

guaranteed portion of the debt and then to the unsecured interest of the guaranteed portion of the debt. In the event a bankruptcy court attempts to direct the payments to be applied in a different manner, the lender will immediately notify the Agency servicing office.

(5) *Overpayments.* Upon completion of the reorganization plan, the lender will provide the Agency with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained. If the actual loss sustained as a result of the reorganization is less than the estimated loss, the lender will reimburse the Agency for the overpayment plus interest at the note rate from the date of payment of the estimated loss. If the actual loss is greater than the estimated loss payment, the lender will submit a revised estimated loss in order to obtain payment of the additional amount owed by the Agency to the lender.

(6) *Protective advances.* If approved protective advances were made prior to the borrower having filed bankruptcy, these protective advances and accrued interest will be considered in the loss calculations.

§§ 4287.171–4287.179 [Reserved]

§ 4287.180 Termination of guarantee.

A guarantee under this part will terminate automatically:

- (a) upon full payment of the guaranteed loan;
- (b) upon full payment of any loss obligation; or

(c) upon written notice from the lender to the Agency that the guarantee will terminate 30 days after the date of notice, provided that the lender holds all of the guaranteed portion and the Loan Note Guarantee is returned to the Agency to be canceled.

§§ 4287.181–4287.200 [Reserved]

Dated: September 12, 1995.

Jill Long Thompson,

Under Secretary for Rural Economic and Community Development.

[FR Doc. 96–1576 Filed 2–1–96; 8:45 am]

BILLING CODE 3410–32–U

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: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) today is proposing to amend its regulations governing debarment and suspension in procurement and nonprocurement activities. The proposed amendments to the nonprocurement rule only include DOE agency-specific provisions; i.e., none include provisions in the Governmentwide common rule. The proposed rule would establish a common fact-finding process in cases involving a genuine dispute over material facts. The proposed 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 Regulations (DEAR), chapter 9 of title 48 of the Code of Federal Regulations.

DATES: Written comments (3 copies) must be received on or before April 2, 1996 in order to be assured of consideration.

ADDRESSES: Persons wishing to submit comments on this notice of proposed rulemaking should send them to Cynthia Yee, Office of Clearance and Support, Procurement and Assistance Management, HR–52.2, U. S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Mrs. Cynthia Yee, 202–586–1140.

SUPPLEMENTARY INFORMATION:

- I. Background
 - A. Discussion.
 - B. Section-by-Section Analysis.
- II. 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 12778.
- III. Public Comments.

I. Background

A. Discussion

President Reagan signed Executive Order 12549 on February 18, 1986, which established governmentwide effect for an agency's nonprocurement debarment and suspension actions. On October 13, 1994, President Clinton signed Public Law 103–355, the Federal Acquisition Streamlining Act of 1994. Section 2455 of that Act provides that the debarment, suspension, or other exclusion of a participant in a procurement activity under the Federal Acquisition Regulation, or in a nonprocurement activity under regulations issued pursuant to 12549, shall be given reciprocal governmentwide effect. This proposed rulemaking furthers those actions by changing various provisions to clarify the DOE procurement suspension and debarment provisions and to ensure consistency between the Federal Acquisition Regulation (FAR) and the DEAR. Additionally, this proposed rule deletes some DOE-specific provisions to provide for uniformity with other Federal agencies.

B. Section-by-Section Analysis

The DOE today is removing the current regulation, at 10 CFR Part 1035, and recodifying the regulation at 48 CFR Part 909. In recodifying the debarment and suspension regulations, DOE has made various changes to clarify the provisions of procurement debarment and suspension and to ensure consistency between the FAR and the DEAR. The rules of procedure for fact-finding conferences in Appendix A of 10 CFR Part 1035 are removed. Under the recodified regulations, the Energy Board of Contract Appeals will conduct fact-finding in disputed suspension or proposed debarments.

This proposed rule also amends 10 CFR Part 1036, which governs debarment and suspension with regard to DOE nonprocurement and grants programs.

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.

The following is a comparison of existing provisions in 10 CFR Part 1035 with provisions proposed for inclusion in 48 CFR Part 909 (DEAR).

Subpart 909.400 is not significantly different from the previous 10 CFR

1035.1; subpart 909.401 also is unchanged from 10 CFR 1035.2. Subpart 909.402 is removed as it is contained in FAR 9.402. Subpart 909.403 differs significantly from 1035.4 in that, except for DOE-specific definitions, all other definitions are removed as they are contained in FAR 9.403.

Subpart 909.405 is an abbreviated discussion of the effects of being listed on the General Services Administration's Consolidated List of Debarred, Suspended, and Ineligible Contractors (GSA List), previously contained in 10 CFR 1035.13, which includes only those DOE-specific requirements.

Subpart 909.406-2, which identifies causes of so serious or compelling a nature that they affect the present responsibility of a DOE contractor, was previously contained at 10 CFR 1035.5.

Subpart 909.406-3 discusses the DOE procedures for investigation, referral, decisionmaking and notices of debarment previously contained in 10 CFR 1035.5(c), 1035.7 and 1035.8. The discussion in 909.406-3 is abbreviated and more consistent with the requirements contained in FAR 9.406 and incorporates many of the FAR provisions.

Subpart 909.406-6, in which provision for reconsideration is addressed, was previously contained in 10 CFR 1035.11(c).

New subpart 909.407-2 enumerates other causes for suspension previously contained in 10 CFR 1035.5(b).

New subpart 909.407-3 discusses the DOE procedures for investigation, referral, decisionmaking and notices of suspension previously contained 10 CFR 1305.5(c), 1035.7 and 1035.8.

The changes proposed to 10 CFR Part 1036, Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants) are primarily minor in nature. Sections 1036.105, 1036.110, 1036.215, 1036.312, 1036.313, 1036.314, 1036.412, 1036.710, and 1036.715 are administrative changes, consisting of correcting the identity of the DOE debarment and suspending official, correcting the citation for procurement suspension and debarment provisions, deleting reference to the DOE List, and deleting incorrect references within Part 1036.

Significant changes to DOE agency-specific provisions are made to section 1036.312 and 1036.411, which are amended by deleting the references to information that is not to be included in a notice of proposed debarment. Section 1036.315, a DOE agency-specific provision, is amended by deleting

subparagraph 1036.315(c), which discusses terms of voluntary exclusions.

Section 1036.700, which discusses DOE procedures for debarment and suspension, is revised to include language similar to that contained in the proposed DEAR provisions. The proposed revision provides for fact-finding by the Energy Board of Contract Appeals in suspensions or proposed debarments in which the debarment/suspending official determines that material facts are in dispute.

Section 1036.705 is amended by deleting reference to *in camera* review of evidence, providing for decision making based on the administrative record.

The most significant changes that will be made by the proposed DEAR provisions and the revisions to 10 CFR Part 1036 are with respect to *in camera* review and fact-finding. The proposed changes are procedural in nature and will not have any substantive impact on any person's or entity's rights.

Due to the extensive revisions to DEAR, the complete text of DEAR 909.4 is published. In order to focus commentor's attention on the changes that are proposed to 10 CFR Part 1036, only those portions of Part 1036 that are affected by the changes proposed are published, rather than publishing the complete text of the common rule. In addition to the amendments discussed, minor technical changes of a nonsubstantive nature are made.

II. Procedural Requirements

A. Regulatory Review

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). However, the proposed rule was subject to review under the Executive Order by 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 proposed 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. 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 proposed rulemaking. 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 proposed 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 proposed rule, when finalized, will revise certain procedural requirements pertaining to suspension and debarment of DOE contractors. However, 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 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), 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. This proposed rule would, when adopted as a final rule, have no preemptive effect, will not have any effect on existing Federal laws, and would only clarify the existing regulations on this subject. The revisions would apply only to actions initiated after the effective date of the final rule, and thus, would have no retroactive effect. Therefore, DOE certifies that this proposed rule meets the requirements of sections 2(a) and (b) of Executive Order 12778.

III. Public Comments

Interested persons are invited to participate by submitting data, views, or arguments with respect to the proposed amendments set forth in this notice. Three copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. All written comments received by the date indicated in the **DATES** section of this notice and all other relevant information will be fully considered by DOE before taking final action. Comments received after that date will be considered to the extent that time allows. Any information considered to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information and to treat it according to our determinations (10 CFR 1004.11).

DOE has concluded that this proposed rule does not involve a substantial issue of fact or law, and that the proposed rule will not have substantial impact on the nation's economy or a large number of individuals or businesses. Therefore, pursuant to Public Law 95-91, the DOE Organization Act, and the Administrative Procedure Act (5 U.S.C. 533), the Department does not plan to hold a public hearing on this proposed rule.

List of Subjects in 10 CFR Parts 1035 and 1036 and 48 CFR Part 909

Administrative practice and procedure, Government procurement.

Issued in Washington, DC, on January 23, 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 proposed to be amended as set forth below.

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

1. Part 1035—Debarment and Suspension (Procurement) is removed.

48 CFR PART 909—CONTRACTOR QUALIFICATIONS

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

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

3. Subpart 909.4 is revised to read as follows:

Subpart 909.4—Debarment, Suspension, and Ineligibility

- 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.

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.

(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.

(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.

(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, Section 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) *Debarring 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.

(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.**(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 48 CFR (FAR) subpart 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.

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

4. The authority citation for part 1036 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 [Amended]**

5. 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 "Debarment Official" (paragraph (3)) and "Suspending Official" (paragraph (3)); and removing the definitions for "Director" and "DOE List."

Subpart C—Debarment**§ 1036.312 [Amended]**

6-8. 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 "debarment official;" and in paragraph (g) by revising "DOE" to read "GSA."

§ 1036.313 [Amended]

9. Section 1036.313 is amended in paragraph (a)(1) by revising "Director" to read "debarment official" and removing the citation "(See § 1036.600(c))."

§ 1036.314 [Amended]

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

§ 1036.315 [Amended]

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

Subpart D—Suspension**§ 1036.411 [Amended]**

12. 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 [Amended]

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

Subpart G—Additional DOE Procedures for Debarment and Suspension

§ 1036.700 [Revised]

14. Section 1036.700, 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 debarment 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 debarment official extends this period for good cause. The debarment 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 debarment 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.

15. Section 1036.705 is amended in the introductory paragraph by revising "Director's" and "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 [Removed]

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

§ 1036.715 [Amended]

17. 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).

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95-SW-32-AD]

Airworthiness Directives; Robinson Helicopter Company Model R44 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Robinson Helicopter Company (Robinson) Model R44 helicopters. This proposal would require an adjustment to the low-RPM warning unit threshold to increase the revolutions-per-minute (RPM) at which the warning horn and caution light activate, and revisions to the R44 Rotorcraft Flight Manual that prohibit flight with the throttle governor (governor) selected off, except in certain situations. This proposal is prompted by an FAA Technical Panel Review of Robinson accident history data which revealed that main rotor (M/R) blade stall at abnormally low M/R RPM resulted in accidents. The actions specified by the proposed AD are intended to minimize the possibility of pilot mismanagement of the M/R RPM, which could result in unrecoverable M/R stall and subsequent loss of control of the helicopter.

DATES: Comments must be received by March 4, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95-SW-32-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Bumann, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712-4137, telephone (310) 627-5265; fax (310) 627-5210.