

1. PURPOSE:

The purpose of this AAPD is to implement changes to ADS 303 required by the revised [22 CFR 208 – GOVERNMENTWIDE DEBARMENT AND SUSPENSION \(NONPROCUREMENT\)](#) and the new [22 CFR 210 – GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE \(FINANCIAL ASSISTANCE\)](#).

2. BACKGROUND:

The rules issued November 26, 2003, amended the rules on suspension and debarment under non-procurement programs (assistance, host country contracting and Commodity Import Programs) in 22 CFR Part 208 and amended the coverage on drug-free workplace requirements applicable to assistance and moved it to a new part, 22 CFR Part 210.

The new regulations implement a common rule drafted in an inter-agency committee with the participation of 30 Federal Agencies. It provides uniform requirements for debarment and suspension applicable to all Executive branch agencies to protect assistance, loans, benefits and other nonprocurement activities from waste, fraud, abuse, poor performance or noncompliance similar to the system used for Federal procurement activities under Subpart 9.4 of the Federal Acquisition Regulation (FAR) and its supplements. The thirty agencies are jointly issuing this final rule.

While the regulations have been rewritten in plain language, the substance of the regulations is largely unchanged. One change will limit the application of the rules to the prime and first tier subaward. Although the common rule gives agencies the option to include one additional sub-tier for contracts issued by the recipient, USAID did not include this in its proposed regulation.

Another change in the common rule allows agencies to eliminate the requirement for certifications on debarment and suspension or on drug-free workplace. Now, instead of certifications, the Agreement Officer is responsible for checking [GSA's Excluded Party List](#) to ensure the organization is not suspended or debarred, and must include a requirement in prime awards that the prime must review GSA's list before making a subaward to ensure that subs are not suspended or debarred.

The new drug-free workplace regulations require recipients to agree to maintain a drug-free workplace, to publish a drug-free workplace statement and establish drug-free awareness programs for employees, and to take specific actions in the case of conviction of an employee for drug violations.

3. GUIDANCE:

Agreement Officers may no longer require applicants for federal assistance to provide the certifications "Certification Regarding Drug Free Workplace Requirements," "Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transaction" or "Certification Regarding Debarment, Suspension and Other Responsibility Matters - Lower Tier Covered Transactions" mandated by ADS 303.5.8.

Instead, Agreement Officers must include the attached Standard Provisions in all new assistance awards. These provisions are new Mandatory Standard Provisions for grants and cooperative agreements to U.S. Nongovernmental Organizations, and replace the current Mandatory Standard Provision for Non-U.S. Nongovernmental Organizations “Debarment, Suspension, and Other Responsibility Matters.”

4. POINT OF CONTACT:

Please direct any questions to Allen Eisenberg, M/OP/P, Phone: (202) 712-1467, e-mail: aeisenberg@usaid.gov.

DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS (JANUARY 2004)

(1) The recipient agrees to notify the Agreement Officer immediately upon learning that it or any of its principals:

(a) Are presently excluded or disqualified from covered transactions by any Federal department or agency;

(b) Have been convicted within the preceding three-years 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, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects your present responsibility;

(c) Are 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); and

(d) Have had one or more public transactions (Federal, State, or local) terminated for cause or default within the preceding three years.

(2) The recipient agrees that, unless authorized by the Agreement Officer, it will not knowingly enter into any subagreements or contracts under this grant with a person or entity that is included on the Excluded Parties List System (<http://epls.arnet.gov>). The recipient further agrees to include the following provision in any subagreements or contracts entered into under this award:

DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION
(DECEMBER 2003)

The recipient/contractor certifies that neither it nor its principals is presently excluded or disqualified from participation in this transaction by any Federal department or agency.

(3) The policies and procedures applicable to debarment, suspension, and ineligibility under USAID-financed transactions are set forth in 22 CFR Part 208.

DRUG-FREE WORKPLACE (JANUARY 2004)

- (1) The recipient agrees that it will publish a drug-free workplace statement and provide a copy to each employee who will be engaged in the performance of any Federal award. The statement must
 - (a) Tell the employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in its workplace;
 - (b) Specify the actions the recipient will take against employees for violating that prohibition; and
 - (c) Let each employee know that, as a condition of employment under any award, he or she
 - (1) Must abide by the terms of the statement, and
 - (2) Must notify you in writing if he or she is convicted for a violation of a criminal drug statute occurring in the workplace, and must do so no more than five calendar days after the conviction.
- (2) The recipient agrees that it will establish an ongoing drug-free awareness program to inform employees about
 - (a) The dangers of drug abuse in the workplace;
 - (b) Your policy of maintaining a drug-free workplace;
 - (c) Any available drug counseling, rehabilitation and employee assistance programs; and
 - (d) The penalties that you may impose upon them for drug abuse violations occurring in the workplace.
- (3) Without the Agreement Officer's expressed written approval, the policy statement and program must be in place as soon as possible, no later than the 30 days after the effective date of this award, or the completion date of this award, whichever occurs first.
- (4) The recipient agrees to immediately notify the Agreement Officer if an employee is convicted of a drug violation in the workplace. The notification must be in writing, identify the employee's position title, the number of each award on which the employee worked. The notification must be sent to the Agreement Officer within ten calendar days after the recipient learns of the conviction.
- (5) Within 30 calendar days of learning about an employee's conviction, the recipient must either

- (a) Take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 (29 USC 794), as amended, or
 - (b) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for these purposes by a Federal, State or local health, law enforcement, or other appropriate agency.
- (6) The policies and procedures applicable to violations of these requirements are set forth in 22 CFR Part 210.