

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 “debarring 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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