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## DEPARTMENT OF VETERANS AFFAIRS

### 2 CFR Part 801

### 38 CFR Parts 36, 39, 44, 48, 49, and 51

#### RIN 2900-AM44

### Department of Veterans Affairs Implementation of OMB Guidance on Nonprocurement Debarment and Suspension

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is moving its regulations on nonprocurement debarment and suspension from title 38, 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 its interim final guidance on nonprocurement debarment and suspension, and OMB's final guidance on those matters. Accordingly, in this final rule, VA adopts OMB's guidance and consolidates it with VA's supplemental nonprocurement debarment and suspension provisions, which are codified at 38 CFR part 44. This rule removes part 44 and makes conforming changes to other 38 CFR provisions. This regulatory action is a government-wide administrative initiative for purposes of simplification and clarity, and makes no substantive changes to VA's policy or procedures for nonprocurement debarment and suspension.

**DATES:** *Effective Date:* This final rule is effective May 31, 2007.

**FOR FURTHER INFORMATION CONTACT:** Ms. Katherine Faliski, Assistant Director for Loan Policy and Valuation (262), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans

Affairs, Washington, DC 20420, (202) 273-7369, [katherine.faliski@vba.va.gov](mailto:katherine.faliski@vba.va.gov).

**SUPPLEMENTARY INFORMATION:** On May 11, 2004, OMB established title 2 of the CFR with two subtitles (69 FR 26276). Subtitle A, "Office of Management and Budget Guidance for 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 is located in 2 CFR 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 OMB guidance at 2 CFR part 180 conforms with the Federal agencies' November 26, 2003, update to the common rule on nonprocurement debarment and suspension (70 FR 51864).

Although substantively the same as the common rule, OMB's 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 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. On November 15, 2006,

OMB published a final rule adopting the interim final guidance with changes (71 FR 66431).

This final rule moves VA's nonprocurement debarment and suspension regulations to 2 CFR subtitle B for codification with other agencies' nonprocurement debarment and suspension rules. This action was required by the OMB interim final guidance (2 CFR 180.20, 180.25, 180.30, and 180.35). New 2 CFR part 801 adopts the OMB guidelines with the additions and clarifications VA made to the common rule on nonprocurement debarment and suspension in November 2003 (68 FR 66618), as supplemented May 10, 2006 (71 FR 27203).

VA is removing 38 CFR part 44, the former location of VA's nonprocurement debarment and suspension regulations, and making conforming changes to 38 CFR 36.4226, 36.4337, 36.4346, 36.4349, 39.6, 48.510 and 49.13 by referencing 2 CFR parts 180 and 801, and to 38 CFR 51.210 by referencing 38 CFR part 48.

### Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a "significant regulatory action," requiring review by OMB, unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been

examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

### Regulatory Flexibility Act

The initial and final regulatory flexibility analyses requirements of sections 603 and 604 of the Regulatory Flexibility Act, 5 U.S.C. 601–612, are not applicable to this rule because a notice of proposed rulemaking is not required for this rule. Even so, the Secretary of Veterans Affairs hereby certifies that this regulatory action will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Therefore, pursuant to 5 U.S.C. 605(b), this action is exempt from the initial and final regulatory flexibility analysis requirements of section 603 and 604.

### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any year. This final rule would have no such effect on State, local, and tribal governments, or on the private sector.

### Paperwork Reduction Act

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

### List of Subjects

#### 2 CFR Part 801

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

#### 38 CFR Part 36

Condominiums, Flood insurance, Housing, Indians, Individuals with disabilities, Loan programs-housing and community development, Loan programs-Indians, Loan programs-veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

#### 38 CFR Part 39

Cemeteries, Grant programs-veterans, Veterans.

#### 38 CFR Part 44

Administrative practice and procedures, Grant programs, Loan programs, Reporting and recordkeeping requirements.

#### 38 CFR Parts 48 and 49

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

#### 38 CFR Part 51

Administrative practice and procedure, Claims, Day care, Dental health, Government contracts, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Mental health programs, Nursing homes, Reporting and records keeping requirements Travel and Transportation expenses, Veterans.

Approved: May 21, 2007.

**Gordon H. Mansfield,**

*Deputy Secretary of Veterans Affairs.*

■ For the reasons stated above, under the authority of 38 U.S.C. 501, the Department of Veterans Affairs amends 2 CFR Subtitle B and 38 CFR Chapter I as follows:

### Title 2—Grants and Agreements

■ 1. Add chapter VIII, consisting of part 801, to subtitle B to read as follows:

#### CHAPTER VIII—DEPARTMENT OF VETERANS AFFAIRS

#### PART 801—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

801.10 What does this part do?

801.20 Does this part apply to me?

801.30 What policies and procedures must I follow?

#### Subpart A—General

801.137 Who in the Department of Veterans Affairs may grant an exception to allow an excluded person to participate in a covered transaction?

#### Subpart B—Covered Transactions

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

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

801.332 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

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

### Subparts E–H [Reserved]

#### Subpart I—Definitions

801.930 Debarring official (Department of Veterans Affairs supplement to government-wide definition at 2 CFR 180.930).

801.995 Principal (Department of Veterans Affairs supplement to government-wide definition at 2 CFR 180.995).

801.1010 Suspending official (Department of Veterans Affairs supplement to government-wide definition at 2 CFR 180.1010).

#### Subpart J—Limited Denial of Participation (Department of Veterans Affairs Optional Subpart for OMB Guidance at 2 CFR Part 180).

801.1100 General.

801.1105 Cause for a limited denial of participation.

801.1110 Scope and period of a limited denial of participation.

801.1111 Notice.

801.1112 Conference.

801.1113 Appeal.

**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; 38 U.S.C. 501(a) and 3703(c).

#### § 801.10 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 Veterans Affairs (VA) policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for the Department of Veterans Affairs 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).

#### § 801.20 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 of this part);

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

(c) Department of Veterans Affairs debarment or suspension official; or

(d) Department of Veterans Affairs grants officer, agreements officer, or

other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

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

For any section of OMB guidance in Subparts A through I of 2 CFR part 180 that has no corresponding section in this part, Department of Veterans Affairs policies and procedures are those in the OMB guidance. For any such section where there is a corresponding section in this part, the Department of Veterans Affairs 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 as supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by § 180.220 of the OMB guidance (2 CFR 180.220) as supplemented by § 801.220 in this part (2 CFR 801.220).

**Subpart A—General**

**§ 801.137 Who in the Department of Veterans Affairs may grant an exception to allow an excluded person to participate in a covered transaction?**

Within the Department of Veterans Affairs, the Secretary of Veterans Affairs, the Under Secretary for Health, the Under Secretary for Benefits, and the Under Secretary for Memorial Affairs each has the authority to grant an exception to allow an excluded person to participate in a covered transaction, as provided in the OMB guidance at 2 CFR 180.135.

**Subpart B—Covered Transactions**

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

VA does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement transaction, 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).

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

**§ 801.332 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**

**§ 801.437 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.

**Subparts E–H [Reserved.]**

**Subpart I—Definitions**

**§ 801.930 Debarring official (Department of Veterans Affairs supplement to government-wide definition at 2 CFR 180.930).**

In addition to the debarring official listed at 2 CFR 180.930, the debarring official for the Department of Veterans Affairs is:

- (a) For the Veterans Health Administration, the Under Secretary for Health;
- (b) For the Veterans Benefits Administration, the Under Secretary for Benefits; and
- (c) For the National Cemetery Administration, the Under Secretary for Memorial Affairs.

**§ 801.995 Principal (Department of Veterans Affairs supplement to government-wide definition at 2 CFR 180.995.)**

In addition to the principals identified at 2 CFR 180.995, for the Department of Veterans Affairs loan guaranty program, principals include, but are not limited to the following:

- (a) Loan officers.
- (b) Loan solicitors.
- (c) Loan processors.
- (d) Loan servicers.
- (e) Loan supervisors.
- (f) Mortgage brokers.
- (g) Office managers.
- (h) Staff appraisers and inspectors.
- (i) Fee Appraisers and inspectors.
- (j) Underwriters.
- (k) Bonding companies.
- (l) Real estate agents and brokers.
- (m) Management and marketing agents.
- (n) Accountants, consultants, investment bankers, architects, engineers, attorneys, and others in a

business relationship with participants in connection with a covered transaction under the Department of Veterans Affairs loan guaranty program.

- (o) Contractors involved in the construction, improvement or repair of properties financed with Department of Veterans Affairs guaranteed loans.
- (p) Closing agents.

**§ 801.1010 Suspending official (Department of Veterans Affairs supplement to government-wide definition at 2 CFR 180.1010).**

In addition to the suspending official listed at 2 CFR 180.1010, the suspending official for the Department of Veterans Affairs is:

- (a) For the Veterans Health Administration, the Under Secretary for Health;
- (b) For the Veterans Benefits Administration, the Under Secretary for Benefits; and
- (c) For the National Cemetery Administration, the Under Secretary for Memorial Affairs.

**Subpart J—Limited Denial of Participation (Department of Veterans Affairs Optional Subpart for OMB Guidance at 2 CFR Part 180).**

**§ 801.1100 General.**

Field facility directors are authorized to order a limited denial of participation affecting any participant or contractor and its affiliates except lenders and manufactured home manufacturers. In each case, even if the offense or violation is of a criminal, fraudulent or other serious nature, the decision to order a limited denial of participation shall be discretionary and in the best interests of the Government.

**§ 801.1105 Cause for a limited denial of participation.**

(a) *Causes.* A limited denial of participation shall be based upon adequate evidence of any of the following causes:

- (1) Irregularities in a participant's or contractor's performance in the VA loan guaranty program;
- (2) Denial of participation in programs administered by the Department of Housing and Urban Development or the Department of Agriculture, Rural Housing Service;
- (3) Failure to satisfy contractual obligations or to proceed in accordance with contract specifications;
- (4) Failure to proceed in accordance with VA requirements or to comply with VA regulations;
- (5) Construction deficiencies deemed by VA to be the participant's responsibility;
- (6) Falsely certifying in connection with any VA program, whether or not

the certification was made directly to VA;

(7) Commission of an offense or other cause listed in § 180.800;

(8) Violation of any law, regulation, or procedure relating to the application for guaranty, or to the performance of the obligations incurred pursuant to a commitment to guaranty;

(9) Making or procuring to be made any false statement for the purpose of influencing in any way an action of the Department.

(10) Imposition of a limited denial of participation by any other VA field facility.

(b) *Indictment.* A criminal indictment or information shall constitute adequate evidence for the purpose of limited denial of participation actions.

(c) *Limited denial of participation.*

Imposition of a limited denial of participation by a VA field facility shall, at the discretion of any other VA field facility, constitute adequate evidence for a concurrent limited denial of participation. Where such a concurrent limited denial of participation is imposed, participation may be restricted on the same basis without the need for an additional conference or further hearing.

**§ 801.1110 Scope and period of a limited denial of participation.**

(a) *Scope and period.* The scope of a limited denial of participation shall be as follows:

(1) A limited denial of participation extends only to participation in the VA Loan Guaranty Program and shall be effective only within the geographic jurisdiction of the office or offices imposing it.

(2) The sanction may be imposed for a period not to exceed 12 months except for unresolved construction deficiencies. In cases involving construction deficiencies, the builder may be excluded for either a period not to exceed 12 months or for an indeterminate period which ends when the deficiency has been corrected or otherwise resolved in a manner acceptable to VA.

(b) *Effectiveness.* The sanction shall be effective immediately upon issuance and shall remain effective for the prescribed period. If the cause for the limited denial of participation is resolved before the expiration of the prescribed period, the official who imposed the sanction may terminate it. The imposition of a limited denial of participation shall not affect the right of the Department to suspend or debar any person under this part.

(c) *Affiliates.* An affiliate or organizational element may be included

in a limited denial of participation solely on the basis of its affiliation, and regardless of its knowledge of or participation in the acts providing cause for the sanction. The burden of proving that a particular affiliate or organizational element is capable of meeting VA requirements and is currently a responsible entity and not controlled by the primary sanctioned party (or by an entity that itself is controlled by the primary sanctioned party) is on the affiliate or organizational element.

**§ 801.1111 Notice.**

(a) *Generally.* A limited denial of participation shall be initiated by advising a participant or contractor, and any specifically named affiliate, by certified mail, return receipt requested:

(1) That the sanction is effective as of the date of the notice;

(2) Of the reasons for the sanction in terms sufficient to put the participant or contractor on notice of the conduct or transaction(s) upon which it is based;

(3) Of the cause(s) relied upon under § 801.1105 for imposing the sanction;

(4) Of the right to request in writing, within 30 days of receipt of the notice, a conference on the sanction, and the right to have such conference held within 10 business days of receipt of the request;

(5) Of the potential effect of the sanction and the impact on the participant's or contractor's participation in Departmental programs, specifying the program(s) involved and the geographical area affected by the action.

(b) *Notification of action.* After 30 days, if no conference has been requested, the official imposing the limited denial of participation will notify VA Central Office of the action taken and of the fact that no conference has been requested. If a conference is requested within the 30-day period, VA Central Office need not be notified unless a decision to affirm all or a portion of the remaining period of exclusion is issued. VA Central Office will notify all VA field offices of sanctions imposed and still in effect under this subpart.

**§ 801.1112 Conference.**

Upon receipt of a request for a conference, the official imposing the sanction shall arrange such a conference with the participant or contractor and may designate another official to conduct the conference. The participant shall be given the opportunity to be heard within 10 business days of receipt of the request. This conference precedes, and is in addition to, the

formal hearing provided if an appeal is taken under § 801.1113. Although formal rules of procedure do not apply to the conference, the participant or contractor may be represented by counsel and may present all relevant information and materials to the official or designee. After consideration of the information and materials presented, the official shall, in writing, advise the participant or contractor of the decision to withdraw, modify or affirm the limited denial of participation. If the decision is made to affirm all or a portion of the remaining period of exclusion, the participant shall be advised of the right to request a formal hearing in writing within 30 days of receipt of the notice of decision. This decision shall be issued promptly, but in no event later than 20 days after the conference and receipt of materials.

**§ 801.1113 Appeal.**

Where the decision is made to affirm all or a portion of the remaining period of exclusion, any participant desiring an appeal shall file a written request for a hearing with the Under Secretary for Benefits, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. This request shall be filed within 30 days of receipt of the decision to affirm. If a hearing is requested, it shall be held in accordance with the procedures in §§ 108.825 through 108.855. Where a limited denial of participation is followed by a suspension or debarment, the limited denial of participation shall be superseded and the appeal shall be heard solely as an appeal of the suspension or debarment.

**Title 38—Pensions, Bonuses, and Veterans' Relief**

**CHAPTER I—DEPARTMENT OF VETERANS AFFAIRS**

**PART 36—LOAN GUARANTY**

■ 2. The authority citation for part 36 continues to read as follows:

**Authority:** 38 U.S.C. 501, 3701–3704, 3707, 3710–3714, 3719, 3720, 3729, 3762, unless otherwise noted.

■ 3. In § 36.4226, paragraph (a)(3), the reference to “at § 44.305 of this title” is revised to read “in 2 CFR parts 180 and 801”.

■ 4. In § 36.4337, paragraph (n), the reference to “part 44 of this title” is revised to read “2 CFR parts 180 and 801”.

■ 5. In § 36.4346, paragraph (g)(2), the reference to “38 CFR 44.205 and

44.305" is revised to read "2 CFR parts 180 and 801".

■ 6. In § 36.4349, paragraph (a)(3), the reference to "at § 44.305 of this title" is revised to read "in 2 CFR parts 180 and 801".

#### **PART 39—AID TO STATES FOR ESTABLISHMENT, EXPANSION, AND IMPROVEMENT OF VETERANS' CEMETERIES**

■ 7. The authority citation for part 39 continues to read as follows:

**Authority:** 38 U.S.C. 101, 501, 2408.

■ 8. In § 39.6, paragraph (c)(7), the reference to "38 CFR parts 43 and 44" is revised to read "2 CFR parts 180 and 801 and 38 CFR part 43".

#### **PART 44 [REMOVED]**

■ 9. Remove part 44.

#### **PART 48—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)**

■ 10. The authority citation for part 48 continues to read as follows:

**Authority:** 41 U.S.C. 701, *et seq.*; 38 U.S.C. 501.

■ 11. In § 48.510, paragraph (c), the reference to "38 CFR part 44" is revised to read "2 CFR parts 180 and 801".

#### **PART 49—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS**

■ 12. The authority citation for part 49 continues to read as follows:

**Authority:** 5 U.S.C. 301; 38 U.S.C. 501, OMB Circular A-110 (2 CFR part 215), and as noted in specific sections.

■ 13. In § 49.13, the reference to "part 44 of this chapter" is revised to read "2 CFR parts 180 and 801".

#### **PART 51—PER DIEM FOR NURSING HOME CARE OF VETERANS IN STATE HOMES**

■ 14. The authority citation for part 51 continues to read as follows:

**Authority:** 38 U.S.C. 101, 501, 1710, 1741-1743.

■ 15. In § 51.210, paragraph (t), the reference to "38 CFR part 44, section 44.100 through 44.420" is revised to read "38 CFR part 48".

[FR Doc. E7-10418 Filed 5-30-07; 8:45 am]

**BILLING CODE 8320-01-P**

#### **EXPORT-IMPORT BANK OF THE UNITED STATES**

##### **2 CFR Part 3513**

##### **12 CFR Part 413**

**RIN 3048-ZA03**

#### **Export-Import Bank of the United States Implementation of OMB Guidance on Nonprocurement Debarment and Suspension**

**AGENCY:** Export-Import Bank of the United States.

**ACTION:** Direct final rule.

**SUMMARY:** The Export-Import Bank of the United States (Ex-Im Bank) is establishing a new Part 3513 in 2 CFR that adopts the Office of Management and Budget's (OMB's) guidance in 2 CFR part 180, as supplemented by this new part, as Ex-Im Bank policies and procedures for nonprocurement debarment and suspension. Ex-Im Bank is also removing 12 CFR part 413, the part containing Ex-Im Bank's implementation of the government-wide common rule on nonprocurement debarment and suspension. 2 CFR part 3513 would serve the same purpose as the common rule in a simpler way. These changes constitute an administrative simplification that would make no substantive change in Ex-Im Bank policy or procedures for nonprocurement debarment and suspension.

**DATES:** The effective date for this final rule is July 2, 2007.

**FOR FURTHER INFORMATION CONTACT:** Brian J. Sonfield, Assistant General Council for Administration, 202-565-3439, [brian.sonfield@exim.gov](mailto:brian.sonfield@exim.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Ex-Im Bank's current regulation on nonprocurement suspension and debarment is found at 12 CFR part 413. The current regulation, issued November 26, 2003 (68 FR 66568), is Ex-Im Bank's promulgation of the government-wide "common rule" on this subject.

The Office of Management and Budget (OMB) published interim final guidance on nonprocurement debarment and suspension in the **Federal Register** on August 31, 2005 (70 FR 51863). On November 15, 2006, OMB published a final rule adopting the interim final guidance with changes (71 FR 66431). This guidance, located in 2 CFR part 180, is substantively the same as the common rule, but is published in a form that each agency can adopt, thus eliminating the need for each agency to

publish its separate version of the same rule. It also facilitates the ability to update government-wide requirements without each agency having to re-promulgate its own rules.

Ex-Im Bank is therefore establishing new 2 CFR Part 3513, which adopts as Ex-Import Bank's regulation the OMB guidance set forth at 2 CFR part 180, supplemented by a few necessary agency-specific provisions. Current 12 CFR Part 413 is being removed. No substantive change in Ex-Im Bank's nonprocurement suspension and debarment regulation is intended by these actions.

Ex-Im Bank is authorized and empowered to do a general banking business pursuant to its Charter, see 12 U.S.C. 635(a)(1), and its decisions whether or not to extend credit in particular cases are "committed to agency discretion by law," 5 U.S.C. 701(a)(2). Nothing contained in these regulations is intended to limit Ex-Im Bank's discretion to exercise any rights, privileges or recourse that Ex-Im Bank deems necessary to protect the interests and mission of Ex-Im Bank and the interests of the United States Government.

#### **Executive Order 12866**

OMB has determined this rule to be 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 (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.