

(5) Other reasons the debarring official deems appropriate.

[54 FR 4731, Jan. 30, 1989, as amended at 54 FR 4952, Jan. 31, 1989]

§ 3017.325 Scope of debarment.

(a) *Scope in general.* (1) Debarment of a person under these regulations constitutes debarment of all its divisions and other organizational elements from all covered transactions, unless the debarment decision is limited by its terms to one or more specifically identified individuals, divisions or other organizational elements or to specific types of transactions.

(2) The debarment action may include any affiliate of the participant that is specifically named and given notice of the proposed debarment and an opportunity to respond (see §§ 3017.311 through 3017.314).

(b) *Imputing conduct.* For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) *Conduct imputed to participant.* The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(2) *Conduct imputed to individuals associated with participant.* The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) *Conduct of one participant imputed to other participants in a joint venture.* The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture, grant pursuant to a joint application, or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits

derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

Subpart D—Suspension

§ 3017.400 General.

(a) The suspending official may suspend a person from any of the causes in § 3017.405 using procedures established in §§ 3017.410 through 3017.413.

(b) Suspension is a serious action to be imposed only when:

(1) There exists adequate evidence of one or more of the causes set out in § 3017.405, and

(2) Immediate action is necessary to protect the public interest.

(c) In assessing the adequacy of the evidence, the agency should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as grants, cooperative agreements, loan authorizations, and contracts.

§ 3017.405 Causes for suspension.

(a) Suspension may be imposed in accordance with the provisions of §§ 3017.400 through 3017.413 upon adequate evidence:

(1) To suspect the commission of an offense listed in § 3017.305(a); or

(2) That a cause for debarment under § 3017.305 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

§ 3017.410 Procedures.

(a) *Investigation and referral.* Information concerning the existence of a cause for suspension from any source shall be promptly reported, investigated, and referred, when appropriate, to the suspending official for consideration. After consideration, the suspending official may issue a notice of suspension.

(1) The decision to utilize agency personnel, OIG or other appropriate resources to conduct the investigation

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and develop the documentation required by paragraph (a)(2) of this section is the responsibility of the agency possessing the information.

(2) Basic documentation shall be developed that includes but is not limited to:

(i) The name of the specific respondent(s) against whom the suspension is to be taken;

(ii) The reason(s) for proposing the suspension;

(iii) The specific cause(s) for suspension from § 3017.405;

(iv) A short narrative stating the facts and/or describing other evidence supporting the reason(s) for the suspension;

(v) The recommended time period for the suspension;

(vi) The potential effect and/or consequences that the suspension will have on the respondent(s);

(vii) Copies of any relevant support documentation identified under this section.

(3) The suspending official shall be responsible for deciding whether or not to proceed with the suspension.

(4) OGC is responsible for:

(i) Reviewing the documentation and notice for legal sufficiency, and

(ii) Providing any necessary coordination with DOJ.

(b) *Decisionmaking process.* USDA shall process suspension actions as informally as practicable, consistent with principles of fundamental fairness, using the procedures in § 3017.411 through § 3017.413.

[54 FR 4722 and 4731, Jan. 30, 1989, as amended at 54 FR 4732, Jan. 30, 1989]

§ 3017.411 Notice of suspension.

When a respondent is suspended, notice shall immediately be given:

(a) That suspension has been imposed;

(b) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;

(c) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

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(d) Of the cause(s) relied upon under § 3017.405 for imposing suspension;

(e) That the suspension is for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings;

(f) Of the provisions of § 3017.411 through § 3017.413 and any other USDA procedures, if applicable, governing suspension decisionmaking; and

(g) Of the effect of the suspension.

In USDA, the notice to the respondent shall be signed by the suspending official and transmitted by certified mail, return receipt requested. OGC will be consulted on all proposed suspension actions prior to the notice being sent to the respondent.

[54 FR 4722 and 4731, Jan. 30, 1989, as amended at 54 FR 4732, Jan. 30, 1989]

§ 3017.412 Opportunity to contest suspension.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(b) *Additional proceedings as to disputed material facts.* (1) If the suspending official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents, unless:

(i) The action is based on an indictment, conviction or civil judgment, or

(ii) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(A) In USDA, such determination shall be made by the suspending official, after coordination with OGC.

(B) In USDA, the suspending official shall continue the suspension only if he/she determines, after consultation with OGC, that there is enough evidence to proceed without using the