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

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
§ 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 5 of Executive Order 12549 and...
the guidelines promulgated by the Office of Management and Budget under section 6 of the Executive Order by:
(1) Prescribing the programs and activities that are covered by the government-wide system;
(2) Prescribing the government-wide criteria and government-wide minimum due process procedures that each agency shall use;
(3) Providing for the listing of debarred and suspended participants, participants declared ineligible (see definition of "ineligible" in § 209.101); and prohibiting or requiring a person 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 government-wide system.
(a) 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.

32 CFR Ch. 1 (7-1-09 Edition)

Office of the Secretary of Defense

§ 209.100

(a) Principal investigator. A solicited or unsolicited bid, application, request, invitation to consider or similar communications by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a covered transaction.
(b) Respondent. A person against whom a debarment or suspension action has been initiated.
(c) 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.

32 CFR Ch. 1 (7-1-09 Edition)

§ 209.106

(a) Adequate evidence. Information sufficient to support the reasonable belief that a particular act or omission has occurred.
(b) Affiliates. 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. Indirect control includes, 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 who has the same or similar management, ownership, or principal employees as the suspending or 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.
(d) Civil judgment. The disposition of a civil action by any court of competent jurisdiction, whether by verdict, decision, settlement, stipulation, or otherwise creating a civil liability, for wrongful acts or conduct, or a final determination of liability under the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 1234a).
(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, information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.
(i) Ineligible. Excluded from participation in Federal nonprocurement programs pursuant to a determination of Ineligibility under statutory, executive order, or regulatory authority, other than Executive Order 12549 and its agency implementing regulations; for example, excluded pursuant to the Davis-Bacon Act and its implementing regulations, the equal employment opportunity acts and executive orders, or the environmental protection acts and executive orders. A person is ineligible where the determination of ineligibility affects each person's eligibility to participate in more than one covered transaction.
(j) 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 Nonprocurement Programs compiled, maintained and distributed by the General Services Administration and other information about persons who have been debarred, suspended, or voluntarily excluded therefrom and these regulations, and those who have been determined to be ineligible.
(l) Notice. A written communication served 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 addresses 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) Respondent. Officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities or a person who has a critical influence on or substantive control over a covered transaction, whether or not employed by the participant. Persons who have a critical influence on or substantive control over a covered transaction are:
(q) Principal investigator. A solicited or unsolicited bid, application, request, invitation to consider or similar communications by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a covered transaction.
(r) Respondent. A person against whom a debarment or suspension action has been initiated.
(s) State. Any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers that instrumentality to be an agency of the State government.
(t) 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 and Civil Remedies Act proceedings as may ensue. A person so excluded is "suspended.
(u) Voluntary exclusion or voluntarily excluded. A status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

32 CFR Ch. 1 (7-1-09 Edition)

§ 209.110

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

(1) Covered transaction. For purposes of these regulations, a covered transaction is a primary covered transaction or a 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)(3)(ii) of this section, any 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 guaranteed contractor or subcontractor 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, executed on or after the Federal procurement small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 3304(g) (currently $10,000) 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:

(a) Inter-agency transactions, including debarment and suspension of the Government, including debarment and suspension of the Government, including debarment and suspension of the Government, including debarment and suspension of the Government.

(b) Federal awards to foreign governments or public international organizations, or transactions with foreign governments or public international organizations, or transactions with foreign governments or public international organizations, or transactions with foreign governments or public international organizations.

(c) Transactions pursuant to any other Federal laws or regulations governing debarment and suspension.

Subpart B—Effect of Action

§ 208.300 Debarment or suspension.

(a) Primary covered transactions. Except to the extent prohibited by law, persons who are debarred or suspended shall be debarred or suspended from all 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 covered transactions with such debarred or suspended persons during such prohibition, except as permitted pursuant to § 208.318.

(b) Lower tier covered transactions. Except to the extent prohibited by law, persons who have been debarred or suspended shall be debarred or suspended from all covered transactions as either participants or principals in all lower tier covered transactions (see § 208.118(a)(XIII)) for the period of their debarment or suspension.

(c) Exceptions. Debarment or suspension does not affect a person's eligibility for:
§ 280.320

Subtitle C—Debarment

§ 280.305 General.

The debarment 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.

§ 280.306 Causes for debarment.

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

(a) Conviction of an individual 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 prescribing pricing 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 any requirement of Subpart F of this part, relating to providing a drug-free workplace, as set forth in §280.306.

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

§ 280.319 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 debarment official for consideration. After consideration, the debarment 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 allow 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 decision making; and

(e) Of the potential effect of a debarment.

§ 280.313 Opportunity to contest proposed debarment.

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

(b) Additional proceedings as to disputed material facts. (1) In actions not based upon a conviction or civil judgment, if the debarring official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the proposed debarment, respondents 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.
by the respondent. The decision shall be made within 45 days after receipt of all information and argument submitted by the respondent, unless the debarring 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 debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

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

(3) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

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

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

(d) Notice of debarring official's decision. (1) If the debarring official decides to impose debarment, the respondent shall be given prompt notice of the decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

§ 290.316 Settlement and voluntary exclusion.

(a) When in the best interest of the Government, Military Departments and Defense Agencies may, at any time, settle a debarment or suspension action.

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

§ 290.330 Period of debarment.

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

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

(c) In the case of a debarment for a violation of the requirements of Subpart F of this part (see §290.305(c)(3)), the period of debarment shall not exceed five years.

§ 290.355 Scope of debarment.

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

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

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

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

§ 290.400 Suspension.

(a) The suspending official may suspend a person for any of the causes in §§ 290.405 through 290.413.

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

(1) Where exists adequate evidence of one or more of the causes set out in §§ 290.405 and §290.406, and

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

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

§ 290.406 Causes for suspension.

(a) Suspension may be imposed in accordance with the provisions of §§ 290.405 through 290.413 upon adequate evidence.
In Section 220.410, subsection (1) of the Office of the Secretary of Defense, page 568,

(1) To suspend the commission of an offense listed in § 230.305(a); or

(2) That a cause for debarment under § 230.3 is present.

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

§ 220.410(a) Procedures.

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

(b) Decisionmaking process. Military Departments and Defense Agencies shall process suspension actions in accordance with Paragraph 1.49, consistent with principles of fundamental fairness, using the procedures in § 220.411 through § 220.413.

§ 220.411 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 an irregularity seriously reflecting on the propriety of the Federal Government, an agency of the Federal Government.

(c) Of the nature of the irregularity and of the basis upon which the suspension has been authorized.

§ 220.413 Opportunity to contest suspension.

(a) Subpoena 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 in opposition to the suspension.

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

(1) The evidence is on an indictment, conviction, or civil judgment, or

(2) 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.

(c) Transcript of hearings. If a transcript of the hearing is made available at the cost to the respondent, upon request, the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§ 220.415 Period of suspension.

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

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

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

§ 220.420 Scope of suspension.

The scope of a suspension is limited to the scope of a debarment (see § 230.513), except that the procedures of §§ 220.410 through 220.413 shall be used in imposing a suspension.

Subpart E—Responsibilities of OGA, Agency, and Participants

§ 220.530 OGA responsibilities.

(a) In accordance with the OMB guidelines, OGA shall compile, maintain, and distribute a list of all persons who have been debarred, suspended, or voluntarily excluded by agencies under Executive Order 12349 and other regulations, and those who have been determined to be ineligible.

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

(1) The names and addresses of all debarred, suspended, or voluntarily excluded persons.

(2) The types of action; and

(3) The reason for the action.

§ 220.560 Military Departments and Defense Agencies' responsibilities.

(a) The agency shall provide OGA with current information concerning debarments, suspensions, determinations of ineligibility, and voluntary exclusions it has taken. Until February 18, 1989, the agency shall also provide OGA and OMB with information concerning all transactions in which Military Departments and Defense Agencies has granted exceptions under § 230.215 permitting participation by debarred, suspended, or voluntarily excluded persons.

(b) Unless an alternative schedule is agreed to by OGA, the agency shall advise OGA of the information set forth in this section as promptly as possible after its occurrence.
§ 320.510

(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.

§ 320.510 (7-1-89 Edition)

(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.
Office of the Secretary of Defense

4. The prospective primary participant further agrees by submitting this proposal that it will provide the certification set out below.

5. The prospective primary 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.

6. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

7. If a prospective primary participant shall provide immediate written notice to the department or agency of any change in the circumstances related to this transaction, the department or agency may terminate this transaction for cause or default.

8. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

9. The prospective primary participant agrees by submitting this proposal that it will provide the certification set out below.

10. The prospective primary 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.

11. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

12. If a prospective primary participant shall provide immediate written notice to the department or agency of any change in the circumstances related to this transaction, the department or agency may terminate this transaction for cause or default.

13. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

14. The prospective primary participant agrees by submitting this proposal that it will provide the certification set out below.

15. The prospective primary 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.

16. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

17. If a prospective primary participant shall provide immediate written notice to the department or agency of any change in the circumstances related to this transaction, the department or agency may terminate this transaction for cause or default.

18. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
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.
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
(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 viola-
tions of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal
criminal statute involving the manufacture, distribution, dispens-
ing, 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 grantees 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)

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.