

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

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

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

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

under the heading "Grants Management."

SUPPLEMENTARY INFORMATION:

A. Background

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

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

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

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

the procurement and nonprocurement debarment programs.

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

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

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

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

Comments on the Proposed Rules

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