

(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

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representative must provide the debar-
ing official with information in oppo-
sition to the proposed debarment. You
may do this orally or in writing, but
any information provided orally that
you consider important must also be
submitted in writing for the official
record.

**§ 3017.820 How much time do I have to
contest a proposed debarment?**

(a) As a respondent you or your rep-
resentative must either send, or make
arrangements to appear and present,
the information and argument to the
debaring official within 30 days after
you receive the Notice of Proposed De-
barment.

(b) We consider the Notice of Pro-
posed Debarment to be received by
you—

(1) When delivered, if we mail the no-
tice to the last known street address,
or five days after we send it if the let-
ter is undeliverable;

(2) When sent, if we send the notice
by facsimile or five days after we send
it if the facsimile is undeliverable; or

(3) When delivered, if we send the no-
tice by e-mail or five days after we
send it if the e-mail is undeliverable.

**§ 3017.825 What information must I
provide to the debaring official if I
contest a proposed debarment?**

(a) In addition to any information
and argument in opposition, as a re-
spondent your submission to the debar-
ing official must identify—

(1) Specific facts that contradict the
statements contained in the Notice of
Proposed Debarment. Include any in-
formation about any of the factors list-
ed in § 3017.860. A general denial is in-
sufficient to raise a genuine dispute
over facts material to the debarment;

(2) All existing, proposed, or prior ex-
clusions under regulations imple-
menting E.O. 12549 and all similar ac-
tions taken by Federal, State, or local
agencies, including administrative
agreements that affect only those
agencies;

(3) All criminal and civil proceedings
not included in the Notice of Proposed
Debarment that grew out of facts rel-
evant to the cause(s) stated in the no-
tice; and

(4) All of your affiliates.

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(b) If you fail to disclose this infor-
mation, or provide false information,
the Department of Agriculture may
seek further criminal, civil or adminis-
trative action against you, as appro-
priate.

**§ 3017.830 Under what conditions do I
get an additional opportunity to
challenge the facts on which a pro-
posed debarment is based?**

(a) You as a respondent will not have
an additional opportunity to challenge
the facts if the debaring official deter-
mines that—

(1) Your debarment is based upon a
conviction or civil judgment;

(2) Your presentation in opposition
contains only general denials to infor-
mation contained in the Notice of Pro-
posed Debarment; or

(3) The issues raised in your presen-
tation in opposition to the proposed de-
barment are not factual in nature, or
are not material to the debaring offi-
cial's decision whether to debar.

(b) You will have an additional op-
portunity to challenge the facts if the
debaring official determines that—

(1) The conditions in paragraph (a) of
this section do not exist; and

(2) Your presentation in opposition
raises a genuine dispute over facts ma-
terial to the proposed debarment.

(c) If you have an opportunity to
challenge disputed material facts
under this section, the debaring offi-
cial or designee must conduct addi-
tional proceedings to resolve those
facts.

**§ 3017.835 Are debarment proceedings
formal?**

(a) Debarment proceedings are con-
ducted in a fair and informal manner.
The debaring official may use flexible
procedures to allow you as a respon-
dent to present matters in opposition. In
so doing, the debaring official is not
required to follow formal rules of evi-
dence or procedure in creating an offi-
cial record upon which the official will
base the decision whether to debar.

(b) You or your representative must
submit any documentary evidence you
want the debaring official to consider.

**§ 3017.840 How is fact-finding con-
ducted?**

(a) If fact-finding is conducted—