

ALABAMA DEPARTMENT OF ECONOMIC
AND COMMUNITY AFFAIRS
ADMINISTRATIVE CODE

CHAPTER 305-0-2
ADECA DEBARMENT AND SUSPENSION POLICY

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305-0-2-.01 Purpose.

This regulation sets forth an agency-wide debarment and suspension policy for ADECA.

(1) A person that is debarred or suspended shall be excluded from federal and state financial and nonfinancial assistance and benefits under ADECA programs and activities. Debarment or suspension of a participant in one program or division shall have agency-wide effect.

(2) This policy shall also set forth:

(a) The programs and activities covered by the agency-wide system.

(b) The agency-wide criteria and minimum due process procedures to be used.

(c) Provisions for a listing of debarred and suspended participants.

(d) The consequences of a debarment or suspension.

Author:

Statutory Authority: Code of Ala. 1975, §§41-22-1-27, 41-23-6.

History: New Rule: Filed: June 25, 1993, effective July 30, 1993.

305-0-2-.02 Definitions.

(1) Adequate evidence. Information sufficient to support the reasonable belief that a particular act or omission has occurred.

(2) 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. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person.

(3) Agency/ADECA. The Alabama Department of Economic and Community Affairs.

(4) Division. A subsection of ADECA as designated by the Director, or state law.

(5) Civil judgment. The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation, or otherwise creating a civil liability for the wrongful acts complained of; or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801-12).

(6) Conviction. A judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

(7) Covered transaction. Any activity funded in part or in whole with funds administered, granted, or disbursed by ADECA. This includes grants, projects, contracts for work paid for through ADECA funds, etc.

(8) Debarment. An action taken by a debarring official in accordance with these regulations to exclude a person from participating in covered transactions. A person so excluded is "debarred."

(9) Debarring official. An official authorized to impose debarment. The debarring official is either:

(a) The Director.

(b) An official designated by the Director.

(10) Ineligible. Excluded from participation in federal nonprocurement programs pursuant to a determination of ineligibility under statutory, executive order, or regulatory authority, other than Executive Order 12549 and its agency implementing regulations; for example, excluded pursuant to the Davis-Bacon Act and its implementing regulations, the equal employment opportunity acts and executive orders, or the environmental protection acts and executive orders. A person is ineligible for all programs when determined ineligible for any program.

(11) Legal proceedings. Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a state or local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

(12) Nonprocurement List. The portion of the List of Parties Excluded from Federal Procurement or Nonprocurement Programs compiled, maintained and distributed by the General Services Administration (GSA) containing the names and other information about persons who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(13) Notice. A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agency for services of process, or any partner, officer, director, owner, or joint venturer of the party. If the notice is returned to the agency unopened and/or undelivered after the notice has been sent to the party by certified mail, return receipt requested, or its equivalent, and the United States Postal Service has made the required number of attempts to notify the party to retrieve the certified mail, then the sender shall mail the notice to the party's same address by regular first class mail. If the notice that was sent by regular first class mail is subsequently returned to the agency as mail unopened and/or undeliverable by the United States Post Office, then the sender shall post the notice for a period of three consecutive days in a newspaper of general circulation in the geographic region wherein the party last served in his or her capacity during the time period when he or she received ADECA grant funds or participated in a program which received ADECA grant funds. The party will be considered to have received this notice on the final day of the notice's newspaper publication.

(14) Participant. Any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. This term also includes any person who acts on behalf of or is authorized to commit a participant in a covered transaction as an agency or representative of another participant.

(15) Person. Any individual, corporation, partnership, association, non profit organization, unit of government or legal entity, however organized.

(16) Preponderance of the evidence. Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it.

(17) Principal. Officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or a person who has a critical influence on or substantive control over a covered transaction, whether or not employed by the participant. Persons who have a critical influence on or substantive control over a covered transaction are principal investigators.

(18) Proposal. A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a covered transaction.

(19) Respondent. A person against whom a debarment or suspension action has been initiated.

(20) Suspending official. An official authorized to impose suspension. The suspending official is either:

(a) The Director.

(b) An official designated by the Director.

(21) Suspension. An action taken by a suspending official in accordance with these regulations that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal or debarment, or other proceedings as may ensue.

(22) Grantee. Any organization or individual that:

(a) Submits proposals for or is awarded, or may be expected to submit proposals for or be awarded an ADECA contract and/or Grant Agreement.

(b) Conducts business with ADECA as an agent or representative of a grantee.

(23) Director. The Director of ADECA. (Alabama Department of Economic and Community Affairs.)

(24) ADECA List. The ADECA Consolidated List of Debarred, Suspended or Ineligible Persons/Grantees as maintained by ADECA.

Author:

Statutory Authority: Code of Ala. 1975, §§41-22-1-27, 41-23-6.

History: New Rule: Filed June 25, 1993, effective July 30, 1993.
Amended: Filed January 8, 1998; effective February 12, 1998.

305-0-2-.03 Coverage.

These regulations apply to all persons who have participated, are currently participating, or may reasonably be expected to participate in transactions with and/or through ADECA programs, hereafter referred to as covered transactions.

(1) Grantees. Recipients of funding and/or services through ADECA by means of a contractual arrangement.

(2) Subrecipients. Any person having a contract with a grantee or recipient specific to an ADECA program.

(3) Donees. Any agency/organization, public or non-profit eligible I.A.W. State or Federal laws to participate in the State Surplus Property Program.

Author:

Statutory Authority: Code of Ala. 1975, §§41-22-1-27, 41-23-6.

History: New Rule: Filed: June 25, 1993, effective July 30, 1993.

305-0-2-.04 Policy.

(1) In order to protect the public interest, it is the policy of ADECA to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with these regulations, are appropriate means to implement this policy.

(2) Debarment and suspension are serious actions which shall be used only in the public interest and for ADECA's protection and not for purposes of punishment. ADECA may impose debarment or suspension for the causes and in accordance with the procedures set forth in these regulations.

(3) When more than one division or program has an interest in the proposed debarment or suspension of a person, consideration shall be given to designating one division as the lead for making the decision.

Author:

Statutory Authority: Code of Ala. 1975, §§41-22-1-27, 41-23-6.

History: New Rule: Filed: June 25, 1993, effective July 30, 1993.

305-0-2-.05 **Effect of Action - Debarment or Suspension.**

(1) Except to the extent prohibited by law persons who are debarred or suspended shall be excluded as either grantee/ recipients or subrecipients from any ADECA program throughout the period of their debarment or suspension.

(2) Exception provision. ADECA may grant an exception permitting a debarred or suspended person to participate in an ADECA program upon a written determination by the Director or an authorized designee stating the reasons for deviating from the policy.

(3) Continuation of Existing Activity. At the discretion of the debarring officer an on-going program or contractual arrangement may be carried out to completion notwithstanding the debarment or suspension.

(4) Grantees/recipients/donees shall not renew or extend covered transactions with any person who is debarred or suspended except as shown in (C) above.

Author:

Statutory Authority: Code of Ala. 1975, §541-22-1-27, 41-23-6.

History: New Rule: Filed: June 25, 1993, effective July 30, 1993.

305-0-2-.06 **Debarment.**

(1) The debarring official may debar a person for any of the causes listed as follows using the procedures established in these regulations. The existence of a cause for debarment, however, does not necessarily require that the person be debarred; the seriousness of the acts or omissions and any mitigating factors shall be considered.

(2) Debarment may be imposed for the following reasons or causes:

(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 antitrust 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, 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 the present responsibility of a person.

(b) Violation of the terms of a public agreement (grant agreement or contract for work funded through grant 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 the effective date of these regulations, or a procurement debarment by any federal agency.

2. Knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person, in connection with a covered transaction.

3. Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayment, 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; or

4. Violation of a material provision of any settlement of a debarment or suspension action.

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

(3) Procedures. ADECA shall process debarment actions as informally as practicable, consistent with the fundamental principles of fairness, using the procedures outlined as follows.

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

(5) Notice of proposed debarment. A debarment proceeding shall be initiated by notice to the respondent.

(6) Opportunity to contest proposed debarment.

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

(b) A request for a meeting should be sent to the Director.

(7) Debarring official's decision.

(a) No additional proceedings necessary. In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

1. Standard of proof. In any debarment action, the cause for debarment must be established by a preponderance of the evidence. Where the proposed debarment is based upon a conviction or civil judgment, the standards shall be deemed to have been met.

2. Burden of proof. The burden of proof is on the Division or program proposing debarment.

(b) Notice of debarring official's decision. If the debarring official decides to impose debarment, the respondent shall be given prompt notice.

(8) Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the causes(s). Generally, a debarment should not exceed three years. Where circumstances warrant, a longer

period of debarment may be imposed if a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(b) The debarring official may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the debarment procedures herein outlined shall be followed to extend the debarment.

(c) The respondent may request the debarring official to reverse the debarment decision or to reduce the period or scope of debarment. Such a request shall be in writing and supported by documentation. The debarring official may grant such a request for reasons including, but not limited to:

1. Newly discovered material evidence;
2. Reversal of the conviction or civil judgment upon which the debarment was based;
3. Bona fide change in ownership or management;
4. Elimination of other causes for which the debarment was imposed; or
5. Other reasons the debarring official deems appropriate. X

(9) 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.

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

1. Conduct imputed to par. 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 application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the 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.

Author:

Statutory Authority: Code of Ala. 1975, §§41-22-1-27, 41-23-6.

History: New Rule: Filed: June 25, 1993, effective July 30, 1993.

305-0-2-.07 Suspension.

(1) General.

(a) The suspending official may suspend a person for any of the causes listed as follows using procedures established in these regulations.

(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 these regulations and

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

(2) Causes of suspension.

(a) Suspension may be imposed in accordance with these regulations upon adequate evidence:

1. To suspect the commission of any offense listed as cause for debarment under (a) or
2. That a cause for debarment as listed in these regulations may exist.

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

(3) 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.

(b) Decisionmaking process. ADECA shall process suspension actions as informally as practicable, consistent with principles of fundamental fairness, using the procedures of these regulations.

(4) Notice of suspension. When a respondent is suspended, notice shall immediately be given.

(5) 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) A request for a meeting should be sent to the Director.

(6) Suspending official's decision.

(a) The suspending official may modify or terminate the suspension (for reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency.

(b) Notice of suspending official's decision. Prompt written notice of the suspending official's decision shall be sent to the respondent.

(7) Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of an investigation or ensuring legal debarment, unless terminated sooner by the suspending official or as provided in paragraph B. of this section.

(b) If legal or administrative proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated, unless a Division Chief requests an extension in writing, in which case it may be extended for an additional six months. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The suspending official shall notify the General Counsel of an impending termination of a suspension, at least 30 days before the 12 month period expires, to give that Division an opportunity to request an extension.

(8) Scope of suspension. The scope of a suspension is the same as the scope of a debarment except that the procedures as noted shall be used in imposing a suspension.

Author:

Statutory Authority: Code of Ala. 1975, §§41-22-1-27, 41-23-6.

History: New Rule: Filed: June 25, 1993, effective July 30, 1993.

305-0-2-.08 ADECA's Responsibilities.

In accordance with these guidelines, ADECA shall compile, maintain, and distribute a list of all persons who have been debarred, suspended, or voluntarily excluded by ADECA, and those who have been determined to be ineligible.

Author: Robert H. Pruitt, Paula L. Murphy

Statutory Authority: Code of Ala. 1975, §41-23-6.

History: New Rule: Filed: June 25, 1993; Effective July 30, 1993.

NOTE: When referencing the ADECA Debarment and Suspension Policy in publications, please reference it as follows: ADECA Debarment and Suspension Policy, Alabama Administrative Code, Alabama Department of Economic and Community Affairs, Rule 305-0-2-.01 through -.08 (1993).