

§ 3017.750

§ 3017.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?

(a) The suspending official bases the decision on all information contained in the official record. The record includes—

(1) All information in support of the suspending official's initial decision to suspend you;

(2) Any further information and argument presented in support of, or opposition to, the suspension; and

(3) Any transcribed record of fact-finding proceedings.

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

§ 3017.755 When will I know whether the suspension is continued or terminated?

The suspending official must make a written decision whether to continue, modify, or terminate your suspension within 45 days of closing the official record. The official record closes upon the suspending official's receipt of final submissions, information and findings of fact, if any. The suspending official may extend that period for good cause. However, the record will remain open for the full 30 days, as called for in § 3017.725, even when you make a submission before the 30 days expire.

[68 FR 66544, 66563, Nov. 26, 2003, as amended at 68 FR 66565, Nov. 26, 2003]

§ 3017.760 How long may my suspension last?

(a) If legal or debarment proceedings are initiated at the time of, or during your suspension, the suspension may continue until the conclusion of those proceedings. However, if proceedings are not initiated, a suspension may not exceed 12 months.

(b) The suspending official may extend the 12 month limit under paragraph (a) of this section for an additional 6 months if an office of a U.S. Assistant Attorney General, U.S. Attorney, or other responsible pros-

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ecuting official requests an extension in writing. In no event may a suspension exceed 18 months without initiating proceedings under paragraph (a) of this section.

(c) The suspending official must notify the appropriate officials under paragraph (b) of this section of an impending termination of a suspension at least 30 days before the 12 month period expires to allow the officials an opportunity to request an extension.

§ 3017.765 How may I appeal my suspension?

(a) You may file an appeal only after you have exhausted the option provided for in § 3017.720 to contest the suspension. You must file your appeal within 30 days of receiving the decision required by § 3017.755 and your filing must specify the basis of the appeal. You must submit your appeal in writing to the Hearing Clerk in the Office of Administrative Law Judges (OALJ), United States Department of Agriculture (USDA), Washington, DC 20250. The assigned appeals officer may vacate the decision of the suspending official only if the officer determines that the decision is:

(1) Not in accordance with law;

(2) Not based on the applicable standard of evidence; or

(3) Arbitrary and capricious and an abuse of discretion.

(b) The appeals officer will base the decision solely on the administrative record.

(c) Within 90 days of the date that you file your appeal with USDA's OALJ Hearing Clerk, the appeals officer will give written notification of the decision to you and to the suspending official who took the action being appealed.

(d) The appeals officer's decision is final and is not appealable within USDA.

[68 FR 66565, Nov. 26, 2003]

Subpart H—Debarment

§ 3017.800 What are the causes for debarment?

We may debar a person for—

(a) Conviction of 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 anti-trust statutes, including those proscribing price fixing 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, tax evasion, 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 your present responsibility;

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as—

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction;

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, or a procurement debarment by any Federal agency taken pursuant to 48 CFR part 9, subpart 9.4, before August 25, 1995;

(2) Knowingly doing business with an ineligible person, except as permitted under § 3017.120;

(3) 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;

(4) Violation of a material provision of a voluntary exclusion agreement en-

tered into under § 3017.640 or of any settlement of a debarment or suspension action; or

(5) Violation of the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701); or

(d) Any other cause of so serious or compelling a nature that it affects your present responsibility.

(e) Notwithstanding paragraph (c) (1) of this section, within the Department of Agriculture a nonprocurement debarment by any Federal agency taken before March 1, 1989.

[68 FR 66544, 66563, Nov. 26, 2003, as amended at 68 FR 66565, Nov. 26, 2003]

§ 3017.805 What notice does the debarring official give me if I am proposed for debarment?

After consideration of the causes in § 3017.800 of this subpart, if the debarring official proposes to debar you, the official sends you a Notice of Proposed Debarment, pursuant to § 3017.615, advising you—

(a) That the debarring official is considering debarring you;

(b) Of the reasons for proposing to debar you in terms sufficient to put you on notice of the conduct or transactions upon which the proposed debarment is based;

(c) Of the cause(s) under § 3017.800 upon which the debarring official relied for proposing your debarment;

(d) Of the applicable provisions of this subpart, Subpart F of this part, and any other Department of Agriculture procedures governing debarment; and

(e) Of the governmentwide effect of a debarment from procurement and non-procurement programs and activities.

§ 3017.810 When does a debarment take effect?

A debarment is not effective until the debarring official issues a decision. The debarring official does not issue a decision until the respondent has had an opportunity to contest the proposed debarment.

§ 3017.815 How may I contest a proposed debarment?

If you as a respondent wish to contest a proposed debarment, you or your