

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".

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**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.

**List of Subjects****2 CFR Part 3513**

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

**12 CFR Part 413**

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

■ Accordingly, for the reasons stated in the preamble, and under the authority of 12 U.S.C. 635; Ex-Im Bank amends the Code of Federal Regulations, Title 2, Subtitle B, and Title 12, Chapter IV, as follows:

**Title 2—Grants and Agreements**

■ 1. Add Chapter 35, consisting of part 3513, to Subtitle B to read as follows:

**CHAPTER 35—EXPORT-IMPORT BANK OF THE UNITED STATES****PART 3513—NONPROCUREMENT DEBARMENT AND SUSPENSION**

Sec.

3513.10 What does this part do?

3513.20 Does this part apply to me?

3513.30 What policies and procedures must I follow?

**Subpart A—General**

3513.137 Who at Ex-Im Bank may grant an exception to let an excluded person participate in a covered transaction?

**Subpart B—Covered Transactions**

3513.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

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

3513.332 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**

3513.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

**Subparts E—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.

**§ 3513.10 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 Export Import Bank of the United States (Ex-Im Bank) policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for Ex-Im Bank 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).

**§ 3513.20 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 an Ex-Im Bank suspension or debarment action.

(c) Ex-Im Bank debarment or suspension official;

(d) Ex-Im Bank grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction;

**§ 3513.30 What policies and procedures must I follow?**

Ex-Im Bank 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., § 3513.220). For any section of OMB guidance in Subparts A through I of 2 CFR 180 that has no corresponding section in this part, Ex-Im Bank policies and procedures are those in the OMB guidance.

**Subpart A—General****§ 3513.137 Who in Ex-Im Bank may grant an exception to let an excluded person participate in a covered transaction?**

(a) The Ex-Im Bank agency head or designee may grant an exception permitting an excluded person to participate in a particular covered transaction. If the Ex-Im Bank agency head 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.

(b) An exception granted by one agency for an excluded person does not extend to the covered transactions of another agency.

**Subpart B—Covered Transactions****§ 3513.220 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), Ex-Im Bank does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement under a covered nonprocurement transaction.

**Subpart C—Responsibilities of Participants Regarding Transactions****§ 3513.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?**

To communicate the requirements, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tiered covered transactions.

**Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions****§ 3513.437 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—J—[Reserved]****Title 12—Banks and Banking****CHAPTER IV—EXPORT-IMPORT BANK OF THE UNITED STATES****PART 413—[Removed]**

■ 2. Remove Part 413.

Dated: May 22, 2007.

**Howard A. Schweitzer,**  
*General Counsel.*

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