

excluded by the HHS Office of the Inspector General from participation in Medicare, Medicaid, and/or other Federal health care programs, in accordance with 42 U.S.C. 1320a-7, then that individual or entity is prohibited from participating in all Federal government procurement and nonprocurement programs (42 CFR part 1001).

#### Subpart B—Covered Transactions

##### **§ 376.220 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), this part also applies to all lower tiers of subcontracts under covered nonprocurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c). (See optional lower tier coverage in the diagram in the Appendix to 2 CFR part 180.)

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

##### **§ 376.332 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 to lower-tier participants, you must include a term or condition in the lower-tier transaction requiring the lower-tier participant's compliance with 2 CFR part 180, as supplemented by this subpart.

##### **§ 376.370 What are the obligations of Medicare carriers and intermediaries?**

Because Medicare carriers, intermediaries and other Medicare contractors undertake responsibilities on behalf of the Medicare program (Title XVIII of the Social Security Act), these entities assume the same obligations and responsibilities as the HHS Medicare officials responsible for the Medicare Program with respect to actions under 2 CFR part 376. This would include the requirement for these entities to check the Excluded Parties List System (EPLS) and take necessary steps to effect this part.

#### Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

##### **§ 376.437 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, 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 require the participant to include a similar term or condition in lower-tier covered transactions.

#### Subpart E—Excluded Parties List System [Reserved]

#### Subpart F—General Principles Relating to Suspension and Debarment Actions [Reserved]

#### Subpart G—Suspension [Reserved]

#### Subpart H—Debarment [Reserved]

#### Subpart I—Definitions

##### **§ 376.935 Disqualified. (HHS supplement to government-wide definition at 2 CFR 180.935).**

*Disqualified* means persons prohibited from participating in specified federal procurement and nonprocurement transactions pursuant to the statutes listed in 2 CFR 180.935, and pursuant to Title XI of the Social Security Act (42 U.S.C. 1320a-7, 1320a-7a, 1320c-5, and 1395ccc) as enforced by the HHS Office of the Inspector General.

##### **§ 376.995 Principal (HHS supplement to government-wide definition at 2 CFR 180.995).**

*Principal* means individuals, in addition to those listed at 2 CFR 180.995, who participate in HHS covered transactions including:

- (a) Providers of federally required audit services; and
- (b) Researchers.

#### Subpart J—[Reserved]

#### Title 45—Public Welfare

#### CHAPTER I—DEPARTMENT OF HEALTH AND HUMAN SERVICES

#### PART 74—[AMENDED]

- 1. The authority citation for part 74 continues to read as follows:

Authority: 5 U.S.C. 301.

##### **§ 74.13 [Amended]**

- 2. Section 74.13 is amended by revising the citation “45 CFR part 76” to read “2 CFR part 376.”

#### PART 76—[REMOVED]

- 3. Remove part 76 from Title 45 CFR.

[FR Doc. 07-946 Filed 2-27-07; 12:05 pm]

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#### NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

#### 2 CFR Part 3369

#### 45 CFR Part 1169

RIN 3136-AA29

#### Office of the General Counsel; National Endowment for the Humanities Implementation of OMB Guidance on Nonprocurement Debarment and Suspension

AGENCY: National Endowment for the Humanities.

ACTION: Direct final rule.

**SUMMARY:** The National Endowment for the Humanities (NEH) implements Office of Management and Budget (OMB) guidance on nonprocurement suspension and debarment, issued on August 31, 2005 [70 FR 51863], by adopting the guidelines in a new part in title 2 of the CFR, the Government-wide title recently established for OMB guidance on grants and agreements, and removing 45 CFR part 1169, the part containing the NEH implementation of the government-wide common rule on nonprocurement debarment and suspension. This regulatory action would make no substantive change in NEH policy or procedures for nonprocurement debarment and suspension.

**DATES:** The effective date for this final rule is April 2, 2007.

**FOR FURTHER INFORMATION CONTACT:** National Endowment for the Humanities, ATTN: Office of the General Counsel, 1100 Pennsylvania Avenue, NW., Room 529, Washington, DC 20506; or Heather Gottry, (202) 606-8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606-8282.

**SUPPLEMENTARY INFORMATION:** This final rule implements the OMB guidance and does not make any changes in current policies and procedures. NEH 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 NEH’s specific nonprocurement suspension and debarment rules to title 2 of the CFR, we

believe that it falls under the exception cited above.

#### **Executive Order 12866**

This rule is not significant because the replacement of the common rule with OMB guidance and a brief NEH adopting regulation does not make any changes in current policies and procedures.

#### **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 in 2 CFR Part 3369**

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

■ Accordingly, under the authority of 20 U.S.C. 959(a)(1), NEH amends title 2, subtitle B, and title 45, chapter 1169, of the Code of Federal Regulations as follows:

#### **Title 2—Grants and Agreements**

■ 1. Add Chapter 33 to Subtitle B to read as follows:

#### **CHAPTER 33—NATIONAL ENDOWMENT FOR THE HUMANITIES**

#### **PART 3369—NONPROCUREMENT DEBARMENT AND SUSPENSION**

Sec.

3369.10 What does this part do?

3369.20 Does this part apply to me?

3369.30 What policies and procedures must I follow?

#### **Subpart A—General**

3369.137 Who in the NEH may grant an exception to let an excluded person participate in a covered transaction?

#### **Subpart B—Covered Transactions**

3369.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

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

3369.332 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**

3369.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

#### **Subpart E—I—[Reserved]**

**Authority:** 20 U.S.C. 959(a)(1); 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.

#### **§ 3369.10 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 National Endowment for the Humanities (NEH) policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for the NEH 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, Public Law 103-355, 108 Stat. 3327).

#### **§ 3369.20 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 a NEH suspension or debarment action.

(c) NEH debarment or suspension official;

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

#### **§ 3369.30 What policies and procedures must I follow?**

The NEH 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.*, § 3369.220). For any section of OMB guidance in Subparts A through I of 2 CFR 180 that has no corresponding section in this part, NEH policies and procedures are those in the OMB guidance.

#### **Subpart A—General**

#### **§ 3369.137 Who in the NEH may grant an exception to let an excluded person participate in a covered transaction?**

The NEH Chairman has the authority to grant an exception to let an excluded person participate in a covered transaction, as provided in the OMB guidance at 2 CFR 180.135.

#### **Subpart B—Covered Transactions**

#### **§ 3369.220 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), NEH does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement transaction.

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

#### **§ 3369.332 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 subpart.

#### **Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions**

#### **§ 3369.437 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—I—[Reserved]

#### Title 45—Public Welfare

#### CHAPTER XI—NATIONAL ENDOWMENT FOR THE HUMANITIES

#### PART 1169—[REMOVED]

■ 2. Under 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 Comp., p. 235) part 1169 is removed.

Heather Gottry,  
*Acting General Counsel.*

[FR Doc. E7–3548 Filed 2–28–07; 8:45 am]

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#### DEPARTMENT OF TRANSPORTATION

#### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2006–26356; Directorate Identifier 2006–NM–166–AD; Amendment 39–14963; AD 2007–05–02]

RIN 2120–AA64

#### Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 and ERJ 190 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for all EMBRAER Model ERJ 170 and ERJ 190 airplanes. This AD requires repetitive detailed inspections for blockage of the pitot drain holes of certain air data smart probes (ADSPs), removing accumulated moisture from the pneumatic passages of the ADSPs, related investigative actions, and corrective actions if necessary. This AD results from reports of erroneous air speed indications caused by blockage of the pitot sensors due to freezing of accumulated moisture in the ADSP pneumatic passages. We are issuing this AD to prevent an erroneous air speed indication, which could reduce the flightcrew's ability to control the airplane.

**DATES:** This AD becomes effective April 5, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of April 5, 2007.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://dms.dot.gov> or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL–401, Washington, DC.

Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for service information identified in this AD.

#### FOR FURTHER INFORMATION CONTACT:

Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

#### SUPPLEMENTARY INFORMATION:

#### Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at <http://dms.dot.gov> or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

#### Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all EMBRAER Model ERJ 170 and ERJ 190 airplanes. That NPRM was published in the **Federal Register** on November 20, 2006 (71 FR 67075). That NPRM proposed to require repetitive detailed inspections for blockage of the pitot drain holes of certain air data smart probes (ADSPs), removing accumulated moisture from the pneumatic passages of the ADSPs, related investigative actions, and corrective actions if necessary.

#### Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the NPRM or on the determination of the cost to the public.

#### Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

#### Costs of Compliance

This AD affects about 93 airplanes of U.S. registry. The required actions take about 2 work hours per airplane, at an average labor rate of \$80 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is \$14,880, or \$160 per airplane, per inspection cycle.

#### Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

#### Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect 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.

For the reasons discussed above, I certify that this AD:

- (1) Is not a "significant regulatory action" under Executive Order 12866;
- (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.