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SMALL BUSINESS ADMINISTRATION

2 CFR Part 2700

13 CFR Parts 134 and 145

RIN 3245-AF63

Small Business Administration Implementation of OMB Guidance on Nonprocurement Debarment and Suspension

AGENCY: U.S. Small Business Administration.

ACTION: Direct final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is moving its regulations on nonprocurement debarment and suspension from their current location in title 13 of the 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). This rule establishes a new 2 CFR part 2700 that adopts OMB's final government-wide guidance on nonprocurement debarment and suspension and contains supplemental SBA nonprocurement debarment and suspension provisions. In addition, this rule removes the existing SBA nonprocurement debarment and suspension regulations and makes a conforming change and minor procedural clarifications. These changes constitute an administrative simplification that makes no substantive change in SBA policy or procedures for nonprocurement debarment and suspension. SBA is also amending a provision in its Rules of Procedure Governing Cases Before the Office of Hearings and Appeals (13 CFR 134.102(p)) to update the reference to SBA's nonprocurement debarment and suspension regulations.

DATES: *Effective Date:* This rule is effective September 18, 2007 without further action.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Introduction

On May 11, 2004, OMB established title 2 of the CFR with two subtitles (69 FR 2627). Subtitle A, "Government-wide 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 was located in title 2 of the CFR as new subtitle A, chapter 1, 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 interim final guidance at 2 CFR part 180 conforms the OMB guidance with the Federal agencies' November 26, 2003, update to the common rule on nonprocurement debarment and suspension (*see* 70 FR 51864). Although substantively the same as the common rule, OMB's interim final 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 (70 FR 51864). On November 15, 2006, OMB published a final rule adopting the interim final guidance with changes (71 FR 66431).

This direct final rule places SBA's nonprocurement debarment and suspension regulations in subtitle B of title 2 of the CFR, along with other agencies' nonprocurement debarment and suspension rules. This action was required by the OMB interim final guidance, which was made final on November 15, 2006 (*see* 2 CFR 180.20, 180.25, 180.30 and 180.35). The new CFR part 2700 adopts the OMB guidelines with additions and clarifications that SBA made to the common rule on nonprocurement debarment and suspension in the SBA rule published on November 26, 2003 (68 FR 66544-70). The substance of SBA's nonprocurement debarment and suspension is unchanged. SBA is removing 13 CFR part 145, which was last revised as part of the November 2003 common rule.

SBA is not soliciting public comment on this rule and is instead issuing this rule as a direct final rule. Under 5 U.S.C. 553(b)(3)(A) agencies are not required to undergo notice and comment procedure for "interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice." Because this rule adopts OMB's published guidelines, which followed notice and comment procedures, and collocates SBA's specific nonprocurement suspension and debarment rules to title 2 of the CFR, we believe that it falls under the exception cited above.

Compliance With Executive Orders 13132, 12988 and 12866, the Regulatory Flexibility Act (5 U.S.C. 601-602), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

This regulation 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. Therefore, for the purposes of Executive Order 13132, SBA determines that this rule has no federalism implications warranting preparation of a federalism assessment.

OMB has determined this rule is not a "significant regulatory action" under Executive Order 12866.

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

SBA has determined that this rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, small non-profit enterprises, and small local governments. Pursuant to the RFA, when an agency issues a rulemaking, the agency must prepare a regulatory flexibility analysis which describes the impact of the rule on small entities. However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. Within the meaning of the RFA, SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities because the rule imposes no direct requirements on small entities.

List of Subjects

2 CFR Part 2700

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

13 CFR Part 134

Administrative practice and procedure, Claims, Equal access to justice, Lawyers, Organizations and functions (Government agencies).

13 CFR Part 145

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements.

■ Accordingly, under the authority of 15 U.S.C. 634, SBA amends the Code of Federal Regulations, Title 2, Subtitle B, and Title 13, Chapter 1, as follows:

Title 2—Grants and Agreements

■ 1. Add Chapter XXVII, consisting of Part 2700 to Subtitle B to read as follows:

Chapter XXVII—Small Business Administration

PART 2700—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

2700.10 What does this part do?

2700.20 Does this part apply to me?

2700.30 What policies and procedures must I follow?

Subpart A—General

2700.137 Who in the Small Business Administration may grant an exception to let an excluded person participate in a covered transaction?

Subpart B—Covered Transactions

2700.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

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2700.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

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2700.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

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Subpart H—Debarment

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Subpart I—Definitions

2700.930 Debarring official
2700.995 Principal
2700.1010 Suspending official

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, 1986 Comp., p. 235); 15 U.S.C. 634(b)(6).

§ 2700.10 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 SBA policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for SBA 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, Pub. L. 103–355 (31 U.S.C. 6101 note).

§ 2700.20 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);

(b) Respondent in an SBA suspension or debarment action;

(c) SBA debarment or suspension official; or

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

§ 2700.30 What policies and procedures must I follow?

The SBA policies and procedures 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 of this part (i.e., § 2700.220). For any section of OMB guidance in Subparts A through I of 2 CFR 180 that has no corresponding section in this part, SBA policies and procedures are those in the OMB guidance.

Subpart A—General

§ 2700.137 Who in the Small Business Administration may grant an exception to let an excluded person participate in a covered transaction?

The Director of the Office of Lender Oversight may grant an exception permitting an excluded person to participate in a particular covered transaction under SBA's financial assistance programs. For all other Agency programs, the Director of the Office of Business Operations may grant such an exception.

Subpart B—Covered Transactions

§ 2700.220 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 180.22(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 SBA under a covered nonprocurement transaction and the amount of the contract is expected to equal or exceed \$25,000. This extends the coverage of the SBA nonprocurement suspension and debarment requirements to all lower tiers of subcontracts under covered nonprocurement transactions, as permitted under the OMB guidance at 2 CFR 180.200(c) (see optional lower tier coverage in the figure in the Appendix to 2 CFR part 180)

Subpart C—Responsibilities of Participants Regarding Transactions

§ 2700.332 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 part.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

§ 2700.437 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.

Subpart E–F—[Reserved]

Subpart G—Suspension

§ 2700.765 How may I appeal my suspension?

(a) If the SBA suspending official issues a decision under § 180.755 to continue your suspension after you present information in opposition to that suspension under § 180.720, you may ask for review of the suspending official's decision in two ways:

(1) You may ask the suspending official 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 that the SBA Office of Hearings and Appeals (OHA) review the suspending official's decision to continue your suspension within 30 days of your receipt of the suspending official's decision under § 180.755 or paragraph (a)(1) of this section. However, OHA may reverse the suspending official's decision only where OHA finds that the decision is based on a clear error of material fact or law, or where OHA finds that the suspending official's decision was arbitrary, capricious, or an abuse of discretion. You may appeal the suspending official's decision without requesting reconsideration, or you may appeal the decision of the suspending official on reconsideration. The procedures governing OHA appeals are set forth in 13 CFR part 134.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in error; and include the reasons or legal bases for your position.

(c) OHA, in its discretion, may stay the suspension pending review of the suspending official's decision.

(d) The SBA suspending official and OHA must notify you of their decision under this section, in writing, using the notice procedures set forth at §§ 180.615 and 180.975.

Subpart H—Debarment

§ 2700.890 How may I appeal my debarment?

(a) If the SBA debarring official issues a decision under § 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 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 that the SBA Office of Hearings and Appeals (OHA) review the debarring official's decision to debar you within 30 days of your receipt of the debarring official's decision under § 180.870 or paragraph (a)(1) of this section. However, OHA may reverse the debarring official's decision only where OHA finds that the decision is based on a clear error of material fact or law, or where OHA 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. The procedures governing OHA appeals are set forth in 13 CFR part 134.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in error; and include the reasons or legal bases for your position.

(c) OHA, in its discretion, may stay the debarment pending review of the debarring official's decision.

(d) The SBA debarring official and OHA must notify you of their decision under this section, in writing, using the notice procedures set forth at §§ 180.615 and 180.975.

Subpart I—Definitions

§ 2700.930 Debarring official (SBA supplement to government-wide definition at 2 CFR 180.930).

For SBA, the debarring official for financial assistance programs is the Director of the Office of Lender Oversight; for all other programs, the debarring official is the Director of the Office of Business Operations.

§ 2700.995 Principal (SBA supplement to government-wide definition at 2 CFR 180.995).

Principal means—

(a) Other examples of individuals who are principals in SBA covered transactions include:

(1) Principal investigators.

(2) Securities brokers and dealers under the section 7(a) Loan, Certified Development Company (CDC) and Small Business Investment Company (SBIC) programs.

(3) Applicant representatives under the section 7(a) Loan, CDC, SBIC, Small Business Development Center (SBDC), and section 7(j) programs.

(4) Providers of professional services under the section 7(a) Loan, CDC, SBIC, SBDC, and section 7(j) programs.

(5) Individuals that certify, authenticate or authorize billings.

(b) [Reserved]

§ 2700.1010 Suspending official (SBA supplement to government-wide definition at 2 CFR 180.1010).

For SBA, the suspending official for financial assistance programs is the Director of the Office of Lender Oversight; for all other programs, the suspending official is the Director of the Office of Business Operations.

Subpart J—[Reserved]**Title XIII—Business Credit and Assistance; Chapter I—Small Business Administration****PART 134—RULES OF PROCEDURE GOVERNING CASES BEFORE THE OFFICE OF HEARINGS AND APPEALS**

- 2. The authority citation for part 134 continues to read as follows:

Authority: 5 U.S.C. 504; 15 U.S.C. 632, 634(b)(6), 637(a), 648(l), 656(i), and 687(c); E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189.

§ 134.102 [Amended]

- 3. Section 134.102(p) of subpart B is amended by removing “part 145 of this chapter” and adding “2 CFR parts 180 and 2700” in its place.

PART 145—[REMOVED]

- 4. Under the authority of 15 U.S.C. 634, 13 CFR part 145 is removed.

Dated: July 12, 2007.

Steven C. Preston,
Administrator.

[FR Doc. E7–14035 Filed 7–19–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF AGRICULTURE**Grain Inspection, Packers and Stockyards Administration****7 CFR Parts 800 and 810**

RIN 0580–AA91

United States Standards for Sorghum

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

ACTION: Final rule.

SUMMARY: We are revising the United States Standards for Sorghum to amend the definitions of the classes Sorghum, White sorghum, and Tannin sorghum, and to amend the definition of nongrain sorghum. We are amending the grade limits for broken kernels and foreign material (BNFM), and the subfactor foreign material (FM). Additionally, we are inserting a total count limit for other material into the standards and revising the method of certifying test weight (TW). Further, we are changing the inspection plan tolerances for BNFM and FM. These changes will help facilitate the marketing of sorghum.

DATES: *Effective Date:* June 1, 2008.

FOR FURTHER INFORMATION CONTACT: Patrick McCluskey at GIPSA, USDA, Suite 180 STOP 1404, 6501 Beacon Drive, Kansas City, MO, 64133;

Telephone (816) 823–4639; fax (816) 823–4644.

SUPPLEMENTARY INFORMATION:**Background**

The United States Grain Standards Act (USGSA) authorizes the Secretary of Agriculture to establish official standards of kind and class, quality and condition for sorghum and other grains (7 U.S.C. 76). The United States Standards for Grain serve as the starting point to define grain quality in the marketplace. The United States Standards for Sorghum are in the regulations at 7 CFR 810.1401–810.1405.

On September 24, 2003, GIPSA was asked by the National Sorghum Producers (NSP, formerly National Grain Sorghum Producers) to initiate a review of the sorghum standards. Accordingly, in the December 17, 2003 **Federal Register** (68 FR 70201), through an Advance Notice of Proposed Rulemaking (ANPR) we requested views and comments on the sorghum standards. We received 35 comments to the ANPR. In the March 29, 2006 **Federal Register** (71 FR 15633–15639) we invited comments to our proposed rule identifying changes to the United States Standards for Sorghum to:

(1) Delete the reference to tannin content from definitions of Sorghum, Tannin sorghum and White sorghum, and define these classes based on the presence or absence of a pigmented testa (subcoat);

(2) Revise the definition of nongrain sorghum by deleting sorghum-sudangrass hybrids, sorgrass, and adding language referencing seeds of Sorghum bicolor (L.) Moench that appear atypical of grain sorghum;

(3) Reduce the grading limits for broken kernels and foreign material (BNFM) and the subfactor foreign material (FM);

(4) Insert a total count limit of 10 for other material used to determine sample grade factors;

(5) Report the certification of sorghum test weight in tenths of a pound per bushel; and

(6) Revise the sorghum breakpoints and associated grade limits for U.S. Nos. 1, 2, 3, and 4 BNFM and FM.

Comment Review

We received 11 comments expressing a variety of views during the 60 day comment period for the proposed rule. We received comments from sorghum producers, producer and other industry organizations, grain handlers, and a sorghum researcher.

Overall, the comments supported all or a significant portion of the changes.

A few commenters opposed specific portions of the changes. Some commenters requested additional changes beyond the scope of the proposed rule: Deleting the separate reference to FM but retaining the standard for total BNFM in the sorghum standard; deleting the reference to other grains from the definition of Damaged Kernels and Heat-damaged Kernels; and standardizing feed grain standards. We will consider these comments for future work on the standards.

Sorghum Class Definitions

We proposed removing the reference to tannin content from definitions of Sorghum, Tannin sorghum and White sorghum, and define these classes based on the presence or absence of a pigmented testa (subcoat). We received nine comments on the proposal to remove the word tannin from the class definitions of Sorghum, Tannin sorghum, and White sorghum. Eight commenters directly supported the proposal as written and the other commenter did not oppose the proposal as written. No comments were received opposing the proposal. Of the supporting comments, most used identical language to state that defining sorghum based on the lack of a pigmented testa (subcoat) addressed the concerns of sorghum marketing organizations. Accordingly, we are amending the sorghum standards to remove the reference to tannin content from definitions of Sorghum, Tannin sorghum and White sorghum, and define these classes based on the presence or absence of a pigmented testa (subcoat), as set forth in the proposal.

Nongrain Sorghum Definition

We proposed changing the definition of nongrain sorghum by (1) removing sorgrass and sorghum-sudangrass hybrids by (2) adding the words “seeds of Sorghum bicolor (L.) Moench that appear atypical of grain sorghum.” No commenters opposed or supported the proposal as written. Sorghum-sudangrass hybrids (botanically, Sorghum bicolor (L.) Moench), despite being grown as a forage crop, can either produce kernels which appear typical of grain sorghum or kernels that appear atypical of grain sorghum. We continue to believe that there is no reason to count kernels which appear typical of grain sorghum as nongrain sorghum, and this proposed change is made final herein.

Comments were received supporting the removal of sweet sorghum (sorgo) from the definition of nongrain sorghum because botanically, sweet sorghum is Sorghum bicolor (L.) Moench, as is grain