

- 137.120 May we grant an exception to let an excluded person participate in a covered transaction?
- 137.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?
- 137.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
- 137.135 May the Department of State exclude a person who is not currently participating in a nonprocurement transaction?
- 137.140 How do I know if a person is excluded?
- 137.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

- 137.200 What is a covered transaction?
- 137.205 Why is it important to know if a particular transaction is a covered transaction?
- 137.210 Which nonprocurement transactions are covered transactions?
- 137.215 Which nonprocurement transactions are not covered transactions?
- 137.220 Are any procurement contracts included as covered transactions?
- 137.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

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

Disclosing Information—Primary Tier Participants

- 137.335 What information must I provide before entering into a covered transaction with the Department of State?
- 137.340 If I disclose unfavorable information required under § 137.335, will I be prevented from participating in the transaction?
- 137.345 What happens if I fail to disclose the information required under § 137.335?

- 137.350 What must I do if I learn of the information required under § 137.335 after entering into a covered transaction with the Department of State?

Disclosing Information—Lower Tier Participants

- 137.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
- 137.360 What happens if I fail to disclose the information required under § 137.355?
- 137.365 What must I do if I learn of information required under § 137.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of Department of State Officials Regarding Transactions

- 137.400 May I enter into a transaction with an excluded or disqualified person?
- 137.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
- 137.410 May I approve a participant's use of the services of an excluded person?
- 137.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
- 137.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
- 137.425 When do I check to see if a person is excluded or disqualified?
- 137.430 How do I check to see if a person is excluded or disqualified?
- 137.435 What must I require of a primary tier participant?
- 137.440 What method do I use to communicate those requirements to participants?
- 137.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
- 137.450 What action may I take if a primary tier participant fails to disclose the information required under § 137.335?
- 137.455 What may I do if a lower tier participant fails to disclose the information required under § 137.355 to the next higher tier?

Subpart E—Excluded Parties List System

- 137.500 What is the purpose of the Excluded Parties List System?
- 137.505 Who uses the EPLS?
- 137.510 Who maintains the EPLS?
- 137.515 What specific information is in the EPLS?
- 137.520 Who places the information into the EPLS?
- 137.525 Whom do I ask if I have questions about a person in the EPLS?
- 137.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

- 137.600 How do suspension and debarment actions start?
- 137.605 How does suspension differ from debarment?
- 137.610 What procedures does the Department of State use in suspension and debarment actions?

- 137.615 How does the Department of State notify a person of a suspension and debarment action?
- 137.620 Do Federal agencies coordinate suspension and debarment actions?
- 137.625 What is the scope of a suspension or debarment action?
- 137.630 May the Department of State impute the conduct of one person to another?
- 137.635 May the Department of State settle a debarment or suspension action?
- 137.640 May a settlement include a voluntary exclusion?
- 137.645 Do other Federal agencies know if the Department of State agrees to a voluntary exclusion?

Subpart G—Suspension

- 137.700 When may the suspending official issue a suspension?
- 137.705 What does the suspending official consider in issuing a suspension?
- 137.710 When does a suspension take effect?
- 137.715 What notice does the suspending official give me if I am suspended?
- 137.720 How may I contest a suspension?
- 137.725 How much time do I have to contest a suspension?
- 137.730 What information must I provide to the suspending official if I contest a suspension?
- 137.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 137.740 Are suspension proceedings formal?
- 137.745 How is fact-finding conducted?
- 137.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 137.755 When will I know whether the suspension is continued or terminated?
- 137.760 How long may my suspension last?

Subpart H—Debarment

- 137.800 What are the causes for debarment?
- 137.805 What notice does the debarring official give me if I am proposed for debarment?
- 137.810 When does a debarment take effect?
- 137.815 How may I contest a proposed debarment?
- 137.820 How much time do I have to contest a proposed debarment?
- 137.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 137.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
- 137.835 Are debarment proceedings formal?
- 137.840 How is fact-finding conducted?
- 137.845 What does the debarring official consider in deciding whether to debar me?
- 137.850 What is the standard of proof in a debarment action?
- 137.855 Who has the burden of proof in a debarment action?
- 137.860 What factors may influence the debarring official's decision?
- 137.865 How long may my debarment last?

- 137.870 When do I know if the debarring official debar me?
- 137.875 May I ask the debarring official to reconsider a decision to debar me?
- 137.880 What factors may influence the debarring official during reconsideration?
- 137.885 May the debarring official extend a debarment?

Subpart I—Definitions

- 137.900 Adequate evidence.
- 137.905 Affiliate.
- 137.910 Agency.
- 137.915 Agent or representative.
- 137.920 Civil judgment.
- 137.925 Conviction.
- 137.930 Debarment.
- 137.935 Debarring official.
- 137.940 Disqualified.
- 137.945 Excluded or exclusion.
- 137.950 Excluded Parties List System.
- 137.955 Indictment.
- 137.960 Ineligible or ineligibility.
- 137.965 Legal proceedings.
- 137.970 Nonprocurement transaction.
- 137.975 Notice.
- 137.980 Participant.
- 137.985 Person.
- 137.990 Preponderance of the evidence.
- 137.995 Principal.
- 137.1000 Respondent.
- 137.1005 State.
- 137.1010 Suspending official.
- 137.1015 Suspension.
- 137.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—[Reserved]

Appendix to Part 137—Covered Transactions

Authority: 22 U.S.C. 2658; sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549, 3 CFR 1986 Comp., p. 189; E.O. 12689, 3 CFR 1989 Comp., p. 235.

■ 6. Part 137 is further amended as set forth below.

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

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

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

■ 7. Section 137.440 is added to read as follows:

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

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

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Parts 208 and 210

RIN 0412–AA47

FOR FURTHER INFORMATION CONTACT:

Raquel Powell, M/OP/POL, 1300 Pennsylvania Avenue, NW., Washington, DC 20523–7801, (202) 712–0778.

List of Subjects

22 CFR Part 208

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

22 CFR Part 210

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

Dated: July 15, 2003.

Timothy T. Beans,
Director, Office of Procurement.

■ For the reason stated in the common preamble, the Agency for International Development amends 22 CFR Chapter II, as follows:

■ 1. Part 208 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 208—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

- 208.25 How is this part organized?
- 208.50 How is this part written?
- 208.75 Do terms in this part have special meanings?

Subpart A—General

- 208.100 What does this part do?
- 208.105 Does this part apply to me?
- 208.110 What is the purpose of the nonprocurement debarment and suspension systems?
- 208.115 How does an exclusion restrict a person’s involvement in covered transactions?
- 208.120 May we grant an exception to let an excluded person participate in a covered transaction?
- 208.125 Does an exclusion under the nonprocurement system affect a person’s eligibility for Federal procurement contracts?
- 208.130 Does exclusion under the Federal procurement system affect a person’s eligibility to participate in nonprocurement transactions?
- 208.135 May the U.S. Agency for International Development exclude a person who is not currently participating in a nonprocurement transaction?
- 208.140 How do I know if a person is excluded?
- 208.145 Does this part address persons who are disqualified, as well as those who are

excluded from nonprocurement transactions?

Subpart B—Covered Transactions

- 208.200 What is a covered transaction?
- 208.205 Why is it important to know if a particular transaction is a covered transaction?
- 208.210 Which nonprocurement transactions are covered transactions?
- 208.215 Which nonprocurement transactions are not covered transactions?
- 208.220 Are any procurement contracts included as covered transactions?
- 208.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

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

Disclosing Information—Primary Tier Participants

- 208.335 What information must I provide before entering into a covered transaction with the U.S. Agency for International Development?
- 208.340 If I disclose unfavorable information required under § 208.335, will I be prevented from participating in the transaction?
- 208.345 What happens if I fail to disclose the information required under § 208.335?
- 208.350 What must I do if I learn of the information required under § 208.335 after entering into a covered transaction with the U.S. Agency for International Development?

Disclosing Information—Lower Tier Participants

- 208.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
- 208.360 What happens if I fail to disclose the information required under § 208.355?
- 208.365 What must I do if I learn of information required under § 208.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of USAID Officials Regarding Transactions

- 208.400 May I enter into a transaction with an excluded or disqualified person?
- 208.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
- 208.410 May I approve a participant's use of the services of an excluded person?
- 208.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
- 208.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
- 208.425 When do I check to see if a person is excluded or disqualified?
- 208.430 How do I check to see if a person is excluded or disqualified?
- 208.435 What must I require of a primary tier participant?
- 208.440 What method do I use to communicate those requirements to participants?
- 208.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
- 208.450 What action may I take if a primary tier participant fails to disclose the information required under § 208.335?
- 208.455 What may I do if a lower tier participant fails to disclose the information required under § 208.355 to the next higher tier?

Subpart E—Excluded Parties List System

- 208.500 What is the purpose of the Excluded Parties List System (EPLS)?
- 208.505 Who uses the EPLS?
- 208.510 Who maintains the EPLS?
- 208.515 What specific information is in the EPLS?
- 208.520 Who places the information into the EPLS?
- 208.525 Whom do I ask if I have questions about a person in the EPLS?
- 208.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

- 208.600 How do suspension and debarment actions start?
- 208.605 How does suspension differ from debarment?
- 208.610 What procedures does the U.S. Agency for International Development use in suspension and debarment actions?
- 208.615 How does the U.S. Agency for International Development notify a person of a suspension and debarment action?
- 208.620 Do Federal agencies coordinate suspension and debarment actions?
- 208.625 What is the scope of a suspension or debarment action?
- 208.630 May the U.S. Agency for International Development impute the conduct of one person to another?
- 208.635 May the U.S. Agency for International Development settle a debarment or suspension action?
- 208.640 May a settlement include a voluntary exclusion?
- 208.645 Do other Federal agencies know if the U.S. Agency for International

Development agrees to a voluntary exclusion?

Subpart G—Suspension

- 208.700 When may the suspending official issue a suspension?
- 208.705 What does the suspending official consider in issuing a suspension?
- 208.710 When does a suspension take effect?
- 208.715 What notice does the suspending official give me if I am suspended?
- 208.720 How may I contest a suspension?
- 208.725 How much time do I have to contest a suspension?
- 208.730 What information must I provide to the suspending official if I contest a suspension?
- 208.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 208.740 Are suspension proceedings formal?
- 208.745 How is fact-finding conducted?
- 208.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 208.755 When will I know whether the suspension is continued or terminated?
- 208.760 How long may my suspension last?

Subpart H—Debarment

- 208.800 What are the causes for debarment?
- 208.805 What notice does the debarring official give me if I am proposed for debarment?
- 208.810 When does a debarment take effect?
- 208.815 How may I contest a proposed debarment?
- 208.820 How much time do I have to contest a proposed debarment?
- 208.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 208.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
- 208.835 Are debarment proceedings formal?
- 208.840 How is fact-finding conducted?
- 208.845 What does the debarring official consider in deciding whether to debar me?
- 208.850 What is the standard of proof in a debarment action?
- 208.855 Who has the burden of proof in a debarment action?
- 208.860 What factors may influence the debarring official's decision?
- 208.865 How long may my debarment last?
- 208.870 When do I know if the debarring official debars me?
- 208.875 May I ask the debarring official to reconsider a decision to debar me?
- 208.880 What factors may influence the debarring official during reconsideration?
- 208.885 May the debarring official extend a debarment?

Subpart I—Definitions

- 208.900 Adequate evidence.
- 208.905 Affiliate.
- 208.910 Agency.
- 208.915 Agent or representative.
- 208.920 Civil judgment

- 208.925 Conviction.
- 208.930 Debarment.
- 208.935 Debarring official.
- 208.940 Disqualified.
- 208.945 Excluded or exclusion.
- 208.950 Excluded Parties List System.
- 208.955 Indictment.
- 208.960 Ineligible or ineligibility.
- 208.965 Legal proceedings.
- 208.970 Nonprocurement transaction.
- 208.975 Notice.
- 208.980 Participant.
- 208.985 Person.
- 208.990 Preponderance of the evidence.
- 208.995 Principal.
- 208.1000 Respondent.
- 208.1005 State.
- 208.1010 Suspending official.
- 208.1015 Suspension.
- 208.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—[Reserved]

Appendix to Part 208—Covered Transactions

Authority: E.O. 12163, 3 CFR 1979 Comp., p. 435; E.O. 12549 3 CFR 1986 Comp., p. 189; E.O. 12698, 3 CFR 1989 Comp., p. 235; sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); sec. 621, Pub. L. 87-195, 75 Stat. 445 (22 U.S.C. 2381), as amended.

- 2. Part 208 is further amended as set forth below.
- a. “[Agency Noun]” is removed and “U.S. Agency for International Development” is added in its place wherever it occurs.
- b. “[Agency adjective]” is removed and “USAID” is added in its place wherever it occurs.
- c. “[Agency head or designee]” is removed and “Director, Office of Procurement” is added in its place wherever it occurs.
- 3. Section 208.440 is added to read as follows:

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

To communicate the requirements in § 208.35, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

- 4. Section 208.935 is further amended by adding paragraph (b) to read as follows:

§ 208.935 Debarring official.

* * * * *

(b) The U.S. Agency for International Development's debarring official is the Director of the Office of Procurement.

- 5. Section 208.1010 is further amended by adding paragraph (b) to read as follows:

§ 208.1010 Suspending official.

* * * * *

(b) The U.S. Agency for International Development's suspending official is the Director of the Office of Procurement.

■ 6. Part 210 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 210—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

- Sec.
 210.100 What does this part do?
 210.105 Does this part apply to me?
 210.110 Are any of my Federal assistance awards exempt from this part?
 210.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

- 210.200 What must I do to comply with this part?
 210.205 What must I include in my drug-free workplace statement?
 210.210 To whom must I distribute my drug-free workplace statement?
 210.215 What must I include in my drug-free awareness program?
 210.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
 210.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
 210.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

- 210.300 What must I do to comply with this part if I am an individual recipient?
 210.301 [Reserved]

Subpart D—Responsibilities of USAID Awarding Officials

- 210.400 What are my responsibilities as a USAID awarding official?

Subpart E—Violations of This Part and Consequences

- 210.500 How are violations of this part determined for recipients other than individuals?
 210.505 How are violations of this part determined for recipients who are individuals?
 210.510 What actions will the Federal Government take against a recipient determined to have violated this part?
 210.515 Are there any provisions for exceptions to those actions?

Subpart F—Definitions

- 210.605 Award.

- 210.610 Controlled substance.
 210.615 Conviction.
 210.620 Cooperative agreement.
 210.625 Criminal drug statute.
 210.630 Debarment 210.635 Drug-free workplace.
 210.640 Employee.
 210.645 Federal agency or agency.
 210.650 Grant.
 210.655 Individual.
 210.660 Recipient.
 210.665 State.
 210.670 Suspension.

Authority: 41 U.S.C. 701, *et seq.*; sec. 621, Pub. L. 87-195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, 3 CFR 1979 Comp., p. 435.

■ 7. Part 210 is further amended as set forth below.

■ a. “[Agency Noun]” is removed and “U.S. Agency for International Development” is added in its place wherever it occurs.

■ b. “[Agency Adjective]” is removed and “USAID” is added in its place wherever it occurs.

■ c. “[Agency Head or Designee]” is removed and “Director of the Office of Procurement” is added in its place wherever it occurs.

■ d. “[Agency head]” is removed and “USAID Administrator or designee” is added in its place wherever it occurs.

■ 8. Section 210.510(c) is further amended by removing “[CFR citation for the Federal Agency’s regulation implementing Executive Order 12549 and Executive Order 12689]” and adding “22 CFR Part 208” in its place.

■ 9. Section 210.605 is further amended by adding a paragraph (c) to read as follows:

§ 210.605 Award

* * * * *

(c) Notwithstanding paragraph (a)(2) of this section, this paragraph is not applicable to AID.

PEACE CORPS

22 CFR Parts 310 and 312

RIN 0420-AA17

FOR FURTHER INFORMATION CONTACT: Suzanne Glasow, Associate General Counsel, Office of the General Counsel, Peace Corps, 1111 20th Street, NW., Washington, DC 20526, (202) 692-2157.

List of Subjects

22 CFR Part 310

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements, Technical assistance.

22 CFR Part 312

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

Dated: July 24, 2003.

Keith A. Vance,

Director, Office of Administrative Services, Peace Corps.

■ For the reasons stated in the common preamble, the Peace Corps amends 22 CFR chapter III, as follows:

■ 1. Part 310 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 310—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT).

Sec.

- 310.25 How is this part organized?
 310.50 How is this part written?
 310.75 Do terms in this part have special meanings?

Subpart A—General

- 310.100 What does this part do?
 310.105 Does this part apply to me?
 310.110 What is the purpose of the nonprocurement debarment and suspension system?
 310.115 How does an exclusion restrict a person's involvement in covered transactions?
 310.120 May we grant an exception to let an excluded person participate in a covered transaction?
 310.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
 310.130 Does exclusion under the federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
 310.135 May the Peace Corps exclude a person who is not currently participating in a nonprocurement transaction?
 310.140 How do I know if a person is excluded?
 310.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

- 310.200 What is a covered transaction?
 310.205 Why is it important to know if a particular transaction is a covered transaction?
 310.210 Which nonprocurement transactions are covered transactions?
 310.215 Which nonprocurement transactions are not covered transactions?
 310.220 Are any procurement contracts included as covered transactions?
 310.225 How do I know if a transaction in which I may participate is a covered transaction?

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

- 310.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
- 310.305 May I enter into a covered transaction with an excluded or disqualified person?
- 310.310 What must I do if a federal agency excludes a person with whom I am already doing business in a covered transaction?
- 310.315 May I use the services of an excluded person as a principal under a covered transaction?
- 310.320 Must I verify that principals of my covered transactions are eligible to participate?
- 310.325 What happens if I do business with an excluded person in a covered transaction?
- 310.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

- 310.335 What information must I provide before entering into a covered transaction with the Peace Corps?
- 310.340 If I disclose unfavorable information required under § 310.335, will I be prevented from participating in the transaction?
- 310.345 What happens if I fail to disclose the information required under § 310.335?
- 310.350 What must I do if I learn of the information required under § 310.335 after entering into a covered transaction with the Peace Corps?

Disclosing Information—Lower Tier Participants

- 310.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
- 310.360 What happens if I fail to disclose the information required under § 310.355?
- 310.365 What must I do if I learn of information required under § 310.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of Peace Corps Officials Regarding Transactions

- 310.400 May I enter into a transaction with an excluded or disqualified person?
- 310.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
- 310.410 May I approve a participant's use of the services of an excluded person?
- 310.415 What must I do if a federal agency excludes the participant or a principal after I enter into a covered transaction?
- 310.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
- 310.425 When do I check to see if a person is excluded or disqualified?
- 310.430 How do I check to see if a person is excluded or disqualified?

- 310.435 What must I require of a primary tier participant?
- 310.440 What method do I use to communicate those requirements to participants?
- 310.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
- 310.450 What action may I take if a primary tier participant fails to disclose the information required under § 310.335?
- 310.455 What may I do if a lower tier participant fails to disclose the information required under § 310.355 to the next higher tier?

Subpart E—Excluded Parties List System

- 310.500 What is the purpose of the Excluded Parties List System (EPLS)?
- 310.505 Who uses the EPLS?
- 310.510 Who maintains the EPLS?
- 310.515 What specific information is in the EPLS?
- 310.520 Who places the information into the EPLS?
- 310.525 Whom do I ask if I have questions about a person in the EPLS?
- 310.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

- 310.600 How do suspension and debarment actions start?
- 310.605 How does suspension differ from debarment?
- 310.610 What procedures does the Peace Corps use in suspension and debarment actions?
- 310.615 How does the Peace Corps notify a person of a suspension and debarment action?
- 310.620 Do federal agencies coordinate suspension and debarment actions?
- 310.625 What is the scope of a suspension or debarment action?
- 310.630 May the Peace Corps impute the conduct of one person to another?
- 310.635 May the Peace Corps settle a debarment or suspension action?
- 310.640 May a settlement include a voluntary exclusion?
- 310.645 Do other federal agencies know if the Peace Corps agrees to a voluntary exclusion?

Subpart G—Suspension

- 310.700 When may the suspending official issue a suspension?
- 310.705 What does the suspending official consider in issuing a suspension?
- 310.710 When does a suspension take effect?
- 310.715 What notice does the suspending official give me if I am suspended?
- 310.720 How may I contest a suspension?
- 310.725 How much time do I have to contest a suspension?
- 310.730 What information must I provide to the suspending official if I contest a suspension?
- 310.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 310.740 Are suspension proceedings formal?
- 310.745 How is fact-finding conducted?

- 310.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 310.755 When will I know whether the suspension is continued or terminated?
- 310.760 How long may my suspension last?

Subpart H—Debarment

- 310.800 What are the causes for debarment?
- 310.805 What notice does the debarring official give me if I am proposed for debarment?
- 310.810 When does a debarment take effect?
- 310.815 How may I contest a proposed debarment?
- 310.820 How much time do I have to contest a proposed debarment?
- 310.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 310.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
- 310.835 Are debarment proceedings formal?
- 310.840 How is fact-finding conducted?
- 310.845 What does the debarring official consider in deciding whether to debar me?
- 310.850 What is the standard of proof in a debarment action?
- 310.855 Who has the burden of proof in a debarment action?
- 310.860 What factors may influence the debarring official's decision?
- 310.865 How long may my debarment last?
- 310.870 When do I know if the debarring official debars me?
- 310.875 May I ask the debarring official to reconsider a decision to debar me?
- 310.880 What factors may influence the debarring official during reconsideration?
- 310.885 May the debarring official extend a debarment?

Subpart I—Definitions

- 310.900 Adequate evidence.
- 310.905 Affiliate.
- 310.910 Agency.
- 310.915 Agent or representative.
- 310.920 Civil judgment.
- 310.925 Conviction.
- 310.930 Debarment.
- 310.935 Debarring official.
- 310.940 Disqualified.
- 310.945 Excluded or exclusion.
- 310.950 Excluded Parties List System.
- 310.955 Indictment.
- 310.960 Ineligible or ineligibility.
- 310.965 Legal proceedings.
- 310.970 Nonprocurement transaction.
- 310.975 Notice.
- 310.980 Participant.
- 310.985 Person.
- 310.990 Preponderance of the evidence.
- 310.995 Principal.
- 310.100 Respondent.
- 310.1005 State.
- 310.1010 Suspending official.
- 310.1015 Suspension.
- 310.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—Reserved

Appendix to Part 310—Covered Transactions

Authority: 22 U.S.C. 2503; Sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

- 2. Part 310 is further amended as set forth below.
- a. “[Agency noun]” is removed and “Peace Corps” is added in its place wherever it occurs.
- b. “[Agency adjective]” is removed and “Peace Corps” is added in its place wherever it occurs.
- c. “[Agency head or designee]” is removed and “Peace Corps Director or designee” is added in its place wherever it occurs.
- 3. Section 310.440 is added to read as follows:

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

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

- 4. Part 312 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 312—GOVERNMENTWIDE REQUIREMENTS FOR DRUG—FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

- Sec.
- 312.100 What does this part do?
 - 312.105 Does this part apply to me?
 - 312.110 Are any of my federal assistance awards exempt from this part?
 - 312.115 Does this part affect the federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

- 312.200 What must I do to comply with this part?
- 312.205 What must I include in my drug-free workplace statement?
- 312.210 To whom must I distribute my drug-free workplace statement?
- 312.215 What must I include in my drug-free awareness program?
- 312.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
- 312.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
- 312.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

- 312.300 What must I do to comply with this part if I am an individual recipient?
- 312.301 [Reserved]

Subpart D—Responsibilities of Peace Corps Awarding Officials

- 312.400 What are my responsibilities as a Peace Corps awarding official?

Subpart E—Violations of This Part and Consequences

- 312.500 How are violations of this part determined for recipients other than individuals?
- 312.505 How are violations of this part determined for recipients who are individuals?
- 312.510 What actions will the Federal Government take against a recipient determined to have violated this part?
- 312.515 Are there any exceptions to those actions?

Subpart F—Definitions

- 312.605 Award.
- 312.610 Controlled substance.
- 312.615 Conviction.
- 312.620 Cooperative agreement.
- 312.625 Criminal drug statute.
- 312.630 Debarment.
- 312.635 Drug-free workplace.
- 312.640 Employee.
- 312.645 Federal agency or agency.
- 312.650 Grant.
- 312.655 Individual.
- 312.660 Recipient.
- 312.665 State.
- 312.670 Suspension.

Authority: 22 U.S.C. 2503 (b); 41 U.S.C. 701 *et seq.*

- 5. Part 312 is further amended as set forth below.
- a. “[Agency noun]” is removed and “Peace Corps” is added in its place wherever it occurs.
- b. “[Agency adjective]” is removed and “Peace Corps” is added in its place wherever it occurs.
- c. “[Agency head or designee]” is removed and “Peace Corps Director or designee” is added in its place wherever it occurs.
- d. “[Agency head]” is removed and “Peace Corps Director” is added in its place wherever it occurs.
- 6. Section 312.510(c) is further amended by removing “[CFR citation for the federal agency’s regulations implementing Executive Order 12549 and Executive Order 12689]” and adding “22 CFR Part 310” in its place.
- 7. Section 312.605 is further amended by adding a paragraph (c) to read as follows:

§ 312.605 Award.

* * * * *

(c) Notwithstanding paragraph (a)(2) of this section, this paragraph is not applicable for the Peace Corps.

INTER-AMERICAN FOUNDATION

22 CFR Parts 1006 and 1008

RIN 3200—ZA05

FOR FURTHER INFORMATION CONTACT: Carolyn Karr, General Counsel, Inter-American Foundation, 901 N. Stuart Street, Arlington, Virginia 22203, (703) 306-4350, *ckarr@iaf.gov*.

List of Subjects

22 CFR Part 1006

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements, Technical assistance.

22 CFR Part 1008

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

Dated: August 1, 2003.

David Valenzuela,
President, Inter-American Foundation.

■ For the reasons stated in the common preamble, the Inter-American Foundation amends 22 CFR Chapter X, as follows:

- 1. Part 1006 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 1006—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

- Sec.
- 1006.25 How is this part organized?
 - 1006.50 How is this part written?
 - 1006.75 Do terms in this part have special meanings?

Subpart A—General

- 1006.100 What does this part do?
- 1006.105 Does this part apply to me?
- 1006.110 What is the purpose of the nonprocurement debarment and suspension system?
- 1006.115 How does an exclusion restrict a person’s involvement in covered transactions?
- 1006.120 May we grant an exception to let an excluded person participate in a covered transaction?
- 1006.125 Does an exclusion under the nonprocurement system affect a person’s eligibility for Federal procurement contracts?
- 1006.130 Does exclusion under the Federal procurement system affect a person’s eligibility to participate in nonprocurement transactions?
- 1006.135 May the Inter-American Foundation exclude a person who is not currently participating in a nonprocurement transaction?
- 1006.140 How do I know if a person is excluded?

1006.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

1006.200 What is a covered transaction?
 1006.205 Why is it important to know if a particular transaction is a covered transaction?
 1006.210 Which nonprocurement transactions are covered transactions?
 1006.215 Which nonprocurement transactions are not covered transactions?
 1006.220 Are any procurement contracts included as covered transactions?
 1006.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

1006.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
 1006.305 May I enter into a covered transaction with an excluded or disqualified person?
 1006.310 What Must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
 1006.315 May I use the services of an excluded person as a principal under a covered transaction?
 1006.320 I verify that principals of my covered transactions are eligible to participate?
 1006.325 What happens if I do business with an excluded person in a covered transaction?
 1006.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

1006.335 What information must I provide before a covered transaction with the Inter-American Foundation?
 1006.340 If I disclose unfavorable information required under § 1006.335, will I be prevented from participating in the transaction?
 1006.345 What happens if I fail to disclose the information required under § 1006.335?
 1006.350 What must I do if I learn of the information required under § 1006.335 after entering into a covered transaction with the Inter-American Foundation?

Disclosing Information—Lower Tier Participants

1006.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
 1006.360 What happens if I fail to disclose the information required under § 1006.355?
 1006.365 What must I do if I learn of information required under § 1006.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of Inter-American Foundation Officials Regarding Transactions

1006.400 May I enter into a transaction with an excluded or disqualified person?
 1006.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
 1006.410 May I approve a participant's use of the services of an excluded person?
 1006.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
 1006.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
 1006.425 When do I check to see if a person is excluded or disqualified?
 1006.430 How do I check to see if a person is excluded or disqualified?
 1006.435 What must I require of a primary tier participant?
 1006.440 What method do I use to communicate those requirements to participants?
 1006.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
 1006.450 What action may I take if a primary tier participant fails to disclose the information required under § 1006.335?
 1006.455 What may I do if a lower tier participant fails to disclose the information required under § 1006.335 to the next higher tier?

Subpart E—Excluded Parties List System

1006.500 What is the purpose of the Excluded Parties List System (EPLS)?
 1006.505 Who uses the EPLS?
 1006.510 Who maintains the EPLS?
 1006.515 What specific information is in the EPLS?
 1006.520 Who places the information into the EPLS?
 1006.525 Whom do I ask if I have questions about a person in the EPLS?
 1006.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

1006.600 How do suspension and debarment actions start?
 1006.605 How does suspension differ from debarment?
 1006.610 What procedures does the Inter-American Foundation use in suspension and debarment actions?
 1006.615 How does the Inter-American Foundation notify a person of a suspension and debarment action?
 1006.620 Do Federal agencies coordinate suspension and debarment actions?
 1006.625 What is the scope of a suspension or debarment action?
 1006.630 May the Inter-American Foundation impute the conduct of one person to another?
 1006.635 May the Inter-American Foundation settle a debarment or suspension action?
 1006.640 May a settlement include a voluntary exclusion?

1006.645 Do other Federal agencies know if the Inter-American Foundation agrees to a voluntary exclusion?

Subpart G—Suspension

1006.700 When may the suspending official issue a suspension?
 1006.705 What does the suspending official consider in issuing a suspension?
 1006.710 When does a suspension take effect?
 1006.715 What notice does the suspending official give me if I am suspended?
 1006.720 How may I contest a suspension?
 1006.725 How much time do I have to contest a suspension?
 1006.730 What information must I provide to the suspending official if I contest a suspension?
 1006.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
 1006.740 Are suspension proceedings formal?
 1006.745 How is fact-finding conducted?
 1006.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
 1006.755 When will I know whether the suspension is continued or terminated?
 1006.760 How long may my suspension last?

Subpart H—Debarment

1006.800 What are the causes for debarment?
 1006.805 What notice does the debarring official give me if I am proposed for debarment?
 1006.810 When does a debarment take effect?
 1006.815 How may I contest a proposed debarment?
 1006.820 How much time do I have to contest a proposed debarment?
 1006.825 What information must I provide to the debarring official if I contest a proposed debarment?
 1006.830 Under what conditions do I get an additional opportunity to challenge the fact on which the proposed debarment is based?
 1006.835 Are debarment proceedings formal?
 1006.840 How is fact-finding conducted?
 1006.845 What does the debarring official consider in deciding whether to debar me?
 1006.850 What is the standard of proof in a debarment action?
 1006.855 Who has the burden of proof in a debarment action?
 1006.860 What factors may influence the debarring official's decision?
 1006.865 How long may my debarment last?
 1006.870 When do I know if the debarring official debar me?
 1006.875 May I ask the debarring official to reconsider a decision to debar me?
 1006.880 What factors may influence the debarring official during reconsideration?
 1006.885 May the debarring official extend a debarment?

Subpart I—Definitions

- 1006.900 Adequate evidence.
- 1006.905 Affiliate.
- 1006.910 Agency.
- 1006.915 Agent or representative.
- 1006.920 Civil judgment.
- 1006.925 Conviction.
- 1006.930 Debarment.
- 1006.935 Debarring official.
- 1006.940 Disqualified.
- 1006.945 Excluded or exclusion.
- 1006.950 Excluded Parties List System.
- 1006.955 Indictment.
- 1006.960 Ineligible or ineligibility.
- 1006.965 Legal proceedings.
- 1006.970 Nonprocurement transaction.
- 1006.975 Notice.
- 1006.980 Participant.
- 1006.985 Person.
- 1006.990 Preponderance of the evidence.
- 1006.995 Principal.
- 1006.1000 Respondent.
- 1006.1005 State.
- 1006.1010 Suspending official.
- 1006.1015 Suspension.
- 1006.1020 Voluntary exclusion or voluntarily excluded

Subpart J—[Reserved]

Appendix to Part 1006—Covered Transactions

Authority: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

- 2. Part 1006 is further amended as set forth below.
 - a. “[Agency noun]” is removed and “Inter-American Foundation” is added in its place wherever it occurs.
 - b. “[Agency adjective]” is removed and “Inter-American Foundation” is added in its place wherever it occurs.
 - c. “[Agency head or designee]” is removed and “Inter-American Foundation Debarring Official” is added in its place wherever it occurs.
- 3. Section 1006.440 is added to read as follows:

§ 1006.440 What method do I use to communicate those requirements to participants?

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participant’s compliance with Subpart C of this part and requiring them to include a similar term or condition in lower tier covered transactions.

- 4. Part 1008 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 1008—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

- Sec.
- 1008.100 What does this part do?
- 1008.105 Does this part apply to me?
- 1008.110 Are any of my Federal assistance awards exempt from this part?
- 1008.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

- 1008.200 What must I do to comply with this part?
- 1008.205 What must I include in my drug-free workplace statement?
- 1008.210 To whom must I distribute my drug-free workplace statement?
- 1008.215 What must I include in my drug-free awareness program?
- 1008.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
- 1008.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
- 1008.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

- 1008.300 What must I do to comply with this part if I am an individual recipient?
- 1008.301 [Reserved]

Subpart D—Responsibilities of Inter-American Foundation Awarding Officials

- 1008.400 What are my responsibilities as an Inter-American Foundation awarding official?

Subpart E—Violations of This Part and Consequences

- 1008.500 How are violations of this part determined for recipients other than individuals?
- 1008.505 How are violations of this part determined for recipients who are individuals?
- 1008.510 What actions will the Federal Government take against a recipient determined to have violated this part?
- 1008.515 Are there any exceptions to those actions?

Subpart F—Definitions

- 1008.605 Award.
- 1008.610 Controlled substance.
- 1008.615 Conviction.
- 1008.620 Cooperative agreement.
- 1008.625 Criminal drug statute.
- 1008.630 Debarment.
- 1008.635 Drug-free workplace.
- 1008.640 Employee.
- 1008.645 Federal agency or agency.
- 1008.650 Grant.
- 1008.655 Individual.
- 1008.660 Recipient.
- 1008.665 State.
- 1008.670 Suspension.

Authority: 41 U.S.C. 701 *et seq.*

- 5. Part 1008 is further amended as set forth below.

- a. “[Agency noun]” is removed and “Inter-American Foundation” is added in its place wherever it occurs.
- b. “[Agency adjective]” is removed and “Inter-American Foundation” is added in its place wherever it occurs.
- c. “[Agency head or designee]” is removed and “Inter-American Foundation President or designee” is added in its place wherever it occurs.
- d. “[Agency head]” is removed and “Inter-American Foundation” is added in its place wherever it occurs.

- 6. Section 1008.510(c) is further amended by removing “[CFR citation for the Federal Agency’s regulations implementing Executive Order 12549 and Executive Order 12689]” and adding “22 CFR Part 1006” in its place.

- 7. Section 1008.605 is further amended by adding a paragraph (c) to read as follows:

§ 1008.605 Award.

* * * * *

(c) Notwithstanding paragraph (a)(2) of this section, this paragraph is not applicable for the Inter-American Foundation.

AFRICAN DEVELOPMENT FOUNDATION

22 CFR Parts 1508 and 1509

RIN 3005–ZA01

FOR FURTHER INFORMATION CONTACT: Doris Martin at 202–673–3916 (phone) or domartin@adf.gov.

List of Subjects

22 CFR Part 1508

Administrative practice and procedure, Debarment and suspension, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements.

22 CFR Part 1509

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

Dated: June 30, 2003.

Doris Martin,
General Counsel.

- For the reasons stated in the common preamble, the African Development Foundation amends 22 CFR chapter XV, as follows:

- 1. Part 1508 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 1508—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

- 1508.25 How is this part organized?
1508.50 How is this part written?
1508.75 Do terms in this part have special meanings?

Subpart A—General

- 1508.100 What does this part do?
1508.105 Does this part apply to me?
1508.110 What is the purpose of the nonprocurement debarment and suspension system?
1508.115 How does an exclusion restrict a person's involvement in covered transactions?
1508.120 May we grant an exception to let an excluded person participate in a covered transaction?
1508.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
1508.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
1508.135 May the African Development Foundation exclude a person who is not currently participating in a nonprocurement transaction?
1508.140 How do I know if a person is excluded?
1508.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

- 1508.200 What is a covered transaction?
1508.205 Why is it important to know if a particular transaction is a covered transaction?
1508.210 Which nonprocurement transactions are covered transactions?
1508.215 Which nonprocurement transactions are not covered transactions?
1508.220 Are any procurement contracts included as covered transactions?
1508.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

- 1508.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
1508.305 May I enter into a covered transaction with an excluded or disqualified person?
1508.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
1508.315 May I use the services of an excluded person as a principal under a covered transaction?
1508.320 Must I verify that principals of my covered transactions are eligible to participate?

- 1508.325 What happens if I do business with an excluded person in a covered transaction?
1508.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

- 1508.335 What information must I provide before entering into a covered transaction with the African Development Foundation?
1508.340 If I disclose unfavorable information required under § 1508.335, will I be prevented from participating in the transaction?
1508.345 What happens if I fail to disclose the information required under § 1508.335?
1508.350 What must I do if I learn of the information required under § 1508.335 after entering into a covered transaction with the African Development Foundation?

Disclosing Information—Lower Tier Participants

- 1508.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
1508.360 What happens if I fail to disclose the information required under § 1508.355?
1508.365 What must I do if I learn of information required under § 1508.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of ADF Officials Regarding Transactions

- 1508.400 May I enter into a transaction with an excluded or disqualified person?
1508.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
1508.410 May I approve a participant's use of the services of an excluded person?
1508.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
1508.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
1508.425 When do I check to see if a person is excluded or disqualified?
1508.430 How do I check to see if a person is excluded or disqualified?
1508.435 What must I require of a primary tier participant?
1508.440 What method do I use to communicate those requirements to participants?
1508.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
1508.450 What action may I take if a primary tier participant fails to disclose the information required under § 1508.335?
1508.455 What may I do if a lower tier participant fails to disclose the information required under § 1508.355 to the next higher tier?

Subpart E—Excluded Parties List System

- 1508.500 What is the purpose of the Excluded Parties List System (EPLS)?
1508.505 Who uses the EPLS?
1508.510 Who maintains the EPLS?
1508.515 What specific information is in the EPLS?
1508.520 Who places the information into the EPLS?
1508.525 Whom do I ask if I have questions about a person in the EPLS?
1508.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

- 1508.600 How do suspension and debarment actions start?
1508.605 How does suspension differ from debarment?
1508.610 What procedures does the African Development Foundation use in suspension and debarment actions?
1508.615 How does the African Development Foundation notify a person of a suspension and debarment action?
1508.620 Do Federal agencies coordinate suspension and debarment actions?
1508.625 What is the scope of a suspension or debarment action?
1508.630 May the African Development Foundation impute the conduct of one person to another?
1508.635 May the African Development Foundation settle a debarment or suspension action?
1508.640 May a settlement include a voluntary exclusion?
1508.645 Do other Federal agencies know if the African Development Foundation agrees to a voluntary exclusion?

Subpart G—Suspension

- 1508.700 When may the suspending official issue a suspension?
1508.705 What does the suspending official consider in issuing a suspension?
1508.710 When does a suspension take effect?
1508.715 What notice does the suspending official give me if I am suspended?
1508.720 How may I contest a suspension?
1508.725 How much time do I have to contest a suspension?
1508.730 What information must I provide to the suspending official if I contest a suspension?
1508.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
1508.740 Are suspension proceedings formal?
1508.745 How is fact-finding conducted?
1508.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
1508.755 When will I know whether the suspension is continued or terminated?
1508.760 How long may my suspension last?

Subpart H—Debarment

- 1508.800 What are the causes for debarment?
1508.805 What notice does the debarring official give me if I am proposed for debarment?

- 1508.810 When does a debarment take effect?
- 1508.815 How may I contest a proposed debarment?
- 1508.820 How much time do I have to contest a proposed debarment?
- 1508.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 1508.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
- 1508.835 Are debarment proceedings formal?
- 1508.840 How is fact-finding conducted?
- 1508.845 What does the debarring official consider in deciding whether to debar me?
- 1508.850 What is the standard of proof in a debarment action?
- 1508.855 Who has the burden of proof in a debarment action?
- 1508.860 What factors may influence the debarring official's decision?
- 1508.865 How long may my debarment last?
- 1508.870 When do I know if the debarring official debars me?
- 1508.875 May I ask the debarring official to reconsider a decision to debar me?
- 1508.880 What factors may influence the debarring official during reconsideration?
- 1508.885 May the debarring official extend a debarment?

Subpart I—Definitions

- 1508.900 Adequate evidence.
- 1508.905 Affiliate.
- 1508.910 Agency.
- 1508.915 Agent or representative.
- 1508.920 Civil judgment.
- 1508.925 Conviction.
- 1508.930 Debarment.
- 1508.935 Debarring official.
- 1508.940 Disqualified.
- 1508.945 Excluded or exclusion.
- 1508.950 Excluded Parties List System.
- 1508.955 Indictment.
- 1508.960 Ineligible or ineligibility.
- 1508.965 Legal proceedings.
- 1508.970 Nonprocurement transaction.
- 1508.975 Notice.
- 1508.980 Participant.
- 1508.985 Person.
- 1508.990 Preponderance of the evidence.
- 1508.995 Principal.
- 1508.1000 Respondent.
- 1508.1005 State.
- 1508.1010 Suspending official.
- 1508.1015 Suspension.
- 1508.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—[Reserved]

Appendix to Part 1508—Covered Transactions

Authority: Sec. 2455, Pub.L. 103–355, 108 Stat. 3327; E.O. 12549, 3CFR, 1986 Comp., p.89; E.O. 12689, 3CFR, 1989 Comp., p. 235.

■ 2. Part 1508 is further amended as set forth below:

- a. “[Agency noun]” is removed and “African Development Foundation” is added in its place wherever it occurs.
- b. “[Agency adjective]” is removed and “ADF” is added in its place wherever it occurs.
- c. “[Agency head or designee]” is removed and “ADF President” is added in its place wherever it occurs.
- 3. Section 1508.440 is added to read as follows:

§ 1508.440 What method do I use to communicate those requirements to participants?

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

■ 4. Part 1509 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 1509—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

- Sec.
- 1509.100 What does this part do?
- 1509.105 Does this part apply to me?
- 1509.110 Are any of my Federal assistance awards exempt from this part?
- 1509.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

- 1509.200 What must I do to comply with this part?
- 1509.205 What must I include in my drug-free workplace statement?
- 1509.210 To whom must I distribute my drug-free workplace statement?
- 1509.215 What must I include in my drug-free awareness program?
- 1509.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
- 1509.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
- 1509.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

- 1509.300 What must I do to comply with this part if I am an individual recipient?
- 1509.301 [Reserved]

Subpart D—Responsibilities of ADF Awarding Officials

- 1509.400 What are my responsibilities as an ADF awarding official?

Subpart E—Violations of This Part and Consequences

- 1509.500 How are violations of this part determined for recipients other than individuals?
- 1509.505 How are violations of this part determined for recipients who are individuals?
- 1509.510 What actions will the Federal Government take against a recipient determined to have violated this part?
- 1509.515 Are there any exceptions to those actions?

Subpart F—Definitions

- 1509.605 Award.
- 1509.610 Controlled substance.
- 1509.615 Conviction.
- 1509.620 Cooperative agreement.
- 1509.625 Criminal drug statute.
- 1509.630 Debarment.
- 1509.635 Drug-free workplace.
- 1509.640 Employee.
- 1509.645 Federal agency or agency.
- 1509.650 Grant.
- 1509.655 Individual.
- 1509.660 Recipient.
- 1509.665 State.
- 1509.670 Suspension.

Authority: 41 U.S.C. 701 *et seq.*

■ 5. Part 1509 is further amended as set forth below.

- a. “[Agency noun]” is removed and “African Development Foundation” is added in its place wherever it occurs.
- b. “[Agency adjective]” is removed and “ADF” is added in its place wherever it occurs.
- c. “[Agency head or designee]” is removed and “ADF President” is added in its place wherever it occurs.
- d. “[Agency head]” is removed and “ADF President” is added in its place wherever it occurs.

■ 6. Section 1509.310(c) is further amended by removing “[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]” and adding “22 CFR Part 1508” in its place.

■ 7. Section 1509.605 is further amended by adding a paragraph (c) to read as follows:

§ 1509.605 Award.

* * * * *

(c) Notwithstanding paragraph (a)(2) of this section, this paragraph is not applicable for ADF.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 21 and 24

[Docket No. FR-4692-F-01]

RIN 2501-AC81

FOR FURTHER INFORMATION CONTACT:
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Dane M. Narode@hud.gov. Hearing-or speech-impaired individuals may access the voice telephone number listed above by calling the toll-free Federal Information Relay Service during working hours at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

The January 23, 2002, Common Rule

On January 23, 2002 (67 FR 3266), a governmentwide common rule was published that proposed substantive changes and amendments to the governmentwide nonprocurement common rule for debarment and suspension and the governmentwide rule implementing the Drug-Free Workplace Act of 1988. The publication is available at http://www.access.gpo.gov/su_docs.

www.access.gpo.gov/su_docs.

HUD's July 22, 2002, Proposed Rule

HUD published a proposed rule on July 22, 2002 (67 FR 48006), to adopt the changes and amendments made in the common rule. Additionally, HUD proposed to adopt specific requirements that, along with the provisions in the common rule, would best serve HUD's programs. HUD's proposed rule added a paragraph regarding employment contracts to the definition of "covered transaction" found at § 24.200. HUD's addition made clear that each payment under an employment contract constitutes a new "covered transaction." HUD also enhanced the exclusion review that takes place in § 24.300. Under HUD's rule, a participant must ensure it is not entering into a covered transaction with an excluded or disqualified person. In reviewing for an exclusion, however, HUD's rule, at § 24.300(d), exempts participants from checking on the exemption status of their principals while making salary payments pursuant to an employment contract. Additionally, § 24.440 proposed to use terms or conditions to the award transaction as a means to enforce exclusions under HUD transactions rather than the use of written certifications.

HUD proposed rule provided examples for the debarment and suspension common rule definition of "principal" found at § 24.995. The expansion contains minor modifications consistent with HUD's present practice regarding the definition of "principal" for the purpose of debarments and

suspensions. The proposed rule advised that HUD would retain its definitions of "Hearing Officer" at § 24.947 and "Ultimate Beneficiary" at § 24.1017 as found in the current common rule. The proposed rule made clear in § 24.750 and § 24.845 that all fact-finding referrals for HUD suspensions and debarments will be made to hearing officers.

Subpart J of part 24, which addressed limited denial of participation, was revised stylistically so that the rule conforms to the question and answer format of the common rule. HUD also removed the term "contractor" from § 24.1105 because the common rule deleted the definition of the term. The revised definition of "participant" in the proposed rule covered individuals previously defined as "contractors" in the current rule. Section 24.1145, which addresses imputing the conduct of one person to another in a limited denial of participation, was revised to be consistent with the provisions of § 24.630.

Finally, HUD's rule proposed to enact the requirements for maintaining a drug-free workplace as a new part 21, codifying HUD's drug-free workplace requirements.

The public comment period on the proposed rule closed on September 20, 2002. One commenter submitted comments on the proposed rule.

This Final Rule

This final rule follows publication of the July 22, 2002, proposed rule and takes into consideration the one public comment received. The public comment, along with the Department's responses to the comment, is treated below. However, the Department was not persuaded to change the rule. Accordingly, this final rule adopts the July 22, 2002, proposed rule without change except for the minor modifications identified below necessary to keep the Department's rule consistent with the common rule and existing practice.

In response to an internal comment, the Department has replaced the formulation used to refer to the "Agency head or designee" wherever used in the common rule. The proposed rule originally referred to the "HUD Debarment Official or designee." That formulation has been replaced with the "Secretary or designee" in the final rule. This text change does not modify the meaning of the proposed rule as all debarment authority within the Agency stems from the Secretary's delegable authority. Similarly, the textual modification is consistent with current practice in the Department.

The Department, based upon another internal comment, has made a minor modification to its procedures for when a suspension or proposed debarment has been issued subsequent to the issuance of a limited denial of participation. Under this modification, the hearing officer's jurisdiction over a limited denial of participation will not be immediately divested upon consolidation of the matter with a suspension or a proposed debarment. Upon consolidation, the suspending or debarment official must determine whether material facts are in dispute within 90 days of consolidation unless good cause exists to extend this time. In the event material facts are in dispute, the matters will be referred to the original hearing officer for fact-finding. The Department does not regard this as a material modification.

Comment: The commenter requested that the Department clarify the extent to which the drug-free workplace requirements apply to the residences of telecommuters and other remote workers.

HUD Response: The Department believes this issue was adequately addressed in the final governmentwide rule of May 25, 1990 (55 FR 21681), in response to comments regarding regulations promulgated pursuant to the Drug-Free Workplace Act of 1988. (See especially, 55 FR 21683.)

Comment: The commenter also asked whether the proposed rule intended that collective bargaining agreements be included in the term "employment contracts." The commenter wrote that the rule should clarify that the term "employment contracts" does not include a collective bargaining agreement between an employer and its employees' unions. According to the commenter, the exclusion of collective bargaining agreements as employment contracts is important because, if a principal of a union were excluded, the state would not be permitted to "contracts" with that union. The commenter further wrote that if "employment contracts" mean a consulting contract, it is a redundancy because consultant contracts are already covered in § 24.200.

HUD Response: The Department's proposal does not enlarge the scope of employment contracts (*i.e.*, those that are covered transactions, *e.g.*, a Housing Authority's employment of a Public Housing Executive Director using funds provided pursuant to a Consolidated Annual Contributions Contract) to include a collective bargaining agreement. The proposal merely reinforces the concept that each payment made under an employment

contract that is a covered transaction will constitute an independent covered transaction.

Comment: The commenter argued that if each salary payment is made a covered transaction, employers would be prohibited from making future salary payments to employees who happened to have been excluded since the last salary payment. In the commenter's view, because an employee's salary is paid after the work is performed, the rule would prohibit paying the employee for work he/she has already performed, notwithstanding that the exclusion may be unrelated to the employee's present activity.

HUD Response: The Department has elected to retain the provision as written. Payment for work completed prior to the current activity of the employee does not raise a compliance concern. The provision, as written, allows payment for the work previously performed (work completed before the debarment), but would not allow a continuation of payments subsequent to the imposition of a debarment or suspension absent an exception specified in the Suspension and Debarment regulations. Treating each compensation payment as a separate covered transaction ensures that public funds are adequately protected (which is one of the objectives of the Suspension and Debarment regulations), while not appreciably increasing the administrative burden on the regulated entity. (See, for example, HUD's proposed language at 24 CFR 300(d), exempting salary payments from a requirement to check the Excluded Parties List System (EPLS).)

Comment: The commenter suggested that the Department strike its detailed list of principals in § 24.995(c) accompanying the definition of "Principal." The commenter wrote that the list provided invites readers to make a mechanical comparison of individuals they (*i.e.*, the readers) may be involved with to the principals on the list, as opposed to an evaluation of whether the principals have influence or critical control over the covered transaction.

HUD Response: The Department has elected to retain the detailed list of principals. In the Department's view, the addition of paragraph (c) to the definition of the term "principal" in § 24.995 does not, in any way, expand or detract from the definition stated in the common rule on Suspensions and Debarments. Rather, the section is intended as a convenience to HUD program users to facilitate their understanding of the rule.

The Department has tracked changes to § 24.630 for the imputation

provisions found in § 24.1145 of the proposed rule. The minor modifications to § 24.1145 were made to ensure consistency with the common rule. Likewise, the Department has adopted EPLS when referring to the list of excluded parties.

List of Subjects

24 CFR Part 21

Administrative practice and procedure, Grant programs, Drug-free workplace, Reporting and recordkeeping requirements.

24 CFR Part 24

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Technical assistance, Reporting and recordkeeping requirements.

Dated: September 3, 2003.

Mel Martinez,
Secretary.

■ For the reasons stated in the common preamble, the Department of Housing and Urban Development amends 24 CFR Subtitle A, as follows:

■ 1. A new part 21 is added to read as follows:

PART 21—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Subpart A—Purpose and Coverage

Sec.

- 21.100 What does this part do?
21.105 Does this part apply to me?
21.110 Are any of my federal assistance awards exempt from this part?
21.115 Does this part affect the federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

- 21.200 What must I do to comply with this part?
21.205 What must I include in my drug-free workplace statement?
21.210 To whom must I distribute my drug-free workplace statement?
21.215 What must I include in my drug-free awareness program?
21.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
21.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
21.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

- 21.300 What must I do to comply with this part if I am an individual recipient?
21.301 [Reserved]

Subpart D—Responsibilities of HUD Awarding Officials

- 21.400 What are my responsibilities as a HUD awarding official?

Subpart E—Violations of This Part and Consequences

- 21.500 How are violations of this part determined for recipients other than individuals?
21.505 How are violations of this part determined for recipients who are individuals?
21.510 What actions will the federal government take against a recipient determined to have violated this part?
21.515 Are there any exceptions to those actions?

Subpart F—Definitions

- 21.605 Award.
21.610 Controlled substance.
21.615 Conviction.
21.620 Cooperative agreement.
21.625 Criminal drug statute.
21.630 Debarment.
21.635 Drug-free workplace.
21.640 Employee.
21.645 Federal agency or agency.
21.650 Grant.
21.655 Individual.
21.660 Recipient.
21.665 State.
21.670 Suspension.

Authority: 41 U.S.C. 701; 42 U.S.C. 3535(d).

■ 2. Part 21 is further amended as follows:

- a. "[Agency noun]" is removed and "Department of Housing and Urban Development" is added in its place wherever it occurs.
■ b. "[Agency adjective]" is removed and "HUD" is added in its place wherever it occurs.
■ c. "[Agency head or designee]" is removed and "Secretary or designee" is added in its place wherever it occurs.
■ d. "[Agency head]" is removed and "Secretary" is added in its place wherever it occurs.
■ 3. Part 24 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 24—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

- 24.25 How is this part organized?
24.50 How is this part written?
24.75 Do terms in this part have special meanings?

Subpart A—General

- 24.100 What does this part do?
24.105 Does this part apply to me?
24.110 What is the purpose of the nonprocurement debarment and suspension system?

- 24.115 How does an exclusion restrict a person's involvement in covered transactions?
- 24.120 May we grant an exception to let an excluded person participate in a covered transaction?
- 24.125 Does an exclusion under the nonprocurement system affect a person's eligibility for federal procurement contracts?
- 24.130 Does exclusion under the federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
- 24.135 May the Department of Housing and Urban Development exclude a person who is not currently participating in a nonprocurement transaction?
- 24.140 How do I know if a person is excluded?
- 24.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

- 24.200 What is a covered transaction?
- 24.205 Why is it important to know if a particular transaction is a covered transaction?
- 24.210 Which nonprocurement transactions are covered transactions?
- 24.215 Which nonprocurement transactions are not covered transactions?
- 24.220 Are any procurement contracts included as covered transactions?
- 24.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

- 24.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
- 24.305 May I enter into a covered transaction with an excluded or disqualified person?
- 24.310 What must I do if a federal agency excludes a person with whom I am already doing business in a covered transaction?
- 24.315 May I use the services of an excluded person as a principal under a covered transaction?
- 24.320 Must I verify that principals of my covered transactions are eligible to participate?
- 24.325 What happens if I do business with an excluded person in a covered transaction?
- 24.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

- 24.335 What information must I provide before entering into a covered transaction with the Department of Housing and Urban Development?
- 24.340 If I disclose unfavorable information required under § 24.335, will I be prevented from entering into the transaction?

- 24.345 What happens if I fail to disclose the information required under § 24.335?
- 24.350 What must I do if I learn of the information required under § 24.335 after entering into a covered transaction with the Department of Housing and Urban Development?

Disclosing Information—Lower Tier Participants

- 24.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
- 24.360 What happens if I fail to disclose the information required under § 24.355?
- 24.365 What must I do if I learn of information required under § 24.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of HUD Officials Regarding Transactions

- 24.400 May I enter into a transaction with an excluded or disqualified person?
- 24.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
- 24.410 May I approve a participant's use of the services of an excluded person?
- 24.415 What must I do if a federal agency excludes the participant or a principal after I enter into a covered transaction?
- 24.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
- 24.425 When do I check to see if a person is excluded or disqualified?
- 24.430 How do I check to see if a person is excluded or disqualified?
- 24.435 What must I require of a primary tier participant?
- 24.440 What method do I use to communicate those requirements to participants?
- 24.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
- 24.450 What action may I take if a primary tier participant fails to disclose the information required under § 24.335?
- 24.455 What may I do if a lower tier participant fails to disclose the information required under § 24.355 to the next higher tier?

Subpart E—Excluded Parties List System

- 24.500 What is the purpose of the Excluded Parties List System (EPLS)?
- 24.505 Who uses the EPLS?
- 24.510 Who maintains the EPLS?
- 24.515 What specific information is in the EPLS?
- 24.520 Who places the information into the EPLS?
- 24.525 Whom do I ask if I have questions about a person in the EPLS?
- 24.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

- 24.600 How do suspension and debarment actions start?
- 24.605 How does suspension differ from debarment?
- 24.610 What procedures does the Department of Housing and Urban

Development use in suspension and debarment actions?

- 24.615 How does the Department of Housing and Urban Development notify a person of a suspension or debarment action?
- 24.620 Do federal agencies coordinate suspension and debarment actions?
- 24.625 What is the scope of a suspension or debarment action?
- 24.630 May the Department of Housing and Urban Development impute the conduct of one person to another?
- 24.635 May the Department of Housing and Urban Development settle a debarment or suspension action?
- 24.640 May a settlement include a voluntary exclusion?
- 24.645 Do other federal agencies know if the Department of Housing and Urban Development agrees to a voluntary exclusion?

Subpart G—Suspension

- 24.700 When may the suspending official issue a suspension?
- 24.705 What does the suspending official consider in issuing a suspension?
- 24.710 When does a suspension take effect?
- 24.715 What notice does the suspending official give me if I am suspended?
- 24.720 How may I contest a suspension?
- 24.725 How much time do I have to contest a suspension?
- 24.730 What information must I provide to the suspending official if I contest a suspension?
- 24.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 24.740 Are suspension proceedings formal?
- 24.745 How is fact-finding conducted?
- 24.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 24.755 When will I know whether the suspension is continued or terminated?
- 24.760 How long may my suspension last?

Subpart H—Debarment

- 24.800 What are the causes for debarment?
- 24.805 What notice does the debarring official give me if I am proposed for debarment?
- 24.810 When does a debarment take effect?
- 24.815 How may I contest a proposed debarment?
- 24.820 How much time do I have to contest a proposed debarment?
- 24.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 24.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
- 24.835 Are debarment proceedings formal?
- 24.840 How is fact-finding conducted?
- 24.845 What does the debarring official consider in deciding whether to debar me?
- 24.850 What is the standard of proof in a debarment action?
- 24.855 Who has the burden of proof in a debarment action?
- 24.860 What factors may influence the debarring official's decision?

- 24.865 How long may my debarment last?
- 24.870 When do I know if the debarring official debars me?
- 24.875 May I ask the debarring official to reconsider a decision to debar me?
- 24.880 What factors may influence the debarring official during reconsideration?
- 24.885 May the debarring official extend a debarment?

Subpart I—Definitions

- 24.900 Adequate evidence.
- 24.905 Affiliate.
- 24.910 Agency.
- 24.915 Agent or representative.
- 24.920 Civil judgment.
- 24.925 Conviction.
- 24.930 Debarment.
- 24.935 Debarring official.
- 24.940 Disqualified.
- 24.945 Excluded or exclusion.
- 24.947 Hearing officer.
- 24.950 Excluded Parties List System.
- 24.955 Indictment.
- 24.960 Ineligible or ineligibility.
- 24.965 Legal Proceedings.
- 24.970 Nonprocurement transaction.
- 24.975 Notice.
- 24.980 Participant.
- 24.985 Person.
- 24.990 Preponderance of the evidence.
- 24.995 Principal.
- 24.1000 Respondent.
- 24.1005 State.
- 24.1010 Suspending official.
- 24.1015 Suspension.
- 24.1017 Ultimate beneficiaries.
- 24.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—Limited Denial of Participation

- 24.1100 What is a limited denial of participation?
- 24.1105 Who may issue a limited denial of participation?
- 24.1110 When may a HUD official issue a limited denial of participation?
- 24.1115 When does a limited denial of participation take effect?
- 24.1120 How long may a limited denial of participation last?
- 24.1125 How does a limited denial of participation start?
- 24.1130 How may I contest my limited denial of participation?
- 24.1135 Do federal agencies coordinate limited denial of participation actions?
- 24.1140 What is the scope of a limited denial of participation?
- 24.1145 May HUD impute the conduct of one person to another in a limited denial of participation?
- 24.1150 What is the effect of a suspension or debarment on a limited denial of participation?
- 24.1155 What is the effect of a limited denial of participation on a suspension or a debarment?
- 24.1160 May a limited denial of participation be terminated before the term of the limited denial of participation expires?
- 24.1165 How is a limited denial of participation reported?

Appendix to Part 24—Covered Transactions

Authority: 41 U.S.C. 701 *et seq.*; 42 U.S.C. 3535(d); Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

- 4. Part 24 is further amended as set forth below.
- a. “[Agency noun]” is removed and “the Department of Housing and Urban Development” is added in its place wherever it occurs.
- b. “[Agency adjective]” is removed and “HUD” is added in its place wherever it occurs.
- c. “[Agency head or designee]” is removed and “Secretary or designee” is added in its place wherever it occurs.
- 5. Section 24.200 is further amended by adding a paragraph (c) to read as follows:

§ 24.200 What is a covered transaction?

* * * * *

(c) In the case of employment contracts that are covered transactions, each salary payment under the contract is a separate covered transaction.

- 6. Section 24.300 is further amended by adding paragraphs (d) and (e) to read as follows:

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

* * * * *

(d) You, as a participant, are responsible for determining whether you are entering into a covered transaction with an excluded or disqualified person. You may decide the method by which you do so. You may, but are not required to, check the EPLS.

(e) In the case of an employment contract, HUD does not require employers to check the EPLS prior to making salary payments pursuant to that contract.

- 7. Section 24.440 is added to read as follows:

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

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

- 8. Section 24.750 is further amended by adding a paragraph (c) to read as follows:

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

* * * * *

(c) The official receiving the referral for findings of fact regarding disputed material facts must be a hearing officer in all HUD suspensions.

- 9. Section 24.845 is further amended by adding a paragraph (d) to read as follows:

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

* * * * *

(d) The official receiving the referral for findings of fact regarding disputed material facts must be a hearing officer in all HUD debarments.

- 10. Section 24.947 is added to read as follows:

§ 24.947 Hearing officer.

Hearing officer means an Administrative Law Judge or Board of Contract Appeals Judge authorized by HUD’s Secretary or by the Secretary’s designee, to conduct proceedings under this part.

- 11. Section 24.995 is further amended by adding a paragraph (c) to read as follows:

§ 24.995 Principal.

* * * * *

(c) A person who has a critical influence on, or substantive control over, a covered transaction, whether or not employed by the participant. Persons who have a critical influence on, or substantive control over, a covered transaction may include, but are not limited to:

- (1) Loan officers;
- (2) Staff appraisers and inspectors;
- (3) Underwriters;
- (4) Bonding companies;
- (5) Borrowers under programs financed by HUD or with loans guaranteed, insured, or subsidized through HUD programs;
- (6) Purchasers of properties with HUD-insured or Secretary-held mortgages;
- (7) Recipients under HUD assistance agreements;
- (8) Ultimate beneficiaries of HUD programs;
- (9) Fee appraisers and inspectors;
- (10) Real estate agents and brokers;
- (11) Management and marketing agents;
- (12) Accountants, consultants, investment bankers, architects, engineers, and attorneys who are in a business relationship with participants in connection with a covered transaction under a HUD program;
- (13) Contractors involved in the construction or rehabilitation of

properties financed by HUD, with HUD insured loans, or acquired properties, including properties held by HUD as mortgagee-in-possession;

(14) Closing agents;

(15) Turnkey developers of projects financed by or with financing insured by HUD;

(16) Title companies;

(17) Escrow agents;

(18) Project owners;

(19) Administrators of hospitals, nursing homes, and projects for the elderly financed or insured by HUD; and

(20) Developers, sellers or owners of property financed with loans insured under title I or title II of the National Housing Act.

■ 12. Subpart J is added to Part 24 to read as follows:

Subpart J—Limited Denial of Participation

§ 24.1100 What is a limited denial of participation?

A limited denial of participation excludes a specific person from participating in a specific program, or programs, within a HUD field office's geographic jurisdiction, for a specific period of time. A limited denial of participation is normally issued by a HUD field office, but may be issued by a Headquarters office. The decision to impose a limited denial of participation is discretionary and in the best interests of the government.

§ 24.1105 Who may issue a limited denial of participation?

The Secretary designates HUD officials who are authorized to impose a limited denial of participation, affecting any participant and/or their affiliates, except FHA-approved mortgagees.

§ 24.1110 When may a HUD official issue a limited denial of participation?

(a) An authorized HUD official may issue a limited denial of participation against a person based upon adequate evidence of any of the following causes:

(1) Approval of an applicant for insurance would constitute an unsatisfactory risk;

(2) Irregularities in a person's past performance in a HUD program;

(3) Failure of a person to maintain the prerequisites of eligibility to participate in a HUD program;

(4) Failure to honor contractual obligations or to proceed in accordance with contract specifications or HUD regulations;

(5) Failure to satisfy, upon completion, the requirements of an assistance agreement or contract;

(6) Deficiencies in ongoing construction projects;

(7) Falsely certifying in connection with any HUD program, whether or not the certification was made directly to HUD;

(8) Commission of an offense listed in § 24.800;

(9) Violation of any law, regulation, or procedure relating to the application for financial assistance, insurance, or guarantee, or to the performance of obligations incurred pursuant to a grant of financial assistance or pursuant to a conditional or final commitment to insure or guarantee;

(10) Making or procuring to be made any false statement for the purpose of influencing in any way an action of the Department;

(11) Imposition of a limited denial of participation by any other HUD office; or

(12) Debarment or suspension by another federal agency for any cause substantially the same as provided in § 24.800.

(b) Filing of a criminal Indictment or Information shall constitute adequate evidence for the purpose of limited denial of participation actions. The Indictment or Information need not be based on offenses against HUD.

(c) Imposition of a limited denial of participation by any other HUD office shall constitute adequate evidence for a concurrent limited denial of participation. Where such a concurrent limited denial of participation is imposed, participation may be restricted on the same basis without the need for additional conference or further hearing.

(d) An affiliate or organizational element may be included in a limited denial of participation solely on the basis of its affiliation, and regardless of its knowledge of or participation in the acts providing cause for the sanction. The burden of proving that a particular affiliate or organizational element is currently responsible and not controlled by the primary sanctioned party (or by an entity that itself is controlled by the primary sanctioned party) is on the affiliate or organizational element.

§ 24.1115 When does a limited denial of participation take effect?

A limited denial of participation is effective immediately upon issuance of the notice.

§ 24.1120 How long may a limited denial of participation last?

A limited denial of participation may remain effective up to 12 months.

§ 24.1125 How does a limited denial of participation start?

A limited denial of participation is made effective by providing the person, and any specifically named affiliate, with notice:

(a) That the limited denial of participation is being imposed;

(b) Of the cause(s) under § 24.1110 for the sanction;

(c) Of the potential effect of the sanction, including the length of the sanction and the HUD program(s) and geographic area affected by the sanction;

(d) Of the right to request, in writing, within 30 days of receipt of the notice, a conference under § 24.1130; and

(e) Of the right to contest the limited denial of participation under § 24.1130.

§ 24.1130 How may I contest my limited denial of participation?

(a) Within 30 days after receiving a notice of limited denial of participation, you may request a conference with the official who issued such notice. The conference shall be held within 15 days after the Department's receipt of the request for a conference, unless you waive this time limit. The official or designee who imposed the sanction shall preside. At the conference, you may appear with a representative and may present all relevant information and materials to the official or designee. Within 20 days after the conference, or within 20 days after any agreed upon extension of time for submission of additional materials, the official or designee shall, in writing, advise you of the decision to terminate, modify, or affirm the limited denial of participation. If all or a portion of the remaining period of exclusion is affirmed, the notice of affirmation shall advise you of the opportunity to contest the notice and request a hearing before a Departmental Hearing Officer. You have 30 days after receipt of the notice of affirmation to request this hearing. If the official or designee does not issue a decision within the 20-day period, you may contest the sanction before a Departmental Hearing Officer. Again, you have 30 days from the expiration of the 20-day period to request this hearing. If you request a hearing before the Departmental Hearing Officer, you must submit your request to the Debarment Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW, B-133 Portals 200, Washington DC 20410-0500.

(b) You may skip the conference with the official and you may request a hearing before a Departmental Hearing Officer. This must also be done within 30 days after receiving a notice of limited denial of participation. If you

opt to have a hearing before a Departmental Hearing Officer, you must submit your request to the Debarment Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW, B-133 Portals 200, Washington DC 20410-0500. The hearing before the Departmental Hearing Officer is more formal than the conference before the sanctioning official described above. The hearing before the Departmental Hearing Officer will be conducted in accordance with 24 CFR part 26, subpart A. The Departmental Hearing Officer will issue findings of fact and make a recommended decision. The sanctioning official will then make a final decision as promptly as possible after the Departmental Hearing Officer recommended decision is issued. The sanctioning official may reject the recommended decision or any findings of fact, only after specifically determining the decision or any of the facts to be arbitrary or capricious or clearly erroneous.

§ 24.1135 Do federal agencies coordinate limited denial of participation actions?

Federal agencies do not coordinate limited denial of participation actions. As stated in § 24.1100, a limited denial of participation is a HUD-specific action and applies only to HUD activities.

§ 24.1140 What is the scope of a limited denial of participation?

The scope of a limited denial of participation is as follows:

(a) A limited denial of participation generally extends only to participation in the program under which the cause arose. A limited denial of participation may, at the discretion of the authorized official, extend to other programs, initiatives, or functions within the jurisdiction of an Assistant Secretary. The authorized official, however, may determine that the sanction shall apply to all programs throughout HUD where the sanction is based on an indictment or conviction.

(b) For purposes of this subpart, participation includes receipt of any benefit or financial assistance through grants or contractual arrangements; benefits or assistance in the form of loan guarantees or insurance; and awards of procurement contracts.

(c) The sanction may be imposed for a period not to exceed 12 months, and shall be effective within the geographic jurisdiction of the office imposing it, unless the sanction is imposed by an Assistant Secretary or Deputy Assistant Secretary in which case the sanction may be imposed on either a nationwide or a more restricted basis.

§ 24.1145 May HUD impute the conduct of one person to another in a limited denial of participation?

For purposes of determining a limited denial of participation, HUD may impute conduct as follows:

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

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

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

§ 24.1150 What is the effect of a suspension or debarment on a limited denial of participation?

If you have submitted a request for a hearing pursuant to § 24.1130 of this section, and you also receive, pursuant to subpart G or H of this part, a notice of proposed debarment or suspension that is based on the same transaction(s) or conduct as the limited denial of participation, as determined by the debarment or suspending official, the following rules shall apply:

(a) During the 30-day period after you receive a proposed debarment or suspension, during which you may elect to contest the debarment under § 24.815, or the suspension pursuant to § 24.720,

all proceedings in the limited denial of participation, including discovery, are automatically stayed.

(b) If you do not contest the proposed debarment pursuant to § 24.815, or the suspension pursuant to § 24.720, the final imposition of the debarment or suspension shall also constitute a final decision with respect to the limited denial of participation to the extent that the debarment or suspension is based on the same transaction(s) or conduct as the limited denial of participation.

(c) If you contest the proposed debarment pursuant to § 24.815, or the suspension pursuant to § 24.720, then:

(1) Those parts of the limited denial of participation and the debarment or suspension based on the same transaction(s) or conduct, as determined by the debarment or suspending official, shall be immediately consolidated before the debarment or suspending official;

(2) Proceedings under the consolidated portions of the limited denial of participation shall be stayed before the hearing officer until the suspending or debarment official makes a determination as to whether the consolidated matters should be referred to a hearing officer. Such a determination must be made within 90 days of the date of the issuance of the suspension or proposed debarment, unless the suspending/debarment official extends the period for good cause.

(i) If the suspending or debarment official determines that there is a genuine dispute as to material facts regarding the consolidated matter, the entire consolidated matter will be referred to the hearing officer hearing the limited denial of participation, for additional proceedings pursuant to 24 CFR 24.750 or § 24.845.

(ii) If the suspending or debarment official determines that there is no dispute as to material facts regarding the consolidated matter, jurisdiction of the hearing officer under 24 CFR part 24, subpart J, to hear those parts of the limited denial of participation based on the same transaction[s] or conduct as the debarment or suspension, as determined by the debarment or suspending official, will be transferred to the debarment or suspending official, and the hearing officer responsible for hearing the limited denial of participation shall transfer the administrative record to the debarment or suspending official.

(3) The suspending or debarment official shall hear the entire consolidated case under the procedures governing suspensions and debarments, and shall issue a final decision as to

both the limited denial of participation and the suspension or debarment.

§ 24.1155 What is the effect of a limited denial of participation on a suspension or a debarment?

The imposition of a limited denial of participation does not affect the right of the Department to suspend or debar any person under this part.

§ 24.1160 May a limited denial of participation be terminated before the term of the limited denial of participation expires?

If the cause for the limited denial of participation is resolved before the expiration of the 12-month period, the official who imposed the sanction may terminate it.

§ 24.1165 How is a limited denial of participation reported?

When a limited denial of participation has been made final, or the period for requesting a conference pursuant to § 24.1130 has expired without receipt of such a request, the official imposing the limited denial of participation shall notify the Director of the Compliance Division in the Departmental Enforcement Center of the scope of the limited denial of participation.

DEPARTMENT OF JUSTICE

28 CFR Parts 67 and 83

[OJP(OJP)-1306]

RIN 1121-AA57

ADDRESSES: Please address all comments regarding this interim final rule to Linda Fallowfield, Attorney Advisor, Office of the General Counsel, Office of Justice Programs, Department of Justice, 810 7th Street NW., Washington, DC 20531, (202) 305-2534, e-mail: fallowfi@ojp.usdoj.gov.

FOR FURTHER INFORMATION CONTACT: Linda Fallowfield, Attorney Advisor, Office of the General Counsel, Office of Justice Programs, Department of Justice, 810 7th Street NW., Washington, DC 20531, (202) 305-2534, e-mail: fallowfi@ojp.usdoj.gov.

SUPPLEMENTARY INFORMATION:

The Department of Justice (the Department) is publishing this interim final rule in order to join the publication of the government-wide common rule on debarment and suspension. The Department is adopting this common rule in order to promote consistency within the federal government. The common rule provides uniform requirements for debarment and suspension by Executive branch agencies to protect assistance, loans, benefits and other non-procurement

activities from waste, fraud, abuse and poor performance, similar to the system used for Federal procurement activities under Subpart 9.4 of the Federal Acquisition Regulations (FAR).

Finally, the Department's proposed rule on drug-free workplace requirements would be separated from the proposed rule on debarment and suspension. The drug-free workplace requirements are currently located in subpart F of the Debarment and Suspension Non-procurement Common Rule. Moving those requirements to a separate part would allow them to appear in a more appropriate location nearer other requirements used predominantly by award officials. The requirements for maintaining a drug-free workplace thus would be relocated from 28 CFR part 67 to 28 CFR part 83, and are restated in plain language format.

List of Subjects

28 CFR Part 67

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements, Technical assistance, Drug abuse.

28 CFR Part 83

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

Dated: October 16, 2003.

John Ashcroft,
Attorney General.

■ For the reasons set forth in the preamble, 28 CFR chapter I is amended as follows:

■ 1. Part 67 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 67—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

- 67.25 How is this part organized?
67.50 How is this part written?
67.75 Do terms in this part have special meanings?

Subpart A—General

- 67.100 What does this part do?
67.105 Does this part apply to me?
67.110 What is the purpose of the non-procurement debarment and suspension system?
67.115 How does an exclusion restrict a person's involvement in covered transactions?
67.120 May we grant an exception to let an excluded person participate in a covered transaction?
67.125 Does an exclusion under the non-procurement system affect a person's

eligibility for Federal procurement contracts?

- 67.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in non-procurement transactions?
67.135 May the Department of Justice exclude a person who is not currently participating in a non-procurement transaction?
67.140 How do I know if a person is excluded?
67.145 Does this part address persons who are disqualified, as well as those who are excluded from non-procurement transactions?

Subpart B—Covered Transactions

- 67.200 What is a covered transaction?
67.205 Why is it important to know if a particular transaction is a covered transaction?
67.210 Which non-procurement transactions are covered transactions?
67.215 Which non-procurement transactions are not covered transactions?
67.220 Are any procurement contracts included as covered transactions?
67.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

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

Disclosing Information—Primary Tier Participants

- 67.335 What information must I provide before entering into a covered transaction with the Department of Justice?
67.340 If I disclose unfavorable information required under § 67.335, will I be prevented from participating in the transaction?
67.345 What happens if I fail to disclose the information required under § 67.335?
67.350 What must I do if I learn of the information required under § 67.335 after entering into a covered transaction with the Department of Justice?

Disclosing Information—Lower Tier Participants

- 67.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
- 67.360 What happens if I fail to disclose the information required under § 67.355?
- 67.365 What must I do if I learn of information required under § 67.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of Department of Justice Officials Regarding Transactions

- 67.400 May I enter into a transaction with an excluded or disqualified person?
- 67.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
- 67.410 May I approve a participant's use of the services of an excluded person?
- 67.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
- 67.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
- 67.425 When do I check to see if a person is excluded or disqualified?
- 67.430 How do I check to see if a person is excluded or disqualified?
- 67.435 What must I require of a primary tier participant?
- 67.440 What method do I use to communicate those requirements to participants?
- 67.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
- 67.450 What action may I take if a primary tier participant fails to disclose the information required under § 67.335?
- 67.455 What may I do if a lower tier participant fails to disclose the information required under § 67.355 to the next higher tier?

Subpart E—Excluded Parties List System

- 67.500 What is the purpose of the Excluded Parties List System (EPLS)?
- 67.505 Who uses the EPLS?
- 67.510 Who maintains the EPLS?
- 67.515 What specific information is on the EPLS?
- 67.520 Who places the information into the EPLS?
- 67.525 Whom do I ask if I have questions about a person in the EPLS?
- 67.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

- 67.600 How do suspension and debarment actions start?
- 67.605 How does suspension differ from debarment?
- 67.610 What procedures does the Department of Justice use in suspension and debarment actions?
- 67.615 How does the Department of Justice notify a person of a suspension and debarment action?
- 67.620 Do Federal agencies coordinate suspension and debarment actions?
- 67.625 What is the scope of a suspension or debarment action?

- 67.630 May the Department of Justice impute the conduct of one person to another?
- 67.635 May the Department of Justice settle a debarment or suspension action?
- 67.640 May a settlement include a voluntary exclusion?
- 67.645 Do other Federal agencies know if the Department of Justice agrees to a voluntary exclusion?

Subpart G—Suspension

- 67.700 When may the suspending official issue a suspension?
- 67.705 What does the suspending official consider in issuing a suspension?
- 67.710 When does a suspension take effect?
- 67.715 What notice does the suspending official give me if I am suspended?
- 67.720 How may I contest a suspension?
- 67.725 How much time do I have to contest a suspension?
- 67.730 What information must I provide to the suspending official if I contest a suspension?
- 67.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 67.740 Are suspension proceedings formal?
- 67.745 How is fact-finding conducted?
- 67.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 67.755 When will I know whether the suspension is continued or terminated?
- 67.760 How long may my suspension last?

Subpart H—Debarment

- 67.800 What are the causes for debarment?
- 67.805 What notice does the debarring official give me if I am proposed for debarment?
- 67.810 When does a debarment take effect?
- 67.815 How may I contest a proposed debarment?
- 67.820 How much time do I have to contest a proposed debarment?
- 67.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 67.830 Under what conditions do I get an additional opportunity to challenge the facts on which a proposed debarment is based?
- 67.835 Are debarment proceedings formal?
- 67.840 How is fact-finding conducted?
- 67.845 What does the debarring official consider in deciding whether to debar me?
- 67.850 What is the standard of proof in a debarment action?
- 67.855 Who has the burden of proof in a debarment action?
- 67.860 What factors may influence the debarring official's decision?
- 67.865 How long may my debarment last?
- 67.870 When do I know if the debarring official debars me?
- 67.875 May I ask the debarring official to reconsider a decision to debar me?
- 67.880 What factors may influence the debarring official during reconsideration?
- 67.885 May the debarring official extend a debarment?

Subpart I—Definitions

- 67.900 Adequate evidence.
- 67.905 Affiliate.
- 67.910 Agency.
- 67.915 Agent or representative.
- 67.920 Civil judgment.
- 67.925 Conviction.
- 67.930 Debarment.
- 67.935 Debarring official.
- 67.940 Disqualified.
- 67.945 Excluded or exclusion.
- 67.950 Excluded Parties List System
- 67.955 Indictment.
- 67.960 Ineligible or ineligibility.
- 67.965 Legal proceedings.
- 67.970 Non-procurement transaction.
- 67.975 Notice.
- 67.980 Participant.
- 67.985 Person.
- 67.990 Preponderance of the evidence.
- 67.995 Principal.
- 67.1000 Respondent.
- 67.1005 State.
- 67.1010 Suspending official.
- 67.1015 Suspension.
- 67.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—[Reserved]

Authority: E.O. 12549; Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3711, *et seq.*, Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601, *et seq.*, Victims of Crime Act of 1984, 42 U.S.C. 10601, *et seq.*; 18 U.S.C. 4042; 18 U.S.C. 4351–4353; E.O. 12549 (3 CFR, 1986 Comp. P.189).

- 2. Part 67 is further amended as set forth below.
- a. “[Agency noun]” is removed and “the Department of Justice” is added in its place wherever it occurs.
- b. “[Agency adjective]” is removed and “Department of Justice” is added in its place wherever it occurs.
- c. “[Agency head or designee]” is removed and “Department of Justice debarring official or designee” is added wherever it occurs.
- 3. Section 67.440 is added to read as follows:

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

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

- 4. Part 83 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 83—GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)**Subpart A—Purpose and Coverage Sec.**

- 83.100 What does this part do?
 83.105 Does this part apply to me?
 83.110 Are any of my Federal assistance awards exempt from this part?
 83.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

- 83.200 What must I do to comply with this part?
 83.205 What must I include in my drug-free workplace statement?
 83.210 To whom must I distribute my drug-free workplace statement?
 83.215 What must I include in my drug-free awareness program?
 83.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
 83.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
 83.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

- 83.300 What must I do to comply with this part if I am an individual recipient?
 83.301 [Reserved]

Subpart D—Responsibilities of Department of Justice Awarding Officials

- 83.400 What are my responsibilities as a Department of Justice awarding official?

Subpart E—Violations of This Part and Consequences

- 83.500 How are violations of this part determined for recipients other than individuals?
 83.505 How are violations of this part determined for recipients who are individuals?
 83.510 What actions will the Federal Government take against a recipient determined to have violated this part?
 83.515 Are there any exceptions to those actions?

Subpart F—Definitions

- 83.605 Award.
 83.610 Controlled substance.
 83.615 Conviction.
 83.620 Cooperative agreement.
 83.625 Criminal drug statute.
 83.630 Debarment.
 83.635 Drug-free workplace.
 83.640 Employee.
 83.645 Federal agency or agency.
 83.650 Grant.
 83.655 Individual.
 83.660 Recipient.
 83.665 State.
 83.670 Suspension.

Authority: Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 *et seq.*).

■ 5. Part 83 is further amended as set forth below.

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

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

■ c. “[Agency head or designee]” is removed and “Attorney General or designee” is added wherever it occurs.

■ d. “[Agency head]” is removed and “Attorney General” is added wherever it occurs.

■ 6. Section 83.510(c) is further amended by removing “[CFR citation for the Federal agency’s regulations implementing Executive Order 12549 and Executive Order 12689]” and adding “28 CFR Part 67” in its place.

■ 7. Section 83.605(a)(2) is further amended by removing “[Agency-specific CFR citation]” and adding “28 CFR Part 70” in its place.

DEPARTMENT OF LABOR

29 CFR Part 94 and 98

RIN 1291-AA33

FOR FURTHER INFORMATION CONTACT:

Jeffrey Saylor, Director Division of Acquisition Management Services, N-5425, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693-7285, email saylor-jeffrey@dol.gov.

List of Subjects

29 CFR Part 94

Administrative practices and procedures, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

29 CFR Part 98

Administrative practices and procedures, Grant programs, Loan programs, Reporting and recordkeeping requirements.

Dated: August 14, 2003.

Elaine L. Chao,
Secretary of Labor.

■ For the reasons stated in the common preamble, the Department of Labor amends 29 CFR subtitle A, as follows:

■ 1. Part 94 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 94—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.

- 94.100 What does this part do?
 94.105 Does this part apply to me?
 94.110 Are any of my Federal assistance awards exempt from this part?
 94.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

- 94.200 What must I do to comply with this part?
 94.205 What must I include in my drug-free workplace statement?
 94.210 To whom must I distribute my drug-free workplace statement?
 94.215 What must I include in my drug-free awareness program?
 94.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
 94.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
 94.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

- 94.300 What must I do to comply with this part if I am an individual recipient?
 94.301 [Reserved.]

Subpart D—Responsibilities of Department of Labor Awarding Officials

- 94.400 What are my responsibilities as a Department of Labor awarding official?

Subpart E—Violations of This Part and Consequences

- 94.500 How are violations of this part determined for recipients other than individuals?
 94.505 How are violations of this part determined for recipients who are individuals?
 94.510 What actions will the Federal Government take against a recipient determined to have violated this part?
 94.515 Is there any provision for exceptions to those actions?

Subpart F—Definitions

- 94.605 Award.
 94.610 Controlled substance.
 94.615 Conviction.
 94.620 Cooperative agreement.
 94.625 Criminal drug statute.
 94.630 Debarment.
 94.635 Drug-free workplace.
 94.640 Employee.
 94.645 Federal agency or agency.
 94.650 Grant.
 94.655 Individual.
 94.660 Recipient.
 94.665 State.
 94.670 Suspension.

Authority: 41 U.S.C. 701 *et seq.*

■ 2. Part 94 is further amended as set forth below.

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

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

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

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

■ 3. Section 94.510(c) is further amended by removing “[CFR citation for the Federal Agency’s regulations implementing Executive Order 12549 and Executive Order 12689]” and adding “29 CFR Part 98” in its place.

■ 4. Section 94.605(a)(2) is further amended by removing “[Agency-specific CFR citation]” and adding “29 CFR Part 97” in its place.

■ 5. Part 98 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 98—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

98.25 How is this part organized?

98.50 How is this part written?

98.75 Do terms in this part have special meanings?

Subpart A—General

98.100 What does this part do?

98.105 Does this part apply to me?

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

98.115 How does an exclusion restrict a person’s involvement in covered transactions?

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

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

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

98.135 May the U.S. Department of Labor exclude a person who is not currently participating in a nonprocurement transaction?

98.140 How do I know if a person is excluded?

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

Subpart B—Covered Transactions

98.200 What is a covered transaction?

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

98.210 Which nonprocurement transactions are covered transactions?

98.215 Which nonprocurement transactions are not covered transactions?

98.220 Are any procurement contracts included as covered transactions?

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

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

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

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

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

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

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

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

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

Disclosing Information—Primary Tier Participants

98.335 What information must I provide before entering into a covered transaction with the Department of Labor?

98.340 If I disclose unfavorable information required under § 98.335, will I be prevented from participating in the transaction?

98.345 What happens if I fail to disclose the information required under § 98.335?

98.350 What must I do if I learn of the information required under § 98.335 after entering into a covered transaction with the U.S. Department of Labor?

Disclosing information—Lower Tier Participants

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

98.360 What happens if I fail to disclose the information required under § 98.355?

98.365 What must I do if I learn of information required under § 98.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of the Department of Labor Officials Regarding Transactions

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

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

98.410 May I approve a participant’s use of the services of an excluded person?

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

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

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

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

98.435 What must I require of a primary tier participant?

98.440 [Reserved]

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

98.450 What action may I take if a primary tier participant fails to disclose the information required under § 98.335?

98.455 What may I do if a lower tier participant fails to disclose the information required under § 98.355 to the next higher tier?

Subpart E—Excluded Parties List System

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

98.505 Who uses the EPLS?

98.510 Who maintains the EPLS?

98.515 What specific information is in the EPLS?

98.520 Who places the information into the EPLS?

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

98.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

98.600 How do suspension and debarment actions start?

98.605 How does suspension differ from debarment?

98.610 What procedures does the U.S. Department of Labor use in suspension and debarment actions?

98.615 How does the U.S. Department of Labor notify a person of a suspension and debarment action?

98.620 Do Federal agencies coordinate suspension and debarment actions?

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

98.630 May the U.S. Department of Labor impute the conduct of one person to another?

98.635 May the U.S. Department of Labor settle a debarment or suspension action?

98.640 May a settlement include a voluntary exclusion?

98.645 Do other Federal agencies know if the U.S. Department of Labor agrees to a voluntary exclusion?

Subpart G—Suspension

98.700 When may the suspending official issue a suspension?

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

98.710 When does a suspension take effect?

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

98.720 How may I contest a suspension?

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

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

98.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?

98.740 Are suspension proceedings formal?

98.745 How is fact-finding conducted?

98.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?

- 98.755 When will I know whether the suspension is continued or terminated?
98.760 How long may my suspension last?

Subpart H—Debarment

- 98.800 What are the causes for debarment?
98.805 What notice does the debarring official give me if I am proposed for debarment?
98.810 When does a debarment take effect?
98.815 How may I contest a proposed debarment?
98.820 How much time do I have to contest a proposed debarment?
98.825 What information must I provide to the debarring official if I contest a proposed debarment?
98.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
98.835 Are debarment proceedings formal?
98.840 How is fact-finding conducted?
98.845 What does the debarring official consider in deciding whether to debar me?
98.850 What is the standard of proof in a debarment action?
98.855 Who has the burden of proof in a debarment action?
98.860 What factors may influence the debarring official's decision?
98.865 How long may my debarment last?
98.870 When do I know if the debarring official debars me?
98.875 May I ask the debarring official to reconsider a decision to debar me?
98.880 What factors may influence the debarring official during reconsideration?
98.885 May the debarring official extend a debarment?

Subpart I—Definitions

- 98.900 Adequate evidence.
98.905 Affiliate.
98.910 Agency.
98.915 Agent or representative.
98.920 Civil judgment.
98.925 Conviction.
98.930 Debarment.
98.935 Debarring official.
98.940 Disqualified.
98.945 Excluded or exclusion.
98.950 Excluded Parties List System.
98.955 Indictment.
98.960 Ineligible or ineligibility.
98.965 Legal proceedings.
98.970 Nonprocurement transaction.
98.975 Notice.
98.980 Participant.
98.985 Person.
98.990 Preponderance of the evidence.
98.995 Principal.
98.1000 Respondent.
98.1005 State.
98.1010 Suspending official.
98.1015 Suspension.
98.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—[Reserved]

Appendix to Part 98—Covered Transactions

Authority: 5 U.S.C. 301, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 NOTE); E.O. 11738, 3 CFR, 1973 Comp., p. 799; E.O.

- 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

■ 6. Part 98 is further amended as follows:

- a. “[Agency noun]” is removed and “Department of Labor” is added in its place wherever it occurs.
■ b. “[Agency adjective]” is removed and “Department of Labor” is added in its place wherever it occurs.
■ c. “[Agency head or designee]” is removed and “Secretary of Labor or designee” is added in its place wherever it occurs.

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Parts 1471 and 1472

RIN 3076-AA08

FOR FURTHER INFORMATION CONTACT: Jane Lorber, Director, Labor-Management Cooperation Program, 2100 K St., NW., Washington, DC 20427, (202) 606–5444, e-mail: jlorber@fmcs.gov.

List of Subjects

29 CFR Part 1471

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

29 CFR Part 1472

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

Dated: September 5, 2003.

John J. Toner,
Chief of Staff.

■ For the reason stated in the common preamble, the Federal Mediation and Conciliation Service amends 29 CFR chapter XII, as follows:

- 1. Part 1471 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 1471—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

- 1471.25 How is this part organized?
1471.50 How is this part written?
1471.75 Do terms in this part have special meanings?

Subpart A—General

- 1471.100 What does this part do?
1471.105 Does this part apply to me?
1471.110 What is the purpose of the nonprocurement debarment and suspension system?
1471.115 How does an exclusion restrict a person's involvement in covered transactions?

- 1471.120 May we grant an exception to let an excluded person participate in a covered transaction?
1471.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
1471.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
1471.135 May FMCS exclude a person who is not currently participating in a nonprocurement transaction?
1471.140 How do I know if a person is excluded?
1471.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

- 1471.200 What is a covered transaction?
1471.205 Why is it important to know if a particular transaction is a covered transaction?
1471.210 Which nonprocurement transactions are covered transactions?
1471.215 Which nonprocurement transactions are not covered transactions?
1471.220 Are any procurement contracts included as covered transactions?
1471.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

- 1471.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
1471.305 May I enter into a covered transaction with an excluded or disqualified person?
1471.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
1471.315 May I use the services of an excluded person as a principal under a covered transaction?
1471.320 Must I verify that principals of my covered transactions are eligible to participate?
1471.325 What happens if I do business with an excluded person in a covered transaction?
1471.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

- 1471.335 What information must I provide before entering into a covered transaction with FMCS?
1471.340 If I disclose unfavorable information required under § 1471.335, will I be prevented from participating in the transaction?
1471.345 What happens if I fail to disclose the information required under § 1471.335?
1471.350 What must I do if I learn of the information required under § 1471.335?

after entering into a covered transaction with FMCS?

Disclosing Information—Lower Tier Participants

- 1471.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
- 1471.360 What happens if I fail to disclose the information required under § 1471.355?
- 1471.365 What must I do if I learn of information required under § 1471.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of FMCS Officials Regarding Transactions

- 1471.400 May I enter into a transaction with an excluded or disqualified person?
- 1471.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
- 1471.410 May I approve a participant's use of the services of an excluded person?
- 1471.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
- 1471.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
- 1471.425 When do I check to see if a person is excluded or disqualified?
- 1471.430 How do I check to see if a person is excluded or disqualified?
- 1471.435 What must I require of a primary tier participant?
- 1471.440 What method do I use to communicate those requirements to participants?
- 1471.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
- 1471.450 What action may I take if a primary tier participant fails to disclose the information required under § 1471.335?
- 1471.455 What may I do if a lower tier participant fails to disclose the information required under § 1471.355 to the next higher tier?

Subpart E—Excluded Parties List System

- 1471.500 What is the purpose of the Excluded Parties List System (EPLS)?
- 1471.505 Who uses the EPLS?
- 1471.510 Who maintains the EPLS?
- 1471.515 What specific information is in the EPLS?
- 1471.520 Who places the information into the EPLS?
- 1471.525 Whom do I ask if I have questions about a person in the EPLS?
- 1471.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

- 1471.600 How do suspension and debarment actions start?
- 1471.605 How does suspension differ from debarment?
- 1471.610 What procedures does FMCS use in suspension and debarment actions?

- 1471.615 How does FMCS notify a person of a suspension and debarment action?
- 1471.620 Do Federal agencies coordinate suspension and debarment actions?
- 1471.625 What is the scope of a suspension or debarment action?
- 1471.630 May FMCS impute the conduct of one person to another?
- 1471.635 May FMCS settle a debarment or suspension action?
- 1471.640 May a settlement include a voluntary exclusion?
- 1471.645 Do other Federal agencies know if FMCS agrees to a voluntary exclusion?

Subpart G—Suspension

- 1471.700 When may the suspending official issue a suspension?
- 1471.705 What does the suspending official consider in issuing a suspension?
- 1471.710 When does a suspension take effect?
- 1471.715 What notice does the suspending official give me if I am suspended?
- 1471.720 How may I contest a suspension?
- 1471.725 How much time do I have to contest a suspension?
- 1471.730 What information must I provide to the suspending official if I contest a suspension?
- 1471.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 1471.740 Are suspension proceedings formal?
- 1471.745 How is fact-finding conducted?
- 1471.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 1471.755 When will I know whether the suspension is continued or terminated?
- 1471.760 How long may my suspension last?

Subpart H—Debarment

- 1471.800 What are the causes for debarment?
- 1471.805 What notice does the debarring official give me if I am proposed for debarment?
- 1471.810 When does a debarment take effect?
- 1471.815 How may I contest a proposed debarment?
- 1471.820 How much time do I have to contest a proposed debarment?
- 1471.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 1471.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
- 1471.835 Are debarment proceedings formal?
- 1471.840 How is fact-finding conducted?
- 1471.845 What does the debarring official consider in deciding whether to debar me?
- 1471.850 What is the standard of proof in a debarment action?
- 1471.855 Who has the burden of proof in a debarment action?
- 1471.860 What factors may influence the debarring official's decision?
- 1471.865 How long may my debarment last?

- 1471.870 When do I know if the debarring official debars me?
- 1471.875 May I ask the debarring official to reconsider a decision to debar me?
- 1471.880 What factors may influence the debarring official during reconsideration?
- 1471.885 May the debarring official extend a debarment?

Subpart I—Definitions

- 1471.900 Adequate evidence.
- 1471.905 Affiliate.
- 1471.910 Agency.
- 1471.915 Agent or representative.
- 1471.920 Civil judgment.
- 1471.925 Conviction.
- 1471.930 Debarment.
- 1471.935 Debarring official.
- 1471.940 Disqualified.
- 1471.945 Excluded or exclusion.
- 1471.950 Excluded Parties List System.
- 1471.955 Indictment.
- 1471.960 Ineligible or ineligibility.
- 1471.965 Legal proceedings.
- 1471.970 Nonprocurement transaction.
- 1471.975 Notice.
- 1471.980 Participant.
- 1471.985 Person.
- 1471.990 Preponderance of the evidence.
- 1471.995 Principal.
- 1471.1000 Respondent.
- 1471.1005 State.
- 1471.1010 Suspending official.
- 1471.1015 Suspension.
- 1471.1020 Voluntary exclusion or voluntarily excluded

Subpart J—[Reserved]

Appendix to Part 1471—Covered Transactions

Authority: E.O. 12549, 3 CFR 1986 Comp., p. 189; E.O. 12698, 3 CFR 1989 Comp., p. 235; sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 29 U.S.C. 175a.

- 2. Part 1471 is further amended as set forth below.
- a. “[Agency noun]” is removed and “Federal Mediation and Conciliation Service” is added in its place wherever it occurs.
- b. “[Agency adjective]” is removed and “FMCS” is added in its place wherever it occurs.
- c. “[Agency head or designee]” is removed and “Agency Director” is added in its place wherever it occurs.
- 3. Section 1471.440 is added to read as follows:

§ 1471.440 What method do I use to communicate those requirements to participants?

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

- 4. Part 1472 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 1472—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

- Sec.
1472.100 What does this part do?
1472.105 Does this part apply to me?
1472.110 Are any of my Federal assistance awards exempt from this part?
1472.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

- 1472.200 What must I do to comply with this part?
1472.205 What must I include in my drug-free workplace statement?
1472.210 To whom must I distribute my drug-free workplace statement?
1472.215 What must I include in my drug-free awareness program?
1472.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
1472.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
1472.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

- 1472.300 What must I do to comply with this part if I am an individual recipient?
1472.301 [Reserved]

Subpart D—Responsibilities of FMCS Awarding Officials

- 1472.400 What are my responsibilities as an FMCS awarding official?

Subpart E—Violations of This Part and Consequences

- 1472.500 How are violations of this part determined for recipients other than individuals?
1472.505 How are violations of this part determined for recipients who are individuals?
1472.510 What actions will the Federal Government take against a recipient determined to have violated this part?
1472.515 Are there any exceptions to those actions?

Subpart F—Definitions

- 1472.605 Award.
1472.610 Controlled substance.
1472.615 Conviction.
1472.620 Cooperative agreement.
1472.625 Criminal drug statute.
1472.630 Debarment.
1472.635 Drug-free workplace.
1472.640 Employee.
1472.645 Federal agency or agency.
1472.650 Grant.
1472.655 Individual.
1472.660 Recipient.
1472.665 State.
1472.670 Suspension.

Authority: 41 U.S.C. 701, *et seq.*

■ 5. Part 1472 is further amended as set forth below.

■ a. “[Agency noun]” is removed and “Federal Mediation and Conciliation Service” is added in its place wherever it occurs.

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

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

■ d. “[Agency head]” is removed and “Agency Director” is added in its place wherever it occurs.

■ 6. Section 1472.510 (c) is further amended by removing “[CFR citation for the Federal Agency’s regulations implementing Executive Order 12549 and Executive Order 12689] and adding “29 CFR Part 1471” in its place.

■ 7. Section 1472.605(a)(2) is further amended by removing “[Agency-specific CFR citation]” and adding “29 CFR Part 1470” in its place.

DEPARTMENT OF THE TREASURY

31 CFR Parts 19 and 20

RIN 1505-AA86

FOR FURTHER INFORMATION CONTACT:

Brian Lee, Office of the Deputy Chief Financial Officer, 1500 Pennsylvania Avenue, NW., Attention: Room 6212, Metropolitan Square, Washington, DC 20220, (202) 622-0808, *Brian.Lee@do.treas.gov*.

ADDRESSES: Written comments should be sent to Brian Lee, Office of the Deputy Chief Financial Officer, Department of the Treasury, 1500 Pennsylvania Ave., NW., Attn: Metropolitan Square Room 6212, Washington, DC 20220. Comments may also be sent by electronic mail to *Brian.Lee@do.treas.gov*.

Comments should discuss the extent to which it may be appropriate to amend the interim final rule to reflect programs and matters that may be unique to the Department of the Treasury. Comments on matters that have been raised in connection with the prior common notice of proposed rulemaking and that are discussed elsewhere in the common preamble to this rule will not be considered.

List of Subjects

31 CFR Part 19

Administrative practice and procedure, Debarment and suspension, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements.

31 CFR Part 20

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

Dated: July 31, 2003.

Barry K. Hudson,

Deputy Chief Financial Officer.

■ For the reasons stated in the preamble, the Department of the Treasury amends 31 CFR chapter I as follows:

■ 1. Part 19 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 19—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

- 19.25 How is this part organized?
19.50 How is this part written?
19.75 Do terms in this part have special meanings?

Subpart A—General

- 19.100 What does this part do?
19.105 Does this part apply to me?
19.110 What is the purpose of the nonprocurement debarment and suspension system?
19.115 How does an exclusion restrict a person’s involvement in covered transactions?
19.120 May we grant an exception to let an excluded person participate in a covered transaction?
19.125 Does an exclusion under the nonprocurement system affect a person’s eligibility for Federal procurement contracts?
19.130 Does exclusion under the Federal procurement system affect a person’s eligibility to participate in nonprocurement transactions?
19.135 May the Department of the Treasury exclude a person who is not currently participating in a nonprocurement transaction?
19.140 How do I know if a person is excluded?
19.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

- 19.200 What is a covered transaction?
19.205 Why is it important to know if a particular transaction is a covered transaction?
19.210 Which nonprocurement transactions are covered transactions?
19.215 Which nonprocurement transactions are not covered transactions?
19.220 Are any procurement contracts included as covered transactions?
19.225 How do I know if a transaction in which I may participate is a covered transaction?

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

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

Disclosing Information—Primary Tier Participants

- 19.335 What information must I provide before entering into a covered transaction with the Department of the Treasury?
- 19.340 If I disclose unfavorable information required under § 19.335, will I be prevented from participating in the transaction?
- 19.345 What happens if I fail to disclose the information required under § 19.335?
- 19.350 What must I do if I learn of the information required under § 19.335 after entering into a covered transaction with the Department of the Treasury?

Disclosing Information—Lower Tier Participants

- 19.355 What Information must I provide to a higher tier participant before entering into a covered transaction with that participant?
- 19.360 What happens if I fail to disclose the information required under § 19.355?
- 19.365 What must I do if I learn of information required under § 19.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of Department of the Treasury Officials Regarding Transactions

- 19.400 May I enter into a transaction with an excluded or disqualified person?
- 19.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
- 19.410 May I approve a participant's use of the services of an excluded person?
- 19.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
- 19.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
- 19.425 When do I check to see if a person is excluded or disqualified?
- 19.430 How do I check to see if a person is excluded or disqualified?

- 19.435 What must I require of a primary tier participant?
- 19.440 What method do I use to communicate those requirements to participants?
- 19.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
- 19.450 What action may I take if a primary tier participant fails to disclose the information required under § 19.335?
- 19.455 What may I do if a lower tier participant fails to disclose the information required under § 19.355 to the next higher tier?

Subpart E—Excluded Parties List System

- 19.500 What is the purpose of the Excluded Parties List System (EPLS)?
- 19.505 Who uses the EPLS?
- 19.510 Who maintains the EPLS?
- 19.515 What specific information is in the EPLS?
- 19.520 Who places the information into the EPLS?
- 19.525 Whom do I ask if I have questions about a person in the EPLS?
- 19.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

- 19.600 How do suspension and debarment actions start?
- 19.605 How does suspension differ from debarment?
- 19.610 What procedures does the Department of the Treasury use in suspension and debarment actions?
- 19.615 How does the Department of the Treasury notify a person of a suspension and debarment action?
- 19.620 Do Federal agencies coordinate suspension and debarment actions?
- 19.625 What is the scope of a suspension or debarment action?
- 19.630 May the Department of the Treasury impute the conduct of one person to another?
- 19.635 May the Department of the Treasury settle a debarment or suspension action?
- 19.640 May a settlement include a voluntary exclusion?
- 19.645 Do other Federal agencies know if the Department of the Treasury agrees to a voluntary exclusion?

Subpart G—Suspension

- 19.700 When may the suspending official issue a suspension?
- 19.705 What does the suspending official consider in issuing a suspension?
- 19.710 When does a suspension take effect?
- 19.715 What notice does the suspending official give me if I am suspended?
- 19.720 How may I contest a suspension?
- 19.725 How much time do I have to contest a suspension?
- 19.730 What information must I provide to the suspending official if I contest a suspension?
- 19.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 19.740 Are suspension proceedings formal?
- 19.745 How is fact-finding conducted?

- 19.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 19.755 When will I know whether the suspension is continued or terminated?
- 19.760 How long may my suspension last?

Subpart H—Debarment

- 19.800 What are the causes for debarment?
- 19.805 What notice does the debarring official give me if I am proposed for debarment?
- 19.810 When does a debarment take effect?
- 19.815 How may I contest a proposed debarment?
- 19.820 How much time do I have to contest a proposed debarment?
- 19.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 19.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
- 19.835 Are debarment proceedings formal?
- 19.840 How is fact-finding conducted?
- 19.845 What does the debarring official consider in deciding whether to debar me?
- 19.850 What is the standard of proof in a debarment action?
- 19.855 Who has the burden of proof in a debarment action?
- 19.860 What factors may influence the debarring official's decision?
- 19.865 How long may my debarment last?
- 19.870 When do I know if the debarring official debars me?
- 19.875 May I ask the debarring official to reconsider a decision to debar me?
- 19.880 What factors may influence the debarring official during reconsideration?
- 19.885 May the debarring official extend a debarment?

Subpart I—Definitions

- 19.900 Adequate evidence.
- 19.905 Affiliate.
- 19.910 Agency.
- 19.915 Agent or representative.
- 19.920 Civil judgment.
- 19.925 Conviction.
- 19.930 Debarment.
- 19.935 Debarring official.
- 19.940 Disqualified.
- 19.945 Excluded or exclusion.
- 19.950 Excluded Parties List System.
- 19.955 Indictment.
- 19.960 Ineligible or ineligibility.
- 19.965 Legal proceedings.
- 19.970 Nonprocurement transaction.
- 19.975 Notice.
- 19.980 Participant.
- 19.985 Person.
- 19.990 Preponderance of the evidence.
- 19.995 Principal.
- 19.1000 Respondent.
- 19.1005 State.
- 19.1010 Suspending official.
- 19.1015 Suspension.
- 19.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—[Reserved]**Appendix to Part 19—Covered Transactions**

Authority: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 11738 (3 CFR, 1973 Comp., p. 799); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).??

■ 2. Part 19 is further amended as set forth below.

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

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

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

■ 3. Section 19.440 is added to read as follows:

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

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

■ 4. Part 20 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 20—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.

20.100 What does this part do?

20.105 Does this part apply to me?

20.110 Are any of my Federal assistance awards exempt from this part?

20.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

20.200 What must I do to comply with this part?

20.205 What must I include in my drug-free workplace statement?

20.210 To whom must I distribute my drug-free workplace statement?

20.215 What must I include in my drug-free awareness program?

20.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?

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

20.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

20.300 What must I do to comply with this part if I am an individual recipient?

20.301 [Reserved]

Subpart D—Responsibilities of Department of the Treasury Awarding Officials

20.400 What are my responsibilities as an Department of the Treasury awarding official?

Subpart E—Violations of This Part and Consequences

20.500 How are violations of this part determined for recipients other than individuals?

20.505 How are violations of this part determined for recipients who are individuals?

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

20.515 Are there any exceptions to those actions?

Subpart F—Definitions

20.605 Award.

20.610 Controlled substance.

20.615 Conviction.

20.620 Cooperative agreement.

20.625 Criminal drug statute.

20.630 Debarment.

20.635 Drug-free workplace.

20.640 Employee.

20.645 Federal agency or agency.

20.650 Grant.

20.655 Individual.

20.660 Recipient.

20.665 State.

20.670 Suspension.

Authority: 41 U.S.C. 701, *et seq.*

■ 5. Part 20 is further amended as set forth below.

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

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

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

■ d. “[Agency head]” is removed and “Secretary of the Treasury” is added in its place wherever it occurs.

■ 6. Section 20.510(c) is further amended by removing “[CFR citation for the Federal agency’s regulations implementing Executive Order 12549 and Executive Order 12689]” and adding “22 CFR Part 19” in its place.

■ 7. Section 20.605 is further amended by removing and reserving paragraph (a)(2).

DEPARTMENT OF DEFENSE**Office of the Secretary****32 CFR Parts 25 and 26****RIN 0790-AG86****FOR FURTHER INFORMATION CONTACT:**

Mark Herbst, Office of the Deputy Under Secretary of Defense (Science and Technology), 3080 Defense Pentagon, Washington, DC 20301-3080., telephone: (703) 696-0372.

List of Subjects**32 CFR Part 25**

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements

32 CFR Part 26

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements

Approved: July 31, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

■ Accordingly, as set forth in the common preamble, 32 CFR chapter I, subchapter C is amended as follows:

■ 1. Part 25 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 25—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

25.25 How is this part organized?

25.50 How is this part written?

25.75 Do terms in this part have special meanings?

Subpart A—General 25.100 What does this part do?

25.105 Does this part apply to me?

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

25.115 How does an exclusion restrict a person’s involvement in covered transactions?

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

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

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

25.135 May the DOD Component exclude a person who is not currently participating in a nonprocurement transaction?

25.140 How do I know if a person is excluded?

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

Subpart B—Covered Transactions

25.200 What is a covered transaction?
 25.205 Why is it important to know if a particular transaction is a covered transaction?
 25.210 Which nonprocurement transactions are covered transactions?
 25.215 Which nonprocurement transactions are not covered transactions?
 25.220 Are any procurement contracts included as covered transactions?
 25.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

25.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
 25.305 May I enter into a covered transaction with an excluded or disqualified person?
 25.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
 25.315 May I use the services of an excluded person as a principal under a covered transaction?
 25.320 Must I verify that principals of my covered transactions are eligible to participate?
 25.325 What happens if I do business with an excluded person in a covered transaction?
 25.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

25.335 What information must I provide before entering into a covered transaction with the DOD Component?
 25.340 If I disclose unfavorable information required under § 25.335, will I be prevented from participating in the transaction?
 25.345 What happens if I fail to disclose the information required under § 25.335?
 25.350 What must I do if I learn of the information required under § 25.335 after entering into a covered transaction with the DOD Component?

Disclosing Information—Lower Tier Participants

25.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
 25.360 What happens if I fail to disclose the information required under § 25.355?
 25.365 What must I do if I learn of information required under § 25.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of DOD Component Officials Regarding Transactions

25.400 May I enter into a transaction with an excluded or disqualified person?
 25.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
 25.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
 25.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
 25.425 When do I check to see if a person is excluded or disqualified?
 25.430 How do I check to see if a person is excluded or disqualified?
 25.435 What must I require of a primary tier participant?
 25.440 What method do I use to communicate those requirements to participants?
 25.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
 25.450 What action may I take if a primary tier participant fails to disclose the information required under § 25.335?
 25.455 What may I do if a lower tier participant fails to disclose the information required under § 25.355 to the next higher tier?

Subpart E—Excluded Parties List System

25.500 What is the purpose of the Excluded Parties List System (EPLS)?
 25.505 Who uses the EPLS?
 25.510 Who maintains the EPLS?
 25.515 What specific information is in the EPLS?
 25.520 Who places the information into the EPLS?
 25.525 Whom do I ask if I have questions about a person in the EPLS?
 25.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

25.600 How do suspension and debarment actions start?
 25.605 How does suspension differ from debarment?
 25.610 What procedures does the DOD Component use in suspension and debarment actions?
 25.615 How does the DOD Component notify a person of a suspension and debarment action?
 25.620 Do Federal agencies coordinate suspension and debarment actions?
 25.625 What is the scope of a suspension or debarment action?
 25.630 May the DOD Component impute the conduct of one person to another?
 25.635 May the DOD Component settle a debarment or suspension action?
 25.640 May a settlement include a voluntary exclusion?
 25.645 Do other Federal agencies know if the DOD Component agrees to a voluntary exclusion?

Subpart G—Suspension

25.700 When may the suspending official issue a suspension?

25.705 What does the suspending official consider in issuing a suspension?
 25.710 When does a suspension take effect?
 25.715 What notice does the suspending official give me if I am suspended?
 25.720 How may I contest a suspension?
 25.725 How much time do I have to contest a suspension?
 25.730 What information must I provide to the suspending official if I contest a suspension?
 25.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
 25.740 Are suspension proceedings formal?
 25.745 How is fact-finding conducted?
 25.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
 25.755 When will I know whether the suspension is continued or terminated?
 25.760 How long may my suspension last?

Subpart H—Debarment

25.800 What are the causes for debarment?
 25.805 What notice does the debarring official give me if I am proposed for debarment?
 25.810 When does a debarment take effect?
 25.815 How may I contest a proposed debarment?
 25.820 How much time do I have to contest a proposed debarment?
 25.825 What information must I provide to the debarring official if I contest a proposed debarment?
 25.830 Under what conditions do I get an additional opportunity to challenge the facts on which a proposed debarment is based?
 25.835 Are debarment proceedings formal?
 25.840 How is fact-finding conducted?
 25.845 What does the debarring official consider in deciding whether to debar me?
 25.850 What is the standard of proof in a debarment action?
 25.855 Who has the burden of proof in a debarment action?
 25.860 What factors may influence the debarring official's decision?
 25.865 How long may my debarment last?
 25.870 When do I know if the debarring official debars me?
 25.875 May I ask the debarring official to reconsider a decision to debar me?
 25.880 What factors may influence the debarring official during reconsideration?
 25.885 May the debarring official extend a debarment?

Subpart I—Definitions

25.900 Adequate evidence.
 25.905 Affiliate.
 25.910 Agency.
 25.915 Agent or representative.
 25.920 Civil judgment.
 25.925 Conviction.
 25.930 Debarment.
 25.935 Debarring official.
 25.940 Disqualified.
 25.942 DOD Component.
 25.945 Excluded or exclusion.
 25.950 Excluded Parties List System.
 25.955 Indictment.

- 25.960 Ineligible or ineligibility.
- 25.965 Legal proceedings.
- 25.970 Nonprocurement transaction.
- 25.975 Notice.
- 25.980 Participant.
- 25.985 Person.
- 25.990 Preponderance of the evidence.
- 25.995 Principal.
- 25.1000 Respondent.
- 25.1005 State.
- 25.1010 Suspending official.
- 25.1015 Suspension.
- 25.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—[Reserved]

Appendix to Part 25—Covered Transactions

Authority: E.O. 12549, 3 CFR 1986 Comp., p.189; E.O. 12689, 3 CFR 1989 Comp., p.235; sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note).

- 2. Part 25 is further amended as set forth below.
- a. “[Agency noun]” is removed and “DOD Component” is added in its place wherever it occurs.
- b. “[Agency adjective]” is removed and “DOD Component” is added in its place wherever it occurs.
- c. “[Agency head or designee]” is removed and “Head of the DOD Component or his or her designee” is added in its place wherever it occurs.
- 3. Section 25.440 is added to read as follows:

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

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

- 4. Section 25.935 is further amended by adding paragraph (b) to read as follows:

§ 25.935 Debarring official.

* * * * *

(b) DOD Components’ debarring officials for nonprocurement transactions are the same officials identified in 48 CFR part 209, subpart 209.4 as debarring officials for procurement contracts.

- 5. Section 25.942 is added to read as follows:

§ 25.942 DOD Component.

DOD Component means the Office of the Secretary of Defense, a Military Department, a Defense Agency, or the Office of Economic Adjustment.

- 6. Section 25.1010 is further amended by adding a paragraph (b) to read as follows:

§ 25.1010 Suspending official.

* * * * *

(b) DOD Components’ suspending officials for nonprocurement transactions are the same officials identified in 48 CFR part, subpart 209.4 as suspending officials for procurement contracts.

- 7. Part 26 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 26—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.

- 26.100 What does this part do?
- 26.105 Does this part apply to me?
- 26.110 Are any of my Federal assistance awards exempt from this part?
- 26.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

- 26.200 What must I do to comply with this part?
- 26.205 What must I include in my drug-free workplace statement?
- 26.210 To whom must I distribute my drug-free workplace statement?
- 26.215 What must I include in my drug-free awareness program?
- 26.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
- 26.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
- 26.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

- 26.300 What must I do to comply with this part if I am an individual recipient?
- 26.301 [Reserved]

Subpart D—Responsibilities of DOD Component Awarding Officials

- 26.400 What are my responsibilities as a DOD Component awarding official?

Subpart E—Violations of This Part and Consequences

- 26.500 How are violations of this part determined for recipients other than individuals?
- 26.505 How are violations of this part determined for recipients who are individuals?
- 26.510 What actions will the Federal Government take against a recipient determined to have violated this part?
- 26.515 Are there any exceptions to those actions?

Subpart F—Definitions

- 26.605 Award
- 26.610 Controlled substance.
- 26.615 Conviction.
- 26.620 Cooperative agreement.

- 26.625 Criminal drug statute.
- 26.630 Debarment.
- 26.632 DOD Component.
- 26.635 Drug-free workplace.
- 26.640 Employee.
- 26.645 Federal agency or agency.
- 26.650 Grant.
- 26.655 Individual.
- 26.660 Recipient.
- 26.665 State.
- 26.670 Suspension.

Authority: 41U.S.C.701, *et seq.*

- 8. Part 26 is further amended as set forth below.
- a. “[Agency noun]” is removed and “DOD Component” is added in its place wherever it occurs.
- b. “[Agency adjective]” is removed and “DOD Component” is added in its place wherever it occurs.
- c. “[Agency head or designee]” is removed and “Head of the DOD Component or his or her designee” is added in its place wherever it occurs.
- d. “[Agency head]” is removed and “Secretary of Defense or Secretary of a Military Department” is added in its place wherever it occurs.
- 9. Section 26.510(c) is further amended by removing “[CFR citation for the Federal agency’s regulations implementing Executive Order 12549 and Executive Order 12689]” and adding “32 CFR Part 25” in its place.
- 10. Section 26.605(a)(2) is further amended by removing “[Agency-specific CFR citation]” and adding “32 CFR part 33” in its place.
- 11. Section 26.632 is added to read as follows:

§ 26.632 DOD Component.

DOD Component means the Office of the Secretary of Defense, a Military Department, a Defense Agency, or the Office of Economic Adjustment.

DEPARTMENT OF EDUCATION

34 CFR Parts 84, 85, 668, and 682

RIN 1890-AA07

FOR FURTHER INFORMATION CONTACT:

Peter Wathen-Dunn, Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., room 6E211, Washington, DC 20202–2243. Telephone: 202–401–6700 or via e-mail: *Peter.Wathen-Dunn@ed.gov*. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed above.

SUPPLEMENTARY INFORMATION: The Department of Education (ED) did not receive any comments on its adoption of the common rule. We adopt as the final suspension and debarment regulation of ED the common rule as proposed by ED in its notice of proposed rulemaking (NPRM) (January 23, 2002 (67 FR 3326–333)).

Generally, in the NPRM ED made changes and additions to the common rule to ensure that ED's programs under Title IV of the Higher Education Act of 1965, as amended (HEA), were protected as they have been in the past under ED's adoption of the original common rule. See the NPRM at 67 FR 3326 for a complete description of the ED changes to the Common Rule. The Secretary also chose to adopt the common rule so that procurement transactions below a nonprocurement transaction are covered under ED programs at any tier if the transaction equals or exceeds \$25,000 or requires consent of the Department. The Secretary has also clarified some of the common rule definitions in the context of the HEA.

Because this final rule reorganizes part 85 of title 34 of the Code of Federal Regulations (CFR), some of the cross references to this part in parts 668 and 682 of the CFR are obsolete. Therefore, the Secretary makes conforming amendments to parts 668 and 682 of the CFR so they refer to the proper provisions in part 85.

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List of Subjects

4 CFR Part 84

Debarment and suspension, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

34 CFR Part 85

Administrative practice and procedure, Debarment and suspension, Drug abuse, Grant programs, Loan programs, Reporting and recordkeeping requirements.

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: September 8, 2003.

Rod Paige,
Secretary of Education.

■ For the reasons stated in the common preamble and in the specific preamble of the Department of Education (ED), the Secretary amends title 34 of the Code of Federal Regulations by adding part 84, revising part 85, and amending parts 668 and 682 to read as follows:

■ 1. Part 84 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 84—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.

- 84.100 What does this part do?
84.105 Does this part apply to me?
84.110 Are any of my Federal assistance awards exempt from this part?
84.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

- 84.200 What must I do to comply with this part?
84.205 What must I include in my drug-free workplace statement?
84.210 To whom must I distribute my drug-free workplace statement?
84.215 What must I include in my drug-free awareness program?
84.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
84.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
84.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

- 84.300 What must I do to comply with this part if I am an individual recipient?
84.301 [Reserved]

Subpart D—Responsibilities of ED Awarding Officials

- 84.400 What are my responsibilities as an ED awarding official?

Subpart E—Violations of This Part and Consequences

- 84.500 How are violations of this part determined for recipients other than individuals?
84.505 How are violations of this part determined for recipients who are individuals?
84.510 What actions will the Federal Government take against a recipient determined to have violated this part?
84.515 Are there any exceptions to those actions?

Subpart F—Definitions

- 84.605 Award.
84.610 Controlled substance.
84.615 Conviction.
84.620 Cooperative agreement.
84.625 Criminal drug statute.
84.630 Debarment.
84.635 Drug-free workplace.
84.640 Employee.
84.645 Federal agency or agency.
84.650 Grant.
84.655 Individual.
84.660 Recipient.
84.665 State.
84.670 Suspension.

Authority: E.O.s 12549 and 12689; 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455, Pub. L. 103–355, 108 Stat. 3243 at 3327, unless otherwise noted.

■ 2. Part 84 is further amended as follows:

- a. “[Agency noun]” is removed and “Department of Education” is added in its place wherever it occurs.
■ b. “[Agency adjective]” is removed and “ED” is added in its place wherever it occurs.
■ c. “[Agency head or designee]” is removed and “ED Deciding Official” is added in its place wherever it occurs.
■ d. “[Agency head]” is removed and “ED Deciding Official” is added in its place wherever it occurs.
■ 3. Section 84.510(c) is further amended by removing “[CFR citation for the Federal Agency’s regulations implementing Executive Order 12549 and Executive Order 12689]” and adding “34 CFR part 85” in its place.
■ 4. Section 84.605(a)(2) is further amended by removing “[Agency-specific CFR citation]” and adding “34 CFR part 85” in its place.
■ 5. Each section in part 84 is further amended by adding to the end of each section the following authority citation to read:

Authority: E.O.s 12549 and 12689; 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455, Pub. L. 103-355, 108 Stat. 3243 at 3327.

■ 6. Part 85 is revised to read as provided in instruction 1 at the end of the common preamble:

PART 85—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.
85.25 How is this part organized?
85.50 How is this part written?
85.75 Do terms in this part have special meanings?

Subpart A—General

85.100 What does this part do?
85.105 Does this part apply to me?
85.110 What is the purpose of the nonprocurement debarment and suspension system?
85.115 How does an exclusion restrict a person's involvement in covered transactions?
85.120 May we grant an exception to let an excluded person participate in a covered transaction?
85.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
85.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
85.135 May the Department of Education exclude a person who is not currently participating in a nonprocurement transaction?
85.140 How do I know if a person is excluded?
85.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

85.200 What is a covered transaction?
85.205 Why is it important to know if a particular transaction is a covered transaction?
85.210 Which nonprocurement transactions are covered transactions?
85.215 Which nonprocurement transactions are not covered transactions?
85.220 Are any procurement contracts included as covered transactions?
85.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

85.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
85.305 May I enter into a covered transaction with an excluded or disqualified person?
85.310 What must I do if a Federal agency excludes a person with whom I am

already doing business in a covered transaction?

85.315 May I use the services of an excluded person as a principal under a covered transaction?
85.320 Must I verify that principals of my covered transactions are eligible to participate?
85.325 What happens if I do business with an excluded person in a covered transaction?
85.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

85.335 What information must I provide before entering into a covered transaction with the Department of Education?
85.340 If I disclose unfavorable information required under § 85.335, will I be prevented from participating in the transaction?
85.345 What happens if I fail to disclose the information required under § 85.335?
85.350 What must I do if I learn of the information required under § 85.335 after entering into a covered transaction with the Department of Education?

Disclosing Information—Lower Tier Participants

85.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
85.360 What happens if I fail to disclose the information required under § 85.355?
85.365 What must I do if I learn of information required under § 85.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of ED Officials Regarding Transactions

85.400 May I enter into a transaction with an excluded or disqualified person?
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Subpart J—[Reserved]

Appendix to Part 85—Covered Transactions

Authority: E.O. 12549 (3 CFR 1986 Comp., p.189); E.O. 12698 (3 CFR 1989 Comp., p.235); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e-3, and 3474, unless otherwise noted.

- 7. Part 85 is further amended as follows:
 - a. “[Agency noun]” is removed and “Department of Education” is added in its place wherever it occurs.
 - b. “[Agency adjective]” is removed and “ED” is added in its place wherever it occurs.
 - c. “[Agency head or designee]” is removed and “ED Deciding Official” is added in its place wherever it occurs.
 - d. Each section in part 85 is further amended by adding to the end of each section the following authority citation to read:

Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455, Pub. L. 103–355, 108 Stat. 3243 at 3327.

- 8. Section 85.220 is further amended by adding new paragraphs (c) and (d) to read as follows.

§ 85.220 Are any procurement contracts included as covered transactions?

* * * * *

(c) The contract is awarded by any contractor, subcontractor, supplier, consultant or its agent or representative in any transaction, regardless of tier, that is funded or authorized under ED programs and is expected to equal or exceed \$25,000.

(d) The contract is to perform services as a third party servicer in connection with a title IV, HEA program.

- 9. Section 85.310 is further amended by adding paragraph (c) to read as follows:

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

* * * * *

(c) If you are a title IV, HEA participant, you may not continue a title IV, HEA transaction with an excluded person after the effective date of the exclusion unless permitted by 34 CFR 668.26, 682.702, or 668.94, as applicable.

- 10. Section 85.315 is further amended by adding paragraph (c) to read as follows:

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

* * * * *

(c) *Title IV, HEA transactions.* If you are a title IV, HEA participant—

(1) You may not renew or extend the term of any contract or agreement for the services of an excluded person as a principal with respect to a title IV, HEA transaction; and

(2) You may not continue to use the services of that excluded person as a principal under this kind of an agreement or arrangement more than 90 days after you learn of the exclusion or after the close of the Federal fiscal year in which the exclusion takes effect, whichever is later.

- 11. Section 85.415 is further amended by adding a new paragraph (c) to read as follows.

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

* * * * *

(c) *Title IV, HEA transactions.* If you are a title IV, HEA participant—

(1) You may not renew or extend the term of any contract or agreement for the services of an excluded person as a principal with respect to a title IV, HEA transaction; and

(2) You may not continue to use the services of that excluded person as a principal under this kind of an agreement or arrangement more than 90 days after you learn of the exclusion or after the close of the Federal fiscal year in which the exclusion takes effect, whichever is later.

- 12. Subpart D of part 85 is further amended by adding § 85.440 to read as follows:

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

(a) To communicate those requirements, you must include a term or condition in the transaction requiring each participant's compliance with subpart C of this part and requiring the participant to include a similar term or condition in lower-tier covered transactions.

(b) The failure of a participant to include a requirement to comply with Subpart C of this part in the agreement with a lower tier participant does not affect the lower tier participant's responsibilities under this part.

Authority: E.O. 12549 (3 CFR, 1985 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455 of Pub. L. 103–355, 108 Stat. 3243 at 3327.

- 13. Subpart F of part 85 is further amended by adding a new § 85.611 to read as follows:

§ 85.611 What procedures do we use for a suspension or debarment action involving a title IV, HEA transaction?

(a) If we suspend a title IV, HEA participant under Executive Order 12549, we use the following procedures to ensure that the suspension prevents participation in title IV, HEA transactions:

(1) The notification procedures in § 85.715.

(2) Instead of the procedures in § 85.720 through § 85.760, the procedures in 34 CFR part 668, subpart G or 34 CFR part 682, subpart D or G as applicable.

(3) In addition to the findings and conclusions required by 34 CFR part 668, subpart G or 34 CFR part 682, subpart D or G, the suspending official, and, on appeal, the Secretary determines whether there is sufficient cause for suspension as explained in § 85.700.

(b) If we debar a title IV, HEA participant under E.O. 12549, we use the following procedures to ensure that the debarment also precludes participation in title IV, HEA transactions:

(1) The notification procedures in § 85.805 and § 85.870.

(2) Instead of the procedures in § 85.810 through § 85.885, the procedures in 34 CFR part 668, subpart G or 34 CFR part 682, subpart D or G, as applicable.

(3) On appeal from a decision debaring a title IV, HEA participant, we issue a final decision after we receive any written materials from the parties.

(4) In addition to the findings and conclusions required by 34 CFR part 668, subpart G or 34 CFR part 682, subpart D or G, the debaring official, and, on appeal, the Secretary determines whether there is sufficient cause for debarment as explained in § 85.800.

Authority: E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455 of Pub. L. 103-355, 108 Stat. 3243 at 3327.

■ 14. Subpart F of Part 85 is further amended by adding § 85.612 to read as follows:

§ 85.612 When does an exclusion by another agency affect the ability of the excluded person to participate in a title IV, HEA transaction?

(a) If a title IV, HEA participant is debarred by another agency under E.O. 12549, using procedures described in paragraph (d) of this section, that party is not eligible to enter into title IV, HEA transactions for the duration of the debarment.

(b)(1) If a title IV, HEA participant is suspended by another agency under E.O. 12549 or under a proposed debarment under the Federal Acquisition Regulation (FAR) (48 CFR part 9, subpart 9.4), using procedures described in paragraph (d) of this section, that party is not eligible to enter into title IV, HEA transactions for the duration of the suspension.

(2)(i) The suspension of title IV, HEA eligibility as a result of suspension by another agency lasts for at least 60 days.

(ii) If the excluded party does not object to the suspension, the 60-day period begins on the 35th day after that agency issues the notice of suspension.

(iii) If the excluded party objects to the suspension, the 60-day period begins on the date of the decision of the suspending official.

(3) The suspension of title IV, HEA eligibility does not end on the 60th day if—

(i) The excluded party agrees to an extension; or

(ii) Before the 60th day we begin a limitation or termination proceeding against the excluded party under 34 CFR part 668, subpart G or part 682, subpart D or G.

(c)(1) If a title IV, HEA participant is debarred or suspended by another Federal agency—

(i) We notify the participant whether the debarment or suspension prohibits participation in title IV, HEA transactions; and

(ii) If participation is prohibited, we state the effective date and duration of the prohibition.

(2) If a debarment or suspension by another agency prohibits participation in title IV, HEA transactions, that prohibition takes effect 20 days after we mail notice of our action.

(3) If ED or another Federal agency suspends a title IV, HEA participant, we determine whether grounds exist for an emergency action against the participant under 34 CFR part 668, subpart G or part 682, subpart D or G, as applicable.

(4) We use the procedures in § 85.611 to exclude a title IV, HEA participant excluded by another Federal agency using procedures that did not meet the standards in paragraph (d) of this section.

(d) If a title IV, HEA participant is excluded by another agency, we debar, terminate, or suspend the participant— as provided under this part, 34 CFR part 668, or 34 CFR part 682, as applicable— if that agency followed procedures that gave the excluded party—

(1) Notice of the proposed action;

(2) An opportunity to submit and have considered evidence and argument to oppose the proposed action;

(3) An opportunity to present its objection at a hearing—

(i) At which the agency has the burden of persuasion by a preponderance of the evidence that there is cause for the exclusion; and

(ii) Conducted by an impartial person who does not also exercise prosecutorial or investigative responsibilities with respect to the exclusion action;

(4) An opportunity to present witness testimony, unless the hearing official finds that there is no genuine dispute about a material fact;

(5) An opportunity to have agency witnesses with personal knowledge of material facts in genuine dispute testify about those facts, if the hearing official determines their testimony to be needed, in light of other available evidence and witnesses; and

(6) A written decision stating findings of fact and conclusions of law on which the decision is rendered.

Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189), E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455 of Pub. L. 103-355, 108 Stat. 3243 at 3327.

■ 15. Subpart G is amended by adding a new § 85.711, to read as follows:

§ 85.711 When does a suspension affect title IV, HEA transactions?

(a) A suspension under § 85.611(a) takes effect immediately if the Secretary takes an emergency action under 34 CFR part 668, subpart G or 34 CFR part 682, subpart D or G at the same time the Secretary issues the suspension.

(b)(1) Except as provided under paragraph (a) of this section, a suspension under § 85.611(a) takes effect 20 days after those procedures are complete.

(2) If the respondent appeals the suspension to the Secretary before the expiration of the 20 days under paragraph (b)(1) of this section, the suspension takes effect when the respondent receives the Secretary's decision.

Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189), E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455 of Pub. L. 103-355, 108 Stat. 3243 at 3327.

■ 16. Subpart H is amended by adding a new § 85.811 to read as follows:

§ 85.811 When does a debarment affect title IV, HEA transactions?

(a) A debarment under § 85.611(b) takes effect 30 days after those procedures are complete.

(b) If the respondent appeals the debarment to the Secretary before the expiration of the 30 days under paragraph (a) of this section, the

debarment takes effect when the respondent receives the Secretary's decision.

Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189) E.O. 12689 (3 CFR, Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455 of Pub. L. 103-355, 108 Stat. 3243 at 3327.

■ 17. Subpart I of part 85 is further amended by adding § 85.942 to read as follows:

§ 85.942 ED Deciding Official.

The ED Deciding Official is an ED officer who has delegated authority under the procedures of the Department of Education to decide whether to affirm a suspension or enter a debarment.

Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189), E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455 of Pub. L. 103-355, 108 Stat. 3243 at 3327.

■ 18. Subpart I of part 85 is further amended by adding § 85.952 to read as follows:

§ 85.952 HEA.

HEA means the Higher Education Act of 1965, as amended.

■ 19. Section 85.995 is further amended by adding paragraph (c) to read as follows:

§ 85.995 Principal.

* * * * *

(c) For the purposes of Department of Education title IV, HEA transactions—

(1) A third-party servicer, as defined in 34 CFR 668.2 or 682.200; or

(2) Any person who provides services described in 34 CFR 668.2 or 682.200 to a title IV, HEA participant, whether or not that person is retained or paid directly by the title IV, HEA participant.

* * * * *

■ 20. Subpart I of part 85 is further amended by adding § 85.1016 to read as follows:

§ 85.1016 Title IV, HEA participant.

A *title IV, HEA participant* is—

(a) An institution described in 34 CFR 600.4, 600.5, or 600.6 that provides postsecondary education; or

(b) A lender, third-party servicer, or guaranty agency, as those terms are defined in 34 CFR 668.2 or 682.200.

Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455 of Pub. L. 103-355, 108 Stat. 3243 at 3327.

■ 21. Subpart I of part 85 is further amended by adding § 85.1017 to read as follows:

§ 85.1017 Title IV, HEA program.

A *title IV, HEA program* includes any program listed in 34 CFR 668.1(c).

Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p.

235); 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455 of Pub. L. 103-355, 108 Stat. 3243 at 3327.

■ 22. Subpart I of part 85 is further amended by adding § 85.1018 to read as follows:

§ 85.1018 Title IV, HEA transaction.

A *title IV, HEA transaction* includes:

(a) A disbursement or delivery of funds provided under a title IV, HEA program to a student or borrower;

(b) A certification by an educational institution of eligibility for a loan under a title IV, HEA program;

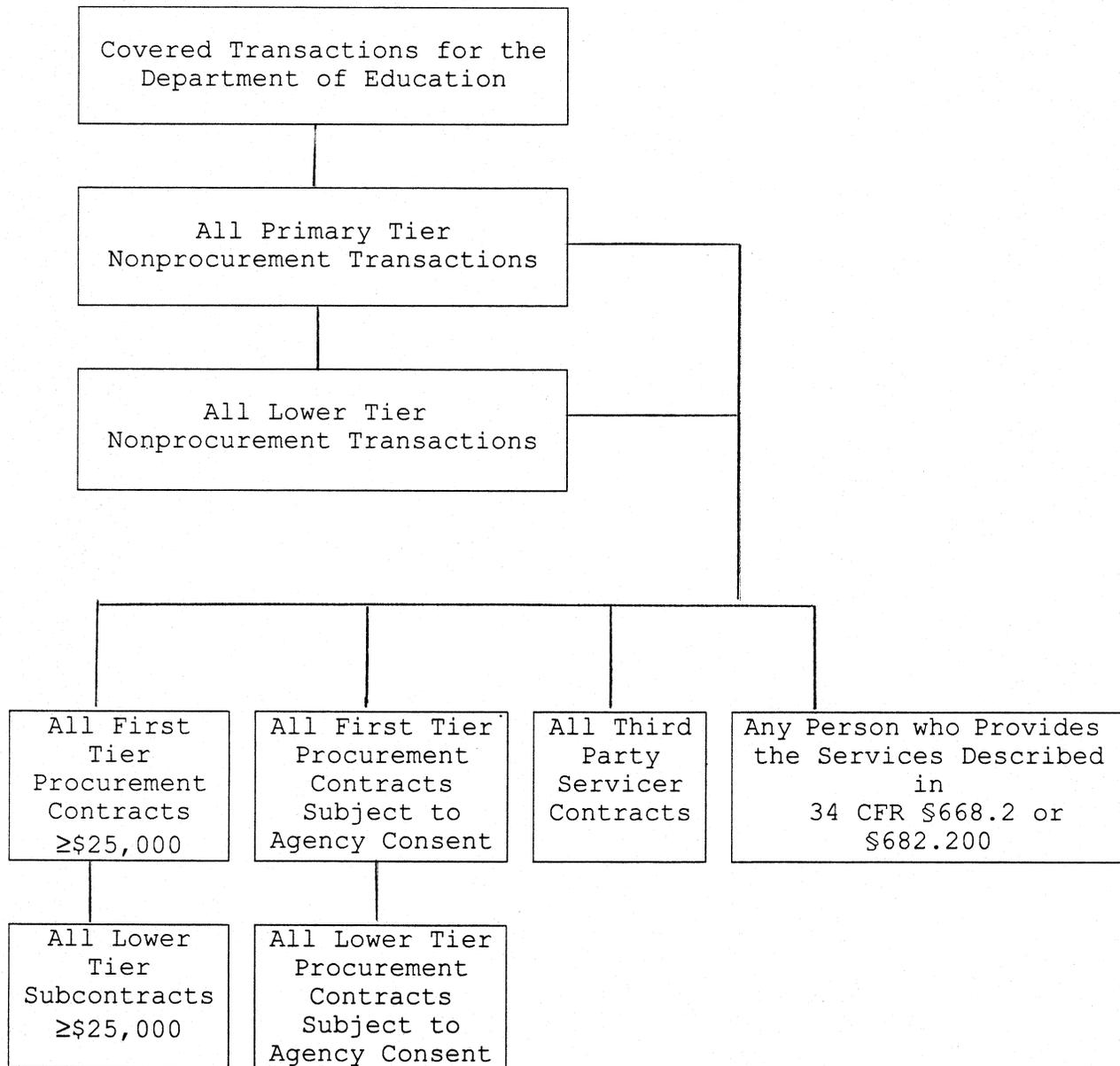
(c) Guaranteeing a loan made under a title IV, HEA program; and

(d) The acquisition or exercise of any servicing responsibility for a grant, loan, or work study assistance under a title IV, HEA program.

Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189) E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455 of Pub. L. 103-355, 108 Stat. 3243 at 3327.

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

Appendix to Part 85—Covered Transactions for ED Covered Transactions—[Reserved]



PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 24. The authority citation for part 668 is revised to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1085, 1088, 1091, 1092, 1094, 1099c, and 1099c-1, unless otherwise noted.

§ 668.82 [Amended]

- 25. Amend § 668.82 as follows:
 - a. In paragraph (e)(1)(i)(B), by removing the words “Cause exists under 34 CFR 85.305 or 85.405” and adding, in their place, the words “Cause exists under 34 CFR 85.700 or 85.800”.
 - b. In paragraphs (f)(1) and (f)(2)(i), by removing the citation “34 CFR 85.201(c)” and adding, in its place, the citation “34 CFR 85.612(d)”.

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

■ 26. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087-2, unless otherwise noted.

§ 682.416 [Amended]

- 27. Amend § 682.416(d)(1)(ii)(B) by removing the words “cause under 34 CFR 85.305 or 85.405” and adding, in their place, the words “cause under 34 CFR 85.700 or 85.800.”

§ 682.705 [Amended]

- 28. Amend § 682.705 by removing paragraph (a)(3).

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1209 and 1212

RIN 3095-AB04

FOR FURTHER INFORMATION CONTACT:

Nancy Allard at Policy and Communications Staff (NPOL), Room 4100, 8601 Adelphi Road, College Park, Maryland 20740-6001, 301-837-1477, or *comments@nara.gov*.

List of Subjects

36 CFR Part 1209

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

36 CFR Part 1212

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

Dated: July 24, 2003.

John W. Carlin,

Archivist of the United States.

■ For the reasons stated in the common preamble, the National Archives and Records Administration amends 36 CFR chapter XII, as follows:

■ 1. Part 1209 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 1209—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

- 1209.25 How is this part organized?
1209.50 How is this part written?
1209.75 Do terms in this part have special meanings?

Subpart A—General

- 1209.100 What does this part do?
1209.105 Does this part apply to me?
1209.110 What is the purpose of the nonprocurement debarment and suspension system?
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1209.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
1209.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
1209.135 May NARA exclude a person who is not currently participating in a nonprocurement transaction?
1209.140 How do I know if a person is excluded?
1209.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

- 1209.200 What is a covered transaction?
1209.205 Why is it important to know if a particular transaction is a covered transaction?
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1209.220 Are any procurement contracts included as covered transactions?
1209.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

- 1209.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
1209.305 May I enter into a covered transaction with an excluded or disqualified person?
1209.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
1209.315 May I use the services of an excluded person as a principal under a covered transaction?
1209.320 Must I verify that principals of my covered transactions are eligible to participate?
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1209.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

- 1209.335 What information must I provide before entering into a covered transaction with NARA?
1209.340 If I disclose unfavorable information required under § 1209.335, will I be prevented from participating in the transaction?
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1209.350 What must I do if I learn of the information required under § 1209.335 after entering into a covered transaction with NARA?

Disclosing Information—Lower Tier Participants

- 1209.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
1209.360 What happens if I fail to disclose the information required under § 1209.355?
1209.365 What must I do if I learn of information required under § 1209.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of NARA Officials Regarding Transactions

- 1209.400 May I enter into a transaction with an excluded or disqualified person?
1209.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
1209.410 May I approve a participant's use of the services of an excluded person?
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1209.425 When do I check to see if a person is excluded or disqualified?

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1209.450 What action may I take if a primary tier participant fails to disclose the information required under § 1209.335?
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- 1209.600 How do suspension and debarment actions start?
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- 1209.800 What are the causes for debarment?
 1209.805 What notice does the debarring official give me if I am proposed for debarment?
 1209.810 When does a debarment take effect?
 1209.815 How may I contest a proposed debarment?
 1209.820 How much time do I have to contest a proposed debarment?
 1209.825 What information must I provide to the debarring official if I contest a proposed debarment?
 1209.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
 1209.835 Are debarment proceedings formal?
 1209.840 How is fact-finding conducted?
 1209.845 What does the debarring official consider in deciding whether to debar me?
 1209.850 What is the standard of proof in a debarment action?
 1209.855 Who has the burden of proof in a debarment action?
 1209.860 What factors may influence the debarring official's decision?
 1209.865 How long may my debarment last?
 1209.870 When do I know if the debarring official debars me?
 1209.875 May I ask the debarring official to reconsider a decision to debar me?
 1209.880 What factors may influence the debarring official during reconsideration?
 1209.885 May the debarring official extend a debarment?

Subpart I—Definitions

- 1209.900 Adequate evidence.
 1209.905 Affiliate.
 1209.910 Agency.
 1209.915 Agent or representative.
 1209.920 Civil judgment.
 1209.925 Conviction.
 1209.930 Debarment.
 1209.935 Debarring official.
 1209.940 Disqualified.
 1209.945 Excluded or exclusion.
 1209.950 Excluded Parties List System.
 1209.955 Indictment.
 1209.960 Ineligible or ineligibility.
 1209.965 Legal proceedings.
 1209.970 Nonprocurement transaction.
 1209.975 Notice.
 1209.980 Participant.
 1209.985 Person.
 1209.990 Preponderance of the evidence.
 1209.995 Principal.
 1209.1000 Respondent.
 1209.1005 State.
 1209.1010 Suspending official.
 1209.1015 Suspension.

- 1209.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—[Reserved]

Appendix to Part 1209—Covered Transactions

Authority: 44 U.S.C. 2104(a); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235);.

- 2. Part 1209 is further amended as set forth below.
 - a. “[Agency noun]” is removed and “NARA” is added in its place wherever it occurs.
 - b. “[Agency adjective]” is removed and “NARA” is added in its place wherever it occurs.
 - c. “[Agency head or designee]” is removed and “Archivist of the United States or designee” is added in its place wherever it occurs.
- 3. Section 1209.440 is added to read as follows:

§ 1209.440 What method do I use to communicate those requirements to participants?

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

- 4. Part 1212 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 1212—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.

- 1212.100 What does this part do?
 1212.105 Does this part apply to me?
 1212.110 Are any of my Federal assistance awards exempt from this part?
 1212.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

- 1212.200 What must I do to comply with this part?
 1212.205 What must I include in my drug-free workplace statement?
 1212.210 To whom must I distribute my drug-free workplace statement?
 1212.215 What must I include in my drug-free awareness program?
 1212.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
 1212.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
 1212.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

- 1212.300 What must I do to comply with this part if I am an individual recipient?
 1212.301 [Reserved]

Subpart D—Responsibilities of NARA Awarding Officials

- 1212.400 What are my responsibilities as a NARA awarding official?

Subpart E—Violations of This Part and Consequences

- 1212.500 How are violations of this part determined for recipients other than individuals?
 1212.505 How are violations of this part determined for recipients who are individuals?
 1212.510 What actions will the Federal Government take against a recipient determined to have violated this part?
 1212.515 Are there any exceptions to those actions?

Subpart F—Definitions

- 1212.605 Award.
 1212.610 Controlled substance.
 1212.615 Conviction.
 1212.620 Cooperative agreement.
 1212.625 Criminal drug statute
 1212.630 Debarment.
 1212.635 Drug-free workplace.
 1212.640 Employee.
 1212.645 Federal agency or agency.
 1212.650 Grant.
 1212.655 Individual.
 1212.660 Recipient.
 1212.665 State.
 1212.670 Suspension.

Authority: 41 U.S.C. 701, *et seq.*; 44 U.S.C. 2104(a).

- 5. Part 1212 is further amended as set forth below.
 - a. “[Agency noun]” is removed and “NARA” is added in its place wherever it occurs.
 - b. “[Agency adjective]” is removed and “NARA” is added in its place wherever it occurs.
 - c. “[Agency head or designee]” is removed and “Archivist of the United States or designee” is added in its place wherever it occurs.
 - d. “[Agency head]” is removed and “Archivist of the United States or designee” is added in its place wherever it occurs.
- 6. Section 1212.510(c) is further amended by removing “[CFR citation for the Federal agency's regulations implementing Executive Order 12549 and Executive Order 12689]” and adding “36 CFR part 1209” in its place.
- 7. Section 1212.605(a)(2) is further amended by removing “[Agency-specific CFR citation]” and adding “36 CFR part 1207” in its place.

DEPARTMENT OF VETERANS AFFAIRS**38 CFR Parts 44 and 48****RIN 2900-AK16**

FOR FURTHER INFORMATION CONTACT: Mr. Robert D. Finneran, Assistant Director for Loan Policy and Valuation (262), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington, DC 20420, (202) 273-7369, e-mail: lgryfinn@vba.va.gov.

List of Subjects*38 CFR Part 44*

Administrative practice and procedure, Condominiums, Debarment and suspension, Grant programs, Handicapped, Housing loan programs—housing and community development, Manufactured homes, Reporting and recordkeeping requirements, Veterans.

38 CFR Part 48

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

Approved: August 4, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

■ For the reasons stated in the common preamble, the Department of Veterans Affairs amends 38 CFR Chapter I, as follows:

■ 1. Part 44 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 44—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

- 44.25 How is this part organized?
44.50 How is this part written?
44.75 Do terms in this part have special meanings?

Subpart A—General

- 44.100 What does this part do?
44.105 Does this part apply to me?
44.110 What is the purpose of the nonprocurement debarment and suspension system?
44.115 How does an exclusion restrict a person's involvement in covered transactions?
44.120 May we grant an exception to let an excluded person participate in a covered transaction?
44.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
44.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?

- 44.135 May the Department of Veterans Affairs exclude a person who is not currently participating in a nonprocurement transaction?
44.140 How do I know if a person is excluded?
44.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

- 44.200 What is a covered transaction?
44.205 Why is it important to know if a particular transaction is a covered transaction?
44.210 Which nonprocurement transactions are covered transactions?
44.215 Which nonprocurement transactions are not covered transactions?
44.220 Are any procurement contracts included as covered transactions?
44.225 How do I know if a transaction in which I may participate is a covered transaction?

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

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

Disclosing Information—Primary Tier Participants

- 44.335 What information must I provide before entering into a covered transaction with the Department of Veterans Affairs?
44.340 If I disclose unfavorable information required under § 44.335, will I be prevented from participating in the transaction?
44.345 What happens if I fail to disclose the information required under § 44.335?
44.350 What must I do if I learn of the information required under § 44.335 after entering into a covered transaction with the Department of Veterans Affairs?

Disclosing Information—Lower Tier Participants

- 44.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
44.360 What happens if I fail to disclose the information required under § 44.355?

- 44.365 What must I do if I learn of information required under § 44.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of Department of Veterans Affairs Officials Regarding Transactions

- 44.400 May I enter into a transaction with an excluded or disqualified person?
44.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
44.410 May I approve a participant's use of the services of an excluded person?
44.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
44.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
44.425 When do I check to see if a person is excluded or disqualified?
44.430 How do I check to see if a person is excluded or disqualified?
44.435 What must I require of a primary tier participant?
44.440 What method do I use to communicate those requirements to participants?
44.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
44.450 What action may I take if a primary tier participant fails to disclose the information required under § 44.335?
44.455 What may I do if a lower tier participant fails to disclose the information required under § 44.355 to the next higher tier?

Subpart E—Excluded Parties List System

- 44.500 What is the purpose of the Excluded Parties List System (EPLS)?
44.505 Who uses the EPLS?
44.510 Who maintains the EPLS?
44.515 What specific information is in the EPLS?
44.520 Who places the information into the EPLS?
44.525 Whom do I ask if I have questions about a person in the EPLS?
44.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

- 44.600 How do suspension and debarment actions start?
44.605 How does suspension differ from debarment?
44.610 What procedures does the Department of Veterans Affairs use in suspension and debarment actions?
44.615 How does the Department of Veterans Affairs notify a person of a suspension and debarment action?
44.620 Do Federal agencies coordinate suspension and debarment actions?
44.625 What is the scope of a suspension or debarment action?
44.630 May the Department of Veterans Affairs impute the conduct of one person to another?
44.635 May the Department of Veterans Affairs settle a debarment or suspension action?

- 44.640 May a settlement include a voluntary exclusion?
- 44.645 Do other Federal agencies know if the Department of Veterans Affairs agrees to a voluntary exclusion?

Subpart G—Suspension 44.700 When may the suspending official issue a suspension?

- 44.705 What does the suspending official consider in issuing a suspension?
- 44.710 When does a suspension take effect?
- 44.715 What notice does the suspending official give me if I am suspended?
- 44.720 How may I contest a suspension?
- 44.725 How much time do I have to contest a suspension?
- 44.730 What information must I provide to the suspending official if I contest a suspension?
- 44.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 44.740 Are suspension proceedings formal?
- 44.745 How is fact-finding conducted?
- 44.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 44.755 When will I know whether the suspension is continued or terminated?
- 44.760 How long may my suspension last?

Subpart H—Debarment 44.800 What are the causes for debarment?

- 44.805 What notice does the debarment official give me if I am proposed for debarment?
- 44.810 When does a debarment take effect?
- 44.815 How may I contest a proposed debarment?
- 44.820 How much time do I have to contest a proposed debarment?
- 44.825 What information must I provide to the debarment official if I contest a proposed debarment?
- 44.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
- 44.835 Are debarment proceedings formal?
- 44.840 How is fact-finding conducted?
- 44.845 What does the debarment official consider in deciding whether to debar me?
- 44.850 What is the standard of proof in a debarment action?
- 44.855 Who has the burden of proof in a debarment action?
- 44.860 What factors may influence the debarment official's decision?
- 44.865 How long may my debarment last?
- 44.870 When do I know if the debarment official debar me?
- 44.875 May I ask the debarment official to reconsider a decision to debar me?
- 44.880 What factors may influence the debarment official during reconsideration?
- 44.885 May the debarment official extend a debarment?

Subpart I—Definitions

- 44.900 Adequate evidence.
- 44.905 Affiliate.
- 44.910 Agency.
- 44.915 Agent or representative.
- 44.920 Civil judgment.

- 44.925 Conviction.
- 44.930 Debarment.
- 44.935 Debarring official.
- 44.940 Disqualified.
- 44.945 Excluded or exclusion.
- 44.950 Excluded Parties List System.
- 44.955 Indictment.
- 44.960 Ineligible or ineligibility.
- 44.965 Legal proceedings.
- 44.970 Nonprocurement transaction.
- 44.975 Notice.
- 44.980 Participant.
- 44.985 Person.
- 44.990 Preponderance of the evidence.
- 44.995 Principal.
- 44.1000 Respondent.
- 44.1005 State.
- 44.1010 Suspending official.
- 44.1015 Suspension.
- 44.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—[Reserved]

Appendix to Part 44—Covered Transactions

Authority: 38 U.S.C. 501 and 38 U.S.C. 3703(c); Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 11738 (3 CFR, 1973 Comp., p.799); E.O. 12549 (3 CFR 1986 comp., p.189) E.O. 12689 (3 CFR 1989 Comp., p. 235.)

- 2. Part 44 is further amended as set forth below.
 - a. “[Agency noun]” is removed and “Department of Veterans Affairs” is added in its place wherever it occurs.
 - b. “[Agency adjective]” is removed and “Department of Veterans Affairs” is added in its place wherever it occurs.
 - c. “[Agency head or designee]” is removed and “Secretary” is added in its place wherever it occurs.

- 3. Section 44.440 is added to read as follows:

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

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

- 4. Section 44.935 is further amended by adding paragraph (b) to read as follows:

§ 44.935 Debarring official.

- * * * * *
- (b) For the Department of Veterans Affairs the debarment official is:
 - (1) For the Veterans Health Administration, the Under Secretary for Health;
 - (2) For the Veterans Benefits Administration, the Under Secretary for Benefits; and
 - (3) For the National Cemetery Administration, the Deputy Under Secretary for Operations.

- 5. Section 44.995 is further amended by adding a paragraph (c) to read as follows:

§ 44.995 Principal.

* * * * *

(c) In the Department of Veterans Affairs loan guaranty program, principals include, but are not limited to the following:

- (1) Loan officers.
- (2) Loan solicitors,
- (3) Loan processors.
- (4) Loan servicers.
- (5) Loan supervisors.
- (6) Mortgage brokers.
- (7) Office managers.
- (8) Staff appraisers and inspectors.
- (9) Fee appraisers and inspectors.
- (10) Underwriters.
- (11) Bonding companies.
- (12) Real estate agents and brokers.
- (13) Management and marketing agents.

(14) Accountants, consultants, investments bankers, architects, engineers, attorneys, and others in a business relationship with participants in connection with a covered transaction under the Department of Veterans Affairs loan guaranty program.

(15) Contractors involved in the construction, improvement or repair of properties financed with Department of Veterans Affairs guaranteed loans.

(16) Closing Agents.

- 6. Section 44.1010 is further amended by adding paragraph (b) to read as follows:

§ 44.1010 Suspending official.

* * * * *

(b) For the Department of Veterans Affairs the suspending official is:

- (1) For the Veterans Health Administration, the Under Secretary for Health;
- (2) For the Veterans Benefits Administration, the Under Secretary for Benefits; and
- (3) For the National Cemetery Administration, the Deputy Under Secretary for Operations.

- 7. Part 48 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 48—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

- Sec.
- 48.100 What does this part do?
- 48.105 Does this part apply to me?
- 48.110 Are any of my Federal assistance awards exempt from this part?
- 48.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

- 48.200 What must I do to comply with this part?
- 48.205 What must I include in my drug-free workplace statement?
- 48.210 To whom must I distribute my drug-free workplace statement?
- 48.215 What must I include in my drug-free awareness program?
- 48.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
- 48.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
- 48.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

- 48.300 What must I do to comply with this part if I am an individual recipient?
- 48.301 [Reserved]

Subpart D—Responsibilities of the Department of Veterans Affairs Awarding Officials

- 48.400 What are my responsibilities as a Department of Veterans Affairs awarding official?

Subpart E—Violations of This Part and Consequences

- 48.500 How are violations of this part determined for recipients other than individuals?
- 48.505 How are violations of this part determined for recipients who are individuals?
- 48.510 What actions will the Federal Government take against a recipient determined to have violated this part?
- 48.515 Are there any exceptions to those actions?

Subpart F—Definitions

- 48.605 Award.
- 48.610 Controlled substance.
- 48.615 Conviction.
- 48.620 Cooperative agreement.
- 48.625 Criminal drug statute.
- 48.630 Debarment.
- 48.635 Drug-free workplace.
- 48.640 Employee.
- 48.645 Federal agency or agency.
- 48.650 Grant.
- 48.655 Individual.
- 48.660 Recipient.
- 48.665 State.
- 48.670 Suspension.

Authority: 41 U.S.C. 701, *et seq.*; 38 U.S.C 501

■ 8. Part 48 is further amended as set forth below.

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

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

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

■ d. “[Agency head]” is removed and “Secretary” is added in its place wherever it occurs.

■ 9. Section 48.510(c) is further amended by removing “[CFR citation for the Federal Agency’s regulations implementing Executive Order 12549 and Executive Order 12689] and adding “38 CFR part 44” in its place.

■ 10. Section 48.605(a)(2) is further amended by removing “[Agency specific CFR citation]” and adding “38 CFR part 43” in its place.

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 32 and 36****RIN 2030-AA48****FOR FURTHER INFORMATION CONTACT:**

Robert F. Meunier, EPA Debarment Official, Office of Grants and Debarment (3901R), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, (202) 564-5399, e-mail: meunier.robert@epa.gov.

List of Subjects*40 CFR Part 32*

Environmental protection, Administrative practice and procedure, Air pollution control, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements, Technical assistance, Water pollution control.

40 CFR Part 36

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

Dated: July 17, 2003.

Morris X. Winn,

Assistant Administrator, Office of Administration and Resources Management.

■ For the reason stated in the common preamble, the Environmental Protection Agency amends 40 CFR chapter I, as follows:

■ 1. Part 32 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 32—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT); AND STATUTORY DISQUALIFICATION UNDER THE CLEAN AIR ACT AND CLEAN WATER ACT

Sec.

- 32.25 How is this part organized?
- 32.50 How is this part written?
- 32.75 Do terms in this part have special meanings?

Subpart A—General

- 32.100 What does this part do?
- 32.105 Does this part apply to me?
- 32.110 What is the purpose of the nonprocurement debarment and suspension system?
- 32.115 How does an exclusion restrict a person's involvement in covered transactions?
- 32.120 May we grant an exception to let an excluded person participate in a covered transaction?
- 32.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
- 32.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
- 32.135 May the EPA exclude a person who is not currently participating in a nonprocurement transaction?
- 32.140 How do I know if a person is excluded?
- 32.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

- 32.200 What is a covered transaction?
- 32.205 Why is it important to know if a particular transaction is a covered transaction?
- 32.210 Which nonprocurement transactions are covered transactions?
- 32.215 Which nonprocurement transactions are not covered transactions?
- 32.220 Are any procurement contracts included as covered transactions?
- 32.225 How do I know if a transaction in which I may participate is a covered transaction?

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

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

Disclosing Information—Primary Tier Participants

- 32.335 What information must I provide before entering into a covered transaction with the EPA?

- 32.340 If I disclose unfavorable information required under § 32.335, will I be prevented from participating in the transaction?
- 32.345 What happens if I fail to disclose the information required under § 32.335?
- 32.350 What must I do if I learn of the information required under § 32.335 after entering into a covered transaction with the EPA?

Disclosing Information—Lower Tier Participants

- 32.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
- 32.360 What happens if I fail to disclose the information required under § 32.355?
- 32.365 What must I do if I learn of information required under § 32.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of EPA Officials Regarding Transactions

- 32.400 May I enter into a transaction with an excluded or disqualified person?
- 32.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
- 32.410 May I approve a participant's use of the services of an excluded person?
- 32.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
- 32.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
- 32.425 When do I check to see if a person is excluded or disqualified?
- 32.430 How do I check to see if a person is excluded or disqualified?
- 32.435 What must I require of a primary tier participant?
- 32.440 What method do I use to communicate those requirements to participants?
- 32.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
- 32.450 What action may I take if a primary tier participant fails to disclose the information required under § 32.335?
- 32.455 What may I do if a lower tier participant fails to disclose the information required under § 32.355 to the next higher tier?

Subpart E—Excluded Parties List System

- 32.500 What is the purpose of the Excluded Parties List System (EPLS)?
- 32.505 Who uses the EPLS?
- 32.510 Who maintains the EPLS?
- 32.515 What specific information is in the EPLS?
- 32.520 Who places the information into the EPLS?
- 32.525 Whom do I ask if I have questions about a person in the EPLS?
- 32.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

- 32.600 How do suspension and debarment actions start?

- 32.605 How does suspension differ from debarment?
- 32.610 What procedures does the EPA use in suspension and debarment actions?
- 32.615 How does the EPA notify a person of a suspension or debarment action?
- 32.620 Do Federal agencies coordinate suspension and debarment actions?
- 32.625 What is the scope of a suspension or debarment?
- 32.630 May the EPA impute conduct of one person to another?
- 32.635 May the EPA settle a debarment or suspension action?
- 32.640 May a settlement include a voluntary exclusion?
- 32.645 Do other Federal agencies know if the EPA agrees to a voluntary exclusion?

Subpart G—Suspension

- 32.700 When may the suspending official issue a suspension?
- 32.705 What does the suspending official consider in issuing a suspension?
- 32.710 When does a suspension take effect?
- 32.715 What notice does the suspending official give me if I am suspended?
- 32.720 How may I contest a suspension?
- 32.725 How much time do I have to contest a suspension?
- 32.730 What information must I provide to the suspending official if I contest a suspension?
- 32.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 32.740 Are suspension proceedings formal?
- 32.745 How is fact-finding conducted?
- 32.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 32.755 When will I know whether the suspension is continued or terminated?
- 32.760 How long may my suspension last?
- 32.765 How may I appeal my suspension?

Subpart H—Debarment

- 32.800 What are the causes for debarment?
- 32.805 What notice does the debarring official give me if I am proposed for debarment?
- 32.810 When does a debarment take effect?
- 32.815 How may I contest a proposed debarment?
- 32.820 How much time do I have to contest a proposed debarment?
- 32.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 32.830 Under what conditions do I get an additional opportunity to challenge the facts on which a proposed debarment is based?
- 32.835 Are debarment proceedings formal?
- 32.840 How is fact-finding conducted?
- 32.845 What does the debarring official consider in deciding whether to debar me?
- 32.850 What is the standard of proof in a debarment action?
- 32.855 Who has the burden of proof in a debarment action?
- 32.860 What factors may influence the debarring official's decision?
- 32.865 How long may my debarment last?
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- 32.875 May I ask the debarring official to reconsider a decision to debar me?
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- 32.885 May the debarring official extend a debarment?
- 32.890 How may I appeal my debarment?

Subpart I—Definitions

- 32.900 Adequate evidence.
- 32.905 Affiliate.
- 32.910 Agency.
- 32.915 Agent or representative.
- 32.920 Civil judgment.
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- 32.930 Debarment.
- 32.935 Debarring official.
- 32.940 Disqualified.
- 32.945 Excluded or exclusion.
- 32.950 Excluded Parties List System.
- 32.955 Indictment.
- 32.960 Ineligible or ineligibility.
- 32.965 Legal proceedings.
- 32.970 Nonprocurement transaction.
- 32.975 Notice.
- 32.980 Participant.
- 32.985 Person.
- 32.990 Preponderance of the evidence.
- 32.995 Principal.
- 32.1000 Respondent.
- 32.1005 State.
- 32.1010 Suspending official.
- 32.1015 Suspension.
- 32.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—Statutory Disqualification and Reinstatement Under the Clean Air Act and Clean Water Act

- 32.1100 What does this subpart do?
- 32.1105 Does this subpart apply to me?
- 32.1110 How will a CAA or CWA conviction affect my eligibility to participate in Federal contracts, subcontracts, assistance, loans and other benefits?
- 32.1115 Can the EPA extend a CAA or CWA disqualification to other facilities?
- 32.1120 What is the purpose of CAA or CWA disqualification?
- 32.1125 How do award officials and others know if I am disqualified?
- 32.1130 How does disqualification under the CAA or CWA differ from a Federal discretionary suspension or debarment action?
- 32.1135 Does CAA or CWA disqualification mean that I must remain ineligible?
- 32.1140 Can an exception be made to allow me to receive an award even though I may be disqualified?
- 32.1200 How will I know if I am disqualified under the CAA or CWA?
- 32.1205 What procedures must I follow to have my procurement and nonprocurement eligibility reinstated under the CAA or CWA?
- 32.1210 Will anyone else provide information to the EPA debarring official concerning my reinstatement request?
- 32.1215 What happens if I disagree with the information provided by others to the EPA debarring official on my reinstatement request?

- 32.1220 What will the EPA debarring official consider in making a decision on my reinstatement request?
- 32.1225 When will the EPA debarring official make a decision on my reinstatement request?
- 32.1230 How will the debarring official notify me of the reinstatement decision?
- 32.1300 Can I resolve my eligibility status under terms of an administrative agreement without having to submit a formal reinstatement request?
- 32.1305 What are the consequences if I mislead the EPA in seeking reinstatement or fail to comply with my administrative agreement?
- 32.1400 How may I appeal a decision denying my request for reinstatement?
- 32.1500 If I am reinstated, when will my name be removed from the EPLS?
- 32.1600 What definitions apply specifically to actions under this subpart?

Appendix to Part 32—Covered Transactions

Authority: 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 7401 *et seq.*; Sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 11738 (3 CFR, 1973 Comp., p. 799); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

PART 32—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT); AND STATUTORY DISQUALIFICATION UNDER THE CLEAN AIR ACT AND CLEAN WATER ACT

- 2. The heading for Part 32 is revised as set forth above.
- 3. Part 32 is further amended as set forth below.
 - a. “[Agency noun]” is removed and “EPA” is added in its place wherever it occurs.
 - b. “[Agency adjective]” is removed and “EPA” is added in its place wherever it occurs.
 - c. “[Agency head or designee]” is removed and “EPA Debarring Official” is added in its place wherever it occurs.
- 4. Section 32.220 is further amended by adding a paragraph (c) to read as follows:

§ 32.220 Are any procurement contracts included as covered transactions?

* * * * *

(c) The contract is awarded by any contractor, subcontractor, supplier, consultant or its agent or representative in any transaction, regardless of tier, to be funded or provided by the EPA under a nonprocurement transaction that is expected to equal or exceed \$25,000. (See optional lower tier coverage shown in the diagram in the appendix to this part.)

- 5. Section 32.440 is added to read as follows:

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

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

- 6. Section 32.765 is added to Subpart G to read as follows:

§ 32.765 How may I appeal my suspension?

(a) If the EPA suspending official issues a decision under § 32.755 to continue your suspension after you present information in opposition to that suspension under § 32.720, you can ask for review of the suspending official’s decision in two ways:

- (1) You may ask the suspending official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; and/or
- (2) You may request the Director, Office of Grants and Debarment (OGD Director), to review the suspending official’s decision to continue your suspension within 30 days of your receipt of the suspending official’s decision under § 32.755 or paragraph (a)(1) of this section. However, the OGD Director can reverse the suspending official’s decision only where the OGD Director finds that the decision is based on a clear error of material fact or law, or where the OGD Director finds that the suspending official’s decision was arbitrary, capricious, or an abuse of discretion.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in error; and include the reasons or legal bases for your position.

(c) A review under paragraph (a)(2) of this section is solely within the discretion of the OGD Director who may also stay the suspension pending review of the suspending official’s decision.

(d) The EPA suspending official and the OGD Director must notify you of their decisions under this section, in writing, using the notice procedures at § 32.615 and § 32.975.

- 7. Section 32.890 is added to Subpart H to read as follows:

§ 32.890 How may I appeal my debarment?

(a) If the EPA debarring official issues a decision under § 32.870 to debar you after you present information in opposition to a proposed debarment under § 32.815, you can ask for review

of the debarring official’s decision in two ways:

(1) You may ask the debarring official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; and/or

(2) You may request the Director, Office of Grants and Debarment (OGD Director), to review the debarring official’s decision to debar you within 30 days of your receipt of the debarring official’s decision under § 32.870 or paragraph (a)(1) of this section. However, the OGD Director can reverse the debarring official’s decision only where the OGD Director finds that the decision is based on a clear error of material fact or law, or where the OGD Director finds that the debarring official’s decision was arbitrary, capricious, or an abuse of discretion.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in error; and include the reasons or legal bases for your position.

(c) A review under paragraph (a)(2) of this section is solely within the discretion of the OGD Director who may also stay the debarment pending review of the debarring official’s decision.

(d) The EPA debarring official and the OGD Director must notify you of their decisions under this section, in writing, using the notice procedures at § 32.615 and § 32.975.

- 8. Section 32.995 is further amended by adding a paragraph (c) to read as follows:

§ 32.995 Principal.

* * * * *

(c) Other examples of individuals who are principals in EPA covered transactions include:

- (1) Principal investigators;
- (2) Technical or management consultants;
- (3) Individuals performing chemical or scientific analysis or oversight;
- (4) Professional service providers such as doctors, lawyers, accountants, engineers, etc.;
- (5) Individuals responsible for the inspection, sale, removal, transportation, storage or disposal of solid or hazardous waste or materials;
- (6) Individuals whose duties require special licenses;
- (7) Individuals that certify, authenticate or authorize billings; and
- (8) Individuals that serve in positions of public trust.

- 9. Subpart J is added to read as follows:

Subpart J—Statutory Disqualification and Reinstatement Under the Clean Air Act and Clean Water Act

§ 32.1100 What does this subpart do?

This subpart explains how the EPA administers section 306 of the Clean Air Act (CAA) (42 U.S.C. 7606), and section 508 of the Clean Water Act (CWA) (33 U.S.C. 1368), which disqualify persons convicted for certain offenses under those statutes (see § 32.1105), from eligibility to receive certain contracts, subcontracts, assistance, loans and other benefits (see coverage under the Federal Acquisition Regulation (FAR), 48 CFR part 9, subpart 9.4, and subparts A through I of this part). It also explains: the procedures for seeking reinstatement of a person's eligibility under the CAA or CWA; the criteria and standards that apply to EPA's decision-making process; and requirements of award officials and others involved in Federal procurement and nonprocurement activities in carrying out their responsibilities under the CAA and CWA.

§ 32.1105 Does this subpart apply to me?

(a) Portions of this subpart apply to you if you are convicted, or likely be convicted, of any offense under section 7413(c) of the CAA or section 1319(c) of the CWA.

(b) Portions of this subpart apply to you if you are the EPA debarbing official, a Federal procurement or nonprocurement award official, a participant in a Federal procurement or nonprocurement program that is precluded from entering into a covered transaction with a person disqualified under the CAA or CWA, or if you are a Federal department or agency anticipating issuing an exception to a person otherwise disqualified under the CAA or CWA.

§ 32.1110 How will a CAA or CWA conviction affect my eligibility to participate in Federal contracts, subcontracts, assistance, loans and other benefits?

If you are convicted of any offense described in § 32.1105, you are automatically disqualified from eligibility to receive any contract, subcontract, assistance, sub-assistance, loan or other nonprocurement benefit or transaction that is prohibited by a Federal department or agency under the Governmentwide debarment and suspension system (*i.e.*, covered transactions under subparts A through I of this part, or prohibited awards under 48 CFR part 9, subpart 9.4), if you:

(a) Will perform any part of the transaction or award at the facility giving rise to your conviction (called the violating facility); and

(b) You own, lease or supervise the violating facility.

§ 32.1115 Can the EPA extend a CAA or CWA disqualification to other facilities?

The CAA specifically authorizes the EPA to extend a CAA disqualification to other facilities that are owned or operated by the convicted person. The EPA also has authority under subparts A through I of this part, or under 48 CFR part 9, subpart 9.4, to take discretionary suspension and debarment actions on the basis of misconduct leading to a CAA or CWA conviction, or for activities that the EPA debarbing official believes were designed to improperly circumvent a CAA or CWA disqualification.

§ 32.1120 What is the purpose of CAA or CWA disqualification?

As provided for in Executive Order 11738 (3 CFR, 1973 Comp., p.799), the purpose of CAA and CWA disqualification is to enforce the Federal Government's policy of undertaking Federal procurement and nonprocurement activities in a manner that improves and enhances environmental quality by promoting effective enforcement of the CAA or CWA.

§ 32.1125 How do award officials and others know if I am disqualified?

If you are convicted under these statutes, the EPA enters your name and address and that of the violating facility into the *Excluded Parties List System (EPLS)* as soon as possible after the EPA learns of your conviction. In addition, the EPA enters other information describing the nature of your disqualification. Federal award officials and others who administer Federal programs consult the *EPLS* before entering into or approving procurement and nonprocurement transactions. As of the date of this regulation, award officials and others, including the public, may obtain a yearly subscription to a printed version of the *EPLS* from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by calling the Government Printing Office Inquiry and Order Desk at (202) 783-3238. Anyone may access the *EPLS* through the internet, currently at <http://epls.arnet.gov>.

§ 32.1130 How does disqualification under the CAA or CWA differ from a Federal discretionary suspension or debarment action?

(a) CAA and CWA disqualifications are exclusions mandated by statute. In contrast, suspensions and debarments imposed under subparts A through I of

this part or under 48 CFR part 9, subpart 9.4, are exclusions imposed at the discretion of Federal suspending or debarbing officials. This means that if you are convicted of violating the CAA or CWA provisions described under § 32.1105, ordinarily your name and that of the violating facility is placed into the *EPLS* before you receive a confirmation notice of the listing, or have an opportunity to discuss the disqualification with, or seek reinstatement from, the EPA.

(b) CAA or CWA disqualification applies to both the person convicted of the offense, and to the violating facility during performance of an award or covered transaction under the Federal procurement and nonprocurement suspension and debarment system. It is the EPA's policy to carry out CAA and CWA disqualifications in a manner which integrates the disqualifications into the Governmentwide suspension and debarment system. Whenever the EPA determines that the risk presented to Federal procurement or nonprocurement activities on the basis of the misconduct which gives rise to a person's CAA or CWA conviction exceeds the coverage afforded by mandatory disqualification, the EPA may use its discretionary authority to suspend or debar a person under subparts A through I of this part, or under 48 CFR part 9, subpart 9.4.

§ 32.1135 Does CAA or CWA disqualification mean that I must remain ineligible?

You must remain ineligible until the EPA debarbing official certifies that the condition giving rise to your conviction has been corrected. If you desire to have your disqualification terminated, you must submit a written request for reinstatement to the EPA debarbing official and support your request with persuasive documentation. For information about the process for reinstatement see § 32.1205 and § 32.1300.

§ 32.1140 Can an exception be made to allow me to receive an award even though I may be disqualified?

(a) After consulting with the EPA debarbing official, the head of any Federal department or agency (or designee) may exempt any particular award or a class of awards with that department or agency from the prohibitions otherwise resulting from CAA or CWA disqualification. In the event an exemption is granted, the exemption must:

- (1) Be in writing; and
- (2) State why the exemption is in the paramount interests of the United States.

(b) In the event an exemption is granted, the exempting department or agency must send a copy of the exemption decision to the EPA debarring official for inclusion in the official record.

§ 32.1200 How will I know if I am disqualified under the CAA or CWA?

There may be several ways that you learn about your disqualification. You are legally on notice by the statutes that a criminal conviction under the CAA or CWA automatically disqualifies you. As a practical matter, you may learn about your disqualification from your defense counsel, a Federal contract or award official, or from someone else who sees your name in the *EPLS*. As a courtesy, the EPA will attempt to notify you and the owner, lessor or supervisor of the violating facility that your names have been entered into the *EPLS*. The EPA will inform you of the procedures for seeking reinstatement and give you the name of a person you can contact to discuss your reinstatement request.

§ 32.1205 What procedures must I follow to have my procurement and nonprocurement eligibility reinstated under the CAA or CWA?

(a) You must submit a written request for reinstatement to the EPA debarring official stating what you believe the conditions were that led to your conviction, and how those conditions have been corrected, relieved or addressed. Your request must include documentation sufficient to support all material assertions you make. The debarring official must determine that all the technical and non-technical causes, conditions and consequences of your actions have been sufficiently addressed so that the Government can confidently conduct future business activities with you, and that your future operations will be conducted in compliance with the CAA and CWA.

(b) You may begin the reinstatement process by having informal discussions with the EPA representative named in your notification of listing. Having informal dialogue with that person will make you aware of the EPA concerns that must be addressed. The EPA representative is not required to negotiate conditions for your reinstatement. However, beginning the reinstatement process with informal dialogue increases the chance of achieving a favorable outcome, and avoids unnecessary delay that may result from an incomplete or inadequate reinstatement request. It may also allow you to resolve your disqualification by reaching an agreement with the EPA debarring official under informal

procedures. Using your informal option first does not prevent you from submitting a formal reinstatement request with the debarring official at any time.

§ 32.1210 Will anyone else provide information to the EPA debarring official concerning my reinstatement request?

If you request reinstatement under § 32.1205, the EPA debarring official may obtain review and comment on your request by anyone who may have information about, or an official interest in, the matter. For example, the debarring official may consult with the EPA Regional offices, the Department of Justice or other Federal agencies, or state, tribal or local governments. The EPA debarring official will make sure that you have an opportunity to address important allegations or information contained in the administrative record before making a final decision on your request for reinstatement.

§ 32.1215 What happens if I disagree with the information provided by others to the EPA debarring official on my reinstatement request?

(a) If your reinstatement request is based on factual information (as opposed to a legal matter or discretionary conclusion) that is different from the information provided by others or otherwise contained in the administrative record, the debarring official will decide whether those facts are genuinely in dispute, and material to making a decision. If so, a fact-finding proceeding will be conducted in accordance with § 32.830 through § 32.840, and the debarring official will consider the findings when making a decision on your reinstatement request.

(b) If the basis for your disagreement with the information contained in the administrative record relates to a legal issue or discretionary conclusion, or is not a genuine dispute over a material fact, you will not have a fact-finding proceeding. However, the debarring official will allow you ample opportunity to support your position for the record and present matters in opposition to your continued disqualification. A summary of any information you provide orally, if not already recorded, should also be submitted to the debarring official in writing to assure that it is preserved for the debarring official's consideration and the administrative record.

§ 32.1220 What will the EPA debarring official consider in making a decision on my reinstatement request?

(a) The EPA debarring official will consider all information and arguments contained in the administrative record

in support of, or in opposition to, your request for reinstatement, including any findings of material fact.

(b) The debarring official will also consider any mitigating or aggravating factors that may relate to your conviction or the circumstances surrounding it, including any of those factors that appear in § 32.860 that may apply to your situation.

(c) Finally, if disqualification applies to a business entity, the debarring official will consider any corporate or business attitude, policies, practices and procedures that contributed to the events leading to conviction, or that may have been implemented since the date of the misconduct or conviction. You can obtain any current policy directives issued by the EPA that apply to CAA or CWA disqualification or reinstatement by contacting the Office of the EPA Debarring Official, U. S. Environmental Protection Agency, Office of Grants and Debarment (3901-R), 1200 Pennsylvania Avenue NW., Washington, DC 20460.

§ 32.1225 When will the EPA debarring official make a decision on my reinstatement request?

(a) The EPA debarring official will make a decision regarding your reinstatement request under § 32.1205(a), when the administrative record is complete, and he or she can determine whether the condition giving rise to the CAA or CWA conviction has been corrected—usually within 45 days of closing the administrative record.

(b) A reinstatement request is not officially before the debarring official while you are having informal discussions under § 32.1205(b).

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

The EPA debarring official will notify you of the reinstatement decision in writing, using the same methods for communicating debarment or suspension action notices under § 32.615.

§ 32.1300 Can I resolve my eligibility status under terms of an administrative agreement without having to submit a formal reinstatement request?

(a) The EPA debarring official may, at any time, resolve your CAA or CWA eligibility status under the terms of an administrative agreement. Ordinarily, the debarring official will not make an offer to you for reinstatement until after the administrative record for decision is complete, or contains enough information to enable him or her to make an informed decision in the matter.

(b) Any resolution of your eligibility status under the CAA or CWA resulting from an administrative agreement must include a certification that the condition giving rise to the conviction has been corrected.

(c) The EPA debarring official may enter into an administrative agreement to resolve CAA or CWA disqualification issues as part of a comprehensive criminal plea, civil or administrative agreement when it is in the best interest of the United States to do so.

§ 32.1305 What are the consequences if I mislead the EPA in seeking reinstatement or fail to comply with my administrative agreement?

(a) Any certification of correction issued by the EPA debarring official, whether the certification results from a reinstatement decision under § 32.1205(a) and § 32.1230, or from an administrative agreement under § 32.1205(b) and § 32.1300, is conditioned upon the accuracy of the information, representations or assurances made during development of the administrative record.

(b) If the EPA debarring official finds that he or she has certified correction of the condition giving rise to a CAA or CWA conviction or violation on the basis of a false, misleading, incomplete or inaccurate information; or if a person fails to comply with material condition of an administrative agreement, the EPA debarring official may revoke the certification of correction and immediately reinstate the CAA or CWA disqualification. In addition, the EPA debarring official may take suspension or debarment action against the person(s) responsible for the misinformation or noncompliance with the agreement as appropriate. If anyone provides false, inaccurate, incomplete or misleading information to EPA in an attempt to obtain reinstatement, the EPA debarring official will refer the matter to the EPA Office of the Inspector General for potential criminal or civil action.

§ 32.1400 How may I appeal a decision denying my request for reinstatement?

(a) If the EPA debarring official denies your request for reinstatement under the CAA or CWA, you can ask for review of the EPA debarring official's decision in two ways:

(1) You may ask the debarring official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; and/or

(2) You may request the Director, Office of Grants and Debarment (OGD Director), to review the debarring official's denial within 30 days of your

receipt of the debarring official's decision under § 32.1230 or paragraph (a)(1) of this section. However, the OGD Director can reverse the debarring official's decision denying reinstatement only where the OGD Director finds that there is a clear error of material fact or law, or where the OGD Director finds that the debarring official's decision was arbitrary, capricious, or an abuse of discretion.

(b) A request for review under this section must be in writing and state the specific findings you believe to be in error and the reason for your position.

(c) A review by the OGD Director under this section is solely within the discretion of the OGD Director.

(d) The OGD Director must notify you of his or her decision under this section, in writing, using the notice procedures identified at § 32.615 and § 32.975.

§ 32.1500 If I am reinstated, when will my name be removed from the EPLS?

If your eligibility for procurement and nonprocurement participation is restored under the CAA or CWA, whether by decision, appeal, or by administrative agreement, the EPA will remove your name and that of the violating facility from the *EPLS*, generally within 5 working days of your reinstatement.

§ 32.1600 What definitions apply specifically to actions under this subpart?

In addition to definitions under subpart I of this part that apply to this part as a whole, the following two definitions apply specifically to CAA and CWA disqualifications under this subpart:

(a) *Person* means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, or any interstate body.

(b) *Violating facility* means any building, plant, installation, structure, mine, vessel, floating craft, location or site of operations that gives rise to a CAA or CWA conviction, and is a location at which or from which a Federal contract, subcontract, loan, assistance award or other covered transaction may be performed. If a site of operations giving rise to a CAA or CWA conviction contains or includes more than one building, plant, installation, structure, mine, vessel, floating craft, or other operational element, the entire location or site of operation is regarded as the violating facility unless otherwise limited by the EPA.

■ 10. Part 36 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 36—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.

36.100 What does this part do?

36.105 Does this part apply to me?

36.110 Are any of my Federal assistance awards exempt from this part?

36.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

36.200 What must I do to comply with this part?

36.205 What must I include in my drug-free workplace statement?

36.210 To whom must I distribute my drug-free workplace statement?

36.215 What must I include in my drug-free awareness program?

36.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?

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

36.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

36.300 What must I do to comply with this part if I am an individual recipient?

36.301 [Reserved]

Subpart D—Responsibilities of EPA Awarding Officials

36.400 What are my responsibilities as an EPA awarding official?

Subpart E—Violations of This Part and Consequences

36.500 How are violations of this part determined for recipients other than individuals?

36.505 How are violations of this part determined for recipients who are individuals?

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

36.515 Are there any exceptions to those actions?

Subpart F—Definitions

36.605 Award.

36.610 Controlled substance.

36.615 Conviction.

36.620 Cooperative agreement.

36.625 Criminal drug statute.

36.630 Debarment.

36.635 Drug-free workplace.

36.640 Employee.

36.645 Federal agency or agency.

36.650 Grant.

36.655 Individual.

36.660 Recipient.

36.665 State.

36.670 Suspension.

Authority: 41 U.S.C. 701 *et seq.*

■ 11. Part 36 is further amended as set forth below.

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

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

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

■ d. “[Agency head]” is removed and “EPA Administrator” is added in its place wherever it occurs.

■ 12. Section 36.510(c) is further amended by removing “[CFR citation for the Federal Agency’s regulations implementing Executive Order 12549 and Executive Order 12689]” and adding “40 CFR Part 32” in its place.

■ 13. Section 36.605(a)(2) is further amended by removing “[Agency-specific CFR citation]” and adding “40 CFR Part 31” in its place.

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 105–68 and 105–74

RIN 3090–AH35

FOR FURTHER INFORMATION CONTACT:

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List of Subjects

41 CFR Part 105–68

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

41 CFR Part 105–74

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

Dated: September 23, 2003.

Stephen A. Perry,
Administrator of General Services.

■ For the reasons stated in the common preamble, the General Services Administration amends 41 CFR chapter 105, as follows:

CHAPTER 105—[AMENDED]

■ 1. Part 105–68 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 105–68—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

105–68.25 How is this part organized?

105–68.50 How is this part written?

105–68.75 Do terms in this part have special meanings?

Subpart A—General

105–68.100 What does this part do?

105–68.105 Does this part apply to me?

105–68.110 What is the purpose of the nonprocurement debarment and suspension system?

105–68.115 How does an exclusion restrict a person’s involvement in covered transactions?

105–68.120 May we grant an exception to let an excluded person participate in a covered transaction?

105–68.125 Does an exclusion under the nonprocurement system affect a person’s eligibility for Federal procurement contracts?

105–68.130 Does exclusion under the Federal procurement system affect a person’s eligibility to participate in nonprocurement transactions?

105–68.135 May the General Services Administration exclude a person who is not currently participating in a nonprocurement transaction?

105–68.140 How do I know if a person is excluded?

105–68.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

105–68.200 What is a covered transaction?

105–68.205 Why is it important to know if a particular transaction is a covered transaction?

105–68.210 Which nonprocurement transactions are covered transactions?

105–68.215 Which nonprocurement transactions are not covered transactions?

105–68.220 Are any procurement contracts included as covered transactions?

105–68.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

105–68.300 What must I do before I enter into a covered transaction with another person at the next lower tier?

105–68.305 May I enter into a covered transaction with an excluded or disqualified person?

105–68.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?

105–68.315 May I use the services of an excluded person as a principal under a covered transaction?

105–68.320 Must I verify that principals of my covered transactions are eligible to participate?

105–68.325 What happens if I do business with an excluded person in a covered transaction?

105–68.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

105–68.335 What information must I provide before entering into a covered transaction with the General Services Administration?

105–68.340 If I disclose unfavorable information required under § 105–68.335, will I be prevented from participating in the transaction?

105–68.345 What happens if I fail to disclose the information required under § 105–68.335?

105–68.350 What must I do if I learn of the information required under § 105–68.335 after entering into a covered transaction with the General Services Administration?

Disclosing Information—Lower Tier Participants

105–68.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?

105–68.360 What happens if I fail to disclose the information required under § 105–68.355?

105–68.365 What must I do if I learn of information required under § 105–68.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of GSA Officials Regarding Transactions

105–68.400 May I enter into a transaction with an excluded or disqualified person?

105–68.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?

105–68.410 May I approve a participant’s use of the services of an excluded person?

105–68.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?

105–68.420 May I approve a transaction with an excluded or disqualified person at a lower tier?

105–68.425 When do I check to see if a person is excluded or disqualified?

105–68.430 How do I check to see if a person is excluded or disqualified?

105–68.435 What must I require of a primary tier participant?

105–68.440 What method do I use to communicate those requirements to participants?

105–68.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?

105–68.450 What action may I take if a primary tier participant fails to disclose the information required under § 105–68.335?

105–68.455 What may I do if a lower tier participant fails to disclose the

information required under § 105–68.355 to the next higher tier?

Subpart E—Excluded Parties List System

- 105–68.500 What is the purpose of the Excluded Parties List System (EPLS)?
 105–68.505 Who uses the EPLS?
 105–68.510 Who maintains the EPLS?
 105–68.515 What specific information is in the EPLS?
 105–68.520 Who places the information into the EPLS?
 105–68.525 Whom do I ask if I have questions about a person in the EPLS?
 105–68.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

- 105–68.600 How do suspension and debarment actions start?
 105–68.605 How does suspension differ from debarment?
 105–68.610 What procedures does the General Services Administration use in suspension and debarment actions?
 105–68.615 How does the General Services Administration notify a person of a suspension and debarment action?
 105–68.620 Do Federal agencies coordinate suspension and debarment actions?
 105–68.625 What is the scope of a suspension or debarment action?
 105–68.630 May the General Services Administration impute the conduct of one person to another?
 105–68.635 May the General Services Administration settle a debarment or suspension action?
 105–68.640 May a settlement include a voluntary exclusion?
 105–68.645 Do other Federal agencies know if the General Services Administration agrees to a voluntary exclusion?

Subpart G—Suspension

- 105–68.700 When may the suspending official issue a suspension?
 105–68.705 What does the suspending official consider in issuing a suspension?
 105–68.710 When does a suspension take effect?
 105–68.715 What notice does the suspending official give me if I am suspended?
 105–68.720 How may I contest a suspension?
 105–68.725 How much time do I have to contest a suspension?
 105–68.730 What information must I provide to the suspending official if I contest a suspension?
 105–68.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
 105–68.740 Are suspension proceedings formal?
 105–68.745 How is fact-finding conducted?
 105–68.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
 105–68.755 When will I know whether the suspension is continued or terminated?
 105–68.760 How long may my suspension last?

Subpart H—Debarment

- 105–68.800 What are the causes for debarment?
 105–68.805 What notice does the debarring official give me if I am proposed for debarment?
 105–68.810 When does a debarment take effect?
 105–68.815 How may I contest a proposed debarment?
 105–68.820 How much time do I have to contest a proposed debarment?
 105–68.825 What information must I provide to the debarring official if I contest a proposed debarment?
 105–68.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
 105–68.835 Are debarment proceedings formal?
 105–68.840 How is fact-finding conducted?
 105–68.845 What does the debarring official consider in deciding whether to debar me?
 105–68.850 What is the standard of proof in a debarment action?
 105–68.855 Who has the burden of proof in a debarment action?
 105–68.860 What factors may influence the debarring official's decision?
 105–68.865 How long may my debarment last?
 105–68.870 When do I know if the debarring official debar me?
 105–68.875 May I ask the debarring official to reconsider a decision to debar me?
 105–68.880 What factors may influence the debarring official during reconsideration?
 105–68.885 May the debarring official extend a debarment?

Subpart I—Definitions

- 105–68.900 Adequate evidence.
 105–68.905 Affiliate.
 105–68.910 Agency.
 105–68.915 Agent or representative.
 105–68.920 Civil judgment.
 105–68.925 Conviction.
 105–68.930 Debarment.
 105–68.935 Debarring official.
 105–68.940 Disqualified.
 105–68.945 Excluded or exclusion.
 105–68.950 Excluded Parties List System.
 105–68.955 Indictment.
 105–68.960 Ineligible or ineligibility.
 105–68.965 Legal proceedings.
 105–68.970 Nonprocurement transaction.
 105–68.975 Notice.
 105–68.980 Participant.
 105–68.985 Person.
 105–68.990 Preponderance of the evidence.
 105–68.995 Principal.
 105–68.1000 Respondent.
 105–68.1005 State.
 105–68.1010 Suspending official.
 105–68.1015 Suspension.
 105–68.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—[Reserved]

Appendix to Part 105–68—Covered Transactions

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

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

■ 2. Part 105–68 is further amended as set forth below.

■ a. “[Agency noun]” is removed and “General Services Administration” is added in its place wherever it occurs.

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

■ c. “[Agency head or designee]” is removed and “Administrator of General Services” is added in its place wherever it occurs.

■ 3. Section 105–68.440 is added to read as follows:

§ 105–68.440 What method do I use to communicate those requirements to participants?

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

■ 4. Part 105–74 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 105–74—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.

- 105–74.100 What does this part do?
 105–74.105 Does this part apply to me?
 105–74.110 Are any of my Federal assistance awards exempt from this part?
 105–74.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

- 105–74.200 What must I do to comply with this part?
 105–74.205 What must I include in my drug-free workplace statement?
 105–74.210 To whom must I distribute my drug-free workplace statement?
 105–74.215 What must I include in my drug-free awareness program?
 105–74.220 By whom must I publish my drug-free workplace statement and establish my drug-free awareness program?
 105–74.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
 105–74.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

- 105–74.300 What must I do to comply with this part if I am an individual recipient?
 105–74.301 [Reserved]

Subpart D—Responsibilities of GSA Awarding Officials

105–74.400 What are my responsibilities as a GSA awarding official?

Subpart E—Violations of This Part and Consequences

105–74.500 How are violations of this part determined for recipients other than individuals?

105–74.505 How are violations of this part determined for recipients who are individuals?

105–74.510 What actions will the Federal Government take against a recipient determined to have violated this part?

105–74.515 Are there any exceptions to those actions?

Subpart F—Definitions

105–74.605 Award.
 105–74.610 Controlled substance.
 105–74.615 Conviction.
 105–74.620 Cooperative agreement.
 105–74.625 Criminal drug statute.
 105–74.630 Debarment.
 105–74.635 Drug-free workplace.
 105–74.640 Employee.
 105–74.645 Federal agency or agency.
 105–74.650 Grant.
 105–74.655 Individual.
 105–74.660 Recipient.
 105–74.665 State.
 105–74.670 Suspension.

Authority: 41 U.S.C. 701 *et seq.*

■ 5. Part 105–74 is further amended as set forth below.

■ a. “[Agency noun]” is removed and “General Services Administration” is added in its place wherever it occurs.

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

■ c. “[Agency head or designee]” is removed and “Administrator of General Services” is added in its place wherever it occurs.

■ d. “[Agency head]” is removed and “Administrator of General Services” is added in its place wherever it occurs.

■ 6. Section 105–74.510(c) is further amended by removing “[CFR citation for the Federal agency’s regulations implementing Executive Order 12549 and Executive Order 12689]” and adding “41 FR part 105–68” in its place.

■ 7. Section 105–74.605(a)(2) is further amended by removing “[Agency-specific CFR citation]” and adding “41 CFR part 105–71” in its place.

DEPARTMENT OF THE INTERIOR**43 CFR Parts 12, 42 and 43**

RIN 1090-AA79

FOR FURTHER INFORMATION CONTACT:

Debra E. Sonderman, Director, Office of Acquisition and Property Management, (202) 208–6431.

List of Subjects**43 CFR Part 12**

Administrative practice and procedure, Contract programs, Cooperative agreements, Debarment and suspension, Grant programs, Grant administration.

43 CFR Part 42

Administrative practice and procedure, Contract programs, Cooperative agreements, Debarment and suspension, Grant programs, Grants administration, Reporting and recordkeeping requirements.

43 CFR Part 43

Administrative practice and procedure, Contract programs, Cooperative agreements, Drug abuse, Grant programs, Grants administration, Reporting and recordkeeping requirements.

Dated: July 25, 2003.

P. Lynn Scarlett,

Assistant Secretary—Policy, Management and Budget.

■ Accordingly, for the reasons stated in the common preamble, the Department of Interior amends 43 CFR subtitle A, as follows:

PART 12—ADMINISTRATIVE AND AUDIT REQUIREMENTS AND COST PRINCIPLES FOR ASSISTANCE PROGRAMS

■ 1. The authority citation for part 12 is revised to read as follows:

Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 5 U.S.C. 301; U.S.C. 6101 note.

■ 2. Part 12, Subpart D is removed and reserved.

■ 3. Part 42 is added to read as set forth in instruction 1 at the end of the common preamble.

PART 42—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

42.25 How is this part organized?

42.50 How is this part written?

42.75 Do terms in this part have special meanings?

Subpart A—General

42.100 What does this part do?

42.105 Does this part apply to me?

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

42.115 How does an exclusion restrict a person’s involvement in covered transactions?

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

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

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

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

42.140 How do I know if a person is excluded?

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

Subpart B—Covered Transactions

42.200 What is a covered transaction?

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

42.210 Which nonprocurement transactions are covered transactions?

42.215 Which nonprocurement transactions are not covered transactions?

42.220 Are any procurement contracts included as covered transactions?

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

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

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

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

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

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

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

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

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

Disclosing Information—Primary Tier Participants

42.335 What information must I provide before entering into a covered transaction with the Department of the Interior?

42.340 If I disclose unfavorable information required under § 42.335, will I be prevented from participating in the transaction?

42.345 What happens if I fail to disclose the information required under § 42.335?

42.350 What must I do if I learn of the information required under § 42.335 after

entering into a covered transaction with the Department of the Interior?

Disclosing Information—Lower Tier Participants

- 42.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
- 42.360 What happens if I fail to disclose the information required under § 42.355?
- 42.365 What must I do if I learn of information required under § 42.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of Department of the Interior Officials Regarding Transactions

- 42.400 May I enter into a transaction with an excluded or disqualified person?
- 42.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
- 42.410 May I approve a participant's use of the services of an excluded person?
- 42.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
- 42.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
- 42.425 When do I check to see if a person is excluded or disqualified?
- 42.430 How do I check to see if a person is excluded or disqualified?
- 42.435 What must I require of a primary tier participant?
- 42.440 What method do I use to communicate those requirements to participants?
- 42.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
- 42.450 What action may I take if a primary tier participant fails to disclose the information required under § 42.335?
- 42.455 What may I do if a lower tier participant fails to disclose the information required under § 42.355 to the next higher tier?

Subpart E—Excluded Parties List System

- 42.500 What is the purpose of the Excluded Parties List System (EPLS)?
- 42.505 Who uses the EPLS?
- 42.510 Who maintains the EPLS?
- 42.515 What specific information is in the EPLS?
- 42.520 Who places the information into the EPLS?
- 42.525 Whom do I ask if I have questions about a person in the EPLS?
- 42.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

- 42.600 How do suspension and debarment actions start?
- 42.605 How does suspension differ from debarment?
- 42.610 What procedures does the Department of the Interior use in suspension and debarment actions?
- 42.615 How does the Department of the Interior notify a person of a suspension and debarment action?

- 42.620 Do Federal agencies coordinate suspension and debarment actions?
- 42.625 What is the scope of a suspension or debarment action?
- 42.630 May the Department of the Interior impute the conduct of one person to another?
- 42.635 May the Department of the Interior settle a debarment or suspension action?
- 42.640 May a settlement include a voluntary exclusion?
- 42.645 Do other Federal agencies know if the Department of the Interior agrees to a voluntary exclusion?

Subpart G—Suspension

- 42.700 When may the suspending official issue a suspension?
- 42.705 What does the suspending official consider in issuing a suspension?
- 42.710 When does a suspension take effect?
- 42.715 What notice does the suspending official give me if I am suspended?
- 42.720 How may I contest a suspension?
- 42.725 How much time do I have to contest a suspension?
- 42.730 What information must I provide to the suspending official if I contest a suspension?
- 42.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 42.740 Are suspension proceedings formal?
- 42.745 How is fact-finding conducted?
- 42.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 42.755 When will I know whether the suspension is continued or terminated?
- 42.760 How long may my suspension last?

Subpart H—Debarment

- 42.800 What are the causes for debarment?
- 42.805 What notice does the debarring official give me if I am proposed for debarment?
- 42.810 When does a debarment take effect?
- 42.815 How may I contest a proposed debarment?
- 42.820 How much time do I have to contest a proposed debarment?
- 42.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 42.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
- 42.835 Are debarment proceedings formal?
- 42.840 How is fact-finding conducted?
- 42.845 What does the debarring official consider in deciding whether to debar me?
- 42.850 What is the standard of proof in a debarment action?
- 42.855 Who has the burden of proof in a debarment action?
- 42.860 What factors may influence the debarring official's decision?
- 42.865 How long may my debarment last?
- 42.870 When do I know if the debarring official debars me?
- 42.875 May I ask the debarring official to reconsider a decision to debar me?
- 42.880 What factors may influence the debarring official during reconsideration?

- 42.885 May the debarring official extend a debarment?

Subpart I—Definitions

- 42.900 Adequate evidence.
- 42.905 Affiliate.
- 42.910 Agency.
- 42.915 Agent or representative.
- 42.920 Civil judgment.
- 42.925 Conviction.
- 42.930 Debarment.
- 42.935 Debarring official.
- 42.940 Disqualified.
- 42.945 Excluded or exclusion.
- 42.950 Excluded Parties List System.
- 42.955 Indictment.
- 42.960 Ineligible or ineligibility.
- 42.965 Legal proceedings.
- 42.970 Nonprocurement transaction.
- 42.975 Notice.
- 42.980 Participant.
- 42.985 Person.
- 42.990 Preponderance of the evidence.
- 42.995 Principal.
- 42.1000 Respondent.
- 42.1005 State.
- 42.1010 Suspending official.
- 42.1015 Suspension.
- 42.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—[Reserved]

Appendix to Part 42—Covered Transactions

Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235); sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); 5 U.S.C. 301; 31 U.S.C.

■ 4. Part 42 is further amended as set forth below.

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

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

■ c. “[Agency head or designee]” is removed and “Director, Office of Acquisition and Property Management” is added in its place wherever it occurs.

■ 5. Section 42.215 is further amended by adding paragraphs (h) through (k) to read as follows:

§ 42.215 Which nonprocurement transactions are not covered transactions?

* * * * *

(h) Transactions entered into pursuant to Public Law 93-638, 88 Stat. 2203.

(i) Under natural resource management programs, permits, licenses, exchanges and other acquisitions of real property, rights-of-way, and easements.

(j) Transactions concerning mineral patent claims entered into pursuant to 30 U.S.C. 22 *et seq.*

(k) Water service contracts and repayments entered into pursuant to 43 U.S.C. 485.

■ 6. Section 42.440 is added to read as follows:

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

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

■ 7. Section 42.935 is further amended by adding paragraph (b) to read as follows:

§ 42.935 Debarring official.

* * * * *

(b) The debarring official for the Department of the Interior is the Director, Office of Acquisition and Property Management.

■ 8. Section 42.970 is further amended by adding paragraphs (a)(12) through (a)(15) to read as follows:

§ 42.970 Nonprocurement transaction.

* * * * *

(a) * * *

(12) Federal acquisition of a leasehold interest or any other interest in real property.

(13) Concession contracts.

(14) Disposition of Federal real and personal property and natural resources.

(15) Any other nonprocurement transactions between the Department and a person.

* * * * *

■ 9. Section 42.1010 is further amended by adding paragraph (b) to read as follows:

§ 42.1010 Suspending official.

* * * * *

(b) The suspending official for the Department of the Interior is the Director, Office of Acquisition and Property Management.

■ 10. Part 43 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 43—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.

43.100 What does this part do?

43.105 Does this part apply to me?

43.110 Are any of my Federal assistance awards exempt from this part?

43.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

43.200 What must I do to comply with this part?

43.205 What must I include in my drug-free workplace statement?

43.210 To whom must I distribute my drug-free workplace statement?

43.215 What must I include in my drug-free awareness program?

43.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?

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

43.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

43.300 What must I do to comply with this part if I am an individual recipient?

43.301 Is there a central point to which I may report information required by § 43.300?

Subpart D—Responsibilities of Department of the Interior Awarding Officials

43.400 What are my responsibilities as a Department of the Interior awarding official?

Subpart E—Violations of This Part and Consequences

43.500 How are violations of this part determined for recipients other than individuals?

43.505 How are violations of this part determined for recipients who are individuals?

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

43.515 Are there any exceptions to those actions?

Subpart F—Definitions

43.605 Award.

43.610 Controlled substance.

43.615 Conviction.

43.620 Cooperative agreement.

43.625 Criminal drug statute.

43.630 Debarment.

43.635 Drug-free workplace.

43.640 Employee.

43.645 Federal agency or agency.

43.650 Grant.

43.655 Individual.

43.660 Recipient.

43.665 State.

43.670 Suspension.

Authority: 5 U.S.C. 301; 31 U.S.C. 6101 note, 7501; 41 U.S.C. Sections 252a and 701 *et seq.*

■ 11. Part 43 is further amended as set forth below.

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

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

■ c. “[Agency head or designee]” is removed and “Director, Office of Acquisition and Property Management” is added in its place wherever it occurs.

■ d. “[Agency head]” is removed and “Secretary of the Interior” is added in its place wherever it occurs.

■ 12. Section 43.301 is added to read as follows:

§ 43.301 Is there a central point to which I may report information required by § 43.300?

No. The Department of the Interior is not designating a central location for the receipt of these reports. Therefore you shall provide this report to every grant officer, or other designee within a Bureau/Office of the Department on whose grant activity the convicted employee was working.

■ 13. Section 43.510(c) is further amended by removing “[CFR citation for the Federal Agency’s regulations implementing Executive Order 12549 and Executive Order 12689]” and adding “43 CFR Part 42” in its place.

■ 14. Section 43.605(a)(2) is further amended by removing “[Agency-specific CFR citation]” and adding “43 CFR Part 12” in its place.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 76 and 82

RIN 0991—AB12

FOR FURTHER INFORMATION CONTACT:

Marc R. Weisman, 336 E. Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, 202-690-8554.

List of Subjects

45 CFR Part 76

Administrative practice and procedure, Grant programs, Reporting and recordkeeping requirements.

45 CFR Part 82

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

Dated: July 30, 2003.

Tommy G. Thompson,

Secretary, Department of Health and Human Services.

■ For the reasons stated in the common preamble, the Department of Health and Human Services amends 45 CFR Subtitle A, as follows:

■ 1. Part 76 is revised to read as set forth in instruction 1 at the end of the common preamble.

PART 76—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

- 76.25 How is this part organized?
 76.50 How is this part written?
 76.75 Do terms in this part have special meanings?

Subpart A—General

- 76.100 What does this part do?
 76.105 Does this part apply to me?
 76.110 What is the purpose of the nonprocurement debarment and suspension system?
 76.115 How does an exclusion restrict a person's involvement in covered transactions?
 76.120 May we grant an exception to let an excluded person participate in a covered transaction?
 76.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
 76.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
 76.135 May HHS exclude a person who is not currently participating in a nonprocurement transaction?
 76.140 How do I know if a person is excluded?
 76.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart B—Covered Transactions

- 76.200 What is a covered transaction?
 76.205 Why is it important to know if a particular transaction is a covered transaction?
 76.210 Which nonprocurement transactions are covered transactions?
 76.215 Which nonprocurement transactions are not covered transactions?
 76.220 Are any procurement contracts included as covered transactions?
 76.225 How do I know if a transaction in which I may participate is a covered transaction?
 76.230 What is the relationship between covered transactions and exclusions from participation in Federal health care programs under Title XI of the Social Security Act?

Subpart C—Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons

- 76.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
 76.305 May I enter into a covered transaction with an excluded or disqualified person?
 76.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
 76.315 May I use the services of an excluded person as a principal under a covered transaction?
 76.320 Must I verify that principals of my covered transactions are eligible to participate?
 76.325 What happens if I do business with an excluded person in a covered transaction?

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

Disclosing Information—Primary Tier Participants

- 76.335 What information must I provide before entering into a covered transaction with HHS?
 76.340 If I disclose unfavorable information required under § 76.335, will I be prevented from participating in the transaction?
 76.345 What happens if I fail to disclose the information required under § 76.335?
 76.350 What must I do if I learn of the information required under § 76.335 after entering into a covered transaction with HHS?

Disclosing Information—Lower Tier Participants

- 76.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
 76.360 What happens if I fail to disclose the information required under § 76.355?
 76.365 What must I do if I learn of information required under § 76.355 after entering into a covered transaction with a higher tier participant?

Subpart D—Responsibilities of HHS Officials Regarding Transactions

- 76.400 May I enter into a transaction with an excluded or disqualified person?
 76.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
 76.410 May I approve a participant's use of the services of an excluded person?
 76.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
 76.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
 76.425 When do I check to see if a person is excluded or disqualified?
 76.430 How do I check to see if a person is excluded or disqualified?
 76.435 What must I require of a primary tier participant?
 76.440 What method do I use to communicate those requirements to participants?
 76.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
 76.450 What action may I take if a primary tier participant fails to disclose the information required under § 76.335?
 76.455 What may I do if a lower tier participant fails to disclose the information required under § 76.355 to the next higher tier?
 76.460 What are the obligations of Medicare carriers and intermediaries?

Subpart E—Excluded Parties List System

- 76.500 What is the purpose of the Excluded Parties List System (EPLS)?
 76.505 Who uses the EPLS?
 76.510 Who maintains the EPLS?
 76.515 What specific information is in the EPLS?

- 76.520 Who places the information into the EPLS?
 76.525 Whom do I ask if I have questions about a person in the EPLS?
 76.530 Where can I find the EPLS?

Subpart F—General Principles Relating to Suspension and Debarment Actions

- 76.600 How do suspension and debarment actions start?
 76.605 How does suspension differ from debarment?
 76.610 What procedures does HHS use in suspension and debarment actions?
 76.615 How does HHS notify a person of a suspension and debarment action?
 76.620 Do Federal agencies coordinate suspension and debarment actions?
 76.625 What is the scope of a suspension or debarment action?
 76.630 May HHS impute the conduct of one person to another?
 76.635 May HHS settle a debarment or suspension action?
 76.640 May a settlement include a voluntary exclusion?
 76.645 Do other Federal agencies know if HHS agrees to a voluntary exclusion?

Subpart G—Suspension

- 76.700 When may the suspending official issue a suspension?
 76.705 What does the suspending official consider in issuing a suspension?
 76.710 When does a suspension take effect?
 76.715 What notice does the suspending official give me if I am suspended?
 76.720 How may I contest a suspension?
 76.725 How much time do I have to contest a suspension?
 76.730 What information must I provide to the suspending official if I contest a suspension?
 76.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
 76.740 Are suspension proceedings formal?
 76.745 How is fact-finding conducted?
 76.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
 76.755 When will I know whether the suspension is continued or terminated?
 76.760 How long may my suspension last?

Subpart H—Debarment

- 76.800 What are the causes for debarment?
 76.805 What notice does the debarring official give me if I am proposed for debarment?
 76.810 When does a debarment take effect?
 76.815 How may I contest a proposed debarment?
 76.820 How much time do I have to contest a proposed debarment?
 76.825 What information must I provide to the debarring official if I contest a proposed debarment?
 76.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
 76.835 Are debarment proceedings formal?
 76.840 How is fact-finding conducted?
 76.845 What does the debarring official consider in deciding whether to debar me?

- 76.850 What is the standard of proof in a debarment action?
- 76.855 Who has the burden of proof in a debarment action?
- 76.860 What factors may influence the debarring official's decision?
- 76.865 How long may my debarment last?
- 76.870 When do I know if the debarring official debars me?
- 76.875 May I ask the debarring official to reconsider a decision to debar me?
- 76.880 What factors may influence the debarring official during reconsideration?
- 76.885 May the debarring official extend a debarment?

Subpart I—Definitions

- 76.900 Adequate evidence.
- 76.905 Affiliate.
- 76.910 Agency.
- 76.915 Agent or representative.
- 76.920 Civil judgment.
- 76.925 Conviction.
- 76.930 Debarment.
- 76.935 Debarring official.
- 76.940 Disqualified.
- 76.945 Excluded or exclusion.
- 76.950 Excluded Parties List System.
- 76.955 Indictment.
- 76.960 Ineligible or ineligibility.
- 76.965 Legal proceedings.
- 76.970 Nonprocurement transaction.
- 76.975 Notice.
- 76.980 Participant.
- 76.985 Person.
- 76.990 Preponderance of the evidence.
- 76.995 Principal.
- 76.1000 Respondent.
- 76.1005 State.
- 76.1010 Suspending official.
- 76.1015 Suspension.
- 76.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—Reserved

Appendix to Part 76—Covered Transactions

Authority: 5 U.S.C. 301; Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 11738 (3 CFR, 1973 Comp., p. 799); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

- 2. Part 76 is further amended as set forth below.
- a. “[Agency noun]” is removed and “HHS” is added in its place wherever it occurs.
- b. “[Agency adjective]” is removed and “HHS” is added in its place wherever it occurs.
- c. “[Agency head or designee]” is removed and “HHS Debarring/Suspension Official” is added in its place wherever it occurs.
- 3. Section 76.220 is further amended by adding a paragraph (c) to read as follows:

§ 76.220 Are any procurement contracts included as covered transactions?

* * * * *

(c) The contract is a subcontract at any tier below a procurement

transaction that is covered under paragraph (a) of this section, and the value of the contract exceeds or is expected to exceed the “simplified acquisition threshold” defined at 42 U.S.C. 403(11). This extends the coverage of paragraph (a) of this section to all lower tiers of contracts that exceed the simplified acquisition threshold (see optional lower tier coverage shown in the diagram in the appendix to this part).

- 4. Section 76.230 is added to read as follows:

§ 76.230 What is the relationship between covered transactions and exclusions from participation in Federal health care programs under Title XI of the Social Security Act?

Any individual or entity excluded from participation in Medicare, Medicaid and other Federal health care programs under Title XI of the Social Security Act, 42 U.S.C. 1320a–7, will be subject to the prohibitions against participating in covered transactions, as set forth in this part. In addition, these excluded parties are also prohibited from participating in all Executive Branch procurement programs and activities. (Public Law 103–355, section 2455) For example, if an individual or entity is excluded by the HHS Office of Inspector General from participation in Medicare, Medicaid and all other Federal health care programs, in accordance with 42 U.S.C. 1320a–7, then that individual or entity is prohibited from participating in all Federal Government procurement and nonprocurement programs (42 CFR part 1001).

- 5. Section 76.440 is added to read as follows:

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

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

- 6. Section 76.460 is added to read as follows:

§ 76.460 What are the obligations of Medicare carriers and intermediaries?

Because Medicare carriers, intermediaries and other Medicare contractors undertake responsibilities on behalf of the Medicare program (Title XVIII of the Social Security Act), these entities assume the same obligations and responsibilities as Medicare agency

officials with respect to actions under 45 CFR part 76. This would include these entities checking the EPLS and taking necessary steps to effectuate this part.

- 7. Section 76.940 is further amended by adding a paragraph (d) to read as follows:

§ 76.940 Disqualified.

* * * * *

(d) The program exclusion authorities under Title XI of the Social Security Act (42 U.S.C. 1320a–7) and enforced by the HHS Office of Inspector General.

- 8. Section 76.995 is further amended by adding a paragraph (c) to read as follows:

§ 76.995 Principal.

* * * * *

(c) Other examples of individuals who are principals in HHS covered transactions include:

- (1) Principal investigators;
- (2) Providers of Federally-required audit services; and
- (3) Researchers.

- 9. Part 82 is added to read as set forth in instruction 2 at the end of the common preamble.

PART 82—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.

- 82.100 What does this part do?
- 82.105 Does this part apply to me?
- 82.110 Are any of my Federal assistance awards exempt from this part?
- 82.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

- 82.200 What must I do to comply with this part?
- 82.205 What must I include in my drug-free workplace statement?
- 82.210 To whom must I distribute my drug-free workplace statement?
- 82.215 What must I include in my drug-free awareness program?
- 82.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
- 82.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
- 82.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

- 82.300 What must I do to comply with this part if I am an individual recipient?
- 82.301 [Reserved]