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AGENCY FOR INTERNATIONAL DEVELOPMENT

2 CFR Part 780

22 CFR Part 208

RIN 0412-AA67

Implementation of OMB Guidance on Government-Wide Debarment and Suspension (Non-procurement)

AGENCY: U.S. Agency for International Development.

ACTION: Final Rule.

SUMMARY: The U.S. Agency for International Development (USAID) is removing its regulation implementing the Government-wide common rule on debarment and suspension (non-procurement), currently located in Part 208 of Title 22 of the Code of Federal Regulations (CFR), and issuing a new regulation to adopt the Office of Management and Budget (OMB) guidance at 2 CFR part 180. This regulatory action implements the OMB's initiative to streamline and consolidate into one title of the CFR all Federal regulations on debarment and suspension. These changes constitute an administrative simplification that would make no substantive change in USAID policy or procedures for debarment and suspension.

DATES: This final rule is effective on August 12, 2011 without further action. Submit comments by July 13, 2011 on any unintended changes this action makes in USAID policies and procedures for debarment and suspension. All comments on unintended changes will be considered and, if warranted, USAID will revise the rule.

ADDRESSES: You may submit comments, identified by RIN 0412-AA67 in the subject line to Ms. M. E. Yearwood, USAID—M/OAA/P, SA-44, 867B, 1300 Pennsylvania Ave., NW., Washington,

DC 20523, e-mail myearwood@usaid.gov, fax (202) 567-4695

FOR FURTHER INFORMATION CONTACT: Melita E. Yearwood, Procurement Analyst, Office of Acquisition and Assistance, Policy Division at (202) 567-4672.

SUPPLEMENTARY INFORMATION:

Background

When it established Title 2 of the CFR as the new central location for OMB guidance and agency implementing regulations concerning grants and agreements [69 FR 26276, May 11, 2004], OMB announced its intention to replace common rules with OMB guidance that agencies could adopt in brief regulations. OMB began that process by proposing [70 FR 51863, August 31, 2005] and finalizing [71 FR 66431, November 15, 2006] Government-wide guidance on non-procurement suspension and debarment in 2 CFR part 180.

The guidance requires each agency to replace the common rule on debarment and suspension requirements that the agency previously issued in its own CFR title with a brief regulation in 2 CFR adopting the Government-wide policies and procedures. One advantage of this approach is that it reduces the total volume of drug-free workplace regulations. A second advantage is that it collocates OMB's guidance and all of the agencies' implementing regulations in 2 CFR.

OMB published interim final guidance in the Federal Register on August 31, 2005 [70 FR 51863]. The August 2005 **Federal Register** Notice stated that the substantive content of the interim final guidelines was intended to conform with the substance of the Federal agencies' most recent update to the common rule [68 FR 66534, November 26, 2003].

The Current Regulatory Actions

As the OMB guidance requires, USAID is taking two regulatory actions. First, we are removing the debarment and suspension common rule from 22 CFR Part 208. Second, to replace the common rule, we are issuing a brief regulation in 2 CFR Part 180 to adopt the Government-wide policies and procedures in the OMB guidance.

Invitation to Comment

Taken together, these regulatory actions are solely an administrative simplification and are not intended to make any substantive change in policies or procedures. In soliciting comments on these actions, we therefore are not seeking to revisit substantive issues that were resolved during the development of the final common rule in 2003. We are inviting comments specifically on any unintended changes in substantive content that the new part in 2 CFR would make relative to the common rule at 22 CFR part 208.

Administrative Procedure Act

Under the Administrative Procedure Act (5 U.S.C. 553), agencies generally propose a regulation and offer interested parties the opportunity to comment before it becomes effective. However, as described in the "Background" section of this preamble, the policies and procedures in this regulation have been proposed for comment two times—one time by Federal agencies as a common rule in 2003 and a second time by OMB as guidance in 2006—and adopted each time after resolution of the comments received.

This direct final rule is solely an administrative simplification that would make no substantive change in USAID's policy or procedures for debarment and suspension. We therefore believe that the rule is noncontroversial and do not expect to receive adverse comments, although we are inviting comments on any unintended substantive change this rule makes.

Accordingly, we find 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 August 12, 2011 without further action, unless we receive adverse comment by July 13, 2011. If any comment on unintended changes is received, it will be considered and, if warranted, we will publish a timely revision of the rule.

Executive Order 12866

OMB has determined this rule to be not significant for purposes of E.O. 12866.

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

This proposed 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 proposed 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 proposed 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 780

Administrative practice and procedure, Debarment and suspension, Grant programs, Grants administration, Reporting and recordkeeping requirements, Government procurement.

22 CFR Part 208

Administrative practice and procedure, Debarment and suspension, Grant programs, Grants administration, Reporting and recordkeeping requirements, Government procurement.

Accordingly, for the reasons set forth in the preamble, and under the authority of 5 U.S.C. 301, the USAID amends the Code of Federal Regulations, Title 2, Subtitle B, by establishing Chapter VII, consisting of part 780 and to read as follows:

■ 1. Chapter VII, consisting of part 780 is added to Title 2 to read as follows:

CHAPTER VII—AGENCY FOR INTERNATIONAL DEVELOPMENT

PART 780—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

780.10 What does this part do?

780.20 Does this part apply to me?

780.30 What policies and procedures must I follow?

Subpart A—General

780.137 Who in the Agency for International Development may grant an exception to let an excluded person participate in a covered transaction?

Subpart B—Covered Transactions

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

Subpart C—Responsibilities of Participants Regarding Transactions

780.332 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

780.437 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

780.930 Debarring Official (Agency for International Development supplement to government-wide definition at 2 CFR 180.930).

780.1010 Suspending Official (Agency for International Development supplement to government-wide definition at 2 CFR 180.1010).

Subpart 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.

§ 780.10 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 USAID policies and procedures for non-procurement debarment and suspension. It thereby gives regulatory effect for USAID 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 section 2455 of the Federal Acquisition Streamlining Act of 1994, Public Law 103-355 (31 U.S.C. 6101 note).

§ 780.20 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

“non-procurement transaction” at 2 CFR 180.970);

(b) Respondent in a USAID suspension or debarment action;

(c) USAID debarment or suspension official; and

(d) USAID grants officer, agreements officer, or other official authorized to enter into any type of non-procurement transaction that is a covered transaction.

§ 780.30 What policies and procedures must I follow?

The USAID 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 any supplemental policies and procedures set forth in this part.

Subpart A—General

§ 780.137 Who in USAID may grant an exception to let an excluded person participate in a covered transaction?

The Director, Office of Acquisition and Assistance or designee, may grant an exception permitting an excluded person to participate in a particular covered transaction. If the Director, Office of Acquisition and Assistance or designee grants an exception, the exception must be in writing and state the reason(s) for deviating from the government-wide policy in Executive Order 12549.

Subpart B—Covered Transactions

§ 780.220 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 any contract, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the contract is to be funded or provided by the USAID under a covered non-procurement transaction and the amount of the contract is expected to equal or exceed \$25,000. This extends the coverage of the USAID non-procurement suspension and debarment requirements to all lower tiers of subcontracts under covered non-procurement 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

§ 780.332 What requirements must I pass down to persons 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

§ 780.437 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, and 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

§ 780.930 Debarring Official (Agency for International Development supplement to government-wide definition at 2 CFR 180.930).

The Debarring Official for USAID is the Director of the Office of Acquisition and Assistance.

§ 780.1010 Suspending Official (Agency for International Development supplement to government-wide definition at 2 CFR 180.1010).

The Suspending Official for USAID is the Director of the Office of Acquisition and Assistance.

Subpart J—[Reserved]

- 2. Title 22, chapter II is amended by removing part 208.

Dated: March 24, 2011.

M.E. Yearwood,

Acquisitions and Assistance Policy Analyst, USAID.

[FR Doc. 2011-14242 Filed 6-10-11; 8:45 am]

BILLING CODE 6116-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2011-0453]

RIN 1625-AA00

Safety Zone, Barrier Testing Operations, Chicago Sanitary and Ship Canal, Romeoville, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Chicago Sanitary and Ship Canal (CSSC) near Romeoville, IL. This temporary final rule is intended to restrict all vessels from transiting the navigable waters of the CSSC. This safety zone is necessary to protect the waters, waterway users, and vessels from the hazards associated with U.S. Army Corps of Engineers (USACE) temporary simultaneous operation of dispersal barrier IIA and IIB.

DATES: This rule is effective on June 10, 2011. This rule will remain in effect until 5 p.m. on June 21, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2011-0453 and are available online by going to <http://www.regulations.gov>, inserting USCG-2011-0453 in the "Keyword" box, and then clicking "search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, contact or e-mail BM1 Adam Kraft, U.S. Coast Guard Sector Lake Michigan, at 414-747-7148 or

Adam.D.Kraft@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to

comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because waiting for a notice and comment period to run would be impracticable and contrary to the public interest in that it would inhibit the Coast Guard's ability to protect the public from the hazards associated with the U.S. Army Corps of Engineers' simultaneous operation of electric barriers IIA and IIB.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the reasons discussed in the preceding paragraph, a 30-day notice period would be impractical and contrary to the public interest.

Background and Purpose

In 2007, the Department of the Interior through the Fish and Wildlife Service listed the Asian Carp and the Silver Carp as Injurious Wildlife Species. Based upon testing conducted by the USACE, the Asian carp is presently migrating toward the Great Lakes through the CSSC and connected tributaries. Scientists are concerned that if these aquatic nuisance species reach the Great Lakes in sufficient numbers they might devastate the Great Lakes commercial and sport fishing industries.

The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, as amended by the National Invasive Species Act of 1996, authorized the USACE to conduct a demonstration project to identify an environmentally sound method for preventing and reducing the dispersal of non-indigenous aquatic nuisance species through the CSSC. The USACE selected an electric barrier because it is a non-lethal deterrent with a proven history, which does not overtly interfere with navigation in the canal.

A demonstration dispersal barrier (Barrier I) was constructed and has been in operation since April 2002. It is located approximately 30 miles from Lake Michigan and creates an electric field in the water by pulsing low voltage DC current through steel cables secured to the bottom of the canal. A second barrier (Barrier IIA) was constructed 800 to 1300 feet downstream of the Barrier I. Barrier IIA is currently operating at two volts per inch, 15 Hertz and 6.5ms. Construction on Barrier IIB has been completed. Operational and safety testing was conducted in February 2011 and is being analyzed. The completion