

# Rules and Regulations

Federal Register

Vol. 72, No. 22

Friday, February 2, 2007

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## NATIONAL SCIENCE FOUNDATION

### 2 CFR Chapter XXV

#### 45 CFR Parts 620 and 689

[Docket Number: NSF-2006-OGC-0106]

RIN 3145AA47

#### National Science Foundation Implementation of OMB Guidance on Nonprocurement Debarment and Suspension

**ACTION:** Final rule.

**SUMMARY:** The National Science Foundation (NSF) is issuing a new part 2520 on nonprocurement debarment and suspension in title 2 of the Code of Federal Regulations (CFR). This new part is NSF's implementation of the Office of Management and Budget's (OMB) guidance provided at 2 CFR part 180. In light of the new part 2520, NSF removes 45 CFR part 620, the part containing its implementation of the government-wide common rule on nonprocurement debarment and suspension. The new part in 2 CFR serves the same purpose as the common rule, but in a simpler way. NSF also is amending a provision in its research misconduct rule (45 CFR part 689) to update the reference to NSF's nonprocurement debarment and suspension regulations. This final rule is part of OMB's initiative to streamline and consolidate all federal regulations on nonprocurement debarment and suspension. It is an administrative simplification that makes no substantive change in NSF policy or procedures for nonprocurement debarment and suspension.

**DATES:** This final rule is effective February 2, 2007.

**FOR FURTHER INFORMATION CONTACT:** Eric S. Gold, Assistant General Counsel, Office of the General Counsel, National

Science Foundation, telephone (703) 292-8060 and e-mail [egold@nsf.gov](mailto:egold@nsf.gov).

**SUPPLEMENTARY INFORMATION:** 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 debarment and suspension 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, "Debarment and Suspension" (February 18, 1996), which gave government-wide effect to each agency's nonprocurement debarment and suspension actions. Section 6 of the Executive order authorized OMB to issue guidance to Executive agencies on nonprocurement debarment and suspension, including provisions prescribing government-wide criteria and minimum due process procedures. Section 3 directed Executive agencies to issue regulations implementing the Executive order that are consistent with the OMB guidelines. The interim final guidance at 2 CFR part 180 conforms the OMB guidance with the Federal agencies' November 26, 2003, update to the common rule on nonprocurement debarment and suspension (see 70 FR 51864). On November 15, 2006, OMB published a final rule adopting the interim final guidance with changes (71 FR 66431).

In accordance with OMB's guidance, this final rule places NSF's nonprocurement debarment regulations in subtitle B of title 2 of the CFR, along with other agencies' nonprocurement debarment and suspension rules. The new CFR part 2520 adopts the OMB guidelines with the same additions and clarifications that NSF made to the common rule on nonprocurement suspension and debarment in November 2003 [68 FR 66633]. The substance of NSF's nonprocurement debarment and suspension regulations is unchanged. In

light of the new part 2520, NSF is removing 45 CFR part 620, which is the current location for NSF's nonprocurement debarment and suspension regulations. NSF is also amending a provision in its research misconduct rule (45 CFR part 689) to update the reference to NSF's nonprocurement debarment and suspension regulations.

#### Executive Order 12866

OMB has determined this rule to be nonsignificant.

#### 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

##### 2 CFR Part 2520

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

##### 45 CFR Part 620

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

##### 45 CFR Part 689

Research misconduct.

■ Accordingly, under the authority of 42 U.S.C. 1870, NSF amends the Code of Federal Regulations, Title 2, Subtitle B, and Title 45, Chapter VI, as follows:

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

■ 1. Add Chapter XXV, consisting of Part 2520 to Subtitle B to read as follows:

#### **Chapter XXV—NATIONAL SCIENCE FOUNDATION**

#### **PART 2520—NONPROCUREMENT DEBARMENT AND SUSPENSION**

SEC.

2520.10 What does this part do?

2520.20 Does this part apply to me?

2520.30 What policies and procedures must I follow?

#### **Subpart A—General**

2520.137 Who in NSF may grant an exception to let an excluded person participate in a covered transaction?

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

2520.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

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

2520.332 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**

2520.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

#### **Subparts E–I [Reserved]**

**Authority:** 42 U.S.C. 1870(a); 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.

#### **§ 2520.10 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 NSF policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for NSF 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).

#### **§ 2520.20 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 an NSF suspension or debarment action.

(c) NSF debarment or suspension official.

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

#### **§ 2520.30 What policies and procedures must I follow?**

The NSF 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., § 2520.220). For any section of OMB guidance in Subparts A through I of 2 CFR 180 that has no corresponding section in this part, NSF policies and procedures are those in the OMB guidance.

#### **Subpart A—General**

#### **§ 2520.137 Who in NSF may grant an exception to let an excluded person participate in a covered transaction?**

The NSF Director and the Deputy Director have the authority to grant an exception to let an excluded person participate in a covered transaction.

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

#### **§ 2520.220 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), NSF 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**

#### **§ 2520.332 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**

#### **§ 2520.437 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.

#### **Subparts E–I [Reserved]**

#### **Title 45—Public Welfare**

#### **CHAPTER VI—NATIONAL SCIENCE FOUNDATION**

#### **PART 620—[REMOVED]**

■ 2. Under the authority of 42 U.S.C. 1870(a); 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 620 is removed.

#### **PART 689—[AMENDED]**

■ 3. The authority citation for part 689 continues to read as follows:

**Authority:** 42 U.S.C. 1870(a).

■ 4. Section 689.8 is amended by revising paragraph (b) to read as follows:

#### **§ 689.8 Interim Administrative Actions**

\* \* \* \* \*

(b) When suspension is determined to be appropriate, the case will be referred to the suspending official pursuant to 2 CFR Part 180, and the suspension procedures of 2 CFR Part 180 will be followed, but the suspending official will be either the Deputy Director or an official designated by the Deputy Director.

■ 5. Section 689.9 is amended by revising paragraph (c)(1) introductory text to read as follows:

**§ 689.9 Dispositions**

(c) \* \* \*

(1) In cases in which debarment is considered by OIG to be an appropriate disposition, the case will be referred to the debarment official pursuant to 2 CFR part 180 and the procedures of 2 CFR part 180 will be followed, but:

\* \* \* \* \*

**Lawrence Rudolph,***General Counsel.*

[FR Doc. E7-1419 Filed 2-1-07; 8:45 am]

BILLING CODE 7555-01-P

**DEPARTMENT OF AGRICULTURE****Animal and Plant Health Inspection Service****7 CFR Part 301**

[Docket No. APHIS-2006-0131]

**Emerald Ash Borer; Quarantined Areas; MI****AGENCY:** Animal and Plant Health Inspection Service, USDA.**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the emerald ash borer regulations by adding areas in Michigan to the list of areas quarantined because of emerald ash borer. As a result of that action, the interstate movement of regulated articles from those areas is restricted. The interim rule was necessary to prevent the artificial spread of the emerald ash borer from infested areas in the State of Michigan into noninfested areas of the United States.

**DATES:** Effective on February 2, 2007, we are adopting as a final rule the interim rule published at 71 FR 57871-57873 on October 2, 2006.

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah McPartlan, Operations Officer, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236; (301) 734-4387.

**SUPPLEMENTARY INFORMATION:****Background**

The emerald ash borer (EAB) (*Agrilus planipennis*) is a destructive wood-boring insect that attacks ash trees (*Fraxinus* spp., including green ash, white ash, black ash, and several horticultural varieties of ash). The insect, which is indigenous to Asia and known to occur in China, Korea, Japan, Mongolia, the Russian Far East, Taiwan, and Canada, eventually kills healthy ash

trees after it bores beneath their bark and disrupts their vascular tissues.

The EAB regulations in 7 CFR 301.53-1 through 301.53-9 (referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the artificial spread of EAB to noninfested areas of the United States. Portions of the States of Indiana, Michigan, and Ohio are already designated as quarantined areas.

In an interim rule<sup>1</sup> effective September 25, 2006, and published in the **Federal Register** on October 2, 2006 (71 FR 57871-57873, Docket No. APHIS-2006-0131), we amended the EAB regulations in § 301.53-3(c) by designating the entire Lower Peninsula of Michigan as a quarantined area. That action was necessary to prevent the artificial spread of the EAB from infested areas in the State of Michigan into noninfested areas of the United States.

Comments on the interim rule were required to be received on or before December 1, 2006. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

**List of Subjects in 7 CFR Part 301**

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

**PART 301—DOMESTIC QUARANTINE NOTICES**

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 71 FR 57871-57873 on October 2, 2006.

Done in Washington, DC, this 29th day of January 2007.

**Kevin Shea,***Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E7-1720 Filed 2-1-07; 8:45 am]

BILLING CODE 3410-34-P

<sup>1</sup>To view the interim rule, go to <http://www.regulations.gov>, click on the "Advanced Search" tab, and select "Docket Search." In the Docket ID field, enter APHIS-2006-0131, then click "Submit." Clicking on the Docket ID link in the search results page will produce a list of all documents in the docket.

**NUCLEAR REGULATORY COMMISSION****10 CFR Part 73**

RIN A104

**Relief From Fingerprinting and Criminal History Records Checks****AGENCY:** Nuclear Regulatory Commission.**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC or Commission) is issuing new regulations to relieve certain categories of individuals from the requirement to undergo fingerprinting, identification, and criminal history records checks under section 149 of the Atomic Energy Act of 1954, as amended, (AEA) before being permitted unescorted access to radioactive materials or other property subject to regulation by the Commission that the Commission determines to be of such significance to the public health and safety or the common defense and security as to warrant such checks.

**DATES:** This final rule is effective on February 2, 2007.

**FOR FURTHER INFORMATION CONTACT:**

Jared K. Heck, Attorney, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-1623, e-mail [jkh3@nrc.gov](mailto:jkh3@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Background
- II. Need for Rule
- III. Analysis of Rule
- IV. Basis for Immediate Effectiveness and Dispensing With Notice and Comment
- V. Voluntary Consensus Standards
- VI. Finding of No Significant Impact: Availability
- VII. Paperwork Reduction Act Statement
- VIII. Regulatory Analysis
- IX. Backfit Analysis
- X. Congressional Review Act

**I. Background**

On August 8, 2005, Congress enacted legislation that authorized the Commission to impose new requirements governing unescorted access to certain radioactive material and other property subject to regulation by the Commission. Specifically, section 652 of the Energy Policy Act of 2005, Pub. L. 109-58, which amended AEA section 149, requires the Commission to ensure that "any individual" who is permitted unescorted access to "radioactive material or other property subject to regulation by the Commission that the Commission determines to be of such significance to the public health and safety or the common defense and