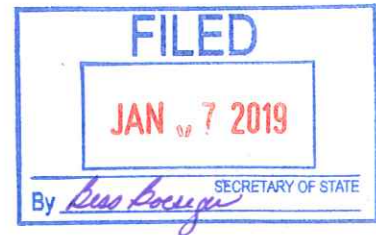


Notice of Rulemaking Hearing



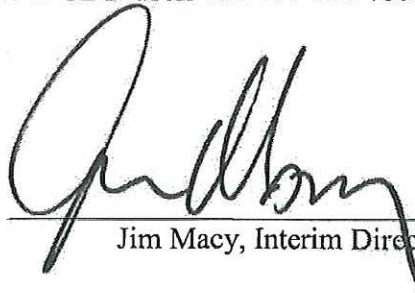
NOTICE is hereby given that the Nebraska Energy Office will hold a rule-making hearing pursuant to Neb Rev. Stat. §84-1411 on the 27th day of February, 2019, to be held at 1:00 PM) Central Time at the Nebraska Energy Office Conference Room at 521 South 14th Street, Lincoln Nebraska Suite 300. **Please note that this hearing has been rescheduled from the original date of January 15, 2019. There will be no hearing on that date.**

The purpose of the hearing to take testimony and evidence about repeal of Title 105, Chapters 1-6 Renewable Energy Tax Credit, and Title 109, Chapter 1 Debarment Procedures for Participants in School Energy Efficiency Loan & Grants Programs. This notice is made pursuant to Neb. Rev. Stat. §§84-907 and 84-1414 and the agency's action is consistent with the authority granted by law. The subject matter and scope of the rule-making action is: the rules are no longer necessary due to the repeal of the authorizing statute.

The agenda and a draft copy of the proposed regulations scheduled for hearing are available at the NEBRASKA ENERGY OFFICE's Lincoln office, 521 South 14th Street, Lincoln Nebraska Suite 300, and on the NEBRASKA ENERGY OFFICE website at <http://www.NEO.ne.gov>. The agenda and a draft copy of the proposed regulations scheduled for hearing are also available at the Office of the Secretary of State, Regulations Division, 1201 N St., Suite 120, Lincoln, NE, 68508. A statement of the fiscal impact of the proposed repeal, which is no expected fiscal impact from repealing these regulations, is also available at these locations.

All interested persons may attend and testify orally or by written submission at the public hearing. Any person may provide advance notice of intent to testify by contacting Ed Holbrook, at NEBRASKA ENERGY OFFICE, P.O. Box 95085, 521 South 14th Street, Suite 300, Lincoln, NE 68509-5085, (402) 471-3356 email ed.holbrook@nebraska.gov. Unscheduled testimony will be heard following scheduled testimony. Interested persons may also submit written comments to Ed Holbrook prior to the hearing, which will be entered into the hearing record if received at the Lincoln office by 5:00 P.M. CT, February 27, 2019.

Please notify the Nebraska Energy Office at least one week in advance of the hearing if auxiliary aids or reasonable accommodations or alternate formats of materials are needed. Contact phone number is 402-471-2867. TDD users call 800-833-7352 and ask the relay operator to call us at 402-471-2867.



Jim Macy, Interim Director

DRAFT/FINAL FISCAL IMPACT STATEMENT

Agency: Nebraska Energy Office	
Title:109	Prepared by: Ed Holbrook. FAAIII
Chapter:1-5	Date prepared: 8/16/18
Subject: Construction of State Funded Buildings	Telephone:402-471-3356

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	(X)	(X)	(X)
Increased Costs	()	()	()
Decreased Costs	()	()	()
Increased Revenue	()	()	()
Decreased Revenue	()	()	()
Indeterminable	()	()	()

Provide an Estimated Cost & a Description of Impact:

State Agency: N/A

Political N/A
Subdivision:

Regulated N/A
Public:

If indeterminable, explain why:

TITLE 109 - NEBRASKA ENERGY OFFICE

CHAPTER 1 - RULES AND REGULATIONS FOR DEBARMENT OF PARTICIPANTS IN THE ENERGY EFFICIENCY SCHOOL LOAN AND GRANT PROGRAMS

01 - DEFINITIONS

01.01 - Adequate Evidence means information sufficient to support the reasonable belief that a particular act or omission has occurred.

01.02 - Affiliates. Persons are affiliates if, directly or indirectly, either one controls or can control the other or a third controls or can control both.

01.03 - Agency means the Nebraska Energy Office.

01.04 - Day means calendar day.

01.05 - Debarment means the action taken by the Agency to exclude a Participant from the School Programs for a specified period of time.

01.06 - Initiating Official means an employee designated by the Director of the Energy Office to make a first assessment of facts that may constitute a cause for debarment.

01.07 - Notice means notification in writing sent by registered or certified mail, return receipt requested, to the last known address of the addressee.

01.08 - Participant means a person or an officer or employee of a person who directly or indirectly participates, may participate, or has participated in Energy Office school programs through an agreement of that person with a recipient or contractor of any tier.

01.09 - Party is a participant or affiliate who has been provided notice of proposed debarment.

001.10 - Person means an individual, corporation, partnership, unincorporated association or other public or private entity.

001.11 - Recipient means any Nebraska public school district to whom the Agency extends a grant or loan under the school programs.

FILED

DEC 10 1988
Allen J. Keenan
Secretary
By *[Signature]*

APPROVED:
Date 12-11-88

[Signature]
Governor

APPROVED
ROBERT M. SPIRE
ATTORNEY GENERAL

DEC 10 1988
BY *[Signature]*
Assistant Attorney General

TITLE 100
Chapter 1

01 DEFINITIONS (Continued)

~~001.12 School Programs means the grant and loan programs authorized by Sections 01-1632 through 01-1634 of Nebraska statute, administered by the Energy Office. The regulations for the grant program are in Title 106 of the Nebraska Administrative Rules and Regulations; the regulations for the loan program are in Title 100 of the Nebraska Administrative Rules and Regulations.~~

APPROVED
ROBERT M. SPIRE
ATTORNEY GENERAL
DEC 10 1986
BY *Robert M. Spire*
Assistant Attorney General

APPROVED:
Date 12-17-86
Bob Kerrey
Governor

FILED
DEC 18 1986
Allen J. Keerman
SECRETARY OF STATE
By *Allen J. Keerman*

TITLE 109
Chapter 1

02—PURPOSE

~~02.01 Purpose of Debarment Rule: The purpose of this rule establishing grounds and procedures for debarment of participants of school programs is to safeguard the public interest and to protect the financial integrity of the programs administered by the Energy Office under Sections 01-1632 through 01-1634 of the Nebraska Statutes. It is essential to the mission of the Energy Office that Severance Tax Funds are used properly by the public school districts who are recipients of loans and grants and by program participants so when school districts contract to accomplish energy efficiency improvements with these funds. Debarment is not a form of punishment. It shall be imposed only for the causes stated and only for the minimum duration necessary to protect the state's interest.~~

FILED

DEC 18 1988
Allen J. Keerman
SECRETARY OF STATE
By *Sharon Hoffmann*

APPROVED:
Date 12-11-88
Bob Kerrey
Governor

APPROVED
ROBERT M. SPIRE
ATTORNEY GENERAL 3.
JUL 1 1989
Robert M. Spire
Assistant Attorney General

TITLE 109
Chapter 1

~~003~~ CAUSE FOR DEBARMENT

~~003.01~~ Any participant or affiliate may be debarred upon adequate evidence for any of the following causes:

~~003.01A~~ Commission of fraud or conviction of any criminal offense as an incident to obtaining, seeking to obtain, or performing a contract funded in whole or part by Agency financial assistance under the School Programs.

~~003.01B~~ Commission or omission of an act of a nature so serious that it indicates a lack of business integrity. Such commissions or omissions include but are not limited to:

~~003.01B1~~ The violation of any applicable law, regulation or contractual duty relating to the performance or obligations incurred pursuant to an agreement with a Recipient of Agency financial assistance under the School Programs.

~~003.01B2~~ Making or causing to be made any false statement or using deceit for the purpose of influencing in any way any action by the Recipient School District or the Agency.

~~003.01B3~~ Violation of any agreement with the Agency for voluntary exclusion from participation in a school loan program.

~~003.01B4~~ An outstanding indictment for or a plea of nolo contendere to a criminal offense indicating a lack of business integrity or business honesty that seriously and directly affects the question of present responsibility.

~~003.01B5~~ A substantial and serious failure to perform or a record of unsatisfactory performance in accordance with the terms of one or more agreements with a Recipient of Agency financial assistance occurring within a period of five years preceding the determination to debar, and

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DEC 10 1986
Allen J. Keerman
Secretary of State
By *[Signature]*

APPROVED:
Date 12-17-86
[Signature]
Governor

APPROVED
ROBERT M. SPIRE
ATTORNEY GENERAL
DEC 10 1986
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Assistant Attorney General

TITLE 109
Chapter 1

003 ——— CAUSE FOR DEBARMENT (Continued)

~~003-0186 — Disqualification from participation in direct or
indirect contracting by any Nebraska state agency.~~

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APPROVED
ROBERT M. SPIRE
ATTORNEY GENERAL

DEC 10 1986

BY *Robert M. Spire*
Assistant Attorney General

APPROVED:
Date 12/10/86

Bob Kerrey
GOVERNOR

DEC 11 8 1986

Allen J. Beerman
SECRETARY OF STATE

6.

TITLE 109
Chapter 1

03 — TERMS OF DEBARMENT

~~03.01 — Debarment of Affiliates. Debarment may include any Affiliate of a Participant. A determination to include an Affiliate shall be made on a case-by-case basis. Among the factors to be considered are the Affiliate's knowledge of and participation in the conduct which is the basis for the debarment.~~

~~004.01A — Notice and Procedures. An Affiliate shall be afforded the same rights to notice and hearing as the Participant.~~

~~03.02 — Decision to Debar. Among the factors to be considered in determining the seriousness of an offense or the failure or inadequacy of performance is whether the person knew he or she was in violation of the applicable statutes, regulations, or contract provisions.~~

~~03.03 — Time limitations on Decisions to Debar. The notice of a proposed debarment shall be given within one year of:~~

~~004.03A — a criminal conviction; or~~

~~004.03B — completion of an investigation which is a basis for the debarment action; or~~

~~04.03 — C — discovery of the cause on which the debarment action is based, whichever comes last.~~

~~04.04 — Period of Debarment. The following periods of debarment may be imposed at the discretion of the Initiating Official:~~

~~004.04A — Up to two years for a first debarment action;~~

~~004.04B — Up to six years for a second debarment action for the same cause; or~~

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DEC 18 1986

William J. Gorman
Secretary of State

APPROVED:
Date 12/12/86

Bob Kerrey
Governor

APPROVED
ROBERT M. SPIRE
ATTORNEY GENERAL

DEC 10 1986

Robert M. Spire
Assistant Attorney General

TITLE 109
Chapter 1

004—TERMS OF DEBARMENT (Continued)

~~04.04 C—When the debarment is based on debarment by another Nebraska state agency, a period not to exceed the remainder of the original debarment period.~~

~~04.05—Voluntary Exclusion.—When in the best interests of the state, and provided that allegations of fraud or criminal activity are not involved, an Initiating Official instead of taking administrative action, may enter into an agreement with a Participant or an Affiliate providing for voluntary exclusion from the school programs for a specified period of time. Agreements for voluntary exclusion are entered into for the benefit of both parties and do not constitute administrative suspension or debarment measures. However, violation of an agreement for voluntary exclusion may result in administrative action to debar.~~

~~004.05A Separate Listing.—The name of the person entering into an agreement under this subsection shall be included on the School-Programs Exclusion List under a separate heading entitled "Voluntary Exclusions."~~

APPROVED
ROBERT M. SPIRE
ATTORNEY GENERAL

DEC 10 1986
BY *Ardis A. Hill*
Assistant Attorney General

FILED

APPROVED:
Date 11-27-86

Gov. *Bob Kerrey*

DEC 18 1986

By *Allen G. Keerman*
Secretary of Education

TITLE 100
Chapter 1

05 — PROCEDURES FOR DEBARMENT

~~05.01 — Initiation of Debarment. — Anyone may contact the Chief of the Finance Division or other Initiating Official of the Agency concerning the existence of a cause under Section 003. An Initiating Official shall review the matter and may also refer it to the Nebraska Attorney General. If after his or her review, the Initiating Official reasonably believes that a cause exists under Section 003, he or she may proceed according to the following procedures.~~

~~05.02 — Notice of Proposed Debarment. — When a debarment is proposed, the Initiating Official shall give notice to the Participant stating:~~

~~05.02 A — the specific acts or omissions which form the basis of the action;~~

~~005.02B — that the party may, on request, obtain a hearing;~~

~~005.02C — that the party may be represented by counsel; and~~

~~005.02D — the period of proposed debarment, and that the debarment is effective when the final determination is issued, if no hearing is requested and the time to request a hearing has expired, or when the debarment order is issued by the hearing officer.~~

~~05.03 — Amendment of Notice. — The matters of fact and law alleged in a notice may be amended by the Initiating Official at any stage of the proceedings.~~

05.04 — Hearing

~~005.04A — Request for a Hearing. — A request for a hearing shall be filed with the Initiating Official within twenty-one days of receipt of the notice of proposed debarment. If no request is timely filed, the opportunity to be heard is waived and the Initiating Official shall make a final determination and provide notice to the participant.~~

FILED

DEC 18 1986

Allen J. Keenan
Secretary of State
BY *Allen J. Keenan*

APPROVED:
Date *12-17-86*

Bob Kerrey
Governor

APPROVED
ROBERT M. SPIRE
ATTORNEY GENERAL 8.

DEC 10 1986

BY *Robert M. Spire*
Assistant Attorney General

TITLE 109
Chapter 1

~~005—PROCEDURES FOR DEBARMENT—(Continued)~~

~~005.04B Hearing Before Hearing Officer. On timely request for a hearing, the Director of Agency shall appoint a Hearing Officer to conduct debarment hearings.~~

~~005.04B1—Where the proposed action is not based solely upon a conviction and evidence in support thereof, the person shall be afforded at his option an oral hearing before a hearing officer, or the opportunity to submit documentary evidence and written briefs for consideration by a hearing officer, or both.~~

~~005.04B2—Where the proposed action is based solely upon a conviction and evidence in support thereof, the person shall be limited to the opportunity to submit documentary evidence and written briefs for consideration by a hearing officer.~~

~~005.04C Oral Hearing. The hearing officer shall:~~

~~005.04C1—Arrange as prompt a hearing as is practicable within sixty days of the request for the hearing.~~

~~005.04C2—Determine the location of the hearing place considering the convenience of the parties and the public interest.~~

~~005.04C3—Provide at least ten days notice of the time and place of the hearing to all parties, to include a statement indicating the nature of the proceedings and their purpose.~~

~~005.04C4—Permit, at his or her discretion, any member of the public having an interest in the matter being heard to participate in the hearing at his or her own expense. Such participation shall be limited to the following:~~

~~005.04C4a—Receiving advance notice of hearings;~~

TITLE 109
Chapter 1

005—PROCEDURES FOR DEBARMENT (Continued)

~~005-04C4b—Filing written briefs on the issues presented;~~

~~and 005-04C4c—Testifying when requested by the hearing officer;~~

~~005-04C5—Require Agency witnesses, if any, to be called first and to be questioned by the person against whom debarment is proposed. The person against whom debarment is proposed may be questioned by any party; and~~

~~005-04C6—Make a record of the proceeding and make a transcription of the record available to a party at the expense of the requesting party.~~

~~005-04D—Determination. The hearing officer may debar if the Agency has established the existence of a cause by a preponderance of the evidence and the debarment is consistent with these regulations.~~

~~05-04 E—Distribution. Within sixty days of the hearing, the hearing officer shall provide notice of his or her determination to all parties.~~

~~05-05—Review by Director. A person debarred may, within fifteen days after receipt of the notice of the determination, file a request for review by the Director of the Agency. If the Director, in his or her discretion, denies the request for review, the determination of the hearing officer or Initiating Officer shall be final. Where a review is granted, the determination by the Director shall be final. The Director's determination shall be made within sixty days of the date the Director receives the request for review. The Director's determination shall recite the grounds upon which it is made. Notice of the decision shall be sent to all parties.~~

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FILED

DEC 18 1986
Allen J. Beermann
SECRETARY OF STATE
By *James Hoffmann* for

APPROVED:
Date *12-17-86*
Bob Terry
Governor

APPROVED
ROBERT M. SPIRE
ATTORNEY GENERAL 10.

DEC 18 1986
Robert M. Spire
Assistant Attorney General