

UNITED STATES DEPARTMENT OF AGRICULTURE  
FOOD SAFETY AND INSPECTION SERVICE  
WASHINGTON, DC

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<b>FSIS DIRECTIVE</b>	2200.3	4/4/13
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**SUSPENSION AND DEBARMENT**

**I. PURPOSE**

This directive implements policy for the suspension and debarment (S&D) program in FSIS applicable to actions against participants who have an unsatisfactory record of integrity and business ethics for procurement and nonprocurement transactions under FSIS financial assistance and other programs. This directive specifically addresses:

A. Participation in the governmentwide S&D system for programs and activities involving Federal financial and nonfinancial assistance and benefits.

B. Compliance with the Office of Management and Budget's (OMB) regulations establishing governmentwide criteria and minimum due process procedures when suspending or debaring participants.

C. Submission of a suspended or debarred person or firm's information into the web-based Exclusions Section of the General Services Administration (GSA) System for Award Management (SAM).

**II. (RESERVED)**

**III. (RESERVED)**

**IV. REFERENCES**

Executive Order 12549, Debarment and Suspension  
Executive Order 12689, Debarment and Suspension  
Agricultural Acquisition Regulation (AGAR) 48 CFR, Subpart 409.4, Debarment, Suspension, and Ineligibility  
Federal Acquisition Regulation (FAR) 48 CFR, Subpart 9.4, Debarment, Suspension, and Ineligibility  
2 CFR, Part 180, OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)  
2 CFR, Part 417, USDA Nonprocurement Debarment and Suspension  
Public Law 110-246, Food Conservation and Energy Act of 2008  
USDA Departmental Regulation (DR) 1700-2, OIG Organization and Procedures

**V. ABBREVIATIONS**

The following appear in their shortened form in this directive:

CFR	Code of Federal Regulations
EO	Executive Order
HCAD	Head of Contracting Activity Designee

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**DISTRIBUTION:**

Electronic; All Field Employees

**OPI:**

OAS – Procurement Management Branch

OCFO	Office of the Chief Financial Officer
OGC	Office of General Counsel
OIG	Office of Inspector General
OMB	Office of Management and Budget
OPPM	Office of Procurement and Property Management
POC	Point of Contact
S&D	Suspension and Debarment
SAM	System for Award Management

## VI. POLICY

It is FSIS policy that procurement and nonprocurement S&D actions be implemented in accordance with the applicable regulations following the procedures set forth in this guidance to ensure that:

- A. Only responsible persons or entities participate in FSIS procurement, nonprocurement, and other programs offering Federal benefits.
- B. FSIS solicits offers from, awards contracts to, and consents to subcontracts only with responsible persons and firms.
- C. When circumstances warrant, a suspension action will be taken to protect FSIS and the Federal Government by temporarily excluding persons and firms proposed for debarment from participation in the Federal assistance programs while the debarment action is being processed.
- D. Causes for suspension action include adequate evidence:
  1. That a cause for debarment may exist (**example**: conviction).
  2. To suspect the commission of an offense listed as a cause for debarment.
- E. A debarment action is for a fixed specified time period, generally up to three years, but for a longer period where circumstances warrant. Causes for debarment include:
  1. Criminal or civil conviction or judgment for:
    - a. Commission of fraud or a criminal offense in connection with the obtainment, attempt to obtain, or performance of a public or private agreement or transaction.
    - b. Violation of Federal or state antitrust statutes, including those prescribing price fixing between competitors, allocation of customers between competitors, and bid rigging.
    - c. Commission of embezzlement, theft, forgery, or bribery, falsification or destruction of records, falsification of statements or claims, receipt of stolen property and obstruction of justice.
    - d. 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.
  2. Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an Agency program, such as:

a. A willful failure to perform in accordance with the terms of one or more public agreements or transactions.

b. A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions.

c. A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

3. Any of the following causes:

a. A procurement debarment by any Federal agency taken pursuant to 48 CFR Subpart 9.4.

b. Knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person, in any connection with a covered transaction.

c. 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.

d. Violation of any requirement of 48 CFR 52.223-6 - Drug-Free Workplace, relating to providing a drug-free workplace, as set forth in 49 CFR § 29.615.

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

## VII. DEFINITION

**S&D Actions.** Discretionary administrative actions taken to protect the Federal Government by excluding certain firms and persons from participation in Federal programs. The S&D action ensures that the Federal Government does not conduct business with a person or firm that has an unsatisfactory record of integrity and business ethics. S&D actions are administered governmentwide; consequently, a person or firm excluded by one Federal agency is excluded from doing business with all Federal agencies. Suspended and debarred individual and entity names are in SAM.

## VIII. APPLICABILITY

This directive is applicable to:

A. FSIS personnel who interact with persons and firms that participate, or previously participated, or may reasonably be expected to participate in transactions under Federal procurement and nonprocurement programs.

B. Covered transactions for procurement (**example:** contract over \$150,000), nonprocurement (**example:** cooperative agreement) or other program (**example:** loan) with Federal benefits.

C. Nonprocurement transactions including those related to the receipt of inspection services, animal damage control services, public health and safety inspection services, and animal and plant health and safety inspection services as prescribed in 2 CFR 180.215 and 2 CFR 417.215 are not covered under this directive.

## IX. ROLES AND RESPONSIBILITIES

A. **General Responsibilities.** Agency S&D staff are personnel assigned nonprocurement S&D duties, which include confirming potential causes for debarment or suspension. These individuals are not necessarily full-time program staff, but may be Agency employees assigned to support the program manager regarding program S&D issues. S&D staff positions include:

1. The nonprocurement S&D official is the Agency Administrator as designated by the Secretary, Department of Agriculture. This authority may not be redelegated.

2. The S&D Council member is the Office of Management, Assistant Administrator, or designee.

3. The S&D coordinator is the HCAD and is the Agency liaison between the Department and FSIS S&D officials.

4. The S&D staff must complete the S&D training. (**NOTE:** This training is available in AgLearn at [www.aglearn.usda.gov](http://www.aglearn.usda.gov).)

B. **Nonprocurement Responsibilities.** Applicable to nonprocurement S&D actions only.

1. **FSIS Administrator.**

a. Serves as the S&D official and is authorized to impose S&D actions in accordance with the procedures set forth in 2 CFR, Parts 180 and 417.

b. Determines if a suspension or debarment is warranted based on the administrative record.

2. **S&D Coordinator:**

a. Receives and reviews referral records from FSIS personnel, assigns an FSIS case number unique to each respondent and coordinates activities to support an S&D action.

b. Shares information and developments with internal and external interested offices, as necessary, if assigned as the lead agency.

c. Serves as the POC for outside party inquiries (**examples:** from banks, employers, or the general public) regarding a person's status in SAM, which consists of verifying an identity match between FSIS' excluded person and the subject of the inquiry by the outside party. As needed, coordinates with OGC when responding to outside inquiries to ensure that no deliberative process, attorney-client, or attorney work product privileges are waived by sharing information with the outside party.

d. Provides USDA OCFO with the nonprocurement S&D report within seven days after each fiscal year quarter.

e. Coordinates investigations where applicable, depending on if the potential causes for suspension or debarment are obtained from external sources (**examples:** OIG, other Federal agencies, hotline complaints, media) or through internal program operations (**example:** review of program activities).

f. Establishes the administrative record for the S&D official to initiate an S&D action.

**C. Procurement Responsibilities.** Applicable to procurement S&D actions only.

**1. FSIS S&D Staff:**

a. Coordinate the investigation of causes for possible suspension or debarment, and report findings to the contracting officer.

b. Assist the contracting officer in any Agency procurement S&D related issues.

**2. Contracting Officer.**

a. Reviews SAM after the opening of offers and immediately prior to award. (**NOTE:** Contractors listed in SAM will not receive awards and will have their bids or proposals rejected, unless the FSIS Administrator decides otherwise in accordance with 48 CFR 9.405-1(b) and 409.405.)

b. When recommending that the S&D official initiate debarment or suspension action, prepares the referral record, in consultation with OGC if needed, and forwards it to the S&D coordinator.

**3. S&D Coordinator:**

a. Receives and reviews S&D referral records from contracting officers and forwards them to OPPM for lead agency coordination.

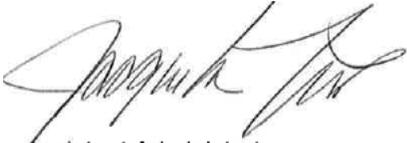
b. Shares information and developments with internal and external interested offices, as necessary, if assigned as the lead agency.

c. Serves as the POC for outside party inquiries regarding a contractor's status in SAM, which consists of verifying an identity match between FSIS' excluded contractors listed in SAM and the subject of the inquiry by the outside party. As needed, coordinates with OGC when responding to outside inquiries to ensure that no deliberative process, attorney-client, or attorney work product privileges are waived by sharing information with the outside party.

d. Receives the referral record from OPPM and submits to the S&D Official to initiate an S&D action as set forth in 48 CFR Parts 9.4 and 409.4.

X. **ADDITIONAL INFORMATION**

For additional information regarding the directive please contact the FSIS Procurement Management Branch at [procurement@fsis.usda.gov](mailto:procurement@fsis.usda.gov).



Assistant Administrator  
Office of Management