

species is misbranded unless the product name is appropriately qualified or unless the statement of ingredients indicates the species from which the casings are derived.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Wade, Director, Food Labeling Division, FSIS, West End Court Building, Washington, DC; (202) 254-2590.

SUPPLEMENTARY INFORMATION: Sausages are prepared using single or multiple species of meat or poultry. Some sausages are made with non-edible casings that must be removed before eating. Others are made with edible casings, such as those made from cellulose or collagen. Still others are made with natural casings, also referred to as animal casings, which are prepared from various sections of the viscera. Some sausages prepared in natural casings may have the species identified in the product name or statement of ingredients on the product label. However, sausages may also be made with natural casings derived from a species that is not identified on the label. For example, a combination beef-and-lamb sausage may be made with a pork casing.

The use of any particular type of casing is commonly determined by the price and availability of the casings and the size and shape of the sausage product. Natural casings are not prepared from poultry because poultry intestines are not the appropriate size for sausages customarily consumed in this country. More importantly, FSIS has only recently determined poultry intestines to be edible.

FSIS believes that consumers of sausages made with natural casings expect the casings to be derived from the same species as the species indicated on the product label, whether in the product name or in the ingredients statement. For example, the natural casing of a sausage labeled "beef sausage" should be derived from cattle. Similarly, FSIS believes that consumers of poultry sausage, e.g., chicken sausage, expect the sausage to be made from poultry and would not necessarily expect the casing to be derived from a red meat source.

Therefore, FSIS considers a sausage made with natural casings derived from a different species to be a misbranded product, unless the species from which the casings are derived is indicated in the product name or listed in the ingredients statement, or is in both places on the product label.

Done, at Washington, D.C., on: July 23, 1996.
Michael R. Taylor,
Acting Under Secretary for Food Safety.
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DEPARTMENT OF ENERGY

10 CFR Parts 1035 and 1036 and 48 CFR Part 909

RIN 1991-AB24

Debarment and Suspension (Procurement) and Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants) and Department of Energy Acquisition Regulation

AGENCY: Department of Energy (DOE).

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) today is publishing a final rule which amends its regulations governing debarment and suspension in procurement and nonprocurement activities. The rule establishes a common fact-finding process in procurement and nonprocurement cases involving a genuine dispute over material facts. The rule removes the Department's procurement debarment and suspension regulations from part 10 of the Code of Federal Regulations (CFR) and recodifies them in the Department of Energy Acquisition Regulation (DEAR), chapter 9 of title 48 of the Code of Federal Regulations.

EFFECTIVE DATE: This rule is effective August 30, 1996.

FOR FURTHER INFORMATION CONTACT: Mrs. Cynthia Yee, Office of Clearance and Support, Procurement and Assistance Management, HR-52, U. S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, 202-586-1140.

SUPPLEMENTARY INFORMATION:

- I. Background.
- II. Public Comments.
- III. Procedural Requirements.
 - A. Regulatory Review.
 - B. Review under the Regulatory Flexibility Act.
 - C. Review Under the Paperwork Reduction Act.
 - D. Review Under the National Environmental Policy Act.
 - E. Review Under Executive Order 12612.
 - F. Review Under Executive Order 12988.
 - G. Review Under the Unfunded Mandates Reform Act.

I. Background

The Department of Energy (DOE) today is publishing a final rule which removes 10 CFR Part 1035, Debarment and Suspension (Procurement), and recodifies the regulation at 48 CFR Part 909. In recodifying the procurement debarment and suspension regulations, DOE makes various changes to clarify the provisions of procurement debarment and suspension and to ensure consistency between the Federal Acquisition Regulation (FAR) and the DEAR. See explanation of the changes in the preamble to the Notice of Proposed Rulemaking published for this rule on February 2, 1996 (61 FR 3877). Under the recodified regulations, the Energy Board of Contract Appeals will conduct fact-finding in suspensions or proposed debarments in which the debarring/suspending official determines that material facts are in dispute.

This rule also amends 10 CFR Part 1036, Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), which governs debarment and suspension with regard to DOE nonprocurement and grants programs. The changes made to 10 CFR Part 1036 are primarily technical or procedural in nature. They are explained in the preamble of the Notice of Proposed Rulemaking (61 FR 3877-3878), with the exception of changes to subparagraph (c)(1) of section 1036.110 and subparagraph (a) of section 1036.215, which were not in the proposed rule. These subparagraphs are being added because previous changes to the common rule resulted in them being inadvertently omitted. This final rule reinstates the subparagraphs and corrects references in those reinstated subparagraphs. Section 1036.700 provides for fact-finding by the Energy Board of Contract Appeals in suspensions or proposed debarments in which the debarring/suspending official determines that material facts are in dispute.

The Department of Energy Consolidated List of Debarred, Suspended, Ineligible and Voluntarily Excluded Awardees (DOE List) has been eliminated as unnecessary because the General Services Administration maintains, pursuant to Executive order 12549, a governmentwide list of parties excluded from federal procurement and nonprocurement programs.

Due to the extensive revisions to DEAR, the complete text of DEAR 909.4 is published. However, only those portions of Part 1036 that are affected by the changes are published, rather than

publishing the complete text of the common rule.

II. Public Comments

On February 2, 1996, DOE published a Notice of Proposed Rulemaking and invited public comment for a period of 60 days on these amendments to the Department's debarment and suspension regulations (61 FR 3877). No comments were received on the proposed rule. Except for the technical correction of sections 1036.110 and 1036.215, this final rule makes no changes to the rule as proposed.

III. Procedural Requirements

A. Regulatory Review

Today's final rule has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Nevertheless, a copy of the rule was submitted informally to the Office of Information and Regulatory Affairs because it relates to the subject matter of a Governmentwide common rule.

B. Review Under the Regulatory Flexibility Act

This final rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96-354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. Today's rule revises procedural requirements pertaining to suspension and debarment of DOE contractors. It contains no recordkeeping or substantive regulatory requirements. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities, and therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this rule. Accordingly, no OMB clearance is required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

D. Review Under NEPA

DOE has determined that issuance of this rule is not a major federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 et seq., and therefore that neither an environmental assessment nor an environmental impact statement is

required. Categorical exclusion A2 in DOE's regulations implementing NEPA, appendix A of subpart D of 10 CFR Part 1021, applies to this rulemaking. Categorical exclusion A2 encompasses procedural and administrative matters pertaining to contracts.

E. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the national Government and the States, and in the distribution of power and responsibility among various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

Today's rule revises certain procedural requirements pertaining to suspension and debarment of DOE contractors. DOE has determined that none of the revisions will have a substantial direct effect on the institutional interests or traditional functions of the States.

F. Review Under Executive Order 12988

Section 3 of Executive Order 12988 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 3(a) and 3(b), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE has completed the required review and determined that, to the extent permitted by law, the final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104-4 on March 22, 1995, requires each Federal agency, to the

extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." Section 203 of the Act, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals. 2 U.S.C. 1533.

The final rule published today does not contain any Federal mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

List of Subjects

10 CFR Part 1035

Administrative practice and procedure, Government procurement.

10 CFR Part 1036

Administrative practice and procedure, Drug abuse, Grant programs, Loan programs.

48 CFR Part 909

Government procurement.

Issued in Washington, DC, on June 7, 1996.
Richard H. Hopf,
Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set out in the preamble, Title 10 Code of Federal Regulations Parts 1035 and 1036 and Chapter 9, Title 48 Code of Federal Regulations are amended as set forth below.

10 CFR PART 1035—DEBARMENT AND SUSPENSION (PROCUREMENT)—[REMOVED]

1. Under the authority of Section 644 of the DOE Organization Act, 42 U.S.C. 7254, Part 1035—Debarment and Suspension (Procurement) is removed.

PART 1036—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

2. The authority citation continues to read as follows:

Authority: E.O. 12689, E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 42 U.S.C. 701 et seq.); Secs. 644 and 646, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254 and 7256); Pub. L. 97–258, 98 Stat. 1003–1005 (31 U.S.C.) 6301–6308.

Subpart A—General

§ 1036.105 Definitions. [Amended]

3. Section 1036.105 is amended by revising the phrase “Director, Procurement and Assistance Management Directorate” to read “Deputy Assistant Secretary for Procurement and Assistance Management or designee” in the definitions for “Debarring Official” (paragraph (3)) and “Suspending Official” (paragraph (3)); and removing the definitions for “Director” and “DOE List.”

4. Section 1036.110 is amended by adding paragraphs (c) (1) and (2) to read as follows:

§ 1036.110 Coverage.

* * * * *

(c) * * *

(1) Debarment and suspension of DOE procurement contractors is covered by 48 CFR (DEAR) 909.4.

(2) *Reserved.*

Subpart B—Effect of Action

5. Section 1036.215 is amended by adding paragraphs (a) and (b) to read as follows:

§ 1036.215 Exception provision.

* * * * *

(a) The DOE authorized designee is the Deputy Assistant Secretary for Procurement and Assistance Management or designee.

(b) *Reserved.*

Subpart C—Debarment

§ 1036.312 Notice of proposed debarment. [Amended]

6. Section 1036.312 is amended by removing paragraph (b)(1); by removing paragraph (d)(1); by removing paragraph (e)(1); in paragraph (f) by revising “Director” to read “debarring official;” and in paragraph (g) by revising “DOE” to read “GSA.”

§ 1036.313 Opportunity to contest proposed debarment. [Amended]

7. Section 1036.313 is amended in paragraph (a)(1) by revising “Director” to read “debarring official” and removing the citation “(See § 1036.600(c)).”

§ 1036.314 Debarring official's decision. [Amended]

8. Section 1036.314 is amended by removing paragraph (d)(1)(vi) and redesignating paragraphs (d)(1) (vii) and (viii) as (d)(1) (vi) and (vii).

§ 1036.315 Settlement and voluntary exclusion. [Amended]

9. Section 1036.315 is amended by removing paragraph (c).

Subpart D—Suspension

§ 1036.411 Notice of Suspension. [Amended]

10. Section 1036.411 is amended by removing paragraph (c)(1); by removing paragraph (f)(1); in paragraph (h) by revising “Director” to read “suspending official” and in paragraph (j) by revising “DOE” to read “GSA.”

§ 1036.412 Opportunity to contest suspension. [Amended]

11. Section 1036.412 is amended by removing paragraph (a)(1).

Subpart G—Additional DOE Procedures for Debarment and Suspension

12. Section 1036.700, Decisionmaking, is revised to read as follows:

§ 1036.700 Procedures.

(a) *Decisionmaking process for debarments.* (1) In actions based upon a conviction or civil judgment, and other actions in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submissions made by the awardee. If no suspension is in effect, the decision shall be made within 30 working days after receipt of any information and argument submitted by the awardee, unless the debarring official extends this period for good cause. The debarring official shall consider information and argument in opposition to the proposed debarment including identification of disputed material facts. If the respondent fails to submit a timely written response to a notice of proposed debarment, the debarring official shall notify the respondent in accordance with 10 CFR 1036.312 that the awardee is debarred.

(2) In actions not based upon a conviction or civil judgment, if it is found that the awardee's submission in opposition raises a genuine dispute over facts material to the proposed debarment, at the request of the awardee, the debarring official shall refer the matter to the Energy Board of Contract Appeals for a fact-finding conference, in accordance with rules consistent with this section promulgated by the Energy Board of Contract Appeals. The Energy Board of Contract Appeals shall report to the Debarring Official findings of fact, not conclusions of law. The findings shall resolve any disputes over material facts based on a preponderance of evidence.

(b) *Decisionmaking process for suspensions.* (1) In actions based on an indictment, the suspending official shall make a decision based upon the administrative record, which shall include submissions made by the awardee.

(2) In actions not based on an indictment, if it is found that the awardee's submission in opposition raises a genuine dispute over facts material to the suspension and if no determination has been made, on the basis of Department of Justice advice, that substantial interest of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced, the suspending official shall, at the request of the awardee, refer the matter to the Energy Board of Contract Appeals for a fact-finding conference, in accordance with rules promulgated by the Energy Board of Contract Appeals. The Energy Board of Contract Appeals shall report to the Suspending Official findings of fact, not conclusions of law. The findings shall resolve any disputes over material facts based on adequate evidence.

(c) *Meeting.* Upon receipt of a timely request therefore from the respondent, the debarring/suspending official shall schedule a meeting between the debarring/suspending official and the respondent, to be held no later than 30 days from the date the request is received. The debarring/suspending official may postpone the date of the meeting if the respondent requests a postponement in writing. At the meeting, the respondent, appearing personally or through an attorney or other authorized representative, may informally present and explain evidence that causes for debarment or suspension do not exist, evidence of any mitigating factors, and arguments concerning the imposition, scope, duration, or effects of a proposed debarment or suspension.

(d) *Fact-finding conference.* The purpose of a fact-finding conference under this section is to provide the respondent an opportunity to dispute material facts and to provide the debarring/suspending official with findings of fact based, as applicable, on adequate evidence or on a preponderance of the evidence. If the debarring/suspending official determines that a written response or a presentation at the meeting under paragraph (c) of this section puts material facts in dispute, the debarring/suspending official shall refer the matter to the Energy Board of Contract Appeals for fact-finding. The fact-finding conference shall be conducted in accordance with rules promulgated by the Energy Board of Contract Appeals. The Energy Board of Contract Appeals shall report to the Debarring Official findings of fact, but not conclusions of law. The findings shall resolve any disputes over material facts based on a preponderance of evidence if the case involves a proposal to debar, or on adequate evidence if the case involves a suspension. Since convictions or civil judgments generally establish the cause for debarment by a preponderance of the evidence, there usually is no genuine dispute over a material fact that warrants a fact-finding conference for those proposed debarments based on convictions or civil judgments.

13. Section 1036.705 is amended in the introductory paragraph by revising "Director" to read "debaring/suspending official" in the first and second sentences, revising reference to "1036.700(b)(1) or (b)(2)" to read "1036.700(c)" and by revising paragraph (b) to read as follows:

§ 1036.705 Coordination with Department of Justice.

* * * * *

(b) Deny additional proceedings and base the decision on all information in the administrative recording, including any submissions made by the respondent.

§ 1036.710 DOE consolidated list of debarred, suspended, ineligible, and voluntarily excluded awardees. [Removed]

14. Section 1036.710, DOE consolidated list of debarred, suspended, ineligible, and voluntarily excluded awardees, is removed.

§ 1036.715 Effects of being listed on the GSA list. [Amended]

15. Section 1036.715 is amended by revising the section heading to read "Effects of being listed on the GSA list" and, in the introductory paragraph, by revising "Director" to read "Deputy Assistant Secretary for Procurement and

Assistance Management or designee" and by revising "DOE List" to read "GSA List" wherever it appears in paragraphs (a) through (g).

48 CFR PART 909—CONTRACTOR QUALIFICATIONS

16. The authority citation for Part 909 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

17. Subpart 909.4 is revised to read as follows:

Subpart 909.4—Debarment, Suspension, and Ineligibility

Sec.

- 909.400 Scope of subpart.
- 909.401 Applicability.
- 909.403 Definitions.
- 909.405 Effect of listing.
- 909.406 Debarment.
- 909.406-2 Causes for debarment.
- 909.406-3 Procedures.
- 909.406-6 Requests for reconsideration of debarment.
- 909.407-2 Causes for suspension.
- 909.407-3 Procedures.

Subpart 909.4—Debarment, Suspension, and Ineligibility

§ 909.400 Scope of subpart.

This subpart—

(a) Prescribes policies and procedures governing the debarment and suspension of organizations and individuals from participating in Department of Energy (DOE) contracts, procurement sales contracts, and real property purchase agreements, and from participating in DOE approved subcontracts and subagreements.

(b) Sets forth the causes, procedures, and requirements for determining the scope, duration, and effect of DOE debarment and suspension actions; and

(c) Implements and supplements FAR subpart 9.4 with respect to the exclusion of organizations and individuals from procurement contracting and Government approved subcontracting.

§ 909.401 Applicability.

The provisions of this subpart apply to all procurement debarment and suspension actions initiated by DOE on or after the effective date of this subpart. Nonprocurement debarment and suspension rules are codified in 10 CFR part 1036.

§ 909.403 Definitions.

In addition to the definitions set forth at FAR 9.403, the following definitions apply to this subpart:

Debarring Official. The DOE Debarring Official is the Deputy Assistant Secretary for Procurement and Assistance Management, or designee.

DOE means the Department of Energy, including the Federal Energy Regulatory Commission.

Suspending Official. The DOE Suspending Official is the Deputy Assistant Secretary for Procurement and Assistance Management, or designee.

§ 909.405 Effect of listing. (DOE coverage—paragraph (e), (b), (g) and (h))

(e) The Department of Energy may not solicit offers from, award contracts to or consent to subcontract with contractors debarred, suspended or proposed for debarment unless the Deputy Assistant Secretary for Procurement and Assistance Management makes a written determination justifying that there is a compelling reason for such action in accordance with FAR 9.405(a).

(f) DOE may disapprove or not consent to the selection (by a contractor) of an individual to serve as a principal investigator, as a project manager, in a position of responsibility for the administration of Federal funds, or in another key personnel position, if the individual is on the GSA List.

(g) DOE shall not conduct business with an agent or representative of a contractor if the agent's or representative's name appears on the GSA List.

(h) DOE shall review the GSA List before conducting a preaward survey or soliciting proposals, awarding contracts, renewing or otherwise extending the duration of existing contracts, or approving or consenting to the award, extension, or renewal of subcontracts.

§ 909.406 Debarment.

§ 909.406-2 Causes for debarment. (DOE coverage—paragraphs (c) and (d))

(c) The Debarring Official may debar a contractor for any other cause of so serious or compelling a nature that it affects the present responsibility of a DOE contractor. Such cause may include but is not limited to:

- (1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a private contract or subcontract; and
- (2) Inexcusable, prolonged, or repeated failure to pay a debt (including disallowed costs and overpayments) owed to DOE, provided the contractor has been notified of the determination of indebtedness, and further provided that the time for initiating any administrative or legal action to oppose or appeal the determination of indebtedness has expired or that such action, if initiated, has been concluded.

(d) The Debarring Official may debar a contractor:

- (1) On the basis that an individual or organization is an affiliate of a debarred

contractor, subject to the requirements of FAR 9.406-1(b) and 9.406-3(c);

(2) For failure to observe the material provisions of a voluntary exclusion (see 10 CFR 1036.315 for discussion of voluntary exclusion).

§ 909.406-3 Procedures. (DOE coverage—paragraphs (a), (b) and (d))

(a) *Investigation and referral.* (1) Offices responsible for the award and administration of contracts are responsible for reporting to both the Deputy Assistant Secretary for Procurement and Assistance Management and the DOE Inspector General information about possible fraud, waste, abuse, or other wrongdoing which may constitute or contribute to a cause(s) for debarment under this subpart. Circumstances that involve possible criminal or fraudulent activities must be reported to the Office of the Inspector General in accordance with 10 CFR Part 1010, Conduct of Employees, § 1010.217(b), Cooperation with the Inspector General.

(2) At a minimum, referrals for consideration of debarment action should be in writing and should include the following information:

(i) The recommendation and rationale for the referral;

(ii) A statement of facts;

(iii) Copies of documentary evidence and a list of all witnesses, including addresses and telephone numbers, together with a statement concerning their availability to appear at a fact-finding proceeding and the subject matter of their testimony;

(iv) A list of parties including the contractor, principals, and affiliates (including last known home and business addresses, zip codes and DUNS Number);

(v) DOE's acquisition history with the contractor, including recent experience under contracts and copies of pertinent contracts;

(vi) A list of any known active or potential criminal investigations, criminal or civil proceedings, or administrative claims before the Board of Contract Appeals; and

(vii) A statement regarding the impact of the debarment action on DOE programs. This statement is not required for referrals by the Inspector General.

(3) Referrals may be returned to the originator for further information or development.

(b) *Decisionmaking process.*

Contractors proposed for debarment shall be afforded an opportunity to submit information and argument in opposition to the proposed debarment.

(1) In actions based upon a conviction or civil judgment, or in which there is

no genuine dispute over material facts, the Debarring Official shall make a decision on the basis of all the information in the administrative record, including any submissions made by the contractor. If the respondent fails to submit a timely written response to a notice of proposed debarment, the Debarring Official shall notify the respondent in accordance with FAR 9.406-3(e) that the contractor is debarred.

(2) In actions not based upon a conviction or civil judgment, the contractor may request a fact-finding hearing to resolve a genuine dispute of material fact. In its request, the contractor must identify the material facts in dispute and the basis for disputing the facts. If the Debarring Official determines that there is a genuine dispute of material fact, the Debarring Official shall refer the matter to the Energy Board of Contract Appeals for a fact-finding conference.

(3) *Meeting.* Upon receipt of a timely request therefor from a contractor proposed for debarment, the Debarring Official shall schedule a meeting between the Debarring Official and the respondent, to be held no later than 30 days from the date the request is received. The Debarring Official may postpone the date of the meeting if the respondent requests a postponement in writing. At the meeting, the respondent, appearing personally or through an attorney or other authorized representative, may present and explain evidence that causes for debarment do not exist, evidence of any mitigating factors, and arguments concerning the imposition, scope, or duration of a proposed debarment or debarment.

(4) *Fact-finding conference.* The purpose of a fact-finding conference under this section is to provide the respondent an opportunity to dispute material facts through the submission of oral and written evidence; resolve facts in dispute; and provide the Debarring Official with findings of fact based, as applicable, on adequate evidence or on a preponderance of the evidence. The fact-finding conference shall be conducted in accordance with rules consistent with FAR 9.406-3(b) promulgated by the Energy Board of Contract Appeals. The Energy Board of Contract Appeals will notify the affected parties of the schedule for the hearing. The Energy Board of Contract Appeals shall deliver written findings of fact to the Debarring Official (together with a transcription of the proceeding, if made) within a certain time period after the hearing record closes, as specified in the Energy Board of Contract Appeals Rules. The findings shall resolve any disputes

over material facts based upon a preponderance of the evidence, if the case involves a proposal to debar, or on adequate evidence, if the case involves a suspension. Since convictions or civil judgments generally establish the cause for debarment by a preponderance of the evidence, there usually is no genuine dispute over a material fact that would warrant a fact-finding conference for those proposed debarments based on convictions or civil judgments.

(d) *Debaring Official's decision.* (4) The Debarring Official's final decision shall be based on the administrative record. In those actions where additional proceedings are necessary as to disputed material facts, written findings of fact shall be prepared and included in the final decision. In those cases where the contractor has requested and received a fact-finding conference, the written findings of fact shall be those findings prepared by the Energy Board of Contract Appeals. Findings of fact shall be final and conclusive unless within 15 days of receipt of the findings, the Department or the respondent requests reconsideration, as provided in the Board's Rules, or unless set aside by a court of competent jurisdiction. The Energy Board of Contract Appeals shall be provided a copy of the Debarring Official's final decision.

909.406-6 Requests for reconsideration of debarment.

(a) At any time during a period of debarment, a respondent may submit to the Debarring or Suspending Official a written request for reconsideration of the scope, duration, or effects of the suspension/debarment action because of new information or changed circumstances, as discussed at FAR 9.406-4(c).

(b) In reviewing a request for reconsideration, the Debarring or Suspending Official may, in his or her discretion, utilize any of the procedures (meeting and fact-finding) set forth in 48 CFR (DEAR) 909.406-3 and 909.407-3. The Debarring or Suspending Official's final disposition of the reconsideration request shall be in writing and shall set forth the reasons why the request has been granted or denied. A notice transmitting a copy of the disposition of the request for reconsideration shall be sent to the respondent and, if a fact-finding conference under 48 CFR (DEAR) 909.406-3(b)(4) is pending (as in the case of a request for reconsideration of a suspension, where the proposed debarment is the subject of a fact-finding conference), a copy of the disposition shall be transmitted to the Energy Board of Contract Appeals.

909.407-2 Causes for suspension. (DOE coverage—paragraph (d))

(d) The Suspending Official may suspend an organization or individual:

(1) Indicted for or suspected, upon adequate evidence, of the causes described in 48 CFR (DEAR) 909.406-2(c)(1).

(2) On the basis of the causes set forth in 48 CFR (DEAR) 909.406-2(d)(2).

(3) On the basis that an organization or individual is an affiliate of a suspended or debarred contractor.

909.407-3 Procedures. (DOE coverage—paragraphs (b) and (c))

(b) Decisionmaking process.

(1) In actions based on an indictment, the Suspending Official shall make a decision based upon the administrative record, which shall include submissions made by the contractor in accordance with 48 CFR (DEAR) 909.406-3(b)(1) and 909.406-3(b)(3).

(2) For actions not based on an indictment, the procedures in 48 CFR (DEAR) 909.406-3(b)(2) and FAR 9.407-3(b)(2) apply.

(3) Coordination with Department of Justice. Whenever a meeting or fact-finding conference is requested, the Suspending Official's legal representative shall obtain the advice of appropriate Department of Justice officials concerning the impact disclosure of evidence at the meeting or fact-finding conference could have on any pending civil or criminal investigation or legal proceeding. If such Department of Justice official requests in writing that evidence needed to establish the existence of a cause for suspension not be disclosed to the respondent, the Suspending Official shall:

(i) Decline to rely on such evidence and withdraw (without prejudice) the suspension or proposed debarment until such time as disclosure of the evidence is authorized; or

(ii) Deny the request for a meeting or fact-finding and base the suspension decision solely upon the information in the administrative record, including any submission made by the respondent.

(e) Notice of suspending official's decision. In actions in which additional proceedings have been held, following such proceedings, the Suspending Official shall notify respondent, as applicable, in accordance with paragraphs (e)(1) or (e)(2) of this section.

(1) Upon deciding to sustain a suspension, the Suspending Official shall promptly send each affected respondent a notice containing the following information:

(i) A reference to the notice of suspension, the meeting and the fact-finding conference;

(ii) The Suspending Official's findings of fact and conclusions of law;

(iii) The reasons for sustaining a suspension;

(iv) A reference to the Suspending Official's waiver authority under 48 CFR (DEAR) 909.405;

(v) A statement that the suspension is effective throughout the Executive Branch as provided in FAR 9.407-1(d);

(vi) Modifications, if any, of the initial terms of the suspension;

(vii) A statement that a copy of the suspension notice was sent to GSA and that the respondent's name and address will be added to the GSA List; and

(viii) If less than an entire organization is suspended, specification of the organizational element(s) or individual(s) included within the scope of the suspension.

(2) If the Suspending Official decides to terminate a suspension, the Suspending Official shall promptly send, by certified mail, return receipt requested, each affected respondent a copy of the final decision required under this section.

[FR Doc. 96-16015 Filed 7-30-96; 8:45 am]

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DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 121**

[Docket No. 28072; Amendment No. 121-258]

RIN 2120-AF29

Advanced Simulation Plan Revisions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correcting amendments.

SUMMARY: These correcting amendments clarify a final rule published Monday, June 17, 1996 (61 FR 30726). That final rule revised the Advanced Simulation Plan to update terminology used to describe simulators, to eliminate the requirement that the minimum of 1 year of employment as an instructor or check airman be with the operator of the simulator, and to authorize the use of Level C simulators for initial and upgrade training and checking for second-in-command duties.

EFFECTIVE DATE: July 31, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Gary E. Davis, Telephone: (202) 267-3747.

SUPPLEMENTARY INFORMATION:**Need for Correction**

As published, the final rule did not modify the title or remove references to obsolete "phrases" of simulation contained in the introductory text of Appendix H to 14 CFR part 121, "Advanced Simulation Plan." Therefore, the June 17, 1996, final rule may prove to be misleading and is in need of correction.

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Federal Aviation Administration.

Accordingly, 14 CFR part 121 is corrected by making the following correcting amendments:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701-44702, 44705, 44709-44711, 44713, 44716-44717, 44722, 44901, 44903-44904, 44912, 46105.

Appendix H to Part 121—[Corrected]

2. The heading and the introductory text of Appendix H are revised to read as follows:

Appendix H to Part 121—Advanced Simulation

This appendix provides guidelines and a means for achieving flightcrew training in advanced airplane simulators. This appendix describes the simulator and visual system requirements which must be achieved to obtain approval of certain types of training in the simulator. The requirements in this appendix are in addition to the simulator approval requirements in § 121.407. Each simulator which is used under this appendix must be approved as a Level B, C, or D simulator, as appropriate.

To obtain FAA approval of the simulator for a specific level, the following must be demonstrated to the satisfaction of the Administrator:

1. Documented proof of compliance with the appropriate simulator, visual system, and additional training requirements of this appendix for the level for which approval is requested.

2. An evaluation of the simulator to ensure that its ground, flight, and landing performance matches the type of airplane simulated.

3. An evaluation of the appropriate simulator and visual system requirements of the level for which approval is requested.

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