

# **Financial Assistance Management DOT Dash 2008-03**

Date: July 18, 2008

To: Financial Assistance Working Group (FAWG)

From: Office of the Senior Procurement Executive  
Financial Assistance Management Division

Subject: Implementation of OMB Guidance on  
Nonprocurement Suspension and Debarment

Summary: The purpose of this DOT Dash is to inform you that the Department's regulations on nonprocurement suspension and debarment have been moved from their previous location, 49 CFR Part 29, to 2 CFR Part 1200.

The Department is also adopting the interim and final government-wide guidance on nonprocurement suspension and debarment issued by the Office of Management and Budget (OMB) in the Federal Register on August 31, 2005 (70 FR 51863) and November 15, 2006 (71 FR 66431), respectively.

The changes mentioned reflect an attempt to simplify the administrative process of nonprocurement suspension and debarment and will not result in any contextual changes. This rule became effective June 2, 2008.

If you have any questions or concerns, please contact Ellen Shields at 202-366-4268 or [Ellen.Shields@dot.gov](mailto:Ellen.Shields@dot.gov).



Denise Wright

Acting Deputy Director  
Office of the Senior Procurement Executive  
Attachments

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### 2 CFR Part 1200

#### 49 CFR Part 29

RIN 2105-AD68

### Department of Transportation Implementation of OMB Guidance on Nonprocurement Suspension and Debarment

**AGENCY:** Office of the Secretary (OST), Department of Transportation.

**ACTION:** Final rule.

**SUMMARY:** The Department of Transportation (Department) is moving its regulations on nonprocurement suspension and debarment from their current location in title 49 of the Code of Federal Regulations (CFR) to title 2 of the CFR. By issuing this final rule and moving its nonprocurement suspension and debarment regulations to new CFR part 1200 in title 2 thereof, the Department is also adopting the interim and final government-wide guidance on nonprocurement suspension and debarment issued by the Office of Management and Budget (OMB) in the **Federal Register** on August 31, 2005 (70 FR 51863) and November 15, 2006 (71 FR 66431), respectively. The OMB guidance can be found in 2 CFR Part 180, Subtitle A, Chapter I. These actions by the Department implement OMB initiatives to streamline and consolidate all federal regulations on nonprocurement suspension and debarment into one part of the CFR. In addition, this rule removes 49 CFR Part 29, regulations that reflect the Department's implementation of the government-wide common rule on nonprocurement suspension and debarment. These changes are non-substantive in nature and constitute an administrative simplification that would

make no substantive change in Department policy or procedures for nonprocurement suspension and debarment.

**DATES:** This final rule is effective on June 2, 2008.

**FOR FURTHER INFORMATION CONTACT:** Ms. Ellen Shields, Office of the Senior Procurement Executive, Office of Administration (M-61), (202) 366-4268, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal Holidays.

#### SUPPLEMENTARY INFORMATION:

##### Background

On May 11, 2004, OMB established title 2 of the CFR with two subtitles (69 FR 26275). Subtitle A, "Government-wide Grants and Agreements," contains OMB policy guidance to Federal agencies on grants and agreements. Subtitle B, "Federal Agency Regulations for Grants and Agreements," contains Federal agencies' regulations implementing the OMB guidance, as it applies to grants and other financial assistance agreements and nonprocurement transactions.

On August 31, 2005, OMB published interim final guidance for government-wide nonprocurement suspension and debarment in the **Federal Register** (70 FR 51863). The guidance is located in title 2 of the CFR as new subtitle A, Chapter 1, part 180. The interim final guidance updated previous OMB guidance that was issued pursuant to Executive Order 12549, "Suspension and debarment" (February 18, 1986), which have government-wide effect on each agency's nonprocurement suspension and debarment actions. Section 6 of the Executive Order authorized OMB to issue guidance to Executive agencies on nonprocurement suspension and debarment, including provisions describing government-wide criteria and minimum due process. Section 3 directed Executive agencies to issue regulations implementing the Executive Order that are consistent with the OMB guidelines. On November 15, 2006, OMB published a final rule adopting the final guidance with changes (71 FR 66431).

This final rule places DOT's nonprocurement suspension and debarment regulations in subtitle B of title 2 of the CFR, along with other agencies' nonprocurement suspension

and debarment rules. The new 2 CFR part 1200 adopts the OMB guidelines with additions and clarifications that the Department made to the common rule on nonprocurement suspension and debarment in November 2003 (68 FR 66643) and October 2006 (71 FR 62394).

DOT is not soliciting public comment on this rule and is instead issuing this rule as a 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 DOT's specific nonprocurement suspension and debarment rules to title 2 of the CFR, we believe that it falls under the exception cited above. In addition, the Department believes that there would not be meaningful public comment on this rule, which is purely administrative in nature.

#### Executive Order 12866

The Department has determined that this rule is nonsignificant. It is purely administrative in nature and does not impose new burdens on any parties.

#### Regulatory Flexibility Act of 1980

The Department certifies that this rule will not have a significant effect on a substantial number of small entities. That is because, as a purely administrative rule, it does not create economic effects on anyone.

#### Unfunded Mandates Act of 1995

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, as adjusted for inflation.

#### Paperwork Reduction Act of 1995

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

#### Executive Order 13132 (Federalism)

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 1200

Administrative practice and procedure, Suspension and debarment, Grant programs, Reporting and recordkeeping requirements.

##### 49 CFR Part 29

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

Issued on April 14, 2008.

**Mary E. Peters,**

*Secretary of Transportation.*

■ For the reasons stated in the preamble, under the authority of Sec. 2455, Public Law 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 11738 (3 CFR, 1973 Comp., p. 799); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235), the Department of Transportation amends Title 2, subtitle B and title 49, subtitle A, of the Code of Federal Regulations as follows:

#### Title 2—Grants and Agreements

- 1. Add Chapter 12, consisting of part 1200 to Subtitle B to read as follows:

#### Chapter 12—Department of Transportation

#### PART 1200—NONPROCUREMENT SUSPENSION AND DEBARMENT

Sec.

1200.10 What does this part do?

1200.20 Does this part apply to me?

1200.30 What policies and procedures must I follow?

##### Subpart A—General

1200.137 Who in the Department of Transportation may grant an exception to let an excluded person participate in a covered transaction?

##### Subpart B—Covered Transactions

1200.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

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

1200.332 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

1200.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

#### Subparts E Through J—[Reserved]

**Authority:** 49 U.S.C. 322; Sec. 2455, Public Law 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).

##### § 1200.10 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 Department of Transportation policies and procedures for nonprocurement suspension and debarment. It thereby gives regulatory effect for the Department of Transportation to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, “Suspension and Debarment” (3 CFR 1986 Comp., p. 189), Executive Order 12689, “Suspension and Debarment” (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Public Law 103–355, 108 Stat. 3327).

##### § 1200.20 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 Department of Transportation suspension or debarment action;

(c) Department of Transportation debarment or suspension official;

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

##### § 1200.30 What policies and procedures must I follow?

The Department of Transportation 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., § 1200.220). For any section of OMB guidance in Subparts A through I of 2 CFR 180 that has no corresponding section in this part, Department of

Transportation policies and procedures are those in the OMB guidance.

#### Subpart A—General

##### § 1200.137 Who in the Department of Transportation may grant an exception to let an excluded person participate in a covered transaction?

Within the Department of Transportation, Office of the Secretary, the Secretary or an official designated by the Secretary may grant an exception permitting an excluded person to participate in a particular covered transaction. Within an Operating Administration of the Department of Transportation, the head of the operating administration may grant an exception permitting an excluded person to participate in a particular covered transaction. The head of an operating administration may delegate this function and authorize successive delegations.

#### Subpart B—Covered Transactions

##### § 1200.220 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) of the OMB guidance, this part applies to any contract, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the contract is to be funded or provided by the Department of Transportation under a covered nonprocurement transaction and the amount of the contract is expected to equal or exceed \$25,000. This extends the coverage of the Department of Transportation nonprocurement suspension and debarment requirements 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 figure in the appendix to 2 CFR part 180).

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

##### § 1200.332 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

#### § 1200.437 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 and requires the participant to include a similar term or condition in lower-tier covered transactions.

### Subpart E Through J—[Reserved]

#### Title 49—Transportation

#### PART 29—[REMOVED]

##### ■ 2. Remove part 29.

[FR Doc. E8-8788 Filed 5-1-08; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2007-0248 Directorate Identifier 2007-CE-084-AD; Amendment 39-15500; AD 2008-09-19]

RIN 2120-AA64

#### Airworthiness Directives; De Havilland Support Limited Model Beagle B.121 Series 1, 2, and 3 Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

The Type Certificate Holder (TCH) has received several reports of failed Rudder torque tube assemblies. The torque tube assemblies are subject to repetitive inspection in accordance with Airworthiness Directive 2060 PRE 80. The recent failures occurred in service after the inspections required by AD 2060 PRE 80 had been performed. In the event of such failures, loss of directional control through both the Rudder and Nosewheel Steering may occur.

The TCH has also received reports of loose rivets attaching the inboard Anchor Assembly to the Starboard Torque Tube.

We are issuing this AD to require actions to correct the unsafe condition on these products.

**DATES:** This AD becomes effective June 6, 2008.

On June 6, 2008, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

#### FOR FURTHER INFORMATION CONTACT:

Taylor Martin, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4138; fax: (816) 329-4090.

#### SUPPLEMENTARY INFORMATION:

##### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on November 27, 2007 (72 FR 66087). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

The Type Certificate Holder (TCH) has received several reports of failed Rudder torque tube assemblies. The torque tube assemblies are subject to repetitive inspection in accordance with Airworthiness Directive 2060 PRE 80. The recent failures occurred in service after the inspections required by AD 2060 PRE 80 had been performed. In the event of such failures, loss of directional control through both the Rudder and Nosewheel Steering may occur. The TCH has also received reports of loose rivets attaching the inboard Anchor Assembly to the Starboard Torque Tube.

The MCAI requires the inspection of the rudder torque tube assemblies and hubs for cracking and loose rivets with conditional correction or replacement following De Havilland Support Limited Service Bulletin B121/65, Issue 2, dated August 10, 2005.

#### Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received.

#### Comment Issue: Reference the Correct TC Holder in the AD

Trevor A. Wood requests that the FAA reference De Havilland Support Ltd. (DHSL) in the proposed AD instead of British Aerospace Aircraft Group, Scottish Division. The commenter points out that DHSL is the organization that has published the service information, and he believes that the current type certificate data sheet for the Beagle B.121 series 1, 2, and 3 airplanes incorrectly references the type certificate holder. The commenter points out that the British Aerospace Aircraft Group, Scottish Division, relinquished responsibility for these airplanes in November 2002 when the type certificate was transferred to DHSL.

The FAA does not agree that the NPRM incorrectly referenced British Aerospace Aircraft Group, Scottish Division, as the type certificate holder. We cannot change the type certificate data sheet without approval and request from the State of Design, in this case the United Kingdom Civil Aviation Authority (CAA) and the European Aviation Safety Agency (EASA). However, since issuance of the NPRM, the FAA has received such approval and request. We have revised the type certificate data sheet (A22EU, Revision 4, dated March 20, 2008) to reference the type certificate holder of the Beagle B.121 series 1, 2, and 3 airplanes as De Havilland Support Limited. We have made the appropriate changes in the final rule AD action to reflect this.

#### Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

#### Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the AD.