

common rule did not address the issue of scope, the Department proposed to include the results of the resolution of this issue as part of the December 20, 1994, publication as discussed below.

New exceptions for certain types of transactions under natural resource management programs were proposed. These exceptions attempted to make clear that permits, licenses, exchanges and other acquisitions of real property, rights-of-way, and easements, under natural resource management programs were excluded from coverage.

For example, when the Federal Government seeks to acquire real property, including through use of an exchange of real property elsewhere, the transaction will not be subject to these regulations. In such cases, where the success of the agency program depends on a specific parcel of land, the application of the debarment and suspension system could harm the public interest. Moreover, public land management activities require the use of certain transactions for land and resource management without regard to the identity of the recipient. Accordingly, range management transactions, such as grazing permits and rights-of-way, are excluded by the proposed exception language. Similarly, virtually all recreation management and public land access transactions are not covered.

In addition, the Department proposed to amend section 12.110(a)(3) of its final rule to include nonprocurement debarment system coverage for Federal acquisition of a leasehold interest or any other interest in real property, concession contracts, and disposition of Federal real and personal property and natural resources.

The scope of the Department's nonprocurement debarment system will include transactions associated with natural resources management programs and the disposition of natural resources with the following exceptions: permits, licenses, exchanges and other acquisitions of real property, rights-of-way, easements, mineral patent claims administered by the Bureau of Land Management and water service contracts and repayment contracts awarded by the Bureau of Reclamation. Patents issued under the Mining Law of 1872, 30 U.S.C. 22 *et seq.*, as amended are statutory entitlements and, therefore, are exempt under the terms of Executive Order 12549. The award of water service contracts and repayment contracts is mandatory, provided by the Reclamation Project Act of 1939, as amended, set forth at 43 U.S.C. 485.

One comment was received from the private sector, and one comment was

received from another Federal agency in response to the proposed rule. The private sector commenter stated that the Department's proposal to include nonprocurement debarment system coverage for disposition of Federal real and personal property and natural resources was unwarranted and that the preamble provided no articulated basis for the proposal. The commenter also stated that the Department was under no statutory compulsion to make this change. The commenter stated that there is no policy basis for including asset sales in the nonprocurement debarment system, particularly given the expanded scope of the system to include reciprocal procurement and nonprocurement government-wide effect. The commenter expressed the view that including asset sales in the nonprocurement debarment system works a punishment on potential buyers who would be deemed ineligible, contrary to the express purposes of the nonprocurement system.

The amendment of section 12.110(a)(3) as to covered transactions does not add disposition of real and personal property and natural resources. It is our interpretation that these transactions were already covered as part of the general language adopted in the final common rule published on May 26, 1988. Because of new exceptions from coverage, as set forth in section 12.110(a)(2), however, the language in section 12.110(a)(3) was added to attempt to clarify those covered transactions previously excluded.

The U.S. Forest Service (USFS) addressed the compatibility of this rule with the debarment provisions of the Forest Resources Conservation and Shortage Relief Act of 1990 (Export Act). USFS states that in enacting the Export Act, Congress "anticipated no governmentwide effect would be imposed on persons debarred pursuant to the Export Act." USFS relies for this proposition solely on the provision of the Export Act that debarment thereunder may be decided only by the Secretaries of Commerce and of the Interior. We reject this interpretation. By participating in this common rule making, agencies are agreeing only to give reciprocal effect to debarments and suspensions effectuated by other agencies. This is not the same as the other agencies debarring or suspending a party under the Export Act. Similarly, the Export Act gives both Commerce and Interior discretion to deny applications for unprocessed timber that are filed under the Export Act. Accordingly, we see no prohibition in that Act against giving reciprocal effect

to governmentwide debarments or suspensions to applications under the Export Act.

USFS also stated a concern that due to differing requirements of this rule and the Export Act, separate debarment systems will have to be maintained, and that all timber-related debarments should be "under one system." We do not understand what USFS intends when it refers to separate debarment systems. As long as the source of the debarment is apparent, we see no reason why the differing effects of debarments under the Export Act and this rule would require the maintenance of two separate systems.

Next, USFS queries whether sale of miscellaneous forest products, such as Christmas trees, posts and poles, and boughs, will be covered. We would exclude such sales as incidental benefits.

Finally, USFS recommends that there should only be a self-certification process for individuals and families, not also a check by Federal agencies of the *List of Parties Excluded from Federal Procurement and Nonprocurement Programs* for the individual or corporation and all its aliases or affiliates. We believe that Federal agencies have an obligation to ensure that the Federal Government is only doing business with responsible parties; therefore, we are not changing the Common Rule's requirement for Federal agencies to check the List.

Therefore, the Department will exclude all transactions concerning permits, licenses, exchanges and other acquisitions of real property, rights-of-way, easements, mineral patent claims, water service contracts, and repayment contracts from its nonprocurement debarment and suspension system.

A corresponding change is also being made in Section 12.200(c) to add a reference to these excluded transactions.

List of Subjects in 43 CFR Part 12

Administrative practice and procedure, Contract programs, Cooperative agreements, Grant programs, Grants administration, Reporting and recordkeeping requirements.

Dated: May 25, 1995.

Bonnie R. Cohen,

Assistant Secretary—Policy, Management and Budget.

Title 43 of the Code of Federal Regulations, part 12 is amended as follows: