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DEPARTMENT OF JUSTICE

2 CFR Part 2867

28 CFR Part 67

[Docket Number: OJP (DOJ)-1457; AG Order No. 2870-2007]

RIN 1121-AA73

Department of Justice Implementation of OMB Guidance on Nonprocurement Debarment and Suspension

AGENCY: Department of Justice.

ACTION: Direct final rule.

SUMMARY: The Department of Justice ("DOJ" or "the Department") is removing its regulations implementing the government-wide common rule on nonprocurement debarment and suspension, currently located within Part 67 of Title 28 of the Code of Federal Regulations (CFR), and adopting the Office of Management and Budget's (OMB) guidance at Title 2 of the CFR. This regulatory action implements the OMB's initiative to streamline and consolidate all federal regulations on nonprocurement debarment and suspension into one part of the CFR. These changes constitute an administrative simplification that would make no substantive change in DOJ policy or procedures for nonprocurement debarment and suspension.

DATES: This final rule is effective on May 14, 2007 without further action, unless adverse comment is received by DOJ by April 12, 2007. If adverse comment is received, DOJ will publish a timely withdrawal of the rule in the *Federal Register*.

ADDRESSES: Please address all comments regarding this rule by U.S. mail, to: Scott A. Chutka, Attorney-Advisor, Office of the General Counsel, Office of Justice Programs, Department of Justice, 810 7th Street, NW.,

Washington, DC 20531; by telefacsimile (fax), to: (202) 307-1419; or by e-mail, to: OJP_Fed_Reg_Comments@usdoj.gov. To ensure proper handling, please reference OJP Docket No. 1457 on your correspondence. You may view an electronic version of this rule at www.regulations.gov and you may also comment by using the www.regulations.gov form for this regulation. When submitting comments electronically you must include OJP Docket No. 1457 in the subject box.

FOR FURTHER INFORMATION CONTACT: Scott A. Chutka, Attorney-Advisor, Office of the General Counsel, at (202) 307-6235 [Note: This is not a toll-free telephone number.]; or by e-mail at OJP_Fed_Reg_Comments@usdoj.gov.

SUPPLEMENTARY INFORMATION:

Background

On November 26, 2003, at 68 FR 66534, the Department adopted, on an interim final basis, the government-wide nonprocurement debarment and suspension common rule (NCR), which recast the nonprocurement debarment and suspension regulations in plain English and made other required updates. On March 11, 2005, at 70 FR 12141, the Department published a final rule completing its adoption of the government-wide common rule.

Thereafter, on August 31, 2005, OMB issued an interim final guidance that implemented its Guidance for Governmentwide Debarment and Suspension (Nonprocurement), at 70 FR 51863. In addition to restating and updating its guidance on nonprocurement debarment and suspension, the interim final guidance requires all federal agencies to adopt a new approach to Federal agency implementation of the guidance. OMB requires each agency to issue a brief rule that: (1) Adopts the guidance, giving it regulatory effect for that agency's activities; and (2) states any agency-specific additions, clarifications, and exceptions to the government-wide policies and procedures contained in the guidance. That guidance also requires agencies to implement the OMB guidance by February 28, 2007. OMB issued this guidance in final form on November 15, 2006, at 71 FR 66431.

Pursuant to requirements in OMB's interim final guidance, DOJ is therefore: (1) Removing 28 CFR part 67; (2) replacing the Department's part

containing the full text of the debarment and suspension common rule with a brief part implementing OMB's guidance and any provisions specific to the Department; and (3) co-locating the Department's part with OMB's guidance in 2 CFR along with other agencies' regulations in that title.

This regulatory action will implement the OMB initiative to streamline and consolidate all federal regulations on nonprocurement debarment and suspension into one part of the CFR, and does not modify any of the Department's current policies.

Invitation to Comment

With this regulatory action, DOJ is creating a new part in 2 CFR to adopt the OMB guidelines with the same additions and clarifications the Department made to the common rule on nonprocurement debarment and suspension in March 2005, at 68 FR 12141. In soliciting comments on this action, therefore, DOJ is not seeking to revisit substantive issues that were already resolved during the preparation of that final common rule. However, because DOJ intends the new part to make no changes in current policies and procedures, the Department specifically invites comments only on any unintended changes in substantive content that the new part in 2 CFR would make relative to the March 2005 final rule at 28 CFR part 67.

Administrative Procedure Act

Under the Administrative Procedure Act (5 U.S.C. 553) agencies generally offer interested parties the opportunity to comment on proposed regulations before they become effective. However, in this case, on November 26, 2003, at 68 FR 65534, the Department adopted, on an interim final basis, the government-wide nonprocurement debarment and suspension common rule (NCR), which recast the nonprocurement debarment and suspension regulations in plain English and made other required updates. Comments were solicited on the Department's interim NCR rule. On March 11, 2005, at 70 FR 12141, the Department published a final rule completing its adoption of the government-wide NCR common rule.

The changes made by this direct final rule constitute an administrative simplification that would make no

substantive change in Department policy or procedures for nonprocurement debarment and suspension. The Department believes that the rule is noncontroversial and adverse comments will not be received, although comments on this rule are invited.

Accordingly, the Department finds that the solicitation of public comments on this direct final rule is unnecessary and that “good cause” exists under 5 U.S.C. 553(b)(B) and 553(d) to make this rule effective on May 14, 2007 without further action, unless adverse comment is received by DOJ by April 12, 2007. If adverse comment is received, the Department will publish a timely withdrawal of the rule in the **Federal Register**.

Executive Order 12866

This regulatory action has been determined by OMB to be not significant for purposes of E.O. 12866.

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

This regulatory action, if adopted, would not have a significant adverse impact on a substantial number of small entities. This action merely removes DOJ’s current policy and provisions related to the debarment and suspension common rule and replaces it with a brief part adopting OMB’s guidance and implementing any provisions specific to the Department. In addition, it co-locates the Department’s regulations with OMB’s guidance in 2 CFR along with other agencies’ rules in that title. These provisions are merely administrative in nature and do not modify the Department’s current policy.

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.

List of Subjects

2 CFR Part 2867

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

28 CFR Part 67

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements, Technical assistance, Drug Abuse.

■ Accordingly, for the reasons set forth in the preamble, and under the authority of 5 U.S.C. 301 and 28 U.S.C. 509, 510, 515–519, the Department of Justice amends the Code of Federal Regulations, Title 2, Subtitle B, and part 67 of chapter 1 of Title 28, as follows:

Title 2—Grants and Agreements

■ 1. Add Chapter 28, consisting of Part 2867, to Subtitle B to read as follows:

CHAPTER 28—DEPARTMENT OF JUSTICE

PART 2867—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

§ 2867.10 What does this part do?

§ 2867.20 To whom does this part apply?

§ 2867.30 What policies and procedures must be followed?

Subpart A—General

§ 2867.137 Who in the Department of Justice may grant an exception to let an excluded person participate in a covered transaction?

Subpart B—Covered Transactions

§ 2867.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Subpart C—Responsibilities of Participants Regarding Transactions

§ 2867.332 What method must a participant use to pass requirements down to participants at lower tiers with whom the participant intends to do business?

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

§ 2867.437 What method must be used to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

Subparts E–J—[Reserved]

Authority: 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; 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

§ 2867.10 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 Justice policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for the Department of Justice 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).

§ 2867.20 To whom does this part apply?

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 any—

(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 of this part));

(b) Respondent in a Department of Justice suspension or debarment action;

(c) Department of Justice debarment or suspension official;

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

§ 2867.30 What policies and procedures must be followed?

The Department of Justice policies and procedures that must be followed 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.*, § 2867.220). 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 Justice policies and procedures are those in the OMB guidance.

Subpart A—General**§ 2867.137 Who in the Department of Justice may grant an exception to let an excluded person participate in a covered transaction?**

Within the Department of Justice, the Attorney General 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**§ 2867.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?**

Although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (also see optional lower tier coverage in the figure in the Appendix to 2 CFR part 180), the Department of Justice does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement transaction.

Subpart C—Responsibilities of Participants Regarding Transactions**§ 2867.332 What method must a participant use to pass requirements down to participants at lower tiers with whom the participant intends to do business?**

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**§ 2867.437 What method must be used 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, the communication 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.

Subparts E–J—[Reserved]**Title 28—Judicial Administration****CHAPTER 1—DEPARTMENT OF JUSTICE**

■ 2. Remove Part 67.

Dated: March 6, 2007.

Alberto R. Gonzales,

Attorney General.

[FR Doc. E7-4362 Filed 3-12-07; 8:45 am]

BILLING CODE 4410-18-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA-2006-25945; Airspace Docket No. 06-ACE-15]

Modification of Class E Airspace; Alliance, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Alliance, NE.

DATES: *Effective Date:* 0901 UTC, May 10, 2007.

FOR FURTHER INFORMATION CONTACT: Grant Nichols, System Support, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329-2522.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on January 11, 2007 (72 FR 1279). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on May 10, 2007. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Fort Worth, Texas on February 20, 2007.

Donald R. Smith,

Manager, System Support Group, ATO Central Service Area.

[FR Doc. 07-1161 Filed 3-12-07; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****18 CFR Part 385**

[Docket No. RM02-11-000]

Civil Monetary Penalty Inflation Adjustment Rule: Order No. 692; Order Redesignating Proceeding

Issued February 16, 2007.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule: order redesignating proceeding.

SUMMARY: On August 5, 2002, the Commission issued a final rule for a Civil Monetary Penalty Inflation Adjustment as mandated by the Debt Collection Improvement Act of 1996. The final rule was designated "Order No. 890". The Commission is redesignating "Order No. 890" as "Order No. 692".

DATES: *Effective Date:* February 16, 2007.

FOR FURTHER INFORMATION CONTACT: Secretary's Office, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-8400.

SUPPLEMENTARY INFORMATION: On August 5, 2002, the Commission issued "Order No. 890, Final Rule" in the above-captioned proceeding. *Civil Monetary Penalty Inflation Adjustment Rule*, 100 FERC ¶ 61,159 (2002).

By this order the Commission redesignates the above-captioned proceeding as Order No. 692, Final Rule.

By direction of the Commission.

Nora E. Donovan,

Acting Secretary.

[FR Doc. E7-4552 Filed 3-12-07; 8:45 am]

BILLING CODE 6717-01-P

INTERNATIONAL TRADE COMMISSION**19 CFR Part 208****Investigations Relating to Commercial Availability Under the African Growth and Opportunity Act**

AGENCY: United States International Trade Commission.

ACTION: Correcting amendment.

SUMMARY: The Commission published a notice in the **Federal Register** on February 27, 2007 (72 FR 8624) amending its rules of practice and