

- 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 debars 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.

#### *Electronic Access to This Document*

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/legislation/FedRegister>.

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Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

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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)

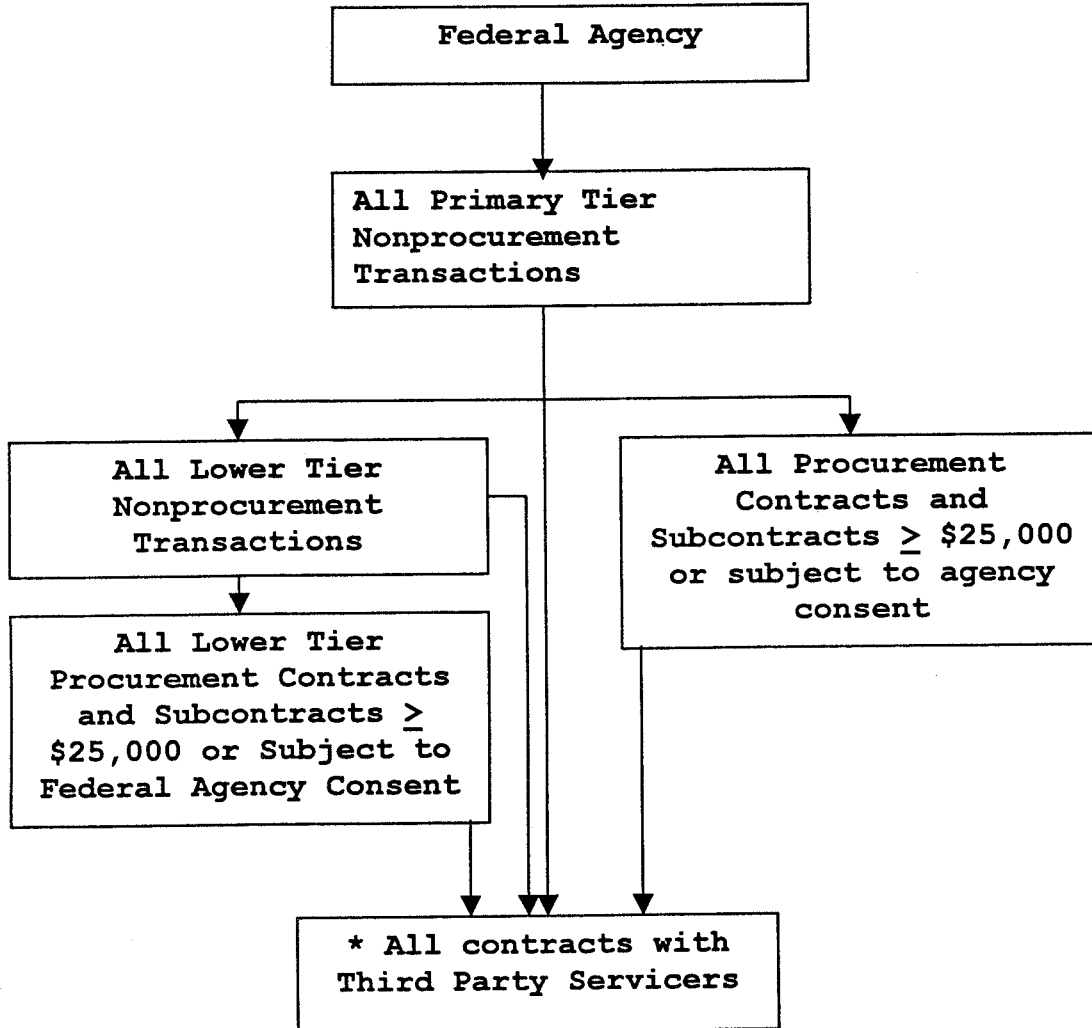
23. The appendix to part 85 is amended by removing and reserving the Covered Transactions Chart and by adding a Covered Transactions for ED Chart to read as follows.

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.

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**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 debarring 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 debarring 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 debarring official make a decision on my reinstatement request?**

(a) The EPA debarring 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 debarring official while you are having informal discussions under § 32.1205(b).

**§ 32.1230 How will the EPA debarring official notify me of the reinstatement decision?**

The EPA debarring 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 debarring official may, at any time, resolve your CAA or CWA eligibility status under the terms of an administrative agreement. Ordinarily, the debarring 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 debarring 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 debarring 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 debarring 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 debarring official may revoke the certification of correction and immediately reinstate the CAA or CWA disqualification. In addition, the EPA debarring 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 debarring 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 debarring official denies your request for reinstatement under the CAA or CWA, you can ask for review of the EPA debarring official's decision in two ways:

(1) You may ask the debarring 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 debarring official's denial within 30 days of your receipt of the debarring official's decision under § 32.1230 or paragraph (a)(1) of this section. However, the OGD Director can reverse the debarring 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 debarring 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 debarring 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:

Donald J. Suda, Special Assistant for Contractor Integrity, General Services Administration, 1800 F Street NW., Washington, DC 20405–0002, (202) 501–4770, e-mail: [donald.suda@gsa.gov](mailto:donald.suda@gsa.gov)

#### 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?
- 620.105 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?

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2542.450 What action may I take if a primary tier participant fails to disclose the information required under § 2542.330?

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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?

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2542.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?

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2542.840 Is a record made of fact-finding proceedings?

2542.845 What does the debarring official consider in deciding whether to debar me?

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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?

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2542.885 May the debarring official extend a debarment?

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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.