

§ 1471.635

participated in, had knowledge of, or reason to know of the improper conduct.

(c) *Conduct imputed from one organization to another organization.* We may impute the fraudulent, criminal, or other improper conduct of one organization to another organization when the improper conduct occurred in connection with a partnership, joint venture, joint application, association or similar arrangement, or when the organization to whom the improper conduct is imputed has the power to direct, manage, control or influence the activities of the organization responsible for the improper conduct. Acceptance of the benefits derived from the conduct is evidence of knowledge, approval or acquiescence.

§ 1471.635 May the Federal Mediation and Conciliation Service settle a debarment or suspension action?

Yes, we may settle a debarment or suspension action at any time if it is in the best interest of the Federal Government.

§ 1471.640 May a settlement include a voluntary exclusion?

Yes, if we enter into a settlement with you in which you agree to be excluded, it is called a voluntary exclusion and has governmentwide effect.

§ 1471.645 Do other Federal agencies know if the Federal Mediation and Conciliation Service agrees to a voluntary exclusion?

(a) Yes, we enter information regarding a voluntary exclusion into the *EPLS*.

(b) Also, any agency or person may contact us to find out the details of a voluntary exclusion.

Subpart G—Suspension

§ 1471.700 When may the suspending official issue a suspension?

Suspension is a serious action. Using the procedures of this subpart and subpart F of this part, the suspending official may impose suspension only when that official determines that—

(a) There exists an indictment for, or other adequate evidence to suspect, an offense listed under § 1471.800(a), or

29 CFR Ch. XII (7–1–10 Edition)

(b) There exists adequate evidence to suspect any other cause for debarment listed under § 1471.800(b) through (d); and

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

§ 1471.705 What does the suspending official consider in issuing a suspension?

(a) In determining the adequacy of the evidence to support the suspension, the suspending official considers 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. During this assessment, the suspending official may examine the basic documents, including grants, cooperative agreements, loan authorizations, contracts, and other relevant documents.

(b) An indictment, conviction, civil judgment, or other official findings by Federal, State, or local bodies that determine factual and/or legal matters, constitutes adequate evidence for purposes of suspension actions.

(c) In deciding whether immediate action is needed to protect the public interest, the suspending official has wide discretion. For example, the suspending official may infer the necessity for immediate action to protect the public interest either from the nature of the circumstances giving rise to a cause for suspension or from potential business relationships or involvement with a program of the Federal Government.

§ 1471.710 When does a suspension take effect?

A suspension is effective when the suspending official signs the decision to suspend.

§ 1471.715 What notice does the suspending official give me if I am suspended?

After deciding to suspend you, the suspending official promptly sends you a Notice of Suspension advising you—

(a) That you have been suspended;
(b) That your suspension is based on—

- (1) An indictment;
- (2) A conviction;

(3) Other adequate evidence that you have committed irregularities which seriously reflect on the propriety of further Federal Government dealings with you; or

(4) Conduct of another person that has been imputed to you, or your affiliation with a suspended or debarred person;

(c) Of any other irregularities in terms sufficient to put you on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) upon which we relied under §1471.700 for imposing suspension;

(e) That your suspension is for a temporary period pending the completion of an investigation or resulting legal or debarment proceedings;

(f) Of the applicable provisions of this subpart, Subpart F of this part, and any other FMCS procedures governing suspension decision making; and

(g) Of the governmentwide effect of your suspension from procurement and nonprocurement programs and activities.

§ 1471.720 How may I contest a suspension?

If you as a respondent wish to contest a suspension, you or your representative must provide the suspending official with information in opposition to the suspension. You may do this orally or in writing, but any information provided orally that you consider important must also be submitted in writing for the official record.

§ 1471.725 How much time do I have to contest a suspension?

(a) As a respondent you or your representative must either send, or make arrangements to appear and present, the information and argument to the suspending official within 30 days after you receive the Notice of Suspension.

(b) We consider the notice to be received by you—

(1) When delivered, if we mail the notice to the last known street address, or five days after we send it if the letter is undeliverable;

(2) When sent, if we send the notice by facsimile or five days after we send it if the facsimile is undeliverable; or

(3) When delivered, if we send the notice by e-mail or five days after we send it if the e-mail is undeliverable.

§ 1471.730 What information must I provide to the suspending official if I contest a suspension?

(a) In addition to any information and argument in opposition, as a respondent your submission to the suspending official must identify—

(1) Specific facts that contradict the statements contained in the Notice of Suspension. A general denial is insufficient to raise a genuine dispute over facts material to the suspension;

(2) All existing, proposed, or prior exclusions under regulations implementing E.O. 12549 and all similar actions taken by Federal, state, or local agencies, including administrative agreements that affect only those agencies;

(3) All criminal and civil proceedings not included in the Notice of Suspension that grew out of facts relevant to the cause(s) stated in the notice; and

(4) All of your affiliates.

(b) If you fail to disclose this information, or provide false information, the Federal Mediation and Conciliation Service may seek further criminal, civil or administrative action against you, as appropriate.

§ 1471.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?

(a) You as a respondent will not have an additional opportunity to challenge the facts if the suspending official determines that—

(1) Your suspension is based upon an indictment, conviction, civil judgment, or other finding by a Federal, State, or local body for which an opportunity to contest the facts was provided;

(2) Your presentation in opposition contains only general denials to information contained in the Notice of Suspension;

(3) The issues raised in your presentation in opposition to the suspension are not factual in nature, or are not material to the suspending official's initial decision to suspend, or the official's decision whether to continue the suspension; or