

- 970.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 970.740 Are suspension proceedings formal?
- 970.745 How is fact-finding conducted?
- 970.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 970.755 When will I know whether the suspension is continued or terminated?
- 970.760 How long may my suspension last?

Subpart H—Debarment

- 970.800 What are the causes for debarment?
- 970.805 What notice does the debarring official give me if I am proposed for debarment?
- 970.810 When does a debarment take effect?
- 970.815 How may I contest a proposed debarment?
- 970.820 How much time do I have to contest a proposed debarment?
- 970.825 What information must I provide to the debarring official if I contest a proposed debarment?
- 970.830 Under what conditions do I get an additional opportunity to challenge the facts on which a proposed debarment is based?
- 970.835 Are debarment proceedings formal?
- 970.840 How is fact-finding conducted?
- 970.845 What does the debarring official consider in deciding whether to debar me?
- 970.850 What is the standard of proof in a debarment action?
- 970.855 Who has the burden of proof in a debarment action?
- 970.860 What factors may influence the debarring official's decision?
- 970.865 How long may my debarment last?
- 970.870 When do I know if the debarring official debars me?
- 970.875 May I ask the debarring official to reconsider a decision to debar me?
- 970.880 What factors may influence the debarring official during reconsideration?
- 970.885 May the debarring official extend a debarment?

Subpart I—Definitions

- 970.900 Adequate evidence.
- 970.905 Affiliate.
- 970.910 Agency.
- 970.915 Agent or representative.
- 970.920 Civil judgment.
- 970.925 Conviction.
- 970.930 Debarment.
- 970.935 Debarring official.
- 970.940 Disqualified.
- 970.945 Excluded or exclusion.
- 970.950 Excluded Parties List System.
- 970.955 Indictment.
- 970.960 Ineligible or ineligibility.
- 970.965 Legal proceedings.
- 970.970 Nonprocurement transaction.
- 970.975 Notice.
- 970.980 Participant.
- 970.985 Person.
- 970.990 Preponderance of the evidence.
- 970.995 Principal.
- 970.1000 Respondent.
- 970.1005 State.

- 970.1010 Suspending official.
- 970.1015 Suspension.
- 970.1020 Voluntary exclusion or voluntarily excluded.

Subpart J—[Reserved]

Appendix to Part 970—Covered Transactions

Authority: Sec. 2455, Pub.L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p.189; E.O. 12689, 3 CFR, 1989 Comp., p.235.

- 2. Part 970 is further amended as set forth below.
- a. “[Agency noun]” is removed and “OPM” is added in its place wherever it occurs.
- b. “[Agency adjective]” is removed and “OPM” is added in its place wherever it occurs.
- c. “[Agency head or designee]” is removed and “Debarring Official” is added in its place wherever it occurs.
- 3. Section 970.440 is added to read as follows:

§ 970.440 What method do I use to communicate those requirements to participants?

To communicate the requirement, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

DEPARTMENT OF AGRICULTURE

7 CFR Parts 3017 and 3021

RIN 0505-AA11

SUMMARY: The United States Department of Agriculture (USDA) adopts the common rule on nonprocurement debarment and suspension and drug-free workplace on an interim final basis solely in order to request further comment on §§ 3017.765 and 3017.890.

DATES: Comments should be submitted on or before January 26, 2004 in order to be ensured of consideration. Comments received after this date may be considered to the extent practicable.

ADDRESSES: Comments should be sent to Tyson Whitney, OCFO–PAD Room 3448A, Mail Stop 9020, 1400 Independence Avenue, SW., Washington, DC 20250–9020, (202) 720–8978. Comments may also be submitted via electronic mail to twhitney@cfo.usda.gov. All comments, including names and addresses, will become a matter of public record.

FOR FURTHER INFORMATION CONTACT:

Tyson Whitney, OCFO–PAD Room 3448A, Mail Stop 9020, 1400 Independence Avenue, SW., Washington, DC 20250–9020, (202) 720–8978.

SUPPLEMENTARY INFORMATION:

Sections 3017.765 and 3017.890 supplement the procedures in the common rule for contesting the decision of the suspending or debarring official by allowing for a further appeal of the decision of the suspending or debarring official, made in response to a contested suspension or debarment, to an administrative law judge (“ALJ”) of the Department of Agriculture (“USDA”). While at present adopting those provisions as they were proposed on January 23, 2002, USDA seeks further comment on whether these provisions are necessary or add substantive value to the suspension and debarment process.

These provisions originally were included in the current USDA nonprocurement suspension and debarment regulation (7 CFR 3017.515) because it was thought that the courts would give more deference to the findings of an ALJ than to those of an executive branch agency's suspending or debarring official. That has not been the experience of USDA, and in fact the decisions of other executive agencies without appeal from decisions made by the suspending or debarring official under the contest provision in the common rule have withstood judicial scrutiny. Accordingly, since the common rule does not require appeal to an ALJ, USDA is considering removing sections 3017.765 and 3017.890 in the final rule in order to eliminate an unnecessary, time-consuming, and costly stage of litigation.

Section 3017.935(b) and 3017.1010(b) of the proposed rule would have authorized the Secretary of Agriculture to delegate the authority to be the debarring or suspending official, respectively, to the Administrators of USDA program agencies, who further would have been authorized to redelegate that authority except for the authority to make a final debarment or suspension decision. The proposed rule, if adopted as final, would have had the effect of repealing the authority in the current rule in 7 CFR 3017.105 authorizing the Chief of the Forest Service to redelegate the authority to make final debarment or suspension decisions to the Deputy Chief or an Associate Deputy Chief for the National Forest System. In the interim final rule, USDA is revising the text of sections 3017.935(b) and 3017.1010(b) to preserve the authority of the Chief of the Forest Service to redelegate his authority to the Deputy Chief or an Associate Deputy Chief. Since this is a rule of internal agency management, notice and comment for this change is