

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

#### General Comments

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

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

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

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

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

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

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

#### Subpart A

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

#### Subpart B

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

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

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

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

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