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OFFICE OF MANAGEMENT AND BUDGET

2 CFR Part 180

Guidance for Governmentwide Debarment and Suspension (Nonprocurement)

AGENCY: Office of Management and Budget.

ACTION: Final rule.

SUMMARY: OMB is revising its Governmentwide guidance on nonprocurement debarment and suspension and issuing it in final form. The guidance, as implemented by Federal agency regulations, will replace the current common rule as the source of uniform agency policies and procedures related to nonprocurement debarment and suspension. Replacing the common rule with the guidance will reduce the volume of Federal regulations in this area and make them simpler to use.

DATES: The effective date for this final guidance is November 15, 2006.

FOR FURTHER INFORMATION CONTACT: Gilbert Tran, Office of Federal Financial Management, Office of Management and Budget, telephone (202) 395-3052 (direct) or (202) 395-3993 (main office) and e-mail: Hai_M._Tran@omb.eop.gov.

SUPPLEMENTARY INFORMATION:

I. Background

OMB published interim final guidance on nonprocurement debarment and suspension in the **Federal Register** on August 31, 2005 [70 FR 51863]. The issuance of the OMB guidance is an important step toward replacing the current common rule on nonprocurement debarment and suspension, a regulation that 34 agencies individually publish.

Replacing the common rule will achieve significant regulatory streamlining and simplification. In lieu

of its codification of the common rule, each agency will adopt the OMB guidance in a brief regulation that states any agency-specific additions, exceptions, or clarifications to the Government-wide policies and procedures. The OMB guidance and the individual agencies' brief adopting parts will replace the 34 agency codifications of the full text of the common rule. That replacement removes more than 1500 pages of needlessly duplicative regulations from the Code of Federal Regulations (CFR). The brief adopting parts also make it easy for a reader to see an agency's variations from the Government-wide guidance. The variations previously were difficult to identify because they were embedded within each agency's publication of the full text of the common rule.

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 notice therefore requested comments specifically on any unintended changes from the common rule. OMB received comments only from the Interagency Suspension and Debarment Committee (ISDC), pointing out a few unintended changes and needed technical corrections. These final guidelines make the needed revisions.

II. Comments and Changes to the Interim Final Guidance

The following paragraphs detail the substantive comments OMB received from the ISDC and the revisions made to the interim final guidance in making it the final guidance:

Comment: The ISDC recommended adding a new paragraph § 180.25(c)(7) to state that an agency may include "any provisions authorized by OMB" in its regulation implementing the guidelines, in addition to the specific examples described in § 180.25(c)(1) through (6). The added paragraph simply makes explicit the authority that OMB already has to approve additional provisions in an agency's regulation. The ISDC recommended the paragraph due to a concern that, without an explicit statement in § 180.25(c)(7), an agency's regulatory provision that was beyond the scope of the six examples in § 180.25(c)(1) through (6) could invite a

legal challenge, even if approved by OMB.

Response: The guidelines were amended to add the recommended new subparagraph § 180.25(c)(7).

Comment: The ISDC noted a technical error in the wording of § 180.220(c)(1) that made an unintentional change from the common rule by reducing the number of additional tiers of contracts under a covered nonprocurement transaction that a Federal agency could include as covered transactions under the policy.

Response: The wording of § 180.220(c)(1) was changed in accordance with the recommendation.

Comment: The ISDC recommended deleting § 180.25(b)(4) and revising § 180.300(b) by striking the phrase "if allowed by the Federal agency responsible for the transaction * * *." The two changes remove the option for a Federal agency to preclude a primary tier participant from collecting certifications from a lower tier participant as the method it uses to help enforce lower tier participant compliance with the requirements of the policy. The ISDC recommended dropping the option because no Federal agency used it in adopting the common rule on nonprocurement suspension and debarment in November 2003.

Response: Section 180.25(b)(4) was deleted and § 180.300(b) was revised, as recommended.

OMB made one additional technical correction in § 180.220 in specifying which contracts and subcontracts under covered nonprocurement transactions were to be considered "covered transactions." Under the interim final guidelines § 180.220(b)(1) included a contract in an amount "expected to equal or exceed \$25,000", while § 180.220(c)(2) included a subcontract with a value that "exceeds or is expected to exceed \$25,000." The dollar thresholds in the two paragraphs were intended to be the same. OMB therefore revised the wording of § 180.220(c)(2) to conform with that in § 180.220(b)(1).

III. How To Cite Agency Adopted Suspension and Debarment Guidelines

OMB understands there may be some confusion among practitioners regarding citation of the guidelines when adopted by agencies. OMB recommends the following long form citation to practitioners:

2 CFR 180.630 ([Year when the section goes final]) as implemented by 2 CFR 2424.10 ([Year when section goes final]).

In the proposed citation, 180.630 refers to the OMB guideline in subtitle A, while 2424.10 refers to the specific agency enactment in subtitle B giving the guideline regulatory effect. Long forms for citations involving only Agency-specific sections or both Adopted Guideline and Agency-specific sections should follow standard citation formats based upon the above long form.

OMB further recommends that short forms following the initial citation be solely to the guideline or the specific agency drop-in cited. The reference to CFR title in the short forms below would be dropped if it were to be repeated constantly.

2 CFR 180.630 by 2 CFR 2424.10

[Where the guideline contains all relevant material.]

2 CFR 2424.137

[Where the agency drop-in contains all relevant material.]

2 CFR 180.995, 2424.995

[Where both the guideline and agency drop-in are necessary.]

IV. Next Step

The next step in replacing the current common rule on nonprocurement debarment and suspension is the agencies' issuance of regulations adopting the final OMB guidelines, as § 180.30 of the guidelines requires. Over the coming months, each agency will publish a regulation in a new agency chapter in Subtitle B of 2 CFR, the new Government-wide title that OMB established for grants and agreements. Each agency also will remove its codification of the common rule from its own CFR title so that the OMB guidance and all agency implementing regulations on nonprocurement debarment and suspension ultimately will be located in 2 CFR.

Availability of Amended 2 CFR Part 180

OMB has prepared an updated version of 2 CFR part 180 as amended herein. It is available electronically on the OMB Home Page at <http://www.omb.gov>, and then select "Grants Management" followed by "Circulars."

List of Subjects in 2 CFR Part 180

Administrative practice and procedure, Debarment and suspension,

Grant programs, Reporting and recordkeeping requirements.

Rob Portman,
Director.

Authority and Issuance

■ For the reasons set forth above, the Office of Management and Budget amends 2 CFR part 180 in Subtitle A, Chapter I, as set forth below.

PART 180—OMB GUIDELINES TO AGENCIES ON GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

■ 1. The authority citation for part 180 continues to read as follows:

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.

§ 180.25 [Amended]

■ 2. Remove § 180.25(b)(4) and redesignate § 180.25(b)(5) as § 180.25(b)(4).

■ 3. Revise § 180.25(c)(2) and add (c)(7) to read as follows:

§ 180.25 What must a Federal agency address in its implementation of the guidance?

* * * * *

(c) * * *

(2) Identify any types of nonprocurement transactions that the Federal agency exempts from coverage under these guidelines, as authorized under § 180.215(g)(2).

* * * * *

(7) Include any provisions authorized by OMB.

■ 4. Revise § 180.220(c)(1) and (c)(2) to read as follows:

§ 180.220 Are any procurement contracts included as covered transactions?

* * * * *

(c) * * *

(1) It is awarded by a participant in a procurement transaction under a nonprocurement transaction of a Federal agency that extends the coverage of paragraph (b)(1) of this section to additional tiers of contracts (see the diagram in the appendix to this part showing that optional lower tier coverage); and

(2) The value of the subcontract is expected to equal or exceed \$25,000.

■ 5. Revise § 180.300(b) to read as follows:

§ 180.300 What must I do before I enter into a covered transaction with another person at the next lower tier?

* * * * *

(b) Collecting a certification from that person; or

* * * * *

[FR Doc. E6-19199 Filed 11-14-06; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1400

RIN 0560-AH67

Definition of Indian Tribe for Payment Eligibility and Payment Limitation

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the regulations of the Commodity Credit Corporation (CCC) governing payment limitation and payment eligibility and the limitation on the maximum allowable adjusted gross income (AGI) for program participants. Currently, 7 CFR part 1400, subpart G, exempts Indian tribes from all requirements of the AGI limitation for payment eligibility without providing a definition of Indian tribe. This rule defines "Indian tribe" consistent with the definition used by the United States Department of the Interior, Bureau of Indian Affairs (BIA), and other rules utilized by CCC, FSA and the Natural Resources Conservation Service (NRCS) in their programs.

DATES: This rule is effective on November 15, 2006.

FOR FURTHER INFORMATION CONTACT: James Baxa, Production, Emergencies and Compliance Division, United States Department of Agriculture (USDA), Stop 0517, 1400 Independence Ave., SW., Washington, DC 20250-0517. Telephone: (202) 720-7641. Electronic mail: James.Baxa@wdc.usda.gov.

Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Notice and Comment

Section 1601(c) of the Farm Security and Rural Investment Act of 2002 (the 2002 Act) provides that the regulations needed to implement Title I of the 2002 Act, including those involved here, are to be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to