



Debarment and Suspension

Office of Emergency and Remedial Response
Hazardous Site Control Division (OS-220W)

Quick Reference Fact Sheet

INTRODUCTION

THIS DOCUMENT APPLIES TO:

- Remedial Project Managers
- On-Scene Coordinators
- Regional Project Officers
- All Participants in Response Actions Where Contractors Are Involved

To protect the Government and the public interest, EPA excludes organizations or individuals that do not act responsibly from receiving Federal funds through assistance and contracting programs. This is called debarment and suspension, and is the subject of this document. Debarment and suspension apply to both procurement programs, such as contracting, and nonprocurement programs, such as assistance agreements and loans. The document provides the following:

- Definitions of debarment and suspension
- Authorities for pursuing debarment and suspension
- Causes for debarment and suspension
- Procedures for debarment and suspension
- Requirements of the Drug-Free Workplace Act of 1988.

Debarment and suspension are concerns for participants in the Superfund program, as well as in all Federal programs.

DEFINITIONS

IMPACT ON SUPERFUND:

Exclusion of any party from participation in Federal Assistance Agreements or Contracts

Federal agencies pursue debarment and suspension to exclude a party from participating in Federal assistance and contracting programs. When there is adequate evidence of a serious act or omission, suspension is pursued immediately, pending completion of investigation or legal proceedings. Suspension proceedings provide for due process, and may include a hearing. Generally, suspension is temporary and does not exceed 18 months.

Debarment is a longer exclusion from receiving Federal funds. The debarment process consists of a formal investigation, notification, hearing, written decision, and appeals process. Generally debarments do not exceed three years except for debarments under the Drug-Free Workplace Act, which do not exceed five years.

AUTHORITIES FOR DEBARMENT AND SUSPENSION

48 CFR Subpart 9.4
Covers TES,
REM, FIT,
ARCS, TAT,
CLP

40 CFR 32
Covers
Assistance,
Loan and
Benefit
Programs

40 CFR 35
Covers
Cooperative
Agreements
and Superfund
State
Contracts

Although the requirements and procedures for both procurement and nonprocurement programs are similar, they are handled in separate regulations. According to Executive Order 12549, Federal agencies must participate in a Government-wide system for nonprocurement debarment and suspension. EPA's regulations for nonprocurement debarment and suspension are found at:

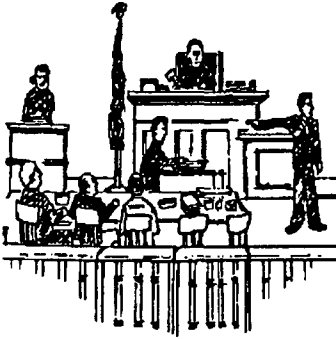
- 40 CFR Part 32, Debarment and Suspension Under EPA Assistance, Loan and Benefit Programs
- 40 CFR Part 35 Subpart O, Cooperative Agreements and Superfund State Contracts for Superfund Response Actions (Section 35.6560).

Requirements for procurement debarment and suspension are contained in the Federal Acquisition Regulation at 48 CFR Subpart 9.4.



CAUSES FOR DEBARMENT AND SUSPENSION

Many activities can lead to debarment and suspension proceedings. Causes of debarment and suspension include:



- Fraud in transactions or public contracts
- Antitrust violations
- Embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements and receiving stolen property, making false claims, or obstructing justice
- Poor quality work or willful violations of statutes and regulations, including violations of the Drug-Free Workplace Act
- Lack of business integrity that seriously and directly affects present responsibility (for example, EPA takes action for environmental-related offenses).



Report Fraud
(202) 260-8025

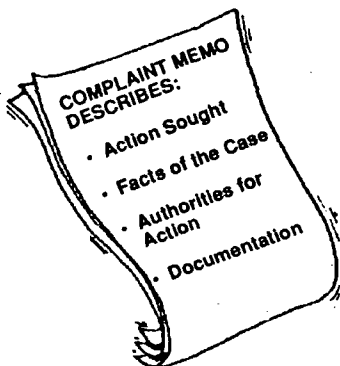
PROCEDURES FOR DEBARMENT AND SUSPENSION

If you suspect that suspension and/or debarment are warranted, contact EPA's Grants Administration Division, Compliance Branch, at (202)260-8025. Be assured that callers may remain anonymous if desired.

The debarment and suspension process involves several complicated steps. First, an investigation is coordinated by the Office of the Inspector General, Office of Criminal Enforcement, Office of Regional Counsel, and/or the Compliance Branch, to determine the facts of the case. If allegations are substantiated, EPA prepares a complaint memorandum outlining the action that is sought, describing the essential facts, citing pertinent authorities, and including necessary documentation. Then EPA issues a notice containing this complaint memorandum. The respondent has 30 days to request a hearing, or submit opposition in writing. Next, a hearing is conducted, or the respondent's written opposition is reviewed. Based on all the available evidence, the Debarring official then issues a written decision. At any time during the process, a settlement can be reached to protect the interest of the Federal government.

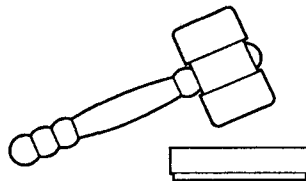


Conduct Investigation

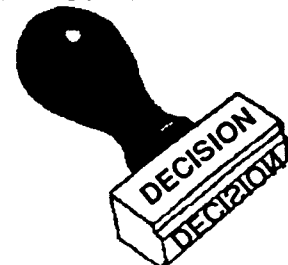


Issue Complaint Memo

When the decision is final, EPA must notify the General Services Administration (GSA) of debarred or suspended contractors. GSA compiles, maintains, and distributes a "List of Parties Excluded From Federal Procurement or Nonprocurement Programs" which EPA and the States must consult when entering assistance and contracting agreements using Federal money. In addition, there is a limited appeals process. According to 40 CFR Part 32, either party may request an administrative appeal within 30 days of the decision. The only appeal under the Federal Acquisition Regulation is to the U.S. District Court.



Conduct Hearing



CERTIFICATION

To participate in procurement and nonprocurement programs, recipients must certify that they:

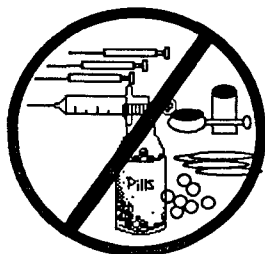


- Are not currently debarred or suspended, or proposed for debarment or suspension
- Have not been convicted of civil or criminal suits for fraud, white collar offenses, or antitrust statutes during the previous three years and are not currently indicted for these offenses
- Have not lost any Federal, State, or local assistance agreements or contracts for violations or default during the previous three years.

If these certifications cannot be met, the recipient must write a complete explanation for EPA.

MAJOR REQUIREMENTS OF DRUG-FREE WORKPLACE ACT OF 1988

The Drug-Free Workplace Act of 1988 became effective on March 18, 1989. This Act requires that to compete for Federal grants and contracts (equal to or exceeding \$25,000), recipients must certify in advance that they will provide a drug-free workplace. To comply with this Act, recipients of Federal funds must:



- Publish a statement prohibiting drug abuse in the workplace
- Establish a drug-free awareness program
- Report workplace drug convictions to EPA
- Impose sanctions for employees convicted of workplace drug violations.

If a contractor or grantee violates the drug-free workplace requirements, payments may be suspended, the contract or assistance agreement may be suspended or terminated, and/or debarment and suspension proceedings may be pursued.

ADDITIONAL INFORMATION

Specific contacts are available to provide assistance in four areas:



- General questions: Grants Administration Division, Compliance Branch (202) 260-8025
- Drug-Free Workplace: Grants Administration Division, Policy and Procedures Branch (202) 260-9294
- Direct Procurement Under 48 CFR Subpart 9.4: Procurement and Contracts Management Division (202) 260-5020
- GSA's "List of Parties Excluded from Federal Procurement and Nonprocurement Programs":

Procurement Analyst (202) 501-3566 (procurement)
Management Analyst (202) 501-4740 (nonprocurement).

For more information on debarment and suspension, consult 40 CFR Part 32, Debarment and Suspension Under EPA Assistance, Loan and Benefit Programs; 48 CFR Subpart 9.4, Federal Acquisition Regulations; and the Drug-Free Workplace Act of 1988, Public Law 100-690.