonprocurement transactions are covered transactions?

76.215 Which nonprocurement transactions are not covered transactions?

76.220 Are any procurement contracts included as covered transactions?

76.225 How do I know if a transaction that I may participate in is a covered transaction?

76.230 What is the relationship between covered transactions and exclusions from participation in Federal health care programs under Title XI of the Social Security Act?

### Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

76.300 May I enter into a covered transaction with an excluded or disqualified person?

76.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?

76.310 May I use the services of an excluded person under a covered transaction?

76.315 Must I verify that principals of my covered transactions are eligible to participate?

- 76.320 What happens if I do business with an excluded person in a covered transaction?
- 76.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

#### Disclosing Information—Primary Tier Participants

- 76.330 What information must I provide before entering into a covered transaction with HHS?
- 76.335 If I disclose unfavorable information required under § 76.330 will I be prevented from entering into the transaction?
- 76.340 What happens if I fail to disclose the information required under § 76.330?
- 76.345 What must I do if I learn of the information required under § 76.330 after entering into a covered transaction with HHS?

#### Disclosing Information—Lower Tier Participants

- 76.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
- 76.355 What happens if I fail to disclose the information required under § 76.350?
- 76.360 What must I do if I learn of information required under § 76.350 after entering into a covered transaction with a higher tier participant?

#### Subpart D—Responsibilities of HHS Officials Regarding Transactions

- 76.400 May I enter into a transaction with an excluded or disqualified person?
- 76.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
- 76.410 May I approve a participant's use of the services of an excluded person?
- 76.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
- 76.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
- 76.425 When do I check to see if a person is excluded or disqualified?
- 76.430 How do I check to see if a person is excluded or disqualified?
- 76.435 What must I require of a primary tier participant?
- 76.440 What method do I use to communicate those requirements to participants?
- 76.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
- 76.450 What action may I take if a primary tier participant fails to disclose the information required under § 76.330?
- 76.455 What may I do if a lower tier participant fails to disclose the information required under § 76.350 to the next higher tier?
- 76.460 What are the obligations of Medicare carriers and intermediaries?

#### Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs

- 76.500 What is the purpose of the List?
- 76.505 Who uses the List?
- 76.510 Who maintains the List?
- 76.515 What specific information is on the List?
- 76.520 Who gives the GSA the information that it puts on the List?
- 76.525 Whom do I ask if I have questions about a person on the List?
- 76.530 Where can I get the List?

#### Subpart F—General Principles Relating to Suspension and Debarment Actions

- 76.600 How do suspension and debarment actions start?
- 76.605 How does suspension differ from debarment?
- 76.610 What procedures does HHS use in suspension and debarment actions?
- 76.615 How does HHS notify a person of suspension and debarment actions?
- 76.620 Do Federal agencies coordinate suspension and debarment actions?
- 76.625 What is the scope of a suspension or debarment action?
- 76.630 May HHS impute the conduct of one person to another?
- 76.635 May HHS settle a debarment or suspension action?
- 76.640 May a settlement include a voluntary exclusion?
- 76.645 Do other Federal agencies know if HHS agrees to a voluntary exclusion?

#### Subpart G—Suspension

- 76.700 When may the suspending official issue a suspension?
- 76.705 What does the suspending official consider in issuing a suspension?
- 76.710 When does a suspension take effect?
- 76.715 What notice does the suspending official give me if I am suspended?
- 76.720 How may I contest a suspension?
- 76.725 How much time do I have to contest a suspension?
- 76.730 What information must I provide to the suspending official if I contest a suspension?
- 76.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 76.740 Are suspension proceedings formal?
- 76.745 Is a record made of fact-finding proceedings?
- 76.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 76.755 When will I know whether the suspension is continued or terminated?
- 76.760 How long may my suspension last?

#### Subpart H—Debarment

- 76.800 What are the causes for debarment?
- 76.805 What notice does the debarment official give me if I am proposed for debarment?
- 76.810 When does a debarment take effect?
- 76.815 How may I contest a proposed debarment?
- 76.820 How much time do I have to contest a proposed debarment?

- 76.825 What information must I provide to the debarment official if I contest a proposed debarment?
- 76.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
- 76.835 Are debarment proceedings formal?
- 76.840 Is a record made of fact-finding proceedings?
- 76.845 What does the debarment official consider in deciding whether to debar me?
- 76.850 What is the standard of proof in a debarment action?
- 76.855 Who has the burden of proof in a debarment action?
- 76.860 What factors may influence the debarment official's decision?
- 76.865 How long may my debarment last?
- 76.870 When do I know if the debarment official debar me?
- 76.875 May I ask the debarment official to reconsider a decision to debar me?
- 76.880 What factors may influence the debarment official during reconsideration?
- 76.885 May the debarment official extend a debarment?

#### Subpart I—Definitions

- 76.900 Adequate evidence.
- 76.905 Affiliate.
- 76.910 Agency.
- 76.915 Agent or representative.
- 76.920 Civil judgment.
- 76.925 Conviction.
- 76.930 Debarment.
- 76.935 Debarment official.
- 76.940 Disqualified.
- 76.945 Excluded or exclusion.
- 76.950 Indictment.
- 76.955 Ineligible or ineligibility.
- 76.960 Legal proceedings.
- 76.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.
- 76.970 Nonprocurement transaction.
- 76.975 Notice.
- 76.980 Participant.
- 76.985 Person.
- 76.990 Preponderance of the evidence.
- 76.995 Principal.
- 76.1000 Respondent.
- 76.1005 State.
- 76.1010 Suspending official.
- 76.1015 Suspension.
- 76.1020 Voluntary exclusion or voluntarily excluded.

#### Subpart J [Reserved]

#### Appendix to Part 76—Covered Transactions

**Authority:** 5 U.S.C. 301; Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 11738 (3 CFR, 1973 Comp., p. 799); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

2. Part 76 is further amended as set forth below.

a. “[Agency noun]” is removed and “HHS” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “HHS” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “HHS Debarring/Suspension Official” is added in its place wherever it occurs.

3. Section 76.220 is further amended by adding a paragraph (d) to read as follows:

**§ 76.220 Are any procurement contracts included as covered transactions?**

\* \* \* \* \*

(d) The contract is a subcontract at any tier below a procurement transaction that is covered under paragraph (a) of this section, and the value of the contract exceeds or is expected to exceed the “simplified acquisition threshold” defined at 42 U.S.C. 403(11). This extends the coverage of paragraph (a) of this section to all lower tiers of contracts that exceed the simplified acquisition threshold (see optional lower tier coverage shown in the diagram in the appendix to this part).

4. Section 76.230 is added to read as follows:

**§ 76.230 What is the relationship between covered transactions and exclusions from participation in Federal health care programs under Title XI of the Social Security Act?**

Any individual or entity excluded from participation in Medicare, Medicaid and other Federal health care programs under Title XI of the Social Security Act, 42 U.S.C. 1320a–7, will be subject to the prohibitions against participating in covered transactions, as set forth in this part. In addition, these excluded parties are also prohibited from participating in all Executive Branch procurement programs and activities. (Public Law 103–355, section 2455) For example, if an individual or entity is excluded by the HHS Office of Inspector General from participation in Medicare, Medicaid and all other Federal health care programs, in accordance with 42 U.S.C. 1320a–7, then that individual or entity is prohibited from participating in all Federal Government procurement and nonprocurement programs (42 CFR part 1001).

5. Section 76.440 is added to read as follows:

**§ 76.440 What method do I use to communicate those requirements to participants?**

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participant’s compliance with Subpart C of this part and requiring them to include a similar term or condition in lower tier covered transactions.

6. Section 76.460 is added to read as follows:

**§ 76.460 What are the obligations of Medicare carriers and intermediaries?**

Because Medicare carriers, intermediaries and other Medicare contractors undertake responsibilities on behalf of the Medicare program (Title XVIII of the Social Security Act), these entities assume the same obligations and responsibilities as Medicare agency officials with respect to actions under 45 CFR part 76. This would include these entities checking the GSA List and taking necessary steps to effectuate this part.

7. Section 76.940 is further amended by adding a paragraph (d) to read as follows:

**§ 76.940 Disqualified.**

\* \* \* \* \*

(d) The program exclusion authorities under Title XI of the Social Security Act (42 U.S.C. 1320a–7) and enforced by the HHS Office of Inspector General.

8. Section 76.995 is further amended by adding a paragraph (c) to read as follows:

**§ 76.995 Principal.**

\* \* \* \* \*

(c) Other examples of individuals who are principals in HHS covered transactions include:

- (1) Principal investigators;
- (2) Providers of Federally-required audit services; and
- (3) Researchers.

9. Part 82 is added to read as set forth in instruction 2 at the end of the common preamble.

**PART 82—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)**

**Subpart A—Purpose and Coverage**

Sec.

- 82.100 What does this part do?  
 82.105 Does this part apply to me?  
 82.110 Are any of my Federal assistance awards exempt from this part?  
 82.115 Does this part affect the Federal contracts that I receive?

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

- 82.200 What must I do to comply with this part?  
 82.205 What must I include in my drug-free workplace statement?  
 82.210 To whom must I distribute my drug-free workplace statement?  
 82.215 What must I include in my drug-free awareness program?  
 82.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?

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

82.230 How and when must I identify workplaces?

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

- 82.300 What must I do to comply with this part if I am an individual recipient?  
 82.301 [Reserved]

**Subpart D—Responsibilities of HHS Awarding Officials**

82.400 What are my responsibilities as an HHS awarding official?

**Subpart E—Violations of This Part and Consequences**

- 82.500 How are violations of this part determined for recipients other than individuals?  
 82.505 How are violations of this part determined for recipients who are individuals?  
 82.510 What actions will the Federal Government take against a recipient determined to have violated this part?  
 82.515 Are there any exceptions to those actions?

**Subpart F—Definitions**

- 82.605 Award.  
 82.610 Controlled substance.  
 82.615 Conviction.  
 82.620 Cooperative agreement.  
 82.625 Criminal drug statute.  
 82.630 Debarment.  
 82.635 Drug-free workplace.  
 82.640 Employee.  
 82.645 Federal agency or agency.  
 82.650 Grant.  
 82.655 Individual.  
 82.660 Recipient.  
 82.665 State.  
 82.670 Suspension.

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

10. Part 82 is further amended as set forth below.

a. “[Agency noun]” is removed and “HHS” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “HHS” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “HHS Official or designee” is added in its place wherever it occurs.

d. “[Agency head]” is removed and “the Secretary of HHS” is added in its place wherever it occurs.

11. Section 82.510(c) is further amended by removing “[CFR citation for the Federal Agency’s regulations implementing Executive Order 12549 and Executive Order 12689]” and adding “45 CFR part 76” in its place.

12. Section 82.605(a)(2) is further amended by removing “[Agency-specific CFR citation]” and adding “45 CFR part 92” in its place.

**NATIONAL SCIENCE FOUNDATION****45 CFR Parts 620 and 630****FOR FURTHER INFORMATION CONTACT:**

Anita Eisenstadt, Assistant General Counsel, National Science Foundation, 4201 Wilson Boulevard, Room 1265, Arlington, Virginia, 22230, (703) 292-8060; e-mail: [aeisenst@nsf.gov](mailto:aeisenst@nsf.gov).

**List of Subjects****45 CFR Part 620**

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

**45 CFR Part 630**

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

**Lawrence Rudolph,**

*General Counsel, National Science Foundation.*

Accordingly, as set forth in the common preamble, the National Science Foundation proposes to amend 45 CFR chapter VI as follows:

1. Part 620 is revised to read as set forth in instruction 1 at the end of the common preamble.

**PART 620—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)****Sec.**

- 620.25 How is this part organized?  
620.50 How is this part written?  
620.75 Do terms in this part have special meanings?

**Subpart A—General**

- 620.100 What does this part do?  
620.105 Does this part apply to me?  
620.110 What is the purpose of the nonprocurement debarment and suspension system?  
620.115 How does an exclusion restrict a person's involvement in covered transactions?  
620.120 May we grant an exception to let an excluded person participate in a covered transaction?  
620.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?  
620.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?  
620.135 May the National Science Foundation exclude a person who is not currently participating in a nonprocurement transaction?  
620.140 How do I know if a person is excluded?  
620.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

**Subpart B—Covered Transactions**

- 620.200 What is a covered transaction?  
620.205 Why is it important to know if a particular transaction is a covered transaction?  
620.210 Which nonprocurement transactions are covered transactions?  
620.215 Which nonprocurement transactions are not covered transactions?  
620.215 Are any procurement contracts included as covered transactions?  
620.225 How do I know if a transaction that I may participate in is a covered transaction?

**Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons**

- 620.300 May I enter into a covered transaction with an excluded or disqualified person?  
620.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?  
620.310 May I use the services of an excluded person under a covered transaction?  
620.315 Must I verify that principals of my covered transactions are eligible to participate?  
620.320 What happens if I do business with an excluded person in a covered transaction?  
620.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

**Disclosing Information—Primary Tier Participants**

- 620.330 What information must I provide before entering into a covered transaction with the National Science Foundation?  
620.335 If I disclose unfavorable information required under § 620.330 will I be prevented from entering into the transaction?  
620.340 What happens if I fail to disclose the information required under § 620.330?  
620.345 What must I do if I learn of the information required under § 620.330 after entering into a covered transaction with the National Science Foundation?

**Disclosing Information—Lower Tier Participants**

- 620.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?  
620.355 What happens if I fail to disclose the information required under § 620.350?  
620.360 What must I do if I learn of information required under § 620.350 after entering into a covered transaction with a higher tier participant?

**Subpart D—Responsibilities of National Science Foundation Officials Regarding Transactions**

- 620.400 May I enter into a transaction with an excluded or disqualified person?

- 620.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?  
620.410 May I approve a participant's use of the services of an excluded person?  
620.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?  
620.420 May I approve a transaction with an excluded or disqualified person at a lower tier?  
620.425 When do I check to see if a person is excluded or disqualified?  
620.430 How do I check to see if a person is excluded or disqualified?  
620.435 What must I require of a primary tier participant?  
620.440 What method do I use to communicate those requirements to participants?  
620.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?  
620.450 What action may I take if a primary tier participant fails to disclose the information required under § 620.330?  
620.455 What may I do if a lower tier participant fails to disclose the information required under § 620.350 to the next higher tier?

**Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs**

- 620.500 What is the purpose of the List?  
620.505 Who uses the List?  
620.510 Who maintains the List?  
620.515 What specific information is on the List?  
620.520 Who gives the GSA the information that it puts on the List?  
620.525 Whom do I ask if I have questions about a person on the List?  
620.530 Where can I get the List?

**Subpart F—General Principles Relating to Suspension and Debarment Actions**

- 620.600 How do suspension and debarment actions start?  
620.605 How does suspension differ from debarment?  
620.610 What procedures does the National Science Foundation use in suspension and debarment actions?  
620.615 How does the National Science Foundation notify a person of suspension and debarment actions?  
620.620 Do Federal agencies coordinate suspension and debarment actions?  
620.625 What is the scope of a suspension or debarment action?  
620.630 May the National Science Foundation impute the conduct of one person to another?  
620.635 May the National Science Foundation settle a debarment or suspension action?  
620.640 May a settlement include a voluntary exclusion?  
620.645 Do other Federal agencies know if the National Science Foundation agrees to a voluntary exclusion?

**Subpart G—Suspension**

- 620.700 When may the suspending official issue a suspension?

- 620.705 What does the suspending official consider in issuing a suspension?  
 620.710 When does a suspension take effect?  
 620.715 What notice does the suspending official give me if I am suspended?  
 620.720 How may I contest a suspension?  
 620.725 How much time do I have to contest a suspension?  
 620.730 What information must I provide to the suspending official if I contest a suspension?  
 620.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?  
 620.740 Are suspension proceedings formal?  
 620.745 Is a record made of fact-finding proceedings?  
 620.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?  
 620.755 When will I know whether the suspension is continued or terminated?  
 620.760 How long may my suspension last?

#### Subpart H—Debarment

- 620.800 What are the causes for debarment?  
 620.805 What notice does the debarring official give me if I am proposed for debarment?  
 620.810 When does a debarment take effect?  
 620.815 How may I contest a proposed debarment?  
 620.820 How much time do I have to contest a proposed debarment?  
 620.825 What information must I provide to the debarring official if I contest a proposed debarment?  
 620.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?  
 620.835 Are debarment proceedings formal?  
 620.840 Is a record made of fact-finding proceedings?  
 620.845 What does the debarring official consider in deciding whether to debar me?  
 620.850 What is the standard of proof in a debarment action?  
 620.855 Who has the burden of proof in a debarment action?  
 620.860 What factors may influence the debarring official's decision?  
 620.865 How long may my debarment last?  
 620.870 When do I know if the debarring official debars me?  
 620.875 May I ask the debarring official to reconsider a decision to debar me?  
 620.880 What factors may influence the debarring official during reconsideration?  
 620.885 May the debarring official extend a debarment?

#### Subpart I—Definitions

- 620.900 Adequate evidence.  
 620.905 Affiliate.  
 620.910 Agency.  
 620.915 Agent or representative.  
 620.920 Civil judgment.  
 620.925 Conviction.  
 620.930 Debarment.  
 620.935 Debarring official.

- 620.940 Disqualified.  
 620.945 Excluded or exclusion.  
 620.950 Indictment.  
 620.955 Ineligible or ineligibility.  
 620.960 Legal proceedings.  
 620.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.  
 620.970 Nonprocurement transaction.  
 620.975 Notice.  
 620.980 Participant.  
 620.985 Person.  
 620.990 Preponderance of the evidence.  
 620.995 Principal.  
 620.1000 Respondent.  
 620.1005 State.  
 620.1010 Suspending official.  
 620.1015 Suspension.  
 620.1020 Voluntary exclusion or voluntarily excluded.

#### Subpart J [Reserved]

#### Appendix to Part 620—Covered Transactions

**Authority:** 42 U.S.C. 1870(a); 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. Part 620 is further amended as set forth below.

a. “[Agency noun]” is removed and “National Science Foundation” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “National Science Foundation” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “Director or designee” is added in its place wherever it occurs.

3. Section 620.440 is added to read as follows:

#### § 620.440 What method do I use to communicate those requirements to participants?

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participant's compliance with Subpart C of this part and requiring them to include a similar term or condition in lower tier covered transactions.

4. Part 630 is added to read as set forth in instruction 2 at the end of the common preamble.

#### PART 630—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

##### Subpart A—Purpose and Coverage

- Sec.  
 630.100 What does this part do?  
 630.105 Does this part apply to me?  
 630.110 Are any of my Federal assistance awards exempt from this part?  
 630.115 Does this part affect the Federal contracts that I receive?

##### Subpart B—Requirements for Recipients Other Than Individuals

- 630.200 What must I do to comply with this part?  
 630.205 What must I include in my drug-free workplace statement?  
 630.210 To whom must I distribute my drug-free workplace statement?  
 630.215 What must I include in my drug-free awareness program?  
 630.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?  
 630.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?  
 630.230 How and when must I identify workplaces?

##### Subpart C—Requirements for Recipients Who Are Individuals

- 630.300 What must I do to comply with this part if I am an individual recipient?  
 630.301 [Reserved]

##### Subpart D—Responsibilities of National Science Foundation Awarding Officials

- 630.400 What are my responsibilities as a National Science Foundation awarding official?

##### Subpart E—Violations of This Part and Consequences

- 630.500 How are violations of this part determined for recipients other than individuals?  
 630.505 How are violations of this part determined for recipients who are individuals?  
 630.510 What actions will the Federal Government take against a recipient determined to have violated this part?  
 630.515 Are there any exceptions to those actions?

##### Subpart F—Definitions

- 630.605 Award.  
 630.610 Controlled substance.  
 630.615 Conviction.  
 630.620 Cooperative agreement.  
 630.625 Criminal drug statute.  
 630.630 Debarment.  
 630.635 Drug-free workplace.  
 630.640 Employee.  
 630.645 Federal agency or agency.  
 630.650 Grant.  
 630.655 Individual.  
 630.660 Recipient.  
 630.665 State.  
 630.670 Suspension.

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

5. Part 630 is further amended as set forth below.

a. “[Agency noun]” is removed and “National Science Foundation” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “National Science Foundation” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “Director or designee” is added in its place wherever it occurs.

d. “[Agency head]” is removed and “Director, National Science

Foundation" is added in its place wherever it occurs.

6. Section 630.510(c) is further amended by removing "[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "45 CFR part 620" in its place.

7. Section 630.605(a)(2) is further amended by removing "[Agency-specific CFR citation]" and adding "45 CFR part 602" in its place.

## NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

### National Endowment for the Arts

#### 45 CFR Parts 1154 and 1155

#### RIN 3135-AA18 and 3135-AA19

#### FOR FURTHER INFORMATION CONTACT:

Karen Elias, Deputy General Counsel, National Endowment for the Arts, Room 518, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, (202) 682-5418, or by e-mail: [eliask@arts.gov](mailto:eliask@arts.gov).

#### ADDITIONAL SUPPLEMENTARY INFORMATION:

Section 1154.440 of this part proposes to use terms or conditions to award transactions as the ordinary means of enforcing exclusions under NEA transactions rather than obtaining written certifications. This alternative available under the common rule is more efficient than the NEA's current reliance on the certification process for prospective recipients and participants.

This proposed rule relocates the requirements for maintaining a drug-free workplace from 45 CFR part 1154 to 45 CFR part 1155 and proposes to restate those requirements in plain language format.

#### List of Subjects

##### 45 CFR Part 1154

Administrative practice and procedure, Debarment and suspension, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements.

##### 45 CFR Part 1155

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

Dated: June 28, 2001.

**Karen L. Elias,**

*Deputy General Counsel, National Endowment for the Arts.*

For the reasons stated in the preamble, the National Endowment for the Arts proposes to amend 45 CFR chapter XI as follows:

1. Part 1154 is revised to read as set forth in instruction 1 at the end of the common preamble.

## PART 1154—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

### Sec.

1154.25 How is this part organized?

1154.50 How is this part written?

1154.75 Do terms in this part have special meanings?

### Subpart A—General

1154.100 What does this part do?

1154.105 Does this part apply to me?

1154.110 What is the purpose of the nonprocurement debarment and suspension system?

1154.115 How does an exclusion restrict a person's involvement in covered transactions?

1154.120 May we grant an exception to let an excluded person participate in a covered transaction?

1154.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?

1154.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?

1154.135 May the National Endowment for the Arts exclude a person who is not currently participating in a nonprocurement transaction?

1154.140 How do I know if a person is excluded?

1154.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

### Subpart B—Covered Transactions

1154.200 What is a covered transaction?

1154.205 Why is it important to know if a particular transaction is a covered transaction?

1154.210 Which nonprocurement transactions are covered transactions?

1154.215 Which nonprocurement transactions are not covered transactions?

1154.220 Are any procurement contracts included as covered transactions?

1154.225 How do I know if a transaction in which I may participate is a covered transaction?

### Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

1154.300 May I enter into a covered transaction with an excluded or disqualified person?

1154.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?

1154.310 May I use the services of an excluded person under a covered transaction?

1154.315 Must I verify that principals of my covered transactions are eligible to participate?

1154.320 What happens if I do business with an excluded person in a covered transaction?

1154.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

### Disclosing Information—Primary Tier Participants

1154.330 What information must I provide before entering into a covered transaction with the National Endowment for the Arts?

1154.335 If I disclose unfavorable information required under § 1154.330 will I be prevented from entering into the transaction?

1154.340 What happens if I fail to disclose the information required under § 1154.330?

1154.345 What must I do if I learn of the information required under § 1154.330 after entering into a covered transaction with the National Endowment for the Arts?

### Disclosing information—Lower Tier Participants

1154.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?

1154.355 What happens if I fail to disclose the information required under § 1154.350?

1154.360 What must I do if I learn of information required under § 1154.350 after entering into a covered transaction with a higher tier participant?

### Subpart D—Responsibilities of NEA Officials Regarding Transactions

1154.400 May I enter into a transaction with an excluded or disqualified person?

1154.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?

1154.410 May I approve a participant's use of the services of an excluded person?

1154.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?

1154.420 May I approve a transaction with an excluded or disqualified person at a lower tier?

1154.425 When do I check to see if a person is excluded or disqualified?

1154.430 How do I check to see if a person is excluded or disqualified?

1154.435 What must I require of a primary tier participant?

1154.440 What method do I use to communicate those requirements to participants?

1154.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?

1154.450 What action may I take if a primary tier participant fails to disclose the information required under § 1154.330?

1154.455 What may I do if a lower tier participant fails to disclose the information required under § 1154.350 to the next higher tier?

**Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs**

- 1154.500 What is the purpose of the List?  
 1154.505 Who uses the List?  
 1154.510 Who maintains the List?  
 1154.515 What specific information is on the List?  
 1154.520 Who gives the GSA the information that it puts on the List?  
 1154.525 Whom do I ask if I have questions about a person on the List?  
 1154.530 Where can I get the List?

**Subpart F—General Principles Relating to Suspension and Debarment Actions**

- 1154.600 How do suspension and debarment actions start?  
 1154.605 How does suspension differ from debarment?  
 1154.610 What procedures does the National Endowment for the Arts use in suspension and debarment actions?  
 1154.615 How does the National Endowment for the Arts notify a person of suspension and debarment actions?  
 1154.620 Do Federal agencies coordinate suspension and debarment actions?  
 1154.625 What is the scope of a suspension or debarment action?  
 1154.630 May the National Endowment for the Arts impute the conduct of one person to another?  
 1154.635 May the National Endowment for the Arts settle a debarment or suspension action?  
 1154.640 May a settlement include a voluntary exclusion?  
 1154.645 Do other Federal agencies know if the National Endowment for the Arts agrees to a voluntary exclusion?

**Subpart G—Suspension**

- 1154.700 When may the suspending official issue a suspension?  
 1154.705 What does the suspending official consider in issuing a suspension?  
 1154.710 When does a suspension take effect?  
 1154.715 What notice does the suspending official give me if I am suspended?  
 1154.720 How may I contest a suspension?  
 1154.725 How much time do I have to contest a suspension?  
 1154.730 What information must I provide to the suspending official if I contest a suspension?  
 1154.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?  
 1154.740 Are suspension proceedings formal?  
 1154.745 Is a record made of fact-finding proceedings?  
 1154.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?  
 1154.755 When will I know whether the suspension is continued or terminated?  
 1154.760 How long may my suspension last?

**Subpart H—Debarment**

- 1154.800 What are the causes for debarment?

- 1154.805 What notice does the debarring official give me if I am proposed for debarment?  
 1154.810 When does a debarment take effect?  
 1154.815 How may I contest a proposed debarment?  
 1154.820 How much time do I have to contest a proposed debarment?  
 1154.825 What information must I provide to the debarring official if I contest a proposed debarment?  
 1154.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?  
 1154.835 Are debarment proceedings formal?  
 1154.840 Is a record made of fact-finding proceedings?  
 1154.845 What does the debarring official consider in deciding whether to debar me?  
 1154.850 What is the standard of proof in a debarment action?  
 1154.855 Who has the burden of proof in a debarment action?  
 1154.860 What factors may influence the debarring official's decision?  
 1154.865 How long may my debarment last?  
 1154.870 When do I know if the debarring official debar me?  
 1154.875 May I ask the debarring official to reconsider a decision to debar me?  
 1154.880 What factors may influence the debarring official during reconsideration?  
 1154.885 May the debarring official extend a debarment?

**Subpart I—Definitions**

- 1154.900 Adequate evidence.  
 1154.905 Affiliate.  
 1154.910 Agency.  
 1154.915 Agent or representative.  
 1154.920 Civil judgment.  
 1154.925 Conviction.  
 1154.930 Debarment.  
 1154.935 Debarring official.  
 1154.940 Disqualified.  
 1154.945 Excluded or exclusion.  
 1154.950 Indictment.  
 1154.955 Ineligible or ineligibility.  
 1154.960 Legal proceedings.  
 1154.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.  
 1154.970 Nonprocurement transaction.  
 1154.975 Notice.  
 1154.980 Participant.  
 1154.985 Person.  
 1154.990 Preponderance of the evidence.  
 1154.995 Principal.  
 1154.1000 Respondent.  
 1154.1005 State.  
 1154.1010 Suspending official.  
 1154.1015 Suspension.  
 1154.1020 Voluntary exclusion or voluntarily excluded.

**Subpart J [Reserved]**

**Appendix to Part 1154—Covered Transactions**

**Authority:** Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp.,

p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

2. Part 1154 is further amended as set forth below.

a. “[Agency noun]” is removed and “National Endowment for the Arts” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “NEA” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “NEA Chairman” is added in its place wherever it occurs.

3. Section 1154.440 is added to read as follows:

**§ 1154.440 What method do I use to communicate those requirements to participants?**

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participant's compliance with subpart C of this part, and requiring them to include a similar term or condition in lower tier covered transactions.

4. Part 1155 is added to read as set forth in instruction 2 at the end of the common preamble.

**PART 1155—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)**

**Subpart A—Purpose and Coverage**

Sec.

- 1155.100 What does this part do?  
 1155.105 Does this part apply to me?  
 1155.110 Are any of my Federal assistance awards exempt from this part?  
 1155.115 Does this part affect the Federal contracts that I receive?

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

- 1155.200 What must I do to comply with this part?  
 1155.205 What must I include in my drug-free workplace statement?  
 1155.210 To whom must I distribute my drug-free workplace statement?  
 1155.215 What must I include in my drug-free awareness program?  
 1155.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?  
 1155.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?  
 1155.230 How and when must I identify workplaces?

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

- 1155.300 What must I do to comply with this part if I am an individual recipient?  
 1155.301 [Reserved]

**Subpart D—Responsibilities of NEA Awarding Officials**

- 1155.400 What are my responsibilities as an NEA awarding official?

**Subpart E—Violations of This Part and Consequences**

- 1155.500 How are violations of this part determined for recipients other than individuals?
- 1155.505 How are violations of this part determined for recipients who are individuals?
- 1155.510 What actions will the Federal Government take against a recipient determined to have violated this part?
- 1155.515 Are there any exceptions to those actions?

**Subpart F—Definitions**

- 1155.605 Award.
- 1155.610 Controlled substance.
- 1155.615 Conviction.
- 1155.620 Cooperative agreement.
- 1155.625 Criminal drug statute.
- 1155.630 Debarment.
- 1155.635 Drug-free workplace.
- 1155.640 Employee.
- 1155.645 Federal agency or agency.
- 1155.650 Grant.
- 1155.655 Individual.
- 1155.660 Recipient.
- 1155.665 State.
- 1155.670 Suspension.

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

5. Part 1155 is further amended as set forth below.

a. “[Agency noun]” is removed and “National Endowment for the Arts” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “NEA” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “NEA Chairman” is added in its place wherever it occurs.

d. “[Agency head]” is removed and “NEA Chairman” is added in its place wherever it occurs.

6. Section 1155.310(c) is further amended by removing “[CFR citation for the Federal Agency’s regulations implementing Executive Order 12549 and Executive Order 12689]” and adding “45 CFR part 1154” in its place.

7. Section 1155.605(a)(2) is further amended by removing “[Agency-specific CFR citation]” and adding “45 CFR part 1157” in its place.

**NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES****National Endowment for the Humanities****45 CFR Part 1169 and 1173****RIN 3136-AA25****FOR FURTHER INFORMATION CONTACT:**

Laura S. Nelson, Assistant General Counsel, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Room 530, Washington, DC, 20506, (202) 606-8322.

**List of Subjects****45 CFR Part 1169**

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

**45 CFR Part 1173**

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

Dated: June 15, 2001.

**Laura S. Nelson,**

*Assistant General Counsel.*

Accordingly, as set forth in the common preamble, 45 CFR chapter XI is proposed to be amended as follows.

1. Part 1169 is revised to read as set forth in instruction 1 at the end of the common preamble.

**PART 1169—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

Sec.

- 1169.25 How is this part organized?
- 1169.50 How is this part written?
- 1169.75 Do terms in this part have special meanings?

**Subpart A—General**

- 1169.100 What does this part do?
- 1169.105 Does this part apply to me?
- 1169.110 What is the purpose of the nonprocurement debarment and suspension system?
- 1169.115 How does an exclusion restrict a person’s involvement in covered transactions?
- 1169.120 May we grant an exception to let an excluded person participate in a covered transaction?
- 1169.125 Does an exclusion under the nonprocurement system affect a person’s eligibility to participate in Federal procurement contracts?
- 1169.130 Does an exclusion under the Federal procurement system affect a person’s eligibility to participate in nonprocurement transactions?
- 1169.135 May the NEH exclude a person who is not currently participating in a nonprocurement transaction?
- 1169.140 How do I know if a person is excluded?
- 1169.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

**Subpart B—Covered Transactions**

- 1169.200 What is a covered transaction?
- 1169.205 Why is it important to know if a particular transaction is a covered transaction?
- 1169.210 Which nonprocurement transactions are covered transactions?
- 1169.215 Which nonprocurement transactions are not covered transactions?

- 1169.220 Are any procurement contracts included as covered transactions?
- 1169.225 How do I know if a transaction that I may participate in is a covered transaction?

**Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons**

- 1169.300 May I enter into a covered transaction with an excluded or disqualified person?
- 1169.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
- 1169.310 May I use the services of an excluded person under a covered transaction?
- 1169.315 Must I verify that principals of my covered transactions are eligible to participate?
- 1169.320 What happens if I do business with an excluded person in a covered transaction?
- 1169.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

**Disclosing Information—Primary Tier Participants**

- 1169.330 What information must I provide before entering into a covered transaction with the NEH?
- 1169.335 If I disclose unfavorable information required under § 1169.330 will I be prevented from entering into the transaction?
- 1169.340 What happens if I fail to disclose the information required under § 1169.330?
- 1169.345 What must I do if I learn of the information required under § 1169.330 after entering into a covered transaction with the NEH?

**Disclosing Information—Lower Tier Participants**

- 1169.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
- 1169.355 What happens if I fail to disclose the information required under § 1169.350?
- 1169.360 What must I do if I learn of information required under § 1169.350 after entering into a covered transaction with a higher tier participant?

**Subpart D—Responsibilities of NEH Officials Regarding Transactions**

- 1169.400 May I enter into a transaction with an excluded or disqualified person?
- 1169.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
- 1169.410 May I approve a participant’s use of the services of an excluded person?
- 1169.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
- 1169.420 May I approve a transaction with an excluded or disqualified person at a lower tier?

- 1169.425 When do I check to see if a person is excluded or disqualified?
- 1169.430 How do I check to see if a person is excluded or disqualified?
- 1169.435 What must I require of a primary tier participant?
- 1169.440 What method do I use to communicate requirements to participants?
- 1169.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
- 1169.450 What action may I take if a primary tier participant fails to disclose the information required under § 1169.330?
- 1169.455 What may I do if a lower tier participant fails to disclose the information required under § 1169.350 to the next higher tier?

**Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs**

- 1169.500 What is the purpose of the List?
- 1169.505 Who uses the List?
- 1169.510 Who maintains the List?
- 1169.515 What specific information is on the List?
- 1169.520 Who gives the GSA the information that it puts on the List?
- 1169.525 Whom do I ask if I have questions about a person on the List?
- 1169.530 Where can I get the List?

**Subpart F—General Principles Relating to Suspension and Debarment Actions**

- 1169.600 How do suspension and debarment actions start?
- 1169.605 How does suspension differ from debarment?
- 1169.610 What procedures does the NEH use in suspension and debarment actions?
- 1169.615 How does the NEH notify a person of suspension and debarment actions?
- 1169.620 Do Federal agencies coordinate suspension and debarment actions?
- 1169.625 What is the scope of a suspension or debarment action?
- 1169.630 May the NEH impute the conduct of one person to another?
- 1169.635 May the NEH settle a debarment or suspension action?
- 1169.640 May a settlement include a voluntary exclusion?
- 1169.645 Do other Federal agencies know if the NEH agrees to a voluntary exclusion?

**Subpart G—Suspension**

- 1169.700 When may the suspending official issue a suspension?
- 1169.705 What does the suspending official consider in issuing a suspension?
- 1169.710 When does a suspension take effect?
- 1169.715 What notice does the suspending official give me if I am suspended?
- 1169.720 How may I contest a suspension?
- 1169.725 How much time do I have to contest a suspension?
- 1169.730 What information must I provide to the suspending official if I contest a suspension?

- 1169.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 1169.740 Are suspension proceedings formal?
- 1169.745 Is a record made of fact-finding proceedings?
- 1169.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 1169.755 When will I know whether the suspension is continued or terminated?
- 1169.760 How long may my suspension last?

**Subpart H—Debarment**

- 1169.800 What are the causes for debarment?
- 1169.805 What notice does the debarring official give me if I am proposed for debarment?
- 1169.810 When does a debarment take effect?
- 1169.815 How may I contest a proposed debarment?
- 1169.820 How much time do I have to contest a proposed debarment?
- 1169.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 1169.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
- 1169.835 Are debarment proceedings formal?
- 1169.840 Is a record made of fact-finding proceedings?
- 1169.845 What does the debarring official consider in deciding whether to debar me?
- 1169.850 What is the standard of proof in a debarment action?
- 1169.855 Who has the burden of proof in a debarment action?
- 1169.860 What factors may influence the debarring official's decision?
- 1169.865 How long may my debarment last?
- 1169.870 When do I know if the debarring official debars me?
- 1169.875 May I ask the debarring official to reconsider a decision to debar me?
- 1169.880 What factors may influence the debarring official during reconsideration?
- 1169.885 May the debarring official extend a debarment?

**Subpart I—Definitions**

- 1169.900 Adequate evidence.
- 1169.905 Affiliate.
- 1169.910 Agency.
- 1169.915 Agent or representative.
- 1169.920 Civil judgment.
- 1169.925 Conviction.
- 1169.930 Debarment.
- 1169.935 Debarring official.
- 1169.940 Disqualified.
- 1169.945 Excluded or exclusion.
- 1169.950 Indictment.
- 1169.955 Ineligible or ineligibility.
- 1169.960 Legal proceedings.
- 1169.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.

- 1169.970 Nonprocurement transaction.
- 1169.975 Notice.
- 1169.980 Participant.
- 1169.985 Person.
- 1169.990 Preponderance of the evidence.
- 1169.995 Principal.
- 1169.1000 Respondent.
- 1169.1005 State.
- 1169.1010 Suspending official.
- 1169.1015 Suspension.
- 1169.1020 Voluntary exclusion or voluntarily excluded.

**Subpart J [Reserved]**

**Appendix to Part 1169—Covered Transactions**

**Authority:** E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12698 (3 CFR, 1989 Comp., p. 235); sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 959(a)(1).

2. Part 1169 is further amended as set forth below.

a. “[Agency noun]” is removed and “NEH” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “NEH” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “NEH Assistant General Counsel” is added in its place wherever it occurs.

3. Section 1169.440 is added to read as follows:

**§ 1169.440 What method do I use to communicate requirements to participants?**

To communicate the requirements, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

4. Part 1173 is added to read as set forth in instruction 2 at the end of the common preamble.

**PART 1173—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)**

**Subpart A—Purpose and Coverage**

Sec.

- 1173.100 What does this part do?
- 1173.105 Does this part apply to me?
- 1173.110 Are any of my Federal assistance awards exempt from this part?
- 1173.115 Does this part affect the Federal contracts that I receive?

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

- 1173.200 What must I do to comply with this part?
- 1173.205 What must I include in my drug-free workplace statement?
- 1173.210 To whom must I distribute my drug-free workplace statement?
- 1173.215 What must I include in my drug-free awareness program?

- 1173.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
- 1173.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
- 1173.230 How and when must I identify workplaces?

#### Subpart C—Requirements for Recipients Who Are Individuals

- 1173.300 What must I do to comply with this part if I am an individual recipient?
- 1173.301 [Reserved]

#### Subpart D—Responsibilities of NEH Awarding Officials

- 1173.400 What are my responsibilities as an NEH awarding official?

#### Subpart E—Violations of This Part and Consequences

- 1173.500 How are violations of this part determined for recipients other than individuals?
- 1173.505 How are violations of this part determined for recipients who are individuals?
- 1173.510 What actions will the Federal Government take against a recipient determined to have violated this part?
- 1173.515 Are there any exceptions to those actions?

#### Subpart F—Definitions

- 1173.605 Award.
- 1173.610 Controlled substance.
- 1173.615 Conviction.
- 1173.620 Cooperative agreement.
- 1173.625 Criminal drug statute.
- 1173.630 Debarment.
- 1173.635 Drug-free workplace.
- 1173.640 Employee.
- 1173.645 Federal agency or agency.
- 1173.650 Grant.
- 1173.655 Individual.
- 1173.660 Recipient.
- 1173.665 State.
- 1173.670 Suspension.

**Authority:** 41 U.S.C. 701, *et seq.*; 20 U.S.C. 959(a)(1).

5. Part 1173 is further amended as set forth below.

a. “[Agency noun]” is removed and “NEH” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “NEH” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “NEH Assistant General Counsel” is added in its place wherever it occurs.

d. “[Agency head]” is removed and “NEH Assistant General Counsel” is added in its place wherever it occurs.

6. Section 1173.510(c) is further amended by removing “[CFR citation for the Federal agency’s regulations implementing Executive Order 12549 and Executive Order 12689]” and adding “45 CFR part 1169” in its place.

7. Section 1173.605(a)(2) is further amended by removing “[Agency-

specific CFR citation]” and adding “45 CFR part 1174” in its place.

### NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

#### Institute of Museum and Library Services

#### 45 CFR Parts 1185 and 1186 RIN 3137-AA14

#### FOR FURTHER INFORMATION CONTACT:

Nancy E. Weiss, General Counsel,  
Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Suite 802, Washington, DC 20506;  
Telephone: (202) 606-5414; E-mail: [nweiss@imls.gov](mailto:nweiss@imls.gov).

#### List of Subjects

##### 45 CFR Part 1185

Administrative practice and procedure, Debarment and suspension, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements.

##### 45 CFR Part 1186

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

Dated: August 10, 2001.

**Robert S. Martin,**

*Director, Institute of Museum and Library Services.*

For the reasons stated in the preamble, the Institute of Museum and Library Services proposes to amend 45 CFR chapter XI as follows:

1. Part 1185 is revised to read as set forth in instruction 1 at the end of the common preamble.

### PART 1185—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

#### Sec.

- 1185.25 How is this part organized?
- 1185.50 How is this part written?
- 1185.75 Do terms in this part have special meanings?

#### Subpart A—General

- 1185.100 What does this part do?
- 1185.105 Does this part apply to me?
- 1185.110 What is the purpose of the nonprocurement debarment and suspension system?
- 1185.115 How does an exclusion restrict a person’s involvement in covered transactions?
- 1185.120 May we grant an exception to let an excluded person participate in a covered transaction?
- 1185.125 Does an exclusion under the nonprocurement system affect a person’s eligibility to participate in Federal procurement contracts?
- 1185.130 Does an exclusion under the Federal procurement system affect a

person’s eligibility to participate in nonprocurement transactions?

- 1185.135 May the Institute of Museum and Library Services exclude a person who is not currently participating in a nonprocurement transaction?
- 1185.140 How do I know if a person is excluded?
- 1185.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

#### Subpart B—Covered Transactions

- 1185.200 What is a covered transaction?
- 1185.205 Why is it important to know if a particular transaction is a covered transaction?
- 1185.210 Which nonprocurement transactions are covered transactions?
- 1185.215 Which nonprocurement transactions are not covered transactions?
- 1185.220 Are any procurement contracts included as covered transactions?
- 1185.225 How do I know if a transaction in which I may participate is a covered transaction?

#### Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

- 1185.300 May I enter into a covered transaction with an excluded or disqualified person?
- 1185.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
- 1185.310 May I use the services of an excluded person under a covered transaction?
- 1185.315 Must I verify that principals of my covered transactions are eligible to participate?
- 1185.320 What happens if I do business with an excluded person in a covered transaction?
- 1185.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

#### Disclosing Information—Primary Tier Participants

- 1185.330 What information must I provide before entering into a covered transaction with the Institute of Museum and Library Services?
- 1185.335 If I disclose unfavorable information required under § 1185.330 will I be prevented from entering into the transaction?
- 1185.340 What happens if I fail to disclose the information required under § 1185.330?
- 1185.345 What must I do if I learn of the information required under § 1185.330 after entering into a covered transaction with the Institute of Museum and Library Services?

#### Disclosing information—Lower Tier Participants

- 1185.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?

- 1185.355 What happens if I fail to disclose the information required under § 1185.350?
- 1185.360 What must I do if I learn of information required under § 1185.350 after entering into a covered transaction with a higher tier participant?

#### Subpart D—Responsibilities of Institute of Museum and Library Services Officials Regarding Transactions

- 1185.400 May I enter into a transaction with an excluded or disqualified person?
- 1185.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
- 1185.410 May I approve a participant's use of the services of an excluded person?
- 1185.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
- 1185.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
- 1185.425 When do I check to see if a person is excluded or disqualified?
- 1185.430 How do I check to see if a person is excluded or disqualified?
- 1185.435 What must I require of a primary tier participant?
- 1185.440 What method do I use to communicate those requirements to participants?
- 1185.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
- 1185.450 What action may I take if a primary tier participant fails to disclose the information required under § 1185.330?
- 1185.455 What may I do if a lower tier participant fails to disclose the information required under § 1185.350 to the next higher tier?

#### Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs

- 1185.500 What is the purpose of the List?
- 1185.505 Who uses the List?
- 1185.510 Who maintains the List?
- 1185.515 What specific information is on the List?
- 1185.520 Who gives the GSA the information that it puts on the List?
- 1185.525 Whom do I ask if I have questions about a person on the List?
- 1185.530 Where can I get the List?

#### Subpart F—General Principles Relating to Suspension and Debarment Actions

- 1185.600 How do suspension and debarment actions start?
- 1185.605 How does suspension differ from debarment?
- 1185.610 What procedures does the Institute of Museum and Library Services use in suspension and debarment actions?
- 1185.615 How does the Institute of Museum and Library Services notify a person of suspension and debarment actions?
- 1185.620 Do Federal agencies coordinate suspension and debarment actions?

- 1185.625 What is the scope of a suspension or debarment action?
- 1185.630 May the Institute of Museum and Library Services impute the conduct of one person to another?
- 1185.635 May the Institute of Museum and Library Services settle a debarment or suspension action?
- 1185.640 May a settlement include a voluntary exclusion?
- 1185.645 Do other Federal agencies know if the Institute of Museum and Library Services agrees to a voluntary exclusion?

#### Subpart G—Suspension

- 1185.700 When may the suspending official issue a suspension?
- 1185.705 What does the suspending official consider in issuing a suspension?
- 1185.710 When does a suspension take effect?
- 1185.715 What notice does the suspending official give me if I am suspended?
- 1185.720 How may I contest a suspension?
- 1185.725 How much time do I have to contest a suspension?
- 1185.730 What information must I provide to the suspending official if I contest a suspension?
- 1185.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 1185.740 Are suspension proceedings formal?
- 1185.745 Is a record made of fact-finding proceedings?
- 1185.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 1185.755 When will I know whether the suspension is continued or terminated?
- 1185.760 How long may my suspension last?

#### Subpart H—Debarment

- 1185.800 What are the causes for debarment?
- 1185.805 What notice does the debarring official give me if I am proposed for debarment?
- 1185.810 When does a debarment take effect?
- 1185.815 How may I contest a proposed debarment?
- 1185.820 How much time do I have to contest a proposed debarment?
- 1185.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 1185.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
- 1185.835 Are debarment proceedings formal?
- 1185.840 Is a record made of fact-finding proceedings?
- 1185.845 What does the debarring official consider in deciding whether to debar me?
- 1185.850 What is the standard of proof in a debarment action?
- 1185.855 Who has the burden of proof in a debarment action?
- 1185.860 What factors may influence the debarring official's decision?

- 1185.865 How long may my debarment last?
- 1185.870 When do I know if the debarring official debars me?
- 1185.875 May I ask the debarring official to reconsider a decision to debar me?
- 1185.880 What factors may influence the debarring official during reconsideration?
- 1185.885 May the debarring official extend a debarment?

#### Subpart I—Definitions

- 1185.900 Adequate evidence.
- 1185.905 Affiliate.
- 1185.910 Agency.
- 1185.915 Agent or representative.
- 1185.920 Civil judgment.
- 1185.925 Conviction.
- 1185.930 Debarment.
- 1185.935 Debarring official.
- 1185.940 Disqualified.
- 1185.945 Excluded or exclusion.
- 1185.950 Indictment.
- 1185.955 Ineligible or ineligibility.
- 1185.960 Legal proceedings.
- 1185.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.
- 1185.970 Nonprocurement transaction.
- 1185.975 Notice.
- 1185.980 Participant.
- 1185.985 Person.
- 1185.990 Preponderance of the evidence.
- 1185.995 Principal.
- 1185.1000 Respondent.
- 1185.1005 State.
- 1185.1010 Suspending official.
- 1185.1015 Suspension.
- 1185.1020 Voluntary exclusion or voluntarily excluded.

#### Subpart J [Reserved]

#### Appendix to Part 1185—Covered Transactions

**Authority:** 20 U.S.C. 9101 *et seq.*; Sec. 2455 Pub.L. 103-355, 108 Stat. 311867 (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. Part 1185 is further amended as set forth below:

a. “[Agency noun]” is removed and “Institute of Museum and Library Services” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “IMLS” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “Director, Institute of Museum and Library Services” is added in its place wherever it occurs.

3. Section 1185.440 is added to read as follows:

#### § 1185.440 What method do I use to communicate requirements to participants?

To communicate the requirements, you must include a term or condition in the transaction requiring the participant's compliance with subpart C of this part and requiring them to

include a similar term or condition in lower-tier covered transactions.

4. Part 1186 is added to read as set forth in instruction 2 at the end of the common preamble.

## **PART 1186—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)**

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

Sec.

- 1186.100 What does this part do?
- 1186.105 Does this part apply to me?
- 1186.110 Are any of my Federal assistance awards exempt from this part?
- 1186.115 Does this part affect the Federal contracts that I receive?

### **Subpart B—Requirements for Recipients Other Than Individuals**

- 1186.200 What must I do to comply with this part?
- 1186.205 What must I include in my drug-free workplace statement?
- 1186.210 To whom must I distribute my drug-free workplace statement?
- 1186.215 What must I include in my drug-free awareness program?
- 1186.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
- 1186.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
- 1186.230 How and when must I identify workplaces?

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

- 1186.300 What must I do to comply with this part if I am an individual recipient?
- 1186.301 [Reserved]

### **Subpart D—Responsibilities of Institute of Museum and Library Services Awarding Officials**

- 1186.400 What are my responsibilities as an Institute of Museum and Library Services awarding official?

### **Subpart E—Violations of This Part and Consequences**

- 1186.500 How are violations of this part determined for recipients other than individuals?
- 1186.505 How are violations of this part determined for recipients who are individuals?
- 1186.510 What actions will the Federal Government take against a recipient determined to have violated this part?
- 1186.515 Are there any exceptions to those actions?

### **Subpart F—Definitions**

- 1186.605 Award.
- 1186.610 Controlled substance.
- 1186.615 Conviction.
- 1186.620 Cooperative agreement.
- 1186.625 Criminal drug statute.
- 1186.630 Debarment.
- 1186.635 Drug-free workplace.
- 1186.640 Employee.
- 1186.645 Federal agency or agency.

- 1186.650 Grant.
- 1186.655 Individual.
- 1186.660 Recipient.
- 1186.665 State.
- 1186.670 Suspension.

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

5. Part 1186 is further amended as set forth below.

a. “[Agency noun]” is removed and “Institute of Museum and Library Services” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “IMLS” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “Director, Institute of Museum and Library Services or designee” is added in its place wherever it occurs.

d. “[Agency head]” is removed and “Director, Institute of Museum and Library Services” is added in its place wherever it occurs.

6. Section 1186.310(c) is further amended by removing “[CFR citation for the Federal Agency’s regulations implementing Executive Order 12549 and Executive Order 12689]” and adding “45 CFR part 1185” in its place.

7. Section 1186.605(a)(2) is further amended by removing “[Agency-specific CFR citation]” and adding “45 CFR part 1183” in its place.

## **CORPORATION FOR NATIONAL AND COMMUNITY SERVICE**

### **45 CFR Parts 2542 and 2545**

#### **RIN 3045-AA28**

#### **FOR FURTHER INFORMATION CONTACT:**

Suzanne Dupré, Office of General Counsel, Corporation for National and Community Service, Room 8200, 1201 New York Ave., NW., Washington, DC 20525, (202) 606-5000 ext. 396, e-mail: [sdupre@cns.gov](mailto:sdupre@cns.gov).

#### **List of Subjects**

##### *45 CFR Part 2542*

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

##### *45 CFR Part 2545*

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

Dated: May 31, 2001.

#### **Wendy Zenker,**

*Chief Operating Officer, Corporation for National and Community Service.*

Accordingly, as set forth in the common preamble, the Corporation for National and Community Service

proposes to amend 45 CFR chapter XXV as follows:

1. Part 2542 is revised to read as set forth in instruction 1 at the end of the common preamble.

## **PART 2542—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

Sec.

- 2542.25 How is this part organized?
- 2542.50 How is this part written?
- 2542.75 Do terms in this part have special meanings?

### **Subpart A—General**

- 2542.100 What does this part do?
- 2542.105 Does this part apply to me?
- 2542.110 What is the purpose of the nonprocurement debarment and suspension system?
- 2542.115 How does an exclusion restrict a person’s involvement in covered transactions?
- 2542.120 May we grant an exception to let an excluded person participate in a covered transaction?
- 2542.125 Does an exclusion under the nonprocurement system affect a person’s eligibility to participate in Federal procurement contracts?
- 2542.130 Does an exclusion under the Federal procurement system affect a person’s eligibility to participate in nonprocurement transactions?
- 2542.135 May the Corporation exclude a person who is not currently participating in a nonprocurement transaction?
- 2542.140 How do I know if a person is excluded?
- 2542.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

### **Subpart B—Covered Transactions**

- 2542.200 What is a covered transaction?
- 2542.205 Why is it important to know if a particular transaction is a covered transaction?
- 2542.210 Which nonprocurement transactions are covered transactions?
- 2542.215 Which nonprocurement transactions are not covered transactions?
- 2542.220 Are any procurement contracts included as covered transactions?
- 2542.225 How do I know if a transaction that I may participate in is a covered transaction?

### **Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons**

- 2542.300 May I enter into a covered transaction with an excluded or disqualified person?
- 2542.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
- 2542.310 May I use the services of an excluded person under a covered transaction?

2542.315 Must I verify that principals of my covered transactions are eligible to participate?

2542.320 What happens if I do business with an excluded person in a covered transaction?

2542.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

#### Disclosing Information—Primary Tier Participants

2542.330 What information must I provide before entering into a covered transaction with the Corporation?

2542.335 If I disclose unfavorable information required under § 2542.330 will I be prevented from entering into the transaction?

2542.340 What happens if I fail to disclose the information required under § 2542.330?

2542.345 What must I do if I learn of the information required under § 2542.330 after entering into a covered transaction with the Corporation?

#### Disclosing Information—Lower Tier Participants

2542.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?

2542.355 What happens if I fail to disclose the information required under § 2542.350?

2542.360 What must I do if I learn of information required under § 2542.350 after entering into a covered transaction with a higher tier participant?

#### Subpart D—Responsibilities of Corporation Officials Regarding Transactions

2542.400 May I enter into a transaction with an excluded or disqualified person?

2542.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?

2542.410 May I approve a participant's use of the services of an excluded person?

2542.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?

2542.420 May I approve a transaction with an excluded or disqualified person at a lower tier?

2542.425 When do I check to see if a person is excluded or disqualified?

2542.430 How do I check to see if a person is excluded or disqualified?

2542.435 What must I require of a primary tier participant?

2542.440 What method do I use to communicate requirements to primary tier participants?

2542.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?

2542.450 What action may I take if a primary tier participant fails to disclose the information required under § 2542.330?

2542.455 What may I do if a lower tier participant fails to disclose the

information required under § 2542.350 to the next higher tier?

#### Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs

2542.500 What is the purpose of the List?

2542.505 Who uses the List?

2542.510 Who maintains the List?

2542.515 What specific information is on the List?

2542.520 Who gives the GSA the information that it puts on the List?

2542.525 Whom do I ask if I have questions about a person on the List?

2542.530 Where can I get the List?

#### Subpart F—General Principles Relating to Suspension and Debarment Actions

2542.600 How do suspension and debarment actions start?

2542.605 How does suspension differ from debarment?

2542.610 What procedures does the Corporation use in suspension and debarment actions?

2542.615 How does the Corporation notify a person of suspension and debarment actions?

2542.620 Do Federal agencies coordinate suspension and debarment actions?

2542.625 What is the scope of a suspension or debarment action?

2542.630 May the Corporation impute the conduct of one person to another?

2542.635 May the Corporation settle a debarment or suspension action?

2542.640 May a settlement include a voluntary exclusion?

2542.645 Do other Federal agencies know if the Corporation agrees to a voluntary exclusion?

#### Subpart G—Suspension

2542.700 When may the suspending official issue a suspension?

2542.705 What does the suspending official consider in issuing a suspension?

2542.710 When does a suspension take effect?

2542.715 What notice does the suspending official give me if I am suspended?

2542.720 How may I contest a suspension?

2542.725 How much time do I have to contest a suspension?

2542.730 What information must I provide to the suspending official if I contest a suspension?

2542.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?

2542.740 Are suspension proceedings formal?

2542.745 Is a record made of fact-finding proceedings?

2542.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?

2542.755 When will I know whether the suspension is continued or terminated?

2542.760 How long may my suspension last?

#### Subpart H—Debarment

2542.800 What are the causes for debarment?

2542.805 What notice does the debarring official give me if I am proposed for debarment?

2542.810 When does a debarment take effect?

2542.815 How may I contest a proposed debarment?

2542.820 How much time do I have to contest a proposed debarment?

2542.825 What information must I provide to the debarring official if I contest a proposed debarment?

2542.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?

2542.835 Are debarment proceedings formal?

2542.840 Is a record made of fact-finding proceedings?

2542.845 What does the debarring official consider in deciding whether to debar me?

2542.850 What is the standard of proof in a debarment action?

2542.855 Who has the burden of proof in a debarment action?

2542.860 What factors may influence the debarring official's decision?

2542.865 How long may my debarment last?

2542.870 When do I know if the debarring official debars me?

2542.875 May I ask the debarring official to reconsider a decision to debar me?

2542.880 What factors may influence the debarring official during reconsideration?

2542.885 May the debarring official extend a debarment?

#### Subpart I—Definitions

2542.900 Adequate evidence.

2542.905 Affiliate.

2542.910 Agency.

2542.915 Agent or representative.

2542.920 Civil judgment.

2542.925 Conviction.

2542.930 Debarment.

2542.935 Debarring official.

2542.940 Disqualified.

2542.945 Excluded or exclusion.

2542.950 Indictment.

2542.955 Ineligible or ineligibility.

2542.960 Legal proceedings.

2542.965 List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs.

2542.970 Nonprocurement transaction.

2542.975 Notice.

2542.980 Participant.

2542.985 Person.

2542.990 Preponderance of the evidence.

2542.995 Principal.

2542.1000 Respondent.

2542.1005 State.

2542.1010 Suspending official.

2542.1015 Suspension.

2542.1020 Voluntary exclusion or voluntarily excluded.

#### Subpart J [Reserved]

#### Appendix to Part 2542—Covered Transactions

Authority: 42 U.S.C. 12651(c); 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. Part 2542 is further amended as set forth below.

a. “[Agency noun]” is removed and “Corporation” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “Corporation” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “Corporation Chief Executive Officer or designee” is added in its place wherever it occurs.

3. Section 2542.440 is added to read as follows:

**§ 2542.440 What method do I use to communicate requirements to participants?**

To communicate the requirements, you must include a term or condition in the transaction requiring the participant’s compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

4. Part 2545 is added to read as set forth in instruction 2 at the end of the common preamble.

**PART 2545—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)**

**Subpart A—Purpose and Coverage**

Sec.

2545.100 What does this part do?

2545.105 Does this part apply to me?

2545.110 Are any of my Federal assistance awards exempt from this part?

2545.115 Does this part affect the Federal contracts that I receive?

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

2545.200 What must I do to comply with this part?

2545.205 What must I include in my drug-free workplace statement?

2545.210 To whom must I distribute my drug-free workplace statement?

2545.215 What must I include in my drug-free awareness program?

2545.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?

2545.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?

2545.230 How and when must I identify workplaces?

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

2545.300 What must I do to comply with this part if I am an individual recipient?

2545.301 [Reserved]

**Subpart D—Responsibilities of Corporation Awarding Officials**

2545.400 What are my responsibilities as a Corporation awarding official?

**Subpart E—Violations of This Part and Consequences**

2545.500 How are violations of this part determined for recipients other than individuals?

2545.505 How are violations of this part determined for recipients who are individuals?

2545.510 What actions will the Federal Government take against a recipient determined to have violated this part?

2545.515 Are there any exceptions to those actions?

**Subpart F—Definitions**

2545.605 Award.

2545.610 Controlled substance.

2545.615 Conviction.

2545.620 Cooperative agreement.

2545.625 Criminal drug statute.

2545.630 Debarment.

2545.635 Drug-free workplace.

2545.640 Employee.

2545.645 Federal agency or agency.

2545.650 Grant.

2545.655 Individual.

2545.660 Recipient.

2545.665 State.

2545.670 Suspension.

**Authority:** 41 U.S.C. 701, *et seq.*; 42 U.S.C. 12644 and 12651(c).

5. Part 2545 is further amended as set forth below.

a. “[Agency noun]” is removed and “Corporation” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “Corporation” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “Corporation Chief Executive Officer or designee” is added in its place wherever it occurs.

d. “[Agency head]” is removed and “Corporation Chief Executive Officer” is added in its place wherever it occurs.

6. Section 2545.510(c) is further amended by removing “[CFR citation for the Federal Agencies’ regulations implementing Executive Order 12549 and Executive Order 12689]” and adding “45 CFR part 2542” in its place.

7. Section 2545.605(a)(2) is further amended by removing “[Agency-specific CFR citation]” and adding “45 CFR part 2541” in its place.

**DEPARTMENT OF TRANSPORTATION  
49 CFR Parts 29 and 32**

**RIN 2105-AD07**

**FOR FURTHER INFORMATION CONTACT:**

Ladd Hakes, Office of the Senior Procurement Executive (M-62), 400 Seventh Street SW., Washington, DC 20590, (202) 366-4268, e-mail: [ladd.hakes@ost.dot.gov](mailto:ladd.hakes@ost.dot.gov).

**ADDITIONAL SUPPLEMENTARY INFORMATION:**

This part proposes additional debarment and suspension exception authority by including a paragraph (c) in

§ 29.120 to allow any DOT debarring or suspending official to grant exceptions and make written determinations under that section. In addition, § 29.440 proposes to use terms or conditions to the award transactions as a means to enforce exclusions under DOT transactions rather than written certifications. This alternative available under the common rule is more efficient than DOT’s current certification process for prospective recipients and participants. This part also proposes to add a paragraph (d) to § 29.520 requiring DOT officials, when providing information to GSA, to include their Operating Administration identifying code. This part also proposes to add a paragraph (b) to the definitions of a “debaring official” at § 29.935 and “suspending official” at § 29.1010 to include the head of a Departmental operating administration, with downward delegation authority. Finally, this proposed rule relocates the requirements for maintaining a drug-free workplace from 49 CFR part 29 to 49 CFR part 32.

**List of Subjects**

*49 CFR Part 29*

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements.

*49 CFR Part 32*

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

Approved: November 2, 2001.

**Norman Y. Mineta,**

*Secretary of Transportation.*

For the reasons stated in the common preamble, the Department of Transportation proposes to amend 49 CFR chapter I, as follows:

1. Part 29 is revised to read as set forth in instruction 1 at the end of the common preamble.

**PART 29—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

Sec.

29.25 How is this part organized?

29.50 How is this part written?

29.75 Do terms in this part have special meanings?

**Subpart A—General**

29.100 What does this part do?

29.105 Does this part apply to me?

29.110 What is the purpose of the nonprocurement debarment and suspension system?

- 29.115 How does an exclusion restrict a person's involvement in covered transactions?
- 29.120 May we grant an exception to let an excluded person participate in a covered transaction?
- 29.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?
- 29.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
- 29.135 May DOT exclude a person who is not currently participating in a nonprocurement transaction?
- 29.140 How do I know if a person is excluded?
- 29.145 Does this part cover persons who are disqualified as well as those who are excluded from nonprocurement transactions?

#### **Subpart B—Covered Transactions**

- 29.200 What is a covered transaction?
- 29.205 Why is it important to know if a particular transaction is a covered transaction?
- 29.210 Which nonprocurement transactions are covered transactions?
- 29.215 Which nonprocurement transactions are not covered transactions?
- 29.220 Are any procurement contracts included as covered transactions?
- 29.225 How do I know if a transaction that I may participate in is a covered transaction?

#### **Subpart C—Responsibilities of Participants Regarding Transactions**

##### **Doing Business With Other Persons**

- 29.300 May I enter into a covered transaction with an excluded or disqualified person?
- 29.305 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
- 29.310 May I use the services of an excluded person under a covered transaction?
- 29.315 Must I verify that principals of my covered transactions are eligible to participate?
- 29.320 What happens if I do business with an excluded person in a covered transaction?
- 29.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

##### **Disclosing Information—Primary Tier Participants**

- 29.330 What information must I provide before entering into a covered transaction with DOT?
- 29.335 If I disclose unfavorable information required under § 29.330 will I be prevented from entering into the transaction?
- 29.340 What happens if I fail to disclose the information required under § 29.330?
- 29.345 What must I do if I learn of the information required under § 29.330 after entering into a covered transaction with DOT?

##### **Disclosing Information—Lower Tier Participants**

- 29.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
- 29.355 What happens if I fail to disclose the information required under § 29.350?
- 29.360 What must I do if I learn of information required under § 29.350 after entering into a covered transaction with a higher tier participant?

##### **Subpart D—Responsibilities of DOT Officials Regarding Transactions**

- 29.400 May I enter into a transaction with an excluded or disqualified person?
- 29.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
- 29.410 May I approve a participant's use of the services of an excluded person?
- 29.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
- 29.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
- 29.425 When do I check to see if a person is excluded or disqualified?
- 29.430 How do I check to see if a person is excluded or disqualified?
- 29.435 What must I require of a primary tier participant?
- 29.440 What method do I use to communicate those requirements to participants?
- 29.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
- 29.450 What action may I take if a primary tier participant fails to disclose the information required under § 29.330?
- 29.455 What may I do if a lower tier participant fails to disclose the information required under § 29.350 to the next higher tier?

##### **Subpart E—Governmentwide List of Parties Excluded or Disqualified From Federal Procurement and Nonprocurement Programs**

- 29.500 What is the purpose of the List?
- 29.505 Who uses the List?
- 29.510 Who maintains the List?
- 29.515 What specific information is on the List?
- 29.520 Who gives the GSA the information that it puts on the List?
- 29.525 Whom do I ask if I have questions about a person on the List?
- 29.530 Where can I get the List?

##### **Subpart F—General Principles Relating to Suspension and Debarment Actions**

- 29.600 How do suspension and debarment actions start?
- 29.605 How does suspension differ from debarment?
- 29.610 What procedures does DOT use in suspension and debarment actions?
- 29.615 How does DOT notify a person of suspension and debarment actions?
- 29.620 Do Federal agencies coordinate suspension and debarment actions?
- 29.625 What is the scope of a suspension or debarment action?

- 29.630 May DOT impute the conduct of one person to another?
- 29.635 May DOT settle a debarment or suspension action?
- 29.640 May a settlement include a voluntary exclusion?
- 29.645 Do other Federal agencies know if DOT agrees to a voluntary exclusion?

##### **Subpart G—Suspension**

- 29.700 When may the suspending official issue a suspension?
- 29.705 What does the suspending official consider in issuing a suspension?
- 29.710 When does a suspension take effect?
- 29.715 What notice does the suspending official give me if I am suspended?
- 29.720 How may I contest a suspension?
- 29.725 How much time do I have to contest a suspension?
- 29.730 What information must I provide to the suspending official if I contest a suspension?
- 29.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 29.740 Are suspension proceedings formal?
- 29.745 Is a record made of fact-finding proceedings?
- 29.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 29.755 When will I know whether the suspension is continued or terminated?
- 29.760 How long may my suspension last?

##### **Subpart H—Debarment**

- 29.800 What are the causes for debarment?
- 29.805 What notice does the debarring official give me if I am proposed for debarment?
- 29.810 When does a debarment take effect?
- 29.815 How may I contest a proposed debarment?
- 29.820 How much time do I have to contest a proposed debarment?
- 29.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 29.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
- 29.835 Are debarment proceedings formal?
- 29.840 Is a record made of fact-finding proceedings?
- 29.845 What does the debarring official consider in deciding whether to debar me?
- 29.850 What is the standard of proof in a debarment action?
- 29.855 Who has the burden of proof in a debarment action?
- 29.860 What factors may influence the debarring official's decision?
- 29.865 How long may my debarment last?
- 29.870 When do I know if the debarring official debars me?
- 29.875 May I ask the debarring official to reconsider a decision to debar me?
- 29.880 What factors may influence the debarring official during reconsideration?
- 29.885 May the debarring official extend a debarment?

**Subpart I—Definitions**

- 29.900 Adequate evidence.  
 29.905 Affiliate.  
 29.910 Agency.  
 29.915 Agent or representative.  
 29.920 Civil judgment.  
 29.925 Conviction.  
 29.930 Debarment.  
 29.935 Debarring official.  
 29.940 Disqualified.  
 29.945 Excluded or exclusion.  
 29.950 Indictment.  
 29.955 Ineligible or ineligibility.  
 29.960 Legal proceedings.  
 29.965 List of Parties Excluded or Disqualified from Federal Procurement and Nonprocurement Programs.  
 29.970 Nonprocurement transaction.  
 29.975 Notice.  
 29.980 Participant.  
 29.985 Person.  
 29.990 Preponderance of the evidence.  
 29.995 Principal.  
 29.1000 Respondent.  
 29.1005 State.  
 29.1010 Suspending official.  
 29.1015 Suspension.  
 29.1020 Voluntary exclusion or voluntarily excluded.

**Subpart J [Reserved]****Appendix to Part 29—Covered Transactions**

**Authority:** Sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 11738 (3 CFR, 1973 Comp., p.799); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

2. Part 29 is further amended as set forth below.

a. “[Agency noun]” is removed and “Department of Transportation” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “DOT” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “debaring or suspending official” is added in its place wherever it occurs.

3. Section 29.120 is further amended by adding a paragraph (c) to read as follows:

**§ 29.120 May we grant an exception to an excluded person to participate in a covered transaction?**

\* \* \* \* \*

(c) A debaring or suspending official may grant exceptions and make written determinations under this section.

4. Section 29.440 is added to read as follows:

**§ 29.440 What method do I use to communicate those requirements to participants?**

To communicate the requirement you must include a term or condition in the transaction requiring the participants’ compliance with subpart C of this part and requiring them to include a similar

term or condition in lower-tier covered transactions.

5. Section 29.520 is further amended by removing the period at the end of paragraph (c)(4) and adding a semi-colon, and adding a paragraph (d) to read as follows:

**§ 29.520. Who gives the GSA the information that it puts on the List?**

\* \* \* \* \*

(d) The DOT official’s Operating Administration code, as follows: United States Coast Guard [DOT-USCG]; Federal Aviation Administration [DOT-FAA]; Federal Highway Administration [DOT-FHWA]; Federal Motor Carrier Safety Administration [DOT-FMCSA]; Federal Railway Administration [DOT-FRA]; Federal Transit Administration [DOT-FTA]; National Highway Traffic Safety Administration [DOT-NHTSA]; Research and Special Programs [DOT-RSPA]; Maritime Administration [DOT-MARAD]; and DOT (general) [DOT-OST].

6. Section 29.935 is further amended by adding a paragraph (b) to read as follows:

**§ 29.935 Debarring official.**

\* \* \* \* \*

(b) For DOT “debaring official” means the designated head of a DOT operating administration, who may delegate any of his or her functions under this part and authorize successive delegations.

7. Section 29.1010 is further amended by adding a paragraph (b) to read as follows:

**§ 29.1010 Suspending official.**

\* \* \* \* \*

(b) For DOT “suspending official” means the designated head of a DOT operating administration, who may delegate any of his or her functions under this part and authorize successive delegations.

8. Part 32 is added to read as set forth in instruction 2 at the end of the common preamble.

**PART 32—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)**

**Subpart A—Purpose and Coverage**

Sec.

- 32.100 What does this part do?  
 32.105 Does this part apply to me?  
 32.110 Are any of my Federal assistance awards exempt from this part?  
 32.115 Does this part affect the Federal contracts that I receive?

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

- 32.200 What must I do to comply with this part?  
 32.205 What must I include in my drug-free workplace statement?  
 32.210 To whom must I distribute my drug-free workplace statement?  
 32.215 What must I include in my drug-free awareness program?  
 32.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?  
 32.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?  
 32.230 How and when must I identify workplaces?

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

- 32.300 What must I do to comply with this part if I am an individual recipient?  
 32.301 [Reserved]

**Subpart D—Responsibilities of DOT Awarding Officials**

- 32.400 What are my responsibilities as a DOT awarding official?

**Subpart E—Violations of This Part and Consequences**

- 32.500 How are violations of this part determined for recipients other than individuals?  
 32.505 How are violations of this part determined for recipients who are individuals?  
 32.510 What actions will the Federal Government take against a recipient determined to have violated this part?  
 32.515 Are there any exceptions to those actions?

**Subpart F—Definitions**

- 32.605 Award.  
 32.610 Controlled substance.  
 32.615 Conviction.  
 32.620 Cooperative agreement.  
 32.625 Criminal drug statute.  
 32.630 Debarment.  
 32.635 Drug-free workplace.  
 32.640 Employee.  
 32.645 Federal agency or agency.  
 32.650 Grant.  
 32.655 Individual.  
 32.660 Recipient.  
 32.665 State.  
 32.670 Suspension.

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

9. Part 32 is further amended as set forth below.

a. “[Agency noun]” is removed and “Department of Transportation” is added in its place wherever it occurs.

b. “[Agency adjective]” is removed and “DOT” is added in its place wherever it occurs.

c. “[Agency head or designee]” is removed and “Secretary of Transportation” is added in its place wherever it occurs.

d. “[Agency head]” is removed and “Secretary of Transportation” is added in its place wherever it occurs.

10. Section 32.510 (c) is further amended by removing “CFR citation for the Federal Agency’s regulations implementing Executive Order 12549

and Executive Order 12689” and adding “49 CFR part 29” in its place.

11. Section 32.605(a)(2) is further amended by removing “[Agency-

specific CFR citation]” and adding “49 CFR part 18” in its place.

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