

**PART 29—GOVERNMENTWIDE
DEBARMENT AND SUSPENSION
(NONPROCUREMENT) AND
GOVERNMENTWIDE REQUIREMENTS
FOR DRUG-FREE WORKPLACE
(GRANTS)**

1. The authority for part 29 is revised to read as follows:

Authority: 41 U.S.C. 701 *et seq.*; 49 U.S.C. 322(a); E.O. 12549, 3 CFR, 1986 Comp., p. 189.

2. Section 29.100 is revised as set forth at the end of the common preamble.

3. Sections 29.105 and 29.110 are amended as set forth at the end of the common preamble.

4. Sections 29.200, 29.215, 29.220, and 29.225, and Appendices A and B to Part 29 are revised as set forth at the end of the common preamble.

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DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Parts 9, 22, 28, 44, and 52

[FAC 90-28; FAR Case 94-801]

RIN 9000-AG22

**Federal Acquisition Regulation;
Debarment, Suspension, and
Ineligibility (Ethics)**

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994, Public Law 103-355 (the Act). The Federal Acquisition Regulatory Council is amending the Federal Acquisition Regulation (FAR) to reflect the policy of ensuring that suspensions, debarments, and other exclusions from procurement and nonprocurement activities receive reciprocal Government-wide effect as directed by Executive Order (E.O.) 12689, dated August 16, 1989, and Section 2455, Uniform Suspension and Debarment, of the Act. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: August 25, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Julius Rothlein, Ethics Team Leader, at (703) 697-4349 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAC 90-28, FAR case 94-801.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act (FASA) of 1994, Pub. L. 103-355 (the Act), provides authorities that streamline the acquisition process and minimize burdensome Government-unique requirements. Major changes in the acquisition process as a result of the Act's implementation include changes in the areas of Commercial Item Acquisition, Simplified Acquisition Procedures, the Truth in Negotiations Act, and introduction of the Federal Acquisition Computer Network (FACNET). In order to promptly achieve the benefits of the provisions of the Act, the Government is issuing implementing regulations on an expedited basis.

FAR case 94-801 originated because Section 2455 of Public Law 103-355 was enacted to remedy the current situation where suspensions, debarments, and other exclusions from procurement and nonprocurement activities do not have reciprocal Government-wide effect. The concept of reciprocity for procurement and nonprocurement suspension and debarment actions is not new. Since August 1989 there has been an effort to do by executive order (*i.e.*, E.O. 12689), what section 2455 now prescribes by law. That earlier effort was worked on by a committee known as the "Interagency Committee on Debarment and Suspension." This Interagency Committee is made up of 16 of the Federal executive agencies that impose nonprocurement suspensions and debarments. By October 1994 the agencies in an ad hoc group reached agreement on the language that would implement the concept of reciprocity and be consistent with the principles of the *National Performance Review*. The language in FAR 9.401, Applicability, has been coordinated with the ad hoc group of agencies. The changes to the procurement and nonprocurement rules implement Section 2455 and E.O. 12689 by ensuring that suspensions, debarments, and other exclusions from procurement and nonprocurement activities have reciprocal Government-wide effect.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because only a very small percentage of Federal contractors are debarred or suspended.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Public Comments

A proposed rule was published on December 20, 1994, at 59 FR 65623. Ten substantive comments were received from six commenters. The FASA Implementation Team fully considered all comments received. However, no changes to the case were considered necessary as a result of the public comments. The team's full analysis and disposition of the comments may be obtained from the FAR Secretariat. The most significant comment and its disposition follows:

Comment: One commenter recommended the deletion of the category "proposed for debarment" from the FAR procurement procedures, in order to ensure consistency with the nonprocurement rule which does not place that category on the GSA List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

Response: Disagree. The agencies do not believe there is a need to change the 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