



U.S Department of  
Transportation  
Office of the Secretary  
of Transportation

**ORDER**

**DOT 4200.5F**

## **Subject: Suspension and Debarment, and Ineligibility Procedures**

---

1. **PURPOSE.** This Order prescribes standards and implementing procedures for debarment, suspension, and ineligibility actions, and ensures that the U.S. Department of Transportation (DOT) conducts a vigorous department-wide debarment, suspension, and ineligibility program.
  
2. **POLICY.** The public has entrusted DOT with billions of dollars for financial assistance and acquisitions and expects that the Department will act as an effective steward of these funds to ensure a safe, efficient, secure, accessible, and convenient transportation system. As part of its stewardship obligations to the public, the Department is responsible for ensuring these Federal funds are used responsibly and consistently with legal requirements. To carry out this responsibility, DOT officers and employees will use the debarment and suspension process to ensure that only responsible persons participate in DOT procurement (acquisitions) and non-procurement (financial assistance, e.g. grants, cooperative agreements, loans, and other transactions) programs and projects.

This Order does not create any rights or benefits, substantive or procedural, enforceable at law or in equity by any individual or legal entity against the United States, its departments, agencies, instrumentalities or entities, its officers, employees or agents, or any other person.

3. **CANCELLATION.** DOT 4200.5E, Government-wide Debarment, Suspension and Ineligibility.
  
4. **REFERENCES.**
  - a. 2 C.F.R. Part 180, Government-wide Debarment and Suspension (non-procurement), effective November 15, 2006, adopted and supplemented by DOT at 2 C.F.R. Part 1200, effective June 2, 2008, provides Office of Management and Budget (OMB) guidance for Federal agencies on the Government-wide debarment and suspension system for non-procurement transactions, programs, and activities. The Government-wide non-procurement regulation can be accessed through the following website: [http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr180\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr180_main_02.tpl)

- b. Federal Acquisition Regulation (FAR), 48 C.F.R. Subpart 9.4, Debarment Suspension, and Ineligibility, provides rules for a Federal-wide system of debarment and suspension for procurement actions; FAR, 48 C.F.R. Part 3, Improper Business Practices and Personal Conflicts of Interest and 48 C.F.R. Subpart 9.1, Responsible Prospective Contractors, are also applicable and should be referenced. The FAR can be accessed through the following website: <http://www.acquisition.gov/far/>.
  - c. U.S. Department of Transportation Acquisition Manual (TAM), Subpart 1209.4, Debarment, Suspension, and Ineligibility, supplements FAR, 48 C.F.R. Subpart 9.4. The TAM, issued by the Office of the Senior Procurement Executive (OSPE), establishes uniform internal operating acquisition procedures which implement or supplement the FAR and the Transportation Acquisition Regulations (TAR). The TAR also provides supplemental guidance. The TAM can be accessed through the following website:  
<http://one10.dot.gov/office/ost/ospe/Shared%20Documents/Transportation%20Acquisition%20Manual/tam.htm>
  - d. Acquisition Management System (AMS), Procurement Guidance, T3.2.2.7, provides rules for procurement debarment and suspension actions for the Federal Aviation Administration (FAA). The AMS, Procurement Guidance, can be accessed through the following website:  
<http://fast.faa.gov/docs/procurementGuidance/T3.2.2.7ContractorQualifications.pdf>.
5. **APPLICABILITY.** This Order applies to all DOT Operating Administrations (OAs) (including FAA) and Secretarial Offices that make, execute, or approve non-procurement transactions. This Order also applies to all OAs and Secretarial Offices that make, execute, or approve procurement transactions pursuant to the FAR or AMS.
6. **KEY TERMS.**
- a. Unless otherwise specified below, all terms used in this Order have the meaning required by the regulations as set forth in 2 C.F.R. Parts 180 and 1200 for non-procurement suspension and debarment “actions,” and in 48 C.F.R. Subpart 9.4 for procurement suspension and debarment “actions.”
  - b. Particular key terms defined by this Order include:
    - (1) *Suspension and Debarment “action”*: A suspension and debarment “action” is an action to do one or more of the following: suspend, propose to debar, debar, settle with an administrative monitoring agreement, settle with a voluntary exclusion agreement, or decline to exclude or monitor an individual or legal entity.
    - (2) *Decline to exclude or monitor an individual or legal entity*: A suspension and debarment “action” to decline to exclude or monitor an individual or entity means the Suspension and Debarment Official

(SDO), also known as suspending official or debarring official, has decided that the Agency will not exclude or monitor an individual or legal entity in a referral for action to suspend, propose to debar or debar based on the information provided in a referral, either because the information is insufficient to support an action to exclude under a suspension, proposal to debar or debarment, because the agency finds the individual or entity to be presently responsible, because the agency has agreed to transfer lead agency status over a particular individual or company to another Federal agency, or the agency has issued a show cause letter.

- (3) *DOT referral*: The entry into the DOT Suspension and Debarment Tracking System by the Office of the Inspector General (OIG), OA or Secretarial Office of an initial recommendation to suspend and/or propose to debar as supported by information showing an indictment, conviction, civil judgment, or factual investigation.
- (4) *DOT Suspension and Debarment Tracking System*: The database is used to track and report on DOT progress in suspension and debarment “actions” against individuals and entities entered into the system through a DOT referral.
- (5) *Covered transaction*: A non-procurement or procurement transaction that is subject to the prohibitions of 2 C.F.R. Part 180. It may be a transaction at:—(a) The primary tier, between a Federal agency and a person (see appendix in 2 C.F.R. 180); or (b) a lower tier, between a participant in a covered transaction and another person. (2 C.F.R. 180.205)
- (6) *Non-procurement*: Any transaction, regardless of type (except procurement contracts), including, but not limited to the following: (a) Grants, (b) Cooperative agreements, (c) Scholarships, (d) Fellowships (e) Contracts of assistance, (f) Loans, (g) Loan guarantees, (h) Subsidies, (i) Insurances, (j) Payments for specified uses, and (k) Donation agreements. A non-procurement transaction at any tier does not require the transfer of Federal funds. (2 C.F.R. 180.970)
- (7) *Proper notification*: A notification from the OIG that includes either a copy of the conviction order, a copy of the sentencing order, a copy of an order of a judgment, or other official correspondence or documentation evidencing the conviction or judgment from the Department of Justice/United States Attorney or other law enforcement entity or court. Internet sources or local newspaper articles as well as unverified news sources are unacceptable for documentation.

## 7. **RESPONSIBILITIES.**

- a. The responsibilities for OAs and Secretarial Offices carrying out this Order are as follows:

- (1) OAs and Secretarial Offices shall be proactive in ensuring only responsible individuals and legal entities participate in DOT procurement and non-procurement transactions.
- (2) OAs and Secretarial Offices shall be proactive in responding to information and referrals regarding potential suspension and debarment “actions.” Sources of information include, but are not limited to:
  - (a) OIG investigations. The OIG will report indictments and convictions to the relevant Chief Counsel and provide copies to the OSPE;
  - (b) Department of Justice/U.S. Attorney investigations;
  - (c) Civil or criminal court actions arising in Federal, state, or local courts;
  - (d) Media reports (newspaper, magazine, newsletter, internet, etc.);
  - (e) Records, reports, and reviews/audits of DOT recipients and other Federal agencies; or
  - (f) State Suspension and Debarring offices.
- (3) OAs and Secretarial Offices must review the list of parties excluded from Federal procurement or non-procurement programs located on the Federal Government-wide exclusions website at: <https://SAM.gov> before entering into any contract and/or award agreements.
- (4) Prior to entering into a non-procurement covered transaction, recipients of DOT assistance must verify the individual or legal entity subject to the covered transaction is not excluded. Recipients shall do this by checking <https://SAM.gov/> collecting a certification from that individual or legal entity, or adding a clause or condition to the covered transaction with that individual or legal entity. While the regulations give recipients these three options to verify eligibility, DOT strongly encourages recipients to check <https://SAM.gov/>.
- (5) OAs and Secretarial Offices should include in all non-procurement agreements, a requirement that the recipient inform the OA or Secretarial Office with which it entered into a non-procurement agreement when the recipient suspends or debar a contractor, individual, or legal entity that is participating in the award.
- (6) OAs and Secretarial Offices shall appoint a representative to attend quarterly suspension and debarment meetings to be chaired by the OSPE. The OSPE will provide a topical agenda and sign-in sheet.

- (7) OAs and Secretarial Offices must submit to the OSPE all new and revised procedures that include requirements outlined in the FAR Subpart 9.4, 2 C.F.R. Parts 180 and 1200, FAA's AMS and this Order.
- (8) OAs and Secretarial Offices and the OIG, must enter all new and active referrals into the DOT Suspension and Debarment Tracking system for informational and tracking purposes. The DOT Suspension and Debarment Tracking System address is:  
<https://one.dot.gov/sd/Pages/home.aspx>.
- (9) After a DOT referral in the DOT Suspension and Debarment Tracking System is created to recommend that an individual or legal entity be suspended or proposed for debarment based upon documents showing indictment, conviction, or civil judgment, the OA or Secretarial Office will take a suspension or debarment "action" for that individual or legal entity within 45 calendar days of the DOT referral being entered into the DOT Suspension and Debarment Tracking System. Suspension or debarment "actions" taken based on referrals from factual investigations are taken within 90 days of the referral being entered into the DOT Suspension and Debarment Tracking System. The OIG, OA or Secretarial Office creates a DOT referral by entering an individual or legal entity, and the documents supporting action against that individual or legal entity, in the DOT Suspension and Debarment Tracking System and uploading supporting documentation in the system.
- (10) By October 30<sup>th</sup> of each year, OAs and Secretarial Offices must submit to the OSPE information for preparation of an annual report. The submission shall include all individuals or legal entities entered into the DOT Suspension and Debarment Tracking System during the preceding fiscal year. If no action was taken, the OA or Secretarial Office must provide an explanation in the DOT Suspension and Debarment Tracking System. An inactivity report is required for those OAs or Secretarial Offices with no DOT referrals or Suspension and Debarment "actions".
- (11) Prior to taking a suspension or debarment action, OAs and Secretarial Offices shall:
  - (a) Check the Federal Government-wide exclusions website at <https://SAM.gov> to ensure the individual or legal entity is not already debarred or suspended.
  - (b) Check the DOT Suspension and Debarment Tracking System to ensure the individual or legal entity is not already debarred, suspended or another OA has not initiated a case action.
  - (c) Determine whether another Federal agency has an interest in initiating a debarment or suspension action against the individual or legal entity. The OA or Secretarial Office shall submit individual or legal entity summary information to the OSPE. The OSPE forwards the "lead agency" inquiry email to the Chair of

the Government-wide Interagency Suspension and Debarment Committee (ISDC) for Federal Government-wide distribution. If more than one agency has an interest in initiating action against the individual or legal entity, the interested agencies should discuss and agree upon a lead agency and/or joint responsibilities per Executive Order 12549 under the ISDC.

- (d) Determine whether another OA or Secretarial Office has an interest in initiating a suspension or debarment action against an individual or legal entity, by following the same procedures as identified in (c) above. If another DOT office has an interest in taking action against the individual or legal entity, the two offices should discuss and agree upon a lead office and/or joint responsibilities.
  - (e) Except for those individuals or legal entities originally referred to the OAs or Secretarial Offices by the OIG, OAs and Secretarial Offices must notify the Office of the Assistant Inspector General for Investigations, with a copy to the OSPE, before a DOT referral recommending a suspension or debarment action is entered into the DOT Suspension and Debarment Tracking System. The Office of the Assistant Inspector General for Investigations will contact the appropriate U.S. Attorney's Office or the Department of Justice to ensure that there are no pending or contemplated actions that may be affected by any recommended suspension or debarment "action". To ensure continued timely processing of the suspension or debarment "action", the Office of the Assistant Inspector General for Investigations will respond to the OAs or Secretarial Offices within five (5) working days of receipt of OA or Secretarial Office notification.
- b. The OSPE is responsible for overall program oversight, including:
- (1) Providing policy, technical advice, and training.
  - (2) Chairing and documenting quarterly suspension and debarment meetings.
  - (3) Reviewing and posting all procedures submitted in accordance with paragraph 7.a. (7).
  - (4) Ensuring that the DOT Suspension and Debarment Tracking System assigns a case number for each new individual or legal entity.
  - (5) Validating and consolidating OA and Secretarial Office data submissions. The OSPE will forward an annual consolidated report to the Deputy Secretary with a copy provided to the General Counsel and the Inspector General.
  - (6) Distributing ISDC lead agency coordination notices and data calls to all

OAs and Secretarial Offices. The OAs and Secretarial Offices shall coordinate and collaborate with each other and other Federal agencies to the maximum extent possible.

- (7) Notifying OAs and Secretarial Offices of ISDC monthly meetings to encourage OA meeting attendance.

8. **IMPLEMENTATION.** The policies and procedures contained in this Order are effective immediately. Pursuant to paragraph 7.a.(7), OAs and Secretarial Offices shall submit any additional implementing guidance to the OSPE at least 30 calendar days prior to such guidance becoming effective.

9. **DEBARMENT PROCEDURES FOR DOT PROCUREMENT AND NONPROCUREMENT TRANSACTIONS.**

- a. All debarment proceedings must comply with the requirements of the FAR, 48 C.F.R. Subpart 9.4, Debarment, Suspension, and Ineligibility, and with TAR and TAM, Subpart 1209.4, Debarment, Suspension, and Ineligibility, for procurement transactions, or with the AMS Procurement Guidance, T3.2.2.7 for FAA procurement actions, and with 2 C.F.R. Parts 180 and 1200 for non-procurement transactions. Any inconsistency or ambiguity shall be resolved by the following order of precedence: for procurement transactions, the FAR (or the AMS in the case of FAA), the TAM, and this Order; for non-procurement transactions, 2 C.F.R. Parts 180 and 1200 and this Order.
- b. A debarment action is initiated by mailing, e-mailing or faxing written notification, (2 C.F.R. 180.820(b)) of a proposed debarment to an individual or legal entity, with an acknowledgment receipt.
- c. If the debarring official determines not to take action as provided in 9.e or determines after initiating action that a debarment will not be imposed, then the debarring official shall document the reasons for the decision on the DOT Suspension and Debarment application as soon as practical but no later than five (5) working days following the decision for non-procurement actions and three (3) working days for procurement actions.

This explanation shall include an analysis of the factors considered as listed in paragraph 9.g or 9.h.

- d. **Post-Conviction or Civil Judgment.** Within 45 calendar days of proper notification, OAs and Secretarial Offices shall take a Suspension and Debarment "action", as defined in 6.b. (2), against any individual or legal entity that has been convicted of a criminal offense, or has been the subject of a civil judgment for:

- (1) Fraud in obtaining, attempting to obtain, or performing a public contract or subcontract;

- (2) Violation of Federal or State antitrust statutes relating to the submission of offers;
  - (3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;
  - (4) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States or its outlying areas, when the product was not made in the United States or its outlying areas (see Section 202 of the Defense Production Act (Public Law 102-558));
  - (5) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor.
- e. Post Indictment. See Suspension Procedures for Procurement and Non-procurement Transactions, Post Indictment or Civil Judgment, paragraph 10.b. of this Order.
- f. Investigation and DOT Referral. Where there is no conviction, civil judgment or indictment and an OA or Secretarial Office receives information from any source that an individual or legal entity's actions or activities, or failure to act, may be a cause for debarment, it must evaluate the information to determine if investigation by the OIG appears necessary to determine if facts exist to support a debarment. If the OA or Secretarial Office determines that further investigation by the OIG appears necessary to support a debarment, the OA or Secretarial Office shall coordinate with the OIG, and may coordinate with the United States Department of Justice, if necessary, to compile the administrative record. If a DOT referral based on a factual investigation occurs, the OA or Secretarial Office shall take suspension and debarment "action" within 90 days of that DOT referral, which can include a decision not to exclude or monitor. When the decision to exclude or monitor occurs, OAs and SO's shall update the Suspension and Debarment Tracking System with date of decision and the explanation for the decision at the same time.
- g. Causes for Debarment. Causes for debarment in procurement actions are located in the FAR at 48 C.F.R. 9.406-2; in FAA procurement actions in AMS Procurement Guidance at T3.2.2.7 (A)(3)(b)(I); and in non-procurement actions at 2 C.F.R. 180.800 and 2 C.F.R. Part 1200. Causes for a debarment may include, but are not limited to:
- (1) Conviction of or civil judgment for:
    - (a) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;
    - (b) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of

customers between competitors, and bid rigging;

- (c) 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;
  - (d) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States or its outlying areas, when the product was not made in the United States or its territories (See, Section 202 of the Defense Production Act Amendments of 1992 (Public Law 102-558));
  - (e) Violations of the Buy American Act (41 U.S.C. 10a-10c), which restricts the purchase of foreign made supplies and use of foreign-made construction materials:
    - (i) Pursuant to the Consolidated Appropriations Act, 2010 (Public Law 111-117, Division A, Title IV, Section 413), if a contracting officer determines that a contractor, individual or legal entity does not comply with the Buy American Act, the individual or legal entity is automatically ineligible to receive appropriated funds of any kind;
    - (ii) Section 413 is not permanent and must be enacted each fiscal year. If Section 413 or a similar provision is not enacted in future years, but a contracting officer determines that an individual or legal entity does not comply with the Buy American Act, then the OA or Secretarial Office shall initiate debarment proceedings in accordance with the procedures established in this Order and Subpart 9.4 of the FAR.
  - (f) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a contractor, individual, or legal entity.
- (2) Violation of the terms of a public agreement or transaction so serious as to justify debarment, 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; or

- (c) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.
- (3) Knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded individual or legal entity, in connection with a DOT non-procurement transaction, except as permitted in 2 C.F.R. 180.120 and 1200.137.
  - (4) 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.
  - (5) Violation of a material provision of a voluntary exclusion agreement entered into under 2 C.F.R. 180.640 or of any settlement of a debarment or suspension action.
  - (6) Violation of the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701).
  - (7) Knowing failure by a principal, until 3 years after final payment on any Government contract awarded to the contractor, to timely disclose to the Government, in connection with the award, performance, or closeout of the contract or a subcontract there-under, credible evidence of:
    - (a) Violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code;
    - (b) Violation of the False Claims Act (31 U.S.C. 3729–3733);
    - (c) Significant overpayment(s) on the contract, other than overpayments resulting from contract financing payments as defined in FAR 32.001.(vi).
  - (8) Based on a determination by the Secretary of Homeland Security or the Attorney General of the United States, that the individual or legal entity is not in compliance with Immigration and Nationality Act employment provisions (see Executive Order 12989, as amended by Executive Order 13286). Such determination is not reviewable in the debarment proceedings. In such cases, the period of debarment shall be for a period of one (1) year and may be extended in additional year increments if the violation continues.
  - (9) Any other cause of such a serious or compelling a nature that it affects the present responsibility of an individual or legal entity.

- h. Remedial Measures and Mitigating Factors. In determining whether to impose a debarment, the debarring official must evaluate the individual's or legal entity's present responsibility. The individual or legal entity that is proposed for debarment has the burden of demonstrating to the satisfaction of the debarring official that it is presently responsible. In evaluating an individual's or legal entity's present responsibility, the debarring official may consider, but is not limited to, the following factors:
- (1) Whether the individual or legal entity had effective standards of conduct and internal control systems in place at the time of the activity which constitutes cause for debarment or had adopted such procedures prior to any Government investigation of the activity cited as a cause for debarment;
  - (2) Whether the individual or legal entity brought the activity cited as a cause for debarment to the attention of the appropriate Government agency in a timely manner;
  - (3) Whether the individual or legal entity has fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official;
  - (4) Whether the individual or legal entity cooperated fully with Government agencies during the investigation and during any court or administrative action;
  - (5) Whether the individual or legal entity has paid or agreed to pay all criminal, civil, and administrative liability costs for the improper activity, including any investigative or administrative costs incurred by the Government, and has made or agreed to make full restitution;
  - (6) Whether the individual or legal entity has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment;
  - (7) Whether the individual or legal entity has implemented or agreed to implement remedial measures, including any identified by the Government;
  - (8) Whether the individual or legal entity has instituted or agreed to institute new or revised review and control procedures and ethics training programs;
  - (9) Whether the individual or legal entity had adequate time to eliminate the circumstances within the individual's or legal entity's organization that led to the cause for debarment; and
  - (10) Whether the individual's or legal entity's management recognizes and understands the seriousness of the misconduct giving rise to the cause for

debarment and has implemented programs to prevent recurrence.

- i. Fact Finding. In actions not based upon a conviction or civil judgment, and when the debarment official finds that there is a genuine dispute over facts material to the proposed debarment, he or she shall:
  - (1) Request a DOT Administrative Law Judge conduct fact finding and provide a report to the debarment official;
  - (2) Request the head of a DOT OA or Secretarial Office, other than the one in which the debarment action is being initiated, designate a fact finder to conduct fact finding and provide a report to the debarment official; or
  - (3) Designate an independent fact finder to conduct fact finding and provide a report to the debarment official. The designated fact finder must be independent and, therefore, may not be supervised by the debarring official. The designated fact finder on any case may not, in that or any other factually related case, participate or advise in the decision.
- j. Affiliates. In imposing any debarment, the debarment official shall consider debarring any affiliates as appropriate.
- k. Length of Debarment. Generally, debarment periods should not exceed three years. However, a longer or shorter debarment period may be imposed pursuant to FAR 9.406-4 and 2 C.F.R. 180.865.

10. **SUSPENSION PROCEDURES FOR DOT PROCUREMENT AND NON-PROCUREMENT TRANSACTIONS.**

- a. Suspension is a serious action to be imposed on the basis of adequate evidence, pending the completion of investigation or legal proceedings, when it has been determined that immediate action is necessary to protect the Government's interest. All suspension proceedings must comply with the requirements of the FAR, 48 C.F.R. Subpart 9.4 Debarment, Suspension, and Ineligibility for procurement transactions, or with the AMS Procurement Guidance, T3.2.2.7 for FAA procurement actions, and with 2 C.F.R. Parts 180 and 1200 for non-procurement transactions, as well as with the TAM, Subpart 1209.4, Debarment, Suspension, and Ineligibility. Any inconsistency or ambiguity shall be resolved by the following order of precedence: for procurement transactions, the FAR (or the AMS in the case of FAA), the TAM, and this Order; for non-procurement transactions, 2 C.F.R. Parts 180 and 1200 and this Order.
- b. Post Indictment or Civil Judgment. Within 45 calendar days of a DOT referral, OAs and Secretarial Offices shall take a Suspension and Debarment "action" as defined in 6.b. (2) . The causes for suspension are listed in 2 C.F.R. Part 180 and in FAR Subpart 9.4.
  - (1) An indictment shall constitute adequate evidence for purposes of suspension actions.

- (2) A suspension action is initiated by e-mailing, faxing or mailing a written suspension (see 2 C.F.R. 180.725 (b)) notice to an individual or legal entity. A copy of the written suspension notice shall be placed on the Suspension and Debarment Tracking System.
  - (3) If the suspending official determines that a suspension or debarment exclusion from contracting or financial assistance should not occur, as indicated in 10.b. then the suspending official shall document the reasons for the decision on the DOT Suspension and Debarment Tracking System as soon as practicable but no later than five (5) working days following the decision.
- c. Investigation and Referral. Where there is no indictment or civil judgment and an OA or Secretarial Office receives information from any source that an individual or legal entity's actions or activities, or failure to act, may be a cause for suspension, the OA or Secretarial Office must promptly evaluate the information. Refer to section 9f, of this Order for procedures.
- d. Causes for Suspension. Causes for suspension in procurement actions are located in the FAR at 48 C.F.R. 9.407.2; in FAA procurement actions in the AMS Procurement Guidance at T3.2.2.7 (A)(3)(c)(2); and in non-procurement actions at 2 C.F.R. 180.700 and 2 C.F.R. Part 1200. The suspending official may suspend an individual or legal entity, suspected upon adequate evidence, of violating the causes listed in the appropriate authorities above.
- e. Immediate Need. In deciding whether to impose a suspension, the suspending official must determine whether immediate action is necessary to protect the public interest. The determination of immediate need does not require a separate finding. Immediate need is a conclusion that a suspending official may draw from inferences made from the facts and circumstances. Also, immediate need does not connote that future misconduct, loss, or injury is probable. The need for immediate action is based on what a reasonably prudent business person would be expected to do given the risk potential under the circumstances. Additionally, even where the suspending official may initially find that immediate action is necessary, a suspended individual or legal entity, in its response, may address the immediate need. If the individual or legal entity can demonstrate to the satisfaction of the suspending official that it has taken protective action to eliminate, or reduce to an acceptable level, the Government's risk pending the completion of the investigation or legal proceedings, then the suspending official may terminate or modify a suspension even though there is adequate evidence to support a suspension.
- f. Fact Finding. In actions not based upon an indictment conviction, or civil settlement and when the suspending official finds that there is a genuine dispute over facts material to the proposed suspension, he or she may:
- (1) Request a DOT Administrative Law Judge conduct fact finding and provide a report to the suspension official;

- (2) Request the head of a DOT OA or Secretarial Office, other than the one in which the suspension action is being initiated, designate a fact finder to conduct fact finding and provide a report to the suspension official; or
  - (3) Designate an independent fact finder to conduct fact finding and provide a report to the suspending official. The designated fact finder must be independent and, therefore, may not be supervised by the suspending official. The designated fact finder on any case may not in that or any other factually related case, participate or advise in the decision.
- g. Length of Suspension. A suspension is for a temporary period, pending the completion of legal proceedings or the debarment process. Generally, in cases where legal or debarment proceedings have not been initiated and where no related civil, criminal, or administrative proceeding is initiated, suspensions will not exceed 12 months. If a related civil, criminal, or administrative proceeding is not initiated within 12 months of the effective date of the suspension, then the suspension will be terminated, unless an Assistant Attorney General in the Department of Justice or a United States Attorney requests in writing an extension, supported by such written request, the suspension may be extended for an additional 6 months. In no event will a suspension be extended beyond 18 months, unless a related civil, criminal, or administrative proceeding is initiated.

11. **GENERAL SERVICES ADMINISTRATION (GSA) NOTIFICATION.**

- a. OAs and Secretarial Offices shall promptly notify the OSPE after making a determination of debarment or suspension; modifying or rescinding such action; or entering into an agreement for a voluntary exclusion. The OSPE shall notify the GSA, the Federal Government-wide exclusions website: <https://SAM.gov> within five (5) working days for non-procurement and three (3) working days for procurement of the determination. The notification must include the information required in the FAR, 48 C.F.R. Section 9.404(c) for procurement actions or 2 C.F.R. Section 180.520 and 2 C.F.R. 1200 for non-procurement actions.

Each OA or Secretarial Office, when having an individual or legal entity to place into the Federal Government-wide exclusions website: <https://SAM.gov>, will complete the following:

- (1) Complete the Federal Government wide Exclusions Template at: [https://one.dot.gov/ost/m1/m60/suspension\\_debarment/Shared%20Documents/Templates/DOT%20Sam.gov%20Submission%20Template.pdf](https://one.dot.gov/ost/m1/m60/suspension_debarment/Shared%20Documents/Templates/DOT%20Sam.gov%20Submission%20Template.pdf)
- (2) Send the completed template via an e-mail to the OSPE for the Federal Government wide exclusions submissions.

- b. OSPE designated personnel will respond to exclusion requests and ensure timely placement of the suspended or debarred entities into the Federal Government- wide Exclusion website within five (5) working days for non-procurement agreements and three (3) working days for procurement awards to <https://SAM.gov>. The referring OA or Secretarial Office will receive e-mail verification from the OSPE that the affected individual or legal entity has been placed into the Federal Government-wide exclusion website. Each OA or Secretarial Office will be responsible for verifying the accuracy of information referred to the exclusion website and will notify the OSPE of any errors.

12. **EFFECT OF DEBARMENT OR SUSPENSION - PROCUREMENT**

- a. New Contracts. OAs and Secretarial Offices may not solicit offers, award contracts to, or consent to subcontracts with individuals or legal entities on the Federal Government- wide exclusion list (List or Website) from Federal Procurement and Non-procurement Programs, unless the Secretary or his or her designee determines that there is a compelling reason for such action.
- b. Continuation of Current Procurement Transactions. OAs and Secretarial Offices may continue transactions in existence at the time the individual or legal entity was debarred, suspended, or proposed for debarment, unless the Secretary or his or her designee directs otherwise. However, unless the Secretary or his or her designee makes a written determination of the compelling reasons for doing so, ordering activities (contracting offices) may not:
  - (1) Place orders exceeding the guaranteed minimum under indefinite quantity contracts;
  - (2) Place orders under optional use Federal Supply Schedule contracts, blanket purchase agreements, or basic ordering agreements; or
  - (3) Add new work or scope, exercise options, or otherwise extend the duration of current contract orders.
- c. A debarred or suspended procurement contractor is considered debarred or suspended government-wide for purposes of non-procurement transactions.

13. **EFFECT OF DEBARMENT OR SUSPENSION - NONPROCUREMENT**

- a. New Non-procurement Transactions. OAs and Secretarial Offices shall not enter into any non-procurement transaction (i.e., grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance payments for specified use, federal competitions, donation agreements or other transaction agreements) with individuals or legal entities who have been debarred or suspended, unless the Secretary or his or her designee directs otherwise.

- b. Continuation of Current Non-procurement Transactions. OAs and Secretarial Offices may continue with non-procurement transactions that were already in existence at the time the individual or legal entity was debarred, suspended, or proposed for debarment. Continuation of a transaction is not required, however, and termination may be considered and implemented. The decision to terminate and the type of termination action, if any, shall be taken only after a thorough review to ensure that the action is proper and appropriate.
- c. Covered Transactions: An individual or organization debarred or suspended pursuant to 2 CFR Parts 180 and 1200 is considered debarred or suspended for purposes of covered transactions unless the debarment and suspension is limited by its terms to one or more specifically identified individuals, legal entities, or other organizational elements or to specific types of transactions.
- d. An individual or legal entity debarred or suspended pursuant to 2 C.F.R. Parts 180 and 1200 is considered debarred or suspended for purposes of non-procurement and procurement transactions.



Anthony R. Foxx  
Secretary of Transportation