

Office of Chief Financial Officer, USDA

§ 3017.910

**§ 3017.875 May I ask the debarring official to reconsider a decision to debar me?**

Yes, as a debarred person you may ask the debarring official to reconsider the debarment decision or to reduce the time period or scope of the debarment. However, you must put your request in writing and support it with documentation.

**§ 3017.880 What factors may influence the debarring official during reconsideration?**

The debarring official may reduce or terminate your debarment based on—

- (a) Newly discovered material evidence;
- (b) A reversal of the conviction or civil judgment upon which your debarment was based;
- (c) A bona fide change in ownership or management;
- (d) Elimination of other causes for which the debarment was imposed; or
- (e) Other reasons the debarring official finds appropriate.

**§ 3017.885 May the debarring official extend a debarment?**

(a) Yes, the debarring official may extend a debarment for an additional period, if that official determines that an extension is necessary to protect the public interest.

(b) However, the debarring official may not extend a debarment solely on the basis of the facts and circumstances upon which the initial debarment action was based.

(c) If the debarring official decides that a debarment for an additional period is necessary, the debarring official must follow the applicable procedures in this subpart, and subpart F of this part, to extend the debarment.

**§ 3017.890 How may I appeal my debarment?**

(a) You may file an appeal only after you have exhausted the option provided for in § 3017.815 to contest the debarment. You must file your appeal within 30 days of receiving the decision required by § 3017.870 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 debarring 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 debarring 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 I—Definitions**

**§ 3017.900 Adequate evidence.**

*Adequate evidence* means information sufficient to support the reasonable belief that a particular act or omission has occurred.

**§ 3017.905 Affiliate.**

Persons are *affiliates* of each other if, directly or indirectly, either one controls or has the power to control the other or a third person controls or has the power to control both. The ways we use to determine control include, but are not limited to—

- (a) Interlocking management or ownership;
- (b) Identity of interests among family members;
- (c) Shared facilities and equipment;
- (d) Common use of employees; or
- (e) A business entity which has been organized following the exclusion of a person which has the same or similar management, ownership, or principal employees as the excluded person.

**§ 3017.910 Agency.**

*Agency* means any United States executive department, military department, defense agency, or any other

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agency of the executive branch. Other agencies of the Federal government are not considered “agencies” for the purposes of this part unless they issue regulations adopting the governmentwide Debarment and Suspension system under Executive orders 12549 and 12689.

#### § 3017.915 Agent or representative.

*Agent or representative* means any person who acts on behalf of, or who is authorized to commit, a participant in a covered transaction.

#### § 3017.920 Civil judgment.

*Civil judgment* means the disposition of a civil action by any court of competent jurisdiction, whether by verdict, decision, settlement, stipulation, other disposition which creates a civil liability for the complained of wrongful acts, or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801-3812).

#### § 3017.925 Conviction.

*Conviction* means—

- (a) A judgment or any other determination of guilt of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea, including a plea of *nolo contendere*; or
- (b) Any other resolution that is the functional equivalent of a judgment, including probation before judgment and deferred prosecution. A disposition without the participation of the court is the functional equivalent of a judgment only if it includes an admission of guilt.

#### § 3017.930 Debarment.

*Debarment* means an action taken by a debarring official under subpart H of this part to exclude a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1). A person so excluded is debarred.

#### § 3017.935 Debarring official.

(a) *Debarring official* means an agency official who is authorized to impose debarment. A debarring official is either—

- (1) The agency head; or
- (2) An official designated by the agency head.

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(b) The head of an organizational unit within the Department of Agriculture (*e.g.*, Administrator, Food and Nutrition Service), who has been delegated authority in part 2 of this title to carry out a covered transaction, is delegated authority to act as the debarring official in connection with such transaction. This authority to act as a debarring official may not be redelegated below the head of the organizational unit, except that, in the case of the Forest Service, the Chief may redelegate the authority to act as a debarring official to the Deputy Chief or an Associate Deputy Chief for the National Forest System.

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

#### § 3017.940 Disqualified.

*Disqualified* means that a person is prohibited from participating in specified Federal procurement or non-procurement transactions as required under a statute, Executive order (other than Executive Orders 12549 and 12689) or other authority. Examples of disqualifications include persons prohibited under—

- (a) The Davis-Bacon Act (40 U.S.C. 276(a));
- (b) The equal employment opportunity acts and Executive orders; or
- (c) The Clean Air Act (42 U.S.C. 7606), Clean Water Act (33 U.S.C. 1368) and Executive Order 11738 (3 CFR, 1973 Comp., p. 799).

#### § 3017.945 Excluded or exclusion.

*Excluded or exclusion* means—

- (a) That a person or commodity is prohibited from being a participant in covered transactions, whether the person has been suspended; debarred; proposed for debarment under 48 CFR part 9, subpart 9.4; voluntarily excluded; or
- (b) The act of excluding a person.

#### § 3017.950 Excluded Parties List System

*Excluded Parties List System (EPLS)* means the list maintained and disseminated by the General Services Administration (GSA) containing the names and other information about persons who are ineligible. The *EPLS* system includes the printed version entitled,