

information on DOT's interim final regulations, see DOT's agency-specific preamble.

FOR FURTHER INFORMATION CONTACT: See preambles of individual agencies below.

SUPPLEMENTARY INFORMATION: On December 20, 1994, all but one of the agencies participating in the development of this final rule published a notice of proposed rulemaking (NPRM) that proposed to make changes to the nonprocurement debarment and suspension Common Rule (Common Rule) to provide for reciprocal effect between procurement and nonprocurement debarments, suspensions, and other exclusionary actions. The history of the nonprocurement debarment and suspension system and of the effort to establish reciprocity between the procurement and nonprocurement debarment and suspension systems was described in the December 20, 1994 NPRM. See 59 FR 65607.

The Department of Transportation, which did not join in publishing the NPRM, is joining in the publication of this regulation as an interim final rule. See the Department of Transportation's preamble to this regulation for a discussion regarding its participation in the Common Rule.

Technical changes to the regulations are generally not discussed in this preamble. The notice of proposed rulemaking (NPRM) proposed amendments to the Common Rule only as necessary to achieve the objectives of reciprocity or to correct printing errors in the original regulations. The NPRM used this approach to focus attention on those substantive matters that were directly affected by the reciprocity rule. In this final regulation, fuller text is provided, including, at a minimum, the entire paragraph where any change is made, so that readers may see the amendments in context. The text of the Common Rule amendments is set out at the end of this preamble and is followed by the agency-specific preambles and any agency-specific amendments to the Common Rule.

Response to Comments

Five commenters provided their views on the proposed amendments to the Common Rule. Eight comments were also submitted regarding the effect of the proposed rule on specific agencies or regarding specific additional changes to the Common Rule that were proposed by certain agencies. Those comments are addressed in the agency-specific preambles that follow the amendments to the Common Rule.

Request for Future Rulemaking

The Administrative Conference of the United States (ACUS) submitted a comment supporting the proposed reciprocity amendments and asked that the agencies participating in this rulemaking effort initiate a subsequent rulemaking effort to consider additional changes to the Common Rule and the Federal Acquisition Regulation (FAR), consistent with ACUS Recommendation 95-2, which that agency adopted on January 19, 1995. Another commenter mentioned the ACUS recommendation and asked that it be considered in a future rulemaking action, noting particularly that part of the recommendation regarding the need for agencies to consider mitigating and aggravating circumstances. The agencies participating in this rulemaking action agree that additional changes to the Common Rule should be considered and will consider Recommendation 95-2 along with other proposed changes to the Common Rule before the end of this year.

Should the FAR be amended so that proposed debarments would not be effective?

Comment: Three of the commenters were concerned about a difference between the procurement and nonprocurement rules that was not addressed by the NPRM. Under the FAR subpart 9.4, *Debarment, Suspension, and Ineligibility*, a proposed debarment has the effect of excluding a party from receiving a contract. In contrast, under the Common Rule, a proposed debarment has no effect on a person's eligibility to participate in a nonprocurement program. In each of the three comments, the commenter asked that the FAR rule be amended so that proposed debarments under subpart 9.4 would have no effect.

Discussion: While the three comments request changes to the FAR and do not technically request any change to the Common Rule, the agencies participating in this rulemaking action agree that there is no need to change either rule so that the effect of a proposed debarment is the same under both debarment and suspension systems. The request to make the two rules the same on this matter misconstrues the purpose and effect of the reciprocity effort.

The purpose of the proposed reciprocity rule is to ensure that, once one agency takes action to exclude a person and that person is placed on the *List of Parties Excluded from Federal Procurement and Nonprocurement Programs*, all agencies will honor that determination. In deciding whether to

take an action to exclude a person, the agency considers whether a person's present responsibility is affected such that the person poses a risk to the Federal Government. The agencies did not intend that the decision to give reciprocity would require the agencies to change the two debarment and suspension systems and establish identical procedures for excluding persons under both the FAR and the Common Rule.

Change: None.

Comment: One commenter thought that the nonprocurement common rule's recognition of proposed debarments under the FAR went beyond the authority in section 2455 of the *Federal Acquisition Streamlining Act*, which provides that "Regulations shall be issued providing that provisions for the debarment, suspension, or other exclusion of a participant in a procurement activity under the Federal Acquisition Regulation (FAR), or in a nonprocurement activity under regulations issued pursuant to Executive Order 12549, shall have government-wide effect." The commenter pointed out that this statute does not list proposed debarments specifically and, therefore, argued that the nonprocurement rule could not give effect to proposed debarments entered under the FAR. The commenter suggested that the phrase "other exclusion" probably referred to voluntary exclusions under section 2.210 of the common rule.

Discussion: Section 2455 does not limit, as suggested by the commenter, the scope of the amendments that agencies may make to the Common Rule. The passage quoted by the commenter states that agencies shall give effect under the Common Rule to "debarment, suspension, or other exclusion of a participant in a procurement activity under the Federal Acquisition Regulation (FAR)" (emphasis added). A proposed debarment is an exclusion under the FAR, thus, section 2455 of the Streamlining Act authorizes agencies to promulgate nonprocurement rules that give effect to proposed debarments under the FAR. The commenter's suggestion that "other exclusion" referred to voluntary exclusions does not bear weight. There is no history that Congress intended to limit that term to a unique exclusion that exists in only one system. Rather, "other exclusion" must refer to any exclusion that has effect under either system.

Change: None.

Comment: One commenter raised a hypothetical situation which it believed demonstrated a difficulty between the