

U.S. DEPARTMENT OF AGRICULTURE
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| DEPARTMENTAL REGULATION | Number: 2280-001 |
| SUBJECT: Suspension and Debarment | DATE: January 16, 2013 |
| | OPI: Office of the Chief Financial Officer |

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1. PURPOSE

This guidance prescribes Departmental standards for implementing suspension and debarment (S&D) procedures for all Department of Agriculture (USDA) procurement and nonprocurement programs or activities.

2. SPECIAL INSTRUCTIONS

This regulation supersedes the Departmental S&D Guidance dated December 14, 2011.

3. POLICY

- a. Executive Order (EO) 12549 – *Debarment and Suspension* – mandates Executive departments and agencies to:
 - (1) Participate in a government-wide system for S&D for programs and activities involving Federal financial and nonfinancial assistance and benefits;
 - (2) Comply with the Office of Management and Budget’s (OMB) regulations establishing government-wide criteria and minimum due process procedures when debarring or suspending participants; and
 - (3) Submit suspended or debarred persons’ identifying information for listing in the System for Award Management (SAM) which is maintained by the General Services Administration (GSA). (Effective July 2012, the GSA Excluded Parties List System [EPLS] migrated to the SAM).
- b. Nonprocurement S&D procedures as mandated by EO 12549 are outlined in 2 Code of Federal Regulations (C.F.R.) Part 180 (*OMB Guidelines to Agencies on Government-wide Debarment and Suspension*) and 2 C.F.R. Part 417 (USDA Supplement to 2 C.F.R. Part 180).
- c. Federal Acquisition Regulation (FAR) 48 C.F.R. 9.402(e) mandates Federal agencies to establish appropriate procedures to implement the policies and procedures of FAR 48 C.F.R. Subpart 9.4 (*Debarment, Suspension, and Ineligibility*). USDA’s procurement S&D regulations have been promulgated in the Agriculture Acquisition Regulation (AGAR): FAR 48 C.F.R., Chapter 4, Subpart 409.4.
- d. Pursuant to EO 12689 the suspension, debarment, or other exclusion of a participant in a nonprocurement program or activity under regulations issued pursuant to EO 12549, or in a procurement program or activity under the FAR, will have reciprocal government-wide effect. That is, a person or entity that is suspended or debarred from a nonprocurement program or activity is also excluded from procurement programs or activities, and vice versa, across the Federal government.

- e. All USDA agencies will implement S&D in accordance with the applicable regulations for procurement or nonprocurement S&D actions and with the procedures set forth in this guidance to ensure that:
 - (1) Only presently responsible persons participate in USDA programs; and
 - (2) USDA solicits offers from, awards contracts to, and consents to subcontracts only with presently responsible entities.

4. BACKGROUND

- a. S&D are discretionary or statutory administrative actions taken by Federal agencies to protect the government by excluding persons and entities who are not presently responsible from participating in Federal programs or activities. These actions are not designed to be punitive in nature, but are meant to ensure that the Federal government does not conduct business with a person or entity that is not presently responsible. S&D are administered government-wide; consequently, a person or entity suspended or debarred by one Federal agency is excluded from entering into procurement and covered nonprocurement transactions with all Federal agencies.
- b. The Secretary has established a S&D Council to better coordinate USDA efforts for ensuring effective implementation of S&D procedures. The Council will meet every quarter, and Council members will brief on their respective areas' S&D activity based on information outlined in Appendix A.

5. DEFINITIONS

- a. General – Definitions applicable to both procurement and nonprocurement S&D actions:
 - (1) Agency. Unless preceded by “Federal,” “agency” will mean an agency or staff office within USDA that administers procurement or nonprocurement programs or activities.
 - (2) Conviction.
 - (a) A judgment or any other determination of guilt of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea, including a plea of nolo contendere; or
 - (b) Any other resolution that is the functional equivalent of a judgment, including probation before judgment and deferred prosecution. A disposition without the participation of the court is the functional equivalent of a judgment only if it includes an admission of guilt. 2 C.F.R. § 180.920.

- (3) Debarment. An action taken by a debarring official under:
- (a) FAR 48 C.F.R. 9.406 and AGAR 409.406 for procurement, or
 - (b) Subpart H of 2 C.F.R. Parts 180 and 417 for nonprocurement transactions, to exclude a person or entity from participating in covered transactions. 2 C.F.R. § 180.925.
- (4) Exclusions. Records reflected in the General Services Administration's SAM database identify those parties excluded by Federal government agencies from receiving certain types of Federal financial and nonfinancial assistance and benefits, Federal contracts or Federally-approved subcontracts. The purpose of the database is to keep agencies abreast of administrative, as well as statutory exclusions taken throughout the Federal Government. Actions may be taken under 2 C.F.R. Parts 180 and 417 and FAR 48 C.F.R. Subparts 9.4 and 409.4 or other specific statutory authority. An exclusion type specifies why an individual or entity is on the excluded parties list and communicates the associated ramifications. The following four Exclusion Types replace Cause and Treatment Codes from the legacy EPLS:
- (a) Preliminarily Ineligible (Proceedings Pending) (*Suspension, Blocked Pending Investigation, Proposed Debarment*)
 - (b) Ineligible (Proceedings Completed) (*Debarment, Denial, Disqualified, Termination from Eligibility, Ineligible Conviction, Excluded*);
 - (c) Prohibition/Restriction (*License or Approval Revoked; Sanctioned; Partial Denial*)
 - (d) Voluntary Exclusion (*Voluntarily Excluded*).
- (5) Indictment. Indictment means an indictment for a criminal offense. A presentment, information, or other filing by a competent authority charging a criminal offense shall be given the same effect as an indictment. 2 C.F.R. § 180.955 and FAR 48 C.F.R. 9.403¹
- (6) Interagency Suspension and Debarment Committee (ISDC). The ISDC consists of representatives from Federal agencies designated by the Director of OMB. The committee facilitates Federal lead agency coordination, serves as a forum to discuss current S&D related issues, and assists with developing unified Federal policy. USDA has at least two members: a representative from the Office of the Chief Financial Officer (OCFO) for nonprocurement S&D functions, and another from the Office of Procurement and Property Management (OPPM) for procurement S&D functions.

¹ The FAR definition of indictment differs from the 2 CFR Part 180 definition in that it does not include the word presentment.

- (7) **Lead Agency Coordination.** The process of sharing information concerning potential suspension or debarment actions through the ISDC. If more than one Federal or USDA agency has an interest in pursuing actions against the same person or entity, the concerned Federal and USDA agencies agree upon a lead that initiates and takes responsibility for the suspension or debarment action.
 - (8) **Referral.** A formal recommendation to initiate suspension or debarment action made to the S&D Official by the Office of Inspector General (OIG), a program manager, contracting officer, or other appropriate agency S&D personnel after receipt, investigation and verification of information about a potential cause for suspension or debarment. (See Section 7. a).
 - (9) **Referral Record.** The supporting documentation accompanying a referral submitted to a S&D Official that is used by the S&D Official in establishing the administrative record and determining whether initiation of a suspension or debarment action is warranted. (See Appendices D and E).
 - (10) **Respondent.** Respondent means a person against whom an agency has initiated a debarment or suspension action. 2 C.F.R. § 180.1000.
 - (11) **Suspension.** An action taken by a suspending official under (1) FAR 48 C.F.R. 9.407 and AGAR 409.407 for procurement, or (2) Subpart G of 2 C.F.R. Parts 180 and 417 for nonprocurement transactions, that immediately prohibits a person or entity from participating in covered transactions for a temporary period, pending completion of further proceedings. 2 C.F.R. § 180.1015.
- b. **Nonprocurement – Definitions applicable to nonprocurement S&D actions only:**
- (1) **Agency S&D Staff.** Agency personnel assigned nonprocurement S&D duties, which include reviewing and confirming potential causes for suspension or debarment. These individuals are not necessarily full-time program staff, but may be agency employees assigned to support the program manager regarding program S&D issues.
 - (2) **Covered Transaction.** A nonprocurement or procurement transaction that is subject to the prohibitions of 2 C.F.R. Parts 180 and 417 in that a suspended or debarred individual or entity is precluded from participating in covered transactions. See 2 C.F.R. §§ 180.200, 180.205, 180.210, 180.220, 417.210 and 417.220.
 - (3) **Financial Assistance/Benefit.** Include, but are not limited to, grants (formula and project), direct payments, subsidies, payments for specified uses, loans, loan guarantees, insurance, and cooperative agreements.

- (4) Nonfinancial Assistance/Benefit. Include, but are not limited to, the sale, exchange, or donation of property and goods; the use of property, facilities, and equipment; provision of specialized services, advisory services, and counseling; dissemination of technical information; training; and investigation of complaints.
- (5) Nonprocurement Transaction. As set forth in 2 C.F.R. §§ 180.210 and 180.970.

2 C.F.R. § 180.210. Which nonprocurement transactions are covered transactions? All nonprocurement transactions, as defined in §180.970, are covered transactions unless listed in the exemptions under §180.215.

2 C.F.R. § 180.970. Nonprocurement transaction.

- (a) Nonprocurement transaction means any transaction, regardless of type (except procurement contracts), including, but not limited to the following:

- 1 Grants.
- 2 Cooperative agreements.
- 3 Scholarships.
- 4 Fellowships.
- 5 Contracts of assistance.
- 6 Loans.
- 7 Loan guarantees.
- 8 Subsidies.
- 9 Insurances.
- 10 Payments for specified uses.
- 11 Donation agreements.

- (b) A nonprocurement transaction at any tier does not require the transfer of Federal funds.

- (6) Not Covered Transaction. Nonprocurement transactions listed in 2 C.F.R. §§ 180.215, 417.215, or 417.220. Not covered transactions are not exempt from S&D procedures. A person or entity that abuses a not covered transaction may continue to receive benefits under the program, but may be referred by the agency for suspension or debarment to protect the Federal government.

2 C.F.R. § 180.215. Which nonprocurement transactions are not covered transactions?

The following types of nonprocurement transactions are not covered transactions:

- (a) A direct award to—
 - 1 A foreign government or foreign governmental entity;
 - 2 A public international organization;
 - 3 An entity owned (in whole or in part) or controlled by a foreign government; or
 - 4 Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.
- (b) A benefit 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). For example, if a person receives social security benefits under the Supplemental Security Income provisions of the Social Security Act, 42 U.S.C. 1301 *et seq.* , those benefits are not covered transactions and, therefore, are not affected if the person is excluded.
- (c) Federal employment.
- (d) A transaction that a Federal agency needs to respond to a national or agency-recognized emergency or disaster.
- (e) A permit, license, certificate or similar instrument issued as a means to regulate public health, safety or the environment, unless a Federal agency specifically designates it to be a covered transaction.
- (f) An incidental benefit that results from ordinary governmental operations.
- (g) Any other transaction if—
 - 1 The application of an exclusion to the transaction is prohibited by law; or
 - 2 A Federal agency's regulation exempts it from coverage under this part.

2 C.F.R. § 417.215. Which nonprocurement transactions, in addition to those listed in 2 C.F.R. § 180.215, are not covered transactions?

- (a) *Transactions not covered.* In addition to the nonprocurement transactions listed in 2 CFR 180.215, the following nonprocurement transactions are not covered transactions:
- 1 An entitlement or mandatory award required by a statute, including a lower tier entitlement or mandatory award that is required by a statute.
 - 2 The export or substitution of Federal timber governed by the Forest Resources Conservation and Shortage Relief Act of 1990, 16 U.S.C. 620 *et seq.* (The “Export Act”), which prevents a debarred person from entering into any contract for the purchase of unprocessed timber from Federal lands. *See* 16 U.S.C. 620d(d)(1)(A).
 - 3 The receipt of licenses, permits, certificates, and indemnification under regulatory programs conducted in the interest of public health and safety, and animal and plant health and safety.
 - 4 The receipt of official grading and inspection services, animal damage control services, public health and safety inspection services, and animal and plant health and safety inspection services.
 - 5 If the person is a State or local government, the provision of official grading and inspection services, animal damage control services, animal and plant health and safety inspection services.
 - 6 The receipt of licenses, permits, or certificates under regulatory programs conducted in the interest of ensuring fair trade practices.
 - 7 Permits, licenses, exchanges and other acquisitions of real property, rights of way, and easements under natural resource management programs.
 - 8 Any transaction to be implemented outside the United States that is below the primary tier covered transaction in a USDA foreign assistance program.
 - 9 Any transaction to be implemented outside the United States that is below the primary tier covered transaction in a USDA export credit guarantee program or direct credit program.
- (b) *Limited requirement to check EPLS.* Notwithstanding the fact that transactions to be implemented outside the United States that are below the primary tier covered transaction in a USDA foreign assistance program, export credit guarantee program or direct credit program are not covered transactions, pursuant to paragraphs (a)(8) and (9) of this section, primary tier participants under these programs must check the EPLS prior to entering into any transaction with a person at the first lower tier and shall not enter into such a transaction if the person is excluded or disqualified under the EPLS.

- (c) *Exception.* A cause for suspension or debarment under §180.700 or §180.800 of this title (as supplemented by §417.800) may be based on the actions of a person with respect to a procurement or nonprocurement transaction under a USDA program even if such transaction has been excluded from covered transaction status by this section or §417.220.

2 C.F.R. § 417.220. Are any procurement contracts included as covered transactions?

- (a) Covered transactions under this part:
- 1 Do not include any procurement contracts awarded directly by a Federal agency; but
 - 2 Do include some procurement contracts awarded by non-Federal participants in nonprocurement covered transactions (*see* appendix to this part).
- (b) Specifically, a contract for goods or services is a covered transaction if any of the following applies:
- 1 The contract is awarded by a participant in a nonprocurement transaction that is covered under §417.210, and the amount of the contract is expected to equal or exceed \$25,000.
 - 2 The contract requires the consent of a USDA official. In that case, the contract, regardless of the amount, always is a covered transaction, and it does not matter who awarded it. For example, it could be a subcontract awarded by a contractor at a tier below a nonprocurement transaction, as shown in the appendix to this part.
 - 3 The contract is for Federally-required audit services.
- (c) Any procurement contract to be implemented outside the United States that is below the primary tier covered transaction in a USDA foreign assistance program is not a covered transaction, notwithstanding the provisions in paragraphs (a) and (b) of this section.
- (d) Any procurement contract to be implemented outside the United States that is below the primary tier covered transaction in a USDA export credit guarantee program or direct credit program is not a covered transaction, notwithstanding the provisions in paragraphs (a) and (b) of this section.
- (e) Notwithstanding the fact that procurement contracts to be implemented outside the United States that are below the primary tier covered transaction in a USDA foreign assistance program, export credit guarantee program or

direct credit program are not covered transactions, pursuant to paragraphs (c) and (d) of this section, primary tier participants under these programs must check the EPLS prior to entering into any procurement contract that is expected to equal or exceed \$25,000 with a person at the first lower tier and shall not enter into such a procurement contract if the person is excluded or disqualified under the EPLS.

- (7) Person. Person means any individual, corporation, partnership, association, unit of government, or legal entity, however organized. 2 C.F.R. § 180.985.
 - (8) Program. Any function of a Federal agency that provides domestic and/or international financial or nonfinancial assistance/benefits to anyone other than an agency of the Federal government. A program may in practice be called an activity, a service, a project, a process, or some other name regardless of whether it is identified as a separate program by statute or regulation. A program will be identified in terms of its legal authority, administering office, funding, purpose, benefits, and beneficiaries.
 - (9) Program Manager. The individual responsible for managing nonprocurement S&D activities for the agency's program(s).
 - (10) S&D Coordinator. Agency liaison between OCFO and the S&D Official, program managers, and agency S&D staff.
 - (11) S&D Official. An agency official who is authorized to impose S&D. Pursuant to 2 C.F.R. §§ 180.930, 180.1010, 417.930 and 417.1010, the nonprocurement S&D Official is the agency administrator. This authority may not be redelegated, except in the case of the Forest Service where the Chief has redelegated the authority to act as S&D Officials to the Deputy Chief and Associate Deputy Chiefs for the National Forest System. (*See also Letter of Delegation from the Chief, National Forest Service, for the Deputy and Associate Deputy Chiefs, National Forest Service, Re: Delegation of Authority to Serve as Nonprocurement Debarring and Suspending Official (August 27, 2012)*).
 - (12) SAM Memorandum. The memorandum sent by the nonprocurement S&D coordinator to OCFO that contains the suspended or debarred person's or entity's information for input in the SAM. The SAM memorandum only applies to nonprocurement S&D procedures. (See Appendix C).
 - (13) Additional definitions may be found in 2 C.F.R. § 180.900 through § 180.1020.
- c. Procurement – Definitions applicable to procurement S&D actions only.
- (1) Agency S&D Staff. Agency personnel assigned procurement S&D duties, which include reviewing potential causes for suspension or debarment and assisting the contracting officer regarding S&D issues.

- (2) **Contract.** *Contract* means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301, et seq. For discussion of various types of contracts, see part 16. FAR 48 C.F.R. 2.101.
- (3) **Contracting Officer.** An agency representative, as set forth in FAR 48 C.F.R. 2.101, and 1.602-1.

Contracting officer. FAR 48 C.F.R. 2.101. A person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer. “Administrative contracting officer (ACO)” refers to a contracting officer who is administering contracts. “Termination contracting officer (TCO)” refers to a contracting officer who is settling terminated contracts. A single contracting officer may be responsible for duties in any or all of these areas. Reference in this regulation (48 CFR chapter 1) to administrative contracting officer or termination contracting officer does not—

- (a) Require that a duty be performed at a particular office or activity; or
- (b) Restrict in any way a contracting officer in the performance of any duty properly assigned.

Authority. FAR 48 C.F.R. 1.602-1

- (a) Contracting officers have authority to enter into, administer, or terminate contracts and make related determinations and findings. Contracting officers may bind the Government only to the extent of the authority delegated to them. Contracting officers shall receive from the appointing authority (see 1.603–1) clear instructions in writing regarding the limits of their authority. Information on the limits of the contracting officers' authority shall be readily available to the public and agency personnel.
 - (b) No contract shall be entered into unless the contracting officer ensures that all requirements of law, executive orders, regulations, and all other applicable procedures, including clearances and approvals, have been met.
- (4) **Contractor.** Contractor means any individual or other legal entity that —

- (a) Directly or indirectly (e.g., through an affiliate), submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a Government contract, including a contract for carriage under Government or commercial bills of lading, or a subcontract under a Government contract; or
 - (b) Conducts business, or reasonably may be expected to conduct business, with the Government as an agent or representative of another contractor. FAR 48 C.F.R. 9.403.
- (5) Procurement. Procurement (see “Acquisition”). Acquisition means the acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract. FAR 48 C.F.R. 2.101.
- (6) S&D Coordinator. Agency liaison between OPDM and the contracting officers and agency S&D staff.
- (7) S&D Official. The Director of OPDM, who is also the Senior Procurement Executive, pursuant to 7 C.F.R. § 2.93 and AGAR 409.403. Exceptions:
- (a) For commodity contracts awarded on behalf of the Commodity Credit Corporation (CCC), the Executive Vice President, CCC, or his or her designee is the debarring official;
 - (b) For contracts awarded under the School Lunch and Surplus Removal Programs (42 U.S.C. § 1755 and 7 U.S.C. § 612c), the Department’s S&D Official has delegated debarring authority to the Agricultural Marketing Service.
- (8) Additional definitions may be found in FAR 48 C.F.R. 2.101 and 9.403.

6. RESPONSIBILITIES

- a. General – Responsibilities applicable to both procurement and nonprocurement S&D actions:
 - (1) OGC will:
 - (a) When requested, provide legal advice to the agency S&D staff, program managers, contracting officers, S&D coordinators, and S&D Officials;

- (b) Review proposed suspension or debarment actions for legal sufficiency and inform S&D Officials of any legal risks; and
 - (c) As necessary, assist OIG in facilitating contact and coordination with the Department of Justice (DOJ), the Assistant United States Attorney, or local prosecutors who may be handling a criminal or civil suit involving a person or entity that is being considered for exclusion. Primary coordination is typically provided by OIG.
- (2) OIG will:
- (a) Provide information to the Department about actions of individuals and entities that may form the basis for S&D actions. OIG components, including the Office of Investigations and the Office of Audits, conduct work which generates information sometimes suitable for S&D referrals. OIG will provide a quarterly report to OCFO containing updated information on OIG investigations and indictment, convictions, and pre-trial diversions.
 - (b) Facilitate contact and coordination with DOJ, the Assistant United States Attorney, or local prosecutors who may be handling a criminal or civil suit involving a person or entity that is being considered for suspension, debarment, or exclusion. If an action would interfere with an ongoing investigation, OIG will consider requesting the Department defer the action, or seek special protections against disclosure of sensitive information.
 - (c) Remain involved in the S&D process until the case is resolved. When needed, OIG personnel will attend S&D meetings and hearings, provide testimony and other information and evidence regarding their work, and generally assist the S&D staff.
- b. Nonprocurement – Responsibilities applicable to nonprocurement S&D actions only:
- (1) Agency Administrators will:
- (a) Serve as S&D Officials;
 - (b) Determine if a suspension or debarment is warranted based on the administrative record;
 - (c) Initiate suspension or debarment action when warranted, taking into consideration any advice received from OGC, OIG, or DOJ regarding possible conflicts with ongoing civil or criminal investigations or litigation;
 - (d) Impose suspension or debarment in accordance with the procedures set forth in 2 C.F.R. Parts 180 and 417;

- (e) Ensure that the S&D coordinators, program managers, and all other appropriate agency S&D personnel complete the S&D training that will be available in AgLearn (www.aglearn.usda.gov). A certificate of completion (see Appendix B) must be provided to OCFO by December 30 of each year;
 - (f) Establish S&D guidance or instructions that implement the Department's policies and procedures, and provide to OCFO when established or modified. The guidance/instructions should include, but not be limited to:
 - 1 Controls and procedures to identify fraud and misconduct related to the agency's programs or activities;
 - 2 An internal review plan for identifying cases to be referred for suspension or debarment; and
 - 3 A training plan that (i) identifies all agency personnel required to take S&D training and (ii) ensures all affected employees are made aware of and follow procedures pursuant to the S&D regulations and the Department's S&D directive(s).
- (2) Agency S&D Staff will:
- (a) In coordination with OIG, where applicable, review and confirm potential causes for suspension or debarment actions obtained from external sources (e.g., OIG, other Federal agencies, hotline complaints, media) or through internal program operations (e.g., review of program participants), and report findings to the program manager; and
 - (b) Assist the program manager in any S&D-related program issues.
- (3) OCFO will:
- (a) Receive OIG's quarterly report containing updated information on OIG investigations and Federal or state indictment or conviction actions and disseminate to procurement and nonprocurement S&D coordinators;
 - (b) Receive SAM memoranda from nonprocurement S&D coordinators and enter suspended or debarred persons' information in the SAM;
 - (c) Receive outside party inquiries regarding a person's status in the SAM and refer the outside party to the appropriate S&D coordinator;
 - (d) Coordinate nonprocurement S&D issues within USDA and with other Federal agencies, including updating and maintaining USDA's supplemental nonprocurement S&D regulations in 2 C.F.R. Part 417; and

- (e) Act as USDA's nonprocurement point of contact (POC) for lead agency coordination. OCFO will notify Federal and USDA agencies of pending suspension or debarment actions and coordinate any agency response with the ISDC.
- (4) Program Managers (or other appropriate program personnel) will:
- (a) Ensure that the requirements in 2 C.F.R. § 180.425 are met, and that the SAM is checked when required to confirm that only presently responsible persons or entities are allowed to participate in USDA nonprocurement covered transactions;
 - (b) Where appropriate, refer program violators in any USDA program, including covered and not covered nonprocurement transactions, to the S&D coordinator for lead agency coordination, after confirming the existence of a possible cause for suspension or debarment; and
 - (c) When recommending that a S&D Official initiate suspension or debarment action, prepare the referral record (see Appendix D), in consultation with OIG and OGC if needed, and forward to the S&D coordinator.
- (5) S&D Coordinators will:
- (a) Receive suspension or debarment information from program managers and forward to OCFO for lead agency coordination when appropriate;
 - (b) Receive OIG's quarterly report from OCFO containing updated information on OIG investigations and Federal or state indictment or conviction actions and disseminate to all program managers and appropriate agency S&D staff;
 - (c) Share information and developments within USDA and other interested Federal agencies, as necessary, if lead is assigned to the S&D coordinator's agency;
 - (d) Receive suspension or debarment information from the ISDC through OCFO and disseminate to program managers and agency S&D staff for lead agency coordination;
 - (e) Review referral records received from program managers, assign an agency case number unique to each respondent (see Appendix A), and forward to the S&D Official for consideration;
 - (f) Send the SAM memorandum (see Appendix C) to OCFO accompanied by the Notice of Suspension or Debarment signed by the S&D Official. The SAM memorandum should be sent after a suspension notice or a debarment

decision has been sent to the respondent, or following the receipt of a plea or settlement agreement that includes voluntary exclusions;

- (g) Provide OCFO with the nonprocurement S&D report (see Appendix A) within seven days after a fiscal year (FY) quarter. S&D Council members will use this information to brief the Council on the agencies' S&D activity in its quarterly meetings;
- (h) Be the POC for outside party inquiries (e.g., from banks, employers, or the general public) regarding a person's status in the SAM, which consists of verifying an identity match between the agency's excluded person and the subject of the inquiry by the outside party. As needed, coordinate with OGC when responding to outside inquiries to ensure that no deliberative process, attorney-client, or attorney work product privileges are waived by sharing information with the outside party.

c. Procurement – Responsibilities applicable to procurement S&D actions only:

(1) Agency S&D Staff will:

- (a) In coordination with OIG, where applicable, review and confirm potential causes for suspension or debarment actions obtained from external sources (e.g., OIG, other Federal agencies, hotline complaints, media) or through internal operations (e.g., review of contractor performance), and report findings to the contracting officer; and
- (b) Assist the contracting officer in any agency procurement S&D-related issues.

(2) Contracting Officers will:

- (a) Review Exclusions in the SAM after the opening of bids or receipts of proposals and immediately prior to award. Contractors listed in the SAM will not receive awards and will have their bids or proposals rejected, unless the agency administrator decides otherwise in accordance with FAR 48 C.F.R. Subparts 9.405-1(b) and AGAR 409.405;
- (b) Refer contractors that may not be presently responsible to the S&D coordinator for lead agency coordination, where appropriate; and
- (c) When recommending that the S&D Official initiate suspension or debarment action, prepare the referral record (see Appendix E), in consultation with OGC if needed, and forward to the S&D coordinator.

(3) OPFM will:

- (a) Review the referral records received from the S&D coordinators, assign an

agency case number unique to each respondent, and forward to the S&D Official for consideration;

- (b) Enter suspended or debarred contractors' information in the EPLS in the SAM;
 - (c) Respond to outside party inquiries regarding a contractor's status in the SAM. As needed, coordinate with OGC when responding to outside inquiries to ensure that no deliberative process, attorney-client, privacy protected information, or attorney work product privileges are waived by sharing information with the outside party;
 - (d) Coordinate procurement S&D issues within USDA and with other Federal agencies. This includes updating and maintaining USDA's supplemental procurement S&D regulations in AGAR 409.4;
 - (e) Act as USDA's procurement POC for lead agency coordination; and
 - (f) Submit quarterly reports to OCFO detailing the Department's procurement S&D activity (see Appendix A) seven days after the FY quarter.
- (4) S&D Coordinators will:
- (a) Receive suspension or debarment information from contracting officers and forward to OPPM for lead agency coordination;
 - (b) Receive OIG's quarterly report containing updated information on OIG investigations and Federal or state indictment or conviction actions from OCFO and disseminate to all contracting officers and appropriate agency S&D staff;
 - (c) Review referral records received from contracting officers and forward to OPPM;
 - (d) Share information and developments within USDA and other interested Federal agencies, as necessary, if lead is assigned to the S&D coordinator's agency; and
 - (e) Receive suspension or debarment information from the ISDC through OPPM and disseminate to contracting officers and agency S&D staff.
- (5) S&D Official will:
- (a) Receive referral records from OPPM staff and determine whether suspension or debarment is in the government's interest;

- (b) Initiate suspension or debarment action when warranted, taking into consideration any advice received from OGC, OIG, or DOJ regarding possible conflicts with ongoing civil or criminal investigations or litigation;
- (c) Impose suspension or debarment in accordance with the procedures set forth in FAR 48 C.F.R. Subpart 9.4 and AGAR 409.4; and
- (d) Ensure that all contracting officers and procurement S&D personnel complete the S&D training available in AgLearn (www.aglearn.usda.gov). A certificate of completion (see Appendix B) must be provided to OCFO by December 30 of each calendar year.

7. SUSPENSION AND DEBARMENT PROCEDURES

a. Causes

- (1) Nonprocurement causes for suspension and debarment are listed in 2 C.F.R. §§ 180.700 and 180.800/417.800, respectively.

2 C.F.R. § 180.700. When may the suspending official issue a suspension?

Suspension is a serious action. Using the procedures of this subpart and subpart F of this part, the suspending official may impose suspension only when that official determines that—

- (a) There exists an indictment for, or other adequate evidence to suspect, an offense listed under §180.800(a), or
- (b) There exists adequate evidence to suspect any other cause for debarment listed under §180.800(b) through (d); and
- (c) Immediate action is necessary to protect the public interest.

2 C.F.R. § 180.800. What are the causes for debarment?

A Federal agency may debar a person 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, tax evasion, 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 your present responsibility;
- (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, or a procurement debarment by any Federal agency taken pursuant to 48 CFR part 9, subpart 9.4, before August 25, 1995;
 - 2 Knowingly doing business with an ineligible person, except as permitted under §180.135;
 - 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;
 - 4 Violation of a material provision of a voluntary exclusion agreement entered into under §180.640 or of any settlement of a debarment or suspension action; or
 - 5 Violation of the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701); or
- (d) Any other cause of so serious or compelling a nature that it affects your present responsibility.

2 C.F.R. § 417.800. What are the USDA causes for debarment?

A Federal agency may debar a person 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, tax evasion, 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 your present responsibility;
- (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 March 1, 1989, or a procurement debarment by any Federal agency taken pursuant to 48 CFR part 9, subpart 9.4, before August 25, 1995;
 - 2 Knowingly doing business with an ineligible person, except as permitted under §180.135;
 - 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;

- 4 Violation of a material provision of a voluntary exclusion agreement entered into under §180.640 or of any settlement of a debarment or suspension action; or
- 5 Violation of the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701); or

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

(2) Procurement causes for suspension and debarment are listed in FAR 48 C.F.R 9.407-2 and 9.406-2, respectively.

FAR 48 C.F.R. 9.407-2. Suspension

- (a) The suspending official may suspend a contractor suspected, upon adequate evidence, of—
 - 1 Commission of fraud or a criminal offense in connection with (i) obtaining, (ii) attempting to obtain, or (iii) performing a public contract or subcontract;
 - 2 Violation of Federal or State antitrust statutes relating to the submission of offers;
 - 3 Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property; or
 - 4 Violations of the Drug-Free Workplace Act of 1988 (Public Law 100–690), as indicated by—
 - a Failure to comply with the requirements of the clause at 52.223–6, Drug-Free Workplace; or
 - b Such a number of contractor employees convicted of violations of criminal drug statutes occurring in the workplace as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace (see 23.504);
 - 5 Intentionally affixing a label bearing a “Made in America” inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States or its outlying areas, when the product was not made

in the United States or its outlying areas (see Section 202 of the Defense Production Act (Public Law 102–558));

- 6 Commission of an unfair trade practice as defined in 9.403 (see section 201 of the Defense Production Act (Pub. L. 102–558));
- 7 Delinquent Federal taxes in an amount that exceeds \$3,000. See the criteria at 9.406–2(b)(1)(v) for determination of when taxes are delinquent; or
- 8 Knowing failure by a principal, until 3 years after final payment on any Government contract awarded to the contractor, to timely disclose to the Government, in connection with the award, performance, or closeout of the contract or a subcontract thereunder, credible evidence of—
 - a Violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code;
 - b Violation of the civil False Claims Act (31 U.S.C. 3729–3733); or
 - c Significant overpayment(s) on the contract, other than overpayments resulting from contract financing payments as defined in 32.001; or
- 9 Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor.

- (b) Indictment for any of the causes in paragraph (a) above constitutes adequate evidence for suspension.
- (c) The suspending official may upon adequate evidence also suspend a contractor for any other cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor.

[48 FR 42142, Sept. 19, 1983, as amended at 54 FR 4968, Jan. 31, 1989; 55 FR 21707, May 25, 1990; 59 FR 11373, Mar. 10, 1994; 61 FR 2633, Jan. 26, 1996; 61 FR 69291, Dec. 31, 1996; 68 FR 28081, May 22, 2003; 73 FR 21798, Apr. 22, 2008; 73 FR 67091, Nov. 12, 2008]

FAR 48 C.F.R. 9.406-2. Debarment

The debarring official may debar—

- (a) A contractor for a conviction of or civil judgment for—

- 1 Commission of fraud or a criminal offense in connection with (i) obtaining, (ii) attempting to obtain, or (iii) performing a public contract or subcontract;
 - 2 Violation of Federal or State antitrust statutes relating to the submission of offers;
 - 3 Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;
 - 4 Intentionally affixing a label bearing a “Made in America” inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States or its outlying areas, when the product was not made in the United States or its outlying areas (see Section 202 of the Defense Production Act (Public Law 102–558)); or
 - 5 Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor.
- (b) 1 A contractor, based upon a preponderance of the evidence, for any of the following—
- a Violation of the terms of a Government contract or subcontract so serious as to justify debarment, such as—
 1. Willful failure to perform in accordance with the terms of one or more contracts; or
 2. A history of failure to perform, or of unsatisfactory performance of, one or more contracts.
 - b Violations of the Drug-Free Workplace Act of 1988 (Public Law 100–690), as indicated by—
 1. Failure to comply with the requirements of the clause at 52.223–6, Drug-Free Workplace; or
 2. Such a number of contractor employees convicted of violations of criminal drug statutes occurring in the workplace as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace (see 23.504).
 - c Intentionally affixing a label bearing a “Made in America” inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States or its outlying areas, when the

product was not made in the United States or its outlying areas (see Section 202 of the Defense Production Act (Public Law 102–558)).

d Commission of an unfair trade practice as defined in 9.403 (see Section 201 of the Defense Production Act (Public Law 102–558)).

e Delinquent Federal taxes in an amount that exceeds \$3,000.

1. Federal taxes are considered delinquent for purposes of this provision if both of the following criteria apply:

a. *The tax liability is finally determined* . The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

b. *The taxpayer is delinquent in making payment* . A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

2. *Examples.*

a. The taxpayer has received a statutory notice of deficiency, under I.R.C. §6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

b. The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. §6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

- c. *The taxpayer has entered into an installment agreement pursuant to I.R.C. §6159 . The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.*
- d. *The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).*

- f Knowing failure by a principal, until 3 years after final payment on any Government contract awarded to the contractor, to timely disclose to the Government, in connection with the award, performance, or closeout of the contract or a subcontract thereunder, credible evidence of—
 - 1. Violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code;
 - 2. Violation of the civil False Claims Act (31 U.S.C. 3729–3733); or
 - 3. Significant overpayment(s) on the contract, other than overpayments resulting from contract financing payments as defined in 32.001.

(2) A contractor, based on a determination by the Secretary of Homeland Security or the Attorney General of the United States, that the contractor is not in compliance with Immigration and Nationality Act employment provisions (see Executive Order 12989, as amended by Executive Order 13286). Such determination is not reviewable in the debarment proceedings.

- (c) A contractor or subcontractor based on any other cause of so serious or compelling a nature that it affects the present responsibility of the contractor or subcontractor.

[48 FR 42142, Sept. 19, 1983, as amended at 54 FR 4968, Jan. 31 ,1989; 54 FR 19815, May 8, 1989; 55 FR 21707, May 25, 1990; 59 FR 11372, Mar. 10, 1994; 61 FR 2633, Jan. 26, 1996; 61 FR 41473, Aug. 8, 1996; 61 FR 69291, Dec. 31, 1996; 68 FR 28080, May 22, 2003; 69 FR 34230, June 18, 2004; 73 FR 21798, Apr. 22, 2008; 73 FR 67091, Nov. 12, 2008]

- (3) In addition to the causes for regulatory procurement and nonprocurement S&D actions discussed above, there are also several statutory debarment provisions.

S&D actions undertaken pursuant to these statutory provisions are not reciprocal across the Federal government. For reciprocity to occur, an agency must also undertake a regulatory procurement or nonprocurement suspension or debarment action in conjunction with the statutory suspension or debarment action.

- (a) Section 14211 of the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246; 7 U.S.C. § 2209j; 2 C.F.R. § 417.865, requires the Secretary to “permanently debar an individual, organization, corporation, or other entity convicted of a felony for knowingly defrauding the United States in connection with any program administered by the Department of Agriculture from any subsequent participation in Department of Agriculture programs” – both procurement and nonprocurement. Those debarred pursuant to this statutory provision are permanently excluded from participating in all USDA procurement and nonprocurement programs or activities, even those normally considered not covered transactions, with the only exception being that continued participation in domestic food assistance programs is allowed to those permanently debarred. A list of domestic food assistance programs is set forth in 2 C.F.R. § 417.865(d)(2). Unlike regulatory S&D actions which are discretionary, S&D actions under this statute are mandatory.
 - (b) Title 16, U.S.C. § 620d(d) provides that any person who violates 16 U.S.C. §§ 620-620j, or any regulation or contract issued under 16 U.S.C. §§ 620-620j, may be debarred from entering into any contract for the purchase of unprocessed timber from Federal lands for a period of not more than 5 years. Such person shall also be precluded from taking delivery of Federal timber purchased by another party for the period of debarment.
 - (c) Title 7, U.S.C. § 2021(h) provides that the Department can immediately suspend a retail food store or wholesale food concern in the event of flagrant violations of the Supplemental Nutritional Assistance Program. This suspension is taken before the administrative action of disqualification is finalized.
 - (d) The American Recovery and Reinvestment Act of 2009 (Recovery Act), Public Law 111-5, provides that Recovery Act funds cannot be spent on “any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.” See Section 1604 of Division A of the Recovery Act. The President issued guidance to Executive Departments and Agencies stating that they shall take appropriate corrective action that may include initiating a proceeding for suspension and debarment for violations of Section 1604. See 74 Fed. Reg. 12,531 (March 25, 2009).
- (4) Evidence of the existence of a potential cause for procurement or nonprocurement suspension or debarment action may be discovered through sources including, but not limited to, OIG or DOJ investigations; civil or criminal court actions; hotline complaints; media reports; USDA records and reviews of persons or entities

participating in USDA procurement and nonprocurement programs or activities; and records or reports from other Federal agencies. It should also be noted that while the quarterly OIG report and OIG investigations can be helpful tools in discovering potential causes for S&D actions, not everything contained in the OIG quarterly report or every OIG investigation results in a potential cause for S&D actions.

b. Inquiry and Review

- (1) Whenever information about a potential cause for suspension or debarment becomes known, the concerned agency S&D staff will conduct their own inquiry and may request OIG assistance when applicable². Nonprocurement agency S&D staff will forward the results of the inquiry to the program manager; procurement agency S&D staff will forward to the contracting officer.
- (2) The program manager or contracting officer, in consultation with OGC when needed, will determine whether information obtained during the inquiry should be forwarded to the S&D Official for possible suspension or debarment action. If forwarding is appropriate, the program manager or contracting officer will prepare the referral record.

c. Lead Agency Coordination

- (1) The program manager informs the nonprocurement S&D coordinator, or the contracting officer informs the procurement S&D coordinator, of a potential suspension or debarment action. The nonprocurement S&D coordinator forwards the person's or entity's identifying information; the reason for the proposed action; a due date when other USDA and Federal agencies can respond to the notice; and the agency's POC concerning the action to OCFO for lead agency coordination. Similarly, the procurement S&D coordinator forwards the information to OPPM.
- (2) OCFO and OPPM coordinate with other Federal agencies through the ISDC to facilitate the sharing of suspension or debarment information and to prevent duplicative efforts should another Federal agency express an interest in or initiate an action against the same person or entity. USDA and other interested Federal agencies will decide on the lead agency that will initiate and take responsibility for the suspension or debarment action.
- (3) If the lead is assigned to the USDA agency, the S&D coordinator will coordinate with internal and external interested offices to share and obtain information and developments relevant to the case.
- (4) If the lead is assigned to another Federal agency, the lead agency acts on behalf of all Federal agencies, and has a responsibility to keep other interested agencies informed of significant developments. The other interested agencies, in turn, may

² USDA Departmental Regulation , *OIG Organization and Procedures*, 1700-2 (1997), Section 8(c).

assist the lead agency in providing relevant information to enable the lead agency to effectively carry out its function.

d. Document Preparation

- (1) If the lead agency coordination notice does not generate a response, or if the lead is assigned to the initiating USDA agency, the program manager or contracting officer will prepare the referral record (see Appendices D and E), in consultation with OGC when needed.
- (2) The program manager or contracting officer will forward the referral record to either the nonprocurement or the procurement S&D coordinator, as appropriate.

e. Decision-Making Process

- (1) The nonprocurement S&D coordinator reviews the referral record, assigns an agency case number unique to each respondent, and either returns the referral record to the program manager for revisions or forwards the referral record to the appropriate S&D Official for consideration, following consultation with OGC or OIG, as appropriate. The S&D Official follows the procedures set forth in 2 C.F.R. Parts 180 and 417, Subparts G and H in deciding, initiating and finalizing the suspension or debarment action.
- (2) The procurement S&D coordinator sends the referral record to OPDM for review; OPDM staff assigns a case number unique to each respondent, and either returns the referral record to the contracting officer for revisions or forwards the referral record to the procurement S&D Official for consideration, following consultation with OGC or OIG, as appropriate. The procurement S&D Official follows the procedures set forth in FAR 48 C.F.R. 9.406, 9.407, and AGAR 409.406 and 409.407 in deciding, initiating and finalizing the suspension or debarment action.

8. DISQUALIFICATION

- a. 2 C.F.R. § 180.935 defines “disqualified” as a situation in which a person is prohibited from participating in specified Federal procurement or nonprocurement transactions as required under a statute, Executive order (other than Executive Orders 12549 and 12689) or other authority. Disqualification is an agency program-specific action that has effect only for the particular program from which a person or entity was disqualified, unlike suspension or debarment which have government-wide exclusionary effect. Currently, the policy on listing disqualified persons or entities in the SAM varies from agency to agency. In accordance with 2 C.F.R. §§ 180.25(c)(6), 180.45, OCFO will coordinate with the agencies that have disqualification procedures to determine the appropriateness of providing for the inclusion in the SAM of all persons or entities disqualified by USDA. Such inclusion would require promulgation of an amendment to USDA’s supplemental nonprocurement S&D regulations in 2 C.F.R. Part 417, and may also require the promulgation of amendments to agency

disqualification regulations. If 2 C.F.R. Part 417 and the necessary agency disqualification regulations are amended to provide for inclusion of disqualified persons or entities in the SAM, agencies will work with OCFO to establish appropriate Exclusion Types to facilitate such listing.

- b. Disqualification actions will be reported to OCFO in the agency's quarterly nonprocurement S&D report (see Appendix A).

9. REFERENCES

- a. [EO 12549](#) – Established a government-wide system of nonprocurement S&D and created the ISDC.
- b. [2 C.F.R. Part 180](#) – *OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)*.
- c. [2 C.F.R. Part 417](#) – USDA Supplement to 2 C.F.R. Part 180:
- d. [EO 12689](#) – Details the scope of the procurement S&D program and calls for reciprocity between the procurement and nonprocurement S&D programs.
- e. [FAR 48 C.F.R. Subpart 9.4](#) – *Debarment, Suspension, and Ineligibility* (Government-wide procurement S&D regulation).
- f. [AGAR Subpart 409.4](#) – USDA Supplement to FAR 48 C.F.R.
- g. [Section 14211 of the Food Conservation and Energy Act of 2008, Pub. L. No. 110-246; 7 U.S.C. § 2209j](#) – *Permanent Debarment from Participation in Department of Agriculture Programs for Fraud*:
- h. [Title 16 – Conservation; Chapter 4 – Protection of Timber, and Depredations; Sec. 620d – Monitoring and Enforcement](#)
- i. [Title 7, U.S.C. § 2021](#) – *Civil Penalties and Disqualification of Retail Food Stores and Wholesale Food Concern*:
- j. The American Recovery and Reinvestment Act of 2009, [Pub. L. No. 111-5](#)
- k. [Interagency Suspension and Debarment Committee](#)
- l. [USDA Departmental Regulation 1700-2](#), *OIG Organization and Procedures*

-END-

APPENDIX A

Sample Quarterly S&D Activity Report¹

| RMA 3 rd Quarter ² FY 2011 S&D Activity | | | | | | | | | | |
|---|--------------------------------------|---|------------------|----------------------------------|-----------------------------------|------------------|--|------------|----------------|------------|
| Agency Case # | OIG Case # <i>(If applicable)</i> | CFDA # ³ <i>(If applicable)</i> | Participant | Cause | Source of Referral Information | Action Sought | Status/Outcome | | | |
| New Referrals⁴ | | | | | | | | | | |
| RMA-NP-0311-1.1 | XX-yyyy-yyyy | 10.455 | Direct | 2 C.F.R. § 417.800(a)(1) | OIG | Debarment | Notice of Proposed Debarment sent to respondent. | | | |
| RMA-NP-0311-1.2 | XX-yyyy-yyyy | 10.455 | Direct | 2 C.F.R. § 417.800(a)(1) | OIG | Debarment | Notice of Proposed Debarment sent to respondent. | | | |
| RMA-NP-0311-2 | N/A | 10.450 | Indirect | 2 C.F.R. § 417.800(c)(2) | RMA State Office | Debarment | Referral withdrawn per S&D Official's decision to discontinue debarment proceedings. | | | |
| RMA-NP-0311-3 | N/A | 10.458 | Direct | 2 C.F.R. §180.700 (b) and (c) | RMA State Office | Suspension | Suspension is imposed and respondent listed in the EPLS. | | | |
| RMA-NP-0311-4 | N/A | 10.450 | Indirect | 7 U.S.C. § 1515(h)(1) | RMA State Office | Disqualification | Program manager currently preparing the referral record. | | | |
| Pending Referrals⁵ | | | | | | | | | | |
| RMA-NP-0111-1 | ZZ-yyyy-yyyy | 10.458 | Direct | 2 C.F.R. § 417.800(a)(3) | OIG | Debarment | Referral withdrawn upon respondent's successful contest to the Notice of Proposed Debarment. | | | |
| RMA-NP-0211-1 | N/A | 10.459 | Direct | 2 C.F.R. § 417.800(a)(2) | RMA State Office | Debarment | Debarment imposed and respondent listed in the EPLS. | | | |
| Referrals | | | Withdrawn | | | | Completed | | | |
| Cause | New | Pending | New | | Pending | | New | | Pending | |
| | | | Total | % | Total | % | Total | % | Total | % |
| 2 C.F.R. §180.700 | 1 | 0 | 0 | 0% | 0 | 0% | 1 | 100% | 0 | 0% |
| 2 C.F.R. §§ 180.800 and 417.800 | 3 | 2 | 1 | 33% | 1 | 50% | 0 | 0% | 1 | 50% |
| Others | 1 | 0 | 0 | 0% | 0 | 0% | 0 | 0% | 0 | 0% |
| Total | 5 | 2 | 1 | 20% | 1 | 50% | 1 | 20% | 1 | 50% |

- (1) With sample content. Include disqualification when applicable. Each agency provides its nonprocurement quarterly S&D activity report, while OPPM provides the Department-wide procurement S&D activity report.
- (2) Represents a FY quarter, e.g., 3rd quarter = April through June. The report will be provided to OCFO within 7 days after the FY quarter. Example: 3rd quarter activity will be reported by July 7, 4th quarter by October 7, etc.
- (3) Catalog of Federal Domestic Assistance (CFDA) number when applicable.
- (4) Referrals initiated in the current FY quarter, i.e., 3rd quarter FY 2011 in this sample report.
- (5) Referrals initiated in previous FY quarters but are still pending or were completed in the current FY quarter.

Appendix A: Description of Columns in the S&D Activity Report

| Column | Description |
|--------------------------------|--|
| Agency Case # | <p>A unique tracking number assigned to a respondent. It consists of four components: (1) the agency’s acronym; (2) whether the case is procurement (P) or nonprocurement (NP) related; (3) the quarter and FY the referral was initiated; and (4) a number that corresponds to the order in which the referral was processed by the agency for that quarter. Example: The first nonprocurement referral initiated by RMA in the 3rd quarter of FY 2011 would be assigned RMA-NP-0311-1; the second would be RMA-NP-0311-2; etc. The last digit(s) will reset to 1 for each new quarter. Thus, the first nonprocurement referral in the 4th quarter of FY 2011 would be labeled RMA-NP-0411-1.</p> <p>In cases where OIG assigns the same OIG case # (see OIG Case # column) for multiple indictments or convictions, the fourth component of the agency case # will reflect the number of respondents in that single OIG case # which will be reported in the same referral record. Example: The first referral that was processed by RMA consists of two respondents – RMA-NP-0311-1.1 and RMA-NP-0311-1.2 – that are part of the same OIG case # (XX-yyyy-yyyy); thus, the last component of their agency case #s are 1.1 and 1.2 to reflect the two respondents that are indicted/convicted in this single OIG case #.</p> |
| OIG Case # | <p>An OIG-assigned case number to an OIG-reported indictment or conviction. A single OIG case # can include multiple indictments or convictions. Case number format: 2 letters followed by 8 numbers.</p> |
| CFDA # | <p>The CFDA #, if applicable, for the program in which the respondent was participating.</p> |
| Participant | <p>For nonprocurement transactions only: Whether the respondent is a (1) direct or (2) indirect participant. A direct participant is involved in a primary tier covered transaction as set forth in 2 C.F.R. § 180.200(a). An indirect participant is involved in a lower tier covered transaction as set forth in 2 C.F.R. § 180.200(b).</p> |
| Cause | <p>The causes for (1) suspension are listed in FAR 48 C.F.R. 9.407-2 for procurement and 2 C.F.R. § 180.700 for nonprocurement transactions; (1) for debarment, in FAR 48 C.F.R. 9.406-2 for procurement and 2 C.F.R. §§ 180.800 and 417.800 for nonprocurement transactions; and (3) for disqualification, in the program’s statutes and/or regulations. Specific causes under each regulation must be identified.</p> |
| Source of Referral Information | <p>The source for the potential suspension, debarment, or disqualification must be identified, including, but not limited to, sources illustrated in Section 7.a (4). <i>Note:</i> OCFO receives OIG’s quarterly report containing updated information on OIG investigations and indictments and convictions, and provides the report to the S&D coordinators to disseminate to program managers, contracting officers, and other appropriate agency S&D personnel. However, agencies are not to wait for this report to initiate suspension or debarment action since the details of each case are contained in legal action memoranda that OIG provides to the agency liaison officers for investigations beforehand. The memoranda include, among other things, the status of the case and whether administrative action can be taken. If such cases require immediate action, program managers and contracting officers will consult with OIG, and OGC if necessary, to discuss taking appropriate administrative action. Also note that not every OIG item will be appropriate for S&D action.</p> |

Appendix A: Description of Columns in the S&D Activity Report

| Column | Description |
|-----------------|--|
| Action Sought | The action sought must be identified as a (1) suspension; (2) debarment; or (3) disqualification, when applicable. |
| Status/ Outcome | The status or outcome of each referral must be stated, which includes identifying postponed referrals as a result of OGC, OIG, or DOJ requests to avoid interfering with criminal or civil investigations or litigation proceedings. |
| Referrals | New and pending referrals are summed up under sub-columns New and Pending, respectively. Referrals are categorized according to the regulation that pertains to the cause for the action: (1) FAR 48 C.F.R. 9.407-2 for procurement or 2 C.F.R. § 180.700 for nonprocurement suspension; (2) FAR 48 C.F.R. 9.406-2 for procurement or 2 C.F.R. §§ 180.800 and 417.800 for nonprocurement debarment; and (3) “Others” for specific program statutes or regulations covering disqualification. |
| Withdrawn | <p>Referrals that do not result in a suspension, debarment, or disqualification.</p> <p>New and pending referrals that were withdrawn in the current quarter must be noted under sub-columns New and Pending, respectively. RMA-NP-0311-2 is one of three new referrals for debarment, and one of five total new referrals, that was withdrawn, which correspond to 33% and 20% withdrawal in (1) 2 C.F.R. §§ 180.800 and 417.800 and (2) Total.</p> <p>The two pending referrals are both for debarment; thus, RMA-NP-0111-1, a pending referral that was withdrawn, represents 50% withdrawal for (1) 2 C.F.R. §§ 180.800 and 417.800 and (2) Total.</p> |
| Completed | <p>Referrals that result in a suspension, debarment, or disqualification.</p> <p>New and pending referrals that resulted in a suspension, debarment, or disqualification in the current quarter are given in sub-columns New and Pending, respectively. These actions are measured as a percentage of the corresponding referrals under the % sub-column.</p> <p>RMA-NP-0311-3, the only new referral under 2 C.F.R. § 180.800, resulted in a suspension, for a completion rate of 100%. Since there are five new referrals, this suspension corresponds to 20% of the total. None of the new referrals in 2 C.F.R. §§ 180.800 and 417.800 resulted in a debarment, since two are still ongoing while one was withdrawn, nor did RMA-NP-0311-4 result in a disqualification; thus, (1) 2 C.F.R. §§ 180.800 and 417.800 and (2) Others are both 0%.</p> <p>RMA-NP-0211-1, one of two pending referrals, resulted in the current quarter’s sole debarment, listed under Total of the Pending sub-column. This represents 50% of pending referrals for both (1) 2 C.F.R. §§ 180.800 and 417.800 and (2) Total. Lastly, since there are no pending referrals for 2 C.F.R. § 180.700 and Others, both are 0%.</p> |

APPENDIX B

Agency Certificate of Completion of S&D Training Template

TO: Director
Transparency and Accountability Reporting Division
Office of the Chief Financial Officer

FROM: S&D Official
USDA Agency

DATE:

SUBJECT: Certification of S&D Training Completion

This certifies that all S&D coordinators, program managers, and other appropriate agency S&D personnel have taken and completed the required S&D training in AgLearn. If you have any questions, please contact agency POC.

APPENDIX C

SAM Memorandum Template

TO: Office of the Chief Financial Officer
Transparency and Accountability Reporting Division
Attn: SAM Coordinator

FROM: S&D Coordinator
USDA Agency

DATE:

SUBJECT: Exclusion of Individual/Entity

The following individual(s)/entity(ies) is/are excluded. The pertinent information required by 2 C.F.R. § 180.515(a), in conjunction with an OGC review, is as follows:

Classification: Individual or Firm

DUNS: Enter a 9-digit DUNS number when the classification is firm.
Leave blank if unknown.

Name and Address: Complete name and address of individual or entity, with cross references if more than one name is involved in a single action.

Active Date: The effective date of the exclusion.

Termination Date: The date the exclusion ends. If no termination date, state “Indefinite.”

Exclusion Type: See https://www.sam.gov/sam/transcript/Quick_Guide_for_Exclusions.pdf for listing and explanation of the four exclusion types that replace the EPLS CT codes.

OGC Review: Indicate if OGC reviewed the Notice of Suspension or Debarment
Yes____ No____

Description: Description or explanation of the cause for the exclusion, which
(Optional) will be included in the SAM listing.

Please add the referenced information regarding the individuals or entities into the SAM. If you have any questions regarding this action, please contact agency POC at contact information.

Attachment: Notice of Exclusion (i.e., Suspension, Debarment, Disqualification, or Settlement Agreement) signed by the S&D Official.

APPENDIX D

Nonprocurement Referral Record

A comprehensive referral record is essential for the S&D Official to create the administrative record that will be used as the basis for making a suspension or debarment decision.

Assemble the referral record in reverse chronological order, with the most current information first. Include an index of the documents as ordered in the record. The referral record includes, but is not limited to:

1. The name and address of the respondent(s) against whom the action is being proposed or taken;
2. The reason(s) and specific cause(s) for proposing debarment (as set forth in 2 C.F.R. § 180.800 and § 417.800), and if suspension is recommended (2 C.F.R. § 180.700), an explanation of why immediate action is needed to protect the public interest;
3. An Executive Summary that consists of (a) a brief history and background of events and the specific acts that gave rise to the referral record, including citations of USDA regulations at issue and (b) a short narrative describing any other evidence supporting the reason(s) for the need to debar or suspend;
4. The recommended time period for the suspension or debarment, including the rationale for the time period recommended;
5. Mitigating and/or aggravating factors that may affect the decision to suspend or debar;
6. Copies of any relevant supporting documentation, including, but not limited to:
 - a. Detailed evidence of specific cause(s) warranting a suspension or debarment;
 - b. Lists of affiliates and evidence documenting the affiliation;
 - c. Correspondence showing delegation of authority to an affiliate;
 - d. Business records of the respondent such as copies of any articles of incorporation, loan or grant agreements, by-laws or partnership agreements;
 - e. Borrower/grantee complaint letters to respondents and their responses;
 - f. Relevant facts showing the respondent's present responsibility with respect to future dealings with the government;
 - g. Inspection or review reports documenting deficient or exemplary performance;
 - h. All other relevant correspondence at the primary or lower tier of covered transactions which establishes a relationship between the respondent and the government and/or

- the transfer of Federal funds, including, if applicable, correspondence documenting deficient or exemplary performance;
- i. Copies of any criminal indictments (including superseding indictments), civil complaints, verdict forms, judgments, pretrial diversion agreements, plea agreements, settlement agreements, and/or violation notices;
 - j. Copies of law enforcement investigative reports (such reports may be redacted, in coordination with OIG, OGC and/or investigative agency to protect privileged material); and
 - k. Documentation to justify lapses in timeliness in the referral or processing of a case. If the referral is more than three years after the alleged wrongdoing, explanatory documentation must be provided indicating the reason(s) for the delay.

APPENDIX E

Procurement Referral Record

TO: USDA Procurement S&D Official
Office of Procurement and Property Management

FROM: Contracting Officer
USDA Agency

DATE:

SUBJECT: Proposed Suspension or Debarment of Contractor

Pursuant to FAR 48 C.F.R. 9.407-2 or 9.406-2, the following contractor is proposed for:
debarment or suspension:

Classification: Individual or Firm

DUNS: Enter a 9-digit DUNS number when the classification is firm.
Leave blank if unknown.

Name and Address: Complete name and address of contractor

Action (check one): Suspension
 Debarment

Action Date: The effective date of the exclusion

Attached are all pertinent information and supporting documentation. If you have any questions regarding this action, please contact agency POC.

A. Pertinent information includes, but is not limited to:

1. The reason(s) and specific causes for proposing debarment, or if suspension is recommended, why immediate action is needed to protect the public interest;
2. A short narrative stating the facts and/or describing other evidence supporting the reason(s) for the need to debar, and if appropriate, the need to suspend;
3. The recommended time period for the debarment, including the rationale for the time period recommended; and
4. Mitigating and/or aggravating factors that may affect the decision to suspend or debar.

B. Supporting documentation may include, but is not limited to, the following:

1. Detailed evidence of specific cause(s) warranting a suspension or debarment;
2. Lists of affiliates and evidence documenting the affiliation;
3. Correspondence showing delegation of authority to an affiliate;
4. Business records, including, but not limited to, articles of incorporation, statement of officers, loan agreements, by-laws or partnership agreements;
5. Agency letters to the respondents and their responses;
6. Borrower complaint letters to respondents and their responses;
7. Relevant facts showing the respondent's present responsibility with respect to future dealings with the government;
8. Inspection or review reports documenting deficient or exemplary performance;
9. Contract signature pages, if cause is based on a conviction or civil judgment; otherwise, include pertinent portions of the contract.
10. If failure to make payments or to make timely payments is cited as a cause, include copies of unpaid bills, late payments, demand letters, and a summary of the current status of payments including the most recent statement of account and synopsis;
11. The contracting officer's decision on such items as default or contract termination. Include any claims submitted by the purchaser;

12. Copies of any criminal indictments (including superseding indictments), civil complaints, verdict forms, judgments, pretrial diversion agreements, plea agreements, settlement agreements, and/or violation notices;
13. Copies of law enforcement investigative reports (such reports may be redacted, in coordination with OGC and/or investigative agency to protect privileged material);
14. Copies of declarations by sale administration and/or law enforcement personnel, if applicable; and
15. Inspections and/or certifications, if applicable.