



# Federal Register

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Wednesday,  
November 26, 2003

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## Part II

### **Governmentwide Debarment and Suspension (Nonprocurement), and Requirements for Drug-Free Workplace (Grants); Rules (Final and Interim Final)**

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Office of Personnel Management  
Department of Agriculture  
Department of Energy  
Export-Import Bank  
Small Business Administration  
National Aeronautics and Space Administration  
Department of Commerce  
Social Security Administration  
Office of National Drug Control Policy  
Department of State  
Agency for International Development  
Peace Corps  
Inter-American Foundation  
African Development Foundation  
Department of Housing and Urban Development  
Department of Justice  
Department of Labor  
Federal Mediation and Conciliation Service  
Department of the Treasury  
Department of Defense  
Department of Education  
National Archives and Records Administration  
Department of Veterans Affairs  
Environmental Protection Agency  
General Services Administration  
Department of the Interior  
Department of Health and Human Services  
National Science Foundation  
National Foundation on the Arts and the Humanities  
    National Endowment for the Arts  
    National Endowment for the Humanities  
    Institute of Museum and Library Services  
Corporation for National and Community Service  
Department of Transportation

<b>OFFICE OF PERSONNEL MANAGEMENT</b>	<b>DEPARTMENT OF JUSTICE</b>	<b>National Endowment for the Humanities</b>
5 CFR Part 970	28 CFR Parts 67 and 83	45 CFR Parts 1169 and 1173
<b>DEPARTMENT OF AGRICULTURE</b>	<b>DEPARTMENT OF LABOR</b>	<b>Institute of Museum and Library Services</b>
7 CFR Parts 3017 and 3021	29 CFR Parts 94 and 98	45 CFR Parts 1185 and 1186
<b>DEPARTMENT OF ENERGY</b>	<b>FEDERAL MEDIATION AND CONCILIATION SERVICE</b>	<b>CORPORATION FOR NATIONAL AND COMMUNITY SERVICE</b>
10 CFR Parts 606, 607, and 1036	29 CFR Parts 1471 and 1472	45 CFR Parts 2542 and 2545
<b>THE EXPORT-IMPORT BANK OF THE UNITED STATES</b>	<b>DEPARTMENT OF THE TREASURY</b>	<b>DEPARTMENT OF TRANSPORTATION</b>
12 CFR Part 413	31 CFR Parts 19 and 20	49 CFR Parts 29 and 32
<b>SMALL BUSINESS ADMINISTRATION</b>	<b>DEPARTMENT OF DEFENSE</b>	<b>Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)</b>
13 CFR Parts 145 and 147	32 CFR Parts 25 and 26	<b>AGENCIES:</b> Office of Personnel Management; Department of Agriculture; Department of Energy; The Export-Import Bank of the United States; Small Business Administration; National Aeronautics and Space Administration; Department of Commerce; Social Security Administration; Office of National Drug Control Policy; Department of State; Agency for International Development; Peace Corps; Inter-American Foundation; African Development Foundation; Department of Housing and Urban Development; Department of Justice; Department of Labor; Federal Mediation and Conciliation Service; Department of the Treasury; Department of Defense; Department of Education; National Archives and Records Administration; Department of Veterans Affairs; Environmental Protection Agency; General Services Administration; Department of the Interior; Department of Health and Human Services; National Science Foundation; National Foundation on the Arts and the Humanities, National Endowment for the Arts, National Endowment for the Humanities, Institute of Museum and Library Services; Corporation for National and Community Service, and Department of Transportation.
<b>NATIONAL AERONAUTICS AND SPACE ADMINISTRATION</b>	<b>DEPARTMENT OF EDUCATION</b>	
14 CFR Parts 1265 and 1267	34 CFR Parts 84, 85, 668 and 682	
<b>DEPARTMENT OF COMMERCE</b>	<b>NATIONAL ARCHIVES AND RECORDS ADMINISTRATION</b>	
15 CFR Parts 26 and 29	36 CFR Parts 1209 and 1212	
<b>SOCIAL SECURITY ADMINISTRATION</b>	<b>DEPARTMENT OF VETERANS AFFAIRS</b>	
20 CFR Parts 436 and 439	38 CFR Parts 44 and 48	
<b>OFFICE OF NATIONAL DRUG CONTROL POLICY</b>	<b>ENVIRONMENTAL PROTECTION AGENCY</b>	
21 CFR Parts 1404 and 1405	40 CFR Parts 32 and 36	
<b>DEPARTMENT OF STATE</b>	<b>GENERAL SERVICES ADMINISTRATION</b>	
22 CFR Parts 133 and 137	41 CFR Parts 105-68 and 105-74	
<b>AGENCY FOR INTERNATIONAL DEVELOPMENT</b>	<b>DEPARTMENT OF THE INTERIOR</b>	
22 CFR Parts 208 and 210	43 CFR Parts 12, 42 and 43	
<b>PEACE CORPS</b>	<b>DEPARTMENT OF HEALTH AND HUMAN SERVICES</b>	
22 CFR Parts 310 and 312	45 CFR Parts 76 and 82	
<b>INTER-AMERICAN FOUNDATION</b>	<b>NATIONAL SCIENCE FOUNDATION</b>	
22 CFR Parts 1006 and 1008	45 CFR Parts 620 and 630	
<b>AFRICAN DEVELOPMENT FOUNDATION</b>	<b>NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES</b>	
22 CFR Parts 1508 and 1509	<b>National Endowment for the Arts</b>	
<b>DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT</b>	45 CFR Parts 1154 and 1155	
24 CFR Parts 21 and 24		

**ACTION:** Final rules and interim final rules.

**SUMMARY:** These rules implement changes to the governmentwide nonprocurement debarment and suspension common rule (NCR) and the associated rule on drug-free workplace requirements. The final and interim final rules reflect changes made to the proposed rules in response to the comments received during the comment period. The NCR sets forth the common policies and procedures that Federal Executive branch agencies must use in taking suspension or debarment actions. It also establishes procedures for participants and Federal agencies in entering covered transactions. While these procedures are mandatory for all agencies of the Executive branch under Executive Order 12549, any Federal agency with procurement or nonprocurement responsibilities may elect to join the governmentwide system by adopting these procedures through the rulemaking process. Certain small Executive branch agencies that are exempt from having to issue separate regulations with the approval of the Office of Management and Budget, may initiate suspension and debarment actions in their inherent authority. Following the procedures set forth in the NCR will help ensure that the agencies' actions comply with due process standards and provide the public with uniform procedures. As an alternative, smaller Executive branch agencies may refer matters of contractor and participant responsibility to another Executive branch agency for action. For a detailed explanation of the changes to these rules, see the comments section under **SUPPLEMENTARY INFORMATION** below.

**DATES:** The effective date for this rule is November 26, 2003. The comment date for those agencies issuing this rule as an interim rule (*i.e.*, the Department of Agriculture, the Export-Import Bank, the Department of Justice, and the Department of Treasury) is January 26, 2004.

**ADDRESSES:** Comments on the interim rules should be submitted to the individual agency contacts.

**FOR FURTHER INFORMATION CONTACT:** Robert F. Meunier, Chair of the Interagency Suspension and Debarment Committee, Office of Grants and Debarment (3901-R), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460, by phone at (202) 564-5399 or by e-mail ([meunier.robert@epa.gov](mailto:meunier.robert@epa.gov)). A chart showing where each agency has codified the common rule may be obtained by accessing the Office of Management and Budget's home page (<http://www.whitehouse.gov/omb>),

under the heading "Grants Management."

**SUPPLEMENTARY INFORMATION:**

**A. Background**

On February 18, 1986, President Reagan issued Executive Order 12549 (3 CFR 1986 Comp., p. 189), "Debarment and Suspension," to establish a governmentwide debarment and suspension system covering the full range of Federal procurement and nonprocurement activities, and to establish procedures for debarment and suspension from participation in Federal nonprocurement programs. Section 4 of that Order established the Interagency Suspension and Debarment Committee (ISDC) to monitor implementation of that system, coordinate actions among the Federal agencies, and make recommendations to the Office of Management and Budget (OMB) concerning regulatory and other changes needed to address the needs of both the procurement and nonprocurement suspension and debarment programs under a comprehensive debarment and suspension system encompassing the full range of Federal activities.

The OMB published initial guidelines for nonprocurement debarment and suspension to all Executive branch agencies on May 29, 1987 (52 FR 20360), followed by final guidelines along with the NCR on May 26, 1988 (53 FR 19160). The OMB guidelines and NCR provide uniform requirements for debarment and suspension by Executive branch agencies to protect assistance, loans, benefits and other nonprocurement activities from waste, fraud, abuse, poor performance or noncompliance similar to the system used for Federal procurement activities under Subpart 9.4 of the Federal Acquisition Regulation (FAR) and its supplements.

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

On August 16, 1989, President George H. W. Bush issued Executive Order 12689, "Debarment and Suspension," (3 CFR 1989 Comp., p. 235), directing agencies to reconcile technical differences existing between the procurement and nonprocurement debarment programs, and to give exclusions under either program reciprocal effect across procurement and nonprocurement activities. In 1994, Congress passed the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355, 108 Stat. 3327), mandating reciprocity for exclusions issued under

the procurement and nonprocurement debarment programs.

On April 12, 1999, OMB asked the ISDC to review the common rule and propose amendments that would: (a) Resolve remaining unnecessary technical differences between the procurement and nonprocurement systems; (b) revise the current rule in a plain language style and format; and (c) make other improvements to the common rule consistent with the purpose of the suspension and debarment system. On October 29, 1999, the ISDC issued a final report to OMB with recommended changes to the NCR.

On January 23, 2002, thirty agencies jointly proposed amendments to the NCR and for the removal and relocation of the governmentwide provisions implementing the Drug-Free Workplace Act of 1988 (67 FR 3265). One additional agency, Department of Housing and Urban Development, proposed its amendments to those rules on July 22, 2002 (67 FR 48006).

Since publication of the above proposed rules, the Federal Emergency Management Agency (FEMA), along with parts of many other Federal agencies, has been transferred into the new Department of Homeland Security (DHS). Therefore, this final rulemaking does not include a final rule for FEMA or DHS. Three agencies, Department of Treasury, Department of Justice and The Export-Import Bank of the United States, did not propose changes along with other agencies on January 23, 2002, but are adopting these rules on an interim final basis. The Department of Agriculture, although it proposed rules on January 23, has decided to issue an interim final rule for the reasons cited in its agency-specific preamble. Persons wishing to submit comments to the Department of Agriculture, Department of Treasury, Department of Justice or The Export-Import Bank of the United States may do so within sixty (60) days of the date of this publication by sending comments as described in the preambles to those rules. The remaining twenty-nine agencies are jointly issuing this rule as a final rule.

Furthermore, since publication of the proposed rule, the General Services Administration (GSA) has changed the name of the List of Parties Excluded from Federal Procurement and Nonprocurement Programs (List). It is now called the Excluded Parties List System (EPLS). Corresponding changes have been made throughout this rule.

**Comments on the Proposed Rules**

We received comments on the proposed amendments to the NCR from sixteen commenters. Of those, eight are

from employees of Federal agencies; two are from state employees; and six are from professional or public organizations. We received no comments addressing the provisions related to the drug-free workplace requirements.

#### General Comments

*Plain language format.* Generally, most comments were supportive of the plain language style and format of the proposed rule, including the American Bar Association's Section on Public Contracts Law (ABA-PCL), which found the format of the proposed rule to be in a " \* \* \* user friendly style that is well suited for non-lawyers. \* \* \* without losing any of the precision in the standard regulation format."

However, one commenter expressed concern that the question and answer format will make it more difficult for Government officials familiar with standard rules to find information quickly by scanning the table of contents for short titles.

While we acknowledge that the longer sentences associated with the question and answer format will make scanning the table of contents more difficult, we believe that the benefits to the regulated community far exceed any small burden that might be placed on Government officials when using the rule. We prepared the proposed rule so that information pertaining to Government officials with various responsibilities under the rule, and information pertaining to individuals and businesses subject to the rule, are grouped together under separate subparts. We believe that this will enhance everyone's ability to locate information of particular interest to them.

One commenter noted that in some places within the proposed rule the sentences are still complex. In preparing the proposed rule, there were several provisions, such as those reciting the causes for debarment and provisions related to affiliation and imputed conduct, which we did not revise or did so insubstantially. As a result, in a few places the style of the language was not fully in line with the style used in other parts of the proposed rule. Accordingly, we revised the final rule so that those provisions are less complex and more in keeping with the plain language format used elsewhere in the rule. Section 630 of the final rule, regarding imputation of conduct, is reorganized entirely in response to this and other comments regarding its lack of clarity.

*Native American Tribes.* One commenter noted that neither the existing NCR, nor the proposed rule specifically addresses the treatment of

Native American Tribes. Issues related to the status of recognized Native American Tribes can be complex. However, tribes, like states, are expected to be responsible recipients of, and participants in, Federal nonprocurement transactions. Under this rule, Native American Tribes are accorded the same treatment as state governments with regard to the coverage and applicability. Therefore, no special distinction with respect to Native American Tribes is required.

*Debarring Official Responsibilities.* One commenter requested that the final rule specifically state that suspending and debarring officials may use the services of other officials in carrying out their duties. The numerous references to the suspending or debarring official within this rule do not imply that the suspending or debarring official must perform all those duties without the assistance of staff or others. The drafting committee acknowledges that it is common practice for suspending and debarring officials to use the services of assistants in carrying out their duties. Such administrative matters are more appropriately addressed through agency-specific internal guidance rather than in this rule.

#### Subpart A

*"Participant" and "participate".* Two commenters raised concerns that the definition of "participant" in section 980 may be confused with the term "participant" as used in section 105(a) and "participate" as used in section 135. These terms in sections 105(a) and 135 are, in fact, broader in scope than the definition in section 980. We agree that section 105(a) should be clarified to identify the entire universe of potential participants, rather than only those who may presently have the status of a current "participant" as defined in section 980. Accordingly, section 105 in the final rule is amended to state that portions of the rule apply to you if you are " \* \* \* a person who has been, is, or may be expected to be, a \* \* \* " participant or principal in a covered transaction. Similarly, section 135 of the proposed rule has been amended by substituting the concept of *involvement* for *participation* to make it clear that Federal agencies may take suspension or debarment actions against any persons who may be involved in covered transactions regardless of whether they are currently a "participant" as defined under section 980. We also made changes to the imputed conduct provisions by substituting the word "person" for "participant" in section 630 for the same reason.

#### Subpart B

*Covered transactions.* One commenter suggested that Subpart B of the final rule include specific language currently contained in the existing NCR in section 110(a)(1), which notes that a nonprocurement transaction need not involve the transfer of Federal funds. We included that language in the proposed rule in the definition of nonprocurement transaction in section 970(b). Accordingly, no further amendment to Subpart B for that purpose is necessary.

*Commodity Debarment.* One agency raised concern about the regulation's lack of guidance with regard to "commodity" suspension and debarment referenced in sections 110(c) and 945. The ISDC notes that any resolution of the issues surrounding debarment of commodities requires thorough agency-wide consultation and possible changes to Parts 8, 9, 13, 47, 51 and 52 of the FAR. Because the comment was received after the comment period had closed and just prior to publication of this final rule, there was insufficient opportunity for the ISDC to address this issue before this rulemaking. Therefore the issues surrounding commodity suspension and debarment will be addressed at a later time. However, any agency considering a commodity debarment should fully coordinate the action in accordance with section 620.

*Optional lower tier coverage.* We received two comments about the language in section 220 of the proposed rule that mandates coverage of subcontracts of \$25,000 or more at the first tier below a covered nonprocurement transaction. The language gives agencies an option to extend coverage to subcontracts at lower tiers.

The two comments recommended diametrically opposed changes to the proposed rule. One commenter suggested revising the rule to require agencies to cover subcontracts at all tiers and said that making lower tier coverage optional would be inconsistent with the rule's purpose as stated in section 110. The other suggested revising the rule to either: (1) Eliminate coverage of subcontracts entirely, relying on reciprocity with Federal procurement debarment and suspension actions; or (2) establish a common approach for all Federal agencies by limiting coverage to first tier subcontracts of \$25,000 or more (the proposed rule's mandatory coverage).

The two comments reflect the widely varying nature of Federal programs subject to this rule. Some programs,

especially programs with awards to states as pass-through entities, have substantial program performance by subcontractors at lower tiers below covered nonprocurement transactions. Other programs, including many research programs, are performed by participants in the covered nonprocurement transactions. At least some programs of the first type may be particularly vulnerable to subcontractor malfeasance; agencies in those cases need the flexibility to extend coverage to lower tier subcontracts to adequately protect the Federal Government's interest. Many programs of the second type, however, do not share that vulnerability. Revising the rule to mandate extended coverage in all cases would increase administrative burdens and costs for those programs without commensurate benefits to the taxpayer. For this reason, the final rule includes the optional lower tier coverage in section 220 as the best way to afford adequate protection for the wide universe of Federal agency programs without imposing undue administrative burdens on agencies or participants.

#### Subpart C

*Scope of action.* One commenter recommended that proposed sections 300, 400, 420 and 445 be clarified to state that persons checking the *Excluded Parties List System (EPLS)*, formerly known as the List of Parties Excluded or Disqualified from Federal Procurement and Nonprocurement Programs, should look at the cause and treatment code to see if the listed person is ineligible under a statute or executive order as opposed to suspended or debarred under this rule. The cause and treatment code will reveal a scope of disqualification which may differ from a discretionary suspension or debarment. The *EPLS* includes cause and treatment codes with each listing, as well as instructions for their use, so that the user will know the nature and scope of a person's ineligibility. This is the same system as that currently in place and has worked without problems. We believe that sections 75(b), 145(b)(1) and 515 of the proposed rule already adequately address this matter. Therefore, no additional language in this regard is added to the final rule.

*Participant verification of eligibility of lower tier participant.* One commenter recommended that we clarify that a participant planning to enter into a covered transaction with another entity at the next lower tier must verify that the entity is not excluded or disqualified. We agree. We included a new section 300 in the final rule to more

clearly state that obligation. We renumbered the remaining sections within that series to maintain the sequence of the final rule.

*Participant termination of suspended or debarred principal in existing covered transactions.* One agency commenter noted that the cautionary language contained in the final sentence of section 305(a) of the proposed rule (now section 310(a) of the final rule), be modified appropriately and included at the end of proposed section 310(a) (now section 315(a) of the final rule). The language under proposed rule section 305(a) emphasized that a participant exercise caution in deciding whether to terminate covered transactions, such as subcontracts or subgrants, with persons that were already in existence at the time the person was excluded. The commenting agency noted that a participant may face the same issue with regard to one of its own employees who may be subject to an exclusion while already acting as a principal under another covered transaction. Since an agency exclusion imposed under this rule does not apply to existing awards, termination options in such situations can be legally and practically complex. Before such an action is taken, the option must be carefully analyzed and weighed. We believe the same or similar concerns apply to decisions about employees who serve as principals. Accordingly, section 315(a) of this final rule has been amended to include similar cautionary language.

*Participant verification of its principals' eligibility.* One commenter suggested that proposed section 315 be clarified so that the reader understands that a participant need only verify that its own principals, and not those of lower tier participants, are eligible to participate in the covered transaction. Since a participant may have a transaction both above it and below it, it is possible to misconstrue this section to obligate the participant to verify the principals of those participants above and below its own organization. The language in proposed sections 315 and 325 (now sections 320 and 330 in the final rule), was intended to require participants only to verify eligibility of its own principals in its own transactions. Participants at lower tiers will verify the principals' eligibility in their transactions. Accordingly, we amended proposed section 315 (now section 320 in the final rule), to replace the phrase "any principal" in the first sentence, with the phrase "any of your principals."

*Doing business with an excluded person.* The same commenter suggested

that proposed section 320 (now section 325 in the final rule), be modified by replacing the phrase "If as a participant you knowingly do business with an excluded person" with "If you as a participant do business with a person when you knew or had reason to know that the person was excluded. \* \* \* ." The commenter believes it would make the standard consistent with that found elsewhere in the rule. However, the only place in the rule that the "reason to know" standard applies is when an agency is imputing conduct from an entity to an individual for the purpose of suspension or debarment. That standard is different from the "should have known" standard, but less than the actual knowledge standard required under proposed section 320 (now section 325). When the NCR was published as a final rule in 1988, the standard of actual knowledge was adopted to support a cause for debarment under section 305(c)(2). That final rule changed the language from what had been proposed as a "known or reasonably should have known" standard. That was done to conform the nonprocurement rule to a FAR certification proposed amendments at 52 FR 28642-46 (July 31, 1987). See also discussion at 53 FR 19167 (May 26, 1988). It was determined then, and we agree now, that actual knowledge of ineligibility should be required before an agency debar a person for doing business with an excluded or disqualified person. Therefore, the standard under this section in the final rule remains unchanged.

*Certification.* Three of the six comments we received on this subject, including one from the ABA-PCL, supported the proposed rule's elimination of a current requirement for certifications. The ABA-PCL also noted that the problems caused by certifications could be aggravated, rather than solved, if some agencies elected to continue using certifications, and instructions were not issued to preclude each agency from separately crafting certification language that differed from the language used by the others. We agree and note that this comment should be addressed by the joint efforts of 26 Federal grant-making agencies to implement the streamlining and simplification requirements of the Federal Financial Assistance Management Improvement Act of 1999 (Pub. Law 106-107). A stated goal of those interagency efforts is to eliminate certifications or assurances that are found to be unnecessary and establish common language for others.

One of the three commenters supporting continued use of

certifications said that certifications provide the best means of obtaining accurate and updated information about a person's eligibility. That commenter noted that the Office of Federal Procurement Policy retained the suspension/debarment certification when the Clinger-Cohen amendments were implemented for Federal procurement contracts.<sup>1</sup> Another comment in support of retaining certifications suggested that a certification is the best way for a participant to provide information about itself and its principals, as required by proposed rule section 330 (now section 335 in the final rule), to the Federal agency with which it is about to engage in a covered transaction.

We understand and appreciate these views. However, Federal award officials can now rely on the electronic *EPLS* which is available worldwide on the Internet, as opposed to the printed version that could be six weeks out of date by the time some awarding officials receive them. New technology has eliminated any need to require Federal agencies to obtain suspension/debarment certifications, although the rule still makes certifications available as an option for any agency with circumstances that justify their continued use. In their agency-specific preambles accompanying the **Federal Register** notice of proposed rulemaking, only a few agencies proposed to use certifications in their covered transactions. This suggests that many agencies see alternative methods as an opportunity to reduce burdens on participants without reducing compliance with the rule's requirements. Therefore, the final rule does not require Federal agencies to obtain certifications.

#### Subpart E

*Identity confirmation by date of birth.* The Federation of American Hospitals suggested that section 515 of the rule include a field for birth date entries on the *GSA List* (now called the *EPLS*). The Federation observed that birth dates are currently available in company employee databases and are used in other Federal programs to assist in matching identities. The ISDC has been studying the use of birth dates as a

potential data entry into the *EPLS* to confirm the identity of individuals. The collection, use, and dissemination of personal identifier information, such as social security numbers and birth dates, is widely practiced in private and commercial settings. However, when Federal agencies desire to do so, the issue is more complex. Certain statutes designed to protect privacy must be considered. We believe that this suggestion has merit and should be considered as an enhancement to the current system at a later date.

#### Subpart F

*Confirmation of receipt of notice by e-mail.* The ABA-PCL expressed general support for expanding the options for delivery of action notices under sections 615, 725, 820 and 975. It noted that e-mail notification, unlike notification by facsimile, is still in an evolutionary stage and may lack the level of certainty that the notice reaches the intended recipient in a timely manner. It suggested that the regulation should require that e-mails be followed up by notice via regular mail, or that the respondent provide the sender with a confirmation of e-mail receipt.

While still an evolving technology, e-mail is not inferior to traditional mail or facsimile as a means to deliver notice. Even current mail with return receipt options does not guarantee that the mail reaches the intended recipient. Many return receipts are returned to the sender as undeliverable or unclaimed. Some are signed by a person whose signature is not legible. The legal system accepts, as legally sufficient, constructive notice to bring a matter to conclusion—knowing that actual receipt by the intended recipient is not guaranteed. This has been equally true in the world of suspension and debarment. Agencies are occasionally faced with claims by respondents who have been debarred that they did not see the notice or decision, or that the facsimile notice was mis-delivered. The current NCR and FAR debarment rules assume receipt if the notice is sent to the last known address. Because the rules allow any debarred person to petition for reinstatement at any time, a person who makes a case for non receipt of notice is not deprived of an opportunity to contest an action or have its status changed. Requiring duplicate mailings or other cumbersome procedures will not significantly increase the chance of actual receipt. It would only lengthen the notification process and deprive the agencies of the ability to take prompt protective action and to conduct business efficiently.

Therefore, we did not change this in the final rule.

*Scope of action with regard to subsidiaries.* The ABA-PCL requested that proposed section 625 be amended to address uncertainty about whether an organization's suspension or debarment automatically covers wholly owned subsidiaries. The 1988 preamble to the NCR contained a detailed explanation of the treatment to be accorded all subsidiaries of a corporation with regard to the scope of a debarment or suspension. See 53 FR 19169 (May 26, 1988). The 1988 NCR, when proposed, would have included subsidiaries automatically within the scope of a suspension or debarment action taken against the parent company. As a result of comments received in 1988, the final NCR removed the term "subsidiaries" from the automatic scope of a suspension or debarment against a parent company. This was, in part, because separately incorporated entities may have different shareholder interests involved that may not be notified of the action. Also, a subsidiary corporation may receive an award in its own name. Procurement and nonprocurement award officials must rely on the *EPLS* to determine the eligibility status of a potential contractor or participant. There is nothing in the award process that will inform the award official that any potential contractor or participant is, or may be, a subsidiary of another excluded entity—even if all the subsidiary's stock is owned by the excluded entity. Apart from cases where a subsidiary's name may include part of the parent's name, there may be nothing in the *EPLS* that will cause an award official to associate the potential subsidiary contractor or participant with an excluded parent. For these reasons, the original nonprocurement suspension and debarment final rule elected to treat all subsidiaries as "affiliates." This means that all entities with a distinct legal identity, including wholly-owned subsidiaries, must be provided with a notice of action, an opportunity to contest, and written determinations. The subsidiary will appear with its own listing to assure that the Government may effectively enforce the *EPLS*. Parts of a business entity that do not enjoy a separate legal standing, such as unincorporated divisions and branches, are included within the scope of the action against the entity.

*Imputing conduct.* One commenter observed that a technical reading of section 630 of the proposed rule does not adequately describe imputing conduct from a subsidiary to its parent company or between separate corporate or other business entities other than

<sup>1</sup> Section 4301(b)(2)(iii) of the Federal Acquisition Reform Act of 1996 (Pub. L. 104-106), prohibits Federal agencies from imposing non-statutory certifications on contractors or offerors unless the Federal Acquisition Regulatory Council provides written justification to the Administrator for Federal Procurement Policy, and the Administrator approves the certification requirement in writing. This justification must include a determination that there is no less burdensome means for administering and enforcing the agency regulation.

those engaged in joint ventures. Paragraph (a) of that section refers to imputing conduct from individuals to organizations. Paragraph (b) addresses imputing conduct from organizations to individuals. Paragraph (c) addresses imputing conduct between businesses linked by some form of limited joint venture or agreement.

Many agencies have operated with the understanding that the phrase "or similar arrangement" contained in section 325(b)(3) of the current NCR allows agencies to impute conduct between a subsidiary and its parent company. The proposed rule did not alter the current language of the NCR. However, after reviewing the proposed language, and comments requesting that we redraft this section using plain language (see General comments on plain language format above), we revised section 630 of this final rule to make clear that, for the purpose of suspension or debarment, Federal agencies may impute misconduct from individuals to organizations, from organizations to individuals, from individuals to other individuals, and from organizations to organizations, where appropriate. Section 630(c) of the final rule covers imputing misconduct from any linked organizations, including those linked by a parent-subsidary relationship. This revised format and style of section 630 will help eliminate ambiguity existing under the current NCR language and make it more understandable to the general public.

We also note that this rule retains the *reason to know* standard as the appropriate standard for imputing misconduct to individuals under section 630(b). The Circuit Court of Appeals for the DC Circuit, in *Novicki v. Cook*, 946 F.2d 938 (D.C. Cir. 1991), noted that the *reason to know* standard was not defined in the FAR. Using an analysis of that standard at common law, the Court reasoned that this standard is not one of strict liability or a *should have known* standard that can be met merely because of an individual's position as president of a corporation. We agree with that interpretation. We also note, as did the Court, that the debarring official in that case had other information in the record, the nature of which could have reasonably supported imputation under the *reason to know* standard under the right circumstances. Under this rule, if a person in a position of control, influence or authority over a business activity acquires information that suggests misconduct and fails to take action to prevent the misconduct from occurring, or to mitigate the injurious consequences of the misconduct once it has occurred,

imputation under the *reason to know* standard of section 630(b) is appropriate. If a person in authority over a business activity can be shown to have deliberately avoided acquiring information about misconduct that would otherwise reasonably be expected to come to their attention in the ordinary course of performing their duties, they may be deemed to have *reason to know* of the misconduct under section 630(b).

The *reason to know* standard of section 630(b) applies to all situations where conduct is to be imputed to an individual. It applies the same standard for imputing conduct between spouses or relatives as it does between an organization and an individual or between unrelated individuals. This section does not authorize imputing conduct from one individual to another in a business activity solely upon the existence of a family or marital relationship between two individuals. Other factors, such as age, experience in the business, education, financial capacity, and organizational or operational independence should be considered along with the relationship before determining that one individual had *reason to know* of the misconduct of the other. Where no other factors are present to support imputing conduct to a related individual, that individual may still be subject to action as an affiliate, if the appropriate degree of control can be established.

Another commenter suggested that we delete from section 630 the word "scope" to describe application of the imputed conduct provisions and we use the term only with regard to the subject matter addressed in section 625. We agree with that clarification and have revised the initial sentence in section 630 accordingly.

That commenter also suggested that the final rule substitute the words "may be" for the word "is" in the final sentence of paragraphs (a) and (c) of section 630 of the proposed rule. The commenter believed such a change would clarify that acceptance of benefits derived from the conduct in question alone does not create a conclusive presumption upon which to impute conduct. We agree that the mere acceptance of benefits alone would be an insufficient basis upon which to conclude that a person had knowledge of, approved of, or acquiesced in the conduct where evidence suggests otherwise. However, agencies under the Governmentwide debarment and suspension system have always used acceptance of benefits as one indicator of knowledge, approval or acquiescence. A suspending or debarring official, or an

official conducting fact-finding in a suspension or debarment action, may weigh the fact of receipt of benefits derived from the conduct against other information available in the record to determine whether a person knew or approved of, or acquiesced in, the conduct in question. Therefore, the language in the proposed rule is accurate and remains in the final rule.

#### Subparts G and H

One Federal debarring official noted that the language of section 700(a) of the proposed rule generally requires adequate evidence to suspect that a cause for debarment exists as the first part of a two-part test to support a suspension. He observed that the adequate evidence test makes sense so long as the reader applies it to any ground under section 800 other than section 800(a). A cause for debarment under section 800(a) requires the matter to have already progressed to a conviction or judgment. While the language in the proposed rule has existed under the NCR for years without apparent confusion, we agree that either section 800(a) should be stated more generally such as "commission of criminal offense or liability for a civil matter" or section 700 should distinguish between suspensions based on causes under section 800(a) and those based on causes under sections 800(b) through (d). To keep the causes for debarment under the FAR and this rule consistent, we elected not to alter the language of section 800(a) in this final rule. But to improve the clarity with respect to suspensions for actions that have not yet progressed to a judgment or conviction, we divided proposed section 700(a) into two paragraphs (a) and (b). Section 700(a) of the final rule relates to suspensions based upon indictment, complaint or other adequate evidence to support criminal or civil matters that may ultimately fall under section 800(a). Section 700(b) of the final rule relates to adequate evidence of any other cause for debarment. Proposed section 700(b) becomes section 700(c) in this final rule.

*Fact-finding proceedings versus presenting matters in opposition.* A few commenters found proposed rule sections 740 and 835 confusing because while these sections address meetings held with the suspending or debarring official to present matters in opposition, the final sentence of each section relates to taking witness testimony and conducting cross-examination. These matters apply to fact-finding proceedings, not presentation of matters in opposition. Fact-finding proceedings are addressed in sections 745 and 840.

Therefore, we moved the language relating to witness testimony and cross-examination from sections 740 and 835 of the proposed rule to sections 745 and 840, respectively, in this final rule. In addition, in response to another agency comment, we clarified the provisions under those sections so that it is clear that fact-finding privileges of presenting witnesses, evidence and other information, or cross-examination of any witnesses, or confrontation of evidence and information presented, is equally available to respondents and the government representatives at those proceedings.

One commenter requested that we revise sections 740(b) and 845(c) to permit the suspending or debarring official to refer both disputed facts and issues of law to another official for resolution. The Governmentwide suspension and debarment provisions under the FAR and the NCR provide only for submitting material facts genuinely in dispute to another official for resolution. In some agencies, the debarring official is in the Office of General Counsel, in other cases, the General Counsel's Office may review the decision before issuance or may advise the debarring official on legal matters while the matter is pending. Each agency has the discretion to decide, and must determine for itself, how it will handle legal issues in the context of debarment or suspension actions. We believe it is in the best interest of the Government to continue that practice. Furthermore, changing the proposed language in accordance with this request would place the NCR at odds with the requirements for suspension and debarment under the FAR. Accordingly, we made no change.

One commenter suggested that the final rule clarify whether disputes over mitigating or aggravating factors would entitle a respondent to a fact-finding proceeding. The current interpretation and practice of the agencies in suspension and debarment actions under both the FAR and NCR is that a respondent is entitled to a fact-finding proceeding on material facts in genuine dispute only with regard to establishing a cause for debarment or suspension. As a practical matter, the regulation does not preclude a suspending or debarring official from using a fact-finding proceeding to address aggravating or mitigating factors in dispute if he or she finds it helpful in reaching a final decision. We left the final rule unchanged to avoid creating an appearance of differing standards for fact-finding between the NCR and the FAR.

*Time limits for decision.* One commenter suggested that we amend sections 755 and 870 to require that the suspending or debarring official make a final decision within 45 days of closing the official record, even in cases where fact-finding is conducted. Currently under the NCR, the 45-day time limit for the suspending or debarring official's decision only applies to cases in which no fact-finding is required. The proposed rule did not alter that requirement. However, since the suspending or debarring official does not close the record in any case until after he or she receives the needed information, including the fact-finder's findings, there is no reason for the suspending or debarring official to treat these cases differently. Accordingly, sections 755 and 870(a) have been revised to set a 45-day period for final decision in all cases, subject to extension for good cause.

*Petitions for reconsideration.* One commenter recommended that either section 875 or 880 incorporate a minimum six month waiting period before a debarred person may petition the debarring official for reconsideration of its period or scope of debarment. We believe there are many reasons that may justify an adjustment of the period or scope of a debarment within six months of issuance of the initial decision. For example, the debarring official may have overlooked important information in the record, or the debarred person may be able to establish present responsibility shortly after a debarment is issued. Unlike the 45-day time limit imposed upon the debarring official in rendering the initial determination, no such time limit is imposed in handling requests for reconsideration under these sections. The debarring official has significant discretion in, and control over, handling requests for reconsideration. Debarring officials can use that discretion in dealing with reconsideration requests, including frivolous requests, without minimum waiting periods. In a close case, a minimum waiting period could discourage a debarring official from imposing a debarment if a company has made an incomplete demonstration of present responsibility. In addition, it can have a harsh result on the company that addresses Government concerns promptly. Most agencies do not appear to have experienced significant problems handling reconsideration requests. Accordingly, the final rule does not include a mandatory minimum waiting period for reconsideration.

Subpart I

*Define "procurement".* One commenter recommended adding a definition of the term "procurement" in Subpart I to clarify which lower tier transactions are covered transactions. The commenter suggested defining "procurement" as the acquisition of supplies and services by contract with a commercial entity, to help distinguish lower tier procurement transactions from subawards made by research institutions to collaborating research organizations.

We understand the importance of distinguishing procurement transactions, which are covered transactions at lower tiers only if they meet the criteria under section 220 of the rule, from nonprocurement transactions that are more broadly covered under section 210. Adding a definition of the term "procurement" to this rule would be warranted if confusion was prevalent among Federal agencies or participant communities about the distinction between procurement and nonprocurement. However, we do not believe this is the case. The definition of "subgrant" and "subaward" in Federal agencies' implementation of OMB Circulars A-102 and A-110, respectively, provide an adequate basis for most agencies and participant communities to make the distinction. Specifically, a lower tier transaction is a nonprocurement transaction subject to section 210 if the transaction's purpose is to have the lower tier participant perform any part of the substantive program from the Federal agency's primary tier transaction. If it meets this criterion, the lower tier transaction is a nonprocurement transaction even if the higher tier participant calls the transaction a "contract." In contrast, the lower tier transaction is procurement subject to section 220 if its purpose is the acquisition of goods or services needed by a performer, at any tier, of the substantive program. While we do not believe that adding a definition of "procurement" is necessary in this Governmentwide rule, any Federal agency may add clarifying language in its own rule if it judges that doing so is warranted for its programs. Also, a participant may seek guidance from the awarding Federal agency if necessary.

*Conviction.* One commenter requested clarification of the term "entry" of judgment as it relates to the definition of "conviction" in section 925. Under Rule 32 of the Federal Rules of Criminal Procedure, a conviction is not final until the entry of a final order. Therefore, a criminal conviction does not exist to



support a cause for debarment under section 800(a) until the court signs the Judgment, Commitment or Probation Order (or its equivalent). The proposed rule sought to address this definition so that agencies would be free to conclude debarment proceedings where a defendant enters a guilty plea or a guilty verdict is returned but judgment is withheld, delayed, or diverted pursuant to an alternative sentence or disposition. Accordingly, the proposed rule expanded the definition to focus on the practical reality of the criminal proceeding's conclusion, rather than the technical requirement that a judgment be "entered."

While acknowledging the legitimacy of the Government's desire to finalize debarment proceedings in criminal matters concluded under special terms without the benefit of a formal entry of judgment, the ABA-PCL expressed concern that the proposed definition, as written, is so broad that it would capture dispositions that are not the functional equivalent of a finding or pronouncement of guilt. It observed that the contexts for such alternate dispositions vary from case to case, and from jurisdiction to jurisdiction, and that failure to add some boundaries to the expanded definition might discourage resolution of some cases in a way that is beneficial to the Government and the affected person. The ABA-PCL suggested that the phrase "or any other resolution" in the proposed definition be subject to some limitation reflective of an admission or finding of guilt before being treated as a ground for debarment. We believe the ABA-PCL's concern is appropriate. Accordingly, the definition of "conviction" in the final rule is revised to provide that an alternative disposition to a criminal entry of a judgment will be treated as the functional equivalent of a judgment if it occurs with the participation of the court; or in a case that involves only an agreement with the prosecutor, if it occurs in the context of an admission of guilt. In making this assessment, the debarment official should consider the entire context of the disposition or resolution, including the nature of the obligations imposed on or accepted by the person, and any official statements made regarding the alternate disposition. Where a person is suspended upon commencement of criminal proceedings which are later held in abeyance to satisfy the terms of an alternative disposition, and the alternative disposition does not qualify as the functional equivalent of a conviction, the suspension may

continue until the criminal matter is concluded under NCR section 760(a).

*Person.* The ABA-PCL also questioned whether it is practical to continue including a "unit of government" within the definition of person for the purpose of taking suspension or debarment actions. The commenter notes that units of government often have a unique status in Federal agency programs that make their suspension or debarment impractical. We acknowledge that there is often a unique relationship between the governmental organizations that might dissuade a Federal agency from choosing to debar a governmental body from Federal nonprocurement transactions. However, that is not true for all Federal transactions, or for all units of government. Federal suspending and debarment officials have sufficient discretion and options available when dealing with units of government or their employees that allow the official to consider all relevant factors. We do not believe that the Federal Government's interest in protecting its nonprocurement programs would be enhanced by eliminating all units of government from the definition of "person." Such an approach would, in effect, create an exemption from coverage and create a void of oversight and accountability for many special bodies of government that receive Federal funds and benefits. Therefore, the definition of "person" remains unchanged in the final rule.

*Principal.* The ABA-PCL also expressed concern that the definition of the term "principal" in proposed section 995(b)(3) is so broad as to potentially result in making it impossible for an individual to find employment in their given field. Proposed section 995(b)(3) includes any person who "occupies a technical or professional position capable of influencing the development or outcome of an activity that affects a covered transaction." The ABA-PCL suggests that this should be narrowed to cover an employee who "occupies a technical or professional position capable of directly and substantially influencing the development or outcome of an activity required under a covered transaction." We agree that the definition of "principal" in proposed section 995(b)(3) should be narrowed in an effort to cover critical non-supervisory/managerial positions. However, use of the term "directly" may confuse the reader to believe that the exclusion will apply only to positions that are charged as a direct cost to the covered transaction. As noted in the 1988 preamble to the NCR, the

Government rejects the direct/indirect cost analysis as being a valid basis upon which to apply the exclusion. In addition, the ABA-PCL's suggested phrase "required under a covered transaction" could be read to require that the product or service must be specifically mentioned in the award, agreement or transaction. It is the intent of this rule to cover any important service or product that is required to perform the award, whether or not it is directly specified in it. Accordingly, we altered the definition of "principal" in section 995(b)(3) of the final rule to apply to any person who "\* \* \* Occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction." (Emphasis added.)

*Fundamental concepts that still apply under this rule.* In addition to addressing the comments raised during the comment period in this rulemaking, we identified important concepts that were addressed in the preamble to the original NCR, or that evolved since its publication, that still apply under this final rule. They are being restated here to preserve them and to provide useful guidance on the interpretation and application of this rule.

*Protection not punishment.* Suspension and debarment are administrative actions taken to protect the Government's business interests. It should not be used to punish persons for past misconduct or to coerce a respondent to resolve other criminal, civil or administrative matters. While suspension and debarment will frequently occur as a result of, or at the same time as other proceedings, and may even be highly dependent upon the resolution of those other proceedings, suspension and debarment are not alternatives for using traditional means of resolving matters in the appropriate forum. Notwithstanding this precaution, the suspending and debarment official may resolve any matter otherwise appropriate for suspension or debarment under the terms of a comprehensive or global agreement that addresses criminal, civil, enforcement, audit, contract dispute, or other proceeding collateral to it when in the best interest of the Government to do so.

It is important for suspending and debarment officials to use balance and sound business judgment in ascertaining whether to use suspension and debarment to address a matter. Where other administrative remedies are available, such as disallowing costs or recovery of sums by set-off, filing of civil claims, or various contractual or

audit options exist, the suspending or debaring official should consider whether those remedies may be more appropriate under the circumstances, or whether to await the outcome of those procedures before using the suspension or debarment option.

*Covered transactions and principals.* While much of the NCR is drafted in terms of an "award" being made by the Government or a participant, it is important to note that the concept of covered transactions is much broader than relationships or benefits that are conferred through traditional vehicles such as grants, cooperative agreements, direct loans, or contracts and subcontracts under them. Loan guarantees, technical assistance, approvals, some licenses and other privileges or events, not necessarily involving an award of money, are covered transactions. Where money is part of the equation, the direct or indirect nature of a participant's cost does not govern whether the transaction is a "covered transaction." This is because many critical services, such as professional fees for legal, accounting, engineering and other services may be charged as an indirect cost to the nonprocurement transaction, but the services of that individual or entity are still critical to performance. For example, an accountant or accounting firm that is debarred for misconduct may be ineligible to perform audit services for a grantee under a covered transaction even though the accounting services are to be charged by the participant as an indirect cost to its grant.

Even where a participant provides services under a covered transaction that is being serviced by a volunteer who has been suspended or debarred, the prohibition on the participant's use of that volunteer in the capacity of a principal will apply to the covered transaction.

Where the NCR is otherwise silent, each agency may describe in its own rule those special transactions it regards as "covered transactions," and the services that when performed on behalf of a participant are those of a "principal." Failure to do so may limit the agency's ability to apply the person's exclusion to or within the transaction.

*Jurisdiction to debar versus the effect of debarment.* It is important to separate the questions: "Who may an agency suspend or debar?" and "What is the excluded person suspended or debarred from?" The definition of "person" in section 985 and the authority stated under section 135 of this rule answer the first question. An agency may

suspend or debar *any* individual or entity that may reasonably be expected to be involved in a covered transaction. The authority to take action against any person that may be " \* \* \* reasonably expected to be involved in a covered transaction," is not intended to operate as a limitation on an agency's ability to protect itself. On the contrary, this rule gives agencies broad authority to take action to protect public programs against any individual or entity that presents a rational business risk to the Government's nonprocurement programs. The answer to the second question is that the suspended or debarred person is excluded from being a principal or participant in any nonprocurement covered transaction that is not exempt from coverage under the NCR (see section 215). Federal agencies can freely enter into exempt transactions without checking the *EPLS*, collecting certifications or assurances, or conditioning the award upon non-debarment or suspension. Transactions that are exempt from coverage include entitlements such as certain social security, disability, or welfare benefits, etc. Exempt transactions also include benefits a person receives that are incidental in nature, such as benefits flowing to sellers of a primary residence when the sale is financed by an FHA loan, or benefits that occur as a result of normal government operations, such as insurance on deposits in Federal banks, use of the postal services, and public use of national parks and recreation areas. It is important for agencies to distinguish when a beneficiary of a transaction is an intended beneficiary (not necessarily the principal or primary beneficiary) and when a person is an incidental beneficiary.

An agency is not precluded from suspending or debaring any person just because that person happens to be a participant in one of these non-covered transactions. Indeed, an agency may even suspend or debar that person for misconduct that occurs during performance of one of those exempt or non-covered transactions, *e.g.*, engaging in mail fraud, or violating an environmental permit.

*Serious violations of health, safety and environmental laws and regulations.* Although the causes for debarment do not specifically identify by name various violations that threaten the health and safety of workers or threaten the environment, serious violations of these laws and regulations have always been subject to suspension or debarment under several provisions, including section 305(a)(4) and/or (d) of the NCR (now section 800(a)(4) and/or

(d)). Any violation of law, regulation or agreement; or any conduct, failure to perform or other event that seriously threatens a Federal nonprocurement or procurement activity, is subject to potential suspension and debarment under this rule. On December 27, 2001, the Federal Acquisition Regulatory Council issued a final rule (see 66 FR 66986-66990), revoking the December 20, 2000 amendments to the FAR that included, among other things, a contractor's health, safety and environmental record in the contract officer's pre-award responsibility review. In so doing, the FAR Council acknowledged that the Governmentwide suspension and debarment system is the most effective and appropriate forum to address serious concerns about a contractor's or participant's responsibility for violations of this nature.

*Transactions in foreign countries.* The prohibitions against using suspended or debarred persons in covered transactions applies equally to transactions entered into by Federal agencies or participants in foreign countries. So long as the transaction is one involving U.S. Executive branch resources or benefits, the protection afforded by the exclusion applies no matter where the covered transaction occurs. The state or country of incorporation, registration, or principal place of business of an excluded entity is irrelevant to its coverage. The prohibition would not apply, however, if the transaction is exempt because it is an award to a foreign government entity as described in section 215(a).

*Lead agency.* Lead agency is not a jurisdictional concept. It is an administrative procedure employed by the Federal agencies to bring efficiency, focus and coordination of resources to bear on any matter which may touch the interests and expertise of several agencies. A respondent has no right to have any particular agency act as lead agency in a suspension or debarment action. While section 620 of this rule allows for agencies to coordinate their interests and select a lead agency, failure to do so does not invalidate the actions of the agency that handles the matter. The ISDC, under its authority in sections 4 and 5 of E.O. 12549, uses flexible and informal procedures to coordinate actions and assist in selecting a lead agency.

*Submission of applications, bids and proposals versus award.* Questions often arise as to an excluded person's eligibility to submit a bid, application or proposal for or under a covered transaction where the bidder, applicant or offeror expects its suspension or

debarment to end prior to the award date. The NCR, like the FAR, precludes awards to excluded persons. Since eligibility for award is determined at that time, in most procurement and nonprocurement transactions, agencies often accept bids, applications or proposals subject to an eligibility determination on the date of award. However, this rule does not require that agencies do so. Each agency must determine for itself whether to accept or consider bids, applications or offers submitted by an excluded person when there is a possibility that an exclusion may end or be removed before the date of award. There may be little danger in considering these submissions where it is clear from the EPLS that a debarment will end on a date certain. However, where a suspension is in place, or the debarred person is anticipating a favorable ruling on a petition for early reinstatement prior to award, caution is advised. In any event, it is the prerogative of the awarding agency to decide whether and under what conditions it will accept or consider bids, applications or proposals under these circumstances.

*What constitutes a new "award?"* Once a person is excluded under this rule, it is important to note that the exclusion applies to awards or transactions entered into on or after the date of the exclusion. Because of the varying types of agreements and contracts that may exist, it is not always easy to determine whether a transaction is part of an existing award or if it is a new award subject to the exclusion. As a rule of thumb, if the transaction in question requires the approval of the party awarding the transaction or conferring the benefit, the transaction is a new award, and subject to the prohibition on using excluded persons. If the transaction is part of a larger agreement and the legal obligation and authority to provide goods or services are already in place, the transaction may be regarded as a preexisting transaction. No-cost time extensions under existing awards can be treated as part of the existing award at the option of the agency granting it.

*Evidence of misconduct versus mere suspicion.* Suspension or debarment may not be imposed upon mere suspicion of misconduct. While the procedures under this rule do not require suspending or debarring officials to follow formal rules of evidence in making decisions, they require that certain standards of proof of misconduct be met in order to suspend or debar a person. These standards (adequate evidence for suspension and preponderance of the evidence for

debarment) require that the suspending or debarring official base his or her decision on an appropriate quality of information, according to the circumstances at hand, so as to preclude suspending or debarring a person on the basis of empty speculation or on mere suspicion of wrongdoing.

*Suspension, adequate evidence and immediate need.* The standard for suspension is a two part test. First, the suspending official must have *adequate evidence* that a cause for debarment exists. Second, the suspending official must conclude that *immediate action is necessary* to protect Federal interests. In a criminal case, the adequate evidence test is met by the presence of an indictment or information. Suspensions based upon evidence other than an indictment are common during the course of an investigation when the information available to the suspending official is sufficient to support a reasonable belief that an act or omission has occurred. In some cases, evidence may be made available to the suspending official that is sensitive to an ongoing investigation. The suspending official may have to review the evidence *in camera* and be unable to disclose the evidence to a suspended respondent. In such cases, it is important that the suspension notice contain enough information so that the respondent can make a meaningful presentation of matters in opposition, since a fact-finding proceeding is likely to be denied to resolve material facts in dispute. In any event, the record must contain the evidence that was considered in issuing the suspension.

Even in cases where an indictment is present, the suspending official must determine that immediate action is necessary to protect Federal interests before imposing a suspension. As noted in the preamble to the proposed changes to this rule, the determination of "immediate need" does not require that the suspending official issue a separate finding. As stated by the court in *Coleman American Moving Services, Inc. v. Weinberger*, 716 F. Supp. 1405 (M.D. Ala. 1989), immediate need is a conclusion that a suspending official may draw from inferences made from the facts and circumstances present. In cases of serious crimes such as fraud against the Government, or criminal activity that threatens the health and safety of individuals, immediate need may be obvious. In other cases, however, a suspending official's determination of immediate need may not be as clear. It is, therefore, important that the suspending official's record be sufficient for a reviewing court to ascertain why immediate action was

deemed prudent. In this regard the term "immediate" does not connote that future misconduct, loss, or injury is probable. A suspending official may conclude that immediate action is needed based on what a reasonably prudent business person would be expected to do given the risk potential under the circumstances.

It is also important to note that the standard of evidence for issuing a suspension does not change merely because the respondent contests the action and is able to marshal some information that conflicts with information the Government has provided to the suspending official. In cases where an investigation is still underway, particularly when fact-finding is not to be conducted at the request of the prosecuting officials, the suspending official must be careful not to apply the debarment standard of *preponderance of the evidence* when deciding whether to continue the suspension. To do so would place the Government at a disadvantage and bring the suspension decision out of context with its goal of temporary protection pending the outcome of an investigation or legal proceedings. Unless the respondent is able to nullify the evidentiary basis for the suspension without regard to resolving disputed material facts, the Government's evidence may remain adequate to support the action. However, a respondent may still attempt to have a suspension removed by addressing the Government's immediate interests that are at risk. If the respondent can demonstrate that the respondent has taken protective action to eliminate, or reduce to an acceptable level, the Government's risk pending completion of the investigation or legal proceedings, the suspending official may terminate a suspension even though there is adequate evidence to support a suspension.

#### *Impact Analysis—Executive Order 12866*

The participating agencies have examined the economic implications of this final rule as required by Executive Order 12866, "Regulatory Planning and Review." Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions,

including: Having an annual effect on the economy of \$100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues.

Although the participating agencies have determined that this final rule does not meet the economic significance threshold of \$100 million effect on the economy in any one year under Section 3(f)(1), the Office of Management and Budget has reviewed this final rule as a significant regulatory action under the Executive Order.

### B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires that, for each rule with a "significant economic impact on a substantial number of small entities," an analysis must be prepared describing the rule's impact on small entities and identifying any significant alternatives to the rule that would minimize the economic impact on small entities.

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

### C. Unfunded Mandates Act of 1995

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

### D. Paperwork Reduction Act

The participating agencies certify that this rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

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

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, (5 U.S.C. 804). This rule will not: Result in an annual

effect on the economy of \$100 million or more; result in an increase in cost or prices; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

### F. Executive Order 13132: Federalism

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the participating agencies have determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

### Text of the Final Common Rules

The text of the final common rules appear below:

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

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

Sec.

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

#### Subpart A—General

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

#### Subpart B—Covered Transactions

- \_\_ .200 What is a covered transaction?

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

#### Subpart C—Responsibilities of Participants Regarding Transactions

##### Doing Business With Other Persons

- \_\_ .300 What must I do before I enter into a covered transaction with another person at the next lower tier?
- \_\_ .305 May I enter into a covered transaction with an excluded or disqualified person?
- \_\_ .310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
- \_\_ .315 May I use the services of an excluded person as a principal under a covered transaction?
- \_\_ .320 Must I verify that principals of my covered transactions are eligible to participate?
- \_\_ .325 What happens if I do business with an excluded person in a covered transaction?
- \_\_ .330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

##### Disclosing Information—Primary Tier Participants

- \_\_ .335 What information must I provide before entering into a covered transaction with the [Agency noun]?
- \_\_ .340 If I disclose unfavorable information required under § \_\_.335, will I be prevented from participating in the transaction?
- \_\_ .345 What happens if I fail to disclose the information required under § \_\_.335?
- \_\_ .350 What must I do if I learn of the information required under § \_\_.335 after entering into a covered transaction with the [Agency noun]?

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- \_\_ .720 How may I contest a suspension?
- \_\_ .725 How much time do I have to contest a suspension?
- \_\_ .730 What information must I provide to the suspending official if I contest a suspension?
- \_\_ .735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- \_\_ .740 Are suspension proceedings formal?
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- \_\_ .750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
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- \_\_ .760 How long may my suspension last?

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- \_\_ .800 What are the causes for debarment?
- \_\_ .805 What notice does the debarring official give me if I am proposed for debarment?
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- \_\_ .820 How much time do I have to contest a proposed debarment?
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- \_\_ .830 Under what conditions do I get an additional opportunity to challenge the facts on which a proposed debarment is based?
- \_\_ .835 Are debarment proceedings formal?
- \_\_ .840 How is fact-finding conducted?
- \_\_ .845 What does the debarring official consider in deciding whether to debar me?
- \_\_ .850 What is the standard of proof in a debarment action?
- \_\_ .855 Who has the burden of proof in a debarment action?

- \_\_ .860 What factors may influence the debarring official's decision?
- \_\_ .865 How long may my debarment last?
- \_\_ .870 When do I know if the debarring official debars me?
- \_\_ .875 May I ask the debarring official to reconsider a decision to debar me?
- \_\_ .880 What factors may influence the debarring official during reconsideration?
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- \_\_ .900 Adequate evidence.
- \_\_ .905 Affiliate.
- \_\_ .910 Agency.
- \_\_ .915 Agent or representative.
- \_\_ .920 Civil judgment.
- \_\_ .925 Conviction.
- \_\_ .930 Debarment.
- \_\_ .935 Debarring official.
- \_\_ .940 Disqualified.
- \_\_ .945 Excluded or exclusion.
- \_\_ .950 Excluded Parties List System.
- \_\_ .955 Indictment.
- \_\_ .960 Ineligible or ineligibility.
- \_\_ .965 Legal proceedings.
- \_\_ .970 Nonprocurement transaction.
- \_\_ .975 Notice.
- \_\_ .980 Participant.
- \_\_ .985 Person.
- \_\_ .990 Preponderance of the evidence.
- \_\_ .995 Principal.
- \_\_ .1000 Respondent.
- \_\_ .1005 State.
- \_\_ .1010 Suspending official.
- \_\_ .1015 Suspension.
- \_\_ .1020 Voluntary exclusion or voluntarily excluded.

**Subpart J—[Reserved]**

**Appendix to Part—Covered Transactions**

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

**§ .25 How is this part organized?**

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

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

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

If you are . . .	See sub-part(s) . . .
(1) a participant or principal in a nonprocurement transaction.	A, B, C, and I.
(2) a respondent in a suspension action.	A, B, F, G and I.
(3) a respondent in a debarment action.	A, B, F, H and I.
(4) a suspending official . . . . .	A, B, D, E, F, G and I.
(5) a debarring official . . . . .	A, B, D, E, F, H and I.
(6) a (n) [Agency adjective] official authorized to enter into a covered transaction.	A, B, D, E and I.
(7) Reserved . . . . .	J.

**§ .50 How is this part written?**

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

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

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

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

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

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

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

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

**Subpart A—General**

**§ .100 What does this part do?**

This part adopts a governmentwide system of debarment and suspension for [Agency adjective] nonprocurement activities. It also provides for reciprocal exclusion of persons who have been excluded under the Federal Acquisition Regulation, and provides for the consolidated listing of all persons who are excluded, or disqualified by statute, executive order, or other legal authority. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” (3 CFR 1986 Comp., p. 189), Executive Order 12689, “Debarment and Suspension” (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Public Law 103–355, 108 Stat. 3327).

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

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

(a) Person who has been, is, or may reasonably be expected to be, a participant or principal in a covered transaction;

(b) Respondent (a person against whom the [Agency noun] has initiated a debarment or suspension action);

(c) [Agency adjective] debarring or suspending official; or

(d) [Agency adjective] official who is authorized to enter into covered transactions with non-Federal parties.

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

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

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

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

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

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

(a) Be a participant in a(n) [Agency adjective] transaction that is a covered transaction under subpart B of this part;

(b) Be a participant in a transaction of any other Federal agency that is a

covered transaction under that agency’s regulation for debarment and suspension; or

(c) Act as a principal of a person participating in one of those covered transactions.

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

(a) The [Agency head or designee] may grant an exception permitting an excluded person to participate in a particular covered transaction. If the [Agency head or designee] grants an exception, the exception must be in writing and state the reason(s) for deviating from the governmentwide policy in Executive Order 12549.

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

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

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

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

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

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

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

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

Check the *Excluded Parties List System (EPLS)* to determine whether a person is excluded. The General Services Administration (GSA) maintains the *EPLS* and makes it available, as detailed in subpart E of this part. When a Federal agency takes an action to exclude a person under the

nonprocurement or procurement debarment and suspension system, the agency enters the information about the excluded person into the *EPLS*.

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

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

(a) Addresses disqualified persons only to—

(1) Provide for their inclusion in the *EPLS*; and

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

(b) Does not specify the—

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

(2) Entities to which the disqualification applies; or

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

**Subpart B—Covered Transactions**

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

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

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

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

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

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

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

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

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

(1) The person who entered into the transaction with you allows you to continue your involvement in a transaction that predates your exclusion, as permitted under § .310 or § .415; or

(2) A(n) [Agency adjective] official obtains an exception from the [Agency head or designee] to allow you to be involved in the transaction, as permitted under § .120.

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

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

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

The following types of nonprocurement transactions are not covered transactions:

(a) A direct award to—

(1) A foreign government or foreign governmental entity;

(2) A public international organization;

(3) An entity owned (in whole or in part) or controlled by a foreign government; or

(4) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.

(b) A benefit to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted). For example, if a person receives social security benefits under the Supplemental Security Income provisions of the Social Security Act, 42 U.S.C. 1301 et seq., those benefits are not covered transactions and, therefore, are not affected if the person is excluded.

(c) Federal employment.

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

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

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

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

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

(a) Covered transactions under this part—

(1) Do not include any procurement contracts awarded directly by a Federal agency; but

(2) Do include some procurement contracts awarded by non-Federal participants in nonprocurement covered transactions (see appendix to this part).

(b) Specifically, a contract for goods or services is a covered transaction if any of the following applies:

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

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

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

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

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

**Subpart C—Responsibilities of Participants Regarding Transactions**

**Doing Business With Other Persons**

**§ .300 What must I do before I enter into a covered transaction with another person at the next lower tier?**

When you enter into a covered transaction with another person at the next lower tier, you must verify that the person with whom you intend to do business is not excluded or disqualified. You do this by:

(a) Checking the *EPLS*; or

(b) Collecting a certification from that person if allowed by this rule; or

(c) Adding a clause or condition to the covered transaction with that person.

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

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

(b) You may not enter into any transaction with a person who is disqualified from that transaction,



unless you have obtained an exception under the disqualifying statute, Executive order, or regulation.

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

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

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, unless the [Agency noun] grants an exception under § .120.

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

(a) You as a participant may continue to use the services of an excluded person as a principal under a covered transaction if you were using the services of that person in the transaction before the person was excluded. However, you are not required to continue using that person's services as a principal. You should make a decision about whether to discontinue that person's services only after a thorough review to ensure that the action is proper and appropriate.

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

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

Yes, you as a participant are responsible for determining whether any of your principals of your covered transactions is excluded or disqualified from participating in the transaction. You may decide the method and frequency by which you do so. You may, but you are not required to, check the *EPLS*.

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

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

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

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

(a) Comply with this subpart as a condition of participation in the transaction. You may do so using any method(s), unless § .440 requires you to use specific methods.

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

**Disclosing Information—Primary Tier Participants**

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

Before you enter into a covered transaction at the primary tier, you as the participant must notify the [Agency adjective] office that is entering into the transaction with you, if you know that you or any of the principals for that covered transaction:

(a) Are presently excluded or disqualified;

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

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

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

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

As a primary tier participant, your disclosure of unfavorable information about yourself or a principal under § .335 will not necessarily cause us to deny your participation in the covered transaction. We will consider the information when we determine whether to enter into the covered transaction. We also will consider any additional information or explanation that you elect to submit with the disclosed information.

**§ .345 What happens if I fail to disclose information required under § .335?**

If we later determine that you failed to disclose information under § .335

that you knew at the time you entered into the covered transaction, we may—

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

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

**§ .350 What must I do if I learn of information required under § .335 after entering into a covered transaction with the [Agency noun]?**

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

(a) You failed to disclose information earlier, as required by § .335; or

(b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § .335.

**Disclosing Information—Lower Tier Participants**

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

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

**§ .360 What happens if I fail to disclose the information required under § .355?**

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

**§ .365 What must I do if I learn of information required under § .355 after entering into a covered transaction with a higher tier participant?**

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

(a) You failed to disclose information earlier, as required by § .355; or

(b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § .355.



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

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

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

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

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

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

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

After entering into a covered transaction with a participant, you as an agency official may not approve a participant's use of an excluded person as a principal under that transaction, unless you obtain an exception under § .120.

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

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

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

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

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

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

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

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

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

(a) Enter into a primary tier covered transaction;

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

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

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

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

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

(a) You as an agency official must check the *EPLS* when you take any action listed in § .425.

(b) You must review information that a participant gives you, as required by § .335, about its status or the status of the principals of a transaction.

#### § .435 What must I require of a primary tier participant?

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

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

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

#### § .440 [Reserved]

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

If a participant knowingly does business with an excluded or disqualified person, you as an agency official may refer the matter for suspension and debarment consideration. You may also disallow costs, annul or terminate the transaction, issue a stop work order, or take any other appropriate remedy.

#### § .450 What action may I take if a primary tier participant fails to disclose the information required under § .335?

If you as an agency official determine that a participant failed to disclose information, as required by § .335, at

the time it entered into a covered transaction with you, you may—

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

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

#### § .455 What may I do if a lower tier participant fails to disclose the information required under § .355 to the next higher tier?

If you as an agency official determine that a lower tier participant failed to disclose information, as required by § .355, at the time it entered into a covered transaction with a participant at the next higher tier, you may pursue any remedies available to you, including the initiation of a suspension or debarment action.

### Subpart E—Excluded Parties List System

#### § .500 What is the purpose of the Excluded Parties List System (EPLS)?

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

#### § .505 Who uses the EPLS?

(a) Federal agency officials use the *EPLS* to determine whether to enter into a transaction with a person, as required under § .430.

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

(1) Principals of their transactions are excluded or disqualified, as required under § .320; or

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

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

#### § .510 Who maintains the EPLS?

In accordance with the OMB guidelines, the General Services Administration (GSA) maintains the *EPLS*. When a Federal agency takes an action to exclude a person under the nonprocurement or procurement debarment and suspension system, the agency enters the information about the excluded person into the *EPLS*.

#### § .515 What specific information is in the EPLS?

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

(1) The full name (where available) and address of each excluded or disqualified person, in alphabetical

order, with cross references if more than one name is involved in a single action;

- (2) The type of action;
- (3) The cause for the action;
- (4) The scope of the action;
- (5) Any termination date for the action;

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

(7) The Dun and Bradstreet Number (DUNS), or other similar code approved by the GSA, of the excluded or disqualified person, if available.

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

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

**§ .520 Who places the information into the *EPLS*?**

Federal officials who take actions to exclude persons under this part or officials who are responsible for identifying disqualified persons must

enter the following information about those persons into the *EPLS*:

- (a) Information required by § .515(a);
- (b) The Taxpayer Identification Number (TIN) of the excluded or disqualified person, including the social security number (SSN) for an individual, if the number is available and may be disclosed under law;
- (c) Information about an excluded or disqualified person, generally within five working days, after—

- (1) Taking an exclusion action;
- (2) Modifying or rescinding an exclusion action;
- (3) Finding that a person is disqualified; or
- (4) Finding that there has been a change in the status of a person who is listed as disqualified.

**§ .525 Whom do I ask if I have questions about a person in the *EPLS*?**

If you have questions about a person in the *EPLS*, ask the point of contact for the Federal agency that placed the person's name into the *EPLS*. You may find the agency point of contact from the *EPLS*.

**§ .530 Where can I find the *EPLS*?**

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

(b) As of November 26, 2003, you may also subscribe to a printed version. However, we anticipate discontinuing the printed version. Until it is discontinued, you may obtain the printed version by purchasing a yearly subscription from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by calling the Government Printing Office Inquiry and Order Desk at (202) 783-3238.

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

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

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

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

Suspension differs from debarment in that—

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

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

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

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

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

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

(a) The suspending or debaring official sends a written notice to the last

known street address, facsimile number, or e-mail address of—

- (1) You or your identified counsel; or
  - (2) Your agent for service of process, or any of your partners, officers, directors, owners, or joint venturers.
- (b) The notice is effective if sent to any of these persons.

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

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

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

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

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

- (1) By its terms to one or more specifically identified individuals, divisions, or other organizational elements; or
  - (2) To specific types of transactions.
- (b) Any affiliate of a participant may be included in a suspension or

debarment action if the suspending or debarment official—

- (1) Officially names the affiliate in the notice; and
- (2) Gives the affiliate an opportunity to contest the action.

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

For purposes of actions taken under this rule, we may impute conduct as follows:

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

(b) *Conduct imputed from an organization to an individual, or between individuals.* We may impute the fraudulent, criminal, or other improper conduct of any organization to an individual, or from one individual to another individual, if the individual to whom the improper conduct is imputed either participated in, had knowledge of, or reason to know of the improper conduct.

(c) *Conduct imputed from one organization to another organization.* We may impute the fraudulent, criminal, or other improper conduct of one organization to another organization when the improper conduct occurred in connection with a partnership, joint venture, joint application, association or similar arrangement, or when the organization to whom the improper conduct is imputed has the power to direct, manage, control or influence the activities of the organization responsible for the improper conduct. Acceptance of the benefits derived from the conduct is evidence of knowledge, approval or acquiescence.

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

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

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

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

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

(a) Yes, we enter information regarding a voluntary exclusion into the *EPLS*.

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

**Subpart G—Suspension**

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

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

(a) There exists an indictment for, or other adequate evidence to suspect, an offense listed under § .800(a), or

(b) There exists adequate evidence to suspect any other cause for debarment listed under § .800(b) through (d); and

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

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

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

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

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

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

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

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

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

- (a) That you have been suspended;
- (b) That your suspension is based

on—

- (1) An indictment;
- (2) A conviction;
- (3) Other adequate evidence that you have committed irregularities which seriously reflect on the propriety of further Federal Government dealings with you; or
- (4) Conduct of another person that has been imputed to you, or your affiliation with a suspended or debarred person;

(c) Of any other irregularities in terms sufficient to put you on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) upon which we relied under § .700 for imposing suspension;

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

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

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

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

If you as a respondent wish to contest a suspension, you or your representative must provide the suspending official with information in opposition to the suspension. You may do this orally or in writing, but any information provided orally that you consider important must also be submitted in writing for the official record.

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

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

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

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

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

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

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

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

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

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

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

(4) All of your affiliates.

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) You as a respondent or your representative must submit any documentary evidence you want the suspending official to consider.

**§ .745 How is fact-finding conducted?**

(a) If fact-finding is conducted—

(1) You may present witnesses and other evidence, and confront any witness presented; and

(2) The fact-finder must prepare written findings of fact for the record.

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

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

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

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

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

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

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

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

The suspending official must make a written decision whether to continue, modify, or terminate your suspension within 45 days of closing the official record. The official record closes upon the suspending official's receipt of final submissions, information and findings of fact, if any. The suspending official may extend that period for good cause.

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

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

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

(c) The suspending official must notify the appropriate officials under paragraph (b) of this section of an impending termination of a suspension at least 30 days before the 12 month period expires to allow the officials an opportunity to request an extension.

**Subpart H—Debarment**

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

We may debar a person for—  
(a) Conviction of or civil judgment for—

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

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

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

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

(b) Violation of the terms of a public agreement or transaction so serious as to

affect the integrity of an agency program, such as—

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

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

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

(c) Any of the following causes:

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

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

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

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

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

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

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

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

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

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

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

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

(e) Of the governmentwide effect of a debarment from procurement and

nonprocurement programs and activities.

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

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

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

If you as a respondent wish to contest a proposed debarment, you or your representative must provide the debarring official with information in opposition to the proposed debarment. You may do this orally or in writing, but any information provided orally that you consider important must also be submitted in writing for the official record.

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

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

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

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

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

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

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

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

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

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

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

(4) All of your affiliates.

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

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

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

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

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

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

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

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

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

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

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

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

(b) You or your representative must submit any documentary evidence you want the debarring official to consider.

**§ .840 How is fact-finding conducted?**

(a) If fact-finding is conducted—

(1) You may present witnesses and other evidence, and confront any witness presented; and

(2) The fact-finder must prepare written findings of fact for the record.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**§ \_\_.860 What factors may influence the debarring official's decision?**

This section lists the mitigating and aggravating factors that the debarring official may consider in determining whether to debar you and the length of your debarment period. The debarring official may consider other factors if appropriate in light of the circumstances of a particular case. The existence or

nonexistence of any factor, such as one of those set forth in this section, is not necessarily determinative of your present responsibility. In making a debarment decision, the debarring official may consider the following factors:

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

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

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

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

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

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

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

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

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

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

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

(l) Whether your organization took appropriate corrective action or remedial measures, such as establishing

ethics training and implementing programs to prevent recurrence.

(m) Whether your principals tolerated the offense.

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

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

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

(q) Whether you have taken appropriate disciplinary action against the individuals responsible for the activity which constitutes the cause for debarment.

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

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

**§ \_\_.865 How long may my debarment last?**

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

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

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

**§ \_\_.870 When do I know if the debarring official debars me?**

(a) The debarring official must make a written decision whether to debar within 45 days of closing the official record. The official record closes upon the debarring official's receipt of final submissions, information and findings of fact, if any. The debarring official may extend that period for good cause.

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

(1) Not to debar you; or  
(2) To debar you. In this event, the notice:

(i) Refers to the Notice of Proposed Debarment;

(ii) Specifies the reasons for your debarment;

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

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

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

Yes, as a debarred person you may ask the debarring official to reconsider the debarment decision or to reduce the time period or scope of the debarment. However, you must put your request in writing and support it with documentation.

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

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

- (a) Newly discovered material evidence;
- (b) A reversal of the conviction or civil judgment upon which your debarment was based;
- (c) A bona fide change in ownership or management;
- (d) Elimination of other causes for which the debarment was imposed; or
- (e) Other reasons the debarring official finds appropriate.

**§ .885 May the debarring official extend a debarment?**

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

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

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

**Subpart I—Definitions**

**§ .900 Adequate evidence.**

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

**§ .905 Affiliate.**

Persons are *affiliates* of each other if, directly or indirectly, either one

controls or has the power to control the other or a third person controls or has the power to control both. The ways we use to determine control include, but are not limited to—

- (a) Interlocking management or ownership;
- (b) Identity of interests among family members;
- (c) Shared facilities and equipment;
- (d) Common use of employees; or
- (e) A business entity which has been organized following the exclusion of a person which has the same or similar management, ownership, or principal employees as the excluded person.

**§ .910 Agency.**

*Agency* means any United States executive department, military department, defense agency, or any other agency of the executive branch. Other agencies of the Federal government are not considered “agencies” for the purposes of this part unless they issue regulations adopting the governmentwide Debarment and Suspension system under Executive orders 12549 and 12689.

**§ .915 Agent or representative.**

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

**§ .920 Civil judgment.**

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

**§ .925 Conviction.**

*Conviction* means—

- (a) A judgment or any other determination of guilt of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea, including a plea of *nolo contendere*; or
- (b) Any other resolution that is the functional equivalent of a judgment, including probation before judgment and deferred prosecution. A disposition without the participation of the court is the functional equivalent of a judgment only if it includes an admission of guilt.

(b) Any other resolution that is the functional equivalent of a judgment, including probation before judgment and deferred prosecution. A disposition without the participation of the court is the functional equivalent of a judgment only if it includes an admission of guilt.

**§ .930 Debarment.**

*Debarment* means an action taken by a debarring official under subpart H of this part to exclude a person from participating in covered transactions and transactions covered under the

Federal Acquisition Regulation (48 CFR chapter 1). A person so excluded is debarred.

**§ .935 Debarring official.**

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

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

**§ .940 Disqualified.**

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

- (a) The Davis-Bacon Act (40 U.S.C. 276(a));
- (b) The equal employment opportunity acts and Executive orders; or
- (c) The Clean Air Act (42 U.S.C. 7606), Clean Water Act (33 U.S.C. 1368) and Executive Order 11738 (3 CFR, 1973 Comp., p. 799).

**§ .945 Excluded or exclusion.**

*Excluded or exclusion* means—

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

**§ .950 Excluded Parties List System**

*Excluded Parties List System (EPLS)* means the list maintained and disseminated by the General Services Administration (GSA) containing the names and other information about persons who are ineligible. The *EPLS* system includes the printed version entitled, “List of Parties Excluded or Disqualified from Federal Procurement and Nonprocurement Programs,” so long as published.

**§ .955 Indictment.**

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

**§ .960 Ineligible or ineligibility.**

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

**§ .965 Legal proceedings.**

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

**§ .970 Nonprocurement transaction.**

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

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

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

**§ .975 Notice.**

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

**§ .980 Participant.**

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

**§ .985 Person.**

*Person* means any individual, corporation, partnership, association,

unit of government, or legal entity, however organized.

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

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

**§ .995 Principal.**

*Principal* means—

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

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

- (1) Is in a position to handle Federal funds;
- (2) Is in a position to influence or control the use of those funds; or,
- (3) Occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction.

**§ .1000 Respondent.**

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

**§ .1005 State.**

- (a) *State* means—
- (1) Any of the states of the United States;
  - (2) The District of Columbia;
  - (3) The Commonwealth of Puerto Rico;
  - (4) Any territory or possession of the United States; or
  - (5) Any agency or instrumentality of a state.

(b) For purposes of this part, *State* does not include institutions of higher education, hospitals, or units of local government.

**§ .1010 Suspending official.**

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

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

**§ .1015 Suspension.**

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

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

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

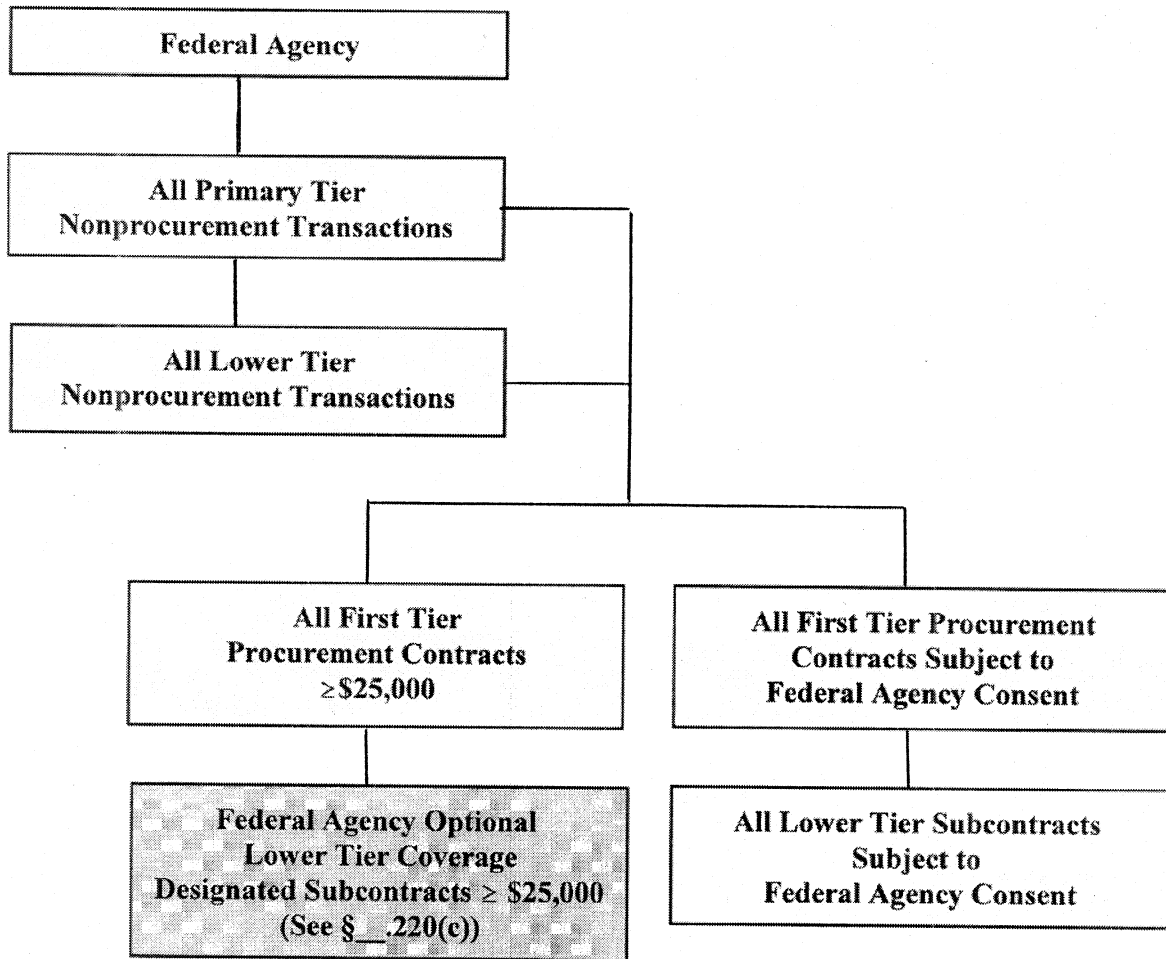
(b) *Voluntarily excluded* means the status of a person who has agreed to a voluntary exclusion.

**Subpart J—[Reserved]****Appendix to [Part/Subpart] \_\_\_\_—  
Covered Transactions**

BILLING CODE 6325-01-P et. al.



**COVERED TRANSACTIONS**



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

**[PART/SUBPART]—  
GOVERNMENTWIDE REQUIREMENTS  
FOR DRUG-FREE WORKPLACE  
(FINANCIAL ASSISTANCE)**

**Subpart A—Purpose and Coverage**

Sec.

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

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

- \_.200 What must I do to comply with this part?
- \_.205 What must I include in my drug-free workplace statement?
- \_.210 To whom must I distribute my drug-free workplace statement?
- \_.215 What must I include in my drug-free awareness program?

- \_.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
- \_.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
- \_.230 How and when must I identify workplaces?

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

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

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

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

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

- \_.500 How are violations of this part determined for recipients other than individuals?
- \_.505 How are violations of this part determined for recipients who are individuals?

- \_.510 What actions will the Federal Government take against a recipient determined to have violated this part?
- \_.515 Are there any exceptions to those actions?

**Subpart F—Definitions**

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

**Subpart A—Purpose and Coverage**

**§ .100 What does this part do?**

This part carries out the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*, as amended) that applies to grants. It also applies the

provisions of the Act to cooperative agreements and other financial assistance awards, as a matter of Federal Government policy.

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

- (a) Portions of this part apply to you if you are either—
  - (1) A recipient of an assistance award from the [Agency noun]; or

- (2) A(n) [Agency adjective] awarding official. (See definitions of award and recipient in §§ .605 and .660, respectively.)
- (b) The following table shows the subparts that apply to you:

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

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

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

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

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

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

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

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

- (a) First, you must make a good faith effort, on a continuing basis, to maintain a drug-free workplace. You must agree

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

- (1) Publish a drug-free workplace statement and establish a drug-free awareness program for your employees (see §§ .205 through .220); and
- (2) Take actions concerning employees who are convicted of violating drug statutes in the workplace (see § .225).
  - (b) Second, you must identify all known workplaces under your Federal awards (see § .230).

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

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

- (1) Will abide by the terms of the statement; and
- (2) Must notify you in writing if he or she is convicted for a violation of a criminal drug statute occurring in the

workplace and must do so no more than five calendar days after the conviction.

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

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

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

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

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

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

If you are a new recipient that does not already have a policy statement as described in § .205 and an ongoing awareness program as described in § .215, you must publish the statement and establish the program by the time given in the following table:

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

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

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

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

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

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

- (1) Take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended; or
- (2) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for these purposes by a Federal, State or local health, law enforcement, or other appropriate agency.

**§ 230 How and when must I identify workplaces?**

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

(1) To the [Agency adjective] official that is making the award, either at the time of application or upon award; or

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

(b) Your workplace identification for an award must include the actual address of buildings (or parts of buildings) or other sites where work under the award takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or

State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

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

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

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

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

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

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

- (1) In writing.
- (2) Within 10 calendar days of the conviction.
- (3) To the [Agency adjective] awarding official or other designee for each award that you currently have, unless § 301 or the award document designates a central point for the receipt of the notices. When notice is made to a central point, it must include the identification number(s) of each affected award.

**§ 301 [Reserved]**

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

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

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

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

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

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

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

A recipient other than an individual is in violation of the requirements of

this part if the [Agency head or designee] determines, in writing, that—

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

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

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

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

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

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

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

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

(a) Suspension of payments under the award;

(b) Suspension or termination of the award; and

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

**§ 515 Are there any exceptions to those actions?**

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

**Subpart F—Definitions**

**§ 605 Award.**

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

(a) The term award includes:

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

(2) A block grant or a grant in an entitlement program, whether or not the

grant is exempted from coverage under the Governmentwide rule [Agency-specific CFR citation] that implements OMB Circular A-102 (for availability, see 5 CFR 1310.3) and specifies uniform administrative requirements.

(b) The term award does not include:

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

(2) Loans.

(3) Loan guarantees.

(4) Interest subsidies.

(5) Insurance.

(6) Direct appropriations.

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

#### § .610 Controlled substance.

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

#### § .615 Conviction.

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

#### § .620 Cooperative agreement.

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

#### § .625 Criminal drug statute.

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

#### § .630 Debarment.

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

Debarment and Suspension (Nonprocurement), that implements Executive Order 12549 and Executive Order 12689.

#### § .635 Drug-free workplace.

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

#### § .640 Employee.

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

(1) All direct charge employees;

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

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

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

#### § .645 Federal agency or agency.

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

#### § .650 Grant.

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

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

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

#### § .655 Individual.

*Individual* means a natural person.

#### § .660 Recipient.

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

#### § .665 State.

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

#### § .670 Suspension.

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

#### Adoption of Common Rules

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

### OFFICE OF PERSONNEL MANAGEMENT

#### 5 CFR Part 970

#### RIN 3206-AJ31

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

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management adopted the Nonprocurement Debarment and Suspension Common Rule on May 17, 1993, following the text of the governmentwide rule as published on May 26, 1988 [53 FR 19160]. OPM did not adopt subpart F of the common rule, pertaining to requirements for drug-free workplace (grants), because the agency

did not issue assistance awards, grants, or other forms of financial or nonfinancial assistance that would be covered by those provisions. For the same reasons, OPM is not adopting the separate regulatory part on drug-free workplace requirements that has been developed as part of this governmentwide regulatory package.

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

Administrative practice and procedure, Debarment and suspension, Government employees, Health facilities, Health insurance, and Health professions.

Dated: August 28, 2003.

U.S. Office of Personnel Management.

**Kay Cole James,**  
*Director.*

■ For the reasons stated in the common preamble, the Office of Personnel Management amends 5 CFR, Code of Federal Regulations as follows:

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

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

Sec.

970.25 How is this part organized?

970.50 How is this part written?

970.75 Do terms in this part have special meanings?

##### Subpart A—General

970.100 What does this part do?

970.105 Does this part apply to me?

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

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

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

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

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

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

970.140 How do I know if a person is excluded?

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

##### Subpart B—Covered Transactions

970.200 What is a covered transaction?

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

970.210 Which nonprocurement transactions are covered transactions?

970.215 Which nonprocurement transactions are not covered transactions?

970.220 Are any procurement contracts included as covered transactions?

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

##### Subpart C—Responsibilities of Participants Regarding Transactions

###### Doing Business With Other Persons

970.300 What must I do before I enter into a covered transaction with another person at the next lower tier?

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

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

970.315 May I use the services of an excluded person as a principal under a covered transaction?

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

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

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

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

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

970.340 If I disclose unfavorable information required under § 970.335, will I be prevented from participating in the transaction?

970.345 What happens if I fail to disclose the information required under § 970.335?

970.350 What must I do if I learn of the information required under § 970.335 after entering into a covered transaction with the OPM?

###### Disclosing information—Lower Tier Participants

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

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

970.365 What must I do if I learn of information required under § 970.355 after entering into a covered transaction with a higher tier participant?

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

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

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

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

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

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

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

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

970.435 What must I require of a primary tier participant?

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

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

970.450 What action may I take if a primary tier participant fails to disclose the information required under § 970.335?

970.455 What may I do if a lower tier participant fails to disclose the information required under § 970.355 to the next higher tier?

##### Subpart E—Excluded Parties List System

970.500 What is the purpose of the Excluded Parties List System (EPLS)?

970.505 Who uses the EPLS?

970.510 Who maintains the EPLS?

970.515 What specific information is in the EPLS?

970.520 Who places the information into the EPLS?

970.525 Whom do I ask if I have questions about a person in the EPLS?

970.530 Where can I find the EPLS?

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

970.600 How do suspension and debarment actions start?

970.605 How does suspension differ from debarment?

970.610 What procedures does the OPM use in suspension and debarment actions?

970.615 How does the OPM notify a person of a suspension and debarment action?

970.620 Do Federal agencies coordinate suspension and debarment actions?

970.625 What is the scope of a suspension or debarment action?

970.630 May the OPM impute the conduct of one person to another?

970.635 May the OPM settle a debarment or suspension action?

970.640 May a settlement include a voluntary exclusion?

970.645 Do other Federal agencies know if the OPM agrees to a voluntary exclusion?

##### Subpart G—Suspension

970.700 When may the suspending official issue a suspension?

970.705 What does the suspending official consider in issuing a suspension?

970.710 When does a suspension take effect?

970.715 What notice does the suspending official give me if I am suspended?

970.720 How may I contest a suspension?

970.725 How much time do I have to contest a suspension?

970.730 What information must I provide to the suspending official if I contest a suspension?

- 970.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 970.740 Are suspension proceedings formal?
- 970.745 How is fact-finding conducted?
- 970.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 970.755 When will I know whether the suspension is continued or terminated?
- 970.760 How long may my suspension last?

#### Subpart H—Debarment

- 970.800 What are the causes for debarment?
- 970.805 What notice does the debarring official give me if I am proposed for debarment?
- 970.810 When does a debarment take effect?
- 970.815 How may I contest a proposed debarment?
- 970.820 How much time do I have to contest a proposed debarment?
- 970.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 970.830 Under what conditions do I get an additional opportunity to challenge the facts on which a proposed debarment is based?
- 970.835 Are debarment proceedings formal?
- 970.840 How is fact-finding conducted?
- 970.845 What does the debarring official consider in deciding whether to debar me?
- 970.850 What is the standard of proof in a debarment action?
- 970.855 Who has the burden of proof in a debarment action?
- 970.860 What factors may influence the debarring official's decision?
- 970.865 How long may my debarment last?
- 970.870 When do I know if the debarring official debars me?
- 970.875 May I ask the debarring official to reconsider a decision to debar me?
- 970.880 What factors may influence the debarring official during reconsideration?
- 970.885 May the debarring official extend a debarment?

#### Subpart I—Definitions

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

- 970.1010 Suspending official.
- 970.1015 Suspension.
- 970.1020 Voluntary exclusion or voluntarily excluded.

#### Subpart J—[Reserved]

#### Appendix to Part 970—Covered Transactions

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

- 2. Part 970 is further amended as set forth below.
- a. “[Agency noun]” is removed and “OPM” is added in its place wherever it occurs.
- b. “[Agency adjective]” is removed and “OPM” is added in its place wherever it occurs.
- c. “[Agency head or designee]” is removed and “Debarring Official” is added in its place wherever it occurs.
- 3. Section 970.440 is added to read as follows:

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

To communicate the requirement, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

## DEPARTMENT OF AGRICULTURE

### 7 CFR Parts 3017 and 3021

#### RIN 0505-AA11

**SUMMARY:** The United States Department of Agriculture (USDA) adopts the common rule on nonprocurement debarment and suspension and drug-free workplace on an interim final basis solely in order to request further comment on §§ 3017.765 and 3017.890.

**DATES:** Comments should be submitted on or before January 26, 2004 in order to be ensured of consideration. Comments received after this date may be considered to the extent practicable.

**ADDRESSES:** Comments should be sent to Tyson Whitney, OCFO—PAD Room 3448A, Mail Stop 9020, 1400 Independence Avenue, SW., Washington, DC 20250–9020, (202) 720–8978. Comments may also be submitted via electronic mail to [twhitney@cfo.usda.gov](mailto:twhitney@cfo.usda.gov). All comments, including names and addresses, will become a matter of public record.

**FOR FURTHER INFORMATION CONTACT:** Tyson Whitney, OCFO—PAD Room 3448A, Mail Stop 9020, 1400 Independence Avenue, SW., Washington, DC 20250–9020, (202) 720–8978.

#### SUPPLEMENTARY INFORMATION:

Sections 3017.765 and 3017.890 supplement the procedures in the common rule for contesting the decision of the suspending or debarring official by allowing for a further appeal of the decision of the suspending or debarring official, made in response to a contested suspension or debarment, to an administrative law judge (“ALJ”) of the Department of Agriculture (“USDA”). While at present adopting those provisions as they were proposed on January 23, 2002, USDA seeks further comment on whether these provisions are necessary or add substantive value to the suspension and debarment process.

These provisions originally were included in the current USDA nonprocurement suspension and debarment regulation (7 CFR 3017.515) because it was thought that the courts would give more deference to the findings of an ALJ than to those of an executive branch agency's suspending or debarring official. That has not been the experience of USDA, and in fact the decisions of other executive agencies without appeal from decisions made by the suspending or debarring official under the contest provision in the common rule have withstood judicial scrutiny. Accordingly, since the common rule does not require appeal to an ALJ, USDA is considering removing sections 3017.765 and 3017.890 in the final rule in order to eliminate an unnecessary, time-consuming, and costly stage of litigation.

Section 3017.935(b) and 3017.1010(b) of the proposed rule would have authorized the Secretary of Agriculture to delegate the authority to be the debarring or suspending official, respectively, to the Administrators of USDA program agencies, who further would have been authorized to redelegate that authority except for the authority to make a final debarment or suspension decision. The proposed rule, if adopted as final, would have had the effect of repealing the authority in the current rule in 7 CFR 3017.105 authorizing the Chief of the Forest Service to redelegate the authority to make final debarment or suspension decisions to the Deputy Chief or an Associate Deputy Chief for the National Forest System. In the interim final rule, USDA is revising the text of sections 3017.935(b) and 3017.1010(b) to preserve the authority of the Chief of the Forest Service to redelegate his authority to the Deputy Chief or an Associate Deputy Chief. Since this is a rule of internal agency management, notice and comment for this change is

not required. The text is also revised to reflect the delegation to the head of an organizational unit of the Department, instead of an administrator, because not all organizational units of the Department are headed by an administrator. Some additional changes to the proposed rule language are made in this interim final rule to improve grammar and conform to the plain English model of regulatory drafting.

### List of Subjects

#### 7 CFR Part 3017

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

#### 7 CFR Part 3021

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

Dated: August 6, 2003.

**Ann M. Veneman,**

*Secretary of Agriculture.*

■ For the reasons stated in the common preamble, the United States Department of Agriculture amends 7 CFR chapter XXX, as follows:

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

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

Sec.

- 3017.25 How is this part organized?  
3017.50 How is this part written?  
3017.75 Do terms in this part have special meanings?

#### Subpart A—General

- 3017.100 What does this part do?  
3017.105 Does this part apply to me?  
3017.110 What is the purpose of the nonprocurement debarment and suspension system?  
3017.115 How does an exclusion restrict a person's involvement in covered transactions?  
3017.120 May we grant an exception to let an excluded person participate in a covered transaction?  
3017.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?  
3017.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?  
3017.135 May the Department of Agriculture exclude a person who is not currently participating in a nonprocurement transaction?

- 3017.140 How do I know if a person is excluded?  
3017.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

#### Subpart B—Covered Transactions

- 3017.200 What is a covered transaction?  
3017.205 Why is it important to know if a particular transaction is a covered transaction?  
3017.210 Which nonprocurement transactions are covered transactions?  
3017.215 Which nonprocurement transactions are not covered transactions?  
3017.220 Are any procurement contracts included as covered transactions?  
3017.225 How do I know if a transaction in which I may participate is a covered transaction?

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

- 3017.300 What must I do before I enter into a covered transaction with another person at the next lower tier?  
3017.305 May I enter into a covered transaction with an excluded or disqualified person?  
3017.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?  
3017.315 May I use the services of an excluded person as a principal under a covered transaction?  
3017.320 Must I verify that principals of my covered transactions are eligible to participate?  
3017.325 What happens if I do business with an excluded person in a covered transaction?  
3017.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

#### Disclosing Information—Primary Tier Participants

- 3017.335 What information must I provide before entering into a covered transaction with the Department of Agriculture?  
3017.340 If I disclose unfavorable information required under § 3017.335, will I be prevented from participating in the transaction?  
3017.345 What happens if I fail to disclose the information required under § 3017.335?  
3017.350 What must I do if I learn of the information required under § 3017.335 after entering into a covered transaction with the Department of Agriculture?

#### Disclosing Information—Lower Tier Participants

- 3017.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?  
3017.360 What happens if I fail to disclose the information required under § 3017.355?

- 3017.365 What must I do if I learn of information required under § 3017.355 after entering into a covered transaction with a higher tier participant?

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

- 3017.400 May I enter into a transaction with an excluded or disqualified person?  
3017.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?  
3017.410 May I approve a participant's use of the services of an excluded person?  
3017.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?  
3017.420 May I approve a transaction with an excluded or disqualified person at a lower tier?  
3017.425 When do I check to see if a person is excluded or disqualified?  
3017.430 How do I check to see if a person is excluded or disqualified?  
3017.435 What must I require of a primary tier participant?  
3017.440 What method do I use to communicate those requirements to participants?  
3017.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?  
3017.450 What action may I take if a primary tier participant fails to disclose the information required under § 3017.335?  
3017.455 What may I do if a lower tier participant fails to disclose the information required under § 3017.355 to the next higher tier?

#### Subpart E—Excluded Parties List System

- 3017.500 What is the purpose of the Excluded Parties List System (EPLS)?  
3017.505 Who uses the EPLS?  
3017.510 Who maintains the EPLS?  
3017.515 What specific information is in the EPLS?  
3017.520 Who places the information into the EPLS?  
3017.525 Whom do I ask if I have questions about a person in the EPLS?  
3017.530 Where can I find the EPLS?

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

- 3017.600 How do suspension and debarment actions start?  
3017.605 How does suspension differ from debarment?  
3017.610 What procedures does the Department of Agriculture use in suspension or debarment actions?  
3017.615 How does the Department of Agriculture notify a person of a suspension and debarment action?  
3017.620 Do Federal agencies coordinate suspension and debarment actions?  
3017.625 What is the scope of a suspension or debarment action?  
3017.630 May the Department of Agriculture impute the conduct of one person to another?

- 3017.635 May the Department of Agriculture settle a debarment or suspension action?
- 3017.640 May a settlement include a voluntary exclusion?
- 3017.645 Do other Federal agencies know if the Department of Agriculture agrees to a voluntary exclusion?

**Subpart G—Suspension**

- 3017.700 When may the suspending official issue a suspension?
- 3017.705 What does the suspending official consider in issuing a suspension?
- 3017.710 When does a suspension take effect?
- 3017.715 What notice does the suspending official give me if I am suspended?
- 3017.720 How may I contest a suspension?
- 3017.725 How much time do I have to contest a suspension?
- 3017.730 What information must I provide to the suspending official if I contest a suspension?
- 3017.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 3017.740 Are suspension proceedings formal?
- 3017.745 How is fact-finding conducted?
- 3017.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 3017.755 When will I know whether the suspension is continued or terminated?
- 3017.760 How long may my suspension last?
- 3017.765 How may I appeal my suspension?

**Subpart H—Debarment**

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

- 3017.880 What factors may influence the debarring official during reconsideration?
- 3017.885 May the debarring official extend a debarment?
- 3017.890 How may I appeal my debarment?

**Subpart I—Definitions**

- 3017.900 Adequate evidence.
- 3017.905 Affiliate.
- 3017.910 Agency.
- 3017.915 Agent or representative.
- 3017.920 Civil judgment.
- 3017.925 Conviction.
- 3017.930 Debarment.
- 3017.935 Debarring official.
- 3017.940 Disqualified.
- 3017.945 Excluded or exclusion.
- 3017.950 Excluded Parties List System.
- 3017.955 Indictment.
- 3017.960 Ineligible or ineligibility.
- 3017.965 Legal proceedings.
- 3017.970 Nonprocurement transaction.
- 3017.975 Notice.
- 3017.980 Participant.
- 3017.985 Person.
- 3017.990 Preponderance of the evidence.
- 3017.995 Principal.
- 3017.1000 Respondent.
- 3017.1005 State.
- 3017.1010 Suspending official.
- 3017.1015 Suspension.
- 3017.1020 Voluntary exclusion or voluntarily excluded.

**Subpart J—[Reserved]**

**Appendix to Part 3017—Covered Transactions**

**Authority:** 5 U.S.C. 301; Pub. L. 101–576, 104 Stat. 2838; Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12698 (3 CFR, 1989 Comp., p. 235); 7 CFR 2.28.

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

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

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

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

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

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

\* \* \* \* \*

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

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

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

\* \* \* \* \*

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

(i) With respect to the Department of Agriculture’s export and foreign assistance programs, any transaction below the primary tier covered transaction other than a nonprocurement transaction under the Market Access Program between a nonprofit trade association or state regional group and a U.S. entity, as defined in part 1485 of this title.

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

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

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

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

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

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

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

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

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

\* \* \* \* \*

(c) A contract for the procurement of ocean transportation in connection with the Department of Agriculture’s foreign



assistance programs is a covered transaction. With respect to the Department of Agriculture's export and foreign assistance programs, such contracts are the only procurement contracts included as covered transactions, notwithstanding the provisions in paragraphs (a) and (b) of this section.

■ 6. Section 3017.440 is added to read as follows:

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

To communicate the requirement, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in their lower-tier covered transactions.

■ 7. Section 3017.755 is further amended by adding a sentence at the end to read as follows:

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

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

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

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

(a) You may file an appeal only after you have exhausted the option provided for in § 3017.720 to contest the suspension. You must file your appeal within 30 days of receiving the decision required by § 3017.755 and your filing must specify the basis of the appeal. You must submit your appeal in writing to the Hearing Clerk in the Office of Administrative Law Judges (OALJ), United States Department of Agriculture (USDA), Washington, DC 20250. The assigned appeals officer may vacate the decision of the suspending official only if the officer determines that the decision is:

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

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

(c) Within 90 days of the date that you file your appeal with USDA's OALJ Hearing Clerk, the appeals officer will give written notification of the decision to you and to the suspending official who took the action being appealed.

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

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

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

\* \* \* \* \*

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

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

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

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

\* \* \* \* \*

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

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

(a) You may file an appeal only after you have exhausted the option provided for in § 3017.815 to contest the debarment. You must file your appeal within 30 days of receiving the decision required by § 3017.870 and your filing must specify the basis of the appeal. You must submit your appeal in writing to the Hearing Clerk in the Office of Administrative Law Judges (OALJ), United States Department of Agriculture (USDA), Washington, DC 20250. The assigned appeals officer may vacate the decision of the debarring official only if the officer determines that the decision is:

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

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

(c) Within 90 days of the date that you file your appeal with USDA's OALJ Hearing Clerk, the appeals officer will give written notification of the decision to you and to the debarring official who took the action being appealed.

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

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

**§ 3017.935 Debarring official.**

\* \* \* \* \*

(b) The head of an organizational unit within the Department of Agriculture (e.g., Administrator, Food and Nutrition Service), who has been delegated authority in part 2 of this title to carry out a covered transaction, is delegated authority to act as the debarring official in connection with such transaction. This authority to act as a debarring official may not be redelegated below the head of the organizational unit, except that, in the case of the Forest Service, the Chief may redelegate the authority to act as a debarring official to the Deputy Chief or an Associate Deputy Chief for the National Forest System.

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

**§ 3017.1010 Suspending official.**

\* \* \* \* \*

(b) The head of an organizational unit within the Department of Agriculture (e.g., Administrator, Food and Nutrition Service), who has been delegated authority in part 2 of this title to carry out a covered transaction, is delegated authority to act as the suspending official in connection with such transaction. This authority to act as a suspending official may not be redelegated below the head of the organizational unit, except that, in the case of the Forest Service, the Chief may redelegate the authority to act as a suspending official to the Deputy Chief or an Associate Deputy Chief for the National Forest System.

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

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

**Subpart A—Purpose and Coverage**

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

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

- 3021.200 What must I do to comply with this part?
- 3021.205 What must I include in my drug-free workplace statement?
- 3021.210 To whom must I distribute my drug-free workplace statement?
- 3021.215 What must I include in my drug-free awareness program?

3021.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?

3021.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?

3021.230 How and when must I identify workplaces?

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

3021.300 What must I do to comply with this part if I am an individual recipient?

3021.301 [Reserved]

#### Subpart D—Responsibilities of Department of Agriculture Awarding Officials

3021.400 What are my responsibilities as a Department of Agriculture awarding official?

#### Subpart E—Violations of This Part and Consequences

3021.500 How are violations of this part determined for recipients other than individuals?

3021.505 How are violations of this part determined for recipients who are individuals?

3021.510 What actions will the Federal Government take against a recipient determined to have violated this part?

3021.515 Are there any exceptions to those actions?

#### Subpart F—Definitions

3021.605 Award.

3021.610 Controlled substance.

3021.615 Conviction.

3021.620 Cooperative agreement.

3021.625 Criminal drug statute.

3021.630 Debarment.

3021.635 Drug-free workplace.

3021.640 Employee.

3021.645 Federal agency or agency.

3021.650 Grant.

3021.655 Individual.

3021.660 Recipient.

3021.665 State.

3021.670 Suspension.

**Authority:** 5 U.S.C. 301; 41 U.S.C. 701 *et seq.*; Pub. L. 101–576, 104 Stat. 2838; 7 CFR § 2.28.

■ 15. Part 3021 is further amended as set forth below:

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

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

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

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

■ 16. Section 3021.510(c) is further amended by removing “[CFR citation for the Federal Agency’s regulations implementing Executive Order 12549 and Executive Order 12689]” and adding “7 CFR part 3017” in its place.

■ 17. Section 3021.605(a)(2) is further amended by removing “[Agency-specific CFR citation]” and adding “7 CFR part 3016” in its place.

## DEPARTMENT OF ENERGY

### 10 CFR Parts 606, 607 and 1036

RIN 1991–AB56

#### FOR FURTHER INFORMATION CONTACT:

Cynthia G. Yee, 202–586–1140;

*cynthia.yee@hq.doe.gov*.

#### List of Subjects

10 CFR Part 606

Administrative practice and procedure, Debarment and suspension, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements.

10 CFR Parts 607 and 1036

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

Issuance of this final rule has been approved by the Office of the Secretary of Energy.

Dated: August 22, 2003.

**Richard H. Hopf,**

*Director, Office of Procurement and Assistance Management, Office of Management, Budget and Evaluation, Department of Energy.*

Dated: August 22, 2003.

**Robert C. Braden, Jr.,**

*Director, Office of Procurement and Assistance Management, National Nuclear Security Administration.*

■ For the reason stated in the common preamble, and under the authority of 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*, the Department of Energy amends 10 CFR Chapters II and X, as follows.

■ 1. Part 606 is added to subchapter H to read as set forth in instruction 1 at the end of the common preamble.

### PART 606—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

606.25 How is this part organized?

606.50 How is this part written?

606.75 Do terms in this part have special meanings?

#### Subpart A—General

606.100 What does this part do?

606.105 Does this part apply to me?

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

606.115 How does an exclusion restrict a person’s involvement in covered transactions?

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

606.125 Does an exclusion under the nonprocurement system affect a person’s eligibility for Federal procurement contracts?

606.130 Does exclusion under the Federal procurement system affect a person’s eligibility to participate in nonprocurement transactions?

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

606.140 How do I know if a person is excluded?

606.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

#### Subpart B—Covered Transactions

606.200 What is a covered transaction?

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

606.210 Which nonprocurement transactions are covered transactions?

606.215 Which nonprocurement transactions are not covered transactions?

606.220 Are any procurement contracts included as covered transactions?

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

#### Subpart C—Responsibilities of Participants Regarding Transactions

##### Doing Business With Other Persons

606.300 What must I do before I enter into a covered transaction with another person at the next lower tier?

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

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

606.315 May I use the services of an excluded person as a principal under a covered transaction?

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

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

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

##### Disclosing Information—Primary Tier Participants

606.335 What information must I provide before entering into a covered transaction with the Department of Energy?

606.340 If I disclose unfavorable information required under § 606.335, will I be prevented from participating in the transaction?

606.345 What happens if I fail to disclose the information required under § 606.335?

606.350 What must I do if I learn of the information required under § 606.335?

after entering into a covered transaction with the Department of Energy?

#### Disclosing Information—Lower Tier Participants

- 606.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?  
 606.360 What happens if I fail to disclose the information required under § 606.355?  
 606.365 What must I do if I learn of information required under § 606.355 after entering into a covered transaction with a higher tier participant?

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

- 606.400 May I enter into a transaction with an excluded or disqualified person?  
 606.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?  
 606.410 May I approve a participant's use of the services of an excluded person?  
 606.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?  
 606.420 May I approve a transaction with an excluded or disqualified person at a lower tier?  
 606.425 When do I check to see if a person is excluded or disqualified?  
 606.430 How do I check to see if a person is excluded or disqualified?  
 606.435 What must I require of a primary tier participant?  
 606.440 What method do I use to communicate those requirements to participants?  
 606.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?  
 606.450 What action may I take if a primary tier participant fails to disclose the information required under § 606.335?  
 606.455 What may I do if a lower tier participant fails to disclose the information required under § 606.355 to the next higher tier?

#### Subpart E—Excluded Parties List System

- 606.500 What is the purpose of the Excluded Parties List System (EPLS)?  
 606.505 Who uses the EPLS?  
 606.510 Who maintains the EPLS?  
 606.515 What specific information is in the EPLS?  
 606.520 Who places the information into the EPLS?  
 606.525 Whom do I ask if I have questions about a person in the EPLS?  
 606.530 Where can I find the EPLS?

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

- 606.600 How do suspension and debarment actions start?  
 606.605 How does suspension differ from debarment?  
 606.610 What procedures does the Department of Energy use in suspension and debarment actions?  
 606.615 How does the Department of Energy notify a person of a suspension and debarment action?

- 606.620 Do Federal agencies coordinate suspension and debarment actions?  
 606.625 What is the scope of a suspension or debarment action?  
 606.630 May the Department of Energy impute the conduct of one person to another?  
 606.635 May the Department of Energy settle a debarment or suspension action?  
 606.640 May a settlement include a voluntary exclusion?  
 606.645 Do other Federal agencies know if the Department of Energy agrees to a voluntary exclusion?

#### Subpart G—Suspension

- 606.700 When may the suspending official issue a suspension?  
 606.705 What does the suspending official consider in issuing a suspension?  
 606.710 When does a suspension take effect?  
 606.715 What notice does the suspending official give me if I am suspended?  
 606.720 How may I contest a suspension?  
 606.725 How much time do I have to contest a suspension?  
 606.730 What information must I provide to the suspending official if I contest a suspension?  
 606.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?  
 606.740 Are suspension proceedings formal?  
 606.745 How is fact-finding conducted?  
 606.746 Who conducts fact-finding conferences for DOE?  
 606.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?  
 606.755 When will I know whether the suspension is continued or terminated?  
 606.760 How long may my suspension last?

#### Subpart H—Debarment

- 606.800 What are the causes for debarment?  
 606.805 What notice does the debarring official give me if I am proposed for debarment?  
 606.810 When does a debarment take effect?  
 606.815 How may I contest a proposed debarment?  
 606.820 How much time do I have to contest a proposed debarment?  
 606.825 What information must I provide to the debarring official if I contest a proposed debarment?  
 606.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?  
 606.835 Are debarment proceedings formal?  
 606.836 Who conducts fact-finding conferences for DOE?  
 606.840 How is fact-finding conducted?  
 606.845 What does the debarring official consider in deciding whether to debar me?  
 606.850 What is the standard of proof in a debarment action?  
 606.855 Who has the burden of proof in a debarment action?  
 606.860 What factors may influence the debarring official's decision?

- 606.865 How long may my debarment last?  
 606.870 When do I know if the debarring official debars me?  
 606.875 May I ask the debarring official to reconsider a decision to debar me?  
 606.880 What factors may influence the debarring official during reconsideration?  
 606.885 May the debarring official extend a debarment?

#### Subpart I—Definitions

- 606.900 Adequate evidence.  
 606.905 Affiliate.  
 606.910 Agency.  
 606.915 Agent or representative.  
 606.920 Civil judgment.  
 606.925 Conviction.  
 606.930 Debarment.  
 606.935 Debarring official.  
 606.940 Disqualified.  
 606.945 Excluded or exclusion.  
 606.950 Excluded Parties List System.  
 606.955 Indictment.  
 606.960 Ineligible or ineligibility.  
 606.965 Legal proceedings.  
 606.970 Nonprocurement transaction.  
 606.975 Notice.  
 606.980 Participant.  
 606.985 Person.  
 606.990 Preponderance of the evidence.  
 606.995 Principal.  
 606.1000 Respondent.  
 606.1005 State.  
 606.1010 Suspending official.  
 606.1015 Suspension.  
 606.1020 Voluntary exclusion or voluntarily excluded.

#### Subpart J—[Reserved]

#### Appendix to Part 606—Covered Transactions

**Authority:** E.O. 12549 (3 CFR, 1986 Comp., p.189); E.O. 12689 (3 CFR, 1989 Comp., p.235); sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

- 2. Part 606 is further amended as set forth below.  
 ■ a. “[Agency noun]” is removed and “Department of Energy” is added in its place wherever it occurs.  
 ■ b. “[Agency adjective]” is removed and “DOE” is added in its place wherever it occurs.  
 ■ c. “[Agency head or designee]” is removed and “Director, Office of Procurement and Assistance Management, DOE, for DOE actions, and Director, Office of Procurement and Assistance Management, NNSA, for NNSA actions” are added in its place wherever it occurs.  
 ■ 3. Section 606.440 is added to read as follows:

#### § 606.440 What method do I use to communicate those 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. Section 606.746 is added to read as follows:

**§ 606.746 Who conducts fact-finding conferences for DOE?**

The Energy Board of Contract Appeals conducts fact-finding conferences for DOE, in accordance with the rules promulgated by the Energy Board of Contract Appeals.

■ 5. Section 606.836 is added to read as follows:

**§ 606.836 Who conducts fact-finding conferences for DOE?**

The Energy Board of Contract Appeals conducts fact-finding conferences for DOE, in accordance with the rules promulgated by the Energy Board of Contract Appeals.

■ 6. Section 606.910 is further amended by adding a definition for Department of Energy in alphabetical order to read as follows:

**§ 606.910 Agency.**  
\* \* \* \* \*

*Department of Energy* means the U.S. Department of Energy, including the National Nuclear Security Administration (NNSA).

■ 7. Section 606.935 is further amended by adding paragraph (b) to read as follows:

**§ 606.935 Debarring official.**  
\* \* \* \* \*

(b) The debarring official for the Department of Energy, exclusive of NNSA, is the Director, Office of Procurement and Assistance Management, DOE. The debarring official for NNSA is the Director, Office of Procurement and Assistance Management, NNSA.

■ 8. Section 606.1010 is further amended by adding paragraph (b) to read as follows:

**§ 606.1010 Suspending official.**  
\* \* \* \* \*

(b) The suspending official for the Department of Energy, exclusive of NNSA, is the Director, Office of Procurement and Assistance Management, DOE. The suspending official for NNSA is the Director, Office of Procurement and Assistance Management, NNSA.

■ 9. Part 607 is added to subchapter H to read as set forth in instruction 2 at the end of the common preamble.

**PART 607—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)**

**Subpart A—Purpose and Coverage**

Sec.

- 607.100 What does this part do?
- 607.105 Does this part apply to me?
- 607.110 Are any of my Federal assistance awards exempt from this part?
- 607.115 Does this part affect the Federal contracts that I receive?

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

- 607.200 What must I do to comply with this part?
- 607.205 What must I include in my drug-free workplace statement?
- 607.210 To whom must I distribute my drug-free workplace statement?
- 607.215 What must I include in my drug-free awareness program?
- 607.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
- 607.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
- 607.230 How and when must I identify workplaces?

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

- 607.300 What must I do to comply with this part if I am an individual recipient?
- 607.301 [Reserved]

**Subpart D—Responsibilities of DOE Awarding Officials**

- 607.400 What are my responsibilities as a DOE awarding official?

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

- 607.500 How are violations of this part determined for recipients other than individuals?
- 607.505 How are violations of this part determined for recipients who are individuals?
- 607.510 What actions will the Federal Government take against a recipient determined to have violated this part?
- 607.515 Are there any exceptions to those actions?

**Subpart F—Definitions**

- 607.605 Award.
- 607.610 Controlled substance.
- 607.615 Conviction.
- 607.620 Cooperative agreement.
- 607.625 Criminal drug statute.
- 607.630 Debarment.
- 607.635 Drug-free workplace.
- 607.640 Employee.
- 607.645 Federal agency or agency.
- 607.650 Grant.
- 607.655 Individual.
- 607.660 Recipient.
- 607.665 State.
- 607.670 Suspension.

**Authority:** 41 U.S.C. 701, *et seq.*; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

■ 10. Part 607 is further amended as set forth below.

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

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

■ c. “[Agency head or designee]” is removed and “Director, Office of Procurement and Assistance Management, DOE, for DOE actions, and Director, Office of Procurement and Assistance Management, NNSA, for NNSA actions” are added in its place wherever it occurs.

■ d. “[Agency head]” is removed and “Secretary of Energy” is added in its place wherever it occurs.

■ 11. Section 607.510(c) is further amended by removing “[CFR citation for the Federal agency’s regulations implementing Executive order 12549 and Executive Order 12689]” and adding “10 CFR Part 606” in its place.

■ 12. Section 607.605(a)(2) is further amended by removing “[Agency-specific CFR citation]” and adding “10 CFR Part 600” in its place.

■ 13. Section 607.645 is further amended by adding the definition for Department of Energy in alphabetical order to read as follows:

**§ 607.645 Federal Agency or agency.**

*Department of Energy* means the U.S. Department of Energy, including the National Nuclear Security Administration (NNSA).

\* \* \* \* \*

**PART 1036—[Removed]**

■ 14. Part 1036 is removed.

**EXPORT-IMPORT BANK OF THE UNITED STATES**

**12 CFR Part 413**

**RIN 3048-ZA03**

**ADDRESSES:** Comments should be sent to Howard Schweitzer, Assistant General Counsel for Administration, Export-Import Bank of the United States, 811 Vermont Ave., NW., Washington, DC 20571, or to [howard.schweitzer@exim.gov](mailto:howard.schweitzer@exim.gov).

**FOR FURTHER INFORMATION CONTACT:** Howard Schweitzer, Assistant General Counsel for Administration, Export-Import Bank of the United States, (202) 565-3229, or at [howard.schweitzer@exim.gov](mailto:howard.schweitzer@exim.gov).

**SUPPLEMENTARY INFORMATION:** Ex-Im Bank publishes this interim final rule in order to join the publication of regulations amending the common rule

on nonprocurement suspension and debarment. As discussed in detail in the common preamble to this rule, the substantive provisions of the common rule have previously been the subject of a notice and comment period. Ex-Im Bank is not at this time adopting any optional provisions contained in the common rule that depart from the substance of the base text of the common rule. For these reasons, Ex-Im Bank finds, pursuant to 5 U.S.C. 553 (b)(B), that a notice and comment period is unnecessary with respect to its adoption of the base text of the common rule.

It should also be noted that Ex-Im Bank will not be adopting those provisions of the common preamble concerning the Government-wide Requirements for Drug-Free Workplace (Grants). Ex-Im Bank does not issue cooperative agreements, awards, grants or other financial assistance covered by these provisions.

#### List of Subjects in 12 CFR Part 413

Administrative practice and procedure, Debarment and suspension, Government contracts, Loan programs, Reporting and recordkeeping requirements.

Dated: August 4, 2003.

**Peter B. Saba,**

*General Counsel, The Export-Import Bank of the United States.*

■ For the reasons stated in the preamble, the Export-Import Bank of the United States amends 12 CFR chapter IV as follows:

■ 1. Part 413 is added to read as set forth in instruction 1 at the end of the common preamble.

#### **PART 413—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

Sec.

- 413.25 How is this part organized?  
413.50 How is this part written?  
413.75 Do terms in this part have special meanings?

##### **Subpart A—General**

- 413.100 What does this part do?  
413.105 Does this part apply to me?  
413.110 What is the purpose of the nonprocurement debarment and suspension system?  
413.115 How does an exclusion restrict a person's involvement in covered transactions?  
413.120 May we grant an exception to let an excluded person participate in a covered transaction?  
413.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?

- 413.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?  
413.135 May the Ex-Im Bank exclude a person who is not currently participating in a nonprocurement transaction?  
413.140 How do I know if a person is excluded?  
413.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

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

- 413.200 What is a covered transaction?  
413.205 Why is it important to know if a particular transaction is a covered transaction?  
413.210 Which nonprocurement transactions are covered transactions?  
413.215 Which nonprocurement transactions are not covered transactions?  
413.220 Are any procurement contracts included as covered transactions?  
413.225 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**

- 413.300 What must I do before I enter into a covered transaction with another person at the next lower tier?  
413.305 May I enter into a covered transaction with an excluded or disqualified person?  
413.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?  
413.315 May I use the services of an excluded person as a principal under a covered transaction?  
413.320 Must I verify that principals of my covered transactions are eligible to participate?  
413.325 What happens if I do business with an excluded person in a covered transaction?  
413.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

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

- 413.335 What information must I provide before entering into a covered transaction with the Ex-Im Bank?  
413.340 If I disclose unfavorable information required under § 413.335, will I be prevented from participating in the transaction?  
413.345 What happens if I fail to disclose the information required under § 413.335?  
413.350 What must I do if I learn of the information required under § 413.335 after entering into a covered transaction with the Ex-Im Bank?

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

- 413.355 What information must I provide to a higher tier participant before entering

into a covered transaction with that participant?

- 413.360 What happens if I fail to disclose the information required under § 413.355?  
413.365 What must I do if I learn of information required under § 413.355 after entering into a covered transaction with a higher tier participant?

##### **Subpart D—Responsibilities of Ex-Im Bank Officials Regarding Transactions**

- 413.400 May I enter into a transaction with an excluded or disqualified person?  
413.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?  
413.410 May I approve a participant's use of the services of an excluded person?  
413.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?  
413.420 May I approve a transaction with an excluded or disqualified person at a lower tier?  
413.425 When do I check to see if a person is excluded or disqualified?  
413.430 How do I check to see if a person is excluded or disqualified?  
413.435 What must I require of a primary tier participant?  
413.440 What method do I use to communicate those requirements to participants?  
413.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?  
413.450 What action may I take if a primary tier participant fails to disclose the information required under § 413.335?  
413.455 What may I do if a lower tier participant fails to disclose the information required under § 413.355 to the next higher tier?

##### **Subpart E—Excluded Parties List System**

- 413.500 What is the purpose of the Excluded Parties List System (EPLS)?  
413.505 Who uses the EPLS?  
413.510 Who maintains the EPLS?  
413.515 What specific information is in the EPLS?  
413.520 Who places the information into the EPLS?  
413.525 Whom do I ask if I have questions about a person in the EPLS?  
413.530 Where can I find the EPLS?

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

- 413.600 How do suspension and debarment actions start?  
413.605 How does suspension differ from debarment?  
413.610 What procedures does the Ex-Im Bank use in suspension and debarment actions?  
413.615 How does the Ex-Im Bank notify a person of a suspension and debarment action?  
413.620 Do Federal agencies coordinate suspension and debarment actions?  
413.625 What is the scope of a suspension or debarment action?  
413.630 May the Ex-Im Bank impute the conduct of one person to another?

- 413.635 May the Ex-Im Bank settle a debarment or suspension action?  
 413.640 May a settlement include a voluntary exclusion?  
 413.645 Do other Federal agencies know if the Ex-Im Bank agrees to a voluntary exclusion?

#### Subpart G—Suspension

- 413.700 When may the suspending official issue a suspension?  
 413.705 What does the suspending official consider in issuing a suspension?  
 413.710 When does a suspension take effect?  
 413.715 What notice does the suspending official give me if I am suspended?  
 413.720 How may I contest a suspension?  
 413.725 How much time do I have to contest a suspension?  
 413.730 What information must I provide to the suspending official if I contest a suspension?  
 413.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?  
 413.740 Are suspension proceedings formal?  
 413.745 How is fact-finding conducted?  
 413.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?  
 413.755 When will I know whether the suspension is continued or terminated?  
 413.760 How long may my suspension last?

#### Subpart H—Debarment

- 413.800 What are the causes for debarment?  
 413.805 What notice does the debarring official give me if I am proposed for debarment?  
 413.810 When does a debarment take effect?  
 413.815 How may I contest a proposed debarment?  
 413.820 How much time do I have to contest a proposed debarment?  
 413.825 What information must I provide to the debarring official if I contest a proposed debarment?  
 413.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?  
 413.835 Are debarment proceedings formal?  
 413.840 How is fact-finding conducted?  
 413.845 What does the debarring official consider in deciding whether to debar me?  
 413.850 What is the standard of proof in a debarment action?  
 413.855 Who has the burden of proof in a debarment action?  
 413.860 What factors may influence the debarring official's decision?  
 413.865 How long may my debarment last?  
 413.870 When do I know if the debarring official debars me?  
 413.875 May I ask the debarring official to reconsider a decision to debar me?  
 413.880 What factors may influence the debarring official during reconsideration?  
 413.885 May the debarring official extend a debarment?

#### Subpart I—Definitions

- 413.900 Adequate evidence.  
 413.905 Affiliate.  
 413.910 Agency.  
 413.915 Agent or representative.  
 413.920 Civil judgment.  
 413.925 Conviction.  
 413.930 Debarment.  
 413.935 Debarring official.  
 413.940 Disqualified.  
 413.945 Excluded or exclusion.  
 413.950 Excluded Parties List System.  
 413.955 Indictment.  
 413.960 Ineligible or ineligibility.  
 413.965 Legal proceedings.  
 413.970 Nonprocurement transaction.  
 413.975 Notice.  
 413.980 Participant.  
 413.985 Person.  
 413.990 Preponderance of the evidence.  
 413.995 Principal.  
 413.1000 Respondent.  
 413.1005 State.  
 413.1010 Suspending official.  
 413.1015 Suspension.  
 413.1020 Voluntary exclusion or voluntarily excluded.

#### Subpart J—[Reserved]

#### Appendix to Part 413—Covered Transactions

**Authority:** Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 11738 (3 CFR, 1973 Comp., p. 799); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

■ 2. Part 413 is further amended as set forth below.

■ a. “[Agency noun]” is removed and “Ex-Im Bank” is added in its place wherever it occurs.

■ b. “[Agency adjective]” is removed and “Ex-Im Bank” is added in its place wherever it occurs.

■ c. “[Agency head or designee]” is removed and “Ex-Im Bank agency head or designee” is added in its place wherever it occurs.

■ 3. Section 413.440 is added to read as follows:

#### § 413.440 What method do I use to communicate those 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.

### SMALL BUSINESS ADMINISTRATION

#### 13 CFR Parts 145 and 147

#### RIN 3245–AE61

**FOR FURTHER INFORMATION CONTACT:** Darryl K. Hairston, SBA Debarring Official, Assistant Administrator for Administration (5331), U.S. Small

Business Administration, 409 Third Street, SW., Washington, DC 20416, (202) 205–6630, e-mail: [darryl.hairston@sba.gov](mailto:darryl.hairston@sba.gov).

#### List of Subjects

##### 13 CFR Part 145

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements, Small businesses.

##### 13 CFR Part 147

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

Dated: September 12, 2003.

#### Hector V. Barreto,

*Administrator, U.S. Small Business Administration.*

■ For the reasons stated in the common preamble, the U.S. Small Business Administration proposes to amend 13 CFR Chapter I as follows:

■ 1. Part 145 is revised to read as set forth in instruction 1 at the end of the common preamble.

### PART 145—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

145.25 How is this part organized?

145.50 How is this part written?

145.75 Do terms in this part have special meanings?

#### Subpart A—General

145.100 What does this part do?

145.105 Does this part apply to me?

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

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

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

145.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?

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

145.135 May the SBA exclude a person who is not currently participating in a nonprocurement transaction?

145.140 How do I know if a person is excluded?

145.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

#### Subpart B—Covered Transactions

145.200 What is a covered transaction?

- 145.205 Why is it important to know if a particular transaction is a covered transaction?
- 145.210 Which nonprocurement transactions are covered transactions?
- 145.215 Which nonprocurement transactions are not covered transactions?
- 145.220 Are any procurement contracts included as covered transactions?
- 145.225 How do I know if a transaction in which I may participate in is a covered transaction?

### Subpart C—Responsibilities of Participants Regarding Transactions

#### Doing Business With Other Persons

- 145.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
- 145.305 May I enter into a covered transaction with an excluded or disqualified person?
- 145.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
- 145.315 May I use the services of an excluded person as a principal under a covered transaction?
- 145.320 Must I verify that principals of my covered transactions are eligible to participate?
- 145.325 What happens if I do business with an excluded person in a covered transaction?
- 145.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

#### Disclosing Information—Primary Tier Participants

- 145.335 What information must I provide before entering into a covered transaction with the SBA?
- 145.340 If I disclose unfavorable information required under § 145.335, will I be prevented from participating in the transaction?
- 145.345 What happens if I fail to disclose the information required under § 145.335?
- 145.350 What must I do if I learn of the information required under § 145.335 after entering into a covered transaction with the SBA?

#### Disclosing Information—Lower Tier Participants

- 145.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
- 145.360 What happens if I fail to disclose the information required under § 145.355?
- 145.365 What must I do if I learn of information required under § 145.355 after entering into a covered transaction with a higher tier participant?

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

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

- 145.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
- 145.410 May I approve a participant's use of the services of an excluded person?
- 145.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
- 145.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
- 145.425 When do I check to see if a person is excluded or disqualified?
- 145.430 How do I check to see if a person is excluded or disqualified?
- 145.435 What must I require of a primary tier participant?
- 145.440 What method do I use to communicate those requirements to participants?
- 145.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
- 145.450 What action may I take if a primary tier participant fails to disclose the information required under § 145.335?
- 145.455 What may I do if a lower tier participant fails to disclose the information required under § 145.355 to the next higher tier?

### Subpart E—Excluded Parties List System

- 145.500 What is the purpose of the Excluded Parties List System (EPLS)?
- 145.505 Who uses the EPLS?
- 145.510 Who maintains the EPLS?
- 145.515 What specific information is in the EPLS?
- 145.520 Who places the information into the EPLS?
- 145.525 Whom do I ask if I have questions about a person in the EPLS?
- 145.530 Where can I find the EPLS?

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

- 145.600 How do suspension and debarment actions start?
- 145.605 How does suspension differ from debarment?
- 145.610 What procedures does the SBA use in suspension and debarment actions?
- 145.615 How does the SBA notify a person of a suspension and debarment action?
- 145.620 Do Federal agencies coordinate suspension and debarment actions?
- 145.625 What is the scope of a suspension or debarment action?
- 145.630 May the SBA impute the conduct of one person to another?
- 145.635 May the SBA settle a debarment or suspension action?
- 145.640 May a settlement include a voluntary exclusion?
- 145.645 Do other Federal agencies know if the SBA agrees to a voluntary exclusion?

### Subpart G—Suspension

- 145.700 When may the suspending official issue a suspension?
- 145.705 What does the suspending official consider in issuing a suspension?
- 145.710 When does a suspension take effect?
- 145.715 What notice does the suspending official give me if I am suspended?
- 145.720 How may I contest a suspension?

- 145.725 How much time do I have to contest a suspension?
- 145.730 What information must I provide to the suspending official if I contest a suspension?
- 145.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 145.740 Are suspension proceedings formal?
- 145.745 How is fact-finding conducted?
- 145.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 145.755 When will I know whether the suspension is continued or terminated?
- 145.760 How long may my suspension last?
- 145.765 How may I appeal my suspension?

### Subpart H—Debarment

- 145.800 What are the causes for debarment?
- 145.805 What notice does the debarring official give me if I am proposed for debarment?
- 145.810 When does a debarment take effect?
- 145.815 How may I contest a proposed debarment?
- 145.820 How much time do I have to contest a proposed debarment?
- 145.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 145.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
- 145.835 Are debarment proceedings formal?
- 145.840 How is fact-finding conducted?
- 145.845 What does the debarring official consider in deciding whether to debar me?
- 145.850 What is the standard of proof in a debarment action?
- 145.855 Who has the burden of proof in a debarment action?
- 145.860 What factors may influence the debarring official's decision?
- 145.865 How long may my debarment last?
- 145.870 When do I know if the debarring official debars me?
- 145.875 May I ask the debarring official to reconsider a decision to debar me?
- 145.880 What factors may influence the debarring official during reconsideration?
- 145.885 May the debarring official extend a debarment?
- 145.890 How may I appeal my debarment?

### Subpart I—Definitions

- 145.900 Adequate evidence.
- 145.905 Affiliate.
- 145.910 Agency.
- 145.915 Agent or representative.
- 145.920 Civil judgment.
- 145.925 Conviction.
- 145.930 Debarment.
- 145.935 Debarring official.
- 145.940 Disqualified.
- 145.945 Excluded or exclusion.
- 145.950 Excluded Parties List System.
- 145.955 Indictment.
- 145.960 Ineligible or ineligibility.
- 145.965 Legal proceedings.
- 145.970 Nonprocurement transaction.



- 145.975 Notice.
- 145.980 Participant.
- 144.985 Person.
- 145.990 Preponderance of the evidence.
- 145.995 Principal.
- 145.1000 Respondent.
- 145.1005 State.
- 145.1010 Suspending official.
- 145.1015 Suspension.
- 145.1020 Voluntary exclusion or voluntarily excluded.

**Subpart J—[Reserved]**

**Appendix to Part 145—Covered Transactions**

**Authority:** 5 U.S.C. 301 *et seq.*; 15 U.S.C. 631 *et seq.*; Sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 11738, 3 CFR, 1973 Comp., p. 799; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

- 2. Part 145 is further amended as set forth below.
  - a. “[Agency noun]” is removed and the “SBA” is added in its place wherever it occurs.
  - b. “[Agency adjective]” is removed and the “SBA” is added in its place wherever it occurs.
  - c. “[Agency head or designee]” is removed and the “SBA Debarment Official” is added in its place wherever it occurs.
- 3. Section 145.220 is further amended by adding a paragraph (c) to read as follows:

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

\* \* \* \* \*

(c) The contract is awarded by any contractor, subcontractor, supplier, consultant or its agent or representative in any transaction, regardless of tier, to be funded or provided by the SBA under a nonprocurement transaction that is expected to equal or exceed \$25,000. (See optional lower tier coverage shown in the diagram in the appendix to this part.)

- 4. Section 145.440 is added to read as follows:

**§ 145.440 What method do I use to communicate 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 145.765 is added to subpart G to read as follows:

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

(a) If the SBA suspending official issues a decision under § 145.755 to

continue your suspension after you present information in opposition to that suspension under § 145.720, you can ask for review of the suspending official’s decision in two ways:

(1) You may ask the suspending official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; and/or

(2) You may request that the SBA Office of Hearings and Appeals (OHA), review the suspending official’s decision to continue your suspension within 30 days of your receipt of the suspending official’s decision under § 145.755 or paragraph (a)(1) of this section. However, OHA can reverse the suspending official’s decision only where OHA finds that the decision is based on a clear error of material fact or law, or where OHA finds that the suspending official’s decision was arbitrary, capricious, or an abuse of discretion.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in error; and include the reasons or legal bases for your position.

(c) OHA, in its discretion, may stay the suspension pending review of the suspending official’s decision.

(d) The SBA suspending official and OHA must notify you of their decisions under this section, in writing, using the notice procedures at §§ 145.615 and 145.975.

- 6. Section 145.890 is added to subpart H to read as follows:

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

(a) If the SBA debarment official issues a decision under § 145.870 to debar you after you present information in opposition to a proposed debarment under § 145.815, you can ask for review of the 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 that the SBA Office of Hearings and Appeals (OHA), review the debarment official’s decision to debar you within 30 days of your receipt of the debarment official’s decision under § 145.870 or paragraph (a)(1) of this section. However, OHA can reverse the debarment official’s decision only where OHA finds that the decision is based on a clear error of material fact or law, or where OHA finds that the 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) OHA may, in its discretion, stay the debarment pending review of the debarment official’s decision.

(d) The SBA debarment official and OHA must notify you of their decisions under this section, in writing, using the notice procedures at §§ 145.615 and 145.975.

- 7. Section 145.935 is further amended by adding a paragraph (b) to read as follows:

**§ 145.935 Debarment official.**

\* \* \* \* \*

(b) For SBA, the debarment official for financial assistance programs means the Assistant Administrator for Lender Oversight; for all other programs, the debarment official means the Assistant Administrator for Administration.

- 8. Section 145.995 is further amended by adding a paragraph (c) to read as follows:

**§ 145.995 Principal.**

\* \* \* \* \*

(c) Other examples of individuals who are principals in SBA covered transactions include:

- (1) Principal investigators.
- (2) Securities brokers and dealers under the section 7(a) Loan, Certified Development Company (CDC) and Small Business Investment Company (SBIC) programs.

(3) Applicant representatives under the section 7(a) Loan, Certified Development Company (CDC), Small Business Investment Company (SBIC), Small Business Development Center (SBDC), and section 7(j) programs.

(4) Providers of professional services under section 7(a) Loan, Certified Development Company (CDC), Small Business Investment Company (SBIC), Small Business Development Center (SBDC), and section 7(j) programs.

(5) Individuals that certify, authenticate or authorize billings.

- 9. Section 145.1010 is further amended by adding a paragraph (b) to read as follows:

**§ 145.1010 Suspending official.**

\* \* \* \* \*

(b) For SBA, the suspending official for financial assistance programs means the Assistant Administrator for Lender Oversight; for all other programs, the suspending official means the Assistant Administrator for Administration.

- 10. Part 147 is added to read as set forth in instruction 2 at the end of the common preamble.



## PART 147—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (NONPROCUREMENT)

### Subpart A—Purpose and Coverage

Sec.

- 147.100 What does this part do?  
 147.105 Does this part apply to me?  
 147.110 Are any of my Federal assistance awards exempt from this part?  
 147.115 Does this part affect the Federal contracts that I receive?

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

- 147.200 What must I do to comply with this part?  
 147.205 What must I include in my drug-free workplace statement?  
 147.210 To whom must I distribute my drug-free workplace statement?  
 147.215 What must I include in my drug-free awareness program?  
 147.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?  
 147.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?  
 147.230 How and when must I identify workplaces?

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

- 147.300 What must I do to comply with this part if I am an individual recipient?  
 147.301 [Reserved]

### Subpart D—Responsibilities of SBA Awarding Officials

- 147.400 What are my responsibilities as an SBA awarding official?

### Subpart E—Violations of This Part and Consequences

- 147.500 How are violations of this part determined for recipients other than individuals?  
 147.505 How are violations of this part determined for recipients who are individuals?  
 147.510 What actions will the Federal Government take against a recipient determined to have violated this part?  
 147.515 Are there any exceptions to those actions?

### Subpart F—Definitions

- 147.605 Award.  
 147.610 Controlled substance.  
 147.615 Conviction.  
 147.620 Cooperative agreement.  
 147.625 Criminal drug statute.  
 147.630 Debarment.  
 147.635 Drug-free workplace.  
 147.640 Employee.  
 147.645 Federal agency or agency.  
 147.650 Grant.  
 147.655 Individual.  
 147.660 Recipient.  
 147.665 State.  
 147.670 Suspension.

Authority: 41 U.S.C. 701–707.

■ 11. Part 147 is further amended as set forth below.

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

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

■ c. “[Agency head or designee]” is removed and the “SBA Administrator or designee” is added in its place wherever it occurs.

■ d. “[Agency head]” is removed and the “SBA Administrator” is added in its place wherever it occurs.

■ 12. Section 147.510(c) is further amended by removing “[CFR citation for the Federal Agency’s regulations implementing Executive Order 12549 and Executive Order 12689]” and adding “13 CFR Part 145” in its place.

■ 13. Section 147.605(a)(2) is amended by removing “[Agency specific CFR citation]” and adding “13 CFR Part 147” in its place.

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 14 CFR Parts 1265 and 1267

#### RIN 2700–AC76

FOR FURTHER INFORMATION CONTACT: Paul Brundage, NASA Headquarters, 300 E Street, SW, Washington, DC 20546–0001, (202) 358–0481, e-mail: paul.d.brundage@nasa.gov.

#### List of Subjects

##### 14 CFR Part 1265

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

##### 14 CFR Part 1267

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

Dated: July 8, 2003.

Tom Luedtke,

Assistant Administrator for Procurement.

■ For the reasons stated in the common preamble, the National Aeronautics and Space Administration amends 14 CFR chapter V as follows:

■ 1. Part 1265 is revised to read as set forth in instruction 1 at the end of the common preamble.

## PART 1265—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

- 1265.25 How is this part organized?  
 1265.50 How is this part written?  
 1265.75 Do terms in this part have special meanings?

### Subpart A—General

- 1265.100 What does this part do?  
 1265.105 Does this part apply to me?  
 1265.110 What is the purpose of the nonprocurement debarment and suspension system?  
 1265.115 How does an exclusion restrict a person’s involvement in covered transactions?  
 1265.120 May we grant an exception to let an excluded person participate in a covered transaction?  
 1265.125 Does an exclusion under the nonprocurement system affect a person’s eligibility for Federal procurement contracts?  
 1265.130 Does exclusion under the Federal procurement system affect a person’s eligibility to participate in nonprocurement transactions?  
 1265.135 May NASA exclude a person who is not currently participating in a nonprocurement transaction?  
 1265.140 How do I know if a person is excluded?  
 1265.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

### Subpart B—Covered Transactions

- 1265.200 What is a covered transaction?  
 1265.205 Why is it important to know if a particular transaction is a covered transaction?  
 1265.210 Which nonprocurement transactions are covered transactions?  
 1265.215 Which nonprocurement transactions are not covered transactions?  
 1265.220 Are any procurement contracts included as covered transactions?  
 1265.225 How do I know if a transaction in which I may participate is a covered transaction?

### Subpart C—Responsibilities of Participants Regarding Transactions

#### Doing Business With Other Persons

- 1265.300 What must I do before I enter into a covered transaction with another person at the next lower tier?  
 1265.305 May I enter into a covered transaction with an excluded or disqualified person?  
 1265.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?  
 1265.315 May I use the services of an excluded person as a principal under a covered transaction?  
 1265.320 Must I verify that principals of my covered transactions are eligible to participate?  
 1265.325 What happens if I do business with an excluded person in a covered transaction?  
 1265.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

**Disclosing Information—Primary Tier Participants**

- 1265.335 What information must I provide before entering into a covered transaction with NASA?
- 1265.340 If I disclose unfavorable information required under § 1265.335, will I be prevented from participating in the transaction?
- 1265.345 What happens if I fail to disclose the information required under § 1265.335?
- 1265.350 What must I do if I learn of the information required under § 1265.335 after entering into a covered transaction with NASA?

**Disclosing Information—Lower Tier Participants**

- 1265.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
- 1265.360 What happens if I fail to disclose the information required under § 1265.355?
- 1265.365 What must I do if I learn of information required under § 1265.355 after entering into a covered transaction with a higher tier participant?

**Subpart D—Responsibilities of NASA Officials Regarding Transactions**

- 1265.400 May I enter into a transaction with an excluded or disqualified person?
- 1265.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
- 1265.410 May I approve a participant's use of the services of an excluded person?
- 1265.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
- 1265.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
- 1265.425 When do I check to see if a person is excluded or disqualified?
- 1265.430 How do I check to see if a person is excluded or disqualified?
- 1265.435 What must I require of a primary tier participant?
- 1265.440 What method do I use to communicate those requirements to participants?
- 1265.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
- 1265.450 What action may I take if a primary tier participant fails to disclose the information required under § 1265.335?
- 1265.455 What may I do if a lower tier participant fails to disclose the information required under § 1265.355 to the next higher tier?

**Subpart E—Excluded Parties List System**

- 1265.500 What is the purpose of the Excluded Parties List System (EPLS)?
- 1265.505 Who uses the EPLS?
- 1265.510 Who maintains the EPLS?
- 1265.515 What specific information is in the EPLS?

- 1265.520 Who places the information into the EPLS?
- 1265.525 Whom do I ask if I have questions about a person in the EPLS?
- 1265.530 Where can I find the EPLS?

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

- 1265.600 How do suspension and debarment actions start?
- 1265.605 How does suspension differ from debarment?
- 1265.610 What procedures does NASA use in suspension and debarment actions?
- 1265.615 How does NASA notify a person of a suspension and debarment action?
- 1265.620 Do Federal agencies coordinate suspension and debarment actions?
- 1265.625 What is the scope of a suspension or debarment action?
- 1265.630 May NASA impute the conduct of one person to another?
- 1265.635 May NASA settle a debarment or suspension action?
- 1265.640 May a settlement include a voluntary exclusion?
- 1265.645 Do other Federal agencies know if NASA agrees to a voluntary exclusion?

**Subpart G—Suspension**

- 1265.700 When may the suspending official issue a suspension?
- 1265.705 What does the suspending official consider in issuing a suspension?
- 1265.710 When does a suspension take effect?
- 1265.715 What notice does the suspending official give me if I am suspended?
- 1265.720 How may I contest a suspension?
- 1265.725 How much time do I have to contest a suspension?
- 1265.730 What information must I provide to the suspending official if I contest a suspension?
- 1265.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 1265.740 Are suspension proceedings formal?
- 1265.745 How is fact-finding conducted?
- 1265.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 1265.755 When will I know whether the suspension is continued or terminated?
- 1265.760 How long may my suspension last?

**Subpart H—Debarment**

- 1265.800 What are the causes for debarment?
- 1265.805 What notice does the debarring official give me if I am proposed for debarment?
- 1265.810 When does a debarment take effect?
- 1265.815 How may I contest a proposed debarment?
- 1265.820 How much time do I have to contest a proposed debarment?
- 1265.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 1265.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?

- 1265.835 Are debarment proceedings formal?
- 1265.840 How is fact-finding conducted?
- 1265.845 What does the debarring official consider in deciding whether to debar me?
- 1265.850 What is the standard of proof in a debarment action?
- 1265.855 Who has the burden of proof in a debarment action?
- 1265.860 What factors may influence the debarring official's decision?
- 1265.865 How long may my debarment last?
- 1265.870 When do I know if the debarring official debars me?
- 1265.875 May I ask the debarring official to reconsider a decision to debar me?
- 1265.880 What factors may influence the debarring official during reconsideration?
- 1265.885 May the debarring official extend a debarment?

**Subpart I—Definitions**

- 1265.900 Adequate evidence.
- 1265.905 Affiliate.
- 1265.910 Agency.
- 1265.915 Agent or representative.
- 1265.920 Civil judgment.
- 1265.925 Conviction.
- 1265.930 Debarment.
- 1265.935 Debarring official.
- 1265.940 Disqualified.
- 1265.945 Excluded or exclusion.
- 1265.950 Excluded Parties List System.
- 1265.955 Indictment.
- 1265.960 Ineligible or ineligibility.
- 1265.965 Legal proceedings.
- 1265.970 Nonprocurement transaction.
- 1265.975 Notice.
- 1265.980 Participant.
- 1265.985 Person.
- 1265.990 Preponderance of the evidence.
- 1265.995 Principal.
- 1265.1000 Respondent.
- 1265.1005 State.
- 1265.1010 Suspending official.
- 1265.1015 Suspension.
- 1265.1020 Voluntary exclusion or voluntarily excluded.

**Subpart J—[Reserved]****Appendix to Part 1265—Covered Transactions**

**Authority:** Sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 11738, 3 CFR, 1973 Comp., p. 799; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235; 42 U.S.C. 2473(c)(1).

- 2. Part 1265 is further amended as set forth below.
- a. “The [Agency noun]” is removed and “NASA” is added in its place wherever it occurs.
- b. “[Agency adjective]” is removed and “NASA” is added in its place wherever it occurs.
- c. “[Agency head or designee]” is removed and “Assistant Administrator for Procurement” is added in its place wherever it occurs.
- 3. Section 1265.440 is added to read as follows:

**§ 1265.440 What method do I use to communicate 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 1267 is added to read as set forth in instruction 2 at the end of the common preamble.

**PART 1267—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)****Subpart A—Purpose and Coverage**

Sec.

- 1267.100 What does this part do?  
1267.105 Does this part apply to me?  
1267.110 Are any of my Federal assistance awards exempt from this part?  
1267.115 Does this part affect the Federal contracts that I receive?

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

- 1267.200 What must I do to comply with this part?  
1267.205 What must I include in my drug-free workplace statement?  
1267.210 To whom must I distribute my drug-free workplace statement?  
1267.215 What must I include in my drug-free awareness program?  
1267.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?  
1267.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?  
1267.230 How and when must I identify workplaces?

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

- 1267.300 What must I do to comply with this part if I am an individual recipient?  
1267.301 [Reserved]

**Subpart D—Responsibilities of NASA Awarding Officials**

- 1267.400 What are my responsibilities as a NASA awarding official?

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

- 1267.500 How are violations of this part determined for recipients other than individuals?  
1267.505 How are violations of this part determined for recipients who are individuals?  
1267.510 What actions will the Federal Government take against a recipient determined to have violated this part?  
1267.515 Are there any exceptions to those actions?

**Subpart F—Definitions**

- 1267.605 Award.

- 1267.610 Controlled substance.  
1267.615 Conviction.  
1267.620 Cooperative agreement.  
1267.625 Criminal drug statute.  
1267.630 Debarment.  
1267.635 Drug-free workplace.  
1267.640 Employee.  
1267.645 Federal agency or agency.  
1267.650 Grant.  
1267.655 Individual.  
1267.660 Recipient.  
1267.665 State.  
1267.670 Suspension.

**Authority:** 41 U.S.C. 701 *et seq.*; 42 U.S.C. 2473c.

■ 5. Part 1267 is further amended as set forth below.

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

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

■ c. “[Agency head or designee]” is removed and “Assistant Administrator for Procurement” is added in its place wherever it occurs.

■ d. “[Agency head]” is removed and “Assistant Administrator for Procurement” is added in its place wherever it occurs.

■ 6. Section 1267.510(c) is further amended by removing “[CFR citation for the Federal Agency’s regulations implementing Executive Order 12549 and Executive Order 12689]” and adding “14 CFR Part 1265” in its place.

■ 7. Section 1267.605(a)(2) is further amended by removing “[Agency-specific CFR citation]” and adding “14 CFR Part 1273” in its place.

**DEPARTMENT OF COMMERCE****15 CFR Parts 26 and 29**

[Docket No. 030723184–3184–01]

RIN 0605–AA16

**FOR FURTHER INFORMATION CONTACT:**

Christine Makris, Office of Acquisition Management, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room HCHB 6422, Washington, DC 20230, 202–482–6131, e-mail: [CMakris@doc.gov](mailto:CMakris@doc.gov).

**List of Subjects***15 CFR Part 26*

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

*15 CFR Part 29*

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

Dated: July 23, 2003.

**Lucia Homick,**

*Acting Director, Office of Executive Budgeting and Assistance Management.*

■ For the reasons stated in the common preamble, the Department of Commerce amends 15 CFR subtitle A, as follows:

■ 1. Part 26 is revised to read as set forth in instruction 1 at the end of the common preamble.

**PART 26—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

Sec.

- 26.25 How is this part organized?  
26.50 How is this part written?  
26.75 Do terms in this part have special meanings?

**Subpart A—General**

- 26.100 What does this part do?  
26.105 Does this part apply to me?  
26.110 What is the purpose of the nonprocurement debarment and suspension system?  
26.115 How does an exclusion restrict a person's involvement in covered transactions?  
26.120 May we grant an exception to let an excluded person participate in a covered transaction?  
26.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?  
26.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?  
26.135 May the Department of Commerce exclude a person who is not currently participating in a nonprocurement transaction?  
26.140 How do I know if a person is excluded?  
26.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

**Subpart B—Covered Transactions**

- 26.200 What is a covered transaction?  
26.205 Why is it important to know if a particular transaction is a covered transaction?  
26.210 Which nonprocurement transactions are covered transactions?  
26.215 Which nonprocurement transactions are not covered transactions?  
26.220 Are any procurement contracts included as covered transactions?  
26.225 How do I know if a transaction in which I may participate is a covered transaction?

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

- 26.300 What must I do before I enter into a covered transaction with another person at the next lower tier?

- 26.305 May I enter into a covered transaction with an excluded or disqualified person?
- 26.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
- 26.315 May I use the services of an excluded person as a principal under a covered transaction?
- 26.320 Must I verify that principals of my covered transactions are eligible to participate?
- 26.325 What happens if I do business with an excluded person in a covered transaction?
- 26.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

#### Disclosing Information—Primary Tier Participants

- 26.3357 What information must I provide before entering into a covered transaction with the Department of Commerce?
- 26.340 If I disclose unfavorable information required under § 26.335, will I be prevented from participating in the transaction?
- 26.345 What happens if I fail to disclose the information required under § 26.335?
- 26.350 What must I do if I learn of the information required under § 26.335 after entering into a covered transaction with the Department of Commerce?

#### Disclosing Information—Lower Tier Participants

- 26.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
- 26.360 What happens if I fail to disclose the information required under § 26.355?
- 26.365 What must I do if I learn of information required under § 26.355 after entering into a covered transaction with a higher tier participant?

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

- 26.400 May I enter into a transaction with an excluded or disqualified person?
- 26.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
- 26.410 May I approve a participant's use of the services of an excluded person?
- 26.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
- 26.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
- 26.425 When do I check to see if a person is excluded or disqualified?
- 26.430 How do I check to see if a person is excluded or disqualified?
- 26.435 What must I require of a primary tier participant?
- 26.440 What method do I use to communicate those requirements to participants?
- 26.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?

- 26.450 What action may I take if a primary tier participant fails to disclose the information required under § 26.335?
- 26.455 What may I do if a lower tier participant fails to disclose the information required under § 26.355 to the next higher tier?

#### Subpart E—Excluded Parties List System

- 26.500 What is the purpose of the Excluded Parties List System (EPLS)?
- 26.505 Who uses the EPLS?
- 26.510 Who maintains the EPLS?
- 26.515 What specific information is in the EPLS?
- 26.520 Who places the information into the EPLS?
- 26.525 Whom do I ask if I have questions about a person in the EPLS?
- 26.530 Where can I find the EPLS?

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

- 26.600 How do suspension and debarment actions start?
- 26.605 How does suspension differ from debarment?
- 26.610 What procedures does the Department of Commerce use in suspension and debarment actions?
- 26.615 How does the Department of Commerce notify a person of a suspension and debarment action?
- 26.620 Do Federal agencies coordinate suspension and debarment actions?
- 26.625 What is the scope of a suspension or debarment action?
- 26.630 May the Department of Commerce impute the conduct of one person to another?
- 26.635 May the Department of Commerce settle a debarment or suspension action?
- 26.640 May a settlement include a voluntary exclusion?
- 26.645 Do other Federal agencies know if the Department of Commerce agrees to a voluntary exclusion?

#### Subpart G—Suspension

- 26.700 When may the suspending official issue a suspension?
- 26.705 What does the suspending official consider in issuing a suspension?
- 26.710 When does a suspension take effect?
- 26.715 What notice does the suspending official give me if I am suspended?
- 26.720 How may I contest a suspension?
- 26.725 How much time do I have to contest a suspension?
- 26.730 What information must I provide to the suspending official if I contest a suspension?
- 26.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 26.740 Are suspension proceedings formal?
- 26.745 How is fact-finding conducted?
- 26.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 26.755 When will I know whether the suspension is continued or terminated?
- 26.760 How long may my suspension last?

#### Subpart H—Debarment

- 26.800 What are the causes for debarment?

- 26.805 What notice does the debarment official give me if I am proposed for debarment?
- 26.810 When does a debarment take effect?
- 26.815 How may I contest a proposed debarment?
- 26.820 How much time do I have to contest a proposed debarment?
- 26.825 What information must I provide to the Debarment official if I contest a proposed debarment?
- 26.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
- 26.835 Are debarment proceedings formal?
- 26.840 How is fact-finding conducted?
- 26.845 What does the debarment official consider in deciding whether to debar me?
- 26.850 What is the standard of proof in a debarment action?
- 26.855 Who has the burden of proof in a debarment action?
- 26.860 What factors may influence the debarment official's decision?
- 26.865 How long may my debarment last?
- 26.870 When do I know if the debarment official debars me?
- 26.875 May I ask the debarment official to reconsider a decision to debar me?
- 26.880 What factors may influence the debarment official during reconsideration?
- 26.885 May the debarment official extend a debarment?

#### Subpart I—Definitions

- 26.900 Adequate evidence.
- 26.905 Affiliate.
- 26.910 Agency.
- 26.915 Agent or representative.
- 26.920 Civil judgment.
- 26.925 Conviction.
- 26.930 Debarment.
- 26.935 Debarment official.
- 26.940 Disqualified.
- 26.945 Excluded or exclusion.
- 26.950 Excluded Parties List System.
- 26.955 Indictment.
- 26.960 Ineligible or ineligibility.
- 26.965 Legal proceedings.
- 26.970 Nonprocurement transaction.
- 26.975 Notice.
- 26.980 Participant.
- 26.985 Person.
- 26.990 Preponderance of the evidence.
- 26.995 Principal.
- 26.1000 Respondent.
- 26.1005 State.
- 26.1010 Suspending official.
- 26.1015 Suspension.
- 26.1020 Voluntary exclusion or voluntarily excluded.

#### Subpart J—[Reserved]

#### Appendix to Part 26—Covered Transactions

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

■ 2. Part 26 is further amended as set forth below.

- a. “[Agency noun]” is removed and “Department of Commerce” is added in its place wherever it occurs.
- b. “[Agency adjective]” is removed and “DoC” is added in its place wherever it occurs.
- c. “[Agency head or designee]” is removed and “Secretary of Commerce or designee” is added in its place wherever it occurs.

■ 3. Section 26.215 is amended as follows:

- a. Add paragraph (d)(1) and add and reserve paragraph (d)(2).
- b. Add paragraph (f)(1) and add and reserve paragraph (f)(2).
- c. Add paragraph (g)(1) and add and reserve paragraph (g)(2).

The additions read as follows:

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

- \* \* \* \* \*
- (d) \* \* \*
- (1) For the purposes of the DoC this means:
- (i) Fisherman’s Contingency Fund.
  - (ii) [Reserved]
  - (2) [Reserved]
- \* \* \* \* \*
- (f) \* \* \*
- (1) For purposes of the DoC this means:
- (i) Export Promotion, Trade Information and Counseling, and Trade Policy.
  - (ii) Geodetic Surveys and Services (Specialized Services).
  - (iii) Fishery Products Inspection Certification.
  - (iv) Standard Reference Materials.
  - (v) Calibration, Measurement and Testing.
  - (vi) Critically Evaluated Data (Standard Reference Data).
  - (vii) Phoenix Data System.
  - (viii) The sale or provision of products, information, and services to the general public.
  - (2) [Reserved]
- (g) \* \* \*
- (1) For purposes of the DoC this means:
- (i) The Administration of the Antidumping and Countervailing Duty Statutes.
  - (ii) The Export Trading Company Act Certificate of Review Program.
  - (iii) Trade Adjustment Assistance Program Certification.
  - (iv) Foreign Trade Zones Act of 1934, as amended.
  - (v) Statutory Import Program.
  - (2) [Reserved]

■ 4. Section 26.220 is amended to add paragraph (c) to read as follows:

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

\* \* \* \* \*

(c) The contract is a subcontract awarded by a participant in a procurement transaction that is covered under paragraph (a) of this section, and the amount of the contract exceeds or is expected to exceed \$25,000. This extends the coverage of paragraph (a) of this section to one additional tier of contracts, as shown in the diagram in the Appendix to this part.

■ 5. Section 26.440 is added to read as follows:

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

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participants’ compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

■ 6. Section 26.970 is amended to add paragraphs (a)(12) through (16) to read as follows:

**§ 26.970 Nonprocurement transaction**

- (a) \* \* \*
- (12) Joint Project Agreements under 15 U.S.C. 1525.
- (13) Cooperative research and development agreements.
- (14) Joint statistical agreements.
- (15) Patent licenses under 35 U.S.C. 207.
- (16) NTIS joint ventures, 15 U.S.C. 3704b.

\* \* \* \* \*

■ 7. Part 29 is added to read as set forth in instruction 2 at the end of the common preamble.

**PART 29—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)**

**Subpart A—Purpose and Coverage**

- 29.100 What does this part do?
- 29.105 Does this part apply to me?
- 29.110 Are any of my Federal assistance awards exempt from this part?
- 29.115 Does this part affect the Federal contracts that I receive?

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

- 29.200 What must I do to comply with this part?
- 29.205 What must I include in my drug-free workplace statement?
- 29.210 To whom must I distribute my drug-free workplace statement?
- 29.215 What must I include in my drug-free awareness program?
- 29.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?

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

29.230 How and when must I identify workplaces?

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

- 29.300 What must I do to comply with this part if I am an individual recipient?
- 29.301 [Reserved]

**Subpart D—Responsibilities of DoC Awarding Officials**

29.400 What are my responsibilities as a DoC awarding official?

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

- 29.500 How are violations of this part determined for recipients other than individuals?
- 29.505 How are violations of this part determined for recipients who are individuals?
- 29.510 What actions will the Federal Government take against a recipient determined to have violated this part?
- 29.515 Are there any exceptions to those actions?

**Subpart F—Definitions**

- 29.605 Award.
- 29.610 Controlled substance.
- 29.615 Conviction.
- 29.620 Cooperative agreement.
- 29.625 Criminal drug statute.
- 29.630 Debarment.
- 29.635 Drug-free workplace.
- 29.640 Employee.
- 29.645 Federal agency or agency.
- 29.650 Grant.
- 29.655 Individual.
- 29.660 Recipient.
- 29.665 State.
- 29.670 Suspension.

**Authority:** 5 U.S.C. 301; 41 U.S.C. 701 *et seq.*

■ 8. Part 29 is further amended as set forth below.

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

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

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

■ d. “[Agency head]” is removed and “Secretary of Commerce” is added in its place wherever it occurs.

■ 9. Section 29.510(c) is further amended by removing “[CFR citation for the Federal agency’s regulations implementing Executive Order 12549 and Executive Order 12689]” and adding “15 CFR Part 26” in its place.

■ 10. Section 29.605(a)(2) is further amended by removing “[Agency-specific CFR citation]” and adding “15 CFR Part 24” in its place.

**SOCIAL SECURITY ADMINISTRATION****20 CFR Parts 436 and 439****RIN 0960-AE27****FOR FURTHER INFORMATION CONTACT:**

Phyllis Y. Smith, Grants Management Officer, Office of Acquisition and Grants, Grants Management Team, 1710 Gwynn Oak Ave, Baltimore, MD 21207, (410) 965-9518, e-mail: [phyllis.y.smith@ssa.gov](mailto:phyllis.y.smith@ssa.gov).

**SUPPLEMENTARY INFORMATION:** Prior to March 31, 1995, SSA was an operating component of the Department of Health and Human Services (HHS). As a result of Public Law 103-296, the Social Security Administration (SSA) became an independent agency on March 31, 1995. However, pursuant to section 106(b) of that law, the HHS regulations at 45 CFR part 76 dealing with nonprocurement, debarment and suspension, and the requirements for a drug-free workplace have remained applicable to SSA. In order to implement its own set of regulations on these topics, SSA is adopting the common rules on nonprocurement, debarment and suspension, and requirements for a drug-free workplace with one amendment as new parts 436 and 439 in title 20 of the Code of Federal Regulations. HHS regulations at 45 CFR Part 76 will cease to be applicable to SSA on the effective date of these regulations, in accordance with section 106(b) of Pub. L. 103-296.

**List of Subjects***20 CFR Part 436*

Administrative practice and procedures, Debarment and suspension, Grant programs, and reporting and recordkeeping requirements.

*20 CFR Part 439*

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

Dated: July 15, 2003.

**Jo Anne B. Barnhart,**

*Commissioner of Social Security.*

■ For the reasons stated in the common preamble, the Social Security Administration amends 20 CFR chapter III, as follows:

■ 1. Part 436 is added to read as set forth in instruction 1 at the end of the common preamble.

**PART 436—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

Sec.

- 436.25 How is this part organized?  
436.50 How is this part written?  
436.75 Do terms in this part have special meanings?

**Subpart A—General**

- 436.100 What does this part do?  
436.105 Does this part apply to me?  
436.110 What is the purpose of the nonprocurement debarment and suspension system?  
436.115 How does an exclusion restrict a person's involvement in covered transactions?  
436.120 May we grant an exception to let an excluded person participate in a covered transaction?  
436.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?  
436.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?  
436.135 May the SSA exclude a person who is not currently participating in a nonprocurement transaction?  
436.140 How do I know if a person is excluded?  
436.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

**Subpart B—Covered Transactions**

- 436.200 What is a covered transaction?  
436.205 Why is it important to know if a particular transaction is a covered transaction?  
436.210 Which nonprocurement transactions are covered transactions?  
436.215 Which nonprocurement transactions are not covered transactions?  
436.220 Are any procurement contracts included as covered transactions?  
436.225 How do I know if a transaction in which I may participate is a covered transaction?

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

- 436.300 What must I do before I enter into a covered transaction with another person at the next lower tier?  
436.305 May I enter into a covered transaction with an excluded or disqualified person?  
436.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?  
436.315 May I use the services of an excluded person as a principal under a covered transaction?  
436.320 Must I verify that principals of my covered transactions are eligible to participate?  
436.325 What happens if I do business with an excluded person in a covered transaction?  
436.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

**Disclosing Information—Primary Tier Participants**

- 436.335 What information must I provide before entering into a covered transaction with the SSA?  
436.340 If I disclose unfavorable information required under § 436.335, will I be prevented from participating in the transaction?  
436.345 What happens if I fail to disclose the information required under § 436.335?  
436.350 What must I do if I learn of information required under § 436.335 after entering into a covered transaction with the SSA?

**Disclosing Information—Lower Tier Participants**

- 436.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?  
436.360 What happens if I fail to disclose the information required under § 436.355?  
436.365 What must I do if I learn of information required under § 436.355 after entering into a covered transaction with a higher tier participant?

**Subpart D—Responsibilities of SSA Officials Regarding Transactions**

- 436.400 May I enter into a transaction with an excluded or disqualified person?  
436.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?  
436.410 May I approve a participant's use of the services of an excluded person?  
436.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?  
436.420 May I approve a transaction with an excluded or disqualified person at a lower tier?  
436.425 When do I check to see if a person is excluded or disqualified?  
436.430 How do I check to see if a person is excluded or disqualified?  
436.435 What must I require of a primary tier participant?  
436.440 What method do I use to communicate those requirements to participants?  
436.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?  
436.450 What action may I take if a primary tier participant fails to disclose the information required under § 436.335?  
436.455 What may I do if a lower tier participant fails to disclose the information required under § 436.355 to the next higher tier?

**Subpart E—Excluded Parties List System**

- 436.500 What is the purpose of the Excluded Parties List System (EPLS)?  
436.505 Who uses the EPLS?  
436.510 Who maintains the EPLS?  
436.515 What specific information is in the EPLS?  
436.520 Who places the information into the EPLS?  
436.525 Whom do I ask if I have questions about a person in the EPLS?

436.530 Where can I find the EPLS?

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

- 436.600 How do suspension and debarment actions start?  
 436.605 How does suspension differ from debarment?  
 436.610 What procedures does the SSA use in suspension and debarment actions?  
 436.615 How does the SSA notify a person of a suspension and debarment action?  
 436.620 Do Federal agencies coordinate suspension and debarment actions?  
 436.625 What is the scope of a suspension or debarment action?  
 436.630 May the SSA impute the conduct of one person to another?  
 436.635 May the SSA settle a debarment or suspension action?  
 436.640 May a settlement include a voluntary exclusion?  
 436.645 Do other Federal agencies know if the SSA agrees to a voluntary exclusion?

#### Subpart G—Suspension

- 436.700 When may the suspending official issue a suspension?  
 436.705 What does the suspending official consider in issuing a suspension?  
 436.710 When does a suspension take effect?  
 436.715 What notice does the suspending official give me if I am suspended?  
 436.720 How may I contest a suspension?  
 436.725 How much time do I have to contest a suspension?  
 436.730 What information must I provide to the suspending official if I contest a suspension?  
 436.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?  
 436.740 Are suspension proceedings formal?  
 436.745 How is fact-finding conducted?  
 436.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?  
 436.755 When will I know whether the suspension is continued or terminated?  
 436.760 How long may my suspension last?

#### Subpart H—Debarment

- 436.800 What are the causes for debarment?  
 436.805 What notice does the debarring official give me if I am proposed for debarment?  
 436.810 When does a debarment take effect?  
 436.815 How may I contest a proposed debarment?  
 436.820 How much time do I have to contest a proposed debarment?  
 436.825 What information must I provide to the debarring official if I contest a proposed debarment?  
 436.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?  
 436.835 Are debarment proceedings formal?  
 436.840 How is fact-finding conducted?  
 436.845 What does the debarring official consider in deciding whether to debar me?

- 436.850 What is the standard of proof in a debarment action?  
 436.855 Who has the burden of proof in a debarment action?  
 436.860 What factors may influence the debarring official's decision?  
 436.865 How long may my debarment last?  
 436.870 When do I know if the debarring official debars me?  
 436.875 May I ask the debarring official to reconsider a decision to debar me?  
 436.880 What factors may influence the debarring official during reconsideration?  
 436.885 May the debarring official extend a debarment?

#### Subpart I—Definitions

- 436.900 Adequate evidence.  
 436.905 Affiliate.  
 436.910 Agency.  
 436.915 Agent or representative.  
 436.920 Civil judgment.  
 436.925 Conviction.  
 436.930 Debarment.  
 436.935 Debarring official.  
 436.940 Disqualified.  
 436.945 Excluded or exclusion.  
 436.950 Excluded Parties List System.  
 436.955 Indictment.  
 436.960 Ineligible or ineligibility.  
 436.965 Legal proceedings.  
 436.970 Nonprocurement transaction.  
 436.975 Notice.  
 436.980 Participant.  
 436.985 Person.  
 436.990 Preponderance of the evidence.  
 436.995 Principal.  
 436.1000 Respondent.  
 436.1005 State.  
 436.1010 Suspending official.  
 436.1015 Suspension.  
 436.1020 Voluntary exclusion or voluntarily excluded.

#### Subpart J—[Reserved]

#### Appendix to Part 436—Covered Transactions

**Authority:** 42 U.S.C. 902(a)(5); Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

- 2. Part 436 is further amended as follows:  
 ■ a. “[Agency noun]” is removed and “SSA” is added in its place wherever it occurs.  
 ■ b. “[Agency adjective]” is removed and “SSA” is added in its place wherever it occurs.  
 ■ c. “[Agency head or designee]” is removed and “SSA Debarring/Suspension Official” is added in its place wherever it occurs.  
 ■ 3. Section 436.440 is added to read as follows:

#### § 436.440 What method do I use to communicate those requirements to participants?

To communicate the requirements to participants, you must include a term or condition in the transaction requiring

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

■ 4. Part 439 is added to read as set forth in instruction 2 at the end of the common preamble.

#### PART 439—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

##### Subpart A—Purpose and Coverage

Sec.

- 439.100 What does this part do?  
 439.105 Does this part apply to me?  
 439.110 Are any of my Federal assistance awards exempt from this part?  
 439.115 Does this part affect the Federal contracts that I receive?

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

- 439.200 What must I do to comply with this part?  
 439.205 What must I include in my drug-free workplace statement?  
 439.210 To whom must I distribute my drug-free workplace statement?  
 439.215 What must I include in my drug-free awareness program?  
 439.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?  
 439.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?  
 439.230 How and when must I identify workplaces?

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

- 439.300 What must I do to comply with this part if I am an individual recipient?  
 439.301 [Reserved]

##### Subpart D—Responsibilities of SSA Awarding Officials

- 439.400 What are my responsibilities as an SSA awarding official?

##### Subpart E—Violations of This Part and Consequences

- 439.500 How are violations of this part determined for recipients other than individuals?  
 439.505 How are violations of this part determined for recipients who are individuals?  
 439.510 What actions will the Federal Government take against a recipient determined to have violated this part?  
 439.515 Are there any exceptions to those actions?

##### Subpart F—Definitions

- 439.605 Award.  
 439.610 Controlled substance.  
 439.615 Conviction.  
 439.620 Cooperative agreement.  
 439.625 Criminal drug statute.  
 439.630 Debarment.  
 439.635 Drug-free workplace.



- 439.640 Employee.  
 439.645 Federal agency or agency.  
 439.650 Grant.  
 439.655 Individual.  
 439.660 Recipient.  
 439.665 State.  
 439.670 Suspension.

**Authority:** 41 U.S.C. 701 *et seq.*

■ 5. Part 439 is further amended as follows:

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

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

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

■ d. “[Agency head]” is removed and “the Commissioner of SSA” is added in its place wherever it occurs.

■ 6. Section 439.510(c) is further amended by removing “[CFR citation for the Federal Agency’s regulations implementing Executive Order 12549 and Executive Order 12689]” and adding “20 CFR Part 436” in its place.

■ 7. Section 439.605(a)(2) is further amended by removing “[Agency-specific CFR citation]” and adding “20 CFR Part 439” in its place.

## OFFICE OF NATIONAL DRUG CONTROL POLICY

21 CFR Parts 1404 and 1405

RIN 3201–ZA03

### FOR FURTHER INFORMATION CONTACT:

ONDCP, Attn: Daniel R. Petersen, Washington, DC 20503, (202) 395–6745, [Daniel\\_R\\_Petersen@ondcp.eop.gov](mailto:Daniel_R_Petersen@ondcp.eop.gov).

### List of Subjects

21 CFR Part 1404

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

21 CFR Part 1405

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

### John Walters,

Director.

■ For the reason stated in the common preamble, the Office of National Drug Control Policy amends 21 CFR chapter III, as follows.

■ 1. Part 1404 is revised to read as set forth in instruction 1 at the end of the common preamble.

## PART 1404—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

- 1404.25 How is this part organized?  
 1404.50 How is this part written?  
 1404.75 Do terms in this part have special meanings?

### Subpart A—General

- 1404.100 What does this part do?  
 1404.105 Does this part apply to me?  
 1404.110 What is the purpose of the nonprocurement debarment and suspension system?  
 1404.115 How does an exclusion restrict a person’s involvement in covered transactions?  
 1404.120 May we grant an exception to let an excluded person participate in a covered transaction?  
 1404.125 Does an exclusion under the nonprocurement system affect a person’s eligibility for Federal procurement contracts?  
 1404.130 Does exclusion under the Federal procurement system affect a person’s eligibility to participate in nonprocurement transactions?  
 1404.135 May the Office of National Drug Control Policy exclude a person who is not currently participating in a nonprocurement transaction?  
 1404.140 How do I know if a person is excluded?  
 1404.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

### Subpart B—Covered Transactions

- 1404.200 What is a covered transaction?  
 1404.205 Why is it important to know if a particular transaction is a covered transaction?  
 1404.210 Which nonprocurement transactions are covered transactions?  
 1404.215 Which nonprocurement transactions are not covered transactions?  
 1404.220 Are any procurement contracts included as covered transactions?  
 1404.225 How do I know if a transaction in which I may participate is a covered transaction?

### Subpart C—Responsibilities of Participants Regarding Transactions

#### Doing Business With Other Persons

- 1404.300 What must I do before I enter into a covered transaction with another person at the next lower tier?  
 1404.305 May I enter into a covered transaction with an excluded or disqualified person?  
 1404.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?  
 1404.315 May I use the services of an excluded person as a principal under a covered transaction?  
 1404.320 Must I verify that principals of my covered transactions are eligible to participate?

- 1404.325 What happens if I do business with an excluded person in a covered transaction?  
 1404.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

### Disclosing Information—Primary Tier Participants

- 1404.335 What information must I provide before entering into a covered transaction with the Office of National Drug Control Policy?  
 1404.340 If I disclose unfavorable information required under § 1404.335, will I be prevented from participating in the transaction?  
 1404.345 What happens if I fail to disclose the information required under § 1404.335?  
 1404.350 What must I do if I learn of the information required under § 1404.335 after entering into a covered transaction with the Office of National Drug Control Policy?

### Disclosing Information—Lower Tier Participants

- 1404.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?  
 1404.360 What happens if I fail to disclose the information required under § 1404.355?  
 1404.365 What must I do if I learn of information required under § 1404.355 after entering into a covered transaction with a higher tier participant?

### Subpart D—Responsibilities of Office of National Drug Control Policy Officials Regarding Transactions

- 1404.400 May I enter into a transaction with an excluded or disqualified person?  
 1404.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?  
 1404.410 May I approve a participant’s use of the services of an excluded person?  
 1404.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?  
 1404.420 May I approve a transaction with an excluded or disqualified person at a lower tier?  
 1404.425 When do I check to see if a person is excluded or disqualified?  
 1404.430 How do I check to see if a person is excluded or disqualified?  
 1404.435 What must I require of a primary tier participant?  
 1404.440 What method do I use to communicate those requirements to participants?  
 1404.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?  
 1404.450 What action may I take if a primary tier participant fails to disclose the information required under § 1404.335?  
 1404.455 What may I do if a lower tier participant fails to disclose the



information required under § 1404.355 to the next higher tier?

#### Subpart E—Excluded Parties List System

- 1404.500 What is the purpose of the Excluded Parties List System (EPLS)?  
 1404.505 Who uses the EPLS?  
 1404.510 Who maintains the EPLS?  
 1404.515 What specific information is in the EPLS?  
 1404.520 Who places the information into the EPLS?  
 1404.525 Whom do I ask if I have questions about a person in the EPLS?  
 1404.530 Where can I find the EPLS?

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

- 1404.600 How do suspension and debarment actions start?  
 1404.605 How does suspension differ from debarment?  
 1404.610 What procedures does the Office of National Drug Control Policy use in suspension and debarment actions?  
 1404.615 How does the Office of National Drug Control Policy notify a person of a suspension and debarment action?  
 1404.620 Do Federal agencies coordinate suspension and debarment actions?  
 1404.625 What is the scope of a suspension or debarment action?  
 1404.630 May the Office of National Drug Control Policy impute the conduct of one person to another?  
 1404.635 May the Office of National Drug Control Policy settle a debarment or suspension action?  
 1404.640 May a settlement include a voluntary exclusion?  
 1404.645 Do other Federal agencies know if the Office of National Drug Control Policy agrees to a voluntary exclusion?

#### Subpart G—Suspension

- 1404.700 When may the suspending official issue a suspension?  
 1404.705 What does the suspending official consider in issuing a suspension?  
 1404.710 When does a suspension take effect?  
 1404.715 What notice does the suspending official give me if I am suspended?  
 1404.720 How may I contest a suspension?  
 1404.725 How much time do I have to contest a suspension?  
 1404.730 What information must I provide to the suspending official if I contest a suspension?  
 1404.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?  
 1404.740 Are suspension proceedings formal?  
 1404.745 How is fact-finding conducted?  
 1404.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?  
 1404.755 When will I know whether the suspension is continued or terminated?  
 1404.760 How long may my suspension last?

#### Subpart H—Debarment

- 1404.800 What are the causes for debarment?

- 1404.805 What notice does the debarring official give me if I am proposed for debarment?  
 1404.810 When does a debarment take effect?  
 1404.815 How may I contest a proposed debarment?  
 1404.820 How much time do I have to contest a proposed debarment?  
 1404.825 What information must I provide to the debarring official if I contest a proposed debarment?  
 1404.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?  
 1404.835 Are debarment proceedings formal?  
 1404.840 How is fact-finding conducted?  
 1404.845 What does the debarring official consider in deciding whether to debar me?  
 1404.850 What is the standard of proof in a debarment action?  
 1404.855 Who has the burden of proof in a debarment action?  
 1404.860 What factors may influence the debarring official's decision?  
 1404.865 How long may my debarment last?  
 1404.870 When do I know if the debarring official debars me?  
 1404.875 May I ask the debarring official to reconsider a decision to debar me?  
 1404.880 What factors may influence the debarring official during reconsideration?  
 1404.885 May the debarring official extend a debarment?

#### Subpart I—Definitions

- 1404.900 Adequate evidence.  
 1404.905 Affiliate.  
 1404.910 Agency.  
 1404.915 Agent or representative.  
 1404.920 Civil judgment.  
 1404.925 Conviction.  
 1404.930 Debarment.  
 1404.935 Debarring official.  
 1404.940 Disqualified.  
 1404.945 Excluded or exclusion.  
 1404.950 Excluded Parties List System.  
 1404.955 Indictment.  
 1404.960 Ineligible or ineligibility.  
 1404.965 Legal proceedings.  
 1404.970 Nonprocurement transaction.  
 1404.975 Notice.  
 1404.980 Participant.  
 1404.985 Person.  
 1404.990 Preponderance of the evidence.  
 1404.995 Principal.  
 1404.1000 Respondent.  
 1404.1005 State.  
 1404.1010 Suspending official.  
 1404.1015 Suspension.  
 1404.1020 Voluntary exclusion or voluntarily excluded.

#### Subpart J—[Reserved]

#### Appendix to Part 1404—Covered Transactions

Authority: E.O. 12549 3 CFR 1986 Comp., p. 189; E.O. 12689 3 CFR 1989 Comp., p. 235; sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); 21 U.S.C. 1701.

■ 2. Part 1404 is further amended as set forth below.

■ a. “[Agency noun]” is removed and “Office of National Drug Control Policy” is added in its place wherever it occurs.

■ b. “[Agency adjective]” is removed and “Office of National Drug Control Policy” is added in its place wherever it occurs.

■ c. “[Agency head or designee]” is removed and “Director of National Drug Control Policy” is added in its place wherever it occurs.

■ 3. Section 1404.440 is added to read as follows:

#### § 1404.440 What method do I use to communicate those requirements to participants?

You must obtain certifications from participants that they will comply with subpart C of this part and that they will obtain similar certifications from lower-tier participants.

■ 4. Part 1405 is added to read as set forth in instruction 2 at the end of the common preamble.

### PART 1405—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

#### Subpart A—Purpose and Coverage

- 1405.100 What does this part do?  
 1405.105 Does this part apply to me?  
 1405.110 Are any of my Federal assistance awards exempt from this part?  
 1405.115 Does this part affect the Federal contracts that I receive?

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

- 1405.200 What must I do to comply with this part?  
 1405.205 What must I include in my drug-free workplace statement?  
 1405.210 To whom must I distribute my drug-free workplace statement?  
 1405.215 What must I include in my drug-free awareness program?  
 1405.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?  
 1405.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?  
 1405.230 How and when must I identify workplaces?

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

- 1405.300 What must I do to comply with this part if I am an individual recipient?  
 1405.301 [Reserved]

#### Subpart D—Responsibilities of Office of National Drug Control Policy Awarding Officials

- 1405.400 What are my responsibilities as an Office of National Drug Control Policy awarding official?

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

- 1405.500 How are violations of this part determined for recipients other than individuals?
- 1405.505 How are violations of this part determined for recipients who are individuals?
- 1405.510 What actions will the Federal Government take against a recipient determined to have violated this part?
- 1405.515 Are there exceptions to those actions?

**Subpart F—Definitions**

- 1405.605 Award.
- 1405.610 Controlled substance.
- 1405.615 Conviction.
- 1405.620 Cooperative agreement.
- 1405.625 Criminal drug statute.
- 1405.630 Debarment.
- 1405.635 Drug-free workplace.
- 1405.640 Employee.
- 1405.645 Federal agency or agency.
- 1405.650 Grant.
- 1405.655 Individual.
- 1405.660 Recipient.
- 1405.665 State.
- 1405.670 Suspension.

**Authority:** 21 U.S.C. 1701; 41 U.S.C. 701, *et seq.*

- 5. Part 1405 is further amended as set forth below.
- a. “[Agency noun]” is removed and “Office of National Drug Control Policy” is added in its place wherever it occurs.
- b. “[Agency adjective]” is removed and “Office of National Drug Control Policy” is added in its place wherever it occurs.
- c. “[Agency head or designee]” is removed and “Director of National Drug Control Policy” is added in its place wherever it occurs.
- d. “[Agency head]” is removed and “Director of National Drug Control Policy” is added in its place wherever it occurs.
- 6. Section 1405.510 (c) is further amended by removing “[CFR citation for the Federal Agency’s regulations implementing Executive Order 12549 and Executive Order 12689]” and adding “21 CFR Part 1404” in its place.
- 7. Section 1405.605 (a) (2) is further amended by removing “[Agency-specific CFR citation]” and adding “21 CFR Part 1403” in its place.

**DEPARTMENT OF STATE****22 CFR Parts 133 and 137**

RIN 1400-AB83

**FOR FURTHER INFORMATION CONTACT:**

Susan Catington, Department Competition Advocate, Policy Division, Office of the Procurement Executive, U.S. Department of State, Washington, DC 20522, (703) 516-1693.

**List of Subjects****22 CFR Part 133**

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

**22 CFR Part 137**

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

Dated: June 17, 2003.

**Georgia K. Hubert,**

*Acting Procurement Executive, Department of State.*

■ For the reasons stated in the common preamble, the Department of State amends 22 CFR chapter I, as follows:

■ 1. Part 133 is added to read as set forth in instruction 2 at the end of the common preamble.

**PART 133—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)**

**Subpart A—Purpose and Coverage**

- 133.100 What does this part do?
- 133.105 Does this part apply to me?
- 133.110 Are any of my Federal assistance awards exempt from this part?
- 133.115 Does this part affect the Federal contracts that I receive?

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

- 133.200 What must I do to comply with this part?
- 133.205 What must I include in my drug-free workplace statement?
- 133.210 To whom must I distribute my drug-free workplace statement?
- 133.215 What must I include in my drug-free awareness program?
- 133.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
- 133.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
- 133.230 How and when must I identify workplaces?

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

- 133.300 What must I do to comply with this part if I am an individual recipient?
- 133.301 [Reserved]

**Subpart D—Responsibilities of Department of State Awarding Officials**

- 133.400 What are my responsibilities as a Department of State awarding official?

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

- 133.500 How are violations of this part determined for recipients other than individuals?

- 133.505 How are violations of this part determined for recipients who are individuals?
- 133.510 What actions will the Federal Government take against a recipient determined to have violated this part?
- 133.515 Are there any exceptions to those actions?

**Subpart F—Definitions**

- 133.605 Award.
- 133.610 Controlled substance.
- 133.615 Conviction.
- 133.620 Cooperative agreement.
- 133.625 Criminal drug statute.
- 133.630 Debarment.
- 133.635 Drug-free workplace.
- 133.640 Employee.
- 133.645 Federal agency or agency.
- 133.650 Grant.
- 133.655 Individual.
- 133.660 Recipient.
- 133.665 State.
- 133.670 Suspension.

**Authority:** 22 U.S.C. 2658; 41 U.S.C. 701, *et seq.*

- 2. Part 133 is further amended as set forth below.
- a. “[Agency noun]” is removed and “Department of State” is added in its place wherever it occurs.
- b. “[Agency adjective]” is removed and “Department of State” is added in its place wherever it occurs.
- c. “[Agency head or designee]” is removed and “Procurement Executive” is added in its place wherever it occurs.
- d. “[Agency head]” is removed and “Procurement Executive” is added in its place wherever it occurs.
- 3. Section 133.510(c) is further amended by removing “[CFR citation for the Federal Agency’s regulations implementing Executive Order 12549 and Executive Order 12689]” and adding “22 CFR Part 137” in its place.
- 4. Section 133.605(a)(2) is further amended by removing “[Agency-specific CFR citation]” and adding “22 CFR Part 135” in its place.
- 5. Part 137 is revised to read as set forth in instruction 1 at the end of the common preamble.

**PART 137—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

Sec.

- 137.25 How is this part organized?
- 137.50 How is this part written?
- 137.75 Do terms in this part have special meanings?

**Subpart A—General**

- 137.100 What does this part do?
- 137.105 Does this part apply to me?
- 137.110 What is the purpose of the nonprocurement debarment and suspension system?
- 137.115 How does an exclusion restrict a person’s involvement in covered transactions?

- 137.120 May we grant an exception to let an excluded person participate in a covered transaction?
- 137.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?
- 137.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
- 137.135 May the Department of State exclude a person who is not currently participating in a nonprocurement transaction?
- 137.140 How do I know if a person is excluded?
- 137.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

#### Subpart B—Covered Transactions

- 137.200 What is a covered transaction?
- 137.205 Why is it important to know if a particular transaction is a covered transaction?
- 137.210 Which nonprocurement transactions are covered transactions?
- 137.215 Which nonprocurement transactions are not covered transactions?
- 137.220 Are any procurement contracts included as covered transactions?
- 137.225 How do I know if a transaction in which I may participate is a covered transaction?

#### Subpart C—Responsibilities of Participants Regarding Transactions

##### Doing Business With Other Persons

- 137.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
- 137.305 May I enter into a covered transaction with an excluded or disqualified person?
- 137.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
- 137.315 May I use the services of an excluded person as a principal under a covered transaction?
- 137.320 Must I verify that principals of my covered transactions are eligible to participate?
- 137.325 What happens if I do business with an excluded person in a covered transaction?
- 137.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

##### Disclosing Information—Primary Tier Participants

- 137.335 What information must I provide before entering into a covered transaction with the Department of State?
- 137.340 If I disclose unfavorable information required under § 137.335, will I be prevented from participating in the transaction?
- 137.345 What happens if I fail to disclose the information required under § 137.335?

- 137.350 What must I do if I learn of the information required under § 137.335 after entering into a covered transaction with the Department of State?

##### Disclosing Information—Lower Tier Participants

- 137.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
- 137.360 What happens if I fail to disclose the information required under § 137.355?
- 137.365 What must I do if I learn of information required under § 137.355 after entering into a covered transaction with a higher tier participant?

##### Subpart D—Responsibilities of Department of State Officials Regarding Transactions

- 137.400 May I enter into a transaction with an excluded or disqualified person?
- 137.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
- 137.410 May I approve a participant's use of the services of an excluded person?
- 137.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
- 137.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
- 137.425 When do I check to see if a person is excluded or disqualified?
- 137.430 How do I check to see if a person is excluded or disqualified?
- 137.435 What must I require of a primary tier participant?
- 137.440 What method do I use to communicate those requirements to participants?
- 137.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
- 137.450 What action may I take if a primary tier participant fails to disclose the information required under § 137.335?
- 137.455 What may I do if a lower tier participant fails to disclose the information required under § 137.355 to the next higher tier?

##### Subpart E—Excluded Parties List System

- 137.500 What is the purpose of the Excluded Parties List System?
- 137.505 Who uses the EPLS?
- 137.510 Who maintains the EPLS?
- 137.515 What specific information is in the EPLS?
- 137.520 Who places the information into the EPLS?
- 137.525 Whom do I ask if I have questions about a person in the EPLS?
- 137.530 Where can I find the EPLS?

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

- 137.600 How do suspension and debarment actions start?
- 137.605 How does suspension differ from debarment?
- 137.610 What procedures does the Department of State use in suspension and debarment actions?

- 137.615 How does the Department of State notify a person of a suspension and debarment action?
- 137.620 Do Federal agencies coordinate suspension and debarment actions?
- 137.625 What is the scope of a suspension or debarment action?
- 137.630 May the Department of State impute the conduct of one person to another?
- 137.635 May the Department of State settle a debarment or suspension action?
- 137.640 May a settlement include a voluntary exclusion?
- 137.645 Do other Federal agencies know if the Department of State agrees to a voluntary exclusion?

##### Subpart G—Suspension

- 137.700 When may the suspending official issue a suspension?
- 137.705 What does the suspending official consider in issuing a suspension?
- 137.710 When does a suspension take effect?
- 137.715 What notice does the suspending official give me if I am suspended?
- 137.720 How may I contest a suspension?
- 137.725 How much time do I have to contest a suspension?
- 137.730 What information must I provide to the suspending official if I contest a suspension?
- 137.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 137.740 Are suspension proceedings formal?
- 137.745 How is fact-finding conducted?
- 137.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 137.755 When will I know whether the suspension is continued or terminated?
- 137.760 How long may my suspension last?

##### Subpart H—Debarment

- 137.800 What are the causes for debarment?
- 137.805 What notice does the debarring official give me if I am proposed for debarment?
- 137.810 When does a debarment take effect?
- 137.815 How may I contest a proposed debarment?
- 137.820 How much time do I have to contest a proposed debarment?
- 137.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 137.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
- 137.835 Are debarment proceedings formal?
- 137.840 How is fact-finding conducted?
- 137.845 What does the debarring official consider in deciding whether to debar me?
- 137.850 What is the standard of proof in a debarment action?
- 137.855 Who has the burden of proof in a debarment action?
- 137.860 What factors may influence the debarring official's decision?
- 137.865 How long may my debarment last?

- 137.870 When do I know if the debarring official debar me?
- 137.875 May I ask the debarring official to reconsider a decision to debar me?
- 137.880 What factors may influence the debarring official during reconsideration?
- 137.885 May the debarring official extend a debarment?

#### Subpart I—Definitions

- 137.900 Adequate evidence.
- 137.905 Affiliate.
- 137.910 Agency.
- 137.915 Agent or representative.
- 137.920 Civil judgment.
- 137.925 Conviction.
- 137.930 Debarment.
- 137.935 Debarring official.
- 137.940 Disqualified.
- 137.945 Excluded or exclusion.
- 137.950 Excluded Parties List System.
- 137.955 Indictment.
- 137.960 Ineligible or ineligibility.
- 137.965 Legal proceedings.
- 137.970 Nonprocurement transaction.
- 137.975 Notice.
- 137.980 Participant.
- 137.985 Person.
- 137.990 Preponderance of the evidence.
- 137.995 Principal.
- 137.1000 Respondent.
- 137.1005 State.
- 137.1010 Suspending official.
- 137.1015 Suspension.
- 137.1020 Voluntary exclusion or voluntarily excluded.

#### Subpart J—[Reserved]

#### Appendix to Part 137—Covered Transactions

**Authority:** 22 U.S.C. 2658; sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549, 3 CFR 1986 Comp., p.189; E.O. 12689, 3 CFR 1989 Comp., p. 235.

■ 6. Part 137 is further amended as set forth below.

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

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

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

■ 7. Section 137.440 is added to read as follows:

#### § 137.440 What method do I use to communicate those requirements to participants?

To communicate the requirement to participants, you must include a term or condition in the transaction requiring the participant’s compliance with subpart C of this part and requiring them to include a similar term or condition in lower tier covered transactions.

## AGENCY FOR INTERNATIONAL DEVELOPMENT

### 22 CFR Parts 208 and 210

#### RIN 0412–AA47

#### FOR FURTHER INFORMATION CONTACT:

Raquel Powell, M/OP/POL, 1300 Pennsylvania Avenue, NW., Washington, DC 20523–7801, (202) 712–0778.

#### List of Subjects

##### 22 CFR Part 208

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

##### 22 CFR Part 210

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

Dated: July 15, 2003.

**Timothy T. Beans,**  
*Director, Office of Procurement.*

■ For the reason stated in the common preamble, the Agency for International Development amends 22 CFR Chapter II, as follows:

■ 1. Part 208 is revised to read as set forth in instruction 1 at the end of the common preamble.

## PART 208—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

- 208.25 How is this part organized?
- 208.50 How is this part written?
- 208.75 Do terms in this part have special meanings?

### Subpart A—General

- 208.100 What does this part do?
- 208.105 Does this part apply to me?
- 208.110 What is the purpose of the nonprocurement debarment and suspension systems?
- 208.115 How does an exclusion restrict a person’s involvement in covered transactions?
- 208.120 May we grant an exception to let an excluded person participate in a covered transaction?
- 208.125 Does an exclusion under the nonprocurement system affect a person’s eligibility for Federal procurement contracts?
- 208.130 Does exclusion under the Federal procurement system affect a person’s eligibility to participate in nonprocurement transactions?
- 208.135 May the U.S. Agency for International Development exclude a person who is not currently participating in a nonprocurement transaction?
- 208.140 How do I know if a person is excluded?
- 208.145 Does this part address persons who are disqualified, as well as those who are

excluded from nonprocurement transactions?

### Subpart B—Covered Transactions

- 208.200 What is a covered transaction?
- 208.205 Why is it important to know if a particular transaction is a covered transaction?
- 208.210 Which nonprocurement transactions are covered transactions?
- 208.215 Which nonprocurement transactions are not covered transactions?
- 208.220 Are any procurement contracts included as covered transactions?
- 208.225 How do I know if a transaction in which I may participate is a covered transaction?

### Subpart C—Responsibilities of Participants Regarding Transactions

#### Doing Business With Other Persons

- 208.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
- 208.305 May I enter into a covered transaction with an excluded or disqualified person?
- 208.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
- 208.315 May I use the services of an excluded person as a principal under a covered transaction?
- 208.320 Must I verify that principals of my covered transactions are eligible to participate?
- 208.325 What happens if I do business with an excluded person in a covered transaction?
- 208.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

#### Disclosing Information—Primary Tier Participants

- 208.335 What information must I provide before entering into a covered transaction with the U.S. Agency for International Development?
- 208.340 If I disclose unfavorable information required under § 208.335, will I be prevented from participating in the transaction?
- 208.345 What happens if I fail to disclose the information required under § 208.335?
- 208.350 What must I do if I learn of the information required under § 208.335 after entering into a covered transaction with the U.S. Agency for International Development?

#### Disclosing Information—Lower Tier Participants

- 208.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
- 208.360 What happens if I fail to disclose the information required under § 208.355?
- 208.365 What must I do if I learn of information required under § 208.355 after entering into a covered transaction with a higher tier participant?

**Subpart D—Responsibilities of USAID Officials Regarding Transactions**

- 208.400 May I enter into a transaction with an excluded or disqualified person?
- 208.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
- 208.410 May I approve a participant's use of the services of an excluded person?
- 208.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
- 208.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
- 208.425 When do I check to see if a person is excluded or disqualified?
- 208.430 How do I check to see if a person is excluded or disqualified?
- 208.435 What must I require of a primary tier participant?
- 208.440 What method do I use to communicate those requirements to participants?
- 208.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
- 208.450 What action may I take if a primary tier participant fails to disclose the information required under § 208.335?
- 208.455 What may I do if a lower tier participant fails to disclose the information required under § 208.355 to the next higher tier?

**Subpart E—Excluded Parties List System**

- 208.500 What is the purpose of the Excluded Parties List System (EPLS)?
- 208.505 Who uses the EPLS?
- 208.510 Who maintains the EPLS?
- 208.515 What specific information is in the EPLS?
- 208.520 Who places the information into the EPLS?
- 208.525 Whom do I ask if I have questions about a person in the EPLS?
- 208.530 Where can I find the EPLS?

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

- 208.600 How do suspension and debarment actions start?
- 208.605 How does suspension differ from debarment?
- 208.610 What procedures does the U.S. Agency for International Development use in suspension and debarment actions?
- 208.615 How does the U.S. Agency for International Development notify a person of a suspension and debarment action?
- 208.620 Do Federal agencies coordinate suspension and debarment actions?
- 208.625 What is the scope of a suspension or debarment action?
- 208.630 May the U.S. Agency for International Development impute the conduct of one person to another?
- 208.635 May the U.S. Agency for International Development settle a debarment or suspension action?
- 208.640 May a settlement include a voluntary exclusion?
- 208.645 Do other Federal agencies know if the U.S. Agency for International

Development agrees to a voluntary exclusion?

**Subpart G—Suspension**

- 208.700 When may the suspending official issue a suspension?
- 208.705 What does the suspending official consider in issuing a suspension?
- 208.710 When does a suspension take effect?
- 208.715 What notice does the suspending official give me if I am suspended?
- 208.720 How may I contest a suspension?
- 208.725 How much time do I have to contest a suspension?
- 208.730 What information must I provide to the suspending official if I contest a suspension?
- 208.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 208.740 Are suspension proceedings formal?
- 208.745 How is fact-finding conducted?
- 208.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 208.755 When will I know whether the suspension is continued or terminated?
- 208.760 How long may my suspension last?

**Subpart H—Debarment**

- 208.800 What are the causes for debarment?
- 208.805 What notice does the debarring official give me if I am proposed for debarment?
- 208.810 When does a debarment take effect?
- 208.815 How may I contest a proposed debarment?
- 208.820 How much time do I have to contest a proposed debarment?
- 208.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 208.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
- 208.835 Are debarment proceedings formal?
- 208.840 How is fact-finding conducted?
- 208.845 What does the debarring official consider in deciding whether to debar me?
- 208.850 What is the standard of proof in a debarment action?
- 208.855 Who has the burden of proof in a debarment action?
- 208.860 What factors may influence the debarring official's decision?
- 208.865 How long may my debarment last?
- 208.870 When do I know if the debarring official debars me?
- 208.875 May I ask the debarring official to reconsider a decision to debar me?
- 208.880 What factors may influence the debarring official during reconsideration?
- 208.885 May the debarring official extend a debarment?

**Subpart I—Definitions**

- 208.900 Adequate evidence.
- 208.905 Affiliate.
- 208.910 Agency.
- 208.915 Agent or representative.
- 208.920 Civil judgment

- 208.925 Conviction.
- 208.930 Debarment.
- 208.935 Debarring official.
- 208.940 Disqualified.
- 208.945 Excluded or exclusion.
- 208.950 Excluded Parties List System.
- 208.955 Indictment.
- 208.960 Ineligible or ineligibility.
- 208.965 Legal proceedings.
- 208.970 Nonprocurement transaction.
- 208.975 Notice.
- 208.980 Participant.
- 208.985 Person.
- 208.990 Preponderance of the evidence.
- 208.995 Principal.
- 208.1000 Respondent.
- 208.1005 State.
- 208.1010 Suspending official.
- 208.1015 Suspension.
- 208.1020 Voluntary exclusion or voluntarily excluded.

**Subpart J—[Reserved]**

**Appendix to Part 208—Covered Transactions**

**Authority:** E.O. 12163, 3 CFR 1979 Comp., p. 435; E.O. 12549 3 CFR 1986 Comp., p. 189; E.O. 12698, 3 CFR 1989 Comp., p. 235; sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); sec. 621, Pub. L. 87-195, 75 Stat. 445 (22 U.S.C. 2381), as amended.

- 2. Part 208 is further amended as set forth below.
- a. “[Agency Noun]” is removed and “U.S. Agency for International Development” is added in its place wherever it occurs.
- b. “[Agency adjective]” is removed and “USAID” is added in its place wherever it occurs.
- c. “[Agency head or designee]” is removed and “Director, Office of Procurement” is added in its place wherever it occurs.
- 3. Section 208.440 is added to read as follows:

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

To communicate the requirements in § 208.35, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

- 4. Section 208.935 is further amended by adding paragraph (b) to read as follows:

**§ 208.935 Debarring official.**

\* \* \* \* \*

(b) The U.S. Agency for International Development's debarring official is the Director of the Office of Procurement.

- 5. Section 208.1010 is further amended by adding paragraph (b) to read as follows:

**§ 208.1010 Suspending official.**

\* \* \* \* \*  
 (b) The U.S. Agency for International Development's suspending official is the Director of the Office of Procurement.

■ 6. Part 210 is added to read as set forth in instruction 2 at the end of the common preamble.

**PART 210—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)**

**Subpart A—Purpose and Coverage**

- Sec.  
 210.100 What does this part do?  
 210.105 Does this part apply to me?  
 210.110 Are any of my Federal assistance awards exempt from this part?  
 210.115 Does this part affect the Federal contracts that I receive?

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

- 210.200 What must I do to comply with this part?  
 210.205 What must I include in my drug-free workplace statement?  
 210.210 To whom must I distribute my drug-free workplace statement?  
 210.215 What must I include in my drug-free awareness program?  
 210.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?  
 210.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?  
 210.230 How and when must I identify workplaces?

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

- 210.300 What must I do to comply with this part if I am an individual recipient?  
 210.301 [Reserved]

**Subpart D—Responsibilities of USAID Awarding Officials**

- 210.400 What are my responsibilities as a USAID awarding official?

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

- 210.500 How are violations of this part determined for recipients other than individuals?  
 210.505 How are violations of this part determined for recipients who are individuals?  
 210.510 What actions will the Federal Government take against a recipient determined to have violated this part?  
 210.515 Are there any provisions for exceptions to those actions?

**Subpart F—Definitions**

- 210.605 Award.

- 210.610 Controlled substance.  
 210.615 Conviction.  
 210.620 Cooperative agreement.  
 210.625 Criminal drug statute.  
 210.630 Debarment 210.635 Drug-free workplace.  
 210.640 Employee.  
 210.645 Federal agency or agency.  
 210.650 Grant.  
 210.655 Individual.  
 210.660 Recipient.  
 210.665 State.  
 210.670 Suspension.

**Authority:** 41 U.S.C. 701, *et seq.*; sec. 621, Pub. L. 87-195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, 3 CFR 1979 Comp., p. 435.

■ 7. Part 210 is further amended as set forth below.

■ a. “[Agency Noun]” is removed and “U.S. Agency for International Development” is added in its place wherever it occurs.

■ b. “[Agency Adjective]” is removed and “USAID” is added in its place wherever it occurs.

■ c. “[Agency Head or Designee]” is removed and “Director of the Office of Procurement” is added in its place wherever it occurs.

■ d. “[Agency head]” is removed and “USAID Administrator or designee” is added in its place wherever it occurs.

■ 8. Section 210.510(c) is further amended by removing “[CFR citation for the Federal Agency’s regulation implementing Executive Order 12549 and Executive Order 12689]” and adding “22 CFR Part 208” in its place.

■ 9. Section 210.605 is further amended by adding a paragraph (c) to read as follows:

**§ 210.605 Award**

\* \* \* \* \*

(c) Notwithstanding paragraph (a)(2) of this section, this paragraph is not applicable to AID.

**PEACE CORPS**

**22 CFR Parts 310 and 312**

**RIN 0420-AA17**

**FOR FURTHER INFORMATION CONTACT:** Suzanne Glasow, Associate General Counsel, Office of the General Counsel, Peace Corps, 1111 20th Street, NW., Washington, DC 20526, (202) 692-2157.

**List of Subjects**

*22 CFR Part 310*

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements, Technical assistance.

*22 CFR Part 312*

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

Dated: July 24, 2003.

**Keith A. Vance,**

*Director, Office of Administrative Services, Peace Corps.*

■ For the reasons stated in the common preamble, the Peace Corps amends 22 CFR chapter III, as follows:

■ 1. Part 310 is revised to read as set forth in instruction 1 at the end of the common preamble.

**PART 310—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT).**

Sec.

- 310.25 How is this part organized?  
 310.50 How is this part written?  
 310.75 Do terms in this part have special meanings?

**Subpart A—General**

- 310.100 What does this part do?  
 310.105 Does this part apply to me?  
 310.110 What is the purpose of the nonprocurement debarment and suspension system?  
 310.115 How does an exclusion restrict a person's involvement in covered transactions?  
 310.120 May we grant an exception to let an excluded person participate in a covered transaction?  
 310.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?  
 310.130 Does exclusion under the federal procurement system affect a person's eligibility to participate in nonprocurement transactions?  
 310.135 May the Peace Corps exclude a person who is not currently participating in a nonprocurement transaction?  
 310.140 How do I know if a person is excluded?  
 310.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

**Subpart B—Covered Transactions**

- 310.200 What is a covered transaction?  
 310.205 Why is it important to know if a particular transaction is a covered transaction?  
 310.210 Which nonprocurement transactions are covered transactions?  
 310.215 Which nonprocurement transactions are not covered transactions?  
 310.220 Are any procurement contracts included as covered transactions?  
 310.225 How do I know if a transaction in which I may participate is a covered transaction?

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

- 310.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
- 310.305 May I enter into a covered transaction with an excluded or disqualified person?
- 310.310 What must I do if a federal agency excludes a person with whom I am already doing business in a covered transaction?
- 310.315 May I use the services of an excluded person as a principal under a covered transaction?
- 310.320 Must I verify that principals of my covered transactions are eligible to participate?
- 310.325 What happens if I do business with an excluded person in a covered transaction?
- 310.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

**Disclosing Information—Primary Tier Participants**

- 310.335 What information must I provide before entering into a covered transaction with the Peace Corps?
- 310.340 If I disclose unfavorable information required under § 310.335, will I be prevented from participating in the transaction?
- 310.345 What happens if I fail to disclose the information required under § 310.335?
- 310.350 What must I do if I learn of the information required under § 310.335 after entering into a covered transaction with the Peace Corps?

**Disclosing Information—Lower Tier Participants**

- 310.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
- 310.360 What happens if I fail to disclose the information required under § 310.355?
- 310.365 What must I do if I learn of information required under § 310.355 after entering into a covered transaction with a higher tier participant?

**Subpart D—Responsibilities of Peace Corps Officials Regarding Transactions**

- 310.400 May I enter into a transaction with an excluded or disqualified person?
- 310.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
- 310.410 May I approve a participant's use of the services of an excluded person?
- 310.415 What must I do if a federal agency excludes the participant or a principal after I enter into a covered transaction?
- 310.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
- 310.425 When do I check to see if a person is excluded or disqualified?
- 310.430 How do I check to see if a person is excluded or disqualified?

- 310.435 What must I require of a primary tier participant?
- 310.440 What method do I use to communicate those requirements to participants?
- 310.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
- 310.450 What action may I take if a primary tier participant fails to disclose the information required under § 310.335?
- 310.455 What may I do if a lower tier participant fails to disclose the information required under § 310.355 to the next higher tier?

**Subpart E—Excluded Parties List System**

- 310.500 What is the purpose of the Excluded Parties List System (EPLS)?
- 310.505 Who uses the EPLS?
- 310.510 Who maintains the EPLS?
- 310.515 What specific information is in the EPLS?
- 310.520 Who places the information into the EPLS?
- 310.525 Whom do I ask if I have questions about a person in the EPLS?
- 310.530 Where can I find the EPLS?

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

- 310.600 How do suspension and debarment actions start?
- 310.605 How does suspension differ from debarment?
- 310.610 What procedures does the Peace Corps use in suspension and debarment actions?
- 310.615 How does the Peace Corps notify a person of a suspension and debarment action?
- 310.620 Do federal agencies coordinate suspension and debarment actions?
- 310.625 What is the scope of a suspension or debarment action?
- 310.630 May the Peace Corps impute the conduct of one person to another?
- 310.635 May the Peace Corps settle a debarment or suspension action?
- 310.640 May a settlement include a voluntary exclusion?
- 310.645 Do other federal agencies know if the Peace Corps agrees to a voluntary exclusion?

**Subpart G—Suspension**

- 310.700 When may the suspending official issue a suspension?
- 310.705 What does the suspending official consider in issuing a suspension?
- 310.710 When does a suspension take effect?
- 310.715 What notice does the suspending official give me if I am suspended?
- 310.720 How may I contest a suspension?
- 310.725 How much time do I have to contest a suspension?
- 310.730 What information must I provide to the suspending official if I contest a suspension?
- 310.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 310.740 Are suspension proceedings formal?
- 310.745 How is fact-finding conducted?

- 310.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 310.755 When will I know whether the suspension is continued or terminated?
- 310.760 How long may my suspension last?

**Subpart H—Debarment**

- 310.800 What are the causes for debarment?
- 310.805 What notice does the debarring official give me if I am proposed for debarment?
- 310.810 When does a debarment take effect?
- 310.815 How may I contest a proposed debarment?
- 310.820 How much time do I have to contest a proposed debarment?
- 310.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 310.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
- 310.835 Are debarment proceedings formal?
- 310.840 How is fact-finding conducted?
- 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 Excluded Parties List System.
- 310.955 Indictment.
- 310.960 Ineligible or ineligibility.
- 310.965 Legal proceedings.
- 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).

■ 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**

**RIN 3200—ZA05**

**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.

Dated: August 1, 2003.

**David Valenzuela,**  
*President, Inter-American Foundation.*

■ For the reasons stated in the common preamble, the Inter-American Foundation amends 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 for Federal procurement contracts?
- 1006.130 Does 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 address 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 in which I may participate is a covered transaction?

#### Subpart C—Responsibilities of Participants Regarding Transactions

##### Doing Business With Other Persons

1006.300 What must I do before I enter into a covered transaction with another person at the next lower tier?  
 1006.305 May I enter into a covered transaction with an excluded or disqualified person?  
 1006.310 What Must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?  
 1006.315 May I use the services of an excluded person as a principal under a covered transaction?  
 1006.320 I verify that principals of my covered transactions are eligible to participate?  
 1006.325 What happens if I do business with an excluded person in a covered transaction?  
 1006.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

##### Disclosing Information—Primary Tier Participants

1006.335 What information must I provide before a covered transaction with the Inter-American Foundation?  
 1006.340 If I disclose unfavorable information required under § 1006.335, will I be prevented from participating in the transaction?  
 1006.345 What happens if I fail to disclose the information required under § 1006.335?  
 1006.350 What must I do if I learn of the information required under § 1006.335 after entering into a covered transaction with the Inter-American Foundation?

##### Disclosing Information—Lower Tier Participants

1006.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?  
 1006.360 What happens if I fail to disclose the information required under § 1006.355?  
 1006.365 What must I do if I learn of information required under § 1006.355 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 § 1006.335?  
 1006.455 What may I do if a lower tier participant fails to disclose the information required under § 1006.355 to the next higher tier?

#### Subpart E—Excluded Parties List System

1006.500 What is the purpose of the Excluded Parties List System (EPLS)?  
 1006.505 Who uses the EPLS?  
 1006.510 Who maintains the EPLS?  
 1006.515 What specific information is in the EPLS?  
 1006.520 Who places the information into the EPLS?  
 1006.525 Whom do I ask if I have questions about a person in the EPLS?  
 1006.530 Where can I find the EPLS?

#### 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 a suspension and debarment action?  
 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 How is fact-finding conducted?  
 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 How is fact-finding conducted?  
 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 debar 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 Excluded Parties List System.
- 1006.955 Indictment.
- 1006.960 Ineligible or ineligibility.
- 1006.965 Legal proceedings.
- 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.

- 4. 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 3005–ZA01**

**FOR FURTHER INFORMATION CONTACT:** Doris Martin at 202–673–3916 (phone) or [domartin@adf.gov](mailto: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.

Dated: June 30, 2003.

**Doris Martin,**  
*General Counsel.*

- For the reasons stated in the common preamble, the African Development Foundation amends 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 for Federal procurement contracts?  
1508.130 Does 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 address 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 What must I do before I enter into a covered transaction with another person at the next lower tier?  
1508.305 May I enter into a covered transaction with an excluded or disqualified person?  
1508.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?  
1508.315 May I use the services of an excluded person as a principal under a covered transaction?  
1508.320 Must I verify that principals of my covered transactions are eligible to participate?

- 1508.325 What happens if I do business with an excluded person in a covered transaction?  
1508.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

**Disclosing Information—Primary Tier Participants**

- 1508.335 What information must I provide before entering into a covered transaction with the African Development Foundation?  
1508.340 If I disclose unfavorable information required under § 1508.335, will I be prevented from participating in the transaction?  
1508.345 What happens if I fail to disclose the information required under § 1508.335?  
1508.350 What must I do if I learn of the information required under § 1508.335 after entering into a covered transaction with the African Development Foundation?

**Disclosing Information—Lower Tier Participants**

- 1508.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?  
1508.360 What happens if I fail to disclose the information required under § 1508.355?  
1508.365 What must I do if I learn of information required under § 1508.355 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 § 1508.335?  
1508.455 What may I do if a lower tier participant fails to disclose the information required under § 1508.355 to the next higher tier?

**Subpart E—Excluded Parties List System**

- 1508.500 What is the purpose of the Excluded Parties List System (EPLS)?  
1508.505 Who uses the EPLS?  
1508.510 Who maintains the EPLS?  
1508.515 What specific information is in the EPLS?  
1508.520 Who places the information into the EPLS?  
1508.525 Whom do I ask if I have questions about a person in the EPLS?  
1508.530 Where can I find the EPLS?

**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 a suspension and debarment action?  
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 How is fact-finding conducted?  
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 How is fact-finding conducted?
- 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 Excluded Parties List System.
- 1508.955 Indictment.
- 1508.960 Ineligible or ineligibility.
- 1508.965 Legal proceedings.
- 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. Section 1508.440 is added to read as follows:

**§ 1508.440 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 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.*

■ 5. 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.

■ 6. 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.

■ 7. 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 HOUSING AND URBAN DEVELOPMENT**

**24 CFR Parts 21 and 24**

**[Docket No. FR-4692-F-01]**

**RIN 2501-AC81**

**FOR FURTHER INFORMATION CONTACT:**  
Dane Narode, Assistant General Counsel, Office of Program

Enforcement, Administrative Proceedings Division, Department of Housing and Urban Development, 1250 Maryland Avenue, Suite 200, Washington, DC 20024-0500; telephone (202) 708-2350 (this is not a toll-free number); e-mail:

*Dane M. Narode@hud.gov*. Hearing-or speech-impaired individuals may access the voice telephone number listed above by calling the toll-free Federal Information Relay Service during working hours at 1-800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### The January 23, 2002, Common Rule

On January 23, 2002 (67 FR 3266), a governmentwide common rule was published that proposed substantive changes and amendments to the governmentwide nonprocurement common rule for debarment and suspension and the governmentwide rule implementing the Drug-Free Workplace Act of 1988. The publication is available at [http://www.access.gpo.gov/su\\_docs](http://www.access.gpo.gov/su_docs).

##### HUD's July 22, 2002, Proposed Rule

HUD published a proposed rule on July 22, 2002 (67 FR 48006), to adopt the changes and amendments made in the common rule. Additionally, HUD proposed to adopt specific requirements that, along with the provisions in the common rule, would best serve HUD's programs. HUD's proposed rule added a paragraph regarding employment contracts to the definition of "covered transaction" found at § 24.200. HUD's addition made clear that each payment under an employment contract constitutes a new "covered transaction." HUD also enhanced the exclusion review that takes place in § 24.300. Under HUD's rule, a participant must ensure it is not entering into a covered transaction with an excluded or disqualified person. In reviewing for an exclusion, however, HUD's rule, at § 24.300(d), exempts participants from checking on the exemption status of their principals while making salary payments pursuant to an employment contract. Additionally, § 24.440 proposed to use terms or conditions to the award transaction as a means to enforce exclusions under HUD transactions rather than the use of written certifications.

HUD proposed rule provided examples for the debarment and suspension common rule definition of "principal" found at § 24.995. The expansion contains minor modifications consistent with HUD's present practice regarding the definition of "principal" for the purpose of debarments and

suspensions. The proposed rule advised that HUD would retain its definitions of "Hearing Officer" at § 24.947 and "Ultimate Beneficiary" at § 24.1017 as found in the current common rule. The proposed rule made clear in § 24.750 and § 24.845 that all fact-finding referrals for HUD suspensions and debarments will be made to hearing officers.

Subpart J of part 24, which addressed limited denial of participation, was revised stylistically so that the rule conforms to the question and answer format of the common rule. HUD also removed the term "contractor" from § 24.1105 because the common rule deleted the definition of the term. The revised definition of "participant" in the proposed rule covered individuals previously defined as "contractors" in the current rule. Section 24.1145, which addresses imputing the conduct of one person to another in a limited denial of participation, was revised to be consistent with the provisions of § 24.630.

Finally, HUD's rule proposed to enact the requirements for maintaining a drug-free workplace as a new part 21, codifying HUD's drug-free workplace requirements.

The public comment period on the proposed rule closed on September 20, 2002. One commenter submitted comments on the proposed rule.

##### This Final Rule

This final rule follows publication of the July 22, 2002, proposed rule and takes into consideration the one public comment received. The public comment, along with the Department's responses to the comment, is treated below. However, the Department was not persuaded to change the rule. Accordingly, this final rule adopts the July 22, 2002, proposed rule without change except for the minor modifications identified below necessary to keep the Department's rule consistent with the common rule and existing practice.

In response to an internal comment, the Department has replaced the formulation used to refer to the "Agency head or designee" wherever used in the common rule. The proposed rule originally referred to the "HUD Debarment Official or designee." That formulation has been replaced with the "Secretary or designee" in the final rule. This text change does not modify the meaning of the proposed rule as all debarment authority within the Agency stems from the Secretary's delegable authority. Similarly, the textual modification is consistent with current practice in the Department.

The Department, based upon another internal comment, has made a minor modification to its procedures for when a suspension or proposed debarment has been issued subsequent to the issuance of a limited denial of participation. Under this modification, the hearing officer's jurisdiction over a limited denial of participation will not be immediately divested upon consolidation of the matter with a suspension or a proposed debarment. Upon consolidation, the suspending or debarment official must determine whether material facts are in dispute within 90 days of consolidation unless good cause exists to extend this time. In the event material facts are in dispute, the matters will be referred to the original hearing officer for fact-finding. The Department does not regard this as a material modification.

*Comment:* The commenter requested that the Department clarify the extent to which the drug-free workplace requirements apply to the residences of telecommuters and other remote workers.

*HUD Response:* The Department believes this issue was adequately addressed in the final governmentwide rule of May 25, 1990 (55 FR 21681), in response to comments regarding regulations promulgated pursuant to the Drug-Free Workplace Act of 1988. (See especially, 55 FR 21683.)

*Comment:* The commenter also asked whether the proposed rule intended that collective bargaining agreements be included in the term "employment contracts." The commenter wrote that the rule should clarify that the term "employment contracts" does not include a collective bargaining agreement between an employer and its employees' unions. According to the commenter, the exclusion of collective bargaining agreements as employment contracts is important because, if a principal of a union were excluded, the state would not be permitted to "contracts" with that union. The commenter further wrote that if "employment contracts" mean a consulting contract, it is a redundancy because consultant contracts are already covered in § 24.200.

*HUD Response:* The Department's proposal does not enlarge the scope of employment contracts (*i.e.*, those that are covered transactions, *e.g.*, a Housing Authority's employment of a Public Housing Executive Director using funds provided pursuant to a Consolidated Annual Contributions Contract) to include a collective bargaining agreement. The proposal merely reinforces the concept that each payment made under an employment

contract that is a covered transaction will constitute an independent covered transaction.

*Comment:* The commenter argued that if each salary payment is made a covered transaction, employers would be prohibited from making future salary payments to employees who happened to have been excluded since the last salary payment. In the commenter's view, because an employee's salary is paid after the work is performed, the rule would prohibit paying the employee for work he/she has already performed, notwithstanding that the exclusion may be unrelated to the employee's present activity.

*HUD Response:* The Department has elected to retain the provision as written. Payment for work completed prior to the current activity of the employee does not raise a compliance concern. The provision, as written, allows payment for the work previously performed (work completed before the debarment), but would not allow a continuation of payments subsequent to the imposition of a debarment or suspension absent an exception specified in the Suspension and Debarment regulations. Treating each compensation payment as a separate covered transaction ensures that public funds are adequately protected (which is one of the objectives of the Suspension and Debarment regulations), while not appreciably increasing the administrative burden on the regulated entity. (See, for example, HUD's proposed language at 24 CFR 300(d), exempting salary payments from a requirement to check the Excluded Parties List System (EPLS).)

*Comment:* The commenter suggested that the Department strike its detailed list of principals in § 24.995(c) accompanying the definition of "Principal." The commenter wrote that the list provided invites readers to make a mechanical comparison of individuals they (*i.e.*, the readers) may be involved with to the principals on the list, as opposed to an evaluation of whether the principals have influence or critical control over the covered transaction.

*HUD Response:* The Department has elected to retain the detailed list of principals. In the Department's view, the addition of paragraph (c) to the definition of the term "principal" in § 24.995 does not, in any way, expand or detract from the definition stated in the common rule on Suspensions and Debarments. Rather, the section is intended as a convenience to HUD program users to facilitate their understanding of the rule.

The Department has tracked changes to § 24.630 for the imputation

provisions found in § 24.1145 of the proposed rule. The minor modifications to § 24.1145 were made to ensure consistency with the common rule. Likewise, the Department has adopted EPLS when referring to the list of excluded parties.

#### List of Subjects

##### 24 CFR Part 21

Administrative practice and procedure, Grant programs, Drug-free workplace, Reporting and recordkeeping requirements.

##### 24 CFR Part 24

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Technical assistance, Reporting and recordkeeping requirements.

Dated: September 3, 2003.

**Mel Martinez,**  
Secretary.

■ For the reasons stated in the common preamble, the Department of Housing and Urban Development amends 24 CFR Subtitle A, as follows:

■ 1. A new part 21 is added to read as follows:

#### **PART 21—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)**

##### **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?  
21.225 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 HUD Awarding Officials**

- 21.400 What are my responsibilities as a HUD 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; 42 U.S.C. 3535(d).

■ 2. Part 21 is further amended as follows:

- a. "[Agency noun]" is removed and "Department of Housing and Urban Development" is added in its place wherever it occurs.  
■ b. "[Agency adjective]" is removed and "HUD" is added in its place wherever it occurs.  
■ c. "[Agency head or designee]" is removed and "Secretary or designee" is added in its place wherever it occurs.  
■ d. "[Agency head]" is removed and "Secretary" is added in its place wherever it occurs.  
■ 3. Part 24 is revised to read as set forth in instruction 1 at the end of the common preamble.

#### **PART 24—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

Sec.

- 24.25 How is this part organized?  
24.50 How is this part written?  
24.75 Do terms in this part have special meanings?

##### **Subpart A—General**

- 24.100 What does this part do?  
24.105 Does this part apply to me?  
24.110 What is the purpose of the nonprocurement debarment and suspension system?

- 24.115 How does an exclusion restrict a person's involvement in covered transactions?
- 24.120 May we grant an exception to let an excluded person participate in a covered transaction?
- 24.125 Does an exclusion under the nonprocurement system affect a person's eligibility for federal procurement contracts?
- 24.130 Does exclusion under the federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
- 24.135 May the Department of Housing and Urban Development exclude a person who is not currently participating in a nonprocurement transaction?
- 24.140 How do I know if a person is excluded?
- 24.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

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

- 24.200 What is a covered transaction?
- 24.205 Why is it important to know if a particular transaction is a covered transaction?
- 24.210 Which nonprocurement transactions are covered transactions?
- 24.215 Which nonprocurement transactions are not covered transactions?
- 24.220 Are any procurement contracts included as covered transactions?
- 24.225 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**

- 24.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
- 24.305 May I enter into a covered transaction with an excluded or disqualified person?
- 24.310 What must I do if a federal agency excludes a person with whom I am already doing business in a covered transaction?
- 24.315 May I use the services of an excluded person as a principal under a covered transaction?
- 24.320 Must I verify that principals of my covered transactions are eligible to participate?
- 24.325 What happens if I do business with an excluded person in a covered transaction?
- 24.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

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

- 24.335 What information must I provide before entering into a covered transaction with the Department of Housing and Urban Development?
- 24.340 If I disclose unfavorable information required under § 24.335, will I be prevented from entering into the transaction?

- 24.345 What happens if I fail to disclose the information required under § 24.335?
- 24.350 What must I do if I learn of the information required under § 24.335 after entering into a covered transaction with the Department of Housing and Urban Development?

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

- 24.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
- 24.360 What happens if I fail to disclose the information required under § 24.355?
- 24.365 What must I do if I learn of information required under § 24.355 after entering into a covered transaction with a higher tier participant?

##### **Subpart D—Responsibilities of HUD Officials Regarding Transactions**

- 24.400 May I enter into a transaction with an excluded or disqualified person?
- 24.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
- 24.410 May I approve a participant's use of the services of an excluded person?
- 24.415 What must I do if a federal agency excludes the participant or a principal after I enter into a covered transaction?
- 24.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
- 24.425 When do I check to see if a person is excluded or disqualified?
- 24.430 How do I check to see if a person is excluded or disqualified?
- 24.435 What must I require of a primary tier participant?
- 24.440 What method do I use to communicate those requirements to participants?
- 24.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
- 24.450 What action may I take if a primary tier participant fails to disclose the information required under § 24.335?
- 24.455 What may I do if a lower tier participant fails to disclose the information required under § 24.355 to the next higher tier?

##### **Subpart E—Excluded Parties List System**

- 24.500 What is the purpose of the Excluded Parties List System (EPLS)?
- 24.505 Who uses the EPLS?
- 24.510 Who maintains the EPLS?
- 24.515 What specific information is in the EPLS?
- 24.520 Who places the information into the EPLS?
- 24.525 Whom do I ask if I have questions about a person in the EPLS?
- 24.530 Where can I find the EPLS?

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

- 24.600 How do suspension and debarment actions start?
- 24.605 How does suspension differ from debarment?
- 24.610 What procedures does the Department of Housing and Urban

Development use in suspension and debarment actions?

- 24.615 How does the Department of Housing and Urban Development notify a person of a suspension or debarment action?
- 24.620 Do federal agencies coordinate suspension and debarment actions?
- 24.625 What is the scope of a suspension or debarment action?
- 24.630 May the Department of Housing and Urban Development impute the conduct of one person to another?
- 24.635 May the Department of Housing and Urban Development settle a debarment or suspension action?
- 24.640 May a settlement include a voluntary exclusion?
- 24.645 Do other federal agencies know if the Department of Housing and Urban Development agrees to a voluntary exclusion?

##### **Subpart G—Suspension**

- 24.700 When may the suspending official issue a suspension?
- 24.705 What does the suspending official consider in issuing a suspension?
- 24.710 When does a suspension take effect?
- 24.715 What notice does the suspending official give me if I am suspended?
- 24.720 How may I contest a suspension?
- 24.725 How much time do I have to contest a suspension?
- 24.730 What information must I provide to the suspending official if I contest a suspension?
- 24.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 24.740 Are suspension proceedings formal?
- 24.745 How is fact-finding conducted?
- 24.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 24.755 When will I know whether the suspension is continued or terminated?
- 24.760 How long may my suspension last?

##### **Subpart H—Debarment**

- 24.800 What are the causes for debarment?
- 24.805 What notice does the debarring official give me if I am proposed for debarment?
- 24.810 When does a debarment take effect?
- 24.815 How may I contest a proposed debarment?
- 24.820 How much time do I have to contest a proposed debarment?
- 24.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 24.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
- 24.835 Are debarment proceedings formal?
- 24.840 How is fact-finding conducted?
- 24.845 What does the debarring official consider in deciding whether to debar me?
- 24.850 What is the standard of proof in a debarment action?
- 24.855 Who has the burden of proof in a debarment action?
- 24.860 What factors may influence the debarring official's decision?



- 24.865 How long may my debarment last?
- 24.870 When do I know if the debarring official debars me?
- 24.875 May I ask the debarring official to reconsider a decision to debar me?
- 24.880 What factors may influence the debarring official during reconsideration?
- 24.885 May the debarring official extend a debarment?

**Subpart I—Definitions**

- 24.900 Adequate evidence.
- 24.905 Affiliate.
- 24.910 Agency.
- 24.915 Agent or representative.
- 24.920 Civil judgment.
- 24.925 Conviction.
- 24.930 Debarment.
- 24.935 Debarring official.
- 24.940 Disqualified.
- 24.945 Excluded or exclusion.
- 24.947 Hearing officer.
- 24.950 Excluded Parties List System.
- 24.955 Indictment.
- 24.960 Ineligible or ineligibility.
- 24.965 Legal Proceedings.
- 24.970 Nonprocurement transaction.
- 24.975 Notice.
- 24.980 Participant.
- 24.985 Person.
- 24.990 Preponderance of the evidence.
- 24.995 Principal.
- 24.1000 Respondent.
- 24.1005 State.
- 24.1010 Suspending official.
- 24.1015 Suspension.
- 24.1017 Ultimate beneficiaries.
- 24.1020 Voluntary exclusion or voluntarily excluded.

**Subpart J—Limited Denial of Participation**

- 24.1100 What is a limited denial of participation?
- 24.1105 Who may issue a limited denial of participation?
- 24.1110 When may a HUD official issue a limited denial of participation?
- 24.1115 When does a limited denial of participation take effect?
- 24.1120 How long may a limited denial of participation last?
- 24.1125 How does a limited denial of participation start?
- 24.1130 How may I contest my limited denial of participation?
- 24.1135 Do federal agencies coordinate limited denial of participation actions?
- 24.1140 What is the scope of a limited denial of participation?
- 24.1145 May HUD impute the conduct of one person to another in a limited denial of participation?
- 24.1150 What is the effect of a suspension or debarment on a limited denial of participation?
- 24.1155 What is the effect of a limited denial of participation on a suspension or a debarment?
- 24.1160 May a limited denial of participation be terminated before the term of the limited denial of participation expires?
- 24.1165 How is a limited denial of participation reported?

**Appendix to Part 24—Covered Transactions**

**Authority:** 41 U.S.C. 701 *et seq.*; 42 U.S.C. 3535(d); 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).

- 4. Part 24 is further amended as set forth below.
- a. “[Agency noun]” is removed and “the Department of Housing and Urban Development” is added in its place wherever it occurs.
- b. “[Agency adjective]” is removed and “HUD” is added in its place wherever it occurs.
- c. “[Agency head or designee]” is removed and “Secretary or designee” is added in its place wherever it occurs.
- 5. Section 24.200 is further amended by adding a paragraph (c) to read as follows:

**§ 24.200 What is a covered transaction?**

\* \* \* \* \*

(c) In the case of employment contracts that are covered transactions, each salary payment under the contract is a separate covered transaction.

- 6. Section 24.300 is further amended by adding paragraphs (d) and (e) to read as follows:

**§ 24.300 What must I do before I enter into a covered transaction with another person at the next lower tier?**

\* \* \* \* \*

(d) You, as a participant, are responsible for determining whether you are entering into a covered transaction with an excluded or disqualified person. You may decide the method by which you do so. You may, but are not required to, check the EPLS.

(e) In the case of an employment contract, HUD does not require employers to check the EPLS prior to making salary payments pursuant to that contract.

- 7. Section 24.440 is added to read as follows:

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

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participants’ compliance with subpart C of this part and requiring them to include a similar term or condition in lower tier covered transactions.

- 8. Section 24.750 is further amended by adding a paragraph (c) to read as follows:

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

\* \* \* \* \*

(c) The official receiving the referral for findings of fact regarding disputed material facts must be a hearing officer in all HUD suspensions.

- 9. Section 24.845 is further amended by adding a paragraph (d) to read as follows:

**§ 24.845 What does the debarring official consider in deciding whether to debar me?**

\* \* \* \* \*

(d) The official receiving the referral for findings of fact regarding disputed material facts must be a hearing officer in all HUD debarments.

- 10. Section 24.947 is added to read as follows:

**§ 24.947 Hearing officer.**

*Hearing officer* means an Administrative Law Judge or Board of Contract Appeals Judge authorized by HUD’s Secretary or by the Secretary’s designee, to conduct proceedings under this part.

- 11. Section 24.995 is further amended by adding a paragraph (c) to read as follows:

**§ 24.995 Principal.**

\* \* \* \* \*

(c) A person who has a critical influence on, or substantive control over, a covered transaction, whether or not employed by the participant. Persons who have a critical influence on, or substantive control over, a covered transaction may include, but are not limited to:

- (1) Loan officers;
- (2) Staff appraisers and inspectors;
- (3) Underwriters;
- (4) Bonding companies;
- (5) Borrowers under programs financed by HUD or with loans guaranteed, insured, or subsidized through HUD programs;
- (6) Purchasers of properties with HUD-insured or Secretary-held mortgages;
- (7) Recipients under HUD assistance agreements;
- (8) Ultimate beneficiaries of HUD programs;
- (9) Fee appraisers and inspectors;
- (10) Real estate agents and brokers;
- (11) Management and marketing agents;
- (12) Accountants, consultants, investment bankers, architects, engineers, and attorneys who are in a business relationship with participants in connection with a covered transaction under a HUD program;
- (13) Contractors involved in the construction or rehabilitation of



properties financed by HUD, with HUD insured loans, or acquired properties, including properties held by HUD as mortgagee-in-possession;

(14) Closing agents;

(15) Turnkey developers of projects financed by or with financing insured by HUD;

(16) Title companies;

(17) Escrow agents;

(18) Project owners;

(19) Administrators of hospitals, nursing homes, and projects for the elderly financed or insured by HUD; and

(20) Developers, sellers or owners of property financed with loans insured under title I or title II of the National Housing Act.

■ 12. Subpart J is added to Part 24 to read as follows:

### **Subpart J—Limited Denial of Participation**

#### **§ 24.1100 What is a limited denial of participation?**

A limited denial of participation excludes a specific person from participating in a specific program, or programs, within a HUD field office's geographic jurisdiction, for a specific period of time. A limited denial of participation is normally issued by a HUD field office, but may be issued by a Headquarters office. The decision to impose a limited denial of participation is discretionary and in the best interests of the government.

#### **§ 24.1105 Who may issue a limited denial of participation?**

The Secretary designates HUD officials who are authorized to impose a limited denial of participation, affecting any participant and/or their affiliates, except FHA-approved mortgagees.

#### **§ 24.1110 When may a HUD official issue a limited denial of participation?**

(a) An authorized HUD official may issue a limited denial of participation against a person based upon adequate evidence of any of the following causes:

(1) Approval of an applicant for insurance would constitute an unsatisfactory risk;

(2) Irregularities in a person's past performance in a HUD program;

(3) Failure of a person to maintain the prerequisites of eligibility to participate in a HUD program;

(4) Failure to honor contractual obligations or to proceed in accordance with contract specifications or HUD regulations;

(5) Failure to satisfy, upon completion, the requirements of an assistance agreement or contract;

(6) Deficiencies in ongoing construction projects;

(7) Falsely certifying in connection with any HUD program, whether or not the certification was made directly to HUD;

(8) Commission of an offense listed in § 24.800;

(9) Violation of any law, regulation, or procedure relating to the application for financial assistance, insurance, or guarantee, or to the performance of obligations incurred pursuant to a grant of financial assistance or pursuant to a conditional or final commitment to insure or guarantee;

(10) Making or procuring to be made any false statement for the purpose of influencing in any way an action of the Department;

(11) Imposition of a limited denial of participation by any other HUD office; or

(12) Debarment or suspension by another federal agency for any cause substantially the same as provided in § 24.800.

(b) Filing of a criminal Indictment or Information shall constitute adequate evidence for the purpose of limited denial of participation actions. The Indictment or Information need not be based on offenses against HUD.

(c) Imposition of a limited denial of participation by any other HUD office shall constitute adequate evidence for a concurrent limited denial of participation. Where such a concurrent limited denial of participation is imposed, participation may be restricted on the same basis without the need for additional conference or further hearing.

(d) An affiliate or organizational element may be included in a limited denial of participation solely on the basis of its affiliation, and regardless of its knowledge of or participation in the acts providing cause for the sanction. The burden of proving that a particular affiliate or organizational element is currently responsible and not controlled by the primary sanctioned party (or by an entity that itself is controlled by the primary sanctioned party) is on the affiliate or organizational element.

#### **§ 24.1115 When does a limited denial of participation take effect?**

A limited denial of participation is effective immediately upon issuance of the notice.

#### **§ 24.1120 How long may a limited denial of participation last?**

A limited denial of participation may remain effective up to 12 months.

#### **§ 24.1125 How does a limited denial of participation start?**

A limited denial of participation is made effective by providing the person, and any specifically named affiliate, with notice:

(a) That the limited denial of participation is being imposed;

(b) Of the cause(s) under § 24.1110 for the sanction;

(c) Of the potential effect of the sanction, including the length of the sanction and the HUD program(s) and geographic area affected by the sanction;

(d) Of the right to request, in writing, within 30 days of receipt of the notice, a conference under § 24.1130; and

(e) Of the right to contest the limited denial of participation under § 24.1130.

#### **§ 24.1130 How may I contest my limited denial of participation?**

(a) Within 30 days after receiving a notice of limited denial of participation, you may request a conference with the official who issued such notice. The conference shall be held within 15 days after the Department's receipt of the request for a conference, unless you waive this time limit. The official or designee who imposed the sanction shall preside. At the conference, you may appear with a representative and may present all relevant information and materials to the official or designee. Within 20 days after the conference, or within 20 days after any agreed upon extension of time for submission of additional materials, the official or designee shall, in writing, advise you of the decision to terminate, modify, or affirm the limited denial of participation. If all or a portion of the remaining period of exclusion is affirmed, the notice of affirmation shall advise you of the opportunity to contest the notice and request a hearing before a Departmental Hearing Officer. You have 30 days after receipt of the notice of affirmation to request this hearing. If the official or designee does not issue a decision within the 20-day period, you may contest the sanction before a Departmental Hearing Officer. Again, you have 30 days from the expiration of the 20-day period to request this hearing. If you request a hearing before the Departmental Hearing Officer, you must submit your request to the Debarment Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW, B-133 Portals 200, Washington DC 20410-0500.

(b) You may skip the conference with the official and you may request a hearing before a Departmental Hearing Officer. This must also be done within 30 days after receiving a notice of limited denial of participation. If you

opt to have a hearing before a Departmental Hearing Officer, you must submit your request to the Debarment Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW, B-133 Portals 200, Washington DC 20410-0500. The hearing before the Departmental Hearing Officer is more formal than the conference before the sanctioning official described above. The hearing before the Departmental Hearing Officer will be conducted in accordance with 24 CFR part 26, subpart A. The Departmental Hearing Officer will issue findings of fact and make a recommended decision. The sanctioning official will then make a final decision as promptly as possible after the Departmental Hearing Officer recommended decision is issued. The sanctioning official may reject the recommended decision or any findings of fact, only after specifically determining the decision or any of the facts to be arbitrary or capricious or clearly erroneous.

**§ 24.1135 Do federal agencies coordinate limited denial of participation actions?**

Federal agencies do not coordinate limited denial of participation actions. As stated in § 24.1100, a limited denial of participation is a HUD-specific action and applies only to HUD activities.

**§ 24.1140 What is the scope of a limited denial of participation?**

The scope of a limited denial of participation is as follows:

(a) A limited denial of participation generally extends only to participation in the program under which the cause arose. A limited denial of participation may, at the discretion of the authorized official, extend to other programs, initiatives, or functions within the jurisdiction of an Assistant Secretary. The authorized official, however, may determine that the sanction shall apply to all programs throughout HUD where the sanction is based on an indictment or conviction.

(b) For purposes of this subpart, participation includes receipt of any benefit or financial assistance through grants or contractual arrangements; benefits or assistance in the form of loan guarantees or insurance; and awards of procurement contracts.

(c) The sanction may be imposed for a period not to exceed 12 months, and shall be effective within the geographic jurisdiction of the office imposing it, unless the sanction is imposed by an Assistant Secretary or Deputy Assistant Secretary in which case the sanction may be imposed on either a nationwide or a more restricted basis.

**§ 24.1145 May HUD impute the conduct of one person to another in a limited denial of participation?**

For purposes of determining a limited denial of participation, HUD may impute conduct as follows:

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

(b) *Conduct imputed from an organization to an individual or between individuals.* HUD may impute the fraudulent, criminal, or other improper conduct of any organization to an individual, or from one individual to another individual, if the individual to whom the improper conduct is imputed either participated in, had knowledge of, or reason to know of the improper conduct.

(c) *Conduct imputed from one organization to another organization.* HUD may impute the fraudulent, criminal, or other improper conduct of one organization to another organization when the improper conduct occurred in connection with a partnership, joint venture, joint application, association, or similar arrangement, or when the organization to whom the improper conduct is imputed has the power to direct, manage, control, or influence the activities of the organization responsible for the improper conduct. Acceptance of the benefits derived from the conduct is evidence of knowledge, approval, or acquiescence.

**§ 24.1150 What is the effect of a suspension or debarment on a limited denial of participation?**

If you have submitted a request for a hearing pursuant to § 24.1130 of this section, and you also receive, pursuant to subpart G or H of this part, a notice of proposed debarment or suspension that is based on the same transaction(s) or conduct as the limited denial of participation, as determined by the debarment or suspending official, the following rules shall apply:

(a) During the 30-day period after you receive a proposed debarment or suspension, during which you may elect to contest the debarment under § 24.815, or the suspension pursuant to § 24.720,

all proceedings in the limited denial of participation, including discovery, are automatically stayed.

(b) If you do not contest the proposed debarment pursuant to § 24.815, or the suspension pursuant to § 24.720, the final imposition of the debarment or suspension shall also constitute a final decision with respect to the limited denial of participation to the extent that the debarment or suspension is based on the same transaction(s) or conduct as the limited denial of participation.

(c) If you contest the proposed debarment pursuant to § 24.815, or the suspension pursuant to § 24.720, then:

(1) Those parts of the limited denial of participation and the debarment or suspension based on the same transaction(s) or conduct, as determined by the debarment or suspending official, shall be immediately consolidated before the debarment or suspending official;

(2) Proceedings under the consolidated portions of the limited denial of participation shall be stayed before the hearing officer until the suspending or debarment official makes a determination as to whether the consolidated matters should be referred to a hearing officer. Such a determination must be made within 90 days of the date of the issuance of the suspension or proposed debarment, unless the suspending/debarment official extends the period for good cause.

(i) If the suspending or debarment official determines that there is a genuine dispute as to material facts regarding the consolidated matter, the entire consolidated matter will be referred to the hearing officer hearing the limited denial of participation, for additional proceedings pursuant to 24 CFR 24.750 or § 24.845.

(ii) If the suspending or debarment official determines that there is no dispute as to material facts regarding the consolidated matter, jurisdiction of the hearing officer under 24 CFR part 24, subpart J, to hear those parts of the limited denial of participation based on the same transaction[s] or conduct as the debarment or suspension, as determined by the debarment or suspending official, will be transferred to the debarment or suspending official, and the hearing officer responsible for hearing the limited denial of participation shall transfer the administrative record to the debarment or suspending official.

(3) The suspending or debarment official shall hear the entire consolidated case under the procedures governing suspensions and debarments, and shall issue a final decision as to

both the limited denial of participation and the suspension or debarment.

**§ 24.1155 What is the effect of a limited denial of participation on a suspension or a debarment?**

The imposition of a limited denial of participation does not affect the right of the Department to suspend or debar any person under this part.

**§ 24.1160 May a limited denial of participation be terminated before the term of the limited denial of participation expires?**

If the cause for the limited denial of participation is resolved before the expiration of the 12-month period, the official who imposed the sanction may terminate it.

**§ 24.1165 How is a limited denial of participation reported?**

When a limited denial of participation has been made final, or the period for requesting a conference pursuant to § 24.1130 has expired without receipt of such a request, the official imposing the limited denial of participation shall notify the Director of the Compliance Division in the Departmental Enforcement Center of the scope of the limited denial of participation.

**DEPARTMENT OF JUSTICE**

**28 CFR Parts 67 and 83**

**[OJP(OJP)-1306]**

**RIN 1121-AA57**

**ADDRESSES:** Please address all comments regarding this interim final rule to Linda Fallowfield, Attorney Advisor, Office of the General Counsel, Office of Justice Programs, Department of Justice, 810 7th Street NW., Washington, DC 20531, (202) 305-2534, e-mail: [fallowfi@ojp.usdoj.gov](mailto:fallowfi@ojp.usdoj.gov).

**FOR FURTHER INFORMATION CONTACT:** Linda Fallowfield, Attorney Advisor, Office of the General Counsel, Office of Justice Programs, Department of Justice, 810 7th Street NW., Washington, DC 20531, (202) 305-2534, e-mail: [fallowfi@ojp.usdoj.gov](mailto:fallowfi@ojp.usdoj.gov).

**SUPPLEMENTARY INFORMATION:**

The Department of Justice (the Department) is publishing this interim final rule in order to join the publication of the government-wide common rule on debarment and suspension. The Department is adopting this common rule in order to promote consistency within the federal government. The common rule provides uniform requirements for debarment and suspension by Executive branch agencies to protect assistance, loans, benefits and other non-procurement

activities from waste, fraud, abuse and poor performance, similar to the system used for Federal procurement activities under Subpart 9.4 of the Federal Acquisition Regulations (FAR).

Finally, the Department's proposed rule on drug-free workplace requirements would be separated from the proposed rule on debarment and suspension. The drug-free workplace requirements are currently located in subpart F of the Debarment and Suspension Non-procurement Common Rule. Moving those requirements to a separate part would allow them to appear in a more appropriate location nearer other requirements used predominantly by award officials. The requirements for maintaining a drug-free workplace thus would be relocated from 28 CFR part 67 to 28 CFR part 83, and are restated in plain language format.

**List of Subjects**

*28 CFR Part 67*

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

*28 CFR Part 83*

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

Dated: October 16, 2003.

**John Ashcroft,**  
*Attorney General.*

■ For the reasons set forth in the preamble, 28 CFR chapter I is amended as follows:

■ 1. Part 67 is revised to read as set forth in instruction 1 at the end of the common preamble.

**PART 67—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

Sec.

- 67.25 How is this part organized?
- 67.50 How is this part written?
- 67.75 Do terms in this part have special meanings?

**Subpart A—General**

- 67.100 What does this part do?
- 67.105 Does this part apply to me?
- 67.110 What is the purpose of the non-procurement debarment and suspension system?
- 67.115 How does an exclusion restrict a person's involvement in covered transactions?
- 67.120 May we grant an exception to let an excluded person participate in a covered transaction?
- 67.125 Does an exclusion under the non-procurement system affect a person's

eligibility for Federal procurement contracts?

- 67.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in non-procurement transactions?
- 67.135 May the Department of Justice exclude a person who is not currently participating in a non-procurement transaction?
- 67.140 How do I know if a person is excluded?
- 67.145 Does this part address persons who are disqualified, as well as those who are excluded from non-procurement transactions?

**Subpart B—Covered Transactions**

- 67.200 What is a covered transaction?
- 67.205 Why is it important to know if a particular transaction is a covered transaction?
- 67.210 Which non-procurement transactions are covered transactions?
- 67.215 Which non-procurement transactions are not covered transactions?
- 67.220 Are any procurement contracts included as covered transactions?
- 67.225 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**

- 67.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
- 67.305 May I enter into a covered transaction with an excluded or disqualified person?
- 67.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
- 67.315 May I use the services of an excluded person as a principal under a covered transaction?
- 67.320 Must I verify that principals of my covered transactions are eligible to participate?
- 67.325 What happens if I do business with an excluded person in a covered transaction?
- 67.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

**Disclosing Information—Primary Tier Participants**

- 67.335 What information must I provide before entering into a covered transaction with the Department of Justice?
- 67.340 If I disclose unfavorable information required under § 67.335, will I be prevented from participating in the transaction?
- 67.345 What happens if I fail to disclose the information required under § 67.335?
- 67.350 What must I do if I learn of the information required under § 67.335 after entering into a covered transaction with the Department of Justice?

**Disclosing Information—Lower Tier Participants**

- 67.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
- 67.360 What happens if I fail to disclose the information required under § 67.355?
- 67.365 What must I do if I learn of information required under § 67.355 after entering into a covered transaction with a higher tier participant?

**Subpart D—Responsibilities of Department of Justice Officials Regarding Transactions**

- 67.400 May I enter into a transaction with an excluded or disqualified person?
- 67.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
- 67.410 May I approve a participant's use of the services of an excluded person?
- 67.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
- 67.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
- 67.425 When do I check to see if a person is excluded or disqualified?
- 67.430 How do I check to see if a person is excluded or disqualified?
- 67.435 What must I require of a primary tier participant?
- 67.440 What method do I use to communicate those requirements to participants?
- 67.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
- 67.450 What action may I take if a primary tier participant fails to disclose the information required under § 67.335?
- 67.455 What may I do if a lower tier participant fails to disclose the information required under § 67.355 to the next higher tier?

**Subpart E—Excluded Parties List System**

- 67.500 What is the purpose of the Excluded Parties List System (EPLS)?
- 67.505 Who uses the EPLS?
- 67.510 Who maintains the EPLS?
- 67.515 What specific information is on the EPLS?
- 67.520 Who places the information into the EPLS?
- 67.525 Whom do I ask if I have questions about a person in the EPLS?
- 67.530 Where can I find the EPLS?

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

- 67.600 How do suspension and debarment actions start?
- 67.605 How does suspension differ from debarment?
- 67.610 What procedures does the Department of Justice use in suspension and debarment actions?
- 67.615 How does the Department of Justice notify a person of a suspension and debarment action?
- 67.620 Do Federal agencies coordinate suspension and debarment actions?
- 67.625 What is the scope of a suspension or debarment action?

- 67.630 May the Department of Justice impute the conduct of one person to another?
- 67.635 May the Department of Justice settle a debarment or suspension action?
- 67.640 May a settlement include a voluntary exclusion?
- 67.645 Do other Federal agencies know if the Department of Justice agrees to a voluntary exclusion?

**Subpart G—Suspension**

- 67.700 When may the suspending official issue a suspension?
- 67.705 What does the suspending official consider in issuing a suspension?
- 67.710 When does a suspension take effect?
- 67.715 What notice does the suspending official give me if I am suspended?
- 67.720 How may I contest a suspension?
- 67.725 How much time do I have to contest a suspension?
- 67.730 What information must I provide to the suspending official if I contest a suspension?
- 67.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 67.740 Are suspension proceedings formal?
- 67.745 How is fact-finding conducted?
- 67.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 67.755 When will I know whether the suspension is continued or terminated?
- 67.760 How long may my suspension last?

**Subpart H—Debarment**

- 67.800 What are the causes for debarment?
- 67.805 What notice does the debarring official give me if I am proposed for debarment?
- 67.810 When does a debarment take effect?
- 67.815 How may I contest a proposed debarment?
- 67.820 How much time do I have to contest a proposed debarment?
- 67.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 67.830 Under what conditions do I get an additional opportunity to challenge the facts on which a proposed debarment is based?
- 67.835 Are debarment proceedings formal?
- 67.840 How is fact-finding conducted?
- 67.845 What does the debarring official consider in deciding whether to debar me?
- 67.850 What is the standard of proof in a debarment action?
- 67.855 Who has the burden of proof in a debarment action?
- 67.860 What factors may influence the debarring official's decision?
- 67.865 How long may my debarment last?
- 67.870 When do I know if the debarring official debars me?
- 67.875 May I ask the debarring official to reconsider a decision to debar me?
- 67.880 What factors may influence the debarring official during reconsideration?
- 67.885 May the debarring official extend a debarment?

**Subpart I—Definitions**

- 67.900 Adequate evidence.
- 67.905 Affiliate.
- 67.910 Agency.
- 67.915 Agent or representative.
- 67.920 Civil judgment.
- 67.925 Conviction.
- 67.930 Debarment.
- 67.935 Debarring official.
- 67.940 Disqualified.
- 67.945 Excluded or exclusion.
- 67.950 Excluded Parties List System
- 67.955 Indictment.
- 67.960 Ineligible or ineligibility.
- 67.965 Legal proceedings.
- 67.970 Non-procurement transaction.
- 67.975 Notice.
- 67.980 Participant.
- 67.985 Person.
- 67.990 Preponderance of the evidence.
- 67.995 Principal.
- 67.1000 Respondent.
- 67.1005 State.
- 67.1010 Suspending official.
- 67.1015 Suspension.
- 67.1020 Voluntary exclusion or voluntarily excluded.

**Subpart J—[Reserved]**

**Authority:** E.O. 12549; Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3711, *et seq.*, Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601, *et seq.*, Victims of Crime Act of 1984, 42 U.S.C. 10601, *et seq.*; 18 U.S.C. 4042; 18 U.S.C. 4351–4353; E.O. 12549 (3 CFR, 1986 Comp. P.189).

- 2. Part 67 is further amended as set forth below.
- a. “[Agency noun]” is removed and “the Department of Justice” is added in its place wherever it occurs.
- b. “[Agency adjective]” is removed and “Department of Justice” is added in its place wherever it occurs.
- c. “[Agency head or designee]” is removed and “Department of Justice debarring official or designee” is added wherever it occurs.
- 3. Section 67.440 is added to read as follows:

**§ 67.440 What method do I use to communicate those 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 83 is added to read as set forth in instruction 2 at the end of the common preamble.

**PART 83—GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)****Subpart A—Purpose and Coverage Sec.**

- 83.100 What does this part do?  
 83.105 Does this part apply to me?  
 83.110 Are any of my Federal assistance awards exempt from this part?  
 83.115 Does this part affect the Federal contracts that I receive?

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

- 83.200 What must I do to comply with this part?  
 83.205 What must I include in my drug-free workplace statement?  
 83.210 To whom must I distribute my drug-free workplace statement?  
 83.215 What must I include in my drug-free awareness program?  
 83.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?  
 83.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?  
 83.230 How and when must I identify workplaces?

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

- 83.300 What must I do to comply with this part if I am an individual recipient?  
 83.301 [Reserved]

#### Subpart D—Responsibilities of Department of Justice Awarding Officials

- 83.400 What are my responsibilities as a Department of Justice awarding official?

#### Subpart E—Violations of This Part and Consequences

- 83.500 How are violations of this part determined for recipients other than individuals?  
 83.505 How are violations of this part determined for recipients who are individuals?  
 83.510 What actions will the Federal Government take against a recipient determined to have violated this part?  
 83.515 Are there any exceptions to those actions?

#### Subpart F—Definitions

- 83.605 Award.  
 83.610 Controlled substance.  
 83.615 Conviction.  
 83.620 Cooperative agreement.  
 83.625 Criminal drug statute.  
 83.630 Debarment.  
 83.635 Drug-free workplace.  
 83.640 Employee.  
 83.645 Federal agency or agency.  
 83.650 Grant.  
 83.655 Individual.  
 83.660 Recipient.  
 83.665 State.  
 83.670 Suspension.

**Authority:** Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 *et seq.*).

■ 5. Part 83 is further amended as set forth below.

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

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

■ c. “[Agency head or designee]” is removed and “Attorney General or designee” is added wherever it occurs.

■ d. “[Agency head]” is removed and “Attorney General” is added wherever it occurs.

■ 6. Section 83.510(c) is further amended by removing “[CFR citation for the Federal agency’s regulations implementing Executive Order 12549 and Executive Order 12689]” and adding “28 CFR Part 67” in its place.

■ 7. Section 83.605(a)(2) is further amended by removing “[Agency-specific CFR citation]” and adding “28 CFR Part 70” in its place.

## DEPARTMENT OF LABOR

### 29 CFR Part 94 and 98

RIN 1291–AA33

#### FOR FURTHER INFORMATION CONTACT:

Jeffrey Saylor, Director Division of Acquisition Management Services, N–5425, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–7285, email [saylor-jeffrey@dol.gov](mailto:saylor-jeffrey@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: August 14, 2003.

**Elaine L. Chao,**  
*Secretary of Labor.*

■ For the reasons stated in the common preamble, the Department of Labor amends 29 CFR subtitle A, as follows:

■ 1. 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 94.605(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 for Federal procurement contracts?

98.130 Does 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 address 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 in which I may participate is a covered transaction?

### **Subpart C—Responsibilities of Participants Regarding Transactions**

#### **Doing Business With Other Persons**

98.300 What must I do before I enter into a covered transaction with another person at the next lower tier?

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

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

98.315 May I use the services of an excluded person as a principal under a covered transaction?

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

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

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

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

98.335 What information must I provide before entering into a covered transaction with the Department of Labor?

98.340 If I disclose unfavorable information required under § 98.335, will I be prevented from participating in the transaction?

98.345 What happens if I fail to disclose the information required under § 98.335?

98.350 What must I do if I learn of the information required under § 98.335 after entering into a covered transaction with the U.S. Department of Labor?

#### **Disclosing information—Lower Tier Participants**

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

98.360 What happens if I fail to disclose the information required under § 98.355?

98.365 What must I do if I learn of information required under § 98.355 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 § 98.335?

98.455 What may I do if a lower tier participant fails to disclose the information required under § 98.355 to the next higher tier?

### **Subpart E—Excluded Parties List System**

98.500 What is the purpose of the Excluded Parties List System (EPLS)?

98.505 Who uses the EPLS?

98.510 Who maintains the EPLS?

98.515 What specific information is in the EPLS?

98.520 Who places the information into the EPLS?

98.525 Whom do I ask if I have questions about a person in the EPLS?

98.530 Where can I find the EPLS?

### **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 a suspension and debarment action?

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 How is fact-finding conducted?

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 How is fact-finding conducted?
- 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 Excluded Parties List System.
- 98.955 Indictment.
- 98.960 Ineligible or ineligibility.
- 98.965 Legal proceedings.
- 98.970 Nonprocurement transaction.
- 98.975 Notice.
- 98.980 Participant.
- 98.985 Person.
- 98.990 Preponderance of the evidence.
- 98.995 Principal.
- 98.1000 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, Director, Labor-Management Cooperation Program, 2100 K St., NW., Washington, DC 20427, (202) 606–5444, e-mail: [jlorber@fmcs.gov](mailto:jlorber@fmcs.gov).

**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.

Dated: September 5, 2003.

**John J. Toner,**  
*Chief of Staff.*

■ For the reason stated in the common preamble, the Federal Mediation and Conciliation Service amends 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 for Federal procurement contracts?
- 1471.130 Does 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 address 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 in which I may participate is a covered transaction?

**Subpart C—Responsibilities of Participants Regarding Transactions**

**Doing Business With Other Persons**

- 1471.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
- 1471.305 May I enter into a covered transaction with an excluded or disqualified person?
- 1471.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
- 1471.315 May I use the services of an excluded person as a principal under a covered transaction?
- 1471.320 Must I verify that principals of my covered transactions are eligible to participate?
- 1471.325 What happens if I do business with an excluded person in a covered transaction?
- 1471.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

**Disclosing Information—Primary Tier Participants**

- 1471.335 What information must I provide before entering into a covered transaction with FMCS?
- 1471.340 If I disclose unfavorable information required under § 1471.335, will I be prevented from participating in the transaction?
- 1471.345 What happens if I fail to disclose the information required under § 1471.335?
- 1471.350 What must I do if I learn of the information required under § 1471.335?



after entering into a covered transaction with FMCS?

#### Disclosing Information—Lower Tier Participants

- 1471.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
- 1471.360 What happens if I fail to disclose the information required under § 1471.355?
- 1471.365 What must I do if I learn of information required under § 1471.355 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 § 1471.335?
- 1471.455 What may I do if a lower tier participant fails to disclose the information required under § 1471.355 to the next higher tier?

#### Subpart E—Excluded Parties List System

- 1471.500 What is the purpose of the Excluded Parties List System (EPLS)?
- 1471.505 Who uses the EPLS?
- 1471.510 Who maintains the EPLS?
- 1471.515 What specific information is in the EPLS?
- 1471.520 Who places the information into the EPLS?
- 1471.525 Whom do I ask if I have questions about a person in the EPLS?
- 1471.530 Where can I find the EPLS?

#### 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 a suspension and debarment action?
- 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 How is fact-finding conducted?
- 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 How is fact-finding conducted?
- 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 Excluded Parties List System.
- 1471.955 Indictment.
- 1471.960 Ineligible or ineligibility.
- 1471.965 Legal proceedings.
- 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 THE TREASURY**

**31 CFR Parts 19 and 20**

**RIN 1505-AA86**

**FOR FURTHER INFORMATION CONTACT:**

Brian Lee, Office of the Deputy Chief Financial Officer, 1500 Pennsylvania Avenue, NW., Attention: Room 6212, Metropolitan Square, Washington, DC 20220, (202) 622-0808, *Brian.Lee@do.treas.gov*.

**ADDRESSES:** Written comments should be sent to Brian Lee, Office of the Deputy Chief Financial Officer, Department of the Treasury, 1500 Pennsylvania Ave., NW., Attn: Metropolitan Square Room 6212, Washington, DC 20220. Comments may also be sent by electronic mail to *Brian.Lee@do.treas.gov*.

Comments should discuss the extent to which it may be appropriate to amend the interim final rule to reflect programs and matters that may be unique to the Department of the Treasury. Comments on matters that have been raised in connection with the prior common notice of proposed rulemaking and that are discussed elsewhere in the common preamble to this rule will not be considered.

**List of Subjects**

*31 CFR Part 19*

Administrative practice and procedure, Debarment and suspension, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements.

*31 CFR Part 20*

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

Dated: July 31, 2003.

**Barry K. Hudson,**

*Deputy Chief Financial Officer.*

■ For the reasons stated in the preamble, the Department of the Treasury amends 31 CFR chapter I as follows:

■ 1. Part 19 is revised to read as set forth in instruction 1 at the end of the common preamble.

**PART 19—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

Sec.

- 19.25 How is this part organized?  
19.50 How is this part written?  
19.75 Do terms in this part have special meanings?

**Subpart A—General**

- 19.100 What does this part do?  
19.105 Does this part apply to me?  
19.110 What is the purpose of the nonprocurement debarment and suspension system?  
19.115 How does an exclusion restrict a person’s involvement in covered transactions?  
19.120 May we grant an exception to let an excluded person participate in a covered transaction?  
19.125 Does an exclusion under the nonprocurement system affect a person’s eligibility for Federal procurement contracts?  
19.130 Does exclusion under the Federal procurement system affect a person’s eligibility to participate in nonprocurement transactions?  
19.135 May the Department of the Treasury exclude a person who is not currently participating in a nonprocurement transaction?  
19.140 How do I know if a person is excluded?  
19.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

**Subpart B—Covered Transactions**

- 19.200 What is a covered transaction?  
19.205 Why is it important to know if a particular transaction is a covered transaction?  
19.210 Which nonprocurement transactions are covered transactions?  
19.215 Which nonprocurement transactions are not covered transactions?  
19.220 Are any procurement contracts included as covered transactions?  
19.225 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**

- 19.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
- 19.305 May I enter into a covered transaction with an excluded or disqualified person?
- 19.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
- 19.315 May I use the services of an excluded person as a principal under a covered transaction?
- 19.320 Must I verify that principals of my covered transactions are eligible to participate?
- 19.325 What happens if I do business with an excluded person in a covered transaction?
- 19.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

**Disclosing Information—Primary Tier Participants**

- 19.335 What information must I provide before entering into a covered transaction with the Department of the Treasury?
- 19.340 If I disclose unfavorable information required under § 19.335, will I be prevented from participating in the transaction?
- 19.345 What happens if I fail to disclose the information required under § 19.335?
- 19.350 What must I do if I learn of the information required under § 19.335 after entering into a covered transaction with the Department of the Treasury?

**Disclosing Information—Lower Tier Participants**

- 19.355 What Information must I provide to a higher tier participant before entering into a covered transaction with that participant?
- 19.360 What happens if I fail to disclose the information required under § 19.355?
- 19.365 What must I do if I learn of information required under § 19.355 after entering into a covered transaction with a higher tier participant?

**Subpart D—Responsibilities of Department of the Treasury Officials Regarding Transactions**

- 19.400 May I enter into a transaction with an excluded or disqualified person?
- 19.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
- 19.410 May I approve a participant's use of the services of an excluded person?
- 19.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
- 19.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
- 19.425 When do I check to see if a person is excluded or disqualified?
- 19.430 How do I check to see if a person is excluded or disqualified?

- 19.435 What must I require of a primary tier participant?
- 19.440 What method do I use to communicate those requirements to participants?
- 19.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
- 19.450 What action may I take if a primary tier participant fails to disclose the information required under § 19.335?
- 19.455 What may I do if a lower tier participant fails to disclose the information required under § 19.355 to the next higher tier?

**Subpart E—Excluded Parties List System**

- 19.500 What is the purpose of the Excluded Parties List System (EPLS)?
- 19.505 Who uses the EPLS?
- 19.510 Who maintains the EPLS?
- 19.515 What specific information is in the EPLS?
- 19.520 Who places the information into the EPLS?
- 19.525 Whom do I ask if I have questions about a person in the EPLS?
- 19.530 Where can I find the EPLS?

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

- 19.600 How do suspension and debarment actions start?
- 19.605 How does suspension differ from debarment?
- 19.610 What procedures does the Department of the Treasury use in suspension and debarment actions?
- 19.615 How does the Department of the Treasury notify a person of a suspension and debarment action?
- 19.620 Do Federal agencies coordinate suspension and debarment actions?
- 19.625 What is the scope of a suspension or debarment action?
- 19.630 May the Department of the Treasury impute the conduct of one person to another?
- 19.635 May the Department of the Treasury settle a debarment or suspension action?
- 19.640 May a settlement include a voluntary exclusion?
- 19.645 Do other Federal agencies know if the Department of the Treasury agrees to a voluntary exclusion?

**Subpart G—Suspension**

- 19.700 When may the suspending official issue a suspension?
- 19.705 What does the suspending official consider in issuing a suspension?
- 19.710 When does a suspension take effect?
- 19.715 What notice does the suspending official give me if I am suspended?
- 19.720 How may I contest a suspension?
- 19.725 How much time do I have to contest a suspension?
- 19.730 What information must I provide to the suspending official if I contest a suspension?
- 19.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 19.740 Are suspension proceedings formal?
- 19.745 How is fact-finding conducted?

- 19.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 19.755 When will I know whether the suspension is continued or terminated?
- 19.760 How long may my suspension last?

**Subpart H—Debarment**

- 19.800 What are the causes for debarment?
- 19.805 What notice does the debarring official give me if I am proposed for debarment?
- 19.810 When does a debarment take effect?
- 19.815 How may I contest a proposed debarment?
- 19.820 How much time do I have to contest a proposed debarment?
- 19.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 19.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
- 19.835 Are debarment proceedings formal?
- 19.840 How is fact-finding conducted?
- 19.845 What does the debarring official consider in deciding whether to debar me?
- 19.850 What is the standard of proof in a debarment action?
- 19.855 Who has the burden of proof in a debarment action?
- 19.860 What factors may influence the debarring official's decision?
- 19.865 How long may my debarment last?
- 19.870 When do I know if the debarring official debars me?
- 19.875 May I ask the debarring official to reconsider a decision to debar me?
- 19.880 What factors may influence the debarring official during reconsideration?
- 19.885 May the debarring official extend a debarment?

**Subpart I—Definitions**

- 19.900 Adequate evidence.
- 19.905 Affiliate.
- 19.910 Agency.
- 19.915 Agent or representative.
- 19.920 Civil judgment.
- 19.925 Conviction.
- 19.930 Debarment.
- 19.935 Debarring official.
- 19.940 Disqualified.
- 19.945 Excluded or exclusion.
- 19.950 Excluded Parties List System.
- 19.955 Indictment.
- 19.960 Ineligible or ineligibility.
- 19.965 Legal proceedings.
- 19.970 Nonprocurement transaction.
- 19.975 Notice.
- 19.980 Participant.
- 19.985 Person.
- 19.990 Preponderance of the evidence.
- 19.995 Principal.
- 19.1000 Respondent.
- 19.1005 State.
- 19.1010 Suspending official.
- 19.1015 Suspension.
- 19.1020 Voluntary exclusion or voluntarily excluded.

**Subpart J—[Reserved]****Appendix to Part 19—Covered Transactions**

**Authority:** Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 11738 (3 CFR, 1973 Comp., p. 799); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).??

■ 2. Part 19 is further amended as set forth below.

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

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

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

■ 3. Section 19.440 is added to read as follows:

**§ 19.440 What method do I use to communicate those 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 20 is added to read as set forth in instruction 2 at the end of the common preamble.

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

**Subpart A—Purpose and Coverage**

Sec.

20.100 What does this part do?

20.105 Does this part apply to me?

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

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

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

20.200 What must I do to comply with this part?

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

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

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

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

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

20.230 How and when must I identify workplaces?

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

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

20.301 [Reserved]

**Subpart D—Responsibilities of Department of the Treasury Awarding Officials**

20.400 What are my responsibilities as an Department of the Treasury awarding official?

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

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

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

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

20.515 Are there any exceptions to those actions?

**Subpart F—Definitions**

20.605 Award.

20.610 Controlled substance.

20.615 Conviction.

20.620 Cooperative agreement.

20.625 Criminal drug statute.

20.630 Debarment.

20.635 Drug-free workplace.

20.640 Employee.

20.645 Federal agency or agency.

20.650 Grant.

20.655 Individual.

20.660 Recipient.

20.665 State.

20.670 Suspension.

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

■ 5. Part 20 is further amended as set forth below.

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

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

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

■ d. “[Agency head]” is removed and “Secretary of the Treasury” is added in its place wherever it occurs.

■ 6. Section 20.510(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 19” in its place.

■ 7. Section 20.605 is further amended by removing and reserving paragraph (a)(2).

**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.

**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: July 31, 2003.

**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 C is 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 for Federal procurement contracts?

25.130 Does 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 address 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 What must I do before I enter into a covered transaction with another person at the next lower tier?  
 25.305 May I enter into a covered transaction with an excluded or disqualified person?  
 25.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?  
 25.315 May I use the services of an excluded person as a principal under a covered transaction?  
 25.320 Must I verify that principals of my covered transactions are eligible to participate?  
 25.325 What happens if I do business with an excluded person in a covered transaction?  
 25.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

##### Disclosing Information—Primary Tier Participants

25.335 What information must I provide before entering into a covered transaction with the DOD Component?  
 25.340 If I disclose unfavorable information required under § 25.335, will I be prevented from participating in the transaction?  
 25.345 What happens if I fail to disclose the information required under § 25.335?  
 25.350 What must I do if I learn of the information required under § 25.335 after entering into a covered transaction with the DOD Component?

##### Disclosing Information—Lower Tier Participants

25.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?  
 25.360 What happens if I fail to disclose the information required under § 25.355?  
 25.365 What must I do if I learn of information required under § 25.355 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 § 25.335?  
 25.455 What may I do if a lower tier participant fails to disclose the information required under § 25.355 to the next higher tier?

#### Subpart E—Excluded Parties List System

25.500 What is the purpose of the Excluded Parties List System (EPLS)?  
 25.505 Who uses the EPLS?  
 25.510 Who maintains the EPLS?  
 25.515 What specific information is in the EPLS?  
 25.520 Who places the information into the EPLS?  
 25.525 Whom do I ask if I have questions about a person in the EPLS?  
 25.530 Where can I find the EPLS?

#### 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 a suspension and debarment action?  
 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 How is fact-finding conducted?  
 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 How is fact-finding conducted?  
 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 Excluded Parties List System.  
 25.955 Indictment.

- 25.960 Ineligible or ineligibility.
- 25.965 Legal proceedings.
- 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, 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:** 41U.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 above.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED) did not receive any comments on its adoption of the common rule. We adopt as the final suspension and debarment regulation of ED the common rule as proposed by ED in its notice of proposed rulemaking (NPRM) (January 23, 2002 (67 FR 3326–333)).

Generally, in the NPRM ED made changes and additions to the common rule to ensure that ED's programs under Title IV of the Higher Education Act of 1965, as amended (HEA), were protected as they have been in the past under ED's adoption of the original common rule. See the NPRM at 67 FR 3326 for a complete description of the ED changes to the Common Rule. The Secretary also chose to adopt the common rule so that procurement transactions below a nonprocurement transaction are covered under ED programs at any tier if the transaction equals or exceeds \$25,000 or requires consent of the Department. The Secretary has also clarified some of the common rule definitions in the context of the HEA.

Because this final rule reorganizes 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 are obsolete. Therefore, the Secretary makes conforming amendments to parts 668 and 682 of the CFR so they refer to the proper provisions in part 85.

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**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the CFR is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html> (Catalog of Federal Domestic Assistance Number 84.032 Federal Family Education Loan Program)

#### List of Subjects

##### 4 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 8, 2003.

**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 amends 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 for Federal procurement contracts?  
85.130 Does 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 address 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 in which I may participate is a covered transaction?

### **Subpart C—Responsibilities of Participants Regarding Transactions**

#### **Doing Business With Other Persons**

85.300 What must I do before I enter into a covered transaction with another person at the next lower tier?  
85.305 May I enter into a covered transaction with an excluded or disqualified person?  
85.310 What must I do if a Federal agency excludes a person with whom I am

already doing business in a covered transaction?

85.315 May I use the services of an excluded person as a principal under a covered transaction?  
85.320 Must I verify that principals of my covered transactions are eligible to participate?  
85.325 What happens if I do business with an excluded person in a covered transaction?  
85.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

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

85.335 What information must I provide before entering into a covered transaction with the Department of Education?  
85.340 If I disclose unfavorable information required under § 85.335, will I be prevented from participating in the transaction?  
85.345 What happens if I fail to disclose the information required under § 85.335?  
85.350 What must I do if I learn of the information required under § 85.335 after entering into a covered transaction with the Department of Education?

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

85.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?  
85.360 What happens if I fail to disclose the information required under § 85.355?  
85.365 What must I do if I learn of information required under § 85.355 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 § 85.335?  
85.455 What may I do if a lower tier participant fails to disclose the

information required under § 85.355 to the next higher tier?

### **Subpart E—Excluded Parties List System**

85.500 What is the purpose of the Excluded Parties List System (EPLS)?  
85.505 Who uses the EPLS?  
85.510 Who maintains the EPLS?  
85.515 What specific information is in the EPLS?  
85.520 Who places the information into the EPLS?  
85.525 Whom do I ask if I have questions about a person in the EPLS?  
85.530 Where can I find the EPLS?

### **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 a suspension and debarment action?  
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 How is fact-finding conducted?  
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 How is fact-finding conducted?
- 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?

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- 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.
- 85.950 Excluded Parties List System.
- 85.952 HEA.
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- 85.960 Ineligible or ineligibility.
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- 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 (c) and (d) to read as follows.

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

\* \* \* \* \*

(c) 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.

(d) The contract is to perform services as a third party servicer in connection with a title IV, HEA program.

- 9. Section 85.310 is further amended by adding paragraph (c) to read as follows:

**§ 85.310 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 85.315 is further amended by adding paragraph (c) to read as follows:

**§ 85.315 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 debaring 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 34 CFR part 682, subpart D or G, the debaring 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 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 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 § 85.952 to read as follows:

**§ 85.952 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;

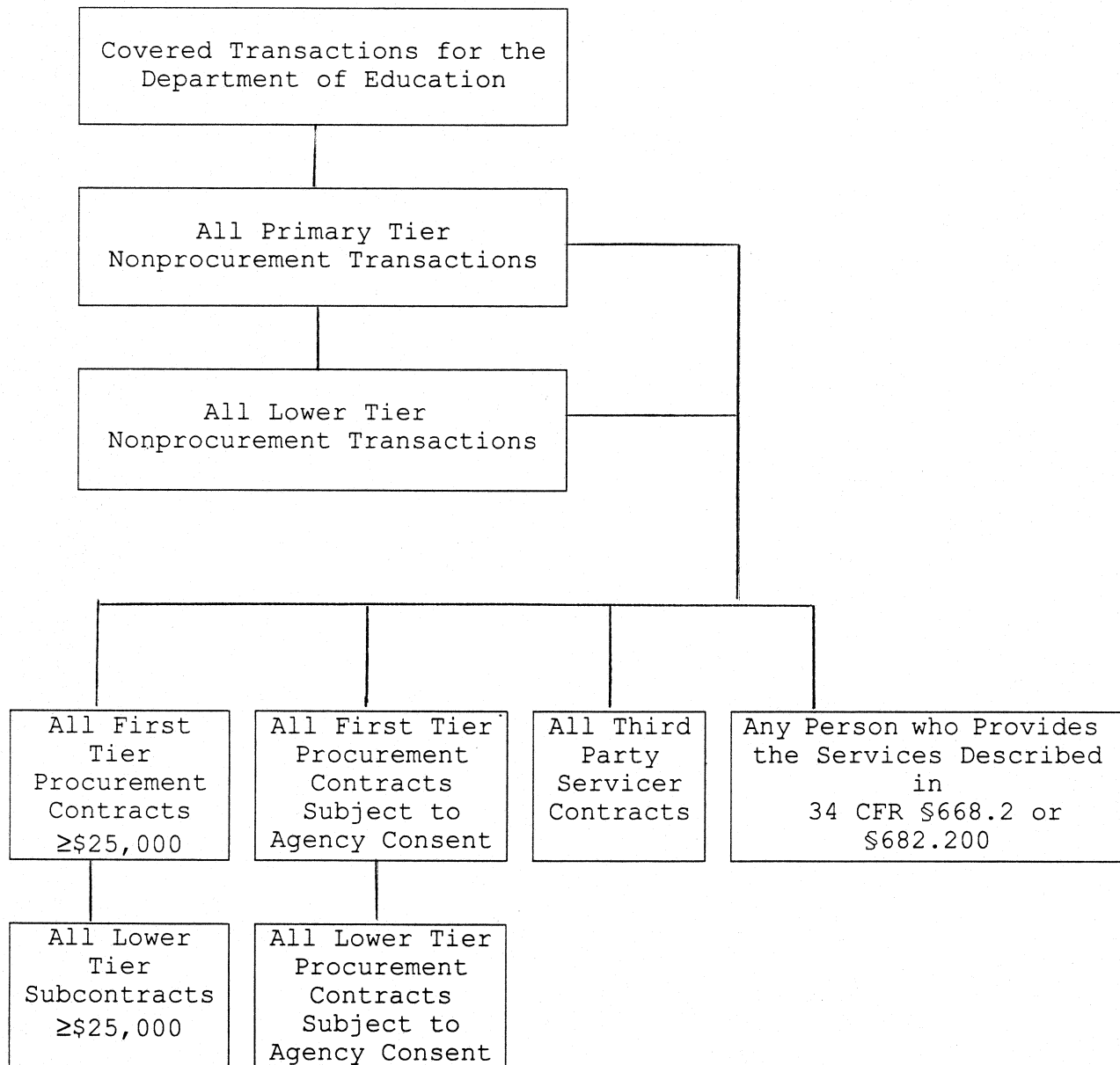
(c) Guaranteeing a loan made under a title IV, HEA program; and

(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 Transaction Chart and by adding a Covered Transactions for ED Chart to read as follows.

**Appendix to Part 85—Covered Transactions for ED Covered Transactions—[Reserved]**



**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, 301-837-1477, or *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.

Dated: July 24, 2003.

**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 for Federal procurement contracts?  
1209.130 Does 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 address 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 in which I may participate is a covered transaction?

#### **Subpart C—Responsibilities of Participants Regarding Transactions**

##### **Doing Business With Other Persons**

- 1209.300 What must I do before I enter into a covered transaction with another person at the next lower tier?  
1209.305 May I enter into a covered transaction with an excluded or disqualified person?  
1209.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?  
1209.315 May I use the services of an excluded person as a principal under a covered transaction?  
1209.320 Must I verify that principals of my covered transactions are eligible to participate?  
1209.325 What happens if I do business with an excluded person in a covered transaction?  
1209.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

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

- 1209.335 What information must I provide before entering into a covered transaction with NARA?  
1209.340 If I disclose unfavorable information required under § 1209.335, will I be prevented from participating in the transaction?  
1209.345 What happens if I fail to disclose the information required under § 1209.335?  
1209.350 What must I do if I learn of the information required under § 1209.335 after entering into a covered transaction with NARA?

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

- 1209.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?  
1209.360 What happens if I fail to disclose the information required under § 1209.355?  
1209.365 What must I do if I learn of information required under § 1209.355 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 § 1209.335?  
1209.455 What may I do if a lower tier participant fails to disclose the information required under § 1209.35 to the next higher tier?

#### **Subpart E—Excluded Parties List System**

- 1209.500 What is the purpose of the Excluded Parties List System (EPLS)?  
1209.505 Who uses the EPLS?  
1209.510 Who maintains the EPLS?  
1209.515 What specific information is in the EPLS?  
1209.520 Who places the information into the EPLS?  
1209.525 Whom do I ask if I have questions about a person in the EPLS?  
1209.530 Where can I find the EPLS?

#### **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 a suspension and debarment action?  
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 How is fact-finding conducted?

- 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 How is fact-finding conducted?
- 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.
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- 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: [lgryfinn@vba.va.gov](mailto:lgryfinn@vba.va.gov).

**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: August 4, 2003.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

■ For the reasons stated in the common preamble, the Department of Veterans Affairs amends 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 for Federal procurement contracts?

44.130 Does 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 address 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 in which I may participate is a covered transaction?

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

44.300 What must I do before I enter into a covered transaction with another person at the next lower tier?

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

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

44.315 May I use the services of an excluded person as a principal under a covered transaction?

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

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

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

**Disclosing Information—Primary Tier Participants**

44.335 What information must I provide before entering into a covered transaction with the Department of Veterans Affairs?

44.340 If I disclose unfavorable information required under § 44.335, will I be prevented from participating in the transaction?

44.345 What happens if I fail to disclose the information required under § 44.335?

44.350 What must I do if I learn of the information required under § 44.335 after entering into a covered transaction with the Department of Veterans Affairs?

**Disclosing Information—Lower Tier Participants**

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

44.360 What happens if I fail to disclose the information required under § 44.355?

44.365 What must I do if I learn of information required under § 44.355 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 § 44.335?

44.455 What may I do if a lower tier participant fails to disclose the information required under § 44.355 to the next higher tier?

**Subpart E—Excluded Parties List System**

44.500 What is the purpose of the Excluded Parties List System (EPLS)?

44.505 Who uses the EPLS?

44.510 Who maintains the EPLS?

44.515 What specific information is in the EPLS?

44.520 Who places the information into the EPLS?

44.525 Whom do I ask if I have questions about a person in the EPLS?

44.530 Where can I find the EPLS?

**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 a suspension and debarment action?

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 How is fact-finding conducted?
- 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 How is fact-finding conducted?
- 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 Excluded Parties List System.
- 44.955 Indictment.
- 44.960 Ineligible or ineligibility.
- 44.965 Legal proceedings.
- 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.)

- 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 debaring 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****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).

**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 recordkeeping requirements.

Dated: July 17, 2003.

**Morris X. Winn,**

*Assistant Administrator, Office of Administration and Resources Management.*

■ For the reason stated in the common preamble, the Environmental Protection Agency amends 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); AND STATUTORY DISQUALIFICATION UNDER THE CLEAN AIR ACT AND CLEAN WATER ACT**

Sec.

32.25 How is this part organized?

32.50 How is this part written?

32.75 Do terms in this part have special meanings?

**Subpart A—General**

- 32.100 What does this part do?
- 32.105 Does this part apply to me?
- 32.110 What is the purpose of the nonprocurement debarment and suspension system?
- 32.115 How does an exclusion restrict a person's involvement in covered transactions?
- 32.120 May we grant an exception to let an excluded person participate in a covered transaction?
- 32.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
- 32.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
- 32.135 May the EPA exclude a person who is not currently participating in a nonprocurement transaction?
- 32.140 How do I know if a person is excluded?
- 32.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

**Subpart B—Covered Transactions**

- 32.200 What is a covered transaction?
- 32.205 Why is it important to know if a particular transaction is a covered transaction?
- 32.210 Which nonprocurement transactions are covered transactions?
- 32.215 Which nonprocurement transactions are not covered transactions?
- 32.220 Are any procurement contracts included as covered transactions?
- 32.225 How do I know if a transaction in which I may participate is a covered transaction?

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

- 32.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
- 32.305 May I enter into a covered transaction with an excluded or disqualified person?
- 32.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
- 32.315 May I use the services of an excluded person as a principal under a covered transaction?
- 32.320 Must I verify that principals of my covered transactions are eligible to participate?
- 32.325 What happens if I do business with an excluded person in a covered transaction?
- 32.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

**Disclosing Information—Primary Tier Participants**

- 32.335 What information must I provide before entering into a covered transaction with the EPA?



- 32.340 If I disclose unfavorable information required under § 32.335, will I be prevented from participating in the transaction?
- 32.345 What happens if I fail to disclose the information required under § 32.335?
- 32.350 What must I do if I learn of the information required under § 32.335 after entering into a covered transaction with the EPA?

**Disclosing Information—Lower Tier Participants**

- 32.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
- 32.360 What happens if I fail to disclose the information required under § 32.355?
- 32.365 What must I do if I learn of information required under § 32.355 after entering into a covered transaction with a higher tier participant?

**Subpart D—Responsibilities of EPA Officials Regarding Transactions**

- 32.400 May I enter into a transaction with an excluded or disqualified person?
- 32.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
- 32.410 May I approve a participant's use of the services of an excluded person?
- 32.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
- 32.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
- 32.425 When do I check to see if a person is excluded or disqualified?
- 32.430 How do I check to see if a person is excluded or disqualified?
- 32.435 What must I require of a primary tier participant?
- 32.440 What method do I use to communicate those requirements to participants?
- 32.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
- 32.450 What action may I take if a primary tier participant fails to disclose the information required under § 32.335?
- 32.455 What may I do if a lower tier participant fails to disclose the information required under § 32.355 to the next higher tier?

**Subpart E—Excluded Parties List System**

- 32.500 What is the purpose of the Excluded Parties List System (EPLS)?
- 32.505 Who uses the EPLS?
- 32.510 Who maintains the EPLS?
- 32.515 What specific information is in the EPLS?
- 32.520 Who places the information into the EPLS?
- 32.525 Whom do I ask if I have questions about a person in the EPLS?
- 32.530 Where can I find the EPLS?

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

- 32.600 How do suspension and debarment actions start?

- 32.605 How does suspension differ from debarment?
- 32.610 What procedures does the EPA use in suspension and debarment actions?
- 32.615 How does the EPA notify a person of a suspension or debarment action?
- 32.620 Do Federal agencies coordinate suspension and debarment actions?
- 32.625 What is the scope of a suspension or debarment?
- 32.630 May the EPA impute conduct of one person to another?
- 32.635 May the EPA settle a debarment or suspension action?
- 32.640 May a settlement include a voluntary exclusion?
- 32.645 Do other Federal agencies know if the EPA agrees to a voluntary exclusion?

**Subpart G—Suspension**

- 32.700 When may the suspending official issue a suspension?
- 32.705 What does the suspending official consider in issuing a suspension?
- 32.710 When does a suspension take effect?
- 32.715 What notice does the suspending official give me if I am suspended?
- 32.720 How may I contest a suspension?
- 32.725 How much time do I have to contest a suspension?
- 32.730 What information must I provide to the suspending official if I contest a suspension?
- 32.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 32.740 Are suspension proceedings formal?
- 32.745 How is fact-finding conducted?
- 32.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 32.755 When will I know whether the suspension is continued or terminated?
- 32.760 How long may my suspension last?
- 32.765 How may I appeal my suspension?

**Subpart H—Debarment**

- 32.800 What are the causes for debarment?
- 32.805 What notice does the debarring official give me if I am proposed for debarment?
- 32.810 When does a debarment take effect?
- 32.815 How may I contest a proposed debarment?
- 32.820 How much time do I have to contest a proposed debarment?
- 32.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 32.830 Under what conditions do I get an additional opportunity to challenge the facts on which a proposed debarment is based?
- 32.835 Are debarment proceedings formal?
- 32.840 How is fact-finding conducted?
- 32.845 What does the debarring official consider in deciding whether to debar me?
- 32.850 What is the standard of proof in a debarment action?
- 32.855 Who has the burden of proof in a debarment action?
- 32.860 What factors may influence the debarring official's decision?
- 32.865 How long may my debarment last?
- 32.870 When do I know if the debarring official debars me?

- 32.875 May I ask the debarring official to reconsider a decision to debar me?
- 32.880 What factors may influence the debarring official during reconsideration?
- 32.885 May the debarring official extend a debarment?
- 32.890 How may I appeal my debarment?

**Subpart I—Definitions**

- 32.900 Adequate evidence.
- 32.905 Affiliate.
- 32.910 Agency.
- 32.915 Agent or representative.
- 32.920 Civil judgment.
- 32.925 Conviction.
- 32.930 Debarment.
- 32.935 Debarring official.
- 32.940 Disqualified.
- 32.945 Excluded or exclusion.
- 32.950 Excluded Parties List System.
- 32.955 Indictment.
- 32.960 Ineligible or ineligibility.
- 32.965 Legal proceedings.
- 32.970 Nonprocurement transaction.
- 32.975 Notice.
- 32.980 Participant.
- 32.985 Person.
- 32.990 Preponderance of the evidence.
- 32.995 Principal.
- 32.1000 Respondent.
- 32.1005 State.
- 32.1010 Suspending official.
- 32.1015 Suspension.
- 32.1020 Voluntary exclusion or voluntarily excluded.

**Subpart J—Statutory Disqualification and Reinstatement Under the Clean Air Act and Clean Water Act**

- 32.1100 What does this subpart do?
- 32.1105 Does this subpart apply to me?
- 32.1110 How will a CAA or CWA conviction affect my eligibility to participate in Federal contracts, subcontracts, assistance, loans and other benefits?
- 32.1115 Can the EPA extend a CAA or CWA disqualification to other facilities?
- 32.1120 What is the purpose of CAA or CWA disqualification?
- 32.1125 How do award officials and others know if I am disqualified?
- 32.1130 How does disqualification under the CAA or CWA differ from a Federal discretionary suspension or debarment action?
- 32.1135 Does CAA or CWA disqualification mean that I must remain ineligible?
- 32.1140 Can an exception be made to allow me to receive an award even though I may be disqualified?
- 32.1200 How will I know if I am disqualified under the CAA or CWA?
- 32.1205 What procedures must I follow to have my procurement and nonprocurement eligibility reinstated under the CAA or CWA?
- 32.1210 Will anyone else provide information to the EPA debarring official concerning my reinstatement request?
- 32.1215 What happens if I disagree with the information provided by others to the EPA debarring official on my reinstatement request?

- 32.1220 What will the EPA debarring official consider in making a decision on my reinstatement request?
- 32.1225 When will the EPA debarring official make a decision on my reinstatement request?
- 32.1230 How will the debarring official notify me of the reinstatement decision?
- 32.1300 Can I resolve my eligibility status under terms of an administrative agreement without having to submit a formal reinstatement request?
- 32.1305 What are the consequences if I mislead the EPA in seeking reinstatement or fail to comply with my administrative agreement?
- 32.1400 How may I appeal a decision denying my request for reinstatement?
- 32.1500 If I am reinstated, when will my name be removed from the EPLS?
- 32.1600 What definitions apply specifically to actions under this subpart?

**Appendix to Part 32—Covered Transactions**

**Authority:** 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 7401 *et seq.*; Sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 11738 (3 CFR, 1973 Comp., p. 799); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

**PART 32—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT); AND STATUTORY DISQUALIFICATION UNDER THE CLEAN AIR ACT AND CLEAN WATER ACT**

- 2. The heading for Part 32 is revised as set forth above.
- 3. 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 Debarring Official” is added in its place wherever it occurs.
- 4. Section 32.220 is further amended by adding a paragraph (c) to read as follows:

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

\* \* \* \* \*

(c) 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.)

- 5. 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.

- 6. 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.

- 7. Section 32.890 is added to Subpart H to read as follows:

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

(a) If the EPA debarring 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 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 decision to debar you within 30 days of your receipt of the debarring official’s decision under § 32.870 or paragraph (a)(1) of this section. However, the OGD Director can reverse the debarring 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 debarring 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.

- 8. 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.

- 9. 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 debarbing 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 debarbing 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 enters your name and address and that of the violating facility into the *Excluded Parties List System (EPLS)* as soon as possible after the EPA learns of your conviction. In addition, the EPA enters other information describing the nature of your disqualification. Federal award officials and others who administer Federal programs consult the *EPLS* before entering into or approving procurement and nonprocurement transactions. As of the date of this regulation, award officials and others, including the public, may obtain a yearly subscription to a printed version of the *EPLS* 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. Anyone may access the *EPLS* 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 debarbing 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 into the *EPLS* 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 debarbing 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 debarbing 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 debarbing 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 in the *EPLS*. 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 entered into the *EPLS*. 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 EPLS?**

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 remove your name and that of the violating facility from the *EPLS*, generally within 5 working days of your reinstatement.

**§ 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.

■ 10. 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.*

■ 11. 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.

■ 12. 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.

■ 13. Section 36.605(a)(2) is further amended by removing “[Agency-specific CFR citation]” and adding “40 CFR Part 31” in its place.

## GENERAL SERVICES ADMINISTRATION

41 CFR Parts 105–68 and 105–74

RIN 3090–AH35

### FOR FURTHER INFORMATION CONTACT:

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### List of Subjects

41 CFR Part 105–68

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

41 CFR Part 105–74

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

Dated: September 23, 2003.

**Stephen A. Perry**,  
Administrator of General Services.

■ For the reasons stated in the common preamble, the General Services Administration amends 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 for Federal procurement contracts?

105–68.130 Does 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 address 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 in which I may participate is a covered transaction?

### Subpart C—Responsibilities of Participants Regarding Transactions

#### Doing Business With Other Persons

105–68.300 What must I do before I enter into a covered transaction with another person at the next lower tier?

105–68.305 May I enter into a covered transaction with an excluded or disqualified person?

105–68.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?

105–68.315 May I use the services of an excluded person as a principal under a covered transaction?

105–68.320 Must I verify that principals of my covered transactions are eligible to participate?

105–68.325 What happens if I do business with an excluded person in a covered transaction?

105–68.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

### Disclosing Information—Primary Tier Participants

105–68.335 What information must I provide before entering into a covered transaction with the General Services Administration?

105–68.340 If I disclose unfavorable information required under § 105–68.335, will I be prevented from participating in the transaction?

105–68.345 What happens if I fail to disclose the information required under § 105–68.335?

105–68.350 What must I do if I learn of the information required under § 105–68.335 after entering into a covered transaction with the General Services Administration?

### Disclosing Information—Lower Tier Participants

105–68.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?

105–68.360 What happens if I fail to disclose the information required under § 105–68.355?

105–68.365 What must I do if I learn of information required under § 105–68.355 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 § 105–68.335?

105–68.455 What may I do if a lower tier participant fails to disclose the

information required under § 105–68.355 to the next higher tier?

#### Subpart E—Excluded Parties List System

- 105–68.500 What is the purpose of the Excluded Parties List System (EPLS)?  
 105–68.505 Who uses the EPLS?  
 105–68.510 Who maintains the EPLS?  
 105–68.515 What specific information is in the EPLS?  
 105–68.520 Who places the information into the EPLS?  
 105–68.525 Whom do I ask if I have questions about a person in the EPLS?  
 105–68.530 Where can I find the EPLS?

#### 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 a suspension and debarment action?  
 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 How is fact-finding conducted?  
 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 How is fact-finding conducted?  
 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 debar 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 Excluded Parties List System.  
 105–68.955 Indictment.  
 105–68.960 Ineligible or ineligibility.  
 105–68.965 Legal proceedings.  
 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 whom 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 FR part 105–68” in its place.

■ 7. Section 105–74.605(a)(2) is further amended by removing “[Agency-specific CFR citation]” and adding “41 CFR 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.

**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: July 25, 2003.

**P. Lynn Scarlett,**

*Assistant Secretary—Policy, Management and Budget.*

■ Accordingly, for the reasons stated in the common preamble, the Department of Interior amends 43 CFR subtitle A, 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 for Federal procurement contracts?

42.130 Does 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 address 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 in which I may participate is a covered transaction?

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

42.300 What must I do before I enter into a covered transaction with another person at the next lower tier?

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

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

42.315 May I use the services of an excluded person as a principal under a covered transaction?

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

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

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

**Disclosing Information—Primary Tier Participants**

42.335 What information must I provide before entering into a covered transaction with the Department of the Interior?

42.340 If I disclose unfavorable information required under § 42.335, will I be prevented from participating in the transaction?

42.345 What happens if I fail to disclose the information required under § 42.335?

42.350 What must I do if I learn of the information required under § 42.335 after



entering into a covered transaction with the Department of the Interior?

#### Disclosing Information—Lower Tier Participants

- 42.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
- 42.360 What happens if I fail to disclose the information required under § 42.355?
- 42.365 What must I do if I learn of information required under § 42.355 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 § 42.335?
- 42.455 What may I do if a lower tier participant fails to disclose the information required under § 42.355 to the next higher tier?

#### Subpart E—Excluded Parties List System

- 42.500 What is the purpose of the Excluded Parties List System (EPLS)?
- 42.505 Who uses the EPLS?
- 42.510 Who maintains the EPLS?
- 42.515 What specific information is in the EPLS?
- 42.520 Who places the information into the EPLS?
- 42.525 Whom do I ask if I have questions about a person in the EPLS?
- 42.530 Where can I find the EPLS?

#### 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 a suspension and debarment action?

- 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 How is fact-finding conducted?
- 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 How is fact-finding conducted?
- 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 Excluded Parties List System.
- 42.955 Indictment.
- 42.960 Ineligible or ineligibility.
- 42.965 Legal proceedings.
- 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.

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**45 CFR Parts 76 and 82**

**RIN 0991—AB12**

**FOR FURTHER INFORMATION CONTACT:**

Marc R. Weisman, 336 E. Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, 202-690-8554.

**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.

Dated: July 30, 2003.

**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 amends 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 for Federal procurement contracts?  
 76.130 Does 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 address 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 in which I may participate 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 What must I do before I enter into a covered transaction with another person at the next lower tier?  
 76.305 May I enter into a covered transaction with an excluded or disqualified person?  
 76.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?  
 76.315 May I use the services of an excluded person as a principal under a covered transaction?  
 76.320 Must I verify that principals of my covered transactions are eligible to participate?  
 76.325 What happens if I do business with an excluded person in a covered transaction?

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

#### Disclosing Information—Primary Tier Participants

- 76.335 What information must I provide before entering into a covered transaction with HHS?  
 76.340 If I disclose unfavorable information required under § 76.335, will I be prevented from participating in the transaction?  
 76.345 What happens if I fail to disclose the information required under § 76.335?  
 76.350 What must I do if I learn of the information required under § 76.335 after entering into a covered transaction with HHS?

#### Disclosing Information—Lower Tier Participants

- 76.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?  
 76.360 What happens if I fail to disclose the information required under § 76.355?  
 76.365 What must I do if I learn of information required under § 76.355 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 § 76.335?  
 76.455 What may I do if a lower tier participant fails to disclose the information required under § 76.355 to the next higher tier?  
 76.460 What are the obligations of Medicare carriers and intermediaries?

#### Subpart E—Excluded Parties List System

- 76.500 What is the purpose of the Excluded Parties List System (EPLS)?  
 76.505 Who uses the EPLS?  
 76.510 Who maintains the EPLS?  
 76.515 What specific information is in the EPLS?

- 76.520 Who places the information into the EPLS?  
 76.525 Whom do I ask if I have questions about a person in the EPLS?  
 76.530 Where can I find the EPLS?

#### 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 a suspension and debarment action?  
 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 How is fact-finding conducted?  
 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 debarring 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 debarring 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 How is fact-finding conducted?  
 76.845 What does the debarring 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 debarring official's decision?
- 76.865 How long may my debarment last?
- 76.870 When do I know if the debarring official debars me?
- 76.875 May I ask the debarring official to reconsider a decision to debar me?
- 76.880 What factors may influence the debarring official during reconsideration?
- 76.885 May the debarring 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 Debarring official.
- 76.940 Disqualified.
- 76.945 Excluded or exclusion.
- 76.950 Excluded Parties List System.
- 76.955 Indictment.
- 76.960 Ineligible or ineligibility.
- 76.965 Legal proceedings.
- 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 (c) to read as follows:

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

\* \* \* \* \*

(c) 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 EPLS 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

RIN 3145-AA41

**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.

Dated: June 10, 2003.

**Lawrence Rudolph,**

*General Counsel, National Science Foundation.*

■ Accordingly, as set forth in the common preamble, the National Science Foundation amends 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 for Federal procurement contracts?

620.130 Does 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 address 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 in which I may participate is a covered transaction?

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

620.300 What must I do before I enter into a covered transaction with another person at the next lower tier?

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

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

620.315 May I use the services of an excluded person as a principal under a covered transaction?

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

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

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

**Disclosing Information—Primary Tier Participants**

620.335 What information must I provide before entering into a covered transaction with the National Science Foundation?

620.340 If I disclose unfavorable information required under § 620.335, will I be prevented from participating in the transaction?

620.345 What happens if I fail to disclose the information required under § 620.335?

620.350 What must I do if I learn of the information required under § 620.335 after entering into a covered transaction with the National Science Foundation?

**Disclosing Information—Lower Tier Participants**

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

620.360 What happens if I fail to disclose the information required under § 620.355?

620.365 What must I do if I learn of information required under § 620.355 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 § 620.335?
- 620.455 What may I do if a lower tier participant fails to disclose the information required under § 620.355 to the next higher tier?

#### Subpart E—Excluded Parties List System

- 620.500 What is the purpose of the Excluded Parties List System (EPLS)?
- 620.505 Who uses the EPLS?
- 620.510 Who maintains the EPLS?
- 620.515 What specific information is in the EPLS?
- 620.520 Who places the information into the EPLS?
- 620.525 Whom do I ask if I have questions about a person in the EPLS?
- 620.530 Where can I find the EPLS?

#### 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 a suspension and debarment action?
- 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 How is fact-finding conducted?
- 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 How is fact-finding conducted?
- 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 Excluded Parties List System.
- 620.955 Indictment.
- 620.960 Ineligible or ineligibility.
- 620.965 Legal proceedings.
- 620.970 Nonprocurement transaction.
- 620.975 Notice.
- 620.980 Participant.

- 620.985 Person.
- 620.990 Preponderance of the evidence.
- 620.995 Principal.
- 620.1000 Respondent.
- 620.1005 State.
- 620.1010 Suspending official.
- 620.1015 Suspension.
- 620.1020 Voluntary exclusion or voluntarily excluded.

#### Subpart J—[Reserved]

#### Appendix to Part 620—Covered Transactions

**Authority:** 42 U.S.C. 1870(a); Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

- 2. Part 620 is further amended as set forth below.
- a. “[Agency noun]” is removed and “National Science Foundation” is added in its place wherever it occurs.
- b. “[Agency adjective]” is removed and “National Science Foundation” is added in its place wherever it occurs.
- c. “[Agency head or designee]” is removed and “Director or designee” is added in its place wherever it occurs.
- 3. Section 620.440 is added to read as follows:

#### § 620.440 What method do I use to communicate those requirements to participants?

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participant's compliance with subpart C of this part and requiring them to include a similar term or condition in lower tier covered transactions.

- 4. Part 630 is added to read as set forth in instruction 2 at the end of the common preamble.

#### PART 630—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

##### Subpart A—Purpose and Coverage

- Sec.
- 630.100 What does this part do?
- 630.105 Does this part apply to me?
- 630.110 Are any of my Federal assistance awards exempt from this part?
- 630.115 Does this part affect the Federal contracts that I receive?

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

- 630.200 What must I do to comply with this part?
- 630.205 What must I include in my drug-free workplace statement?
- 630.210 To whom must I distribute my drug-free workplace statement?
- 630.215 What must I include in my drug-free awareness program?

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

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

630.230 How and when must I identify workplaces?

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

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

630.301 [Reserved]

#### Subpart D—Responsibilities of National Science Foundation Awarding Officials

630.400 What are my responsibilities as a National Science Foundation awarding official?

#### Subpart E—Violations of This Part and Consequences

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

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

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

630.515 Are there any exceptions to those actions?

#### Subpart F—Definitions

630.605 Award.

630.610 Controlled substance.

630.615 Conviction.

630.620 Cooperative agreement.

630.625 Criminal drug statute.

630.630 Debarment.

630.635 Drug-free workplace.

630.640 Employee.

630.645 Federal agency or agency.

630.650 Grant.

630.655 Individual.

630.660 Recipient.

630.665 State.

630.670 Suspension.

**Authority:** 41 U.S.C. 701 *et seq.*

■ 5. Part 630 is further amended as set forth below.

■ a. “[Agency noun]” is removed and “National Science Foundation” is added in its place wherever it occurs.

■ b. “[Agency adjective]” is removed and “National Science Foundation” is added in its place wherever it occurs.

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

■ d. “[Agency head]” is removed and “Director, National Science Foundation” is added in its place wherever it occurs.

■ 6. Section 630.510(c) is further amended by removing “[CFR citation for the Federal Agency’s regulations implementing Executive Order 12549 and Executive Order 12689]” and adding “45 CFR Part 620” in its place.

■ 7. Section 630.605(a)(2) is further amended by removing “[Agency-specific

CFR citation]” and adding “45 CFR Part 602” in its place.

## NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

### National Endowment for the Arts

#### 45 CFR Parts 1154 and 1155

#### RINS 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).

#### 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: July 15, 2003.

**Karen L. Elias,**

*Deputy General Counsel, National Endowment for the Arts.*

■ For the reasons stated in the common preamble, the National Endowment for the Arts amends 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 for Federal procurement contracts?

1154.130 Does 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 address 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 What must I do before I enter into a covered transaction with another person at the next lower tier?

1154.305 May I enter into a covered transaction with an excluded or disqualified person?

1154.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?

1154.315 May I use the services of an excluded person as a principal under a covered transaction?

1154.320 Must I verify that principals of my covered transactions are eligible to participate?

1154.325 What happens if I do business with an excluded person in a covered transaction?

1154.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

#### Disclosing Information—Primary Tier Participants

1154.335 What information must I provide before entering into a covered transaction with the National Endowment for the Arts?

1154.340 If I disclose unfavorable information required under § 1154.335, will I be prevented from participating in the transaction?

1154.345 What happens if I fail to disclose the information required under § 1154.335?

1154.350 What must I do if I learn of the information required under § 1154.335 after entering into a covered transaction with the National Endowment for the Arts?



**Disclosing Information—Lower Tier Participants**

- 1154.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
- 1154.360 What happens if I fail to disclose the information required under § 1154.355?
- 1154.365 What must I do if I learn of information required under § 1154.355 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 § 1154.335?
- 1154.455 What may I do if a lower tier participant fails to disclose the information required under § 1154.355 to the next higher tier?

**Subpart E—Excluded Parties List System**

- 1154.500 What is the purpose of the Excluded Parties List System (EPLS)?
- 1154.505 Who uses the EPLS?
- 1154.510 Who maintains the EPLS?
- 1154.515 What specific information is in the EPLS?
- 1154.520 Who places the information into the EPLS?
- 1154.525 Whom do I ask if I have questions about a person in the EPLS?
- 1154.530 Where can I find the EPLS?

**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 a suspension and debarment action?

- 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 How is fact-finding conducted?
- 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 How is fact-finding conducted?
- 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 debars 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 Excluded Parties List System.
- 1154.955 Indictment.
- 1154.960 Ineligible or ineligibility.
- 1154.965 Legal proceedings.
- 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 1155.510(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 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:**

Heather C. Gottry, Assistant General Counsel, National Endowment for the Humanities, (202) 606-8300.

##### **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: January 30, 2003.

**Michael McDonald,**

*Deputy General Counsel,*

*National Endowment for the Humanities.*

Accordingly, as set forth in the common preamble, 45 CFR chapter XI is amended as follow:

■ 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 for Federal procurement contracts?  
1169.130 Does 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 address 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 in which I may participate is a covered transaction?

##### **Subpart C—Responsibilities of Participants Regarding Transactions**

##### **Doing Business With Other Persons**

1169.300 What must I do before I enter into a covered transaction with another person at the next lower tier?  
1169.305 May I enter into a covered transaction with an excluded or disqualified person?  
1169.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?  
1169.315 May I use the services of an excluded person as a principal under a covered transaction?  
1169.320 Must I verify that principals of my covered transactions are eligible to participate?

1169.325 What happens if I do business with an excluded person in a covered transaction?

1169.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

#### Disclosing Information—Primary Tier Participants

1169.335 What information must I provide before entering into a covered transaction with the NEH?

1169.340 If I disclose unfavorable information required under § 1169.335, will I be prevented from participating in the transaction?

1169.345 What happens if I fail to disclose the information required under § 1169.335?

1169.350 What must I do if I learn of the information required under § 1169.335 after entering into a covered transaction with the NEH?

#### Disclosing Information—Lower Tier Participants

1169.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?

1169.360 What happens if I fail to disclose the information required under § 1169.355?

1169.365 What must I do if I learn of information required under § 1169.355 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 those 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 § 1169.335?

1169.455 What may I do if a lower tier participant fails to disclose the information required under § 1169.355 to the next higher tier?

#### Subpart E—Excluded Parties List System

1169.500 What is the purpose of the Excluded Parties List System (EPLS)?

1169.505 Who uses the EPLS?

1169.510 Who maintains the EPLS?

1169.515 What specific information is in the EPLS?

1169.520 Who places the information into the EPLS?

1169.525 Whom do I ask if I have questions about a person in the EPLS?

1169.530 Where can I find the EPLS?

#### 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 a suspension and debarment action?

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 How is fact-finding conducted?

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 How is fact-finding conducted?

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 Excluded Parties List System.

1169.955 Indictment.

1169.960 Ineligible or ineligibility.

1169.965 Legal proceedings.

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 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 those 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 General Counsel” is added in its place wherever it occurs.

■ d. “[Agency head]” is removed and “NEH 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: June 6, 2003.

**Robert S. Martin,**

*Director, Institute of Museum and Library Services.*

■ For the reasons stated in the preamble, the Institute of Museum and Library Services amends 45 CFR chapter XI, as follows:

■ 1. Part 1185 is revised to read as follows:

**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 for Federal procurement contracts?  
1185.130 Does 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 address 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 What must I do before I enter into a covered transaction with another person at the next lower tier?
- 1185.305 May I enter into a covered transaction with an excluded or disqualified person?
- 1185.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
- 1185.315 May I use the services of an excluded person as a principal under a covered transaction?
- 1185.320 Must I verify that principals of my covered transactions are eligible to participate?
- 1185.325 What happens if I do business with an excluded person in a covered transaction?
- 1185.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

#### Disclosing Information—Primary Tier Participants

- 1185.335 What information must I provide before entering into a covered transaction with the Institute of Museum and Library Services?
- 1185.340 If I disclose unfavorable information required under § 1185.335, will I be prevented from participating in the transaction?
- 1185.345 What happens if I fail to disclose the information required under § 1185.335?
- 1185.350 What must I do if I learn of the information required under § 1185.335 after entering into a covered transaction with the Institute of Museum and Library Services?

#### Disclosing Information—Lower Tier Participants

- 1185.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
- 1185.360 What happens if I fail to disclose the information required under § 1185.355?
- 1185.365 What must I do if I learn of information required under § 1185.355 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 § 1185.335?
- 1185.455 What may I do if a lower tier participant fails to disclose the information required under § 1185.355 to the next higher tier?

### Subpart E—Excluded Parties List System

- 1185.500 What is the purpose of the Excluded Parties List System (EPLS)?
- 1185.505 Who uses the EPLS?
- 1185.510 Who maintains the EPLS?
- 1185.515 What specific information is in the EPLS?
- 1185.520 Who places the information into the EPLS?
- 1185.525 Whom do I ask if I have questions about a person in the EPLS?
- 1185.530 Where can I find the EPLS?

### 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 a suspension and debarment action?
- 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 How is fact-finding conducted?
- 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 How is fact-finding conducted?
- 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 Excluded Parties List System.
- 1185.955 Indictment.
- 1185.960 Ineligible or ineligibility.
- 1185.965 Legal proceedings.
- 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 those 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 1186.510(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 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: June 27, 2003.

##### Michelle Guillermin,

*Chief Financial Officer, Corporation for National and Community Service.*

■ Accordingly, as set forth in the common preamble, the Corporation for National and Community Service amends 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 for Federal procurement contracts?
- 2542.130 Does 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 address 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 in which I may participate is a covered transaction?

#### Subpart C—Responsibilities of Participants Regarding Transactions

##### Doing Business With Other Persons

- 2542.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
- 2542.305 May I enter into a covered transaction with an excluded or disqualified person?
- 2542.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
- 2542.315 May I use the services of an excluded person as a principal under a covered transaction?
- 2542.320 Must I verify that principals of my covered transactions are eligible to participate?
- 2542.325 What happens if I do business with an excluded person in a covered transaction?
- 2542.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

##### Disclosing Information—Primary Tier Participants

- 2542.335 What information must I provide before entering into a covered transaction with the Corporation?
- 2542.340 If I disclose unfavorable information required under § 2542.335,

will I be prevented from participating in the transaction?

- 2542.345 What happens if I fail to disclose the information required under § 2542.335?
- 2542.350 What must I do if I learn of the information required under § 2542.335 after entering into a covered transaction with the Corporation?

##### Disclosing Information—Lower Tier Participants

- 2542.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
- 2542.360 What happens if I fail to disclose the information required under § 2542.355?
- 2542.365 What must I do if I learn of information required under § 2542.355 after entering into a covered transaction with a higher tier participant?

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

- 2542.400 May I enter into a transaction with an excluded or disqualified person?
- 2542.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
- 2542.410 May I approve a participant's use of the services of an excluded person?
- 2542.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
- 2542.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
- 2542.425 When do I check to see if a person is excluded or disqualified?
- 2542.430 How do I check to see if a person is excluded or disqualified?
- 2542.435 What must I require of a primary tier participant?
- 2542.440 What method do I use to communicate those requirements to participants?
- 2542.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
- 2542.450 What action may I take if a primary tier participant fails to disclose the information required under § 2542.335?
- 2542.455 What may I do if a lower tier participant fails to disclose the information required under § 2542.355 to the next higher tier?

##### Subpart E—Excluded Parties List System

- 2542.500 What is the purpose of the Excluded Parties List System (EPLS)?
- 2542.505 Who uses the EPLS?
- 2542.510 Who maintains the EPLS?
- 2542.515 What specific information is in the EPLS?
- 2542.520 Who places the information into the EPLS?
- 2542.525 Whom do I ask if I have questions about a person in the EPLS?
- 2542.530 Where can I find the EPLS?

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

- 2542.600 How do suspension and debarment actions start?
- 2542.605 How does suspension differ from debarment?
- 2542.610 What procedures does the Corporation use in suspension and debarment actions?
- 2542.615 How does the Corporation notify a person of a suspension and debarment action?
- 2542.620 Do Federal agencies coordinate suspension and debarment actions?
- 2542.625 What is the scope of a suspension or debarment action?
- 2542.630 May the Corporation impute the conduct of one person to another?
- 2542.635 May the Corporation settle a debarment or suspension action?
- 2542.640 May a settlement include a voluntary exclusion?
- 2542.645 Do other Federal agencies know if the Corporation agrees to a voluntary exclusion?

##### Subpart G—Suspension

- 2542.700 When may the suspending official issue a suspension?
- 2542.705 What does the suspending official consider in issuing a suspension?
- 2542.710 When does a suspension take effect?
- 2542.715 What notice does the suspending official give me if I am suspended?
- 2542.720 How may I contest a suspension?
- 2542.725 How much time do I have to contest a suspension?
- 2542.730 What information must I provide to the suspending official if I contest a suspension?
- 2542.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 2542.740 Are suspension proceedings formal?
- 2542.745 How is fact-finding conducted?
- 2542.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 2542.755 When will I know whether the suspension is continued or terminated?
- 2542.760 How long may my suspension last?

##### Subpart H—Debarment

- 2542.800 What are the causes for debarment?
- 2542.805 What notice does the debarring official give me if I am proposed for debarment?
- 2542.810 When does a debarment take effect?
- 2542.815 How may I contest a proposed debarment?
- 2542.820 How much time do I have to contest a proposed debarment?
- 2542.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 2542.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
- 2542.835 Are debarment proceedings formal?

- 2542.840 How is fact-finding conducted?  
 2542.845 What does the debarring official consider in deciding whether to debar me?  
 2542.850 What is the standard of proof in a debarment action?  
 2542.855 Who has the burden of proof in a debarment action?  
 2542.860 What factors may influence the debarring official's decision?  
 2542.865 How long may my debarment last?  
 2542.870 When do I know if the debarring official debar me?  
 2542.875 May I ask the debarring official to reconsider a decision to debar me?  
 2542.880 What factors may influence the debarring official during reconsideration?  
 2542.885 May the debarring official extend a debarment?

#### Subpart I—Definitions

- 2542.900 Adequate evidence.  
 2542.905 Affiliate.  
 2542.910 Agency.  
 2542.915 Agent or representative.  
 2542.920 Civil judgment.  
 2542.925 Conviction.  
 2542.930 Debarment.  
 2542.935 Debarring official.  
 2542.940 Disqualified.  
 2542.945 Excluded or exclusion.  
 2542.950 Excluded Parties List System.  
 2542.955 Indictment.  
 2542.960 Ineligible or ineligibility.  
 2542.965 Legal proceedings.  
 2542.970 Nonprocurement transaction.  
 2542.975 Notice.  
 2542.980 Participant.  
 2542.985 Person.  
 2542.990 Preponderance of the evidence.  
 2542.995 Principal.  
 2542.1000 Respondent.  
 2542.1005 State.  
 2542.1010 Suspending official.  
 2542.1015 Suspension.  
 2542.1020 Voluntary exclusion or voluntarily excluded.

#### Subpart J—[Reserved]

#### Appendix to Part 2542—Covered Transactions

**Authority:** 42 U.S.C. 12651(c); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

- 2. Part 2542 is further amended as set forth below.  
 ■ a. “[Agency noun]” is removed and “Corporation” is added in its place wherever it occurs.  
 ■ b. “[Agency adjective]” is removed and “Corporation” is added in its place wherever it occurs.  
 ■ c. “[Agency head or designee]” is removed and “Corporation Chief Executive Officer or designee” is added in its place wherever it occurs.  
 ■ 3. Section 2542.440 is added to read as follows:

#### § 2542.440 What method do I use to communicate those requirements to participants?

To communicate the requirements, you must include a term or condition in the transaction requiring the participant's compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

- 4. Part 2545 is added to read as set forth in instruction 2 at the end of the common preamble.

#### PART 2545—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

##### Subpart A—Purpose and Coverage

Sec.

- 2545.100 What does this part do?  
 2545.105 Does this part apply to me?  
 2545.110 Are any of my Federal assistance awards exempt from this part?  
 2545.115 Does this part affect the Federal contracts that I receive?

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

- 2545.200 What must I do to comply with this part?  
 2545.205 What must I include in my drug-free workplace statement?  
 2545.210 To whom must I distribute my drug-free workplace statement?  
 2545.215 What must I include in my drug-free awareness program?  
 2545.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?  
 2545.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?  
 2545.230 How and when must I identify workplaces?

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

- 2545.300 What must I do to comply with this part if I am an individual recipient?  
 2545.301 [Reserved]

##### Subpart D—Responsibilities of Corporation Awarding Officials

- 2545.400 What are my responsibilities as a Corporation awarding official?

##### Subpart E—Violations of This Part and Consequences

- 2545.500 How are violations of this part determined for recipients other than individuals?  
 2545.505 How are violations of this part determined for recipients who are individuals?  
 2545.510 What actions will the Federal Government take against a recipient determined to have violated this part?  
 2545.515 Are there any exceptions to those actions?

##### Subpart F—Definitions

- 2545.605 Award.  
 2545.610 Controlled substance.

- 2545.615 Conviction.  
 2545.620 Cooperative agreement.  
 2545.625 Criminal drug statute.  
 2545.630 Debarment.  
 2545.635 Drug-free workplace.  
 2545.640 Employee.  
 2545.645 Federal agency or agency.  
 2545.650 Grant.  
 2545.655 Individual.  
 2545.660 Recipient.  
 2545.665 State.  
 2545.670 Suspension.

**Authority:** 41 U.S.C. 701, *et seq.*; 42 U.S.C. 12644 and 12651(c).

- 5. Part 2545 is further amended as set forth below.  
 ■ a. “[Agency noun]” is removed and “Corporation” is added in its place wherever it occurs.  
 ■ b. “[Agency adjective]” is removed and “Corporation” is added in its place wherever it occurs.  
 ■ c. “[Agency head or designee]” is removed and “Corporation Chief Executive Officer or designee” is added in its place wherever it occurs.  
 ■ d. “[Agency head]” is removed and “Corporation Chief Executive Officer” is added in its place wherever it occurs.  
 ■ 6. Section 2545.510(c) is further amended by removing “[CFR citation for the Federal Agencies’ regulations implementing Executive Order 12549 and Executive Order 12689]” and adding “45 CFR Part 2542” in its place.  
 ■ 7. Section 2545.605(a)(2) is further amended by removing “[Agency-specific CFR citation]” and adding “45 CFR Part 2541” in its place.

#### DEPARTMENT OF TRANSPORTATION

##### 49 CFR Parts 29 and 32

##### RIN 2105-AD07

##### FOR FURTHER INFORMATION CONTACT:

Ladd Hakes, Office of the Senior Procurement Executive (M-62), 400 Seventh Street, SW., Washington, DC 20590, (202) 366-4268, e-mail: [ladd.hakes@ost.dot.gov](mailto:ladd.hakes@ost.dot.gov).

##### List of Subjects

##### 49 CFR Part 29

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements.

##### 49 CFR Part 32

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

Dated: August 12, 2003.

**Norman Y. Mineta,**  
*Secretary of Transportation.*

■ For the reasons stated in the common preamble, the Department of Transportation amends 49 CFR subtitle A, as follows:

■ 1. Part 29 is revised to read as set forth in instruction 1 at the end of the common preamble.

## **PART 29—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

Sec.

29.25 How is this part organized?

29.50 How is this part written?

29.75 Do terms in this part have special meanings?

### **Subpart A—General**

29.100 What does this part do?

29.105 Does this part apply to me?

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

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

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

29.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?

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

29.135 May DOT exclude a person who is not currently participating in a nonprocurement transaction?

29.140 How do I know if a person is excluded?

29.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

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

29.200 What is a covered transaction?

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

29.210 Which nonprocurement transactions are covered transactions?

29.215 Which nonprocurement transactions are not covered transactions?

29.220 Are any procurement contracts included as covered transactions?

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

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

29.300 What must I do before I enter into a covered transaction with another person at the next lower tier?

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

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

29.315 May I use the services of an excluded person as a principal under a covered transaction?

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

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

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

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

29.335 What information must I provide before entering into a covered transaction with DOT?

29.340 If I disclose unfavorable information required under § 29.335, will I be prevented from participating in the transaction?

29.345 What happens if I fail to disclose the information required under § 29.335?

29.350 What must I do if I learn of the information required under § 29.335 after entering into a covered transaction with DOT?

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

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

29.360 What happens if I fail to disclose the information required under § 29.355?

29.365 What must I do if I learn of information required under § 29.355 after entering into a covered transaction with a higher tier participant?

### **Subpart D—Responsibilities of DOT Officials Regarding Transactions**

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

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

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

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

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

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

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

29.435 What must I require of a primary tier participant?

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

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

29.450 What action may I take if a primary tier participant fails to disclose the information required under § 29.335?

29.455 What may I do if a lower tier participant fails to disclose the information required under § 29.355 to the next higher tier?

### **Subpart E—Excluded Parties List System**

29.500 What is the purpose of the Excluded Parties List System (EPLS)?

29.505 Who uses the EPLS?

29.510 Who maintains the EPLS?

29.515 What specific information is in the EPLS?

29.520 Who places the information into the EPLS?

29.525 Whom do I ask if I have questions about a person in the EPLS?

29.530 Where can I find the EPLS?

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

29.600 How do suspension and debarment actions start?

29.605 How does suspension differ from debarment?

29.610 What procedures does DOT use in suspension and debarment actions?

29.615 How does DOT notify a person of a suspension and debarment action?

29.620 Do Federal agencies coordinate suspension and debarment actions?

29.625 What is the scope of a suspension or debarment action?

29.630 May DOT impute the conduct of one person to another?

29.635 May DOT settle a debarment or suspension action?

29.640 May a settlement include a voluntary exclusion?

29.645 Do other Federal agencies know if DOT agrees to a voluntary exclusion?

### **Subpart G—Suspension**

29.700 When may the suspending official issue a suspension?

29.705 What does the suspending official consider in issuing a suspension?

29.710 When does a suspension take effect?

29.715 What notice does the suspending official give me if I am suspended?

29.720 How may I contest a suspension?

29.725 How much time do I have to contest a suspension?

29.730 What information must I provide to the suspending official if I contest a suspension?

29.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?

29.740 Are suspension proceedings formal?

29.745 How is fact-finding conducted?

29.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?

29.755 When will I know whether the suspension is continued or terminated?

29.760 How long may my suspension last?

### **Subpart H—Debarment**

29.800 What are the causes for debarment?

29.805 What notice does the debarring official give me if I am proposed for debarment?

29.810 When does a debarment take effect?

29.815 How may I contest a proposed debarment?

29.820 How much time do I have to contest a proposed debarment?



- 29.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 29.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
- 29.835 Are debarment proceedings formal?
- 29.840 How is fact-finding conducted?
- 29.845 What does the debarring official consider in deciding whether to debar me?
- 29.850 What is the standard of proof in a debarment action?
- 29.855 Who has the burden of proof in a debarment action?
- 29.860 What factors may influence the debarring official's decision?
- 29.865 How long may my debarment last?
- 29.870 When do I know if the debarring official debars me?
- 29.875 May I ask the debarring official to reconsider a decision to debar me?
- 29.880 What factors may influence the debarring official during reconsideration?
- 29.885 May the debarring official extend a debarment?

**Subpart I—Definitions**

- 29.900 Adequate evidence.
- 29.905 Affiliate.
- 29.910 Agency.
- 29.915 Agent or representative.
- 29.920 Civil judgment.
- 29.925 Conviction.
- 29.930 Debarment.
- 29.935 Debarring official.
- 29.940 Disqualified.
- 29.945 Excluded or exclusion.
- 29.950 Excluded Parties List System.
- 29.955 Indictment.
- 29.960 Ineligible or ineligibility.
- 29.965 Legal proceedings.
- 29.970 Nonprocurement transaction.
- 29.975 Notice.
- 29.980 Participant.
- 29.985 Person.
- 29.990 Preponderance of the evidence.
- 29.995 Principal.
- 29.1000 Respondent.
- 29.1005 State.
- 29.1010 Suspending official.
- 29.1015 Suspension.
- 29.1020 Voluntary exclusion or voluntarily excluded.

**Subpart J—[Reserved]**

**Appendix to Part 29—Covered Transactions**

**Authority:** Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 11738 (3 CFR, 1973 Comp., p. 799); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

- 2. Part 29 is further amended as set forth below.
- a. “[Agency noun]” is removed and “Department of Transportation” is added in its place wherever it occurs.
- b. [Agency adjective]” is removed and “DOT” is added in its place wherever it occurs.
- c. “[Agency head or designee]” is removed and “debaring or suspending

official” is added in its place wherever it occurs.

■ 3. Section 29.120 is further amended by adding a paragraph (c) to read as follows:

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

\* \* \* \* \*

(c) A debarring or suspending official may grant exceptions and make written determinations under this section.

■ 4. Section 29.440 is added to read as follows:

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

To communicate the requirement you must include a term or condition in the transaction requiring the participants’ compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

■ 5. Section 29.520 is further amended by removing the period at the end of paragraph (c)(4) and adding a semicolon, and adding a paragraph (d) to read as follows:

**§ 29.520 Who places the information into the EPLS?**

\* \* \* \* \*

(d) The DOT official’s Operating Administration code, as follows: United States Coast Guard [DOT–USCG]; Federal Aviation Administration [DOT–FAA]; Federal Highway Administration [DOT–FHWA]; Federal Motor Carrier Safety Administration [DOT–FMCSA]; Federal Railway Administration [DOT–FRA]; Federal Transit Administration [DOT–FTA]; National Highway Traffic Safety Administration [DOT–NHTSA]; Research and Special Programs [DOT–RSPA]; Maritime Administration [DOT–MARAD]; and DOT (general) [DOT–OST].

■ 6. Section 29.935 is further amended adding a paragraph (b) to read as follows:

**§ 29.935 Debarring official.**

\* \* \* \* \*

(b) For DOT “debaring official” means the designated head of a DOT operating administration, who may delegate any of his or her functions under this part and authorize successive delegations.

■ 7. Section 29.1010 is further amended adding a paragraph (b) to read as follows:

**§ 29.1010 Suspending official.**

\* \* \* \* \*

(b) For DOT “suspending official” means the designated head of a DOT operating administration, who may

delegate any of his or her functions under this part and authorize successive delegations.

■ 8. Part 32 is added to read as set forth in instruction 2 at the end of the common preamble.

**PART 32—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)**

**Subpart A—Purpose and Coverage**

Sec.

- 32.100 What does this part do?
- 32.105 Does this part apply to me?
- 32.110 Are any of my Federal assistance awards exempt from this part?
- 32.115 Does this part affect the Federal contracts that I receive?

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

- 32.200 What must I do to comply with this part?
- 32.205 What must I include in my drug-free workplace statement?
- 32.210 To whom must I distribute my drug-free workplace statement?
- 32.215 What must I include in my drug-free awareness program?
- 32.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
- 32.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
- 32.230 How and when must I identify workplaces?

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

- 32.300 What must I do to comply with this part if I am an individual recipient?
- 32.301 [Reserved]

**Subpart D—Responsibilities of DOT Awarding Officials**

- 32.400 What are my responsibilities as a DOT awarding official?

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

- 32.500 How are violations of this part determined for recipients other than individuals?
- 32.505 How are violations of this part determined for recipients who are individuals?
- 32.510 What actions will the Federal Government take against a recipient determined to have violated this part?
- 32.515 Are there any exceptions to those actions?

**Subpart F—Definitions**

- 32.605 Award.
- 32.610 Controlled substance.
- 32.615 Conviction.
- 32.620 Cooperative agreement.
- 32.625 Criminal drug statute.
- 32.630 Debarment.
- 32.635 Drug-free workplace.
- 32.640 Employee.
- 32.645 Federal agency or agency.

- 32.650 Grant.
- 32.655 Individual.
- 32.660 Recipient.
- 32.665 State.
- 32.670 Suspension.

**Authority:** 41 U.S.C. 701 *et seq.*

- 9. Part 32 is further amended as set forth below.
- a. “[Agency noun]” is removed and “Department of Transportation” is added in its place wherever it occurs.

- b. “[Agency adjective]” is removed and “DOT” is added in its place wherever it occurs.
- c. “[Agency head or designee]” is removed and “Secretary of Transportation” is added in its place wherever it occurs.
- d. “[Agency head]” is removed and “Secretary of Transportation” is added in its place wherever it occurs.
- 10. Section 32.510 (c) is further amended by removing “CFR citation for the Federal Agency’s regulations implementing Executive Order 12549

and Executive Order 12689” and adding “49 CFR Part 29” in its place.

- 11. Section 32.605(a)(2) is further amended by removing “[Agency-specific CFR citation]” and adding “49 CFR Part 18” in its place.

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