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## NUCLEAR REGULATORY COMMISSION

### 2 CFR Chapter XX

[NRC-2010-0005]

RIN 3150-A176

### Nonprocurement Debarment and Suspension

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is issuing new regulations governing nonprocurement debarment and suspension. These regulations cover grants, cooperative agreements and other nonprocurement transactions and adopt and supplement, to a limited extent, Office of Management and Budget (OMB) guidance on nonprocurement debarment and suspension found in OMB's regulations.

**DATES:** Effective June 18, 2010.

**ADDRESSES:** You can access publicly available documents related to this document using the following methods: *NRC's Public Document Room (PDR):* The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

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301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

*Federal Rulemaking Web site:* Supporting materials related to this final rule can be found at <http://www.regulations.gov> by searching on Docket ID: NRC-2010-0005.

**FOR FURTHER INFORMATION CONTACT:**

Ruth Kowarski Cooke, Senior Attorney, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301-415-3412, e-mail [ruth.kowarskicooke@nrc.gov](mailto:ruth.kowarskicooke@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

#### I. Background

On May 11, 2004 (69 FR 26275), OMB issued guidance governing Government-wide Grants and Agreements which it published in 2 CFR. This title has two subtitles. 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 the regulations promulgated by Federal agencies where the OMB guidance is implemented.

On August 31, 2005 (70 FR 51863), OMB published interim final guidance for government-wide nonprocurement debarment and suspension in the **Federal Register**. The interim final guidance updated previous OMB guidance that was issued under Executive Order (EO) 12549, "Debarment and Suspension" (February 18, 1986), which gave government-wide effect to each Executive agency's nonprocurement debarment and suspension actions.

Section 6 of the EO 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 EO that are consistent with the OMB guidelines. OMB's interim final guidance was published in 2 CFR part 180 in a form suitable for agency adoption, thus eliminating the need for each agency to repeat the full text of the OMB government-wide guidance in its implementing regulations. This approach makes it easier for recipients of covered transactions or respondents in debarment or suspension actions to

locate the applicable requirements, reduces the volume of regulations, and streamlines the process for updating the governmentwide requirements on nonprocurement debarment and suspension. On November 15, 2006 (71 FR 66431), OMB published a final rule adopting the interim final guidance with changes.

Although the NRC is not required to promulgate regulations on this subject, as NRC is not an "executive agency" for purposes of Executive Order 12549 or Executive Order 12689, it has chosen to do so. NRC is adopting the governmentwide debarment and suspension system requirements 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, Pub. L. 103-355, 108 Stat. 3327).

This final rule places NRC's nonprocurement debarment and suspension regulations in subtitle B of 2 CFR, along with other agencies' nonprocurement debarment and suspension rules. This action is in conformance with OMB final guidance.

The NRC therefore is promulgating 2 CFR part 2000, which adopts the OMB guidance presented in 2 CFR part 180 as supplemented with a few agency-specific provisions.

#### II. Rulemaking Procedure

The Nuclear Regulatory Commission is promulgating this final rule without affording the opportunity for public comment. 5 U.S.C. 553(a)(2) provides that notice and comment is not necessary when the rulemaking action concerns a matter relating to grants, benefits or contracts or to a matter relating to agency management or personnel.

#### III. Section-by-Section Analysis

*Section 2000.10 What does this part do?*

This section explains that NRC, acting under its discretionary authority, is promulgating a regulation adopting OMB's guidance on nonprocurement debarment and suspension found in 2 CFR part 180 for programs and activities involving Federal financial and nonfinancial assistance and benefits. The NRC is giving regulatory effect to

OMB guidance set forth at subpart A of 2 CFR part 180.

*Section 2000.20 Does this part apply to me?*

This section identifies who is covered by the debarment and suspension regulations. It also identifies which NRC officials are responsible for implementing this regulation.

*Section 2000.30 What policies and procedures must I follow?*

This section adopts the policies and procedures set forth in 2 CFR part 180. This section also explains the numbering used in these regulations.

*Section 2000.135 Who in the Nuclear Regulatory Commission may grant an exception to let an excluded person participate in a covered transaction?*

This section supplements guidance contained in 2 CFR 180.135 by identifying the NRC Director of the Office of Administration as the NRC official who has the authority to grant exceptions to a suspension or debarment action, thereby allowing for participation of a person in a particular covered transaction.

*Section 2000.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?*

This section supplements covered transaction guidance contained in 2 CFR 180.220 by explaining that NRC has chosen not to extend the coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts that are covered by 2 CFR 180.220.

*Section 2000.330 What method must I use to pass requirements down to participants at lower tiers with whom I intend to do business?*

This section requires NRC employees to include a term or condition in every nonprocurement agreement requiring compliance with the verification responsibilities set forth at subpart C of 2 CFR part 180. The section also requires that the verification requirement be passed through to all lower level agreements between the nonprocurement agreement holder and its subcontractors.

*Section 2000.930 Debarring Official*

This section provides that the NRC debarring official, who is authorized to debar an entity from entering into a covered transaction, is the Director of the Office of Administration.

*Section 2000.1010 Suspending Official*

This section provides that the NRC's suspending official, who is authorized to suspend entity from entering into a covered transaction, is the Director of the Office of Administration.

#### IV. Environmental Impact: Categorical Exclusion

The Commission has determined that this rule is the type of action described in categorical exclusion 10 CFR 51.229(c)(1). This rule makes non-substantive changes to NRC's nonprocurement debarment and suspension procedures. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

#### V. Paperwork Reduction Act

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

#### VI. Backfit Analysis

The NRC has determined that this rulemaking does not contain provisions which constitute backfitting as defined in any of the NRC's backfitting provisions in 10 CFR Title I, nor are these provisions inconsistent with the issue resolution and finality provisions in 10 CFR part 52. The requirements in the rulemaking address the NRC's policies and procedures for nonprocurement debarment and suspension, and as such, do not constitute new requirements or changes to requirements governing the design, the organization of licensees, or procedures of licensees for operating facilities or conducting licensed activities as defined in the backfitting provisions in 10 CFR Chapter I.

#### VII. Congressional Review Act

In accordance with the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

#### List of Subjects for 2 CFR Part 2000

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

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is amending Title 2 Subtitle B by adding Chapter XX consisting of part 2000 to read as follows:

## CHAPTER XX—UNITED STATES NUCLEAR REGULATORY COMMISSION

### PART 2000—NONPROCUREMENT DEBARMENT AND SUSPENSION

#### Subpart A—General

Sec.

2000.10 What does this part do?

2000.20 Does this part apply to me?

2000.30 What policies and procedures must I follow?

2000.135 Who in the Nuclear Regulatory Commission may grant an exception to let an excluded person participate in a covered transaction?

#### Subpart B—Covered Transactions

2000.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

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

2000.330 What method must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

#### Subpart D–H [Reserved]

#### Subpart I—Definitions

2000.930 Debarring official.

2000.1010 Suspending official.

**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; 5 U.S.C. 301 and 10 U.S.C. 113.

#### Subpart A—General

##### § 2000.10 What does this part do?

This part promulgates a regulation adopting the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, establishing the United States Nuclear Regulatory Commission (NRC) policies and procedures for nonprocurement debarment and suspension. NRC thereby gives regulatory effect to the OMB guidance. It also supplements the OMB guidance by identifying NRC implementing officials and identifying how to pass these requirements through to other entities.

##### § 2000.20 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:

(a) Participant or principal in a “covered transaction”;

(b) Respondent in an NRC nonprocurement suspension or debarment action;

(c) NRC debarment or suspension official; or

(d) NRC grants officer, agreements officer, or other official authorized to

enter into a covered nonprocurement transaction.

**§ 2000.30 What policies and procedures must I follow?**

(a) The NRC 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, and those in this part. The NRC has closely tracked OMB's numbering scheme. For example, the contracts under a nonprocurement transaction that are covered transactions that are in section 220 of the OMB guidance (*i.e.*, 2 CFR 180.220) are found in § 2000.220.

(b) For any section of OMB guidance in subparts A through I of 2 CFR part 180 that has no corresponding section in this part, NRC requirements are those in the OMB guidance at 2 CFR part 180.

**§ 2000.135 Who in the Nuclear Regulatory Commission may grant an exception to let an excluded person participate in a covered transaction?**

The Director, Office of Administration or another official designated by the Director, has the authority to grant a written exception to let an excluded person participate in a covered transaction, as provided in guidance at 2 CFR 180.135. The Director or other official designated by the Director shall explain the reason(s) for deviating from the governmentwide policy.

**Subpart B—Covered Transactions**

**§ 2000.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?**

The NRC nonprocurement suspension and debarment requirements apply only to first-tier procurement contracts under a covered nonprocurement transaction.

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

**§ 2000.330 What method must be used to pass requirements down to participants at lower tiers?**

A participant in a covered transaction must include a term or condition in any lower-tier covered transaction to require the participant of that transaction to—

(a) Comply with subpart C of the OMB guidance in 2 CFR part 180; and

(b) Include a similar term or condition in any covered transaction into which it enters at the next lower tier.

**Subpart E–H [Reserved]**

**Subpart I—Definitions**

**§ 2000.930 Debarring official.**

The Debarring Official for the United States Nuclear Regulatory Commission is the Director, Office of Administration.

**§ 2000.1010 Suspending official.**

The suspending official for the United States Nuclear Regulatory Commission is the Director, Office of Administration.

Dated at Rockville, Maryland, this 30th day of April 2010.

For the Nuclear Regulatory Commission.

**R.W. Borchardt,**

*Executive Director for Operations.*

[FR Doc. 2010–11844 Filed 5–18–10; 8:45 am]

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**DEPARTMENT OF AGRICULTURE**

**Food Safety and Inspection Service**

**9 CFR Part 381**

[Docket No. FSIS–2007–0045]

**Use of Turkey Shackle in Bar-Type Cut Operations; Correcting Amendment**

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Correcting amendment.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is amending the Federal poultry products inspection regulations to correct an inadvertent error in the required shackle width for Bar-type cut turkey operations that use J-type cut maximum line speeds.

**DATES:** This amendment is effective May 19, 2010.

**FOR FURTHER INFORMATION CONTACT:** Patrick Burke, Risk and Innovations Management Division, Office of Policy and Program Development, FSIS, U.S. Department of Agriculture, Room 2–2118 George Washington Carver Center, 5601 Sunnyside Avenue, Beltsville, MD 20705, (301) 504–0843.

**SUPPLEMENTARY INFORMATION:** On September 8, 2008, FSIS published a final rule that provides that turkey slaughter establishments that open turkey carcasses with Bar-type cuts may operate at the maximum line speeds established for J-type cuts if they use a shackle with a 4-inch by 4-inch selector (or kickout), a 45 degree bend of the lower 2 inches, an extended central loop portion of the shackle that lowers the abdominal cavity opening of the carcasses to an angle of 30 degrees from the vertical in direct alignment with the inspector's view, and a width of 10.5

inches (73 FR 51899). The specified shackle width of 10.5 inches is a typographical error, and the correct width is 10 inches. This notice corrects the error and amends § 381.68 to specify the correct 10-inch shackle width for Bar-type cut turkey operations that use J-type cut maximum line speeds.

**Additional Public Notification**

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this proposed rule, FSIS will announce it online through the FSIS Web page located at [http://www.fsis.usda.gov/Regulations\\_Policies/2010\\_Notices\\_Index/index.asp](http://www.fsis.usda.gov/Regulations_Policies/2010_Notices_Index/index.asp). FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at [http://www.fsis.usda.gov/news\\_and\\_events/email\\_subscription/](http://www.fsis.usda.gov/news_and_events/email_subscription/). Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

**List of Subjects in 9 CFR Part 381**

Poultry product inspection, Post-mortem.

■ For the reasons set forth in the preamble, 9 CFR part 381 is corrected by making the following correcting amendment:

**PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS**

■ 1. The authority citation for part 381 continues to read as follows:

**Authority:** 21 U.S.C. 451 *et seq.*