

Department of Agriculture

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(c) A State may notify the Secretary of changes in its selections at any time. For each change, the State must submit to the Secretary an assurance that the State has consulted with elected local officials regarding the change. The Department may establish deadlines by which States are required to inform the Secretary of changes in their program selections.

(d) The Secretary uses a State's process as soon as feasible, depending on individual programs and activities, after the Secretary is notified of its selections.

§415.9 Communication with State and local elected officials.

(a) The Secretary provides notice to directly affected State, areawide, regional, and local entities in a State of proposed Federal financial assistance or direct Federal development if:

(1) The State has not adopted a process under the Order; or

(2) The assistance or development involves a program or an activity that is not covered under the State process.

(b) This notice may be made by publication in the FEDERAL REGISTER or other appropriate means, which the Department in its discretion deems appropriate.

(c) In order to facilitate communication with State and local officials the Secretary has established an office within the Department to receive all communications pertinent to this Order. Communications should be sent to:

(1) The Office of the Chief Financial Officer, Room 143-W, 1400 Independence Avenue SW, Washington, DC 20250, Attention: E.O. 12372; or,

(2) As identified on the USDA's public website, an email address for electronic communications.

§415.10 State comments on proposed Federal financial assistance and direct Federal development.

(a) Except in unusual circumstances, the Secretary gives State processes or directly affected State, areawide, regional, and local officials and entities:

(1) At least 30 days from the date established by the Secretary to comment on proposed Federal financial assist-

ance in the form of noncompetitive continuation awards; and

(2) At least 60 days from the date established by the Secretary to comment on proposed direct Federal development or Federal financial assistance other than noncompetitive continuation awards.

(b) This section also applies to comments in cases in which the review, coordination and communication with the Department have been delegated.

(c) Applicants for programs and activities subject to section 204 of the Demonstration Cities and Metropolitan Development Act must allow areawide agencies a 60-day opportunity for review and comment.

§415.11 Processing comments.

(a) The Secretary follows the procedures in §415.12 if:

(1) A State office or official is designated to act as a single point of contact between a State process and all Federal agencies; and

(2) That office or official transmits a State process recommendation for a program selected under §415.8.

(b)(1) The single point of contact is not obligated to transmit comments from State, areawide, regional or local officials and entities where there is no State process recommendation.

(2) If a State process recommendation is transmitted by a single point of contact, all comments from State, areawide, regional and local officials and entities that differ from it must also be transmitted.

(c) If a State has not established a process, or is unable to submit a State process recommendation, State, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department.

(d) If a program or activity is not selected by a State process, State, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department. In addition, if a State process recommendation for a non-selected program or activity is transmitted to the Department by the single point of contact, the Secretary follows the procedures of §415.12.

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(e) The Secretary considers comments which do not constitute a State process recommendation submitted under these regulations and for which the Secretary is not required to apply the procedures of §415.12, when such comments are provided by a single point of contact by the applicant, or directly to the Department by a commenting party.

§415.12 Accommodation of intergovernmental concerns.

(a) If a State process provides a State process recommendation to the Department through its single point of contact, the Secretary either—

- (1) Accepts the recommendations;
- (2) Reaches a mutually agreeable solution with the State process; or
- (3) Provides the single point of contact with a written explanation of the decision, as determined by the Secretary. The Secretary may also supplement the written explanation by also providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Secretary informs the single point of contact that:

- (1) The Department will not implement its decision for at least ten days after the single point of contact receives the explanation; or
- (2) The Secretary has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification five days after the date of mailing of such notification.

§415.13 Interstate situations.

(a) The Secretary is responsible for:

- (1) Identifying proposed Federal financial assistance and direct Federal development that have an impact on interstate areas;
- (2) Notifying appropriate officials in States which have adopted a process and which selected the Department's program or activity;

(3) Making efforts to identify and notify the affected State, areawide, regional and local officials and entities in those States that have not adopted a process under the Order or do not select the Department's program or activity; and

(4) Responding, pursuant to §415.12, if the Secretary receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the Department have been delegated.

(b) The Secretary uses the procedures in §415.12 if a State process provides a State process recommendation to the Department through a single point of contact.

§415.14 Simplification, consolidation, or substitution of State plans.

(a) As used in this section:

(1) Simplify means that a State may develop its own format, choose its own submission date, and select the planning period for a State plan.

(2) Consolidate means that a State may meet statutory and regulatory requirements by combining two or more plans into one document and that the State can select the format, submission date, and the planning period for the consolidated plan.

(3) Substitute means that a State may use a plan or other document that it has developed for its own purposes to meet Federal requirements.

(b) If not inconsistent with law, a State may decide to try to simplify, consolidate, or substitute Federally required State plans without prior approval by the Secretary.

(c) The Secretary reviews each State plan a State has simplified, consolidated or substituted and accepts the plan only if its contents meet Federal requirements.

§415.15 Waivers.

In an emergency, the Secretary may waive any provision in Subpart C—Intergovernmental Review of Department of Agriculture Programs and Activities, 2 CFR 415.3 to 415.14.

PART 416—GENERAL PROGRAM ADMINISTRATIVE REGULATIONS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

§ 416.2 [Reserved]

PART 417—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

416.1 Special procurement provisions.

416.2 [Reserved]

AUTHORITY: 5 U.S.C. 301; 31 U.S.C. 901–903; 7 CFR 2.28.

SOURCE: 89 FR 68326, Aug. 26, 2024, unless otherwise noted.

§ 416.1 Special procurement provisions.

(a) In order to ensure objective contractor performance and eliminate unfair competitive advantage, a prospective contractor that develops or drafts specifications, requirements, statements of work, invitations for bids, request for proposals, contract term and conditions or other documents for use by a State in conducting a procurement under the USDA entitlement programs specified in 2 CFR 200.101(f)(4) through (7) must be excluded from competing for such procurements. Such prospective contractors are ineligible for contract awards resulting from such procurements regardless of the procurement method used. However, prospective contractors may provide States with specification information related to a State procurement under the USDA entitlement programs specified in 2 CFR 200.101(f)(4) through (7) and still compete for the procurement if the State, and not the prospective contractor, develops or drafts the specifications, requirements, statements of work, invitations for bid, and/or requests for proposals used to conduct the procurement.

(b) Procurements by States under USDA entitlement programs specified in 2 CFR 200.101(f)(4) through (7) must be conducted in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographic preferences.

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Subpart I—Definitions

- 417.930 Debarment official (USDA supplement to government-wide definition at 2 CFR 180.930).
- 417.935 Disqualified (USDA supplement to government-wide definition at 2 CFR 180.935).
- 417.1010 Suspending official (USDA supplement to government-wide definition at 2 CFR 180.1010).

Subpart J—[Reserved]

AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 2209j; Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); Pub. L. 101–576, 104 Stat. 2838; E.O. 12549 (51 FR 6370, 3 CFR, 1986 Comp., p. 189); E.O. 12689 (54 FR 34131, 3 CFR, 1989 Comp., p. 235); 2 CFR part 180; 7 CFR 2.28.

SOURCE: 89 FR 68326, Aug. 26, 2024, unless otherwise noted.

§ 417.10 What does this part do?

This part adopts the OMB guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the USDA policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for the USDA to the OMB guidance, as supplemented by this part. For any section of OMB guidance in subparts A through I of 2 CFR part 180 that has no corresponding section in this part, USDA policies and procedures are those in the OMB guidance. 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).

§ 417.20 Does this part apply to me?

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 §§ 417.215 and 417.220);

(b) Respondent in a USDA debarment and suspension action;

(c) USDA debarment or suspension official; or

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

§ 417.30 What policies and procedures must I follow?

The USDA policies and procedures that you must follow are the policies and procedures specified in this regulation and 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 2 CFR 180.220 as supplemented by § 417.220. For any section of OMB guidance in subparts A through I of 2 CFR part 180 that has no corresponding section in this part, USDA policies and procedures are those in the OMB guidance.

Subpart A—General

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

Within the USDA, a debarment official may grant an exception to let an excluded person participate in a covered transaction as provided under 2 CFR 180.135.

Subpart B—Covered Transactions

§ 417.210 Which nonprocurement transactions are covered transactions?

All nonprocurement transactions, as defined in 2 CFR 180.970, are covered transactions unless listed in § 417.215.

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

(a) *Transactions not covered.* In addition to the nonprocurement transactions listed in 2 CFR 180.215, the following nonprocurement transactions are not covered transactions:

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(1) An entitlement or mandatory award required by a statute, including a lower tier entitlement or mandatory award that is required by a statute.

(2) The export or substitution of Federal timber governed by the Forest Resources Conservation and Shortage Relief Act of 1990, 16 U.S.C. 620 *et seq.* (The “Export Act”), which prevents a debarred person from entering into any contract for the purchase of unprocessed timber from Federal lands. See 16 U.S.C. 620d(d)(1)(A).

(3) The receipt of licenses, permits, certificates, and indemnification under regulatory programs conducted in the interest of public health and safety, and animal and plant health and safety.

(4) The receipt of official grading and inspection services, animal damage control services, public health and safety inspection services, and animal and plant health and safety inspection services.

(5) If the person is a State or local government, the provision of official grading and inspection services, animal damage control services, animal and plant health and safety inspection services.

(6) The receipt of licenses, permits, or certificates under regulatory programs conducted in the interest of ensuring fair trade practices.

(7) Permits, licenses, exchanges and other acquisitions of real property, rights of way, and easements under natural resource management programs.

(8) Any transaction to be implemented outside the United States that is below the primary tier covered transaction in a USDA foreign assistance program.

(9) Any transaction to be implemented outside the United States that is below the primary tier covered transaction in a USDA export credit guarantee program or direct credit program.

(b) *Limited requirement to check SAM.gov.* Notwithstanding the fact that transactions to be implemented outside the United States that are below the primary tier covered transaction in a USDA foreign assistance program, export credit guarantee program or direct credit program are not

covered transactions, pursuant to paragraphs (a)(8) and (9) of this section, primary tier participants under these programs must check *SAM.gov* prior to entering into any transaction with a person at the first lower tier and must not enter into such a transaction if the person is excluded or disqualified in *SAM.gov*.

(c) *Exception.* A cause for suspension or debarment under 2 CFR 180.700 or 2 CFR 180.800 may be based on the actions of a person with respect to a procurement or nonprocurement transaction under a USDA program even if such transaction has been excluded from covered transaction status by this section or § 417.220.

§ 417.220 Are any procurement contracts included as covered transactions?

In addition to the procurement contracts listed in 2 CFR 180.220, the following procurement contracts are covered transactions:

(a) Specifically, a contract for goods or services is a covered transaction if any of the following applies:

(1) The contract is awarded by a participant in a nonprocurement transaction covered under § 417.210, and the contract amount is expected to equal or exceed \$25,000.

(2) [Reserved]

(b) Any procurement contract to be implemented outside the United States that is below the primary tier covered transaction in a USDA foreign assistance program is not a covered transaction, notwithstanding the provisions in 2 CFR 180.220(a) and 2 CFR 180.220(b) and paragraph (a) of this section.

(c) Any procurement contract to be implemented outside the United States that is below the primary tier covered transaction in a USDA export credit guarantee program or direct credit program is not a covered transaction, notwithstanding the provisions in 2 CFR 180.220(a) and 2 CFR 180.220(b) and paragraph (a) of this section.

(d) Notwithstanding the fact that procurement contracts to be implemented outside the United States that are below the primary tier covered transaction in a USDA foreign assistance program, export credit guarantee program or direct credit program are

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not covered transactions, pursuant to paragraph (b) and (c) of this section, primary tier participants under these programs must check *SAM.gov* prior to entering into any procurement contract that is expected to equal or exceed \$25,000 with a person at the first lower tier and must not enter into such a procurement contract if the person is excluded or disqualified in *SAM.gov*.

§ 417.221 How would the exclusions from coverage for the USDA's foreign assistance programs apply?

The primary tier covered transaction would be the food aid grant agreement entered into between USDA and a program participant, such as a U.S. private voluntary organization. USDA would have to check *SAM.gov* before entering into the food aid grant agreement to ensure that the U.S. private voluntary organization that would be the primary tier participant is not excluded or disqualified. A transaction at the first lower tier might be a sub-recipient agreement between the U.S. private voluntary organization and a foreign subrecipient of the commodities that were provided under the food aid grant agreement. Pursuant to § 417.215(a)(8), this nonprocurement transaction would not be a covered transaction. In addition, a transaction at the first lower tier might be a procurement contract entered into between the U.S. private voluntary organization and a foreign entity to provide supplies or services that are expected to equal or exceed \$25,000 in value and that are needed by such organization to implement activities under the food aid grant agreement. Pursuant to § 417.220(b), this procurement contract would not be a covered transaction. However, pursuant to §§ 417.215(b) and 417.220(d), the U.S. private voluntary organization would be prohibited from entering into, at the first lower tier, an agreement with a subrecipient or a procurement contract that is expected to equal or exceed \$25,000 with an entity that appears in *SAM.gov* as excluded or disqualified.

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§ 417.222 How would the exclusions from coverage for the USDA's export credit guarantee and direct credit programs apply?

(a) *Export credit guarantee program.* In the case of the export credit guarantee program, the primary tier covered transaction would be the guarantee issued by the USDA to a U.S. exporter. The U.S. exporter usually assigns the guarantee to a U.S. financial institution, and this would create another primary tier covered transaction between USDA and the U.S. financial institution. USDA would have to check the *SAM.gov* before issuing a guarantee or accepting a guarantee assignment to ensure that the U.S. exporter or financial institution that would be the primary tier participant is not excluded or disqualified. A transaction at the first lower tier under the export credit guarantee program might be a payment obligation of a foreign bank to the U.S. exporter to pay on behalf of the importer for the exported U.S. commodities that are covered by the guarantee. Similarly, a transaction at the first lower tier might be a payment obligation of a foreign bank under an instrument, such as a loan agreement or letter of credit, to the U.S. financial institution assigned the guarantee, which has paid the exporter for the exported U.S. commodities and, in so doing, issued a loan to the foreign bank, which the foreign bank is obligated to repay on deferred payment terms. Pursuant to § 417.215(a)(9), these nonprocurement transactions would not be covered transactions. In addition, a transaction at the first lower tier under the export credit guarantee program might be a procurement contract (*i.e.*, a contract for the purchase and sale of goods) that is expected to equal or exceed \$25,000 entered into between the U.S. exporter and the foreign importer for the U.S. commodities, the payment for which is covered by the guarantee. Pursuant to § 417.220(c), this procurement contract would not be a covered transaction. However, pursuant to §§ 417.215(b) and 417.220(d), the U.S. exporter or U.S. financial institution would be prohibited from entering into, at the first lower tier, an agreement with an importer (or intervening

purchaser) or foreign bank or a procurement contract that is expected to equal or exceed \$25,000 with an entity that appears on the *SAM.gov* as excluded or disqualified.

(b) *Direct credit program.* In the case of the direct credit program, the primary tier covered transaction would be the financing agreement between the USDA and the U.S. exporter. USDA purchases the exporter's account receivable in a particular transaction pursuant to the financing agreement. On occasion, such a transaction may contemplate a payment obligation of a U.S. or foreign bank to make the required payments. USDA would have to check *SAM.gov* before entering into a financing agreement or accepting such a payor to ensure that the U.S. exporter or the bank, if any, that would be the primary tier participant is not excluded or disqualified. A transaction at the first lower tier might be a payment obligation of the importer to pay the exporter for the exported U.S. commodities that are covered by the financing agreement. Pursuant to § 417.215(a)(9), this nonprocurement transaction would not be a covered transaction. In addition, a transaction at the first lower tier might be a procurement contract that is expected to equal or exceed \$25,000 entered into between the U.S. exporter and the foreign importer for the U.S. commodities, the payment for which is covered by the financing agreement. Pursuant to § 417.220(c), this procurement contract would not be a covered transaction. However, pursuant to §§ 417.215(b) and 417.220(d), the U.S. exporter would be prohibited from entering into, at the first lower tier, an agreement with an importer (or intervening purchaser) or bank, or a procurement contract that is expected to equal or exceed \$25,000 with an entity that appears in *SAM.gov* as excluded or disqualified.

Subpart C—Responsibilities of Participants Regarding Transactions

§ 417.332 What methods must I use to pass down requirements to participants in lower-tier covered transactions with whom I intend to do business?

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

Subpart D—Responsibilities of Department of Agriculture Officials Regarding Transactions

§ 417.437 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, 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—[Reserved]

Subpart F—[Reserved]

Subpart G—Suspension

§ 417.755 When will I know whether the USDA suspension is continued or terminated?

The record will remain open for the full 30 days, as called for in 2 CFR 180.725, even when you make a submission before the 30 days expire.

Subpart H—Debarment

§ 417.865 How long may my debarment last?

The Secretary must permanently debar from participation in USDA programs any individual, organization, corporation, or other entity convicted of a felony for knowingly defrauding