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Department of Defense  
**INSTRUCTION**

**AD-A270 419**



May 21, 1990  
NUMBER 3210.5

DDR&E

2

**SUBJECT:** Governmentwide Debarment and Suspension (Nonprocurement) and  
Governmentwide Requirements for Drug-Free Workplace (Grants)

**References:** (a) Executive Order 12549, "Debarment and Suspension,"  
February 18, 1986  
(b) Public Law 100-690, "Anti-Drug Abuse Act of 1988," Title V,  
Subtitle D, "Drug-Free Workplace Act of 1988,"  
Sections 5151-5160, November 18, 1988

**A. PURPOSE**

This Instruction:

1. Establishes Subparts A through E and Appendices A and B of Part 280 of Title 32 of the Code of Federal Regulations (enclosure 1) as the DoD implementation of reference (a).
2. Establishes a new regulation (enclosure 2) to implement reference (b) as it applies to grants. Enclosure 2 replaces the January 1989 version of Subpart F and Appendix C of Part 280 of Title 32 of the Code of Federal Regulations.

**B. APPLICABILITY**

This Instruction applies to the Office of the Secretary of Defense (OSD), the Military Departments, and the Defense Agencies (hereafter referred to collectively as "DoD Components").

**C. DEFINITIONS**

The terms used in this Instruction are defined in enclosures 1 and 2.

**D. POLICY AND PROCEDURES**

It is DoD policy for DoD Components that make nonprocurement awards covered by enclosures 1 and 2 to follow the procedures specified in those enclosures.

**E. RESPONSIBILITIES**

1. The Deputy Director, Defense Research and Engineering (Research and Advanced Technology) shall:

- a. Monitor compliance with this Instruction.

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b. Take actions required to ensure consistent and appropriate implementation of the Instruction within the Department of Defense.

2. Heads of DoD Components shall ensure that this Instruction is implemented within their respective Components.

3. Directors of Defense Agencies, or their designees, shall exercise the authority of the Secretary of Defense to make determinations required under the following sections of enclosure 2:

a. Section 280.610(b).

b. Section 280.615.

F. EFFECTIVE DATE AND IMPLEMENTATION

This Instruction is effective immediately. Forward two copies of implementing documents to the Deputy Director, Defense Research and Engineering (Research and Advanced Technology), within 120 days.

  
Charles M. Herzfeld  
Director, Defense Research  
and Engineering

Enclosures - 2

1. Subparts A through E and Appendices A and B of Part 280 of Title 32 of the Code of Federal Regulations.
2. Subpart F and Appendix C of Part 280 of Title 32 of the Code of Federal Regulations.

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APPENDIX A—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS—PRIMARY COVERED TRANSACTIONS

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APPENDIX C—CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

AUTHORITY: E.O. 12549; sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.)

SOURCE: 53 FR 19190 and 19204, May 26, 1988, unless otherwise noted.

**PART 280—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)**

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Subpart A—General

§ 280.100 Purpose.

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

(b) These regulations implement section 3 of Executive Order 12549 and

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the guidelines promulgated by the Office of Management and Budget under section 6 of the Executive Order by:

- (1) Prescribing the programs and activities that are covered by the governmentwide system;
  - (2) Prescribing the governmentwide criteria and governmentwide minimum due process procedures that each agency shall use;
  - (3) Providing for the listing of debarred and suspended participants, participants and declared ineligible (see definition of "ineligible" in § 280.106(1)), and participants who have voluntarily excluded themselves from participation in covered transactions;
  - (4) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion; and
  - (5) Offering such other guidance as necessary for the effective implementation and administration of the governmentwide system.
- (c) Although these regulations cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

§ 280.106 Definitions.

- (a) *Adequate evidence.* Information sufficient to support the reasonable belief that a particular act or omission has occurred.
- (b) *Affiliate.* Persons are affiliates of each 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. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person.
- (c) *Agency.* Any executive department, military department or defense agency or other agency of the executive branch, excluding the independent regulatory agencies.

tive branch, excluding the independent regulatory agencies.

- (d) *Civil judgment.* The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation, or otherwise creating a will liability for the wrongful acts complained of; or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801-12).
- (e) *Conviction.* A judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.
- (f) *Debarment.* An action taken by a debarring official in accordance with these regulations to exclude a person from participating in covered transactions. A person so excluded is "debarred."
- (g) *Debarring official.* An official authorized to impose debarment. The debarring official is either:
  - (1) The agency head, or
  - (2) An official designated by the agency head.
- (h) *Indictment.* Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.
- (i) *Ineligible.* Excluded from participation in Federal nonprocurement programs pursuant to a determination of ineligibility under statutory, executive order, or regulatory authority, other than Executive Order 12849 and its agency implementing regulations; for example, excluded pursuant to the Davis-Bacon Act and its implementing regulations, the equal employment opportunity acts and executive orders, or the environmental protection acts and executive orders. A person is ineligible where the determination of ineligibility affects such person's eligibility to participate in more than one covered transaction.
- (j) *Legal proceedings.* Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State of local government or quasi-governmental authority is a

party. The term includes appeals from such proceedings.

- (k) *Nonprocurement List.* The portion of the List of Parties Excluded from Federal Procurement or Nonprocurement Programs compiled, maintained and distributed by the General Services Administration (GSA) containing the names and other information about persons who have been debarred, suspended, or voluntarily excluded under Executive Order 12849 and these regulations, and those who have been determined to be ineligible.
- (l) *Notice.* A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service of process, or any partner, officer, director, owner, or joint venturer of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.
- (m) *Participant.* Any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. This term also includes any person who acts on behalf of or is authorized to commit a participant in a covered transaction as an agent or representative of another participant.
- (n) *Person.* Any individual, corporation, partnership, association, unit of government or legal entity, however organized, except: foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities.
- (o) *Preponderance of the evidence.* Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.
- (p) *Principal.* Officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or a person who has a critical influence on or substantive control over a covered transaction, whether or not employed by the participant.

participant. Persons who have a critical influence on or substantive control over a covered transaction are:

- (1) *Principal investigators.*
  - (g) *Proposal.* A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a covered transaction.
  - (i) *Respondent.* A person against whom a debarment or suspension action has been initiated.
  - (e) *State.* Any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers that instrumentality to be an agency of the State government.
  - (i) *Suspending official.* An official authorized to impose suspension. The suspending official is either:
    - (1) The agency head, or
    - (2) An official designated by the agency head.
  - (u) *Suspension.* An action taken by a suspending official in accordance with these regulations that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal, debarment, or Program Fraud Civil Remedies Act proceedings as may ensue. A person so excluded is "suspended."
  - (v) *Voluntary exclusion or voluntary exclusion.* A status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

§ 280.110 Coverage.

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

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- (1) Statutory entitlements or mandatory awards (but not subter awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;
- (2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;
- (3) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);
- (4) Federal employment;
- (5) Transactions pursuant to national or agency-recognized emergencies or disasters;
- (6) Incidental benefits derived from ordinary governmental operations; and
- (7) Other transactions where the application of these regulations would be prohibited by law.

§ 200.305 Ineligible persons.

Persons who are ineligible, as defined in § 200.104(i), are excluded in accordance with the applicable statutory, executive order, or regulatory authority.

§ 200.310 Voluntary exclusions.

Persons who accept voluntary exclusions under § 200.316 are excluded in accordance with the terms of their settlements. Military Departments and Defense Agencies shall, and participants may, contact the original action agency to ascertain the extent of the exclusion.

§ 200.315 Exception provisions.

Military Departments and Defense Agencies may grant an exception permitting a debarred, suspended, or voluntarily excluded person to participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviation.

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§ 200.115 Policy.

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

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment. Agencies may impose debarment or suspension for the causes and in accordance with the procedures set forth in these regulations.

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

Subpart B—Effect of Action

§ 200.200 Debarment or suspension.

(a) Primary covered transactions. Except to the extent prohibited by law, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the executive branch of the Federal Government for the period of their debarment or suspension. Accordingly, no agency shall enter into primary covered transactions with such debarred or suspended persons during such period, except as permitted pursuant to § 200.315.

(b) Lower tier covered transactions. Except to the extent prohibited by law, persons who have been debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (see § 200.110(a)(1)(ii)) for the period of their debarment or suspension.

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

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mandatory), including deposited funds insured by the Federal Government;

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

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

(iv) Federal employment;

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

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

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

(b) Relationship to other sections. This section describes the types of transactions to which a debarment or suspension under the regulations will apply. Subpart B, "Effect of Action," sets forth the consequences of a debarment or suspension. Those consequences would obtain only with respect to participants and principals in the covered transactions and activities described in § 200.110(a). Sections 200.225, "Scope of debarment," and 200.420, "Scope of suspension," govern the extent to which a specific participant or organizational element of a participant would be automatically included within a debarment or suspension action, and the conditions under which affiliates or persons associated with a participant may also be brought within the scope of the action.

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

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will be referred to as "covered transactions."

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

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

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

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

(B) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 203(g) (currently \$25,000) under a primary covered transaction;

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

Such persons are:

- (1) Principal investigators;
- (2) Providers of federally-required audit services;
- (3) Exceptions. The following transactions are not covered:

(i) Statutory entitlements or mandatory awards (but not subter awards thereunder which are not themselves

ing from the Presidential policy established by Executive Order 12649 and § 280.200 of this rule. However, in accordance with the President's stated intention in the Executive Order, exceptions shall be granted only infrequently. Exceptions shall be reported in accordance with § 280.505(a).

§ 280.225 *Continuation of covered transactions.*

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

(b) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, ineligible, or voluntarily excluded, except as provided in § 280.215.

§ 280.225 *Failure to adhere to restrictions.*

Except as permitted under § 280.215 or § 280.220 of these regulations, a participant shall not knowingly do business under a covered transaction with a person who is debarred or suspended, or with a person who is ineligible for or voluntarily excluded from that covered transaction. Violation of this restriction may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies, as appropriate. A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction (see Appendix B), unless it knows that the certification is erroneous. An agency has the burden of proof that such participant did knowingly do business with such a person.

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### Subject C—Debarment

§ 280.300 *General.*

The debarring official may debar a person for any of the causes in § 280.305, using procedures established in § 280.310 through 280.314. The existence of a cause for debarment, however, does not necessarily require that the person be debarred; the seriousness of the person's acts or omissions and any mitigating factors shall be considered in making any debarment decision.

§ 280.305 *Cases for debarment.*

Debarment may be imposed in accordance with the provisions of §§ 280.300 through 280.314 for:

- (a) Conviction of or civil judgment for:
  - (1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;
  - (2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;
  - (3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or
  - (4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.
- (b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:
  - (1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;
  - (2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or
  - (3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

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(c) Any of the following causes:

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

(2) Knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person, in connection with a covered transaction, except as permitted in § 280.215 or § 280.220;

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

(4) Violation of a material provision of a voluntary exclusion agreement entered into under § 280.315 or of any settlement of a debarment or suspension action; or

(5) Violation of any requirement of Subpart F of this part, relating to providing a drug-free workplace, as set forth in § 280.615 of this part.

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

(59 FR 19190 and 19204, May 26, 1994; as amended at 54 FR 4950, 4960, Jan. 31, 1989)

§ 280.310 *Procedures.*

Military Departments and Defense Agencies shall process debarment actions as informally as practicable, consistent with the principles of fundamental fairness, using the procedures in §§ 280.311 through 280.314.

§ 280.311 *Investigation and referral.*

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

§ 280.312 *Notice of proposed debarment.*

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

(a) That debarment is being considered;

(b) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;

(c) Of the cause(s) relied upon under § 280.305 for proposing debarment;

(d) Of the provisions of § 280.311 through § 280.314, and any other Military Departments and Defense Agencies procedures, if applicable, governing debarment decisionmaking; and

(e) Of the potential effect of a debarment.

§ 280.312 *Opportunity to contest proposed debarment.*

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

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

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

§ 280.314 *Debarring official's decision.*

(a) *No additional proceedings necessary.* In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made

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- (1) To suspect the commission of an offense listed in § 280.305(a); or
  - (2) That a cause for debarment under § 280.305 may exist.
- (b) Indictment shall constitute adequate evidence for purposes of suspension actions.

## § 280.411 Procedure.

- (a) Investigation and referral. Information concerning the existence of a cause for suspension from any source shall be promptly reported, investigated, and referred, when appropriate, to the suspending official for consideration. After consideration, the suspending official may issue a notice of suspension.
- (b) Decisionmaking process. Military Departments and Defense Agencies shall process suspension actions as informally as practicable, consistent with principles of fundamental fairness, using the procedures in § 280.411 through § 280.413.

## § 280.411 Notice of suspension.

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

- (a) That suspension has been imposed;
- (b) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;
- (c) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;
- (d) Of the cause(s) relied upon under § 280.405 for imposing suspension;
- (e) That the suspension is for a temporary period pending the completion of an investigation or ensuing legal debarment, or Program Fraud Civil Remedies Act proceedings;
- (f) Of the provisions of § 280.411 through § 280.413 and any other Military Departments and Defense Agencies procedures, if applicable, governing suspension decisionmaking; and
- (g) Of the effect of the suspension.

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## § 280.412 Opportunity to contest suspension.

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

(b) Additional proceedings as to disputed material facts. (1) If the suspending official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witnesses the agency presents, unless:

- (i) The action is based on an indictment, conviction or civil judgment, or
- (ii) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

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

## § 280.413 Suspending official's decision.

The suspending official may modify or terminate the suspension (for example, see § 280.320(c) for reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency. The decision shall be rendered in accordance with the following provisions:

- (a) No additional proceedings necessary. In actions based on an indictment, conviction, or civil judgment in which there is no genuine dispute over material facts; or in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice,

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the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

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

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

(c) Notice of suspending official's decision. Prompt written notice of the suspending official's decision shall be sent to the respondent.

## § 280.415 Period of suspension.

- (a) Suspension shall be for a temporary period pending the completion of an investigation or ensuing legal debarment, or Program Fraud Civil Remedies Act proceedings, unless terminated sooner by the suspending official or as provided in paragraph (b) of this section.
- (b) If legal or administrative proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General or United States Attorney requests its extension in writing, in which case it may be extended for an additional six months. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of an impending termination of a suspension, at least 30 days before the 12-

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month period expires, to give that Department an opportunity to request an extension.

## § 280.436 Scope of suspension.

The scope of a suspension is the same as the scope of a debarment (see § 280.325), except that the procedures of § 280.410 through 280.413 shall be used in imposing a suspension.

## Subject 5—Responsibilities of GSA, Agency and Participants

## § 280.506 GSA responsibilities.

(a) In accordance with the OMB guidelines, GSA shall compile, maintain, and distribute a list of all persons who have been debarred, suspended, or voluntarily excluded by agencies under Executive Order 12849 and these regulations, and those who have been determined to be ineligible.

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

- (1) The names and addresses of all debarred, suspended, ineligible, and voluntarily excluded persons, in alphabetical order, with cross-references when more than one name is involved in a single action;
- (2) The type of action;
- (3) The cause for the action;
- (4) The scope of the action;
- (5) Any termination date for each listing; and
- (6) The agency and name and telephone number of the agency point of contact for the action.

## § 280.505 Military Departments and Defense Agencies' responsibilities.

(a) The agency shall provide GSA with current information concerning debarments, suspension, determinations of ineligibility, and voluntary exclusions it has taken. Until February 18, 1999, the agency shall also provide GSA and OMB with information concerning all transactions in which Military Departments and Defense Agencies has granted exceptions under § 280.215 permitting participation by debarred, suspended, or voluntarily excluded persons.

(b) Unless an alternative schedule is agreed to by GSA, the agency shall advise GSA of the information set

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forth in § 200.500(b) and of the exceptions granted under § 200.215 within five working days after taking such actions.

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

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

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

**§ 200.510 Participants' responsibilities.**

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

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

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

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

# **APPENDIX A—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS—PRIMARY COVERED TRANSACTIONS**

## **Instructions for Certification**

1. By signing and submitting this proposal, the prospective primary participant agrees that it will include the clause titled "Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions" in its offer.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 13449. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of these regulations.
6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

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7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions.

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

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

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

## **Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions**

- (1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
  - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records,

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making false statements, or receiving stolen property;

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

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

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

## **APPENDIX B—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS**

### **Instructions for Certification**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 13449. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of these regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with

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a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

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

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

9. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

## **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions**

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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**PART 280 - GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-  
PROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE  
WORKPLACE (GRANTS)**

\* \* \* \* \*

**Subpart F - Drug-Free Workplace Requirements (Grants)**

- 280.600 Purpose.
- 280.605 Definitions.
- 280.610 Coverage.

- 280.615      Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
- 280.620      Effect of violation.
- 280.625      Exception provision.
- 280.630      Certification requirements and procedures.
- 280.635      Reporting of and employee sanctions for convictions of criminal drug offenses.

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Appendix C to Part 280 - Certification Regarding  
Drug-Free Workplace Requirements

\*   \*   \*   \*   \*

**Subpart F - Drug-Free Workplace Requirements (Grants)**

**\$280.600 Purpose.**

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

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

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

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

**§ 280.605 Definitions.**

(a) Except as amended in this section, the definitions of § 280.105 apply to this subpart.

(b) For purposes of this subpart --

(1) Controlled substance means a controlled substance in schedules I through V of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15;

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

(3) Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

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

(5) Employee means the employee of a grantee directly engaged in the performance of work under the grant, including:

- (i) All "direct charge" employees;
- (ii) All "indirect charge" employees, unless their impact or involvement is insignificant to the

performance of the grant; and,

(iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll.

This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the payroll; or employees of subrecipients or subcontractors in covered workplaces);

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

(7) Grant means an award of financial assistance, including a cooperative agreement, in the form of money, or property in lieu of money, by a Federal agency directly to a grantee. The term grant includes block grant and entitlement grant programs, whether or not exempted from coverage under the grants management government-wide common rule on uniform administrative requirements for grants and cooperative agreements. The term does not include technical assistance that provides services instead of money, or other assistance in the form of loans, loan guarantees, interest subsidies, insurance, or direct appropriations; or any veterans' benefits to individuals, i.e., any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States;

(8) Grantee means a person who applies for or receives a grant directly from a Federal agency (except another Federal agency);

(9) Individual means a natural person;

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

§280.610 Coverage.

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

" (b) This subpart applies to any grant, except where application of this subpart would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government. A determination of such inconsistency may be made only by the agency head or his/her designee.

(c) The provisions of subparts A, B, C, D and E of this part apply to matters covered by this subpart, except where specifically modified by this subpart. In the event of any conflict between provisions of this subpart and other provisions of this part, the provisions of this subpart are deemed to control with respect to the implementation of drug-free workplace requirements concerning grants.



**\$280.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.**

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

(a) The grantee has made a false certification under **\$280.630**;

(b) With respect to a grantee other than an individual--

(1) The grantee has violated the certification by failing to carry out the requirements of subparagraphs (A.)(a)-(g) and/or (B.) of the certification (Alternate I to Appendix C) or

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

(c) With respect to a grantee who is an individual --

(1) The grantee has violated the certification by failing to carry out its requirements (Alternate II to Appendix C); or

(2) The grantee is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity.

**§ 280.620 Effect of violation.**

(a) In the event of a violation of this subpart as provided in § 280.615, and in accordance with applicable law, the grantee shall be subject to one or more of the following actions:

- (1) Suspension of payments under the grant;
- (2) Suspension or termination of the grant; and
- (3) Suspension or debarment of the grantee under the provisions of this part.

(b) Upon issuance of any final decision under this part requiring debarment of a grantee, the debarred grantee shall be ineligible for award of any grant from any Federal agency for a period specified in the decision, not to exceed five years (see § 280.320(a)(2) of this part).

**§ 280.625 Exception provision.**

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

**§ 280.630 Certification requirements and procedures.**

(a) (1) As a prior condition of being awarded a grant, each grantee shall make the appropriate certification to the Federal

agency providing the grant, as provided in Appendix C to this part.

(2) Grantees are not required to make a certification in order to continue receiving funds under a grant awarded before March 18, 1989, or under a no-cost time extension of such a grant. However, the grantee shall make a one-time drug-free workplace certification for a non-automatic continuation of such a grant made on or after March 18, 1989.

(b) Except as provided in this section, all grantees shall make the required certification for each grant. For mandatory formula grants and entitlements that have no application process, grantees shall submit a one-time certification in order to continue receiving awards.

(c) A grantee that is a State may elect to make one certification in each Federal fiscal year. States that previously submitted an annual certification are not required to make a certification for Fiscal year 1990 until June 30, 1990. Except as provided in paragraph (d) of this section, this certification shall cover all grants to all State agencies from any Federal agency. The State shall retain the original of this statewide certification in its Governor's office and, prior to grant award, shall ensure that a copy is submitted individually with respect to each grant, unless the Federal agency has designated a central location for submission.

(d) (1) The Governor of a State may exclude certain State agencies from the statewide certification and authorize these agencies to submit their own certifications to Federal agencies. The statewide certification shall name any State agencies so excluded.

(2) A State agency to which the statewide certification does not apply, or a State agency in a State that does not have a statewide certification, may elect to make one certification in each Federal fiscal year. State agencies that previously submitted a State agency certification are not required to make a certification for Fiscal Year 1990 until June 30, 1990. The State agency shall retain the original of this State agency-wide certification in its central office and, prior to grant award, shall ensure that a copy is submitted individually with respect to each grant, unless the Federal agency designates a central location for submission.

(3) When the work of a grant is done by more than one State agency, the certification of the State agency directly receiving the grant shall be deemed to certify compliance for all workplaces, including those located in other State agencies.

(e) (1) For a grant of less than 30 days performance duration, grantees shall have this policy statement and program in place as soon as possible, but in any case by a date prior to the date on which performance is expected to be completed.

(2) For a grant of 30 days or more performance duration, grantees shall have this policy statement and program in place within 30 days after award.

(3) Where extraordinary circumstances warrant for a specific grant, the grant officer may determine a different date on which the policy statement and program shall be in place.

**§ 280.635 Reporting of and employee sanctions for convictions of criminal drug offenses.**

(a) When a grantee other than an individual is notified that an employee has been convicted for a violation of a criminal drug statute occurring in the workplace, it shall take the following actions:

(1) Within 10 calendar days of receiving notice of the conviction, the grantee shall provide written notice, including the convicted employee's position title, to every grant officer, or other designee on whose grant activity the convicted employee was working, unless a Federal agency has designated a central point for the receipt of such notifications. Notification shall include the identification number(s) for each of the Federal agency's affected grants.

(2) Within 30 calendar days of receiving notice of the conviction, the grantee shall do the following with respect to the employee who was convicted.

(i) Take appropriate personnel action against the employee, up to and including termination, consistent

with requirements of the Rehabilitation Act of 1973, as amended; or

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

(b) A grantee who is an individual who is convicted for a violation of a criminal drug statute occurring during the conduct of any grant activity shall report the conviction, in writing, within 10 calendar days, to his or her Federal agency grant officer, or other designee, unless the Federal agency has designated a central point for the receipt of such notices. Notification shall include the identification number(s) for each of the Federal agency's affected grants.

(Approved by the Office of Management and Budget under control number 0991-0002.)

**Appendix C to Part 280 - Certification Regarding Drug-Free Workplace Requirements**

**Instructions for Certification**

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant 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).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

"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;

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

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) all "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work



under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

#### Certification Regarding Drug-Free Workplace Requirements

##### Alternate I. (Grantees Other Than Individuals)

A. The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about --

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

(2) The grantee's policy of maintaining a drug-free workplace;

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

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will --

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted --

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

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

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

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

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

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Check ☐ if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

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

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar

days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.