

PARTS 1300–1325 [RESERVED]

PART 1326—NONPROCUREMENT DEBARMENT AND SUSPENSION

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AUTHORITY: 5 U.S.C. 301; Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

SOURCE: 71 FR 76574, Dec. 21, 2006, unless otherwise noted.

§ 1326.10 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 Department of Commerce policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect 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, Public Law 103–355, 108 Stat. 3327).

§ 1326.20 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, as supplemented by subpart B and § 1326.970 of this part).

(b) Respondent in a Department of Commerce suspension or debarment action.

(c) Department of Commerce debarment or suspension official;

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

§ 1326.30 What policies and procedures must I follow?

The Department of Commerce 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.*, § 1326.220). For any section of OMB guidance in subparts A through I of 2 CFR 180 that has no corresponding section in this part, Department of Commerce policies

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and procedures are those in the OMB guidance.

Subpart A—General

§ 1326.137 Who in the Department of Commerce may grant an exception to let an excluded person participate in a covered transaction?

Within the Department of Commerce, the Secretary of Commerce or designee 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.

Subpart B—Covered Transactions

§ 1326.215 Which nonprocurement transactions, in addition to those listed in 2 CFR 180.215, are not covered transactions?

(a) For purposes of the Department of Commerce, a transaction that the Department needs to respond to a national or agency-recognized emergency or disaster includes the Fisherman's Contingency Fund.

(b) For purposes of the Department of Commerce, an incidental benefit that results from ordinary governmental operations includes:

(1) Export Promotion, Trade Information and Counseling, and Trade policy.

(2) Geodetic Surveys and Services (Specialized Services).

(3) Fishery Products Inspection Certification.

(4) Standard Reference Materials.

(5) Calibration, Measurement, and Testing.

(6) Critically Evaluated Data (Standard Reference Data).

(7) Phoenix Data System.

(8) The sale or provision of products, information, and services to the general public.

(c) For purposes of the Department of Commerce, any other transaction if the application of an exclusion to the transaction is prohibited by law includes:

(1) The Administration of the Anti-dumping and Countervailing Duty Statutes.

(2) The export Trading Company Act Certification of Review Program.

(3) Trade Adjustment Assistance Program Certification.

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(4) Foreign Trade Zones Act of 1934, as amended.

(5) Statutory Import Program.

§ 1326.220 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 a subcontract that is awarded by a participant in a procurement transaction covered under 2 CFR 180.220(a), if the amount of the subcontract exceeds or is expected to exceed \$25,000. This extends the coverage of the Department of Commerce nonprocurement suspension and debarment requirements to one additional tier of contracts 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

§ 1326.332 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

§ 1326.437 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.

Department of Commerce

§ 1329.10

Subparts E–H [Reserved]

Subpart A—Purpose and Coverage
[Reserved]

Subpart I—Definitions

Subpart B—Requirements for Recipients
Other Than Individuals

§ 1326.970 Nonprocurement transaction (Department of Commerce supplement to government-wide definition at 2 CFR 180.970).

For purposes of the Department of Commerce, nonprocurement transaction includes the following:

- (a) Joint project Agreements under 15 U.S.C. 1525.
- (b) Cooperative research and development agreements.
- (c) Joint statistical agreements.
- (d) Patent licenses under 35 U.S.C. 207.
- (e) NTIS joint ventures, 15 U.S.C. 3704b.

1329.225 Whom in the Department of Commerce does a recipient other than an individual notify about a criminal drug conviction?

Subpart C—Requirements for Recipients
Who Are Individuals

1329.300 Whom in the Department of Commerce does a recipient who is an individual notify about a criminal drug conviction?

Subpart D—Responsibilities of Agency
Awarding Officials

1329.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

Subpart J [Reserved]

Subpart E—Violations of This Part and
Consequences

PART 1327—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

AUTHORITY: 5 U.S.C. 301; 38 U.S.C. 501; 2 CFR part 200.

SOURCE: 79 FR 76050, Dec. 19, 2014, unless otherwise noted.

§ 1327.101 Adoption of 2 CFR Part 200.

Under the authority listed above, the Department of Commerce adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for the Department.

1329.500 Who in the Department of Commerce determines that a recipient other than an individual violated the requirements of this part?

1329.505 Who in the Department of Commerce determines that a recipient who is an individual violated the requirements of this part?

Subpart F—Definitions [Reserved]

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 701–707.

SOURCE: 81 FR 3700, Jan. 22, 2016, unless otherwise noted.

§ 1329.10 What does this part do?

This part requires that the award and administration of Department of Commerce grants and cooperative agreements comply with Office of Management and Budget (OMB) guidance implementing the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701–707, as amended, hereafter referred to as “the Act”) that applies to grants. It thereby—

(a) Gives regulatory effect to the OMB guidance (subparts A through F of 2 CFR part 182) for the Department of Commerce's grants and cooperative agreements; and

(b) Establishes Department of Commerce policies and procedures for compliance with the Act that are the same

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PART 1329—REQUIREMENTS FOR
DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Sec.

1329.10 What does this part do?

1329.20 Does this part apply to me?

1329.30 What policies and procedures must I follow?