Reply to
SP 05-10
Attn. of: CACFP-746
SFSP-509

Subject: Revised Rules on Nonprocurement Suspension/Debarment and Drug Free Workplace Requirements

To: STATE AGENCY DIRECTORS - (Special Nutrition Programs)
Colorado ED, Colorado DPHE, Colorado HS,
Iowa, Kansas, Missouri ED, Missouri DH,
Montana OPI, Montana DPHHS, Nebraska
Nebraska SS, North Dakota, South Dakota,
Utah, Wyoming ED

The attached document provides guidance on the new government-wide suspension/debarment and Drug Free Workplace (DFW) rules. The principal changes to these rules are:

1. USDA continues to codify the suspension/debarment rules at 7 CFR Part 3017 but has codified the DFW rules separately, at 7 CFR Part 3021.
2. Transactions subject to the suspension/debarment rules (covered transactions) now include grants, subgrants, cooperative agreements, and prime contracts under such awards. Subcontracts are no longer covered.
3. The dollar threshold for covered procurement contracts has been lowered from $100,000 to $25,000. Contracts for federally required audit services remain covered regardless of dollar amount.
4. The government-wide suspension/debarment certification form has been abolished, and the collection of such certifications is no longer mandatory. The new rules provide grantees and subgrantees with three options for obtaining satisfaction that prospective subgrantees and contractors are not suspended, debarred, or disqualified. These options are spelled out in the attached guidance.
5. The title of the list of suspended, debarred, and disqualified parties has been changed to Excluded Parties List System (EPLS). It is now available electronically, at a site given in the attached guidance.
6. The DFW certification requirement has been abolished. However, DFW compliance requirements continue to apply.

Statements of the new rules are printed in bold in the attached guidance.

Paper copies of 7 CFR Parts 3017 and 3021 are also attached.

If you have any questions concerning the new rules, please call my staff at (303) 844-0354.

DARLENE SANCHEZ
Regional Director
Special Nutrition Programs

Attachments
REVISED NONPROCUREMENT SUSPENSION/DEBARMENT RULES

The November 26, 2003 Federal Register contained a Notice revising the government-wide suspension/debarment and Drug-Free Workplace (DFW) rules (68 FR 66534). This Notice finalized the proposed rules published January 23, 2002 (67 FR 3266). The new rules took effect on the date they were published. The following material compares and contrasts the principal features of the new and old rules of interest to FNS and its grantees.

I. Organization

The November 26, 2003 Federal Register Notice first gives the government-wide suspension/debarment language, which it follows with separate government-wide Drug-Free Workplace (DFW) language. Each Federal grant-making agency’s agency-specific clarifications, exceptions, and other “tweaks” follow the government-wide text.

USDA has codified the new suspension/debarment rules at 7 CFR Part 3017 and the new DFW rules at 7 CFR Part 3021. USDA’s “tweaks” begin on page 66562. Unlike most agencies, USDA codified the new rule on an interim final basis. This is because USDA’s “tweaks” to the general rule included agency-specific guidance on appealing suspension and debarment actions (7 CFR sec. 3017.765 and 3017.890, respectively); the Department sought comments on these passages.

The provisions of the suspension/debarment and DFW rules have been physically re-arranged. The suspension/debarment responsibilities of grantees and other “participants” are now set out in Subpart C of Part 3017, while those of FNS and other Federal agencies are presented in Subpart D. One must now look to Subpart I for definitions. The preamble to the proposed rule included tables that relate each section of the new rules to its counterpart in the old rules (or indicates that the provision is new and has no such counterpart). These tables may be found at 67 FR 3267 for suspension/debarment and at 67 FR 3271 for DFW. The preamble to the final rule identifies departures from these tables resulting from differences between the proposed and final rules.

The new rules are expressed in the new “plain English” question-and-answer format.

As always, the preamble gives an analysis of the comments received on the proposed rule. In addition, it discusses the Government’s rationale for many of the policies adopted in the new rules as well as those retained from the old. We therefore recommend that user study the preamble as well as the regulatory text.

II. Key Terms

A. Excluded vs. Disqualified.

The new rules are couched in terms of a dichotomy between “excluded” and “disqualified” entities. An entity is “excluded” if it has been suspended or
debated under the government-wide suspension/debarment rules. Suspension and debarment are discretionary actions that an agency takes to protect the public interest. On the other hand, a "disqualified" entity is one that has been denied participation in certain Federal programs under a specific statute or executive order administered by the disqualifying agency. For example, 10 USC 983 requires the Defense Department to disqualify a university from eligibility for grants and contracts funded by certain appropriations if the university has been found to have denied military recruiters access to its campus or refused to permit the ROTC to operate there. "Excluded" and "disqualified" entities are referred to collectively as "ineligible" entities. An ineligible entity is banned from participation in a covered transaction. (7 CFR sec. 3017.75, 3017.940, 3017.945, 3017.960)

B. Covered Transactions.

The new rules define covered transactions at 7 CFR sec. 3017.210 and 3017.220(b). They also present a graphic illustration of covered transaction relationships at 66 FR 66557. The principal provisions of interest to FNS are summarized below.

1. **What Covered Transactions Do Include:**
   a. **Nonprocurement Transactions:**
   
   Unless expressly exempted by 7 CFR sec. 3017.215, the award of any grant, subgrant, or cooperative agreement is a covered transaction.

   b. **Procurement Transactions:**
   
   (1) Any contract awarded by a grantee or subgrantee for federally-required audit services, regardless of dollar amount, is a covered transaction. This provision remains unchanged from the old rules.

   (2) Any other procurement contract expected to equal or exceed $25,000, awarded by a grantee or subgrantee under its grant or subgrant, is a covered transaction. This contrasts with the old rules, which pegged the procurement coverage threshold to the Federal small purchase threshold (currently $100,000).

2. **What Covered Transactions Do Not Include:**

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a. **Subcontracts.** Subcontracts awarded by the grantee’s or subgrantee’s prime contractor, or by a subcontractor at any tier, are not covered transactions unless a Federal agency’s agency-specific “tweaks” to the general rules designate them as such. A Federal grant-making agency may elect to set a threshold higher than $25,000 for use in its programs or extend coverage to lower tier procurement contracts but USDA has not included such provisions in its “tweaks.” This contrasts with the old rules, which treated all subcontracts as covered transactions but which USDA had “tweaked” for FNS programs by excluding subcontracts below the first tier subcontract under a prime contract. The Federal Government’s rationale for this policy shift is set out in the preamble under the heading *Optional lower tier coverage,* beginning on page 66536 of the November 26, 2003 *Federal Register* Notice.

b. **Statutory Entitlement and Mandatory Awards.** Covered transactions do not include entitlement or mandatory awards at any tier if these are required by statute (7 CFR sec. 3017.215(h)). This passage in the new rules lacks the old rules’ clarity that subgrants under entitlement or mandatory grants are covered transactions unless they are themselves entitlement or mandatory. For example, a National School Lunch Program (NSLP) grant to a State educational agency and a WIC grant to a State health agency are both mandatory awards, but both are not mandatory at the subgrantee level. Specifically:

1. The State educational agency is required to make the NSLP available to any organization that applies if that organization meets the regulatory definition of “school.” Therefore, NSLP subgrants to school food authorities are statutory entitlements, excluded from coverage under the suspension/debarment rules.

2. Program regulations at 7 CFR sec. 246.5 give the State health agency considerable latitude in selecting WIC local agencies so long as the outcome gives the State’s WIC-eligible population access to the program. A WIC subgrant is thus a discretionary award subject to the suspension/debarment rules.

c. **Retailer Authorizations.** The authorization of a retailer to participate in the FSP or WIC is not a covered transaction, because alternative program-specific processes exist to protect the public interest against retailer malfeasance. For the same reason, the suspension/debarment rules do not apply to authorizing FMNP
roadside stands. These program-specific processes are described at
7 CFR sec. 278.1(k) for the FSP, 246.12(g)(3)(ii) and 246.12(l)
for WIC, and 248.10(a)(2) and 248.10(c) for the FMNP. This was
our interpretation of the old rules, and it remains unchanged under
the new rules.

C. Excluded Parties List System.

The new rules change the title of the GSA list of parties excluded or
disqualified from engaging in covered transactions from “List of Parties Excluded
or Disqualified From Federal Procurement and Nonprocurement Programs” to
3017.950).

The EPLS is available on the Internet, currently at http://epls.arow.gov.
Cause and treatment codes identify the reason for an entity’s exclusion or
disqualification and the specific restrictions to which the entity is subject while in
excluded or disqualified status (7 CFR sec. 3017.550).

UL. Responsibilities.

A. Engaging in Covered Transactions.

As with the old rules, FNS must obtain satisfaction that a non-federal entity is
neither excluded nor disqualified before engaging that entity in a covered
transaction. Grantees and subgrantees must do likewise. This is a reciprocal
process; the awarding agency must apply due diligence to determining the
applicant’s eligibility, and the applicant or awardee must furnish information
about itself and its principals in good faith.

However, the new rules differ draconically from the old regarding
acceptable methods of obtaining satisfaction. The uniform Federal
suspension/debarment certification form has been abolished, and the
collection of paper certifications is no longer mandatory. New rules provide
greater flexibility in meeting the requirement.

1. State Agencies and Other Non-Federal Entities may meet the
requirement by any one of three methods spelled out at 7 CFR sec.
3017.300. They are:

a. Checking the EPLS.

b. Collecting a certification that the entity is neither
excluded nor disqualified. Since a Federal certification
form is no longer available, a State or local agency electing
this method must devise its own.
2. **FNS must** meet the requirement by doing **both** of the following:

   a. **Checking the EPLS** (7 CFR sec. 3017.430(a)); and

   b. **Reviewing information furnished by the applicant** under 7 CFR sec. 3017.335. (7 CFR sec. 3017.430(b))

The rationale for these procedural revisions is that technological advances have outstripped the procedures described in the old rules. Unlike the old paper GSA List, which could be weeks out-of-date by the time a user needed to consult it, the electronic EPLS is updated daily. A Federal, State, or local agency can instantly check the EPLS to determine whether an entity being considered for a covered transaction is excluded or disqualified. This makes the collection of paper certifications obsolete.

The new rules retain the existing policy that a covered transaction already in effect at the time a party to that transaction is identified as excluded or disqualified need not be terminated (7 CFR sec. 3017.310).

**B. Overseeing Compliance by Grantees, Subgrantees, and Contractors.**

FNS must require State agencies and other primary grantees to comply with the suspension/debarment rules. We must include in Federal-State Agreements and other grant agreements a term or condition committing the grantee to comply (7 CFR sec. 3017.435 and 3017.440).

Primary grantees, in turn, must require their subgrantees to comply. Both primary grantees and subgrantees must require their procurement contractors to comply as well. Although the contractors are not required to obtain satisfaction that their subcontractors are eligible, they must provide whatever information or assurances about themselves and their principals that their grantees or subgrantee customers require (7 CFR sec. 3017.330).

**C. Listing Excluded and Disqualified Entities.**

Excluding a non-federal entity is a discretionary action that FNS may take when deemed necessary to protect the public interest. Taking such action requires posting information about the excluded entity in EPLS (7 CFR sec. 3017.100, 3017.110, and 3017.140).

The Federal official who takes action to exclude an entity must notify that entity. The new rules expand authorized notification media to include data-fax and e-mail (7 CFR sec. 3017.615 and 3017.975).
IV. **Drug-Free Workplace Rules.**

The new rule abolishes the requirement to collect DFW certifications from grantees, but continues to impose DFW compliance requirements on them. As a condition of receiving a Federal award, a State agency or other primary grantee must: (A) make a good-fith effort, on a continuing basis, to maintain a DFW (including taking specific actions described at 7 CFR sec. 3021.200 through 3021.230); and (B) identify all workplace locations where work under the Federal award will be performed (7 CFR sec. 3021.200).

V. **Implementation.**

A. **FNS must:**

1. Make conforming changes to program regulations, Federal-State Agreements, other grant agreements, Instructions, and other guidance and policy statements.

2. Notify State agencies and other primary grantees of the new rules.

3. Incorporate the new rules into their monitoring of State agencies and other grantees.

B. **State agencies must:**

1. Make conforming changes to their internal procedures, subgrant agreements, directives, training materials, etc.

2. Notify their subgrantees and contractors of the new rules.

3. Incorporate the new rules into their subgrantee monitoring.
PART 3017—GOVERNMENTWIDE
DEBARMENT AND SUSPENSION
(NONPROCUREMENT)

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3017.25 How is this part organized?
3017.30 How is this part written?
3017.73 How terms in this part have special response?

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3017.31-32 What does this part do?
3017.33 How does this part apply to me?
3017.34 What is the purpose of the nonprocurement debarment and suspension system?

3017.319 How does an individual receive a personal disclosure or appeal hearing?
Appendix to Part 380—Covered Transactions

Subpart J (Reserved)

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The following table shows which subparts may be of special interest to you, depending on who you are:

<table>
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<tr>
<th>You are (see subparts)</th>
<th>(a) a person or organization in a non-agricultural transaction.</th>
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§3017.50 How is this part written?

(a) This part uses a "plain language" format to make it easier to understand. The section headings and text, often in the form of questions and answers, must be read together.

(b) Prompts used within this part, such as "I" and "you", change from subpart to subpart depending on the audience being addressed. The pronoun "we" always is the Department of Agriculture.

(c) The "Covered Transactions" diagram in the appendix to this part shows the levels or " tiers" at which the Department of Agriculture enforces an exclusion under this part. However, this diagram shows only the general model for the levels or " tiers" at which the Department of Agriculture enforces an exclusion under this part, and the model will vary for certain categories of transactions in accordance with the exclusions from covered transactions in §3017.215 and §3017.220.

(See FR 6351, Nov. 26, 2003, as amended FR 6354, Nov. 26, 2003.)

§3017.75 De terms in this part have special meanings:

This part uses terms throughout the text that have special meaning. These terms are defined in Subpart J of this part. For example, three important terms are:

(1) Exclusion or excluded, which refers to discretionary actions taken by a suspending or debarring official under this part or the Federal Acquisition Regulation (48 CFR part 9), subpart 9.1.

(2) Disqualification or disqualified, which refers to prohibitions under specific statutes, executive orders, and the Department of Agriculture’s regulations that are effective on or before November 26, 2003.
subject to the discretion of an agency official, may have a different scope than exclusions, or have special conditions that apply to the disqualification; and
(c) Ineligibility or ineligible, which generally refers to a person who is either excluded or disqualified.

Subpart A—General

§3017.100 What does this part do?
This part adopts a governmentwide system of debarment and suspension for Department of Agriculture nonprocurement activities it also provides for reciprocal exclusion of persons who have been excluded under the Federal Acquisition Regulation and provides for the consolidated listing of all persons who are excluded or disqualified by statute, executive order or other legal authority. This part satisfies the requirements in section 3 of Executive Order 12549, "Debarment and Suspension" (3 CFR 1986 Comp. p. 189); Executive Order 12044, "Debarment and Suspension" (3 CFR 1989 Comp. p. 225) and 21 U.S.C. 606(b) note (Section 206); Public Law 103-335, 110 Stat. 3327.

§3017.105 Does this part apply to you?
Portions of this part (see table at §3017.25(b)) apply to you if you are able to:
(a) Person who has been, is, or may reasonably be expected to be, a participant or principal in a covered transaction;
(b) Respondent (a person against whom the Department of Agriculture has initiated debarment or suspension action);
(c) Department of Agriculture debarring or suspending official; or
(d) Department of Agriculture official who is authorized to enter into covered transactions with non-Federal parties.

§3017.110 What is the purpose of the nonprocurement debarment and suspension system?
(a) To protect the public interest, the Federal Government requires the integrity of Federal programs by conducting business only with responsible persons.
(b) A Federal agency uses the nonprocurement debarment and suspension system to exclude from Federal programs persons who are not presently responsible.
(c) An exclusion is a serious action that a Federal agency may take only to protect the public interest. A Federal agency may not exclude a person or commodity for the purpose of punishment.

§3017.115 How does an exclusion restrict a person's involvement in covered transactions?
With the exceptions stated in §§3017.120, 3017.130 and 3017.120, a person who is excluded by the Department of Agriculture or any other Federal agency may not:
(a) Be a participant in any Department of Agriculture transaction that is a covered transaction under subpart B of this part;
(b) Be a participant in a transaction of any other Federal agency that is a covered transaction under that agency's regulations for debarment and suspension; or
(c) Act as a principal of a person participating in one of these covered transactions.

§3017.120 May we grant an exception to let an excluded person participate in a covered transaction?
(a) The Secretary of Agriculture or designer may grant an exception permitting an excluded person to participate in a particular covered transaction. If the Secretary of Agriculture or designer grants an exception, the exception must be in writing and state the reasons for granting it from the governmentwide policy in Executive Order 12549.
(b) An exception granted by one agency for an excluded person does not extend to the covered transactions of another agency.

§3017.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
If any Federal agency excludes a person under its nonprocurement common rule on or after August 23, 1985, the excluded person is also ineligible to participate in Federal procurement transactions under the FAR. Therefore, an
Office of Chief Financial Officer, USDA

exclusion under this part has recip-

ciprocal effect in Federal procurement
transactions.

§3017.130 Does exclusion under the
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If any Federal agency excludes a per-
son under the FAR on or after August
23, 1995, the excluded person is also in-
eligible to participate in nonprocure-
ment covered transactions under this
part. Therefore, an exclusion under the
FAR has reciprocal effect in Federal
nonprocurement transactions.

§3017.135 May the Department of Ag-
riculture exclude a person who is
not currently participating in a
nonprocurement transaction?

Given a cause that justifies an exclu-
sion under this part, we may exclude
any person who has been involved, is
currently involved, or may reasonably
be expected to be involved in a covered
transaction

§3017.140 How do I know if a person
is excluded?

Check the Excluded Parties List System
(EPLS) to determine whether a person
is excluded. The General Services Ad-
ministration (GSA) maintains the
EPLS and makes it available, as de-
tailed in subpart E of this part. When a
Federal agency takes an action to ex-
clude a person under the nonprocure-
ment or procurement debarment and
suspension system, the agency enters
the information about the excluded
person into the EPLS.

§3017.145 Does this part address per-
sons who are disqualified, as well
as those who are excluded? From
nonprocurement transactions?

Except if provided for in Subpart J of
this part, this part—
(a) Addresses disqualified persons
only—
(1) Provide for their exclusion in the
EPLS, and
(2) State responsibilities of Federal
agencies and participants to check for
disqualified persons before entering
into covered transactions.
(b) Does not specify the—
(1) Department of Agriculture trans-
actions for which a disqualified person
is ineligible. Those transactions vary
on a case-by-case basis, because they
depend on the language of the specific
statute, Executive order, or regulation
that caused the disqualification.
(2) Entities to which the disqualifica-
tion applies or
(3) Process that the agency uses to
disqualify a person. Unlike exclusion,
disqualification is frequently not a dis-
cretionary action that a Federal agen-
cy takes.

Subpart B—Covered Transactions

§3017.200 What is a covered trans-
action?

A covered transaction is a non-
procurement or procurement trans-
action that is subject to the prohibi-
tions of this part. It may be a trans-
action at—
(a) The primary tier, between a Fed-
eral agency and a person (see appendix
to this part); or
(b) A lower tier, between a partici-
pant in a covered transaction and an-
other person.

§3017.205 Why is it important if a par-
ticular transaction is a covered trans-
action?

The importance of a covered trans-
action depends upon who you are.
(a) As a participant in the trans-
action, you have the responsibilities
laid out in Subpart C of this part.
Those include responsibilities to the
person or Federal agency at the next
higher tier from whom you received
the transaction, if any. They also in-
clude responsibilities if you subse-
quent come into any other covered trans-
actions with persons at the next lower
tier.
(b) As a Federal official who enters
into a primary tier transaction, you
have the responsibilities laid out in
subpart D of this part.
(c) As an excluded person, you may
be a participant or principal in the
transaction unless—
(i) The person who entered into the
transaction with you allows you to
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§3017.205

3017.200 What is a covered transaction?

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permitted under §3017.230 or §3017.410;

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§ 3017.210
(2) Any Department of Agriculture official obtains an exception from the Secretary of Agriculture or designee to allow you to be involved in the transaction, as permitted under §3017.120.

§ 3017.210 Which nonprocurement transactions are covered transactions?
All nonprocurement transactions, as defined in §3017.90, are covered transactions unless listed in §3017.215. (See appendix to this part.)

§ 3017.215 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 owed (in whole or in part) or controlled by a foreign government;
(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 for 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. 1381 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 the Department of Agriculture 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 the Department of Agriculture specifically designates it to be a covered transaction.
(f) An incidental benefit that results from ordinary governmental operations.

7 CFR Ch. I, Subpart B (1-1-04 Edition)
§ 3017.210 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.

(2) Do include any 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 §3017.210, and the amount of the contract is expected to equal or exceed $15,000.

(2) The contract requires the consent of a Department of Agriculture 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.

(b) A contract for the procurement of ocean transportation in connection with the Department of Agriculture's foreign assistance programs is a covered transaction. With respect to the Department of Agriculture's export and foreign assistance programs, such contracts are the only procurement contracts included as covered transactions, notwithstanding the provisions in paragraphs (a) and (b) of this section.

§ 3017.225 How do I know if a transaction is a covered transaction?

As a participant in a transaction, you will know that it is a covered transaction because the agency regulation governing the transaction, the appropriate agency official, or participant at the next higher tier who enters into the transaction with you, will tell you that you must comply with applicable portions of this part.

Subpart C—Responsibilities of Participants Regarding Transactions

§ 3017.300 What must I do before I enter into a covered transaction with another person at the next lower tier?

When you enter into a covered transaction with another person at the next lower tier, you must verify that the person with whom you intend to do business is not excluded or disqualified. You do this by:

(a) Checking the EPIS;

(b) Collecting a certification from that person if allowed by this rule;

(c) Adding a clause or condition to the covered transaction with that person.

§ 3017.305 May I enter into a covered transaction with an excluded or disqualified person?

(a) You as a participant may not enter into a covered transaction with an excluded person, unless the Department of Agriculture grants an exception under §3017.120.

(b) You may enter into a covered transaction with a person who is disqualified from that transaction, unless you have obtained an exception under the disqualifying statute, Executive order, or regulation.

§ 3017.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?

(a) You as a participant may continue covered transactions with an excluded person if the transactions were in existence when the agency excluded the person. However, you are not required to continue the transactions, and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a
§ 3017.315 Thorough review to ensure that the action is proper and appropriate.

(b) You may not review or extend covered transactions (other than no-cost extensions) with any excluded person, unless the Department of Agriculture grants an exception under § 3017.120.

§ 3017.315 May I use the services of an excluded person as a principal under a covered transaction?

(a) You as a participant may continue to use the services of an excluded person as a principal under a covered transaction if you were using the services of that person in the transaction before the person was excluded. However, you are not required to continue using that person's services as a principal. You should make a decision about whether to continue that person's services only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not begin to use the services of an excluded person as a principal under a covered transaction unless the Department of Agriculture grants an exception under § 3017.120.

§ 3017.320 Must I verify that principals of any covered transactions are eligible to participate?

Yes, you as a participant are responsible for determining whether any of your principals of your covered transactions is excluded or disqualified from participating in the transaction. You may decide the method and frequency by which you do so. You may, but you are not required to, check the EPLS.

§ 3017.325 What happens if I do business with an excluded person in a covered transaction?

If as a participant you knowingly do business with an excluded person, we may disallow costs, annul or terminate the transaction, issue a stop work order, debar or suspend you, or take other remedies as appropriate.

§ 3017.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Before entering into a covered transaction with a participant at the next lower tier, you must require that participant to—

§ 3017.340 If I disclose unfavorable information required in § 3017.330, will I be prevented from participating in the transaction?

As a primary tier participant, your disclosure of unfavorable information about yourself or a principal under § 3017.330 will not necessarily cause you to deny your participation in the covered transaction. We will consider the information when we determine whether to enter into the covered transaction. We also will consider any additional information or explanation that you elect to submit with the disclosed information.
§3017.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant? Before you enter into a covered transaction with a person at the next higher tier, you as a lower tier participant must notify that person if you know that you or any of the principals are presently excluded or disqualified.

§3017.366 What happens if I fail to disclose the information required under §3017.355? If we later determine that you failed to disclose the information required under §3017.355 that you knew at the time you entered into the covered transaction, we may—
(a) Terminate the transaction for material failure to comply with the terms and conditions of the transaction;
(b) Pursue any other available remedies, including suspension and debarment.

§3017.365 What must I do if I learn of information required under §3017.355 after entering into a covered transaction with a higher tier participant? At any time after you enter into a lower tier covered transaction with a person at a higher tier, you must provide immediate written notice to that person if you learn either that—
(a) You failed to disclose information earlier, as required by §3017.355; or
(b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in §3017.355.

§3017.410 Subpart D—Responsibilities of Department of Agriculture Officials Regarding Transactions

§3017.400 May I enter into a transaction with an excluded or disqualified person? You as an agency official may not enter into a covered transaction with an excluded person unless you obtain an exception under §3017.120.

§3017.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded? As an agency official, you may not enter into a covered transaction with a participant if you know that a principal of the transaction is excluded, unless you obtain an exception under §3017.120.

§3017.410 May I approve a participant’s use of the services of an excluded person? After entering into a covered transaction with a participant, you as an agency official may not approve a participant’s use of an excluded person as a principal under that transaction, unless you obtain an exception under §3017.120.
§ 3017.415

§ 3017.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?

(a) You as an agency official may continue covered transactions with an excluded person, or under which an excluded person is a principal, if the transactions were in existence when the person was excluded. You are not required to continue the transactions, however, and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper.

(b) You may not renew or extend covered transactions (other than reasonable time extensions) with any excluded person, or under which an excluded person is a principal, unless you obtain an exception under §3017.120.

§ 3017.420 May I approve a transaction with an excluded or disqualified person at a lower tier?

If a transaction at a lower tier is subject to your approval, you as an agency official may not approve—

(a) A covered transaction with a person who is currently excluded, unless you obtain an exception under §3017.120;

(b) A transaction with a person who is disqualified from that transaction, unless you obtain a waiver or extension under the statute, Executive order, or regulation that is the basis for the person's disqualification.

§ 3017.423 When do I check to see if a person is excluded or disqualified?

As an agency official, you must check to see if a person is excluded or disqualified before you—

(a) Enter into a primary tier covered transaction;

(b) Approve a principal in a primary tier covered transaction;

(c) Approve a lower tier participant if agency approval of the lower tier participant is required;

(d) Approve a principal in connection with a lower tier transaction if agency approval of the principal is required

§ 3017.430 How do I check to see if a person is excluded or disqualified?

You check to see if a person is excluded or disqualified in two ways—

(a) You as an agency official must check the EPS, when you take any action listed in §3017.425.

(b) You must review information that a participant gives you, as required by §3017.323, about its status or the status of the principals of a transaction.

§ 3017.435 What must I require of a primary tier participant?

You as an agency official must require each participant in a primary tier covered transaction to—

(a) Comply with subpart C of this part as a condition of participation in the transaction; and

(b) Communicate the requirement to comply with Subpart C of this part to persons at the next lower tier with whom the primary tier participant enters into covered transactions.

§ 3017.440 What method do I use to communicate these requirements to participants?

To communicate tier requirements, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in their lower-tier covered transactions.

(8 FR 6634, Nov. 26, 2003)

§ 3017.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?

If a participant knowingly does business with an excluded or disqualified person, you as an agency official may refer the matter for suspension and debarment consideration. You may also disallow costs, annul or terminate the transaction, issue a stop work order, or take any other appropriate remedy.

§ 3017.450 What action may I take if a primary tier participant fails to disclose the information required under §3017.335?

If you as an agency official determine that a participant failed to disclose information, as required by §3017.335, at the time it entered into a
§3017.520 What is the purpose of the Excluded Parties List System (EPLS)?

The EPLS is a widely available source of the most current information about persons who are excluded or disqualified from covered transactions.

(a) Federal agency officials use the EPLS to determine whether to enter into a transaction with a person, as required by §3017.430.

(b) Participants also may, but are not required to, use the EPLS to determine if:

(1) Principals of their transactions are excluded or disqualified, as required by §3017.320 or

(2) Persons with whom they are entering into covered transactions at the next lower tier are excluded or disqualified.

(c) The EPLS is available to the general public.

§3017.510 Who maintains the EPLS?

In accordance with the OMB guidelines, the General Services Administration (GSA) maintains the EPLS. When a Federal agency takes an action to exclude a person under the nonprocurement or procurement debarment and suspension system, the agency enters the information about the excluded person into the EPLS.
§ 3017.525  
(a) Modifying or rescinding an exclusion action.  
(b) Finding that a person is disqualified or  
(c) Finding that there has been a change in the status of a person listed as disqualified.

§ 3017.531  
(a) How do I ask if I have questions about a person in the EPLS?  
(b) If you have questions about a person in the EPLS, you may contact the Federal agency that placed the person on the EPLS. You may find the agency's contact information through the EPLS.

§ 3017.530  
(a) How can I find the EPLS?  
(b) You may access the EPLS through the Internet, currently at https://eplsi.org.  
(c) As of November 26, 2013, you may also subscribe to a printed version. However, we anticipate discontinuing the printed version. Until it is discontinued, you may obtain the printed version.

§ 3017.610  
(a) What procedures does the Department of Agriculture use in suspension and debarment actions?  
(b) In deciding whether to suspend or debar you, we will consider the procedures in this part and part C of this part.

§ 3017.615  
(a) What procedures does the Department of Agriculture use in suspension or debarment actions?  
(b) We will consider the procedures in this part and part D of this part.
§ 3017.620 Do Federal agencies coordinate suspension and debarment actions?

Yes. When more than one Federal agency has an interest in a suspension or debarment, the agencies may consider designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their suspension and debarment actions.

§ 3017.625 What is the scope of a suspension or debarment?

If you are suspended or debarred, the suspension or debarment is effective as follows:

(a) Your suspension or debarment constitutes suspension or debarment of all of your divisions and other organizational elements from all covered transactions, unless the suspension or debarment decision is limited to:

(ii) By its terms to one or more specifically identified individuals, divisions, or other organizational elements;

(b) To specific types of transactions;

(c) Any affiliate of a participant may be included in a suspension or debarment action if the suspending or debarring official:

(i) Officially names the affiliate in the notice and

(ii) Gives the affiliate an opportunity to contest the action.

§ 3017.630 May the Department of Agriculture impute conduct of one person to another?

For purposes of actions taken under this rule, we may impute conduct as follows:

(a) Conduct imputed from an individual to an organization. We may impute the fraudulent, criminal, or other improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with an organization to that organization when the improper conduct occurred in connection with the individual’s performance of duties for or on behalf of that organization, or with the organization’s knowledge, approval or acquiescence. The organization’s acceptance of the benefits derived from the conduct is evidence of knowledge, approval or acquiescence.

(b) Conduct imputed from an organization to another organization. We may impute the fraudulent, criminal, or other improper conduct of any organization to another organization, or from one individual to another individual, if the individual to whom the improper conduct is imputed either participated in, had knowledge of, or reason to know of the improper conduct.

(c) Conduct imputed from one organization to another organization. We may impute the fraudulent, criminal, or other improper conduct of one organization to another organization when the improper conduct occurred in connection with a joint venture, joint application, association or similar arrangement, if the organization to whom the improper conduct is imputed has the power to direct, manage, control or influence the activities of the organization responsible for the improper conduct. Acceptance of the benefits derived from the conduct is evidence of knowledge, approval or acquiescence.

§ 3017.635 May the Department of Agriculture settle a debarment or suspension action?

Yes, we may settle a debarment or suspension action at any time if it is in the best interest of the Federal Government.

§ 3017.640 May a settlement include a voluntary exclusion?

Yes, if we enter into a settlement with you in which you agree to be excluded. It is called a voluntary exclusion and has government-wide effect.

§ 3017.645 Do other Federal agencies consider if the Department of Agriculture agrees to a voluntary exclusion?

(a) Yes, we enter information regarding a voluntary exclusion into the EPLS.

(b) Also, any agency or person may contact us to find out the details of a voluntary exclusion.

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§ 3071.625 Do Federal agencies coordi- 
nate suspension and debarment ac-
tions?
Yes. When more than one Federal 
agency has an interest in a suspension 
or debarment, the agencies may con-
sider designating one agency as the 
lead agency for making the decision. 
Agencies are encouraged to establish 
methods and procedures for coordi-
nating their suspension and debarment 
actions.

§ 3071.625 What is the scope of a sus-
pension or debarment?
If you are suspended or debarred, the 
suspension or debarment is effective as 
follows:
(a) Your suspension or debarment 
constitutes suspension or debarment of 
all of your divisions and other organi-
sational elements from all covered 
transactions, unless the suspension or 
debarment decision is limited— 
(1) By its terms to one or more spe-
cifically identified individuals, divi-
sions, or other organizational ele-
ments; or 
(2) To specific types of transactions. 
(b) Any affiliate of a participant may 
be included in a suspension or debar-
ment action if the suspending or debar-
ing officials— 
(1) Officially name the affiliate in 
the notice; and 
(2) Give the affiliate an opportunity 
to contest the action.

§ 3071.630 May the Department of Agri-
culture impose conduct of one 
person to another?
For purposes of actions taken under 
this rule, we may impose conduct as 
follows:
(a) Conduct imposed from an individual 
organizational element of another 
organizational element. We may im-
pose this type of conduct if an off-
icial, director, shareholder, partner, 
employee, or other individual is 
associated with an organization, 
that organization when the im-
proper conduct occurred in connection 
with the individual's performance of 
duties for, or on behalf of, that organi-
zation, or with the organization's knowl-
edge, approval or acquiescence. The or-
ganization's acceptance of the benefits 
derived from the conduct is evidence of 
knowledge, approval or acquiescence.

§ 3071.635 May the Department of Agri-
culture settle a debarment or sus-
pension action?
Yes, we may settle a debarment or 
suspension action at any time if it is in 
the best interest of the Federal Gov-
ernment.

§ 3071.640 May a settlement include a 
voluntary exclusion?
Yes, if we enter into a settlement 
with you in which you agree to be ex-
cluded, it is valid a voluntary exclu-
sion and has governmentwide effect.

§ 3071.645 Do other Federal agencies 
know if the Department of Agri-
culture agrees to a voluntary exclu-
sion?
(a) Yes, we enter information regard-

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§ 3017.700 Subpart G—Suspension

§ 3017.700 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 (a) may impose suspension only when that official determines that—

(a) There exists an indictment for, or other adequate evidence—suspect an offense listed under §3017.600(a), or

(b) There exists adequate evidence to suspect any other cause for debarment listed under §3017.600(b) through (d); and

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

§ 3017.705 What does the suspending official consider in issuing a suspension?

(a) In determining the adequacy of the evidence to support the suspension, the suspending official considers how much information is available, how it was obtained, and what inferences can reasonably be drawn. During this assessment, the suspending official may examine the basic documents, including grants, cooperative agreements, loan authorizations, contracts, and other relevant documents.

(b) An indictment, conviction, civil judgment, or other official findings by Federal, State, or local bodies that determine factual and/or legal matters, constitutes adequate evidence for purposes of suspension actions.

(c) In deciding whether immediate action is needed to protect the public interest, the suspending official may consider the necessity for immediate action to protect the public interest either from the nature of the circumstances giving rise to a cause for suspension or from potential business relationships or involvement with a program of the Federal Government.

§ 3017.710 When does a suspension take effect?

A suspension is effective when the suspending official signs the decision to suspend.
information and argument to the suspending official within 10 days after you receive the Notice of Suspension.

(b) We consider the notice to be received by you-

(1) When delivered, if we mail the notice to the last known street address, or five days after we send it if the letter is undeliverable;

(2) When sent, if we send the notice by facsimile or five days after we send it if the facsimile is undeliverable;

(3) When delivered, if we send the notice by e-mail or five days after we send it if the e-mail is undeliverable.

§ 3017.720 What information must I provide in the suspending official's notice of suspension?

(a) In addition to any information and argument in opposition, as a respondent you may also provide your

(b) We consider the notice to be received by you-

(1) When delivered, if we mail the notice to the last known street address, or five days after we send it if the letter is undeliverable;

(2) When sent, if we send the notice by facsimile or five days after we send it if the facsimile is undeliverable;

(3) When delivered, if we send the notice by e-mail or five days after we send it if the e-mail is undeliverable.

§ 3017.720 What information must I provide in the suspending official's notice of suspension?

(a) In addition to any information and argument in opposition, as a respondent you may also provide your

(b) We consider the notice to be received by you-

(1) When delivered, if we mail the notice to the last known street address, or five days after we send it if the letter is undeliverable;

(2) When sent, if we send the notice by facsimile or five days after we send it if the facsimile is undeliverable;

(3) When delivered, if we send the notice by e-mail or five days after we send it if the e-mail is undeliverable.

§ 3017.720 What information must I provide in the suspending official's notice of suspension?

(a) In addition to any information and argument in opposition, as a respondent you may also provide your

(b) We consider the notice to be received by you-

(1) When delivered, if we mail the notice to the last known street address, or five days after we send it if the letter is undeliverable;

(2) When sent, if we send the notice by facsimile or five days after we send it if the facsimile is undeliverable;

(3) When delivered, if we send the notice by e-mail or five days after we send it if the e-mail is undeliverable.

§ 3017.720 What information must I provide in the suspending official's notice of suspension?

(a) In addition to any information and argument in opposition, as a respondent you may also provide your

(b) We consider the notice to be received by you-

(1) When delivered, if we mail the notice to the last known street address, or five days after we send it if the letter is undeliverable;

(2) When sent, if we send the notice by facsimile or five days after we send it if the facsimile is undeliverable;

(3) When delivered, if we send the notice by e-mail or five days after we send it if the e-mail is undeliverable.
§3017.750

(2) The fact-finder must prepare written findings of fact for the record.

(b) A transcript record of fact-finding proceedings must be made unless you as a respondent and the Department of Agriculture agree to waive it in advance. If you want a copy of the transcript record, you may purchase it.

§3017.750 What does the suspending official consider in deciding whether to continue or terminate your suspension?

(a) The suspending official bases the decision on all information contained in the official record. The record includes—

(1) All information in support of the suspending official's initial decision to suspend you;

(2) Any further information and argument presented in support of or opposition to the suspension; and

(3) Any transcripts of record of fact-finding proceedings.

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

§3017.755 When will I know whether the suspension is continued or terminated?

The suspending official must make a written decision whether to continue, modify, or terminate your suspension within 45 days of closing the official record. The official record closes upon the suspending official’s receipt of official submissions, information and findings of fact, if any. The suspending official may extend that period for good cause. However, the record will remain open for the full 30 days, as called for in §3017.725, even when you make a submission before the 30 days expire.

[80 FR 6964, 6965, Nov. 26, 2015, as amended at 81 FR 6030, Nov. 26, 2015]

§3017.760 How long may my suspension last?

(a) If legal or debarment proceedings are initiated at the time of, or during your suspension, the suspension may continue until the conclusion of those proceedings. However, if proceedings are not initiated, a suspension may not exceed 12 months.

(b) The suspending official may extend the 12 month limit under paragraph (a) of this section for an additional 6 months if an employee of a U.S. Assistant Attorney General, U.S. Attorney, or other responsible prosecuting official requests an extension in writing. In no event may a suspension exceed 18 months without initiating proceedings under paragraph (a) of this section.

(c) The suspending official must notify the appropriate officials under paragraph (b) of this section of an impending termination of a suspension at least 30 days before the 12 month period expires to allow the officials an opportunity to request an extension.

§3017.765 How may I appeal my suspension?

(a) You may file an appeal only after you have exhausted the option provided for in §3017.720 to contest the suspension. You must file your appeal within 30 days of receiving the decision required by §3017.755 and your filing must specify the basis of the appeal. You must submit your appeal in writing to the Hearing Clerk in the Office of Administrative Law Judges (OALJ), United States Department of Agriculture (USDA), Washington, DC 20250. The assigned appeals officer may waive the decision of the suspending official only 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) If the appeals officer will base the decision solely on the administrative record:

(c) Within 30 days of the date that you file your appeal with USDA’s OALJ Hearing Clerk, the appeals officer will give written notification of the decision to you and to the suspending official who took the action being appealed.
Office of Chief Financial Officer, USDA

§ 3017.805

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

[FR 6541, Nov. 26, 2001]

Subpart H—Debarment

§ 3017.800 What are the causes for debarment?

We may debar a person for—

(a) Conviction or civil judgment for—

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

(2) Violation of Federal or State antitrust statutes, including price fixing among 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 serious, 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—

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

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

(iii) A willful violation of a statutory or regulatory requirement applicable to a public agreement or transaction;

(iv) Any of the following causes—

(A) A procurement agreement, by any Federal agency taken before Octo-
ber 1, 1988, or a procurement agreement by any Federal agency taken pursuant to 48 CFR part 9, subpart 4, before Au-
gust 23, 1991;

(B) Knowingly doing business with an ineligible person, except as permitted under § 3017.120;

(c) Failure to pay a single substantial debt, or a number of outstanding debts excluding defaults costs and over-
payments, but not including sums owed the Federal Government under the In-
ternal Revenue Code, owed to any Federal agency or instrumentality, pro-
vided the debt is uncollectible to the debtor or, if contested, provided that the debtor’s legal and administrative
remedies have been exhausted.

(d) Violation of a material provision of a voluntary exclusion agreement re-
tered into under § 3017.640 or of any settle-
mant of a debarment or suspension action.

(e) Violation of the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701) or

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

§ 3017.803 What notice does the debar-
ing official give me if I am pro-
gressed for debarment?

After consideration of the causes in § 3017.800 of this subpart, if the debar-
ing official proposes to debar you, the official sends you a Notice of Proposed Debarment, pursuant to § 3017.612, ad-
vising you—

(a) That the debarring official is con-
sidering debarring you.

(b) Of the reasons for proposing to debar you in terms sufficient to put you on notice of the conduct or trans-
actions upon which the proposed debar-
ment is based.

(c) Of the causes upon which § 3017.800

(d) Of the applicable provisions of this subpart, Subpart F of this part, and any other Department of Agri-
culture procedures governing debar-
ment.

(e) Of the governmentwide effect of a debarment from procurement and non-
procurement programs and activities.
§3017.810 When does a debarment take effect?
A debarment is not effective until the debarring official issues a decision. The debarming official does not issue a decision until the respondent has had an opportunity to contest the proposed debarment.

§3017.815 How may I contest a proposed debarment?
If you or a respondent wish to contest a proposed debarment, you or your representative must provide the debarring official with information in opposition to the proposed debarment. You may do this orally or in writing, but any information provided orally that you consider important must also be furnished in writing for the official record.

§3017.820 How much time do I have to contest a proposed debarment?
(a) As a respondent you or your representative must either send or make arrangements to appear and present the information and argument to the debarring official within 10 days after you receive the Notice of Proposed Debarment.
(b) We consider the Notice of Proposed Debarment to be received by you if:
(1) When delivered, we mail the notice to the last known street address, or five days after we send it if the letter is undeliverable,
(2) When sent, if we send the notice by facsimile or five days after we send it if the facsimile is undeliverable, or
(3) When delivered, if we send the notice by e-mail or five days after we send it if the e-mail is undeliverable.

§3017.825 What information must I provide in the debarment motion?
(a) In addition to any information and argument in opposition, a respondent must provide the debarring official with statements contained in the Notice of Proposed Debarment. Include any information about any of the factors listed in §3017.860. A general denial is insufficient to raise a genuine dispute over facts material to the debarment.

§3017.840 Under what conditions do I get an additional opportunity to challenge the facts on which a proposed debarment is based?
(a) You as a respondent will not have an additional opportunity to challenge the facts if the debarring official determines that—
(1) Your debarment is based upon a conviction or civil judgment.
(2) Your presentation to the debarment includes only general denial to information contained in the Notice of Proposed Debarment, or
(3) The issues raised in your presentation in opposition to the proposed debarment are not factual in nature, or are not material to the debarring official's decision whether to debar.
(b) You will have an additional opportunity to challenge the facts if the debarring official determines that—
(1) The conditions in paragraph (a) of this section do not exist, and
(2) Your presentation in opposition raises a genuine dispute over facts material to the proposed debarment.
(c) If you have an opportunity to challenge disputed material facts under this section, the debarring official or designated must conduct additional proceedings to resolve those facts.

§3017.850 Are debarment proceedings formal?
Debarment proceedings are conducted in a fair and informal manner. The debarring official may use flexible
§ 3017.840 What is the standard of proof in a debarment action? (a) In any debarment action, we must establish the cause for debarment to a preponderance of the evidence.

(b) If the proposed debarment is based upon a conviction or civil judgment, the standard of proof is intent.

§ 3017.850 Who has the burden of proof in a debarment action? (a) We have the burden to prove that a cause for debarment exists.

(b) Once a cause for debarment is established, you as a respondent have the burden of demonstrating to the satisfaction of the debarring official that you are presently responsible and that debarment is not necessary.

§ 3017.860 What factors may influence the debarring official’s decision? This section lists the mitigating and aggravating factors that the debarring official may consider in determining whether to debar you and the length of your debarment period. The debarring official may consider other factors if appropriate in light of the circumstances of a particular case. The existence or nonexistence of any factor, such as one of these set forth in this section, is not necessarily determinative of your present responsibility. In making a debarment decision, the debarring official may consider the following factors:

(a) The actual or potential harm or impact that results or may result from the wrongdoing.

(b) The frequency of incidents and/or duration of the wrongdoing.

(c) Whether there is a pattern or prior history of wrongdoing. For example, if you have been found by another Federal agency or a State agency to have engaged in wrongdoing similar to that found in the debarment action, the existence of this fact may be used by the debarring official in determining that you have a pattern or prior history of wrongdoing.

(d) Whether you or any other individual or organization have been allowed to participate in State or local contracts or assistance agreements on a basis of conduct similar to...
one or more of the causes for debarment specified in this part.

(a) Whether you have entered into an administrative agreement with a Federal agency or a State or local government that is not governmentwide but is based on conduct similar to one or more of the causes for debarment specified in this part.

(b) Whether you have been disciplined for misconduct that led to the cause for debarment.

(c) Whether you have been disciplined for misconduct that led to the cause for debarment.

(d) Whether the wrongdoing was pervasive within your organization.

(e) Whether the wrongdoing was pervasive within your organization.

(f) The kind of positions held by the individuals involved in the wrongdoing.

(g) Whether your organization took appropriate corrective action or remedial measures, such as establishing ethics training and implementing programs to prevent recurrence.

(h) Whether your principals tolerated the offense.

(i) Whether you brought the activity to the attention of the appropriate government agency in a timely manner.

(j) Whether you have fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarment official.

(k) Whether you had effective standards of conduct and internal control systems in place at the time the questioned conduct occurred.

(l) Whether you have taken appropriate disciplinary action against the individuals responsible for the activity which constitutes the cause for debarment.

(m) Whether you have had adequate time to eliminate the circumstances within your organization that led to the cause for the debarment.

(n) Other factors that are appropriate to the circumstances of a particular case.

3017.865 How long may my debarment last?

(a) If the debarring official decides to debar you, your period of debarment will be based on the seriousness of the cause(s) upon which your debarment is based. Generally, debarment should not exceed three years. However, if circumstances warrant, the debarring official may impose a longer period of debarment.

(b) In determining the period of debarment, the debarring official may consider the factors in §3017.845. If a suspension has preceded your debarment, the debarring official must consider the time you were suspended.

(c) If the debarment is for a violation of the provisions of the Drug-Free Workplace Act of 1988, your period of debarment may not exceed five years.

3017.870 When do I know if the debarment official debarred me?

(a) The debarment official must make a written decision whether to debar you within 45 days of closing the official record. The official record closes upon the debarment official’s receipt of final submissions, information, and findings of fact, if any. The debarment official may extend that period for good cause. However, the record must remain open for the full 30 days, as called for in §3017.845, even when you make a submission before the 30 days expire.

(b) The debarment official sends you written notice, pursuant to §3017.845, that the official decided, either—

(1) Not to debar you; or

(2) To debar you. In this event, the notice—

(1) Refers to the Notice of Proposed Debarment;

(2) Specifies the reasons for your debarment.

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(iii) States the period of your debarment, including the effective dates
and
(iv) Advises you that your debarment is effective for covered transactions
and contracts that are subject to the Federal Acquisition Regulation (FAR) chapter
11, throughout the executive branch of the Federal Government unless an agency head or an authorized
designee grants an exception.


§3017.872 May I ask the debarring official to reconsider a decision to
debar me?

Yes. As a debarred person, you may
ask the debarring official to reconsider
the debarment decision or to reduce
the time period or scope of the debar-
ment. However, you must put your re-
quest in writing and support it with
documentation.

§3017.880 What factors may influence
the debarring official during recon-
sideation?

The debarring official may reduce or
terminate your debarment based on—
(a) Newly discovered material evi-
dence;
(b) A reversal of the conviction or
civil judgment upon which your debar-
ment was based;
(c) A bona fide change in ownership
or management;
(d) Elimination of other causes for
which the debarment was imposed; or
(e) Other reasons the debarring offi-
cial finds appropriate.

§3017.883 May the debarring official
extend a debarment?

(a) Yes. The debarring official may
extend a debarment for an additional
period if that official determines that
extension is necessary to protect
the public interest.

(b) However, the debarred official
may not extend a debarment solely
on the basis of the facts and cir-
cumstances upon which the initial debar-
ment action was based.

(c) If the debarred official decides
that a debarment for an additional
period is necessary, the debarring official
must follow the applicable procedures
in this subpart and subpart F of this
part to extend the debarment.

§3017.890 How may I appeal my de-
barment?

(a) You may file an appeal only after
you have exhausted the option pro-
vided for in §3017.815 to contest the de-
barment. You must file your appeal
within 30 days of receiving the decision
required by §3017.870 and your filing
must specify the basis of the appeal.
You must submit your appeal in writ-
ing to the Hearing Clerk in the Office
of Administrative Law Judges (OALJ),
United States Department of Agri-
culture (USDA), Washington, DC 20250.

The assigned appeals officer may va-
core the decision of the debarring offi-
cial only if the officer determines that
the decision is—
(1) Not in accordance with law;
(2) Not based on the applicable stand-
ard of evidence of—
(3) Arbitrary and capricious and an
abuse of discretion;
(4) The appeals officer will base the de-
sion solely on the administrative rec-
ord;
(5) Within 90 days of the date that
you file your appeal with USDA’s
OALJ Hearing Clerk, the appeals offi-
cier will give written notification of the
decision to you and to the debarring offi-
cial who took the action being ap-
ppealed;
(6) The appeals officer’s decision is
final and is not appealable within
USDA.

[68 FR 6584, Nov. 20, 2003]

Subpart I—Definitions

§3017.900 Aparjate evidence.

Adequate evidence means information
sufficient to support the reasonable be-
cred that a particular act or omission
has occurred.

§3017.905 Affiliate.

Persons are affiliates of each other if,
directly or indirectly, either one con-
trols or has the power to control the
other or a third person controls or has
the power to control both. The ways
we use to determine control include,
but are not limited to—
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(ii) States the period of your debarment, including the effective dates; and
(iii) Advises you that your debarment is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulation (48 CFR chapter 1), throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception.


§3017.873 May I ask the debarring official to reconsider a decision to debar me?

Yes. As a debarred person you may ask the debarring official to reconsider the debarment decision or to reduce the time period or scope of the debarment. However, you must put your request in writing and support it with documentation.

§3017.880 What factors may influence the debarring official during reconsideration?

The debarring official may reduce or terminate your debarment based on:
(a) Newly discovered material evidence;
(b) A reversal of the conviction or civil judgment upon which your debarment was based;
(c) A bona fide change in ownership or management;
(d) Elimination of other causes for which the debarment was imposed; or
(e) Other reasons the debarring official finds appropriate.

§3017.885 May the debarring official extend a debarment?

(a) Yes. The debarring official may extend a debarment for an additional period if that official determines that an extension is necessary to protect the public interest.
(b) However, the debarring official may not extend a debarment solely on the basis of the facts and circumstances upon which the initial debarment action was based.
(c) If the debarring official decides that a debarment for an additional period is necessary, the debarring official must follow the applicable procedures in this subpart and subpart F of this part to extend the debarment.

§3017.880 How may I appeal my debarment?

(a) You may file an appeal only after you have exhausted the options provided for in §3017.810 to contest the debarment. You must file your appeal within 30 days of receiving the decision required by §3017.810 and your filing must specify the basis of the appeal. You must submit your appeal in writing to the Hearing Official of the Office of Administrative Law Judges (OALJ), United States Department of Agriculture (USDA) Washington, DC 20250.

(b) The assigned appeals officer may vacate the decision of the debarment official if the officer determines that the decision is:
1. Not in accordance with law.
2. Not based on the applicable standard of evidence.
3. Arbitrary and capricious and an abuse of discretion.
(c) The Appeals officer will base the decision solely on the administrative record.
(d) Within 30 days of the date that you file your appeal with USDA's OALJ Hearing Clerk, the appeals officer will give written notification of the decision to you and to the debarment official who took the action being appealed.
(e) The appeals officer’s decision is final and is not appealable within USDA.

Subpart I—Definitions

§3017.900 Adequate evidence.

Adequate evidence means information sufficient to support the reasonable belief that a particular act or omission has occurred.

§3017.905 Affiliate.

Persons are affiliates of each other 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. The ways we use to determine control include, but are not limited to—
§ 5017.910
(a) Interlocking management or ownership.
(b) Identity of interests among family members.
(c) Shared facilities and equipment.
(d) Common use of employees.
(e) A business entity which has been organized following the exclusion of a person who has the same or similar management, ownership, or principal employees as the excluded person.

§ 5017.910 Agency.
Agency means any United States executive department, military department, defense agency, or any other agency of the executive branch. Other agencies of the Federal government are not considered "agencies" for the purposes of this part unless they issue regulations adopting the government-wide Debarment and Suspension system under Executive orders 12549 and 12690.

§ 5017.915 Agent or representative.
Agent or representative means any person who acts on behalf of, or who is authorized to commit, a participant in a covered transaction.

§ 5017.920 Civil judgment.
Civil judgment means the disposition of a civil action by any court of competent jurisdiction, whether by verdict, decision, settlement, stipulation, other disposition which creates a civil liability for the complained of wrongful acts, or a final determination of liability under the Program Fraud Civil Remedy Act of 1988 (31 U.S.C. 3801–3812).

§ 5017.923 Conviction.
Conviction means—
(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.

§ 5017.930 Debarment.
Debarment means an action taken by a debarring official under subpart H of this part to exclude a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1). A person so excluded is debarred.

§ 5017.935 Debarring official.
(a) Debarring official means an agency official who is authorized to propose debarment. A debarring official is either
(i) The agency head, or
(ii) An official designated by the agency head.
(b) The head of an organizational unit within the Department of Agriculture (e.g., Administrator, Food and Nutrition Service), who has been delegated authority in part 2 of this title to carry out a covered transaction, is delegated authority to act as the debarring official in connection with such transaction. This authority to act as a debarring official may not be delegated below the head of the organizational unit except that, in the case of the Forest Service, the Chief may delegate the authority to act as a debarring official to the Deputy Chief of an Associate Deputy Chief for the National Forest System.

§ 5017.940 Disqualified.
Disqualified means that a person is prohibited from participating in specified Federal procurement or nonprocurement transactions as required under a statute, Executive order, regulation other than Executive Order 12549 and 12690, or other authority. Examples of disqualifications include persons prohibited from—
(a) The Davis-Bacon Act (40 U.S.C. 276a-1).
(b) Equal employment opportunity acts and Executive orders, or
(c) The Clean Air Act (42 U.S.C. 7001).

§ 5017.945 Excluded or exclusion.
Excluded or exclusion means—
(a) That a person or commodity is prohibited from being a participant in covered transactions, whether the person has been suspended, debarred, proposed for debarment under 41 CFR part 6, subpart $6.4 voluntarily excluded; or
(b) The act of excluding a person.
§3017.950 Excluded Parties List System
Excluded Parties List System (EPLS) means the list maintained and disseminated by the General Services Administration (GSA) containing the names and other information about persons who are ineligible. The EPLS system includes the printed version entitled "List of Parties Excluded or Disqualified from Federal Procurement and Nonprocurement Programs," so long as published.
§3017.955 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.
§3017.960 Ineligible or ineligibility.
Ineligible or ineligibility means that a person or commodity is prohibited from covered transactions because of an exclusion or disqualification.
§3017.965 Legal proceedings.
Legal proceedings means any criminal proceeding or any civil judicial proceeding, including a proceeding under the False Claims Act (31 U.S.C. 3729-3733), to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term also includes appeals from those proceedings.
§3017.970 Nonprocurement transaction.
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.
§3017.980 Participant.
Participant means any person who submits a proposal or who enters into a covered transaction, including an agent or representative of a participant.
§3017.985 Person.
Person means any individual, corporation, partnership, association, unit of government, or legal entity, however organized.
§3017.990 Preponderance of the evidence.
Preponderance of the evidence means proof by information that, compared with information opposing it, leads to the conclusion that the fact in issue is more probably true than not.
§3017.995 Principal.
Principal means:
(1) An officer, director, owner, partner, principal investigator, or other person within a participant with management or supervisory responsibilities related to a covered transaction, or
(2) A consultant or other person, whether or not employed by the participant or paid with Federal funds, who—
(a) Is in a position to influence or control the use of those funds, or
(b) Occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction.
§3017.1000 Respondent.
Respondent means a person against whom an agency has initiated a depart-
ment or suspension action.

§3017.1005 State.
(a) State means—
(1) Any of the states of the United
States;
(2) The District of Columbia;
(b) The Commonwealth of Puerto
Rico;
(c) Any territory or possession of the
United States; or
(d) Any agency or instrumentality of
a state.
(b) For purposes of this part, State
does not include institutions of higher
education, hospitals, or units of local
government.

§3017.1010 Suspending official.
(a) Suspending official means an agen-
cy official who is authorized to impose
suspension. The suspending official is:
(1) The agency head; or
(2) An official designated by the
agency head.
(b) The head of an organizational
unit within the Department of Agri-
culture (e.g., Administrator, Food and
Nutrition Service) who has been dele-
gated authority in part 2 of this title
to carry out a covered transaction, is
designated authority to act as the sus-
pending official in connection with
such transaction. This authority to act
as a suspending official may not be re-
delегated below the head of the organ-
izational unit, except that, in the case of
the Forest Service, the Chief may re-
delегate the authority to act as a sus-
pending official to the Deputy Chief or
an Associate Deputy Chief for the Na-
tional Forest System.
[68 FR 65141, Dec. 26, 2003, as amended
at 68 FR 4566, Nov. 28, 2003]

§3017.1015 Suspension.
Suspension is an action taken by a
suspending official under subpart G of
this part that immediately prohibits a
person from participating in covered
transactions and transactions covered
under the Federal Acquisition Regula-
tion (48 CFR chapter 1) for a temporary
period pending completion of an agen-
cy investigation and any judicial or ad-
ministrative proceedings that may
enforce. A person so excluded is sus-
pended.

§3017.1020 Voluntary exclusion or vol-
bunary exclusion.
(a) Voluntary exclusion means a per-
son's agreement to be excluded under
the terms of a settlement between the
person and one or more agencies. Vol-
untary exclusion must have govern-
ment-wide effect.
(b) Voluntarily excluded means the
status of a person who has agreed to a
voluntary exclusion.

Subpart J [Reserved]
PART 3018—NEW RESTRICTIONS ON LOBBYING

Subpart A—General

Sec. 3018.000 Conditions on use of funds.
3018.005 Definitions.
3018.010 Certification and disclosure.

Subpart B—Activities by Own Employees

3018.200 Agency and legislative liaison.
3018.205 Professional and technical services.
3018.210 Reporting.

Subpart C—Activities by Other Than Own Employees

3018.300 Professional and technical services.

Subpart D—Penalties and Enforcement

3018.400 Penalties.
3018.405 Penalty procedure.
3018.410 Enforcement.

Subpart E—Exemptions

3018.500 Secretary of Defense.

Subpart F—Agency Reports

3018.600 Semi-annual reports.
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APPENDIX A TO PART 3018—CERTIFICATION REGARDING LOBBYING.

APPENDIX B TO PART 3018—DISCLOSURE FORM TO REPORT LOBBYING.

PART 3021—GOVERNMENTWIDE
REQUIREMENTS FOR DRUG-FREE
WORKPLACE (FINANCIAL ASSISTANCE)
Subpart A—Purpose and Coverage
Sec.
3021.100 What does this part do?
3021.105 Does this part apply to me?
3021.110 Are any of my Federal assistance awards exempt from this part?
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Subpart B—Requirements for Recipients
Other Than Individuals
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3021.500 How are violations of this part determined and who are individuals?

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3021.520 Are there any exceptions to those actions?

Subpart F—Definitions

3021.603 Award.

3021.611 Contractor, sub-contractor.

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3021.625 Cooperative agreement.

3021.623 Criminal drug statute.

3021.639 Determination.

3021.630 Drug-Free workplace.

3021.649 Employee.

3021.651 Federal government or agency.

3021.653 Grant.

3021.655 Individual.

3021.660 Recipient.

3021.665 State.

§3021.100 What does this part do?

This part carries out the portion of the Drug-Free Workplace Act of 1988 (21 U.S.C. 1011 et seq., as amended) that applies to grants. It also applies the provisions of the Act to cooperative agreements and other financial assistance awards, as a matter of Federal Government policy.

§3021.105 Does this part apply to me?

(a) Portions of this part apply to you if you are either—

1. A recipient of an assistance award from the Department of Agriculture; or

2. An awarding official.

(b) The following table shows the subparts that apply to you:

<table>
<thead>
<tr>
<th>Subpart</th>
<th>Applicability</th>
</tr>
</thead>
<tbody>
<tr>
<td>D</td>
<td>A, B, and E</td>
</tr>
<tr>
<td>E</td>
<td>A, B, and E</td>
</tr>
<tr>
<td>F</td>
<td>A, B, and E</td>
</tr>
</tbody>
</table>

§3021.110 Are any of my Federal assistance awards exempt from this part?

This part does not apply to any award that the Secretary of Agriculture designates determines that the application of this part would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government.

§3021.115 Does this part affect the Federal contracts that I receive?

It will affect future contract awards indirectly if you are debarred or suspended for a violation of the requirements of this part, as described in §3021.500(c). However, this part does not apply directly to procurement contracts.

The portion of the Drug-Free Workplace Act of 1988 that applies to Federal procurement contracts is carried out through the Federal Acquisitions Regulation in chapter 1 of Title 48 of the Code of Federal Regulations, and the drug-free workplace coverage is in part 132, subpart 23.3.

Subpart B—Requirements for Recipients Other Than Individuals

§3021.200 What must I do to comply with this part?

There are two general requirements if you are a recipient other than an individual.

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§ 3021.205

(a) First, you must make a good faith effort on a continuing basis, to maintain a drug-free workplace. You must agree to do so as a condition for receiving any award covered by this part.

The specific measures that you must take in this regard are described in more detail in subsequent sections of this subpart. Briefly, those measures are:

(1) Publish a drug-free workplace statement and establish a drug-free awareness program for your employees (see § 3021.205 through 3021.230); and

(2) Take actions concerning employees who are convicted of violating drug statutes in the workplace (see § 3021.225).

(b) Second, you must identify all known workplaces under your Federal awards (see § 3021.220).

§ 3021.205 What must I include in my drug-free workplace statement?

You must publish a statement that:

(a) Tells your employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in your workplace;

(b) Specifies the actions that you will take against employees for violating that prohibition; and

(c) Lets each employee know that, as a condition of employment under any award, he or she:

(i) Will abide by the terms of the statement; and

(ii) Must notify you in writing if he or she is convicted for a violation of a criminal drug statute occurring in the workplace and must do so no more than five calendar days after the conviction.

§ 3021.210 To whom must I distribute my drug-free workplace statement?

You must require that a copy of the statement described in § 3021.205 be given to each employee who will be engaged in the performance of any Federal award.

§ 3021.215 What must I include in my drug-free awareness program?

You must establish an ongoing drug-free awareness program to inform employees about:

(a) The dangers of drug abuse in the workplace;

(b) Your policy of maintaining a drug-free workplace;

(c) Any available drug counseling, rehabilitation, and employee assistance programs; and

(d) The penalties that you may impose upon them for drug abuse violations occurring in the workplace.

§ 3021.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?

If you are a new recipient that does not already have a policy statement as described in § 3021.205 and an ongoing awareness program as described in § 3021.215, you must publish the statement and establish the program by the time given in the following table:

<table>
<thead>
<tr>
<th>If</th>
<th>Then you</th>
</tr>
</thead>
</table>
| (a) The performance period of the award is less than 30 days | must have the policy statement and program in place as soon as possible. To determine the date on which performance is to begin, see § 3021.206.
| (b) The performance period of the award is 30 days or more | must have the policy statement and program in place within 30 days of the Department of Agriculture awarding official.

§ 3021.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?

There are two actions you must take if an employee is convicted of a drug violation in the workplace:

(a) First, you must notify Federal agencies if an employee who is engaged in the performance of an award informs you about a conviction, as required by § 3021.260(c)(2), or you otherwise learn of the conviction. Your notification to the Federal agencies must

(1) Be in writing;

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§ 3021.230 How and when must I identify workplaces?

(a) You must identify all known workplaces under each Department of Agriculture award. A failure to do so is a violation of your drug-free workplace requirements. You may identify the workplaces—

(1) To the Department of Agriculture official that is making the award, either at the time of application or upon award, or

(2) In documents that you keep on file in your offices during the performance of the award, in which case you may provide the information available for inspection upon request by Department of Agriculture officials or their designated representatives.

(b) Your workplace identification for an award must include the actual address of buildings (or parts of buildings) or other sites where work under the award takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

§ 3021.300 What are my responsibilities as an Department of Agriculture awarding official?

(a) You must obtain each recipient’s agreement, as a condition of the award, to comply with the requirements in—

(1) Subpart B of this part, if the recipient is an individual;

(2) Subpart C—Requirements for Recipients Who Are Individuals—

(3) If you identified workplaces to the Department of Agriculture awarding official at the time of application or award, as described in paragraph (a)(1) of this section, and an workplace that you identified changes during the performance of the award, you must inform the Department of Agriculture awarding official.
§ 3021.500
(b) Subpart C of this part, if the recipient is an individual.

Subpart F—Violations of this Part and Consequences

§ 3021.500 How are violations of this part determined for recipients other than individuals?
A recipient other than an individual is in violation of the requirements of this part if the secretary of agriculture or designee determines, in writing, that—
(a) The recipient has violated the requirements of subpart B of this part; or
(b) The number of convictions of the recipient’s employees for violating criminal drug statutes in the workplace is large enough to indicate that the recipient has failed to make a good faith effort to provide a drug-free workplace.

§ 3021.505 How are violations of this part determined for recipients who are individuals?
An individual recipient is in violation of the requirements of this part if the secretary of agriculture or designee determines, in writing, that—
(a) The recipient has violated the requirements of subpart C of this part; or
(b) The recipient is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity.

§ 3021.510 What actions will the federal government take against a recipient determined to have violated this part?
If a recipient is determined to have violated this part, as described in § 3021.500 or § 3021.505, the department of agriculture may take one or more of the following actions—
(a) Suspension of payments under the award;
(b) Suspension or termination of the award; and
(c) Suspension or debarment of the recipient under 7 CFR part 3017 for a period not to exceed five years.

7 CFR Ch. XXX (1–1–04 Edition)

§ 3021.515 Are there any exceptions to those actions?
The the secretary of agriculture may waive with respect to a particular award, in writing, a suspension of payments under an award, suspension or termination of an award, or suspension or debarment of a recipient if the the secretary of agriculture determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

Subpart F—Definitions

§ 3021.600 Award.
Award means an award of financial assistance by the department of agriculture or other federal agency directly to a recipient.
(a) The term award includes:
(1) A Federal grant or cooperative agreement, in the form of money or property in lieu of money.
(2) A block grant or a grant in an entitlement program, whether or not the grant is exempted from coverage under the governmentwide rate 7 CFR part 301 that implements OMB Circular A–110 (for availability, see 7 CFR 1303.3) and specifies uniform administrative requirements.
(3) The term award does not include:
(1) Technical assistance that provides services instead of money.
(2) Loans.
(3) Loan guarantees.
(4) Interest subsidies.
(5) Insurance.
(6) Direct appropriations.
(7) 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).

(4) [86 FR 6327, 8300, Nov. 20, 2013, as amended at 78 FR 6650, Nov. 26, 2013]

§ 3021.610 Controlled substance.

Controlled substance means a controlled substance in schedules I through V of the Controlled Substances Act (21 U.S.C. 802), and as further defined by regulations at 21 CFR 1307.11 through 1308.13.
§ 3021.615 Conviction.
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.

§ 3021.620 Cooperative agreement.
Cooperative agreement means an award of financial assistance that, consistent with 21 U.S.C. 6305, is used to enter into the same kind of relationship as a grant (see definition of grant in §3021.645), except that substantial involvement is expected between the Federal agency and the recipient when carrying out the activity contemplated by the award. The term does not include cooperative research and development agreements as defined in 15 U.S.C. 3706.

§ 3021.625 Criminal drug statute.
Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance.

§ 3021.630 Debarment.
Debarment means an action taken by a Federal agency to prohibit a recipient from participating in Federal Government procurement contracts and covers nonprocurement transactions. A recipient so prohibited is debarred, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and the common rule, Government-Wide Debarment and Suspension (Procurement), that implements Executive Order 12549 and Executive Order 12689.

§ 3021.635 Drug-free workplace.
Drug-free workplace means a site for the performance of work done in connection with a specific award where employees of the recipient are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

§ 3021.640 Employee.
Employee means the employee of a recipient directly engaged in the performance of work under the award, including—
(1) All direct charge employees;
(2) All indirect charge employees, unless their impact or involvement in the performance of work under the award is insignificant to the performance of the award; and
(3) Temporary personnel and consultants who are directly engaged in the performance of work under the award and who are on the recipient's payroll.
(b) The definition does not include workers not on the payroll of the recipient (e.g., volunteers, even if used to meet matching requirement; consultants; independent contractors not on the payroll; or employees of subrecipients or subcontractors in covered workforces).

§ 3021.645 Federal agency or agency.
Federal agency or agency means any United States executive department, military department, government corporation, government controlled corporation, or any other establishment in the executive branch (including the Executive Office of the President, or any independent regulatory agency).

§ 3021.650 Grant.
Grant means an award of financial assistance that, consistent with 21 U.S.C. 6306, is used to enter into a relationship—
(1) The principal purpose of which is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States, rather than to acquire property or services for the Federal Government's direct benefit or use, and
(2) In which substantial involvement is not exerted between the Federal agency and the recipient when carrying out the activity contemplated by the award.

§ 3021.655 Individual.
Individual means a natural person.
§ 3021.660 Recipient.
Recipient means any individual, corporation, partnership, association, unit of government (except a Federal agency) or legal entity, however organized, that receives an award directly from a Federal agency.

§ 3021.665 State.
State means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

§ 3021.670 Suspension.
Suspension means an action taken by a Federal agency that immediately prohibits a recipient from participating in Federal Government procurement contracts and covered non-procurement transactions for a temporary period, pending completion of an investigation and any judicial or administrative proceedings that may ensue. A recipient so prohibited is suspended, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and the common rule, Government-wide Debarment and Suspension (Nonprocurement), that implements Executive Order 12549 and Executive Order 12689. Suspension of a recipient is a distinct and separate action from suspension of an award or suspension of payments under an award.

PART 3052—AUDITS OF STATES, LOCAL GOVERNMENTS, AND NON-PROFIT ORGANIZATIONS

Subpart A—General

§ 3052.100 Purpose.
This part sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards.

§ 3052.105 Definitions.
Audit finding means deficiencies which the auditor is required by § 3052.110(a) to report in the schedule of findings and questioned costs. Auditor means any non-Federal entity that expends Federal awards which must be audited under this part.

CFDA number means the number as assigned to a Federal program in the Catalog of Federal Domestic Assistance (CFDA).

Cluster of programs means a grouping of closely related programs that share common compliance requirements. The