

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## ENVIRONMENTAL PROTECTION AGENCY

### 2 CFR Part 1532

### 40 CFR Parts 26, 30, 32, 35, 36, 46 and 80

### 48 CFR Part 1509

[FRL-8270-5]

RIN 2030-AA94

### Environmental Protection Agency Implementation of OMB Guidance on Nonprocurement Debarment and Suspension

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is publishing a new regulation on nonprocurement debarment and suspension in Title 2 of the Code of Federal Regulations (CFR) as the final step of a four step process in streamlining the government-wide nonprocurement suspension and debarment rules. The purpose of this government-wide initiative is to make the rule on nonprocurement suspension and debarment easier to find and use by the regulated community. The first step in this process was the update to the nonprocurement suspension and debarment common rule published in the **Federal Register** on November 26, 2003. The second step was the establishment of Title 2 in the Code of Federal Regulations on May 11, 2004. The third step was the publication of the Office of Management and Budget's (OMB) guidance on nonprocurement suspension and debarment as adoptable guidance of the new 2 CFR on August 31, 2005. This rule adopts OMB guidance on nonprocurement debarment and suspension. The EPA is also removing a regulation containing

the existing EPA implementation of the government-wide common rule on nonprocurement debarment and suspension. This regulatory action makes no substantive change in EPA policy or procedures for nonprocurement debarment and suspension.

**DATES:** The effective date for this final rule is February 20, 2007.

**FOR FURTHER INFORMATION CONTACT:** Suzanne Hersh, Office of Grants and Debarment (3901R), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by phone (202) 564-5374 or by e-mail ([hersh.suzanne@epa.gov](mailto:hersh.suzanne@epa.gov)).

#### SUPPLEMENTARY INFORMATION:

#### Background

On May 11, 2004, OMB established Title 2 of the CFR with two subtitles (69 FR 26275). Subtitle A, "Government-wide Grants and Agreements," contains OMB policy guidance to Federal agencies on grants and agreements. Subtitle B, "Federal Agency Regulations for Grants and Agreements," contains Federal agencies' regulations implementing the OMB guidance, as it applies to grants and other financial assistance agreements and nonprocurement transactions.

On August 31, 2005, the OMB published interim final guidance for government-wide nonprocurement debarment and suspension in the **Federal Register** (70 FR 51863). The guidance is located in title 2 of the CFR as new subtitle A, chapter 1, Part 180. The interim final guidance updated previous OMB guidance that was issued pursuant to Executive Order 12549, "Debarment and Suspension" (February 18, 1986), which gave government-wide effect to each agency's nonprocurement debarment and suspension actions. Section 6 of the Executive Order authorized OMB to issue guidance to Executive agencies on nonprocurement debarment and suspension, including provisions prescribing government-wide criteria and minimum due process. Section 3 directed Executive agencies to issue regulations implementing the Executive Order that are consistent with the OMB guidelines. On November 15, 2006, OMB published a final rule adopting the interim final guidance with changes (71 FR 66431).

In accordance with OMB's guidance, the EPA issues this final rule to adopt

and implement Title 2 CFR, Part 180 with the same additions and clarifications that EPA made to the common rule on nonprocurement debarment and suspension in November 2003 (68 FR 66533).

#### Executive Order 12866

The OMB has determined this rule nonsignificant.

#### Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This regulatory action will not have a significant adverse impact on a substantial number of small entities.

#### Unfunded Mandates Act of 1995 (Sec. 202, Pub. L. 104-4)

This regulatory action does not contain a Federal mandate that will result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector of \$100 million or more in any one year.

#### Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

#### Federalism (Executive Order 13132)

This regulatory action does not have Federalism implications, as set forth in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

#### Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)

Executive Order 13175, entitled "Consultation and Coordination With Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175.

#### Executive Order 13211 (Energy Effects)

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect

Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

#### **Congressional Review Act (5 U.S.C. 801, *et seq.*)**

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This rule will be effective 30 days from the date of publication in the **Federal Register**.

#### **List of Subjects**

##### *2 CFR Part 1532*

Administrative practice and procedure, Air pollution control, Debarment and suspension, Environmental protection, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements, Technical assistance, Water pollution control.

##### *40 CFR Part 26*

Human research subjects, Report and recordkeeping requirements.

##### *40 CFR Part 30*

Accounting, Colleges and universities, Grant programs, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

##### *40 CFR Part 32*

Administrative practice and procedure, Air pollution control, Debarment and suspension, Environmental protection, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements, Technical assistance, Water pollution control.

##### *40 CFR Part 35*

Air pollution control, Coastal zone, Grant programs—environmental protection, Grant programs—Indians, Hazardous waste, Indians, Intergovernmental relations, Pesticides and pests, Reporting and recordkeeping requirements, Technical assistance,

Waste treatment and disposal, Water pollution control, Water Supply.

##### *40 CFR Part 36*

Administrative practice and procedure, Drug abuse, Grant programs, Loan programs, Reporting and recordkeeping requirements.

##### *40 CFR Part 46*

Environmental protection, Grant programs—education, Grant programs—environmental protection, Reporting and recordkeeping requirements, scholarships and fellowships.

##### *40 CFR Part 80*

Fuel additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

##### *48 CFR Part 1509*

Government procurement, Reporting and recordkeeping requirements.

Dated: January 8, 2007.

#### **Howard Corcoran,**

*Director, Office of Grants and Debarment, U.S. Environmental Protection Agency.*

■ For the reasons stated in the preamble, the Environmental Protection Agency amends title 2, subtitle B; title 40, chapter I; and title 48, chapter XV, of the Code of Federal Regulations as follows:

#### **Title 2—Grants and Agreements**

■ 1. Add Chapter 15, consisting of Part 1532 to Subtitle B to read as follows:

#### **Chapter 15—Environmental Protection Agency**

#### **PART 1532—NONPROCUREMENT DEBARMENT AND SUSPENSION**

##### Sec.

1532.10 What does this part do?

1532.20 Does this part apply to me?

1532.30 What policies and procedures must I follow?

##### **Subpart A—General**

1532.137 Who in the EPA may grant an exception to let an excluded person participate in a covered transaction?

##### **Subpart B—Covered Transactions**

1532.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

##### **Subpart C—Responsibilities of Participants Regarding Transactions**

1532.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

##### **Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions**

1532.437 What method do I use to communicate to a participant the

requirements described in the OMB guidance at 2 CFR 180.435?

#### **Subparts E through F—[Reserved]**

#### **Subpart G—Suspension**

1532.765 How may I appeal my EPA suspension?

#### **Subpart H—Debarment**

1532.890 How may I appeal my EPA debarment?

#### **Subpart I—Definitions**

1532.995 Principal (EPA supplement to government-wide definition at 2 CFR 180.995).

#### **Subpart J—Statutory Disqualification and Reinstatement Under the Clean Air Act and Clean Water Act**

1532.1100 What does this subpart do?

1532.1105 Does this subpart apply to me?

1532.1110 How will a CAA or CWA conviction affect my eligibility to participate in Federal contracts, subcontracts, assistance, loans and other benefits?

1532.1115 Can the EPA extend a CAA or CWA disqualification to other facilities?

1532.1120 What is the purpose of CAA or CWA disqualification?

1532.1125 How do award officials and others know if I am disqualified?

1532.1130 How does disqualification under the CAA or CWA differ from a Federal discretionary suspension or debarment action?

1532.1135 Does CAA or CWA disqualification mean that I must remain ineligible?

1532.1140 Can an exception be made to allow me to receive an award even though I may be disqualified?

1532.1200 How will I know if I am disqualified under the CAA or CWA?

1532.1205 What procedures must I follow to have my procurement and nonprocurement eligibility reinstated under the CAA or CWA?

1532.1210 Will anyone else provide information to the EPA debarring official concerning my reinstatement request?

1532.1215 What happens if I disagree with the information provided by others to the EPA debarring official on my reinstatement request?

1532.1220 What will the EPA debarring official consider in making a decision on my reinstatement request?

1532.1225 When will the EPA debarring official make a decision on my reinstatement request?

1532.1230 How will the EPA debarring official notify me of the reinstatement decision?

1532.1300 Can I resolve my eligibility status under terms of an administrative agreement without having to submit a formal reinstatement request?

1532.1305 What are the consequences if I mislead the EPA in seeking

1532.1600 What definitions apply specifically to actions under this subpart?

**Authority:** 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 7401 *et seq.*; Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 11738 (3 CFR, 1973 Comp., p. 799); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

#### § 1532.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the Environmental Protection Agency (EPA) policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for the EPA to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” (3 CFR 1986 Comp., p. 189), Executive Order 12689, “Debarment and Suspension” (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Pub. L. 103–355, 108 Stat. 3327).

#### § 1532.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in Subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a “covered transaction” (see subpart B of 2 CFR part 180 and the definition of “nonprocurement transaction” at 2 CFR 180.970;

(b) Respondent in an EPA suspension or debarment action;

(c) EPA debarment or suspension official; or

(d) EPA grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

#### § 1532.30 What policies and procedures must I follow?

The EPA policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (i.e., 2 CFR 180.220) as supplemented by section 220 in this part (i.e., § 1532.220). For any section of OMB guidance in subparts A through I of 2 CFR 180 that has no corresponding section in this part, EPA policies and procedures are those in the OMB guidance.

### Subpart A—General

§ 1532.137 Who in the EPA may grant an exception to let an excluded person participate in a covered transaction?

The EPA Debarment Official has the authority to grant an exception to let an excluded person participate in a covered transaction, as provided in the OMB guidance at 2 CFR 180.135. If the EPA Debarment Official grants an exception, the exception must be in writing and state the reason(s) for deviating from the governmentwide policy in Executive Order 12549.

### Subpart B—Covered Transactions

§ 1532.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

In addition to the contracts covered under 2 CFR 180.220(b) of the OMB guidance, this part applies to any contract, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the contract is to be funded or provided by the EPA under a covered nonprocurement transaction and the amount of the contract is expected to equal or exceed \$25,000. This extends the coverage of the EPA nonprocurement suspension and debarment requirements to all lower tiers of subcontracts under covered nonprocurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c) (see optional lower tier coverage in the figure in the appendix to 2 CFR part 180).

### Subpart C—Responsibilities of Participants Regarding Transactions

§ 1532.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You as a participant must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this subpart.

### Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

§ 1532.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the

participant’s compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

### Subpart E through F—[Reserved]

### Subpart G—Suspension

§ 1532.765 How may I appeal my EPA suspension?

(a) If the EPA suspending official issues a decision under 2 CFR 180.755 to continue your suspension after you present information in opposition to that suspension under 2 CFR 180.720, you can ask for review of the suspending official’s decision in two ways:

(1) You may ask the suspending official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; and/or

(2) You may request the Director, Office of Grants and Debarment (OGD Director), to review the suspending official’s decision to continue your suspension within 30 days of your receipt of the suspending official’s decision under 2 CFR 180.755 or paragraph (a)(1) of this section.

However, the OGD Director can reverse the suspending official’s decision only where the OGD Director finds that the decision is based on a clear error of material fact or law, or where the OGD Director finds that the suspending official’s decision was arbitrary, capricious, or an abuse of discretion.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in error; and include the reasons or legal bases for your position.

(c) A review under paragraph (a)(2) of this section is solely within the discretion of the OGD Director who may also stay the suspension pending review of the suspending official’s decision.

(d) The EPA suspending official and the OGD Director must notify you of their decisions under this section, in writing, using the notice procedures at 2 CFR 180.615 and 180.975.

### Subpart H—Debarment

§ 1532.890 How may I appeal my EPA debarment?

(a) If the EPA debarment official issues a decision under 2 CFR 180.870 to debar you after you present information in opposition to a proposed debarment under 2 CFR 180.815, you can ask for review of the debarment official’s decision in two ways:

## Subpart H—Debarment

### § 1532.890 How may I appeal my EPA debarment?

(a) If the EPA debarment official issues a decision under 2 CFR 180.870 to debar you after you present information in opposition to a proposed debarment under 2 CFR 180.815, you can ask for review of the debarment official's decision in two ways:

(1) You may ask the debarment official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; and/or

(2) You may request the Director, Office of Grants and Debarment (OGD Director), to review the debarment official's decision to debar you within 30 days of your receipt of the debarment official's decision under 2 CFR 180.870 or paragraph (a)(1) of this section. However, the OGD Director can reverse the debarment official's decision only where the OGD Director finds that the decision is based on a clear error of material fact or law, or where the OGD Director finds that the debarment official's decision was arbitrary, capricious, or an abuse of discretion.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in error; and include the reasons or legal bases for your position.

(c) A review under paragraph (a)(2) of this section is solely within the discretion of the OGD Director who may also stay the debarment pending review of the debarment official's decision.

(d) The EPA debarment official and the OGD Director must notify you of their decisions under this section, in writing, using the notice procedures at 2 CFR 180.615 and 180.975.

## Subpart I—Definitions

### § 1532.995 Principal (EPA supplement to government-wide definition at 2 CFR 180.995).

In addition to those listed in 2 CFR 180.995, other examples of individuals who are principals in EPA covered transactions include:

- (a) Principal investigators;
- (b) Technical or management consultants;
- (c) Individuals performing chemical or scientific analysis or oversight;
- (d) Professional service providers such as doctors, lawyers, accountants, engineers, etc.;
- (e) Individuals responsible for the inspection, sale, removal, transportation, storage or disposal of solid or hazardous waste or materials;
- (f) Individuals whose duties require special licenses;

- (g) Individuals that certify, authenticate or authorize billings; and
- (h) Individuals that serve in positions of public trust.

## Subpart J—Statutory Disqualification and Reinstatement Under the Clean Air Act and Clean Water Act

### § 1532.1100 What does this subpart do?

This subpart explains how the EPA administers section 306 of the Clean Air Act (CAA) (42 U.S.C. 7606) and section 508 of the Clean Water Act (CWA) (33 U.S.C. 1368), which disqualify persons convicted for certain offenses under those statutes (see § 1532.1105), from eligibility to receive certain contracts, subcontracts, assistance, loans and other benefits (see coverage under the Federal Acquisition Regulation (FAR), 48 CFR part 9, subpart 9.4 and subparts A through I of 2 CFR part 180). It also explains: the procedures for seeking reinstatement of a person's eligibility under the CAA or CWA; the criteria and standards that apply to EPA's decision-making process; and requirements of award officials and others involved in Federal procurement and nonprocurement activities in carrying out their responsibilities under the CAA and CWA.

### § 1532.1105 Does this subpart apply to me?

(a) Portions of this subpart apply to you if you are convicted, or likely to be convicted, of any offense under section 7413(c) of the CAA or section 1319(c) of the CWA.

(b) Portions of this subpart apply to you if you are the EPA debarment official, a Federal procurement or nonprocurement award official, a participant in a Federal procurement or nonprocurement program that is precluded from entering into a covered transaction with a person disqualified under the CAA or CWA, or if you are a Federal department or agency anticipating issuing an exception to a person otherwise disqualified under the CAA or CWA.

### § 1532.1110 How will a CAA or CWA conviction affect my eligibility to participate in Federal contracts, subcontracts, assistance, loans and other benefits?

If you are convicted of any offense described in § 1532.1105, you are automatically disqualified from eligibility to receive any contract, subcontract, assistance, sub-assistance, loan or other nonprocurement benefit or transaction that is prohibited by a Federal department or agency under the Governmentwide debarment and suspension system (i.e. covered transactions under subpart A through I

of 2 CFR part 180, or prohibited awards under 48 CFR part 9, subpart 9.4), if you:

- (a) Will perform any part of the transaction or award at the facility giving rise to your conviction (called the violating facility); and
- (b) You own, lease or supervise the violating facility.

### § 1532.1115 Can the EPA extend a CAA or CWA disqualification to other facilities?

The CAA specifically authorizes the EPA to extend a CAA disqualification to other facilities that are owned or operated by the convicted person. The EPA also has authority under subparts A through I of 2 CFR part 180, or under 48 CFR part 9, subpart 9.4, to take discretionary suspension and debarment actions on the basis of misconduct leading to a CAA or CWA conviction, or for activities that the EPA debarment official believes were designed to improperly circumvent a CAA or CWA disqualification.

### § 1532.1120 What is the purpose of CAA or CWA disqualification?

As provided for in Executive Order 11738 (3 CFR, 1973 Comp., p. 799), the purpose of CAA and CWA disqualification is to enforce the Federal Government's policy of undertaking Federal procurement and nonprocurement activities in a manner that improves and enhances environmental quality by promoting effective enforcement of the CAA or CWA.

### § 1532.1125 How do award officials and others know if I am disqualified?

If you are convicted under these statutes, the EPA enters your name and address and that of the violating facility into the Excluded Parties List System (EPLS) as soon as possible after the EPA learns of your conviction. In addition, the EPA enters other information describing the nature of your disqualification. Federal award officials and others who administer Federal programs consult the EPLS before entering into or approving procurement and nonprocurement transactions. Anyone may access the EPLS through the internet, currently at <http://www.epls.gov>.

### § 1532.1130 How does disqualification under the CAA or CWA differ from a Federal discretionary suspension or debarment action?

(a) CAA and CWA disqualifications are exclusions mandated by statute. In contrast, suspensions and debarments imposed under subparts A through I of 2 CFR part 180 or under 48 CFR part 9, subpart 9.4, are exclusions imposed at

the discretion of Federal suspending or debarring officials. This means that if you are convicted of violating the CAA or CWA provisions described under § 1532.1105, ordinarily your name and that of the violating facility is placed into the EPLS before you receive a confirmation notice of the listing, or have the opportunity to discuss the disqualification with, or seek reinstatement from, the EPA.

(b) CAA or CWA disqualification applies to both the person convicted of the offense, and to the violating facility during performance of an award or covered transaction under the Federal procurement and nonprocurement suspension and debarment system. It is the EPA's policy to carry out CAA and CWA disqualifications in a manner which integrates the disqualifications into the Governmentwide suspension and debarment system. Whenever the EPA determines that the risk presented to Federal procurement and nonprocurement activities on the basis of the misconduct which gives rise to a person's CAA or CWA conviction exceeds the coverage afforded by mandatory disqualification, the EPA may use its discretionary authority to suspend or debar a person under subparts A through I of 2 CFR part 180, or under 48 CFR part 9, subpart 9.4.

**§ 1532.1135 Does CAA or CWA disqualification mean that I must remain ineligible?**

You must remain ineligible until the EPA debarring official certifies that the condition giving rise to your conviction has been corrected. If you desire to have your disqualification terminated, you must submit a written request for reinstatement to the EPA debarring official and support your request with persuasive documentation. For information about the process for reinstatement see §§ 1532.1205 and 1532.1300.

**§ 1532.1140 Can an exception be made to allow me to receive an award even though I may be disqualified?**

(a) After consulting with the EPA debarring official, the head of any Federal department or agency (or designee) may exempt any particular award or a class of awards with that department or agency from CAA or CWA disqualification. In the event an exemption is granted, the exemption must:

(1) Be in writing; and  
(2) State why the exemption is in the paramount interests of the United States.

(b) In the event an exemption is granted, the exempting department or

agency must send a copy of the exemption decision to the EPA debarring official for inclusion in the official record.

**§ 1532.1200 How will I know if I am disqualified under the CAA or CWA?**

There may be several ways that you learn about your disqualification. You are legally on notice by the statutes that a criminal conviction the CAA or CWA automatically disqualifies you. As a practical matter, you may learn about your disqualification from your defense counsel, a Federal contract or award official, or from someone else who sees your name in the EPLS. As a courtesy, the EPA will attempt to notify you and the owner, lessor or supervisor of the violating facility that your names have been entered into the EPLS. The EPA will inform you of the procedures for seeking reinstatement and give you the name of a person you can contact to discuss your reinstatement request.

**§ 1532.1205 What procedures must I follow to have my procurement and nonprocurement eligibility reinstated under the CAA or CWA?**

(a) You must submit a written request for reinstatement to the EPA debarring official stating what you believe the conditions were that led to your conviction, and how those conditions have been corrected, relieved or addressed. Your request must include documentation sufficient to support all material assertions you make. The debarring official must determine that all the technical and non-technical causes, conditions and consequences of your actions have been sufficiently addressed so that the Government can confidently conduct future business activities with you, and that your future operations will be conducted in compliance with the CAA and CWA.

(b) You may begin the reinstatement process by having informal discussions with the EPA representative named in your notification of listing. Having informal dialogue with that person will make you aware of the EPA concerns that must be addressed. The EPA representative is not required to negotiate conditions for your reinstatement. However, beginning the reinstatement process with informal dialogue increases the chance of achieving a favorable outcome, and avoids unnecessary delay that may result from an incomplete or inadequate reinstatement request. It may also allow you to resolve your disqualification by reaching an agreement with the EPA debarring official under informal procedures. Using your informal option first does not prevent you from

submitting a formal reinstatement request with the debarring official at any time.

**§ 1532.1210 Will anyone else provide information to the EPA debarring official concerning my reinstatement request?**

If you request reinstatement under § 1532.1205, the EPA debarring official may obtain review and comment on your request by anyone who may have information about, or an official interest in, the matter. For example, the debarring official may consult with the EPA Regional offices, the Department of Justice or other Federal agencies, or state, tribal or local governments. The EPA debarring official will make sure that you have an opportunity to address important allegations or information contained in the administrative record before making a final decision on your request for reinstatement.

**§ 1532.1215 What happens if I disagree with the information provided by others to the EPA debarring official on my reinstatement request?**

(a) If your reinstatement request is based on factual information (as opposed to a legal matter or discretionary conclusion) that is different from the information provided by others or otherwise contained in the administrative record, the debarring official will decide whether those facts are genuinely in dispute, and material to making a decision. If so, a fact-finding proceeding will be conducted in accordance with 2 CFR 180.830 through 180.840, and the debarring official will consider the findings when making a decision on your reinstatement request.

(b) If the basis for your disagreement with the information contained in the administrative record relates to a legal issue or discretionary conclusion, or is not a genuine dispute over a material fact, you will not have a fact-finding proceeding. However, the debarring official will allow you ample opportunity to support your position for the record and present matters in opposition to your continued disqualification. A summary of any information you provide orally, if not already recorded, should also be submitted to the debarring official in writing to assure that it is preserved for the debarring official's consideration and the administrative record.

**§ 1532.1220 What will the EPA debarring official consider in making a decision on my reinstatement request?**

(a) The EPA debarring official will consider all information and arguments contained in the administrative record in support of, or in opposition to, your

request for reinstatement, including any findings of material fact.

(b) The debarring official will also consider any mitigating or aggravating factors that may relate to your conviction or the circumstances surrounding it, including any of those factors that appear in 2 CFR 180.860 that may apply to your situation.

(c) Finally, if disqualification applies to a business entity, the debarring official will consider any corporate or business attitude, policies, practices and procedures that contributed to the events leading to conviction, or that may have been implemented since the date of the misconduct or conviction. You can obtain any current policy directives issued by the EPA that apply to CAA or CWA disqualification or reinstatement by contacting the Office of the EPA Debarring Official, U.S. EPA, Office of Grants and Debarment (3901R), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

**§ 1532.1225 When will the EPA debarring official make a decision on my reinstatement request?**

(a) The EPA debarring official will make a decision regarding your reinstatement request under § 1532.1205(a), when the administrative record is complete, and he or she can determine whether the condition giving rise to the CAA or CWA conviction has been corrected—usually within 45 days of closing the administrative record.

(b) A reinstatement request is not officially before the debarring official while you are having informal discussions under § 1532.1205(b).

**§ 1532.1230 How will the EPA debarring official notify me of the reinstatement decision?**

The EPA debarring official will notify you of the reinstatement decision in writing, using the same methods for communicating debarment or suspension action notices under 2 CFR 180.615.

**§ 1532.1300 Can I resolve my eligibility status under terms of an administrative agreement without having to submit a formal reinstatement request?**

(a) The EPA debarring official may, at any time, resolve your CAA or CWA eligibility status under the terms of an administrative agreement. Ordinarily, the debarring official will not make an offer to you for reinstatement until after the administrative record for decision is complete, or contains enough information to enable him or her to make an informed decision in the matter.

(b) Any resolution of your eligibility status under the CAA or CWA resulting

from an administrative agreement must include a certification that the condition giving rise to the conviction has been corrected.

(c) The EPA debarring official may enter into an administrative agreement to resolve CAA or CWA disqualification issues as part of a comprehensive criminal plea, civil or administrative agreement when it is in the best interest of the United States to do so.

**§ 1532.1305 What are the consequences if I mislead the EPA in seeking reinstatement or fail to comply with my administrative agreement?**

(a) Any certification of correction issued by the EPA debarring official whether the certification results from a reinstatement decision under §§ 1532.1205(a) and 1532.1230, or from an administrative agreement under §§ 1532.1205(b) and 1532.1300, is conditioned upon the accuracy of the information, representations or assurances made during development of the administrative record.

(b) If the EPA debarring official finds that he or she has certified correction of the condition giving rise to a CAA or CWA conviction or violation on the basis of a false, misleading, incomplete or inaccurate information; or if a person fails to comply with material condition of an administrative agreement, the EPA debarring official may take suspension or debarment action against the person(s) responsible for the misinformation or noncompliance with the agreement as appropriate. If anyone provides false, inaccurate, incomplete or misleading information to EPA in an attempt to obtain reinstatement, the EPA debarring official will refer the matter to the EPA Office of Inspector General for potential criminal or civil action.

**§ 1532.1400 How may I appeal a decision denying my request for reinstatement?**

(a) If the EPA debarring official denies your request for reinstatement under the CAA or CWA, you can ask for review of the debarring official's decision in two ways:

(1) You may ask the debarring official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; and/or

(2) You may request the Director, Office of Grants and Debarment (OGD Director), to review the debarring official's denial within 30 days of your receipt of the debarring official's decision under § 1532.1230 or paragraph (a)(1) of this section. However, the OGD Director can reverse the debarring official's decision denying reinstatement only where the OGD

Director finds that there is a clear error of material fact or law, or where the OGD Director finds that the debarring official's decision was arbitrary, capricious, or an abuse of discretion.

(b) A request for review under this section must be in writing and state the specific findings you believe to be in error and include the reasons or legal bases for your position.

(c) A review under this section is solely within the discretion of the OGD Director.

(d) The OGD Director must notify you of his or her decision under this section, in writing, using the notice procedures at 2 CFR 180.615 and 180.975.

**§ 1532.1500 If I am reinstated, when will my name be removed from the EPLS?**

If your eligibility for procurement and nonprocurement participation is restored under the CAA or CWA, whether by decision, appeal, or by administrative agreement, the EPA will remove your name and that of the violating facility from the EPLS, generally within 5 working days of your reinstatement.

**§ 1532.1600 What definitions apply specifically to actions under this subpart?**

In addition to definitions under subpart A through I of 2 CFR part 180 that apply to this part as a whole, the following two definitions apply specifically to CAA and CWA disqualifications under this subpart:

(a) Person means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, or any interstate body.

(b) Violating facility means any building, plant, installation, structure, mine, vessel, floating craft, location or site of operations that gives rise to a CAA or CWA conviction, and is a location at which or from which a Federal contract, subcontract, loan, assistance award or other covered transactions may be performed. If a site of operations giving rise to a CAA or CWA conviction contains or includes more than one building, plant, installation, structure, mine, vessel, floating craft, or other operational element, the entire location or site of operation is regarded as the violating facility unless otherwise limited by the EPA.

**Title 40 Environment—Chapter I—Environmental Protection Agency**

**PART 26—[AMENDED]**

■ 1. The authority citation for part 26 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 163w(a)(1); 21 U.S.C. 346a(e)(1)(C); section 201 of Pub. L. 109–54; and 42 U.S.C. 300v–1(b).

#### § 26.1506 [Amended]

■ 2. Section 26.1506 is amended by revising the citation “40 CFR Part 32” to read “2 CFR part 1532.”

#### PART 30—[AMENDED]

■ 3. The authority citation for part 30 continues to read as follows:

**Authority:** 7 U.S.C. 135 *et seq.*; 15 U.S.C. 2601 *et seq.*; 33 U.S.C. *et seq.*; 42 U.S.C. 241, 242b, 243, 246, 300f, 300j–1, 300j–2, 300j–3, 1857 *et seq.*, 6901 *et seq.*, 7401 *et seq.*, 9601 *et seq.*; OMB Circular A–110 (64 FR 54926, October 8, 1999).

#### § 30.13 [Amended]

■ 4. Section 30.13 is amended by revising twice the citation “40 CFR Part 32” to read “2 CFR part 1532.”

#### Appendix to Part 30—[Amended]

■ 5. Appendix to part 30 is amended by removing paragraph 8.

#### PART 32—[REMOVED]

■ 6. Under authority Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 11738 (3 CFR, 1973 Comp., p. 799); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235) part 32 is removed.

#### PART 35—[AMENDED]

■ 7. The authority citation for part 35 continues to read as follows:

**Authority:** 42 U.S.C. 9601 *et seq.*

#### § 35.6055 [Amended]

■ 8. Section 35.6055 is amended by removing paragraphs (a)(3) and (a)(4) and redesignating paragraphs (a)(5) and (a)(6) as (a)(3) and (a)(4) respectively.

#### § 35.6105 [Amended]

■ 9. Section 35.6105 is amended by removing paragraphs (a)(3) and (a)(4) and redesignating paragraphs (a)(5) and (a)(6) as (a)(3) and (a)(4) respectively.

#### PART 36—[AMENDED]

■ 10. The authority citation for part 36 continues to read as follows:

**Authority:** 41 U.S.C. 701 *et seq.*

#### § 36.510 [Amended]

■ 11. Section 36.510(c) is amended by revising the citation “40 CFR Part 32” to read “2 CFR part 1532.”

#### PART 46—[AMENDED]

■ 12. The authority citation for part 46 continues to read as follows:

**Authority:** Section 103(b)(5) of the Clean Air Act, as amended (42 U.S.C. 7403(b)(5)); sections 104(b)(5) and (g)(3)(B) of the Clean Water Act, as amended (33 U.S.C. 1254(b)(5) and (g)(3)(B)); section 1442 of the Safe Drinking Water Act, as amended (42 U.S.C. 300j–1); section 8001 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6981); section 10 of the Toxic Substances Control Act, as amended (15 U.S.C. 2609); section 20 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136r); sections 104(k)(6) and 311 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9604(k)(6) and 42 U.S.C. 9660).

■ 13. Section 46.130 is amended by revising the second sentence to read as follows:

#### § 46.130 Debarment and suspension.

\* \* \* Names of individuals who are excluded or disqualified are located in the Excluded Parties List System maintained by the General Services Administration and currently located at <http://www.epls.gov>.

#### § 46.215 [Amended]

■ 14. Section 46.215(c) is amended by revising the citation “40 CFR Part 32” to read “2 CFR part 1532.”

#### PART 80—[AMENDED]

■ 15. The authority citation for part 80 continues to read as follows:

**Authority:** 42 U.S.C. 7414, 7545, 7542, and 7610(a).

#### § 80.65 [Amended]

■ 16. Section 80.65(f)(2)(iv) is amended by revising the citation “40 CFR Part 32” to read “2 CFR part 1532.”

■ 17. Section 80.65(f)(2)(v) is amended by revising the citation “40 CFR Part 32” to read “2 CFR part 1532.”

#### § 80.125 [Amended]

■ 18. Section 80.125(e) is amended by revising the citation “40 CFR Part 32” to read “2 CFR part 1532.”

#### Title 48 Federal Acquisition Regulations System—Chapter XV—Environmental Protection Agency

#### PART 1509—[AMENDED]

■ 19. The authority citation for part 1509 continues to read as follows:

**Authority:** Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

#### 1509.403 [Amended]

■ 20. Section 1509.403 is amended by revising the citation “40 CFR Part 32” to read “2 CFR part 1532.”

[FR Doc. E7–641 Filed 1–18–07; 8:45 am]

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 358

[Docket No. RM07–6–000; Order No. 690]

#### Standards of Conduct for Transmission Providers

Issued January 9, 2007.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Interim rule.

**SUMMARY:** This interim rule responds to the decision of the United States Court of Appeals for the District of Columbia vacating and remanding the standards of conduct rule, Order No. 2004, as it relates to interstate natural gas pipelines, in *National Fuel Gas Supply Corporation v. FERC*, 468 F.3d 831 (D.C. Cir. 2006). The court objected to the Federal Energy Regulatory Commission’s (Commission’s) expansion of the prior standards of conduct to include energy affiliates, and vacated the entire rule as it relates to natural gas pipelines. The interim rule repromulgates the standards of conduct that were not challenged before the court on an interim basis while the Commission considers how to respond to the court’s decision on a permanent basis.

**EFFECTIVE DATE:** This rule is effective January 9, 2007.

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#### SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Suedeem G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff.

#### I. Introduction

1. The Federal Energy Regulatory Commission (Commission) is promulgating interim standards of