

§ 3017.110

7 CFR Ch. XXX (1-1-01 Edition)

(ii) [Reserved]

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

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."

USDA. U.S. Department of Agriculture.

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.

[54 FR 4731, Jan. 30, 1989, as amended at 60 FR 33040, 33043, June 26, 1995; 63 FR 27667, May 20, 1998]

§ 3017.110 Coverage.

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

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

(i) *Primary covered transaction.* Except as noted in paragraph (a)(2) of this section, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including: Grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal agency and a person. Primary covered transactions also include those trans-

actions specially designated by the U.S. Department of Housing and Urban Development in such agency's regulations governing debarment and suspension.

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

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

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

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

(1) Principal investigators.

(2) Providers of federally-required audit services.

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

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

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

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

(iv) Federal employment;

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

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

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

(3) *Department of Agriculture covered transactions.* (i) With respect to paragraph (a)(1) of this section, for USDA's export and foreign assistance programs, covered transactions will include only primary covered transactions. Any lower tier transactions with respect to USDA's export and foreign assistance programs will not be considered lower tier covered transactions for the purposes of this part. The export or substitution of Federal timber governed by the Forest Resources Conservation and Shortage Relief Act of 1990, 16 U.S.C. 620 *et seq.* (the "Export Act"), is specifically excluded from the coverage of this rule. The Export Act provides separate statutory authority to debar persons engaged in both primary covered transactions and lower tier transactions.

(ii) With respect to paragraph (a)(1)(ii)(B) of this section, for USDA's domestic food assistance programs, only the initial such procurement contract and the first tier subcontract under that procurement contract shall be considered lower tier covered transactions.

(iii) With respect to paragraph (a)(2) of this section, the following USDA transactions also are not covered: transactions under programs which provide statutory entitlements and make available loans to individuals and entities in their capacity as producers of agricultural commodities; transactions under conservation programs; transactions under warehouse licensing programs; the receipt of licenses, permits, certificates, and indemnification under regulatory programs conducted in the interest of public health and safety and animal and plant health and safety; the receipt of official grading and inspection services, animal damage control services, public health and safety inspection services, and animal and plant health and safety inspection services; if the person is a State or local government, the provision of official grading and inspection services, animal damage control services, public health and safety inspection services, animal and plant health and safety inspection services;

and permits, licenses, exchanges and other acquisitions of real property, rights of way, and easements under natural resource management programs.

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

(c) *Relationship to Federal procurement activities.* In accordance with E.O. 12689 and section 2455 of Public Law 103-355, any debarment, suspension, proposed debarment or other governmentwide exclusion initiated under the Federal Acquisition Regulation (FAR) on or after August 25, 1995 shall be recognized by and effective for Executive Branch agencies and participants as an exclusion under this regulation. Similarly, any debarment, suspension or other governmentwide exclusion initiated under this regulation on or after August 25, 1995 shall be recognized by and effective for those agencies as a debarment or suspension under the FAR.

[54 FR 4731, Jan. 30, 1989, as amended at 60 FR 33041, 33043, June 26, 1995; 61 FR 250, Jan. 4, 1996]

§ 3017.115 Policy.

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