

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 2 CFR Part 1880

RIN 2700-AD81

#### Extension of Suspension and Debarment Exclusions, Grants and Cooperative Agreements

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Proposed rule.

**SUMMARY:** NASA proposes to extend coverage of nonprocurement suspension and debarment to all-tier procurement and non-procurement actions under all grants and cooperative agreements.

**DATES:** Interested parties should submit comments to NASA at the address below on or before December 28, 2012 to be considered in formulation of the final rule.

**ADDRESSES:** Interested parties may submit comments, identified by RIN number 2700-AD81 via the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. Comments may also be submitted to Leigh Pomponio via email at [leigh.pomponio@nasa.gov](mailto:leigh.pomponio@nasa.gov).

**FOR FURTHER INFORMATION CONTACT:** Leigh Pomponio, NASA, Office of Procurement, (202) 358-0592 or email: [leigh.pomponio@nasa.gov](mailto:leigh.pomponio@nasa.gov).

#### SUPPLEMENTARY INFORMATION:

##### A. Background

The revisions herein are part of NASA's retrospective plan under EO 13563 completed in August 2011. NASA's full plan can be accessed at: [http://www.nasa.gov/pdf/581545main\\_Final%20Plan%20for%20Retrospective%20Analysis%20of%20Existing%20Regulations.pdf](http://www.nasa.gov/pdf/581545main_Final%20Plan%20for%20Retrospective%20Analysis%20of%20Existing%20Regulations.pdf).

On August 31, 2005 (70 FR 51865) The Office of Management and Budget promulgated guidelines to Federal agencies on the governmentwide

debarment suspension system for nonprocurement programs. The OMB guidance to Federal Agencies was amended on November 15, 2006 (71 FRN 664320). These two notices resulted in the governmentwide regulation at 2 CFR 180. Specifically, at § 180.220(c), OMB offered Federal agencies flow down options for application of nonprocurement suspension and debarment regulations to procurement actions under covered transactions. OMB permitted Agencies to flow down requirements to just the first-tier or to all lower-tier participants.

On April 20, 2007, NASA promulgated a final rule (72 FR 19783) which established a new Part 1880 in Title 2 of the Code of Federal Regulations (CFR) on nonprocurement debarment and suspension. This rule implemented and supplemented the Office of Management and Budget's (OMB) guidance provided at 2 CFR Part 180. It included agency-specific regulations related to nonprocurement suspension and debarment. At the time of that action, NASA elected to limit the flow down of nonprocurement suspension and debarment applicability to only first-tier procurement contacts thereunder. However, NASA has reconsidered its position on flow down and is currently proposing to revise 2 CFR 1880.220 to apply to all participants at all tiers under procurement and non-procurement actions at any dollar amount. NASA will not permit any subawards to individuals or entities that are listed on the Excluded Parties List Service (EPLS).

##### B. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866.

This rule is not a major rule under 5 U.S.C. 804.

##### C. Regulatory Flexibility Act

NASA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* It will require entities to check the Excluded Parties List System (EPLS) prior to making subawards under a grant or cooperative agreement; the EPLS is an easy-to-access and use on-line resource.

##### D. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104-13) is not applicable because the NFS changes do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

##### List of Subjects in 2 CFR Part 1880

Government procurement.

**William P. McNally,**

*Assistant Administrator for Procurement.*

Accordingly, 2 CFR Part 1880 is amended as follows:

1. The authority citation for 2 CFR part 1880 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; 42 U.S.C. 2473(c)(1).

2. Section 1880.220 is revised to read as follows:

##### **§ 1880.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?**

NASA extends coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement action, to all lower tier subcontracts, at all dollar values, consistent with OMB guidance at 2 CFR 180.220(c) and the figure in the appendix at 2 CFR part 180. NASA does not permit subcontracting to suspended or debarred entities at any tier, at any dollar amount.

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