

# Rules and Regulations

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## DEPARTMENT OF STATE

### 2 CFR Part 601

#### 22 CFR Parts 133, 137, and 145

[Public Notice 5710]

RIN 1400-AB83

#### Department of State's Implementation of OMB Guidance on Nonprocurement Debarment and Suspension

**AGENCY:** Department of State.

**ACTION:** Final rule.

**SUMMARY:** The Department of State (DOS) is moving its regulations on nonprocurement debarment and suspension from their current location in title 22 of the **Code of Federal Regulations** (CFR) to title 2 of the CFR, and is adopting the format established by the Office of Management and Budget (OMB) in a document of interim final guidance on nonprocurement debarment and suspension published in the **Federal Register** on August 31, 2005. In today's rule, DOS establishes a new 2 CFR part 601 that adopts OMB's final government-wide guidance on nonprocurement debarment and suspension and contains supplemental DOS nonprocurement debarment and suspension provisions. In addition, this rule removes 22 CFR part 137, the existing DOS nonprocurement debarment and suspension regulations and updates references to 22 CFR part 137 in 22 CFR part 145 and 22 CFR part 133 to conform with this change. These changes constitute an administrative simplification that makes no substantive change in DOS policy or procedures for nonprocurement debarment and suspension.

**EFFECTIVE DATE:** This rule is effective March 7, 2007.

**FOR FURTHER INFORMATION CONTACT:** Georgia Hubert, Director, Federal Assistance Division, Office of the

Procurement Executive, A/OPE/FA, Department of State, SA-6, Suite 600, Washington, DC 20520; Telephone: 703-812-2526; e-mail: *hubertgk@state*.

#### SUPPLEMENTARY INFORMATION:

##### Background

On May 11, 2004, OMB established title 2 of the CFR with two subtitles (69 FR 2627). 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, OMB published interim final guidance for government-wide nonprocurement debarment and suspension in the **Federal Register** (70 FR 51863). The guidance was 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 procedures.

Section 3 directed Executive agencies to issue regulations implementing the Executive order that are consistent with the OMB guidelines. The interim final guidance at 2 CFR part 180 conforms the OMB guidance with the Federal agencies' November 26, 2003, update to the common rule on nonprocurement debarment and suspension (see 70 FR 51864). Although substantively the same as the common rule, OMB's interim final guidance was published in a form suitable for agency adoption, thus eliminating the need for each agency to repeat the full text of the OMB government-wide guidance in its implementing regulations. This new approach is intended to make it easier for recipients of covered transactions or respondents in suspension or debarment actions to discern agency-to-agency

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variations from the common rule language; reduce the volume of Federal regulations in the CFR; and streamline the process for updating the government-wide requirements on nonprocurement debarment and suspension (70 FR 51864).

On November 15, 2006, OMB published a final rule adopting the interim final guidance with changes (71 FR 66431). This final rule places DOS's nonprocurement debarment and suspension regulations in subtitle B of title 2 of the CFR, along with other agencies' nonprocurement debarment and suspension rules. This action was required by the OMB interim final guidance, which was made final on November 15, 2006 (see 2 CFR 180.20, 180.25, 180.30 and 180.35).

The new CFR part 601 adopts the OMB guidelines with additions and clarifications that DOS made to the common rule on nonprocurement suspension and debarment in the DOS rule published on November 26, 2003 (68 FR 66582-84). The substance of DOS's nonprocurement debarment and suspension regulations is unchanged. DOS is removing 22 CFR part 137, which was added to the CFR as part of the November 2003 common rule. DOS is also amending references in both Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (22 CFR part 145) and Government-wide Requirements for Drug-Free Workplace (22 CFR part 133) to update the reference to DOS's nonprocurement debarment and suspension regulations.

## Regulatory Findings

### Executive Order 12866

OMB has determined this rule non-significant.

### 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

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**

This final rule does 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 13211**

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**

The Congressional Review Act, 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. DOS 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 601**

Administrative practice and procedure, Debarment and suspension, Assistance programs, Reporting and recordkeeping requirements.

**22 CFR Part 133**

Administrative practice and procedure, Assistance programs, Drug-Free Workplace.

**22 CFR Part 137**

Administrative practice and procedure, Debarment and suspension, Assistance programs, Suspension and Debarment, Reporting and recordkeeping requirements.

**22 CFR Part 145**

Administrative practice and procedure, Assistance programs, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, under the authority at 22 U.S.C. 2658 and 31 U.S.C. 6101, the Department of State amends Title 2, subtitle B and Title 22, Parts 133, 137, 145 chapter I of the Code of Federal Regulations as follows:

■ 1. Add Chapter 6, consisting of Part 601 to Subtitle B to read as follows:

**Title 2—Grants and Agreements****Chapter 6—Department of State****PART 601—NONPROCUREMENT DEBARMENT AND SUSPENSION**

## Sec.

601.10 What does this part do?  
 601.20 Does this part apply to me?  
 601.30 What policies and procedures must I follow?

**Subpart A—General**

601.137 Who in the Department of State may grant an exception to let an excluded person participate in a covered transaction?

**Subpart B—Covered Transactions**

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

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

601.332 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**

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

**Subpart E Through H [Reserved]****Subpart I—Definitions**

601.930 Debarring Official (Department of State supplement to government-wide definition at 2 CFR 180.930).  
 601.1010 Suspending Official (Department of State supplement to government-wide definition at 2 CFR 180.1010)

**Subpart J [Reserved]**

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

**§ 601.10 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 DOS policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for DOS 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 section 2455 of the Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355 (31 U.S.C. 6101 note).

**§ 601.20 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 a DOS suspension or debarment action;

(c) DOS debarment or suspension official; and

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

**§ 601.30 What policies and procedures must I follow?**

The DOS 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 and any supplemental policies and procedures set forth in this part.

**Subpart A—General****§ 601.137 Who in the Department of State may grant an exception to let an excluded person participate in a covered transaction?**

The Procurement Executive, Office of the Procurement Executive, DOS, may grant an exception permitting an excluded person to participate in a particular covered transaction. If the Procurement Executive, Office of the Procurement Executive, DOS, grants an exception, the exception must be in writing and state the reason(s) for deviating from the government-wide policy in Executive Order 12549.

**Subpart B—Covered Transactions****§ 601.220 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 DOS 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 DOS 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**

##### **§ 601.332 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**

##### **§ 601.437 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 H [Reserved]**

#### **Subpart I—Definitions**

##### **§ 601.930 Debarring official (Department of State supplement to government-wide definition at 2 CFR 180.930).**

The Debarring Official for the Department of State is the Procurement Executive, Office of the Procurement Executive (A/OPE).

##### **§ 601.1010 Suspending official (Department of Energy supplement to government-wide definition at 2 CFR 180.1010).**

The Debarring Official for the Department of State is the Procurement Executive, Office of the Procurement Executive (A/OPE).

##### **Subpart J [Reserved]**

#### **Title 22—Foreign Relations**

##### **Chapter I—Department of State**

##### **PART 133—[AMENDED]**

- 2. The authority citation for part 133 continues to read as follows:

**Authority:** 22 U.S.C. 2658; 41 U.S.C. 701, *et seq.*

##### **§ 133.510 [Amended]**

- 3. Section 133.510, paragraph (c) is amended by revising the citation, “22 CFR part 137” to read: “2 CFR Part 601.”

##### **PART 137 [Removed]**

- 4. Part 137 is removed.

##### **PART 145 [Amended]**

- 5. The authority citation for part 145 continues to read as follows:

**Authority:** 22 U.S.C. 2658.1; OMB Circular A-110 (64 FR 54926, October 8, 1999).

##### **§ 145.13 [Amended]**

- 4. Section 145.13 is amended by revising the citation, “22 CFR part 137” to read, “2 CFR 601.”

##### **§ 145.44 [Amended]**

- 5. Section 145.44 is amended by revising the citation, “22 CFR part 137” to read, “2 CFR 601.”

##### **§ 145.62 [Amended]**

- 6. Section 145.62 paragraph (d) is amended by revising the citation, “22 CFR part 137” to read, “2 CFR 601.”

##### **Appendix A to Part 145 [Amended]**

- 7. Appendix A to part 145 is amended by revising the second sentence of paragraph (8) to read, “No contract shall be made to parties listed on the General Services Administration’s Excluded Parties List System (<http://www.epls.gov>) from Federal Procurement or Nonprocurement Programs in accordance with Executive Orders 12549 and 12689, ‘Debarment and Suspension.’”

Dated: February 26, 2007.

**Georgia Hubert,**

*Director, Office of the Procurement Executive, Federal Assistance Division, Department of State.*

[FR Doc. E7-3872 Filed 3-6-07; 8:45 am]

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## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

#### **7 CFR Part 52**

[Docket # AMS-FV-07-0025; FV-05-379]

**RIN 0581-AC56**

### **Processed Fruits and Vegetables**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule revises the regulations governing inspection and certification for processed fruits, vegetables, and processed products by increasing the fees charged for these products by 19 to 26 percent. Furthermore, it revises the regulations so applicants entering into an in-plant inspection contract with the Agricultural Marketing Service (AMS) will incur the costs for the plant survey and sanitation inspection. Finally, the revision provides that applicants entering into a year-round inspection contract, less than year-round (four or more consecutive 40 hour weeks) contract, or lot inspection will incur costs for Sunday differential when an employee works on Sunday. Also affected are the fees charged to persons required to have inspections on imported commodities in accordance with the Agricultural Marketing Agreement Act of 1937. In addition, various editorial changes are being made to enhance clarity. These revisions are necessary in order to recover, as nearly as practicable, the costs of performing inspection services under the Agricultural Marketing Act of 1946 and to ensure the program's financial stability.

**DATES:** Effective April 6, 2007.

**FOR FURTHER INFORMATION CONTACT:** Mr. Terry B. Bane at the Office of the Branch Chief, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0247, Washington, DC 20250-0247, telephone, (202) 720-4693, or e-mail [Terry.Bane@usda.gov](mailto:Terry.Bane@usda.gov).

**SUPPLEMENTARY INFORMATION:**