

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

notices of proposed rulemaking and public participation in rulemaking.

Background

Subpart G of 7 CFR part 1400 was promulgated to implement the requirements of 7 U.S.C. 1308–3a (68 FR 33341). This statute and the rule prohibit CCC or FSA program payments from being paid to any program participant if their income exceeds a certain level—established in the law at an “adjusted gross income” of \$2.5 million. Since the statute, continually and throughout, refers explicitly to “individual or entity” CCC provided an exception to the maximum AGI requirement in 7 CFR 1400.600(g) by expressly excluding from the rule’s coverage, “Payments to States, counties, political subdivisions and agencies thereof, and Indian tribes.” However, while these regulations refer to “American Indian” and “Indian tribal venture” at 7 CFR 1400.100, part 1400 contains no definition of “Indian tribe” nor a cross-reference to an applicable definition in another regulation.

Indian tribes have been developing the agricultural lands that they own as a source of economic and social benefits for the tribes and their members. The United States, under its trust responsibilities and the unique government to government relationship with Indian tribes, provides various forms of assistance to Indian tribes and its members. One means of economic assistance from the United States government on agricultural lands is use of farm programs established by Congress and implemented by various agencies of USDA. An Indian tribe and its members, as holders of agricultural lands, may participate in such programs the same as any other producer and owner of domestic agricultural lands.

This rule adds a definition of “Indian tribe” to 7 CFR 1400.3 consistent with that used by other government agencies. See, for example, the definition at 25 U.S.C. 3703(10). The change will reduce confusion as to types of organizations that qualify for the exemption in 7 CFR 1400.600(g) that was intended only for Indian tribes. Also, this rule will reduce the likelihood that this exemption will be applied to a group that was not intended to be exempt from the AGI requirements.

Executive Order 12866

This final rule has been determined to be not significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB).

Federal Assistance Programs

This final rule has a potential impact on all programs listed in the Catalog of Federal Domestic Assistance in the Agency Program Index under the Department of Agriculture, Farm Service Agency and Natural Resources Conservation Service. Other assistance programs are also impacted.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule.

Environmental Assessment

The environmental impacts of this rule have been considered consistent with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and regulations of the Farm Service Agency (FSA) of the Department of Agriculture (USDA) for compliance with NEPA, 7 CFR part 799. An Environmental Evaluation was completed and the proposed action has been determined not to have the potential to significantly impact the quality of the human environment and no environmental assessment or environmental impact statement is necessary. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12778

This rule has been reviewed under Executive Order 12778. This rule preempts State laws that are inconsistent with it; however, this rule is not retroactive. Before judicial action may be brought concerning this rule, all administrative remedies must be exhausted.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because CCC was not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule. Also, this rule contains no

mandates as defined in sections 202 and 205 of UMRA.

Paperwork Reduction Act

Section 1601(c) of the 2002 Act provides that the promulgation of regulations and the administration of Title I of the 2002 Act shall be done without regard to chapter 5 of title 44 of the United States Code (the Paperwork Reduction Act). Accordingly, these regulations and the forms and other information collection activities needed to administer the program authorized by these regulations are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

Government Paperwork Elimination Act

FSA is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general and FSA in particular to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The form that applicants will use to certify their payment eligibility has been developed for on-line use.

E-Government Act Compliance

CCC is committed to complying with the E-Government Act to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-GOV compliance related to this rule, please contact the person named above under the information contact section.

List of Subjects in 7 CFR Part 1400

Agriculture, Price support programs, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, 7 CFR part 1400 is amended as follows:

PART 1400—PAYMENT LIMITATION AND PAYMENT ELIGIBILITY

■ 1. The authority section for part 1400 continues to read as follows:

Authority: 7 U.S.C. 1308 *et seq.*

■ 2. Section 1400.3 (b) is amended by adding a definition of “Indian tribe” in alphabetical order to read as follows:

§ 1400.3 Definitions.

* * * * *

(b) * * *

Indian tribe means any Indian tribe, band, nation, pueblo, or other organized

group or community, including any Alaska Native village or regional corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

* * * * *

Signed in Washington, DC, on October 25, 2006.

Thomas B. Hofeller,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. E6-19245 Filed 11-14-06; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121 and 124

RIN 3245-AF06

Small Business Size Regulations; Size for Purposes of Government-Wide Acquisition Contracts, Multiple Award Schedule Contracts and Other Long-Term Contracts; 8(a) Business Development/Small Disadvantaged Business; Business Status Determinations

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) is amending its regulations to address the time at which size is determined for the purposes of long-term federal contracts including Government-Wide Acquisition Contracts (GWACs), the General Services Administration (GSA) Multiple Award Schedule (MAS) contracts and multi-agency contracts (MACs). SBA is also amending its 8(a) Business Development regulations to address when a business concern may receive orders as an 8(a) program participant under GSA's MAS Program and other multiple award contracts. This final action is necessary to ensure that small business size status is accurately represented and reported over the life of these long-term Federal contracts.

DATES: *Effective Date:* This rule is effective June 30, 2007, and applies to solicitations and contracts issued after the effective date, as well as contracts and solicitations in existence at the time of the effective date.

FOR FURTHER INFORMATION CONTACT: Dean Koppel, Assistant Administrator, Office of Policy and Research, Office of

Government Contracting, (202) 205-7322 or at dean.koppel@sba.gov.

SUPPLEMENTARY INFORMATION: On April 25, 2003, SBA published in the **Federal Register**, 68 FR 20350, a proposed rule to address the time at which size is determined for purposes of GSA's MAS Program, including the Federal Supply Schedule (FSS), and MAS contracts awarded by other agencies under the authority granted by GSA, and other long-term contracts, including GWACs and multi-agency contracts. The contract types mentioned above will hereinafter be referred to as "long-term contracts" in this rule. With options, these contracts are longer than 5 years in duration—typically lasting 10 to 20 years. SBA also proposed to amend its 8(a) BD regulations to make those regulations consistent with the proposed rule. SBA established the Effective Date of this final rule after consideration of the public comments and after consultation with the General Services Administration (GSA), the Department of Defense (DoD) and the Office of Federal Procurement Policy (OFPP). SBA has been assured that this date reflects the amount of time required to: (1) Modify the Government's contract award database, the Federal Procurement Data System-NG (FPDS-NG), to capture changes in small business size status "going forward" from the date of re-certification; (2) permit agencies to revise their "back office" contract reporting systems that feed into FPDS-NG; and (3) implement the final rule in the Federal Acquisition Regulation (FAR). In addition, the final rule clarifies that re-certification does not affect the terms and conditions of the underlying contract.

Summary of Comments

SBA sought public comment on its proposed rule to amend § 121.404 by adding paragraph (c) to provide that, for purposes of multiple-award contracts, a concern must re-certify its size on an annual basis. The intent of the proposed rule was to require re-certification on long-term contracts. With options, these contracts are greater than 5 years in duration, typically 10 to 20 years. SBA has decided to limit applicability of the final rule to only long-term contracts. For long-term contracts, concerns will now be required to re-certify their small business size status prior to the sixth year of performance, and every time an option is exercised thereafter.

On April 25, 2003, SBA proposed to require re-certification on long-term contracts on an annual basis, but requested comments on requiring re-

certification on an order-by-order basis or at least once every five years. 68 FR 20350. SBA received more than 600 comments both supporting and criticizing all three proposals. Status as a small business in the context of government contracting is primarily relevant for two distinct reasons: (1) Eligibility for set-aside contracts and (2) tracking whether Federal agencies meet their annual small business prime contracting goals. SBA's regulations generally provide that size is determined "as of the date the concern submits a written self-certification that it is small to the procuring activity as part of its initial offer * * * which includes price." 13 CFR 121.404(a). A firm that certifies itself as small as part of its offer for a contract is generally considered small for the life of the contract, even if it grows to be other than small during the life of the contract. 13 CFR 121.404(g). The Small Business Act requires procuring agencies to set annual small business prime contracting goals and annually report the "number and dollar value of contracts awarded" to small business concerns. 15 U.S.C. 644(h)(2)(D).

Over the past decade, Federal agencies have increasingly relied upon multiple award task or delivery order contracts to procure goods or services. Under these procurement vehicles, the quantity of goods or services to be purchased is not set at the time of contract award. Instead, goods or services are acquired by placing a task or delivery order with a contractor, often as a result of a competition among multiple contract holders. Task and delivery order contracts have been called "hunting licenses" or "club memberships" because the real competition, the actual purchase of goods or services, occurs at the order level. Federal agencies have also increasingly utilized task or delivery order contracts of other agencies to acquire goods or services, typically for an administrative fee. Many of these multiple-award contracts have potential durations that far exceed the typical five-year government contract. Agencies are increasingly using these vehicles to get credit towards their small business goals.

SBA has never had a specific rule in place to deal with these long-term contracts. Application of SBA's existing rule to these vehicles leads to unsatisfactory results, with contractors retaining their size status for decades, well after they have outgrown the size standard or merged with or been acquired by a large business concern. Thus, under existing rules an order awarded to a concern that has outgrown