



Federal Register

Wednesday,
November 26, 2003

Part II

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

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

OFFICE OF PERSONNEL MANAGEMENT	DEPARTMENT OF JUSTICE	National Endowment for the Humanities
5 CFR Part 970	28 CFR Parts 67 and 83	45 CFR Parts 1169 and 1173
DEPARTMENT OF AGRICULTURE	DEPARTMENT OF LABOR	Institute of Museum and Library Services
7 CFR Parts 3017 and 3021	29 CFR Parts 94 and 98	45 CFR Parts 1185 and 1186
DEPARTMENT OF ENERGY	FEDERAL MEDIATION AND CONCILIATION SERVICE	CORPORATION FOR NATIONAL AND COMMUNITY SERVICE
10 CFR Parts 606, 607, and 1036	29 CFR Parts 1471 and 1472	45 CFR Parts 2542 and 2545
THE EXPORT-IMPORT BANK OF THE UNITED STATES	DEPARTMENT OF THE TREASURY	DEPARTMENT OF TRANSPORTATION
12 CFR Part 413	31 CFR Parts 19 and 20	49 CFR Parts 29 and 32
SMALL BUSINESS ADMINISTRATION	DEPARTMENT OF DEFENSE	Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)
13 CFR Parts 145 and 147	32 CFR Parts 25 and 26	AGENCIES: 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.
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION	DEPARTMENT OF EDUCATION	
14 CFR Parts 1265 and 1267	34 CFR Parts 84, 85, 668 and 682	
DEPARTMENT OF COMMERCE	NATIONAL ARCHIVES AND RECORDS ADMINISTRATION	
15 CFR Parts 26 and 29	36 CFR Parts 1209 and 1212	
SOCIAL SECURITY ADMINISTRATION	DEPARTMENT OF VETERANS AFFAIRS	
20 CFR Parts 436 and 439	38 CFR Parts 44 and 48	
OFFICE OF NATIONAL DRUG CONTROL POLICY	ENVIRONMENTAL PROTECTION AGENCY	
21 CFR Parts 1404 and 1405	40 CFR Parts 32 and 36	
DEPARTMENT OF STATE	GENERAL SERVICES ADMINISTRATION	
22 CFR Parts 133 and 137	41 CFR Parts 105–68 and 105–74	
AGENCY FOR INTERNATIONAL DEVELOPMENT	DEPARTMENT OF THE INTERIOR	
22 CFR Parts 208 and 210	43 CFR Parts 12, 42 and 43	
PEACE CORPS	DEPARTMENT OF HEALTH AND HUMAN SERVICES	
22 CFR Parts 310 and 312	45 CFR Parts 76 and 82	
INTER-AMERICAN FOUNDATION	NATIONAL SCIENCE FOUNDATION	
22 CFR Parts 1006 and 1008	45 CFR Parts 620 and 630	
AFRICAN DEVELOPMENT FOUNDATION	NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES	
22 CFR Parts 1508 and 1509	National Endowment for the Arts	
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT	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). 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.¹ 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

¹ 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 debaring 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 debaring 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 debaring 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 debaring 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 debaring 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 debaring 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 debaring 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 debaring 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 debaring 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 debaring 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 debaring official in rendering the initial determination, no such time limit is imposed in handling requests for reconsideration under these sections. The debaring official has significant discretion in, and control over, handling requests for reconsideration. Debaring 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 debaring 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 debarring 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 debarring 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]?

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?
- __ .360 What happens if I fail to disclose the information required under § __.355?
- __ .365 What must I do if I learn of information required under § __.355 after entering into a covered transaction with a higher tier participant?

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

- __ .400 May I enter into a transaction with an excluded or disqualified person?
- __ .405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
- __ .410 May I approve a participant's use of the services of an excluded person?

- __ .415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
- __ .420 May I approve a transaction with an excluded or disqualified person at a lower tier?
- __ .425 When do I check to see if a person is excluded or disqualified?
- __ .430 How do I check to see if a person is excluded or disqualified?
- __ .435 What must I require of a primary tier participant?
- __ .440 [Reserved]
- __ .445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
- __ .450 What action may I take if a primary tier participant fails to disclose the information required under § __.335?
- __ .455 What may I do if a lower tier participant fails to disclose the information required under § __.355 to the next higher tier?

Subpart E—Excluded Parties List System

- __ .500 What is the purpose of the Excluded Parties List System (EPLS)?
- __ .505 Who uses the EPLS?
- __ .510 Who maintains the EPLS?
- __ .515 What specific information is in the EPLS?
- __ .520 Who places the information into the EPLS?
- __ .525 Whom do I ask if I have questions about a person in the EPLS?
- __ .530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

- __ .600 How do suspension and debarment actions start?
- __ .605 How does suspension differ from debarment?
- __ .610 What procedures does the [Agency noun] use in suspension and debarment actions?
- __ .615 How does the [Agency noun] notify a person of a suspension or debarment action?
- __ .620 Do Federal agencies coordinate suspension and debarment actions?
- __ .625 What is the scope of a suspension or debarment?
- __ .630 May the [Agency noun] impute conduct of one person to another?
- __ .635 May the [Agency noun] settle a debarment or suspension action?

- __ .640 May a settlement include a voluntary exclusion?
- __ .645 Do other Federal agencies know if the [Agency noun] agrees to a voluntary exclusion?

Subpart G—Suspension

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

Subpart H—Debarment

- __ .800 What are the causes for debarment?
- __ .805 What notice does the debarring official give me if I am proposed for debarment?
- __ .810 When does a debarment take effect?
- __ .815 How may I contest a proposed debarment?
- __ .820 How much time do I have to contest a proposed debarment?
- __ .825 What information must I provide to the debarring official if I contest a proposed debarment?
- __ .830 Under what conditions do I get an additional opportunity to challenge the facts on which a proposed debarment is based?
- __ .835 Are debarment proceedings formal?
- __ .840 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?
- __ .885 May the debarring official extend a debarment?

Subpart I—Definitions

- __ .900 Adequate evidence.
- __ .905 Affiliate.
- __ .910 Agency.
- __ .915 Agent or representative.
- __ .920 Civil judgment.
- __ .925 Conviction.
- __ .930 Debarment.
- __ .935 Debarring official.
- __ .940 Disqualified.
- __ .945 Excluded or exclusion.
- __ .950 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.

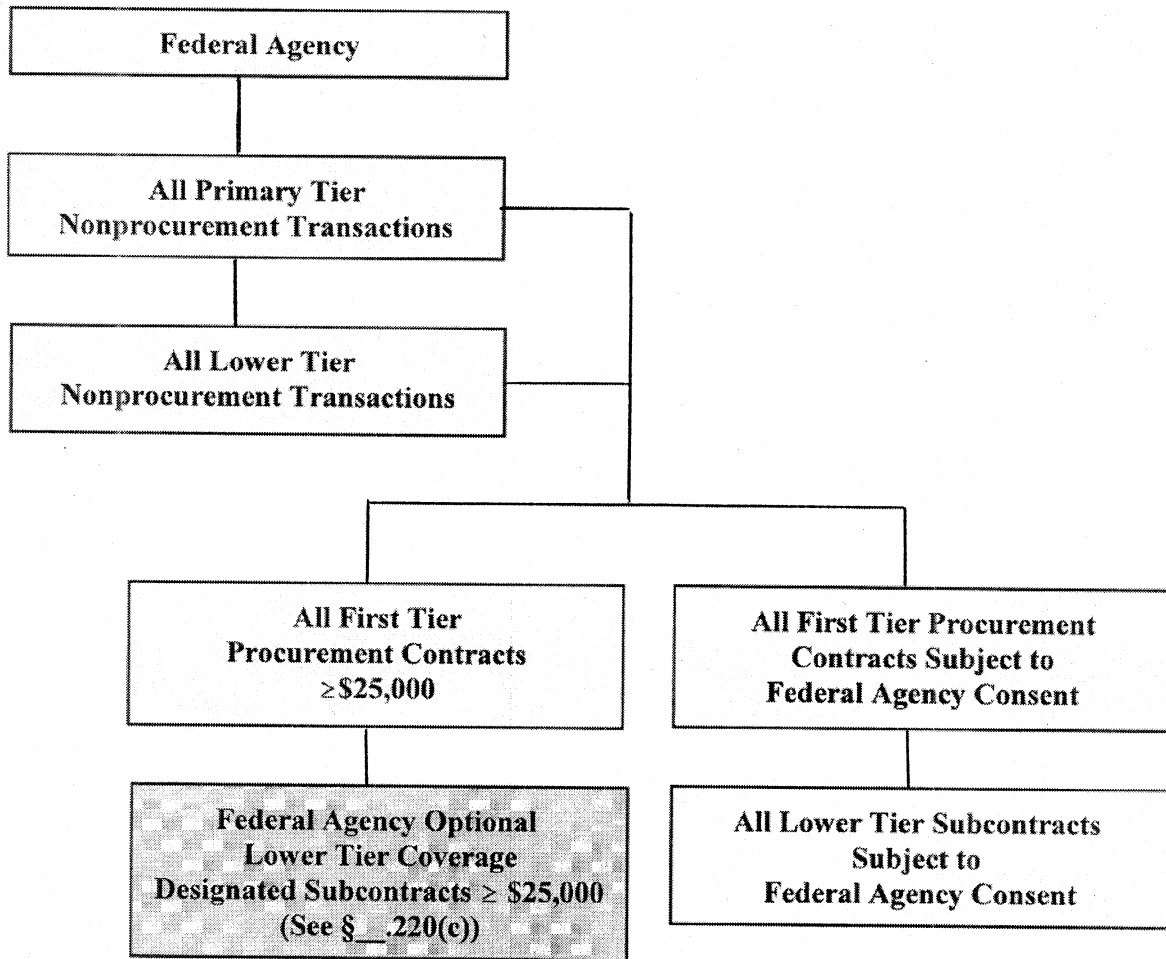
(a) *Voluntary exclusion* means a person's agreement to be excluded under the terms of a settlement between the person and one or more agencies. Voluntary exclusion must have governmentwide effect.

(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, 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

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.

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:

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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?