NONPROCUREMENT DEBARMENT AND SUSPENSION

Procedural Requirements

The following procedural requirements are customarily issued at the time a judge is assigned to preside over the appeal of a debarment imposed pursuant to the Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (7 C.F.R. Part 3017):

1. *Meaning of Words.* As used below, words in the singular form shall be deemed to impart the plural, and vice versa, as the case may require.

2. *Definitions.* The terms defined in the regulations under which the suspension or debarment proceeding arose shall apply with equal force and effect. In addition and except as may be provided otherwise in this subpart:

   a) "Debarring or suspending official" means the official authorized to impose debarment or suspension.

   b) "Hearing Clerk" means the Office of the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250.

   c) "Judge" means any Administrative Law Judge appointed pursuant to 5 U.S.C. § 3105 and assigned to the proceeding in question to act as the "appeals officer".

   d) "Respondent" means a person against whom a debarment or suspension has been initiated.

3. *Docket Number.* The docket number set forth as part of the caption has been assigned by the Hearing Clerk, and the proceeding shall hereafter be referred to by this number.

4. *Response to Appeal Petition and Transmittal of Record.* Within 10 days from the date this notice is mailed by the Hearing Clerk, as shown by the date on the cover letter, the suspending or debarring official may file a response in opposition to the appeal which may raise any relevant issue, and the suspending or debarring official will transmit to the Hearing Clerk the record of the agency proceeding.

5. *Reply to Response.* Within 10 days from the date the Response is mailed to or served on Respondent, Respondent may file a reply to the Response with the Hearing Clerk.

6. *Appearances.* The parties may appear in person or by attorney of record in this proceeding. Any person who appears as attorney must conform to the standards of ethical conduct required of practitioners before the courts of the United States.

7. *Debarment of Attorney.* Whenever the Judge finds that a person acting as attorney for any party to this proceeding is guilty of unethical or contumacious conduct, in or in connection with the proceeding, the Judge may order that such person be precluded from further acting as attorney in the proceeding: *Provided*, That the Judge shall suspend this proceeding for a reasonable time for the purpose of enabling the party to obtain another attorney.

8. *Official Notice.* Official notice shall be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific or commercial fact of established character.

9. *Judge's Decision.* Within 90 days after the filing of the appeal petition, the Judge, on the basis of the record and any matter of which official notice is taken, will rule on the appeal. The decision of the Judge will contain findings of fact and conclusions of law. A final order issued by the Judge will by filed with the Hearing Clerk. Such order may be regarded as final for purposes of judicial review.

10. *Filing; Service; Extensions of Time; and Computation of Time.*

    a) *Filing; Number of Copies.* Four copies of all documents or papers required or authorized by these requirements shall be filed with the Hearing Clerk.

    b) *Service.* Copies of all rulings, decisions and orders by the Judge shall be served by the Hearing Clerk. Copies of all other documents or papers filed with the Hearing Clerk shall be served upon the other party by the party filing the documents or papers. Service shall be made either 1) by delivering a copy of the document or paper to the individual to be served, or to the president, secretary or other executive officer or any director of the corporation or association to be served, or to the attorney of record representing such individual, partnership, corporation, organization or association; or 2) by leaving a copy of the document or paper at the principal office or place of business or residence of such individual, partnership, corporation, organization or association, or of the attorney or agency of record; or 3) by placing in the regular (first class) mail a copy of the document or paper, addressed to such individual, partnership, corporation, organization or association, or to the attorney or agent of record, as the last known residence or principal office or place of business of such person. Proof of service hereunder shall be made by the certificate of the person who actually made the service. The certificate shall be filed with the Hearing Clerk, and made part of the record of the proceeding.

c) *Extensions of Time.* The Judge may extend the time for filing any document or paper required or authorized by these requirements: *Provided*, That the Judge shall not 1) extend the period specified in 7 C.F.R. Part 3017 for filing the appeal petition; or 2) grant any extension which is likely to delay a ruling on the appeal beyond the 90 days after the filing of the petition, unless both parties expressly waive the entry of a decision within such time.

d) *Effective Date of Filing.* Any document or paper required or authorized under these rules shall be deemed to be filed at the time it is received by the Hearing Clerk.

e) *Computation of Time.* Saturdays, Sundays and Federal holidays shall be included in computing the time allowed for the filing of any document or paper: *Provided*, That when such time expires on a Saturday, Sunday or Federal Holiday, such period shall be extended to include the next following business day.

11. *Motions and Requests.*

a) *General.* All motions and requests shall be filed with the Hearing Clerk, and served by the movant upon all parties.

b) *Contents.* All written motions and requests shall state with particularity the order, ruling or action desired and the grounds upon which they are based.

c) *Response to Motions and Requests.* Within 10 days after the mailing or service of any written motion or request, or within such shorter or longer period as may be fixed by the Judge, an opposing party may file a response to the motion or request. The other party shall have no right to reply to the response; however, the Judge may order that a reply be filed.

12. *Judges.*

a) *Recusal.* In the event the Judge assigned to serve in any proceeding (1) has any pecuniary interest in any matter or business involved in the proceeding, (2) is related within the third degree by blood or marriage to any party to the proceeding, (3) has any conflict of interest which might impair the Judge's objectivity in the proceeding, or (4) has any reason deemed by the Judge to be disqualifying, the Judge shall recuse himself or herself.

b) *Motion for Recusal.* Any party to this proceeding may, by motion made to the Judge, request that the Judge withdraw from the proceeding because of an alleged disqualifying reason. Such motion shall set forth with particularity the grounds of alleged disqualification. The Judge may then either rule upon the

motion or, in the alternative, certify the motion to the Secretary of Agriculture.

c) *Powers.* The Judge shall:

(1) Rule on motions and requests;
(2) Do all acts and take all measures necessary for the maintenance of order, including the exclusion of contumacious counsel or other persons;
(3) Rule on the appeal; and
(4) Take all other actions authorized under these rules.

d) *Who may act in the absence of the Judge.* In the case of absence of the Judge or the Judge's inability to act, the powers of and duties to be performed by the Judge under these requirements in connection with this proceeding may, without abatement of the proceeding unless otherwise directed by the Chief Judge, be assigned to any other Judge.

13. *Ex Parte Communications.*

a) At no stage of this proceeding before the issuance of a ruling on the appeal shall the Judge discuss ex parte the merits of the proceeding with any person who is connected with the proceeding as advocate or investigator, or with any representative of such a person: *Provided*, That procedural matters shall not be included within this limitation; and *Provided further*, That the Judge may discuss the merits of the case with such a person if all parties to this proceeding, or their attorneys have been given notice and an opportunity to participate. A memorandum of any such discussion shall be included in the record.

b) No interested person shall make or knowingly cause to be made to the Judge an ex parte communication relevant to the merits of the proceeding.

c) If the Judge receives an ex parte communication in violation of this section, the one who receives the communication shall place in the public record of the proceeding:

(1) All such written communications;
(2) Memoranda stating the substance of all such oral communications, and
(3) All written responses, and memoranda stating the substance of all oral responses thereto.

d) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section, the Judge may, to the extent

consistent with the interests of justice and the policy of the governmentwide suspension and debarment program, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded or otherwise adversely affected on account of such violation.

e) To the extent consistent with the interests of justice and the policy of the governmentwide suspension and debarment program, a violation of this section shall be sufficient grounds for a decision adverse to the party who knowingly commits a violation of this section or who knowingly causes such a violation to occur.

f) For purposes of this section, "ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or the proceeding.