

PART 1940 - GENERAL

SUBPART M - GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)
AND REQUIREMENTS FOR DRUG-FREE WORK PLACE

TABLE OF CONTENTS

<u>Sec.</u>		<u>Page</u>
1940.601	Purpose.	1
1940.602	Policy and scope.	1
1940.603	Definitions.	2
1940.604	Effect of action.	3
1940.605	Exceptions.	3
1940.606	Actions and responsibilities of State Directors, Area and Local Offices.	4
1940.607	Redelegation of authority.	5
1940.608	Appeal of debarment or suspension.	6
1940.609	- 1940.650 [Reserved].	6

Exhibit to Subpart M

Exhibit A - PART 3017 - GOVERNMENTWIDE DEBARMENT AND SUSPENSION
(NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR
DRUG-FREE WORKPLACE

oOo

PART 1940 - GENERAL

SUBPART M - GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)
AND REQUIREMENTS FOR DRUG-FREE WORK PLACE

§ 1940.601 Purpose.

Executive Order 12549, signed February 18, 1986, provides that Executive departments and agencies shall participate in a government-wide system for non-procurement debarment and suspension. The Drug-free Workplace Act of 1988 also placed new requirements on all recipients of government grants; it does not affect applicants for loans only. This subpart implements the U.S. Department of Agriculture's (USDA) Part 3017 which is attached as Exhibit A of this subpart and provides guidance in actions that are specific to Rural Development. These administrative provisions are only a supplement to the information contained in Exhibit A and do not constitute information that would be of benefit to the public.

§ 1940.602 Policy and scope.

This subpart applies to both individual and group-type loans (insured and guaranteed) and grants in connection with any program administered by Rural Development. Any action to be taken under this subpart is for the protection of the public interest. Part 3017 is intended to prevent fraud, waste, and abuse in Federal non-procurement transactions. Aside from a case of fraud, waste, or abuse, it is Rural Development's policy that delinquent borrowers' names will not be placed on the "List of Parties Excluded from Federal Procurement or Non-procurement Programs." Rural Development may however, debar or suspend borrowers who owe collections only for (unsecured) debts unless the borrower is making payments on the debt according to a schedule to Rural Development as agreed to by Agency officials or the debt does not meet the criteria for settlement regulations. If, however, Rural Development borrowers' names are placed on the list by other agencies, Rural Development may not extend additional loan or grant assistance to them for the period of debarment or suspension unless an exception pursuant to § 3017.215 of Exhibit A is obtained prior to processing the application for assistance.

DISTRIBUTION: WSDC

LOAN AND GRANT MAKING
GENERAL

(a) Any servicing action authorized by the Rural Development loan servicing regulations which do not involve new loan funds is not covered by the Governmentwide Debarment and Suspension provisions pursuant to § 3017.220 of Exhibit A. (Protective advances authorized by Rural Development's loan servicing regulations may be made to protect the Government's security interest.)

§ 1940.603 Definitions

Refer to those in § 3017.105 of Exhibit A except in those specific cases which follow:

(a) Agency. Rural Housing Service, Rural Business-Cooperative Service and Rural Utilities Service, with the exception of the Electric and Telecommunications programs as appropriate.

(b) Debarring or Suspending Official. Agency Administrator.

(c) Debarring or Suspending Officer. The individual designated by the State Director for receiving, processing and coordinating all debarment or suspension activities within the State.

(d) List Officer. The Director of the Program Support Staff, as designated by the Agency's Administrator, will receive and process all proposed Debarment or Suspension actions. The names of persons debarred or suspended by the Agency's Administrator will be submitted to the General Services Administration (GSA) which is responsible for maintaining the Governmentwide List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(e) List Availability. The Governmentwide List of Parties Excluded from Federal Procurement or Nonprocurement Programs is now on-line via the Internet. The web site can be found under the General Services Administration's (GSA) "List of Parties Excluded from Federal Procurement and Non-Procurement Programs," at <http://epls.arnet.gov>. RD Instruction § 1940.606(b) describes pre-application responsibilities for screening potential clients and applicants.

(f) Period of Debarment. Will be determined based on the severity of the case's impact on affected borrowers, programs, or operations. Proposed Debarments seldom exceed 3 years except in cases of drug abuse and then may exceed 5 years. There may be cases where the violation of an Agency regulation is of such magnitude that it would warrant a debarment to be imposed longer than 3 years, but not to exceed 5 years. A debarment to exceed 3 years must include a written justification as part of the case file.

§ 1940.604 Effect of action.

(a) Debarment and suspension are drastic actions which may severely affect the economic well being of the persons debarred or suspended. Any person or organization whose name appears on the debarment list referenced in § 1940.603(d), along with their affiliates as defined in Exhibit A, will not be permitted to participate either directly or indirectly, in Government programs except Social Security or others shown in Exhibit A.

(b) If the applicant's name is on the debarment list referenced in § 1940.603(d), Rural Development will not provide the requested assistance unless the type of assistance requested is listed in § 1940.602 of this subpart, or an exception can be made under one of the provisions listed in § 1940.605 of this subpart or § 3017.215 of Exhibit A. This action is not appealable.

§ 1940.605 Exceptions.

(a) Exceptions may be granted, but only infrequently (see § 3017.215 of Exhibit A). When an existing borrower's name is placed on the list by another Federal agency, subsequent assistance may be provided when it is determined that without an exception, the Government's interest would be adversely affected or such funding is necessary to enable the borrower to achieve program objectives. An exception can be processed in accordance with § 3017.215 of Exhibit A.

(b) When there is cause for an exception, the loan/grant processing official will investigate the reason(s), develop the documentation stating the reason(s) for deviating from the President's policy and send the information with the borrower's case file and recommendations to the State Director (see § 1940.608 of this subpart). Making an exception is a discretionary act and any decision is not appealable.

(c) Any exceptions granted shall be reported that same day to the Director, Program Support Staff, in the National Office (see § 3017.505(b) of Exhibit A).

(d) Only the Secretary of Agriculture may grant an exception under the Drug-Free Workplace Act.

§ 1940.606 Actions and responsibilities of State Directors, Area and Local Offices.

(a) Review and become totally familiar with the causes for debarment and suspension as shown in Exhibit A, §§ 3017.305 and 3017.405, respectively.

(b) Upon receipt of a preapplication or application for Rural Development financial assistance, the Rural Development loan/grant processing official is responsible for determining whether an applicant's name appears on the current debarment list in accordance with Exhibit A, § 3017.505(d). The screening of an applicant's name for debarment history can be performed electronically by accessing the Internet under the General Services Administration's (GSA) "List of Parties Excluded from Federal Procurement and Non-Procurement Programs". GSA's Web site is <http://epls.arnet.gov>. A list check should also occur immediately before the loan closing or grant award to prevent granting assistance to applicants that have been placed on the list after submitting an application. It is imperative that the loan/grant processing official document the case file regarding the date of the Nonprocurement List checked. A dated printed copy of the query results of a search on the GSA Web site will suffice in documenting an applicant's screening. If the applicant's name is on the list, assistance will be denied unless the type of assistance requested is listed in § 1940.602 of this subpart or an exception is processed in accordance with § 1940.605 of this subpart or § 3017.215 of Exhibit A. If the applicant's name is not on the list, the loan/grant-processing official will:

(1) Obtain the applicant's signature (lender's signature for guaranteed loans) on certification form AD-1047, "CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS." Copies or facsimiles are acceptable. Inform the certifying party of the significance of lower tier certifications outlined on the back of form; they are especially significant where large construction contracts are awarded. Lower tier transactions outlined in § 3017.110 (a)(1)(ii) of Exhibit A as they pertain to Rural Development include such persons or entities as builders, contractors, dealers, suppliers, manufacturers, real estate brokers or agents, sureties, insurance companies, engineers, architects, inspectors, appraisers, auditors, loan closing agents or other attorneys. Form AD-1048 "CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTIONS" is used.

§ 1940.606(b) (Con.)

(2) Obtain the appropriate certification regarding the Drug-free Work Place for all grant recipients just prior to grant approval. Form AD-1049, "CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS (GRANTS) ALTERNATIVE I - FOR GRANTEEES OTHER THAN INDIVIDUALS" or Form AD-1050, "CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS (GRANTS) ALTERNATIVE II - FOR GRANTEEES WHO ARE INDIVIDUALS" will be used. Copies or facsimiles are acceptable.

(3) Incorporate these certifications (Forms AD-1047, AD-1049 and AD-1050) and associated documentation into the official case file.

(c) When there is cause for debarment or suspension, the loan processing official will conduct the necessary investigation and referral as discussed in Exhibit A, § 3017.311 and § 3017.410. After the investigation and documentation is completed, send the pertinent information to your Regional Attorney for review and memorandum of concurrence before submitting to the Agency's Administrator, Attention: Director of Program Support Staff. The Administrator will decide if debarment or suspension is appropriate. If so, necessary notification will be made to the person against whom the action is taken as required in § 3017.312 - 314 and § 3017.411 - 413 of Exhibit A.

(d) In addition to the responsibilities outlined in RD Instruction 1940-M and Exhibit A, §§ 3017.305 and 3017.405, respectively, it is imperative to compile debarment case files in accordance with the standards outlined by the Agency.

§ 1940.607 Redelegation of authority.

The Agency's Administrator may delegate authority to the State Director to approve exceptions under § 1940.605 of this subpart for subsequent loan assistance. For cases where the State Director does not have approved authority, the borrower's case file, all pertinent information, and the State Director's recommendations will be forwarded to the Agency's Administrator, Attention: Director of Program Support Staff.

RD Instruction 1940-M

§ 1940.608 Appeal of debarment or suspension.

Appeals of any action under this subpart are handled pursuant to § 3017.515 of Exhibit A.

§ 1940.609 - 1940.650 [Reserved].

Attachment: Exhibit A

oOo

PART 3017 - GOVERNMENTWIDE DEBARMENT AND SUSPENSION
(NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENT FOR DRUG-FREE
WORKPLACE

Subpart A - General

Sec.

- 3017.100 Purpose.
- 3017.105 Definitions.
- 3017.110 Coverage.
- 3017.115 Policy.

Subpart B - Effect of Action

- 3017.200 Debarment or suspension.
- 3017.205 Ineligible persons.
- 3017.210 Voluntary exclusion.
- 3017.215 Exception provision.
- 3017.220 Continuation of covered transactions.
- 3017.225 Failure to adhere to restrictions.

Subpart C - Debarment

- 3017.300 General.
- 3017.305 Causes for debarment.
- 3017.310 Procedures.
- 3017.311 Investigation and referral.
- 3017.312 Notice of proposed debarment.
- 3017.313 Opportunity to contest proposed debarment.
- 3017.314 Debarring official's decision.
- 3017.315 Settlement and voluntary exclusion.
- 3017.320 Period of debarment.
- 3017.325 Scope of debarment.

Subpart D - Suspension

- 3017.400 General.
- 3017.405 Causes for suspension.
- 3017.410 Procedures.
- 3017.411 Notice of suspension.
- 3017.412 Opportunity to contest suspension.
- 3017.413 Suspending official's decision.
- 3017.415 Period of suspension.
- 3017.420 Scope of suspension.

Subpart E - Responsibilities of GSA, Agency and Participants

- 3017.500 GSA responsibilities.
- 3017.505 USDA responsibilities.
- 3017.510 Participants' responsibilities.
- 3017.515 Appeal of debarment or suspension decision.

Subpart F - Drug-Free Workplace Requirements - Grants

- 3017.600 Purpose.
- 3017.605 Definitions.
- 3017.610 Coverage.
- 3017.615 Grounds for Suspension of Payments, Termination of Grants, or Suspension or Debarment.
- 3017.620 Effect of Violation.
- 3017.625 Exception Provision.

3017.630 Grantees' Responsibilities.

Appendix A to Part 3017 - Certification Regarding Debarment, Suspension, and
Other Responsibility Matters - Primary Covered

(4-11-89) SPECIAL PN

Transactions

Appendix B to Part 3017 - Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

Appendix C to Part 3017 - Certification Regarding Drug-Free Workplace Requirements.

Authority: 5 U.S.C. 301,
Executive Order 12549,
Sec. 5151-5160 of the Drug-Free Workplace Act of
1988 (Pub. L. 100-690, Title V, Subtitle D).

Subpart A - General

§3017.100 **Purpose.**

(a) Executive order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have governmentwide effect.

(b) These regulations implement Section 3 of Executive Order 12549 and the guidelines promulgated by the Office of Management and Budget under Section 6 of the Executive Order by:

(1) Prescribing the programs and activities that are covered by the governmentwide system;

(2) Prescribing the governmentwide criteria and governmentwide minimum due process procedures that each agency shall use;

(3) Providing for the listing of debarred and suspended participants, participants declared ineligible (see definition of "ineligible" in §3017.105(i)), and participants who have voluntarily excluded themselves from participation in covered transactions;

(4) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion; and

(5) Offering such other guidance as necessary for the effective implementation and administration of the governmentwide system.

(c) Although these regulations cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

§3017.105 **Definitions.**

(a) Adequate evidence. Information sufficient to support the reasonable belief that a particular act or omission has occurred.

(b) Affiliate. Persons are affiliates of each another if, directly or indirectly, either one controls or has the power to control the other, or a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded

(c) Agency. Any executive department, military department or defense agency or other agency of the executive branch, excluding the independent regulatory agencies.

(1) A USDA agency, when used in the context of USDA internal procedures or requirements, is any organizational unit of the Department of Agriculture with authority delegated in 7 CFR Part

2 to carry out primary covered transactions under USDA programs.

(d) Civil judgment. The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation, or otherwise creating a civil liability for the wrongful acts complained of; or a final determination of liability under the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801-12).

(e) Conviction. A judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

(f) Debarment. An action taken by a debaring official in accordance with these regulations to exclude a person from participating in covered transactions. A person so excluded is "debarred."

(g) Debaring official. An official authorized to impose debarment. The debaring official is either:

- (1) The agency head, or
- (2) An official designated by the agency head.

(i) In USDA, the authority to act as a debaring official is not delegated below the agency head level.

(3) In USDA, each Under Secretary, Assistant Secretary, or agency head who has been delegated authority in Part 2 of this title to carry out a covered transaction is authorized to act as a debaring official in connection with such covered transaction.

(h) Indictment. Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

(i) Ineligible. Excluded from participation in Federal nonprocurement programs pursuant to a determination of ineligibility under statutory, executive order, or regulatory authority, other than Executive Order 12549 and its agency implementing regulations; for example, excluded pursuant to the Davis-Bacon Act and its implementing regulations, the equal employment opportunity acts and executive orders, or the environmental protection acts and executive orders. A person is ineligible where the determination of ineligibility affects Such person's eligibility to participate in more than one covered transaction.

(j) Legal proceedings. Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

(k) Nonprocurement List. The portion of the List of Parties Excluded from Federal Procurement or Nonprocurement Programs compiled, maintained and distributed by the General Services Administration (GSA) containing the names and other information about persons who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(l) Notice. A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service of process, or any partner, officer, director, owner, or joint venture of the party. Notice, if undeliverable, shall be considered to have been received by

the addressee five days after being properly sent to the last address known by the agency.

(m) Participant. Any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. This term also includes any person who acts on behalf of or is authorized to commit a participant in a covered transaction as an agent or representative of another participant.

(n) Person. Any individual, corporation, partnership, association, unit of government or legal entity, however organized, except: foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign Governmental entities.

(o) Preponderance of the evidence. Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(p) Principal. Officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or a person who has a critical influence on or substantive control over a covered transaction, whether or not employed by the participant. Persons who have a critical influence on or substantive control over a covered transaction are:

(1) Principal investigators.

(q) Proposal. A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a covered transaction.

(r) Respondent. A person against whom a debarment or suspension action has been initiated.

(s) State. Any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers that instrumentality to be an agency of the State government.

(t) Suspending official. An official authorized to impose suspension. The suspending official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(i) In USDA, the authority to act as a suspending official is not delegated below the agency head level.

(3) In USDA, each Under Secretary, Assistant Secretary, or agency head who has been delegated authority in Part 2 of this title to carry out a covered transaction is authorized to act as a suspending official in connection with such covered transaction.

(u) Suspension. An action taken by a suspending official in accordance with these regulations that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal,

(4-11-89) SPECIAL PN

debarment, or Program Fraud Civil Remedies Act proceedings as may ensue. A person so excluded is "suspended."

(v) Voluntary exclusion or voluntarily excluded. A status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

(w) Appeals officer. Any administrative law judge of the Office of Administrative Law Judges, Department of Agriculture.

(x) USDA. U.S. Department of Agriculture.

§3017.110 **Coverage.**

(a) These regulations apply to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs. For purposes of these regulations such transactions will be referred to as "covered transactions."

(1) Covered transaction. For purposes of these regulations, a covered transaction is a primary covered transaction or a lower tier covered transaction. Covered transactions at any tier need not involve the transfer of Federal funds.

(i) Primary covered transaction. Except as noted in paragraph (a)(2) of this section, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal agency and a person. Primary covered transactions also include those transactions specially designated by the U.S. Department of Housing and Urban Development in such agency's regulations governing debarment and suspension.

(ii) Lower tier covered transaction. A lower tier covered transaction is:

(A) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction.

(B) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. §2304(g) and 41 U.S.C. §253(g) (currently \$25,000) under a primary covered transaction.

(C) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Such persons are:

(1) Principal investigators.

(2) Providers of federally-required audit services.

(2) Exceptions. The following transactions are not covered:

(i) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

- (ii) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;
- (iii) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);
- (iv) Federal employment;
- (v) Transactions pursuant to national or agency-recognized emergencies or disasters;
- (vi) Incidental benefits derived from ordinary governmental operations; and
- (vii) Other transactions where the application of these regulations would be prohibited by law.

(3) USDA covered transactions. These USDA regulations apply to the Department's domestic assistance covered transactions (whether by a Federal agency, recipient, subrecipient, or intermediary) including, except as noted in paragraph (a)(2) of this section: grants, cooperative agreements, scholarships, fellowships, loans, loan guarantees, subsidies, insurance, payments for specified use, and donation agreement subawards, subcontracts and transactions at any tier that are charged as direct or indirect costs, regardless of type of (including subtier awards under awards which are statutory entitlement or mandatory awards).

(b) Relationship to other sections. This section describes the types of transactions to which a debarment or suspension under the regulations will apply. Subpart B, "Effect of Action," §3017.200, "Debarment or suspension," sets forth the consequences of a debarment or suspension. Those consequences would obtain only with respect to participants and principals in the covered transactions and activities described in §3017.110(a), §3017.325, "Scope of debarment," and §3017.420, "Scope of suspension," govern the extent to which a specific participant or organizational elements of a participant would be automatically included within a debarment or suspension action, and the conditions under which affiliates or persons associated with a participant may also be brought within the scope of the action.

(c) Relationship to Federal procurement activities. Debarment and suspension of Federal procurement contractors and subcontractors under Federal procurement contracts are covered by the Federal Acquisition Regulation (FAR), 48 CFR Subpart 9.4.

§3017.115 **Policy.**

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with Executive Order 12549 and these regulations, are appropriate means to implement this policy.

(b) Debarment and suspension are serious actions which shall

be used only in the public interest and for the Federal Government's protection and not for purposes of punishment. Agencies may impose debarment or suspension for the causes and in accordance with the procedures set forth in these regulations.

(c) When more than one agency has an interest in the proposed debarment or suspension of a person, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

Subpart B - Effect of Action

§3017.200 Debarment or Suspension.

(a) Primary covered transactions. Except to the extent prohibited by law, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the executive branch of the Federal Government for the period of their debarment or suspension. Accordingly, no agency shall enter into primary covered transactions with such debarred or suspended persons during such period, except as permitted pursuant to §3017.215.

(b) Lower tier covered transactions. Except to the extent prohibited by law, persons who have been debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (see §3017.110(a)(1)(ii)) for the period of their debarment or suspension.

(c) Exceptions. Debarment or suspension does not affect a person's eligibility for:

(1) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;

(3) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(4) Federal employment;

(5) Transactions pursuant to national or agency-recognized emergencies or disasters;

(6) Incidental benefits derived from ordinary governmental operations; and

(7) Other transactions where the application of these regulations would be prohibited by law.

§3017.205 Ineligible Persons.

Persons who are ineligible, as defined in §3017.105(i), are

excluded in accordance with the applicable statutory, executive order, or regulatory authority.

§3017.210 Voluntary exclusion.

Persons who accept voluntary exclusions under §3017.315 are excluded in accordance with the terms of their settlements. USDA shall, and participants may, contact the original action agency to ascertain the extent of the exclusion.

§3017.215 Exception provision.

USDA may grant an exception permitting a debarred, suspended, or voluntarily excluded person to participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549 and §3017.200 of this rule. However, in accordance with the President's stated intention in the Executive Order, exceptions shall be granted only infrequently. Exceptions shall be reported in accordance with §3017.505(a).

§3017.220 Continuation of covered transactions.

(a) Notwithstanding the debarment, suspension, determination of ineligibility, or voluntary exclusion of any person by an agency, agencies and participants may continue covered transactions in existence at the time the person was debarred, suspended, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, ineligible, or voluntarily excluded, except as provided in §3017.215.

§3017.225 Failure to adhere to restrictions.

Except as permitted under §3017.215 or §3017.220 of these regulations, a participant shall not knowingly do business under a covered transaction with a person who is debarred or suspended, or with a person who is ineligible for or voluntarily excluded from that covered transaction. Violation of this restriction may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies, as appropriate. A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction (see Appendix B), unless it knows that the certification is erroneous. An agency has the burden of proof that such participant did knowingly do business with such a person.

Subpart C - Debarment

§3017.300 General.

(4-11-89) SPECIAL PN

The debarring official may debar a person for any of the causes in §3017.305, using procedures established in §§3017.310 through 3017.314. The existence of a cause for debarment, however, does not necessarily require that the person be debarred; the seriousness of the person's acts or omissions and any mitigating factors shall be considered in making any debarment decision.

§3017.305 Causes for debarment.

Debarment may be imposed in accordance with the provisions of §§3017.300 through 3017.314 for:

(a) Conviction of or civil judgment for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, the effective date of these regulations or a procurement debarment by any Federal agency taken pursuant to 48 C.F.R. Subpart 9.4;

(2) Knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person, in connection with a covered transaction, except as permitted in §3017.215 or §3017.220;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted; or

(4) Violation of a material provision of a voluntary exclusion agreement entered into under §3017.315 or of any settlement of a debarment or suspension action.

(5) Violation of any requirement of Subpart F of this Part,

relating to providing a drug-free workplace, as set forth in §3017.615 of this Part.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a person.

§3017.310 Procedures.

USDA shall process debarment actions as informally as practicable, consistent with the principles of fundamental fairness, using the procedures in §§3017.311 through 3017.314.

§3017.311 Investigation and referral.

Information concerning the existence of a cause for debarment from any source shall be promptly reported, investigated, and referred, when appropriate, to the debarring official for consideration. After consideration, the debarring official may issue a notice of proposed debarment.

(a) The decision to utilize agency personnel, the Office of the Inspector General (OIG), or other appropriate resources to conduct the investigation and develop the documentation required by paragraph (b) of this section is the responsibility of the agency possessing the information.

(b) Basic documentation shall be developed that includes but is not limited to:

- (1) The name of the specific respondent(s) against whom the action is being proposed or taken;
 - (2) The reason(s) for proposing the debarment;
 - (3) The specific cause(s) for debarment from §3017.305;
 - (4) A short narrative stating the facts and/or describing other evidence supporting the reason(s) for the need to debar;
 - (5) The recommended time period for the debarment;
 - (6) The potential effect and/or consequences that the debarment will have on the respondent(s);
 - (7) Copies of any relevant support documentation identified under this section.
- (c) The debarring official shall be responsible for deciding whether or not to proceed with the action.
- (d) The Office of the General Counsel (OGC) is responsible for:
- (1) Reviewing the documentation and notices for legal sufficiency, and
 - (2) Providing any necessary coordination with the Department of Justice (DOJ).

§3017.312 Notice of proposed debarment.

A debarment proceeding shall be initiated by notice to the respondent advising:

- (a) That debarment is being considered;
 - (1) Information on the specific debarment action proposed must be given.
- (b) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;
- (c) Of the cause(s) relied upon under §3017.305 for proposing debarment;
- (d) Of the provisions of §§3017.311 through 3017.314, and

any other USDA procedures, if applicable, governing debarment decisionmaking; and

- (e) Of the potential effect of a debarment.

In USDA, the notice to the respondent shall be signed by the debarring official and transmitted by certified mail, return receipt requested. OGC will be consulted on all proposed debarment actions prior to the notice being sent to the respondent.

§3017.313 Opportunity to contest proposed debarment.

(a) Submission in opposition. Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

- (b) Additional proceedings as to disputed material facts.

(1) In actions not based upon a conviction or civil judgment, if the debarring official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present Witnesses, and confront any witness the agency presents.

(2) A transcribed record of any additional proceedings shall be made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§3017.314 Debarring official's decision.

(a) No additional proceedings necessary. In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(1) In USDA debarment actions where respondent(s) fail(s) to timely provide any submission in opposition, the action will be considered decided.

- (b) Additional proceedings necessary.

(1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

- (3) The debarring official's decision shall be made after the

conclusion of the proceedings with respect to disputed facts.

(c) (1) Standard of proof. In any debarment action, the cause for debarment must be established by a preponderance of the evidence. Where the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(2) Burden of proof. The burden of proof is on the agency proposing debarment.

(d) Notice of debarring official's decision.

(1) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:

(i) Referring to the notice of proposed debarment;
(ii) Specifying the reasons for debarment;
(iii) Stating the period of debarment, including effective dates; and
(iv) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or an authorized designee makes the determination referred to in §3017.215.

(2) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

(3) In USDA, the notice to the respondent shall be in writing, signed by the debarring official and transmitted by certified mail, return receipt requested. The OGC will be consulted on all proposed debarment actions prior to the notice being sent to the respondent.

§3017.315 Settlement and voluntary exclusion.

(a) When in the best interest of the Government, USDA may, at any time, settle a debarment or suspension action.

(b) If a participant and the agency agree to a voluntary exclusion of the participant, such voluntary exclusion shall be entered on the Nonprocurement List (see Subpart E - Responsibilities of GSA, USDA and Participants).

§3017.320 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the causes(s). If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(1) Debarment for causes other than those related to a violation of the requirements of Subpart F of this part generally should not exceed three years. Where circumstances warrant, a longer period of debarment may be imposed.

(2) In the case of a debarment for a violation of the requirements of Subpart F of this part (see §3017.305(c)(5)), the period of debarment shall not exceed five years.

(b) The debarring official may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial

debarment action was based. If debarment for an additional period is determined to be

(4-11-89) SPECIAL PN

necessary, the procedures of §§3017.311 through 3017.314 shall be followed to extend the debarment.

(c) The respondent may request the debarring official to reverse the debarment decision or to reduce the period or scope of debarment. Such a request shall be in writing and supported by documentation. The debarring official may grant such a request for reasons including, but not limited to:

- (1) Newly discovered material evidence;
- (2) Reversal of the conviction or civil judgment upon which the debarment was based;
- (3) Bona fide change in ownership or management;
- (4) Elimination of other causes for which the debarment was imposed; or
- (5) Other reasons the debarring official deems appropriate.

§3017.325 Scope of debarment.

(a) Scope in general. (1) Debarment of a person under these regulations constitutes debarment of all its divisions and other organizational elements from all covered transactions, unless the debarment decision is limited by its terms to one or more specifically identified individuals, divisions or other organizational elements or to specific types of transactions.

(2) The debarment action may include any affiliate of the participant that is specifically named and given notice of the proposed debarment and an opportunity to respond (see §§3017.311 through 3017.314).

(b) Imputing conduct. For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) Conduct imputed to participant. The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(2) Conduct imputed to individuals associated with participant. The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) Conduct of one participant imputed to other participants in a joint venture. The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

Subpart D - Suspension

§3017.400 General.

(a) The suspending official may suspend a person for any of the causes in §3017.405 using procedures established in §§3017.410 through 3017.413.

(b) Suspension is a serious action to be imposed only when:

(1) There exists adequate evidence of one or more of the causes set out in §3017.405, and

(2) Immediate action is necessary to protect the public interest.

(c) In assessing the adequacy of the evidence, the agency should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as grants, cooperative agreements, loan authorizations, and contracts.

§3017.405 Causes for suspension.

(a) Suspension may be imposed in accordance with the provisions of §§3017.400 through 3017.413 upon adequate evidence:

(1) To suspect the commission of an offense listed in §3017.305(a); or

(2) That a cause for debarment under §3017.305 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

§3017.410 Procedures.

(a) Investigation and referral. Information concerning the existence of a cause for suspension from any source shall be promptly reported, investigated, and referred, when appropriate, to the suspending official for consideration. After consideration, the suspending official may issue a notice of suspension,

(1) The decision to utilize agency personnel, OIG or other appropriate resources to conduct the investigation and develop the documentation required by paragraph (a)(2) of this section is the responsibility of the agency possessing the information.

(2) Basic documentation shall be developed that includes but is not limited to:

(i) The name of the specific respondent(s) against whom the suspension is to be taken;

(ii) The reason(s) for proposing the suspension;

(iii) The specific cause(s) for suspension from section 3017.405;

(iv) A short narrative stating the facts and/or describing other evidence supporting the reason(s) for the suspension;

(v) The recommended time period for the suspension;

(vi) The potential effect and/or consequences that the suspension will have on the respondent(s);

(vii) Copies of any relevant support documentation identified under this section.

(3) The suspending official shall be responsible for deciding whether or not to proceed with the suspension.

(4) The OGC is responsible for:

(4-11-89) SPECIAL PN

- (i) Reviewing the documentation and notices for legal sufficiency, and
- (ii) Providing any necessary coordination with the DOJ.
- (b) Decisionmaking process. USDA shall process suspension actions as informally as practicable, consistent with principles of fundamental fairness, using the procedures in §§3017.411 through 3017.413.

§3017.411 Notice of suspension.

When a respondent is suspended, notice shall immediately be given:

- (a) That suspension has been imposed;
- (b) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;
- (c) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;
- (d) Of the cause(s) relied upon under §3017.405 for imposing suspension;
- (e) That the suspension is for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings;
- (f) Of the provisions of §3017.411 through 3017.413 and any other USDA procedures, if applicable, governing suspension decisionmaking; and
- (g) Of the effect of the suspension. In USDA, the notice to the respondent shall be signed by the suspending official and transmitted by certified mail, return receipt requested. The OGC will be consulted on all proposed suspension actions prior to the notice being sent to the respondent.

§3017.412 Opportunity to contest suspension.

- (a) Submission in opposition. Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.
- (b) Additional proceedings as to disputed material facts.
 - (1) If the suspending official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents, unless:
 - (i) The action is based on an indictment, conviction or Civil judgment, or
 - (ii) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.
 - (A) In USDA, such determination shall be made by the suspending official, after coordination with OGC.
 - (B) In USDA, the suspending official shall continue the

suspension only if he/she determines, after consultation with OGC, that there is enough evidence to proceed without using the facts that DOJ has advised would prejudice the contemplated legal proceedings. If there is not such evidence, the suspension shall be terminated immediately without prejudice.

(2) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§3017.413 Suspending official's decision.

The suspending official may modify or terminate the suspension (for example, see §3017.320(c) for reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency. The decision shall be rendered in accordance with the following provisions:

(a) No additional proceedings necessary. In actions based on an indictment, conviction, or civil judgment; in which there is no genuine dispute over material facts; or in which additional proceedings to determine disputed material facts have been denied on the basis of DOJ advice, the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument Submitted by the respondent, unless the suspending official extends this period for good cause.

(1) In USDA, the suspending official shall terminate the suspension immediately when additional proceedings to determine disputed facts have been denied on the basis of DOJ advice. The agency, however, reserves the right to proceed with the suspension when the DOJ completes its legal proceedings or is satisfied that the suspension no longer will prejudice DOJ's proceedings.

(2) In USDA suspension actions, where the respondent(s) fail(s) to timely provide any submission in opposition, the action will be considered decided.

(b) Additional proceedings necessary.

(1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary or capricious or clearly erroneous.

(c) Notice of suspending official's decision. Prompt written

notice of the suspending official's decision shall be sent to the respondent.

(1) In USDA, the notice to the respondent shall be signed by the suspending official and transmitted by certified mail, return receipt requested. The OGC will be consulted on all proposed suspension actions prior to the notice being sent to the respondent. The notice shall include the following:

- (i) Reference to the previously issued notice of suspension;
- (ii) The reason(s) for the action taken in this notice.
- (iii) The effective date(s) of the suspension taken in this notice and, where appropriate, the period of the suspension;
- (iv) Advice that the suspension is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or a designee authorized by an agency head makes a determination referred to in §3017.215.

§3017.415 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings, unless terminated sooner by the suspending official or as provided in paragraph (b) of this section.

(b) If legal or administrative proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General or United States Attorney requests its extension in writing, in which case it may be extended for an additional six months. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of an impending termination of a suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

(1) The suspending official shall notify the OGC which will notify the DOJ of the impending termination of a suspension.

§3017.420 Scope of suspension.

The scope of a suspension is the same as the scope of a debarment (see §3017.325), except that the procedures of §§3017.410 through 3017.413 shall be used in imposing a suspension.

Subpart E - Responsibilities of GSA, USDA and participants.

§3017.500 GSA responsibilities.

(a) In accordance with the OMB guidelines, GSA shall compile, maintain, and distribute a list of all persons who have been debarred, suspended, or voluntarily excluded by agencies under Executive order 12549 and these regulations, and those who have been determined to be ineligible.

(b) At a minimum, this list shall indicate:

(1) The names and addresses of all debarred, suspended, ineligible, and voluntarily excluded persons, in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The type of action;

- (3) The cause for the action;
- (4) The scope of the action;
- (5) Any termination date for each listing; and
- (6) The agency and name and telephone number of the agency point of contact for the action.

§3017.505 USDA responsibilities.

(a) USDA shall provide GSA with current information concerning debarments, suspensions, determinations of ineligibility, and voluntary exclusions it has taken. Until February 18, 1989, USDA shall also provide GSA and OMB with information concerning all transactions in which an agency has granted exceptions under §3017.215 permitting participation by debarred, suspended, or voluntarily excluded persons.

(b) Unless an alternative schedule is agreed to by GSA, USDA shall advise GSA of the information set forth in §3017.500(b) and of the exceptions granted under §3017.215 within five working days after taking such actions.

(1) Each communication with GSA regarding additions, deletions, or changes to the Nonprocurement List shall be in writing.

(c) USDA shall direct inquiries concerning listed persons to the agency that took the action.

(d) USDA officials shall check the Nonprocurement List before entering covered transactions to determine whether a participant in a primary transaction is debarred, suspended, ineligible, or voluntarily excluded (Tel. #).

(e) USDA officials shall check the Nonprocurement List before approving principals or lower tier participants where agency approval of the principal or lower tier participant is required under the terms of the transaction, to determine whether such principals or participants are debarred, suspended, ineligible, or voluntarily excluded.

(f) USDA agencies shall provide the Office of Finance and Management (OFM) with a copy of any information provided to GSA pursuant to this section.

(g) USDA agencies shall notify GSA and OFM, in writing, of debarment or suspension decisions overturned on appeal under §3017.515.

§3017.510 Participants' responsibilities.

(a) Certification by participants in primary covered transactions. Each participant shall submit the certification in Appendix A to this Part for it and its principals at the time the participant submits its proposal in connection with a primary covered transaction, except that States need only complete such certification as to their principals. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, each participant may, but is not required to, check the Nonprocurement List for its principals (Tel. #). Adverse information on the certification will not necessarily result in denial of participation. However, the certification, and any additional information pertaining to the certification submitted by the participant, shall be considered in the administration of covered transactions.

(b) Certification by participants in lower tier-covered transactions.

(1) Each participant shall require participants in lower tier covered transactions to include the certification in Appendix B to this Part for it and its principals in any proposal submitted in connection with such lower tier covered transactions.

(2) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction by any Federal agency, unless it knows that the certification is erroneous. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, a participant may, but is not required to, check the Nonprocurement List for its principals and for participants (Tel. #).

(c) Changed circumstances regarding certification. A participant shall provide immediate, written notice to USDA if at any time the participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Participants in lower tier covered transactions shall provide the same updated notice to the participant to which it submitted its proposal.

§3017.515 Appeal of debarment or suspension decisions.

(a) If a decision to debar or suspend is made by a debarring or suspending official under §3017.314 or §3017.413, the respondent may appeal the decision to the Office of Administrative Law Judges (OALJ) by filing the appeal, in writing, to the Hearing Clerk, OALJ, United States Department of Agriculture, Washington, D.C. 20250. The appeal must be filed within 30 days of receiving the decision and it must specify the basis of the appeal. The decision of a debarring or suspending official under §3017.314 or §3017.413 may be vacated by the assigned appeals officer if the officer determines that the decision is:

- (1) Not in accordance with law;
- (2) Not based on the applicable standard of evidence; or
- (3) Arbitrary and capricious and an abuse of discretion.

(b) The appeals officer will base his/her decision solely upon the administrative record.

(c) Within 90 days of the date the appeal is filed with USDA's OALJ Hearing Clerk, the appeals officer will notify the respondent(s) in writing and the debarring or suspending official who took the action being appealed of his/her decision in the appeal. The notice must specify the reason(s) for the decision made by the appeals officer.

(d) The appeals officer's decision is final and is not appealable within USDA.

Subpart F - Drug-Free Workplace Requirements -- Grants

§3017.600 Purpose.

(a) The purpose of this Subpart is to carry out the Drug-Free Workplace Act of 1988 by requiring that --

(1) A grantee, other than an individual, shall certify to the USDA grantor agency that it will provide a drug-free workplace.

(2) A grantee who is an individual shall certify to the USDA grantor agency that he or she will not engage in the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance in conducting any activity with the grant.

(b) Requirements implementing the Drug-Free Workplace Act of 1988 for contractors with USDA are found at 48 CFR Subparts 9.4, 23.5, and 52.2.

§3017.605 Definitions.

(a) Except as amended in this section, the definitions of §3017.105 apply to this subpart.

(b) For purposes of this subpart--

(1) "Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (12 U.S.C. 812), and as further defined by regulation at 21 CFR 1300.11 - 1300.15.

(2) "Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

(3) "Criminal drug statute" means a criminal statute involving the manufacture, distribution, dispensation, use or possession of any controlled substance;

(4) "Drug-Free workplace" means a site for the performance of work done in connection with a specific grant at which employees of the grantee are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession or use of controlled substances;

(5) "Employee" means the employee of a grantee directly engaged in the performance of work pursuant to the provisions of the grant;

(6) "Federal agency" or "agency" means any United States executive department, military department, government corporation, government controlled corporation, or any establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency;

(7) "Grant" means an award of financial assistance, including a cooperative agreement, in the form of money, or property in lieu of money, by the Federal agency directly to a grantee. The term grant includes block grant and entitlement programs, whether or not exempted from coverage under the grants management governmentwide regulation ("Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"). The term does not include technical assistance which provides services instead of money, or other assistance in the form of loans, loan guarantees, interest subsidies, insurance, or direct appropriations; or any veterans, benefits to individuals, i.e. any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States;

(8) "Grantee" means a person who applies for or receives a

grant directly from the Federal agency.

(9) "Individual" means a natural person.

§3017.610 Coverage.

(a) This subpart applies to any grantee of the agency.

(b) This subpart applies to any grant, except where application of this subpart would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government.

§3017.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.

A grantee shall be deemed in violation of the requirements of this subpart if the agency head or his or her official designee determines, in writing, that

(a) The grantee has made a false certification under §3017.630;

(b) The grantee has violated the certification by failing to carry out the requirements of subparagraphs (A.)(a)-(g) of the certification for grantees other than individuals (Alternative I to Appendix C) or by failing to carry out the requirements of the certification for grantees who are individuals (Alternative II to Appendix C); or

(c) Such a number of employees of the grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the grantee has failed to make a good faith effort to provide a drug-free workplace.

§3017.620 Effect of violation.

(a) In the event of a violation of this subpart as provided in §3017.615, and in accordance with applicable law, the grantee shall be subject to one or more of the following actions:

(1) Suspension of payments under the grant;

(2) Suspension or termination of the grant; and

(3) Suspension or debarment of the grantee under the provisions of this part.

(b) Upon issuance of any final decision under this part requiring debarment of a grantee, the debarred grantee shall be ineligible for award of any grant from any Federal agency for a period specified in the decision, not to exceed five years (see §3017.320 (a)(2) of this part).

§3017.625 Exception provision.

The agency head may waive, with respect to a particular grant, in writing, a suspension of payments under a grant, suspension or termination of a grant, or suspension or debarment of a grantee if the agency head determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

3017.630 Grantees' responsibilities.

(a) As a prior condition of being awarded a grant, each grantee shall make the appropriate certification to the agency, as provided in Appendix C to this part.

(b) Except as provided in this paragraph, a grantee shall make the required certification for each grant. A grantee that is a State may elect to submit an annual certification to each Federal agency in lieu of certifications for each grant during the year covered by the certification.

(c) Grantees are not required to provide a certification in order to continue receiving funds under a grant awarded before the effective date of this subpart or under a no-cost time extension of any grant.

Appendix A - Certification Regarding Debarment, Suspension, and Other
Responsibility Matters - Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by the department or agency entering

into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. #).

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other
Responsibility Matters - Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, state or local) terminated for cause or default. (2) where the prospective primary participant is unable to certify to any of the statements in this certification, Such prospective participant shall attach an explanation to this proposal.

Appendix B - Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is Providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to,

check the Nonprocurement List (Tel. #).

8. Noting contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is Suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

(1) The prospective lower tier participant certified, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Appendix C to Part 3017 - Certification Regarding Drug-Free workplace Requirements.

Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.
2. The certification set out below is a material representation of fact upon which reliance was placed when the agency determined to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.
3. For grantees other than individuals, Alternative I applies.
4. For grantees who are individuals, Alternative II applies.

Certification Regarding Drug-Free Workplace Requirements

Alternative I.

- A. The grantee certifies that it will provide a drug-free workplace by:
 - (a) Publishing a Statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
 - (b) Establishing a drug-free awareness program to inform employees about --
 - (1) The dangers of drug abuse in the workplace;
 - (2) The grantee's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
 - (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
 - (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.
 - (e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;
 - (f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted
 - (1) Taking appropriate personnel action against such an

employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee shall insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, State, zip code)

Alternative II

The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

