

Rules and Regulations

Federal Register

Vol. 75, No. 137

Monday, July 19, 2010

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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ELECTION ASSISTANCE COMMISSION

2 CFR Chapter 58

Nonprocurement Debarment and Suspension

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Final rule.

SUMMARY: The Election Assistance Commission (EAC) is publishing its final rule implementing the Office of Management and Budget regulations on nonprocurement debarment and suspension. These proposed regulations will apply to nonprocurement grants, cooperative agreements and other similar transactions. Under this system, a person who is debarred or suspended is excluded from federal financial and nonfinancial assistance and benefits under federal programs and activities. EAC is also establishing a new 2 CFR chapter 58 part 5800 that adopts OMB's final government-wide guidance on nonprocurement debarment and suspension and contains supplemental EAC nonprocurement debarment and suspension provisions.

DATES: *Effective Date:* This rule is effective on August 18, 2010.

FOR FURTHER INFORMATION CONTACT: Andrew Guggenheim or Tamar Nedzar, Election Assistance Commission 1201 New York Avenue, Suite 300, Washington, DC 20005; Telephone: 202-566-3100.

SUPPLEMENTARY INFORMATION:

Preamble Table of Contents

The following is an outline of the preamble.

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I. Disposition of the Comments

EAC issued a notice of proposed rulemaking and requested public comment on these rules on May 5, 2010 (75 FR 24494). The comment period ended June 4, 2010. EAC received no comments on this rulemaking activity, and therefore makes no changes to the proposed rules. The regulations in this notice are the same in form and substance as those posted in the Notice of Proposed Rulemaking.

II. Legal Basis for Rulemaking

Executive Order 12549, (3 CFR, 1986 Comp., 189 51 FR 6370), authorized OMB to establish a governmentwide debarment and suspension system covering the full range of Federal procurement and nonprocurement activities, and to establish procedures for debarment and suspension from participation in Federal nonprocurement programs. Section 6 of the Executive Order authorized OMB to issue guidelines to Executive departments and agencies that govern which program and activities are covered by the Executive Order, prescribe Governmentwide criteria and Governmentwide minimum due process procedures, and set forth other related details for the effective administration of the guidelines. Section 3 directed agencies to issue implementing regulations that are consistent with OMB guidelines. Pursuant to the Executive Order, on February 21, 1986 OMB published initial guidelines for nonprocurement debarment and suspension that applies to grants, cooperative agreements and similar transactions. EAC is adopting the OMB regulations found in 2 CFR part 180. To adopt these regulations, 2 CFR 180.25 requires federal agencies to address certain agency specific elements. The following regulations fulfill this requirement.

III. Discussion of Rulemaking

The United States Election Assistance Commission (EAC) was created by Congress in the Help America Vote Act of 2002. The Commission's primary function is to serve as a national clearinghouse and resource for information on and procedures for federal elections. EAC conducts studies on election administration and makes those studies available to the public. EAC also has adopted Voluntary Voting

System Guidelines; administers a voting system testing and certification program; allocates election-related federal funding to the States; and carries out administrative duties under the National Voter Registration Act of 1993, including developing and maintaining a mail voter registration application form for elections to federal office.

In general, the proposed regulation gives the authority over debarment and suspension to the Contracting Officer. In the event of a vacancy or conflict of interest by the contracting officer, the debarment and suspension official will be the Chief Financial Officer. Covered transactions include all agency nonprocurement transactions, first-tier contracts and subcontracted funded by the EAC in excess of \$25,000 or 30 percent of the value of the first-tier transaction, whichever is lesser. EAC is also providing covered individuals a right to request a reconsideration of a debarment action. In this process, an individual having received a disposition of the debarment action may submit to the Contracting Officer any newly discovered material evidence; proof of a reversal of the conviction or civil judgment upon which the debarment was based; a bona fide change in ownership or management; elimination of other causes for which the debarment or suspension was imposed; or other reasons the debarring official finds appropriate. By default, elements not addressed in the agency specific regulations will be covered by the government-wide sections in the Common Rule.

IV. Rulemaking Analysis and Notices

A. Executive Order 12866

EAC is an independent agency and is not subject to Executive Order 12866.

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. EAC 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 in 2 CFR Part 5800

Administrative practice and procedure, debarment and suspension, assistance programs, reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, under the authority at 2 CFR part 180, the Election Assistance Commission amends title 2 of the Code of Federal Regulations, by establishing Chapter 58, consisting of part 5800 to read as follows:

Title 2—Grants and Agreements**Chapter 58—Election Assistance Commission****PART 5800—NONPROCUREMENT DEBARMENT AND SUSPENSION**

Sec.

- 5800.10 What does this part do?
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- 5800.930 Debarring official.
5800.970 Nonprocurement transaction.
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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).

§ 5800.10 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 U.S. Election Assistance Commission ("the Commission" or "EAC") policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for the Commission to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, "Debarment and Suspension" and 31 U.S.C. 6101 note.

§ 5800.20 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 (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 Commission suspension or debarment action;

(c) Commission debarment or suspension official; or

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

§ 5800.30 What policies and procedures must I follow?

The Commission 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.*, § ___.220). For any section of OMB guidance in Subparts A through I of 2 CFR 180 that has no corresponding section in this part, Commission policies and procedures are those in the OMB guidance.

Subpart A—General**§ 5800.137 Who at the Commission may grant an exception to let an excluded person participate in a covered transaction?**

The Commission's Contracting Officer 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**§ 5800.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?**

Pursuant to 2 CFR 180.220(c), the Commission extends coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts to include any subcontract to be funded by the Commission, the value of which is expected to equal to or exceed \$25,000 or 30 percent of the value of first-tier transaction, whichever is lesser.

Subpart C—Responsibilities of Participants Regarding Transactions

§ 5800.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

If a lower-tier transaction is covered pursuant to § 5800.220, 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.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

§ 5800.437 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 as an agency official must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, and requires the participant to include a similar term or condition in lower-tier covered transactions.

§ 5800.765 May I ask the suspending official to reconsider a decision to suspend me?

Yes. Within 30 days of receiving a final notice of suspension, you may make a written request for the suspending official to reconsider your suspension.

§ 5800.875 May I ask the debarring official to reconsider a decision to debar me?

Yes. Within 30 days of receiving a final notice of debarment, you may make a written request for the debarring official to reconsider your debarment pursuant to § 5800.880. The disposition of your request for reconsideration; or the result of your appeal; shall be considered a final agency action.

§ 5800.880 What factors may influence the debarring official during reconsideration?

The debarring official may reduce or terminate your debarment based on:

- (a) Newly discovered material evidence;
- (b) A reversal of the conviction or civil judgment upon which your debarment was based;
- (c) A bona fide change in ownership or management;
- (d) Elimination of other causes for which the debarment was imposed; or
- (e) Other reasons the debarring official finds appropriate.

§ 5800.890 How may I appeal my debarment?

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

(1) You may ask the debarring official under § 875 to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; or

(2) You may request a review by the EAC's debarment appeals body (DAP), which is composed of the Executive Director, Chief Financial Officer, and Chief Operating Officer. The DAP will review your appeal and make a determination on whether to sustain or reverse the decision of the debarring official. The DAP will then make a recommendation to the EAC Commissioners who will vote by circulation on whether to accept or reject the recommendation of the DAP. A request to review the debarring official's decision to debar you must be made within 30 days of your receipt of the debarring official's decision under § 180.870 or paragraph (a)(1) of this section. However, the DAP may recommend to the EAC Commissioners that the debarring official's decision be reversed, based on a majority vote of the DAP, only where the DAP finds that the decision is based on a clear error of material fact or law, or where DAP finds that the debarring official's decision was arbitrary, capricious, or an abuse of discretion. You may appeal the debarring official's decision without requesting reconsideration, or you may appeal the decision of the debarring official on reconsideration.

(b) A request for review under this section must be in writing; prominently state on the envelope or other cover and at the top of the first page "Debarment Appeal;" state the specific findings you believe to be in error; and include the reasons or legal bases for your position. The appeal request should be delivered or addressed to the U.S. Election Assistance Commission, 1201 New York Avenue, NW., Suite 300, Washington, DC 20005.

(c) After the circulation vote of the EAC Commissioners has been certified, either the Commission debarring official or the DAP must notify you of their decision under this section, in writing, using the notice procedures set forth at §§ 180.615 and 180.975.

(e) Nothing in this part prohibits the EAC from delegating the appeal review process to another Federal agency through a memorandum of

understanding or interagency agreement.

Subparts E through H—[Reserved]

Subpart I—Definitions

§ 5800.930 Debarring official.

For the Commission, the debarring official for all nonprocurement transactions is the Commission's Contracting Officer. In the case of a vacancy in the position of the Contracting Officer, the alternate debarring official is the Chief Financial Officer.

§ 5800.970 Nonprocurement transaction

While the Commission treats all payments made to states under 42 U.S.C. 15301, 15302 and 15401 as grants, this part does not apply to grants made to states and political subdivisions therein.

§ 5800.1010 Suspending official.

For the Commission, the debarring official for all nonprocurement transactions is the Commission's Contracting Officer. In the case of a vacancy in the position of the Contracting Officer, the alternate debarring official is the Chief Financial Officer.

Subpart J [Reserved]

Thomas Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. 2010-17429 Filed 7-16-10; 8:45 am]

BILLING CODE 6820-KF-P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

RIN 0580-AB18

[Docket #GIPSA-2010-FGIS-0002]

Export Inspection and Weighing Waiver for High Quality Specialty Grains Transported in Containers

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Interim Rule with request for comments.

SUMMARY: The United States Department of Agriculture's (USDA) Grain Inspection, Packers and Stockyards Administration (GIPSA) is issuing an interim rule to potentially make permanent the current waiver for high quality grain exported in containers