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LEGAL STATUS

Federal Acquisition Regulation: Improving Consistency Between Procurement and Nonprocurement Procedures on Suspension and Debarment

A Rule by the Defense Department, the General Services Administration, and the National Aeronautics and Space Administration on 01/03/2025

PUBLISHED CONTENT - DOCUMENT DETAILS

Agencies: Department of DefenseGeneral Services Administration National Aeronautics and Space Administration

Agency/Docket Numbers: FAC 2025-03FAR Case 2019-015, Item IDocket No. FAR-2019-0015 Sequence No. 1

CFR: 48 CFR 248 CFR 348 CFR 948 CFR 2248 CFR 2548 CFR 2648 CFR 33 48 CFR 52

Document Citation: 90 FR 507

Document Number: 2024-31403

Document Type: Rule

Pages: 507-517 (11 pages)

Publication Date: 01/03/2025

RIN: 9000-AN98

PUBLISHED DOCUMENT: 2024-31403 (90 FR 507)

DOCUMENT HEADINGS

Department of Defense
General Services Administration
National Aeronautics and Space Administration
48 CFR Parts 2, 3, 9, 22, 25, 26, 33, and 52
[FAC 2025-03; FAR Case 2019-015, Item I; Docket No. FAR-2019-0015; Sequence No. 1]
RIN 9000-AN98

AGENCY:

Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION:

Final rule.

SUMMARY:

DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to improve consistency between the procurement and nonprocurement procedures on suspension and debarment, based on the recommendations of the Interagency Suspension and Debarment Committee.

DATES:

Effective January 17, 2025.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule at 89 FR 1043 (/citation/89-FR-1043) on January 9, 2024, to improve consistency between procurement and nonprocurement procedures on suspension and debarment, based on the recommendations of the Interagency Suspension and Debarment Committee (ISDC). The procurement procedures on suspension and debarment are covered in the FAR. The nonprocurement procedures on suspension and debarment (*i.e.,* Nonprocurement Common Rule (NCR)) are covered in 2 CFR part 180 (https://www.ecfr.gov/current/title-2/part-180) and agency implementing regulations. For further details please see the proposed rule. Five respondents submitted comments on the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. *Summary of significant changes:* No changes to the FAR text have been made from the proposed to final rule that have a significant negative effect on contractors. Minor changes and clarifications have been made to the final rule. These changes are outlined below:

1. Revised FAR 9.406-1(a) to provide clarification regarding which mitigating and aggravating factors may apply to individuals.

2. Revised FAR 9.406-3(b)(1) and 9.407-3(b)(1) to clarify that if the suspending and debarring official (SDO) extends the opportunity for the contractor to submit material in opposition, then the SDO should also give a deadline for submission of materials.

3. Revised FAR 9.406-3(c)(1)(i) to allow the notice of proposed debarment, or the notice of suspension, to be sent by U.S. mail or private delivery service to the last known street address, with delivery notification service.

4. Revised FAR 9.406-3(c)(1)(ii) to allow the notice of proposed debarment, or the notice of suspension, to be sent by email to the point of contact email address in the contractor's registration in the System for Award Management (SAM), if any, or to the last known email address as confirmed by the agency.

5. Revised FAR 9.406-3(d)(1) to clarify that the official record closes upon the expiration of the contractor's time to submit information and argument in opposition, including any extensions.

B. *Analysis of Public Comments*

1. OUTSIDE THE SCOPE OF THE RULE

Comment: A respondent recommended adding FAR language to address applicability of the suspension and debarment rules to Other Transaction Authority (OTA) Agreements and to grants.

Response: This comment is outside the scope of this rule. Neither OTA Agreements nor grants are covered in the FAR.

Comment: A respondent recommended adding a definition of “present responsibility.”

Response: This issue was previously considered in a notice issued by the Office of Management and Budget (OMB) regarding guidelines for Nonprocurement Debarment and Suspension at 52 FR 20360 (/citation/52-FR-20360) on May 29, 1987, and it was concluded that the definition is unnecessary. The suggestion has been referred to the ISDC for further consideration.

2. IMMEDIATE EXCLUSIONARY EFFECT OF A NOTICE OF PROPOSED DEBARMENT UNDER THE FAR

Comment: A respondent stated that the term “notice of proposed debarment” under the FAR is misleading because the debarment is not “proposed”—it is “imposed.” Most of the respondents recommended that the immediate exclusionary effect of proposed debarment be removed from the FAR to align better with the NCR, and disagree with the Government's rationale for retaining it in the FAR. These respondents indicated that if the risk to the Government in a specific case requires immediate exclusion to protect the Government's business interests, an SDO can issue a notice of suspension under FAR 9.407. Where immediate exclusion is not necessary and the Government would not choose to suspend the contractor, the proposal for debarment should not have an exclusionary effect. Immediate exclusion is particularly unwarranted in cases where the proposed debarment is not based on a conviction or civil judgment, and fact-finding proceedings are necessary. These respondents indicated that there is no increased business risk to the Government in the procurement context than in nonprocurement

transactions. The respondents stated that the Government enters into procurement contracts for public purposes of equal importance (🗋 print page 508) and comparative risk as some nonprocurement transactions. The respondents also pointed out that the Appropriations Act language cited in the proposed rule does not require an SDO to issue an exclusionary notice as part of the assessment of whether suspension and debarment is appropriate. The respondents stated that those statutes simply require the official to have considered whether exclusion is necessary to protect the Government, which can be done without an immediate exclusion (*e.g.,* with a pre-notice letter or proactive outreach by the contractor).

Response: DoD, GSA, and NASA acknowledge the comments but continue to think, after deliberation with the ISDC, that the policy reasons articulated in the preamble to the proposed rule for giving different effect to a proposed debarment when applied to a procurement contract versus a grant remain valid. These policy reasons are based on differences in the purpose of procurement contracts and grants, as well as occasional differences in comparative risk between these instruments. Equally important, neither the ISDC nor the Federal Acquisition Regulatory Council think that the application of a proposed debarment, long allowed by the FAR to protect the taxpayer from harm, leads to inappropriate use or overuse of immediate exclusions. In addition, the final FAR rule formally recognizes the use of pre-notice letters for the suspending and debarring official to consider as an alternative to an immediate exclusion. For these reasons, no changes have been made regarding the immediate exclusionary effect of a notice of proposed debarment.

3. METHODS OF COMMUNICATION

Comment: A respondent expressed support for the amendments to FAR 9.406-3(b)(1) and 9.407-3(b)(1) to permit contractors and their representatives to present matters in opposition remotely. However, the respondent is concerned that permitting notices of proposed debarment, suspension, and the SDO decisions to be sent by standard U.S. mail (with no return receipt requested) or by email “[t]o the last known email address” may be inadequate to give contractors notice and an opportunity to respond. The respondent recommended aligning this provision with the NCR to require that any notice sent by U.S. mail be sent by certified mail or its equivalent to increase the likelihood that the notice will actually be received. The respondent pointed out that this recommendation is consistent with notions of due process and fundamental fairness. It is also consistent with the purpose of the proposed rule: to better align the FAR and NCR.

Response: DoD, GSA, and NASA recognize the need for broad agency flexibility due to the variety of agency missions. FAR 9.406-3(c)(1)(i) was revised to allow the written notice to be sent by U.S. mail or private delivery service to the last known street address, with delivery notification service. FAR 9.406-3(c)(1)(ii) was revised to allow the written notice to be sent by email to the point of contact email address in the contractor's SAM registration, if any, or to the last known email address as confirmed by the agency. These changes provide agencies additional tools beyond using U.S. certified mail with return receipt requested, and they are consistent with the flexibility provided by the NCR, see 2 CFR 180.975 (https://www.ecfr.gov/current/title-2/section-180.975) and 180.615 (https://www.ecfr.gov/current/title-2/section-180.615).

Comment: Regarding sending notices by email, a respondent recommended clarifying how SDOs will determine the “last known email address” for a contractor, its identified counsel, or agent for service of process. The respondent further recommended defining the contractor's “last known email address” as the point of contact email address in the contractor's SAM registration. Additionally, the respondent recommended requiring SDOs to take additional steps to confirm the contractor's receipt of notices sent by email, such as requiring a response to confirm receipt, requesting a “read receipt” on the email, or following up by telephone to confirm that the email was received.

Response: The changes to FAR 9.406-3(c)(1)(i) and (ii) allow agencies the flexibility to rely on a variety of verification services and resources to confirm the last known street address or the last known email address. Requiring specific delivery confirmation practices is overly prescriptive.

Comment: A respondent recommended amending FAR 9.406-4 to add “demonstration of non-receipt of notice” as a reason for the SDO to reduce the period or extent of debarment. Another respondent recommended providing for immediate reinstatement of contractors debarred without receiving notice of a proposed debarment. The SDO could then reissue the notice of proposed debarment and provide the contractor an opportunity to respond before determining whether to continue the debarment for the remainder of the period of debarment. If the SDO determines that debarment is warranted, the contractor would be debarred only for the amount of time remaining in the original period of debarment prior to reinstatement. If the SDO determines that debarment was not warranted, all records of the prior exclusion should be removed from SAM.gov and other applicable Government databases. And, if the SDO determines that an administrative agreement is appropriate,

information in relevant Government databases should be amended to reflect that the contractor was proposed for debarment and an administrative agreement was executed but should not reflect that debarment was ever imposed.

Response: The FAR and the NCR describe how agencies achieve proper notice such that notice is considered to have been received by the contractor. The language in the preamble to the proposed rule (89 FR 1045 (/citation/89-FR-1045)) regarding nonreceipt of notice was not intended to create procedures for immediate reinstatement, but rather to provide an example of a reason under FAR 9.406-4(c)(5) that a debarring official may deem appropriate to reduce the period or extent of debarment. As FAR 9.406-4(c)(5) is a catch-all provision, the suggestion to add “demonstration of non-receipt of notice” is not adopted.

Comment: A respondent commended the decision to require that notices of proposed debarment be sent directly to the contractor, the contractor's identified counsel for purposes of the administrative proceedings, or the contractor's agent for service of process, rather than permitting notices to be sent to partners, officers, directors, owners, or joint venturers. The respondent also commended retaining the requirement that notices be sent directly to specifically named affiliates (and adding that such notices may be sent to the affiliate's identified counsel for purposes of the administrative proceedings, or the affiliate's agent for service of process). Requiring that notices be sent directly to the party named in the notice promotes due process by helping ensure that notices are actually received and that the cognizant party has an opportunity to respond.

Response: DoD, GSA, and NASA acknowledge the respondent's support for the rule.

4. ADMINISTRATIVE AGREEMENT

Comment: A respondent recommended that the final rule clarify that “potential suspension proceeding” and “potential debarment proceedings” are those suspension or debarment proceedings initiated by, at a minimum, a pre-notice letter or other formal action and further clarify that an administrative agreement resulting from (🗋 print page 509) a contractor's proactive outreach, as opposed to resulting from a “potential proceeding,” need not be publicly posted to the Federal Awardee Performance and Integrity Information System (FAPIIS).

Response: The statute (41 U.S.C. 2313 (https://www.govinfo.gov/link/uscode/41/2313)) applies to any administrative agreement, making no exceptions for how the agreement came about. The applicable requirement mandates FAPIIS include information regarding "[e]ach Federal administrative agreement entered into by the person and the Federal Government in the period to resolve a suspension or debarment proceeding." 41 U.S.C. 2313(c)(4) (https://www.govinfo.gov/link/uscode/41/2313). An administrative agreement restricting the Government's ability to seek suspension or debarment necessarily resolves suspension and debarment proceedings. Any such agreement forecloses the opportunity to pursue those remedies on the facts of the existing administrative agreement.

5. ADMINISTRATIVE RECORD

Comment: A respondent recommended including language in the final rule that requires all agencies to (i) provide as part of the notice initiating a proposed debarment or suspension, or with a pre-notice letter, a copy of the relevant administrative record or other compiled information, in the case of a pre-notice letter, and (ii) distribute, upon receipt of a request from a contractor for the administrative record or information supporting a pre-notice letter, a copy of the administrative record or compiled information to the contractor within five days of receipt of the written request. These recommended changes promote a decision-making process that is "as informal as is practicable, consistent with principles of fundamental fairness," see FAR 9.406-3(b), and serve to standardize practices across all Federal SDO activities. The respondent recognized this recommendation falls outside the stated objective of improving the "consistency between the procurement and nonprocurement procedures on suspension and debarment." Nonetheless, the respondent encouraged consideration of this change to promote consistent standards of fundamental fairness. The respondent added that in an appropriate rulemaking, a similar change could be made to the NCR to achieve alignment.

Response: DoD, GSA, and NASA acknowledge the suggestion and decline to adopt it. This matter appropriately remains one of agency discretion.

Comment: A respondent recommended adding a definition of "Administrative Record" (or "Official Record") to the FAR.

Response: The administrative record is the information the SDO has at the time that official makes a decision regarding a suspension or debarment proceeding. See FAR 9.406-3(d) and 9.407-3(d). In the context provided by the FAR, a formal definition is not

necessary.

Comment: Under the NCR, SDOs are required to include in the administrative record for proposed debarments and suspensions "[a]ny further information and argument presented in support of, or opposition to, the [action]." See 2 CFR 180.750(a)(2) (https://www.ecfr.gov/current/title-2/section-180.750#p-180.750(a)(2)) and 180.845(b)(2) (https://www.ecfr.gov/current/title-2/section-180.845#p-180.845(b)(2)). The respondent recommended that the FAR require a copy of all supplemental materials not provided by the contractor be distributed to the contractor within five days of the SDO's decision to include the materials in the administrative record. This change promotes consistent standards across agencies as well as fundamental fairness.

Response: DoD, GSA, and NASA acknowledge the suggestion and decline to adopt it. Rather than representing what to include in the administrative record for proposed debarments and suspensions, 2 CFR 180.750(a)(2) (https://www.ecfr.gov/current/title-2/section-180.750#p-180.750(a)(2)) and 180.845(b)(2) (https://www.ecfr.gov/current/title-2/section-180.845#p-180.845(b)(2)) represent what to include in the administrative record after the SDO suspends or proposes the contractor for debarment. The administrative record is typically given to a contractor after a decision has been made; however, in the time between notices agencies have the discretion to provide documents to the contractor upon request. This flexibility is commensurate with FAR 9.406-3(b)(1).

Comment: A respondent expressed support for the FAR revision to require that an SDO make a debarment decision within 45 days after the "the official administrative record is closed." 89 FR 1049 (/citation/89-FR-1049). Given the significance of closing the "official administrative record," the respondent recommended also requiring that the contractor be notified of the date when the official administrative record is to close. This revision promotes transparency and orderly process in the debarment proceedings, allows the contractor to add any additional information to the record before its closure, and allows the contractor to assert procedural rights relating to the timing of the debarment decision. The recommended change would also ensure that the agency and the contractor are on the same footing for purposes of measuring the time given for the SDO's decision making. The respondent asserts that this change would also promote consistent standards across agencies and is consistent with notions of fundamental fairness.

Response: DOD, GSA, and NASA recognize the importance of transparency in the Government's suspension and debarment procedures. The Councils considered the respondent's suggestion and made edits at FAR 9.406-3(d)(1) to clarify that the official record closes upon the expiration of the contractor's time to submit information and argument in opposition, including any extensions. If a contractor is unsure whether the administrative record has been closed, they should ask the SDO to clarify.

6. MITIGATING AND AGGRAVATING FACTORS THAT COULD APPLY TO AN INDIVIDUAL PERSON PROPOSED FOR EXCLUSION

Comment: A respondent stated that even with the proposed inclusion of additional aggravating or mitigating factors from the NCR in the FAR, under both the FAR and the NCR, the factors that an SDO considers when evaluating whether exclusion is necessary apply most directly to organizations, not people. The respondent stated that this gap is significant given that the majority of suspension and debarment actions appear to be brought against individuals, as opposed to organizations. Moreover, unlike an organization, an individual proposed for exclusion may not be able to afford counsel to represent him or her in a suspension or debarment proceeding. As these factors are currently drafted, and without the means to secure experienced counsel, an individual may not even realize that the mitigating and aggravating factors are a consideration that could apply in the situation of an individual facing potential exclusion. Fundamental fairness, transparency, informality, and due process counsel in favor of developing factors that the average person can understand. The respondent provided examples of potential factors that could apply to an individual person proposed for exclusion. The respondent recognized that this suggestion extends beyond mere alignment of the FAR with the NCR but encouraged consideration of adding these additional factors to promote fundamental fairness in the treatment of individuals proposed for suspension or debarment.

Response: DOD, GSA, and NASA have considered the recommendation to include mitigating and aggravating factors for individuals. As set forth in FAR 9.406-1(a), such factors apply to a “contractor.” Pursuant to FAR 9.403, the definition of “contractor” (🗋 print page 510) specifically includes both individuals and other legal entities. The Councils recognize that clarifying the mitigating and aggravating factors that are applicable to individuals may increase transparency. Consequently, FAR 9.406-1(a) is modified to provide clarification regarding which factors may apply to individuals. Other mitigating or aggravating factors proposed by the respondent are more suitably considered at the SDO's discretion under the catch-all factor at FAR 9.406-1(a)(17).

C. Other Changes

The term “sanctions” is replaced with “remedies” at FAR 9.402(b) for consistency with the FAR language in part 9. Language was added at FAR 9.406-3(f)(1) and 9.407-3(e)(1) for parallel construction with FAR 9.406-3(f)(2) and 9.407-3(e)(2), respectively. Minor edits were made to the final rule to update text for current FAR drafting conventions and to improve readability.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items) or for Commercial Services

This rule does not create new solicitation provisions or contract clauses, nor does it change the applicability or burden of any existing provisions or clauses included in solicitations and contracts valued at or below the SAT, or for commercial products, including COTS items, or for commercial services.

IV. Expected Impact of the Rule

This rule improves consistency between the procurement and nonprocurement procedures on suspension and debarment. These changes in the FAR bring the two systems into closer alignment, which will enhance transparency and consistency within the Government's suspension and debarment procedures. This will allow contractors a better understanding of how the two systems' procedures relate to each other.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 (as amended by E.O. 14094 (/executive-order/14094)) and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 (/executive-order/13563) emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866 (/executive-order/12866), Regulatory Planning and Review, dated September 30, 1993.

VI. Congressional Review Act

Pursuant to the Congressional Review Act, DoD, GSA, and NASA will send this rule to each House of the Congress and to the Comptroller General of the United States. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has determined that this rule does not meet the definition in 5 U.S.C. 804(2) (https://www.govinfo.gov/link/uscode/5/804).

VII. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601-612 (https://www.govinfo.gov/link/uscode/5/601).

1. *Statement of the need for, and the objectives of, the rule.*

DoD, GSA, and NASA are amending the FAR to improve consistency between the procurement and nonprocurement procedures on suspension and debarment, based on recommendations of the Interagency Suspension and Debarment Committee.

The objective of this rule is to change the FAR so that the two systems of procurement and nonprocurement suspension and debarment will be in closer alignment where appropriate, to enhance transparency and consistency within the FAR system.

2. *Statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made to the rules as a result of such comments.*

There were no significant issues raised by the public comments in response to the initial regulatory flexibility analysis.

3. *Description of and an estimate of the number of small entities to which the rule will apply.*

The final rule applies to all entities that do business with the Federal Government.

The exclusions section of SAM does not contain data on the size of an excluded party as size is only specifically determined contract by contract based on the North American Industry Classification System (NAICS) code. When the entity is recorded in SAM as an

excluded party, the SDO identifies the entity as either (1) an individual, (2) firm, (3) vessel, or (4) special entity designation. Collection of unique identification numbers are on “firms” and optionally on “special entity designations”.

Data was analyzed by obtaining the list of entities that were excluded in fiscal years 2021, 2022, and 2023. Next, the entities on that list were compared with unique identification numbers against the SAM data to see if any were actively registered in those fiscal years for all awards. Lastly, the entities that would be considered small businesses were identified based on their primary NAICS code.

The following is a breakdown of those distinct entities, which had an entity registration in active status and concurrent active exclusion record per fiscal year (FY):

Suspension and debarment- SAM exclusions	**FY 2021**	**FY 2022**	**FY 2023**	**Median**
	SB/total exclusions	**SB/total exclusions**	**SB/total exclusions**	**SB percent**
Small Business/Total Exclusions	273/429	251/417	241/392	
Small Business Percentage	64 percent	60 percent	61 percent	61 percent.

4. *Description of projected reporting, recordkeeping, and other compliance requirements of the rule.*

The rule does not include any reporting or recordkeeping requirements. The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35 (https://www.govinfo.gov/link/uscode/44/3501)) or other compliance requirements for small entities.

44 U.S.C. 3518 (https://www.govinfo.gov/link/uscode/44/3518) and 5 CFR 1320.4(a)(2) (https://www.ecfr.gov/current/title-5/section-1320.4#p-1320.4(a)(2)) give an exception for the collection of information during the conduct of an administrative action, investigation, or audit involving an agency against specific individuals or entities.

5. *Description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes.*

The FAR changes are not expected to have a significant economic impact on a substantial number of small entities. The rule imposes minor procedural changes in compliance requirements on contractors and minor process procedures for the Government. However, this alignment enhances transparency and consistency within the Government's suspension and debarment procedures, reducing the complexities in understanding of the two distinct processes and procedural requirements for suspension and debarment Governmentwide. It is anticipated that this rule will have a positive impact on small businesses with increased transparency in the process. DoD, GSA, and NASA were unable to identify any significant alternatives (🗋 print page 511) to accomplish the desired objective of the rule.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501-3521 (https://www.govinfo.gov/link/uscode/44/3501)).

List of Subjects in 48 CFR Parts 2 (https://www.ecfr.gov/current/title-48/part-2), 3 (https://www.ecfr.gov/current/title-48/part-3), 9 (https://www.ecfr.gov/current/title-48/part-9), 22 (https://www.ecfr.gov/current/title-48/part-22), 25 (https://www.ecfr.gov/current/title-48/part-25), 26 (https://www.ecfr.gov/current/title-48/part-26), 33 (https://www.ecfr.gov/current/title-48/part-33), and 52 (https://www.ecfr.gov/current/title-48/part-52)

- Government procurement

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA are amending 48 CFR parts 2 (https://www.ecfr.gov/current/title-48/part-2), 3 (https://www.ecfr.gov/current/title-48/part-3), 9 (https://www.ecfr.gov/current/title-48/part-9), 22 (https://www.ecfr.gov/current/title-48/part-22), 25 (https://www.ecfr.gov/current/title-48/part-25), 26 (https://www.ecfr.gov/current/title-48/part-26), 33 (https://www.ecfr.gov/current/title-48/part-33), and 52 (https://www.ecfr.gov/current/title-48/part-52) as set forth below:

1. The authority citation for 48 CFR parts 2 (https://www.ecfr.gov/current/title-48/part-2), 3 (https://www.ecfr.gov/current/title-48/part-3), 9 (https://www.ecfr.gov/current/title-48/part-9), 22 (https://www.ecfr.gov/current/title-48/part-22), 25 (https://www.ecfr.gov/current/title-48/part-25), 26 (https://www.ecfr.gov/current/title-48/part-26), 33 (https://www.ecfr.gov/current/title-48/part-33), and 52 (https://www.ecfr.gov/current/title-48/part-52) continues to read as follows:

> **Authority:** 40 U.S.C. 121(c) (https://www.govinfo.gov/link/uscode/40/121); 10 U.S.C. chapter 4 (https://www.govinfo.gov/link/uscode/10/401) and 10 U.S.C. chapter 137 (https://www.govinfo.gov/link/uscode/10/13701) legacy provisions (see 10 U.S.C. 3016 (https://www.govinfo.gov/link/uscode/10/3016)); and 51 U.S.C. 20113 (https://www.govinfo.gov/link/uscode/51/20113).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 by—

a. Revising the definition of “Conviction”;

b. In the definition of “Debarment”, removing “a debarring” and “is excluded is “debarred.” ” and adding “a suspending and debarring” and “is “debarred” is excluded.” in their places, respectively;

c. Adding in alphabetical order the definition of “Suspending and debarring official”; and

d. In the definition of “Suspension”, removing “suspending official” and “disqualified is “suspended.” ” and adding “suspending and debarring official” and “ “suspended” is disqualified.” in their places, respectively.

The revision and addition read as follows:

2.101 Definitions.

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Conviction means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere. For use in subpart 9.4, see the definition at 9.403. For use in subpart 26.5, see the definition at 26.503.

★* ★* ★* ★* ★*

Suspending and debarring official means—

(1) An agency head; or

(2) A designee authorized by the agency head to impose a suspension and/or a debarment.

★* ★* ★* ★* ★*

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3.104-7 [Amended]

3. Amend section 3.104-7 by removing from paragraph (d)(3) “suspending or” and adding “suspending and” in its place.

PART 9—CONTRACTOR QUALIFICATIONS

9.104-5 [Amended]

4. Amend section 9.104-5 by removing from paragraph (b)(3) “suspending or” and adding “suspending and” in its place.

5. Amend section 9.104-6 by—

a. Revising paragraph (b)(4); and

b. Removing from paragraph (c) introductory text "debarred or suspended" and adding "debarred, suspended, or has agreed to a voluntary exclusion" in its place.

The revision reads as follows:

9.104-6 Federal Awardee Performance and Integrity Information System.

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(b) * * *

(4) Since FAPIIS may contain information on any of the offeror's previous contracts and information covering a 5-year period, some of that information may not be relevant to a determination of present responsibility, *e.g.,* a prior administrative action such as debarment, suspension, voluntary exclusion, or administrative agreement, that has expired or otherwise been resolved, or information relating to contracts for completely different products or services.

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9.402 [Amended]

6. Amend section 9.402 by—

a. In paragraph (b):

i. Removing "sanctions" and adding "remedies" in its place; and

ii. Removing "set forth"; and

b. Removing from paragraph (d) "Interagency Committee on Debarment and Suspension" and "Section 873" and adding "Interagency Suspension and Debarment Committee" and "section 873" in their places, respectively.

7. Amend section 9.403 by—

a. Adding in alphabetical order the definition of “Administrative agreement”;

b. Revising the definition of “Civil judgment”;

c. Adding in alphabetical order the definition of “Conviction”;

d. Removing the definition of “Debarring official”;

e. Adding a sentence to the end of the definition of “Nonprocurement Common Rule”;

f. Adding in alphabetical order the definition of “Pre-notice letter”;

g. Removing the definition of “Suspending official”; and

h. Adding in alphabetical order the definition of “Voluntary exclusion”.

The additions and revision read as follows:

9.403 Definitions.

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Administrative agreement means an agreement between an agency suspending and debarring official and the contractor used to resolve a suspension or debarment proceeding, or a potential suspension or debarment proceeding.

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Civil judgment means the disposition of a civil action by any court of competent jurisdiction, whether by verdict, decision, settlement, stipulation, other disposition that creates a civil liability for the complained of wrongful acts, or a final determination of liability under the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801-3812 (https://www.govinfo.gov/link/uscode/31/3801)).

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Conviction means—

(1) A judgment or any other determination of guilt of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea, including a plea of nolo contendere; or

(2) Any other resolution that is the functional equivalent of a judgment establishing a criminal offense by a court of competent jurisdiction, including probation before judgment and deferred prosecution. A disposition without the participation of the court is the functional equivalent of a judgment only if it includes an admission of guilt.

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Nonprocurement Common Rule * * * See 2 CFR part 180 (https://www.ecfr.gov/current/title-2/part-180) and agency enacting regulations in 2 CFR subtitle B (https://www.ecfr.gov/current/title-2/subtitle-B).

Pre-notice letter means a written correspondence issued to a contractor in a suspension or debarment matter, (🗋 print page 512) which does not immediately result in an exclusion or ineligibility. The letter is issued at the discretion of the suspending and debarring official. The letter is not a mandatory step in the suspension or debarment process.

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Voluntary exclusion means a contractor's written agreement to be excluded for a period under the terms of a settlement between the contractor and the suspending and debarring official of one or more agencies. A voluntary exclusion must have Governmentwide effect.

9.404 [Amended]

8. Amend section 9.404 by—

a. Removing from paragraph (b)(1) “debarment, declared ineligible,” and adding “debarment, voluntarily excluded, declared ineligible,” in its place;

b. Removing from paragraph (c)(3) introductory text “exclusion accomplished by the Agency” and adding “exclusion, including each voluntary exclusion, accomplished by the agency” in its place; and

c. Removing from paragraph (c)(4) “or proposed debarment taken by” and adding “proposed debarment, or voluntary exclusion taken or entered into by” in its place.

9. Amend section 9.405 by—

a. Revising paragraph (a); and

b. Removing from paragraph (d) “or proposed for debarment are” and adding “proposed for debarment, or voluntarily excluded, are” in its place.

The revision reads as follows:

9.405 Effect of listing.

(a) Contractors debarred, suspended, proposed for debarment, or voluntarily excluded, are excluded from receiving contracts, and agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the agency head determines that there is a compelling reason for such action (see 9.405-1(a)(2), 9.405-2, 9.406-1(d), 9.407-1(d), and 26.505(e)). Contractors debarred, suspended, proposed for debarment, or voluntarily excluded, are also excluded from conducting business with the Government as agents or representatives of other contractors.

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9.405-1 [Amended]

10. Amend section 9.405-1 by—

a. Removing from paragraph (a) heading “ *or proposed for debarment* ” and adding “ *proposed for debarment, or voluntarily excluded* ” in its place;

b. Removing from paragraph (a)(1) “or proposed debarment of” and “or proposed for debarment unless” and adding “proposed debarment, or voluntary exclusion, of” and “proposed for debarment, or voluntarily excluded, unless” in their places, respectively; and

c. Removing from paragraph (a)(2) introductory text “or proposed for debarment, unless” and adding “proposed for debarment, or voluntarily excluded, unless” in its place.

9.405-2 [Amended]

11. Amend section 9.405-2 by—

a. Removing from paragraph (a) “or proposed for debarment is” and adding “proposed for debarment, or voluntarily excluded, is” in its place;

b. Removing from paragraph (b) introductory text “or proposed for debarment, unless”, “or proposed for debarment as”, “Protecting the Government's Interests”, and “or Proposed for Debarment, to” and adding “proposed for debarment, or voluntarily excluded, unless”, “proposed for debarment, or voluntarily excluded, as”, “Protecting the Government's Interest”, and “Proposed for Debarment, or Voluntarily Excluded, to” in their places, respectively; and

c. Removing from paragraph (b)(4) “or proposed debarment” and adding “proposed debarment, or voluntary exclusion” in its place.

12. Revise section 9.406-1 to read as follows:

9.406-1 General.

(a) It is the suspending and debarring official's responsibility to determine whether debarment is in the Government's interest. The suspending and debarring official may, in the public interest, debar a contractor for any of the causes in 9.406-2, using the procedures in 9.406-3. The existence of a cause for debarment, however, does not necessarily require that the contractor be debarred; the seriousness of the contractor's acts or omissions and any remedial measures, mitigating factors, or aggravating factors should be considered in making any debarment decision. Before arriving at any debarment decision, the suspending and debarring official should consider factors such as the following (some of the factors below could apply to individuals such as contractors that are individuals, and are so marked):

(1) Whether the contractor had effective standards of conduct and internal control systems in place at the time of the activity which constitutes cause for debarment or had adopted such procedures prior to any Government investigation of the activity cited as a cause for debarment.

(2) Whether the contractor (including an individual) brought the activity cited as a cause for debarment to the attention of the appropriate Government agency in a timely manner.

(3) Whether the contractor has fully investigated the circumstances surrounding the cause for debarment (or the individual cooperated with the investigation) and, if so, made the result of the investigation available to the suspending and debarring official.

(4) Whether the contractor (including an individual) cooperated fully with Government agencies during the investigation and any court or administrative action.

(5) Whether the contractor (including an individual) has paid or has agreed to pay all criminal, civil, and administrative liability for the improper activity, including any investigative or administrative costs incurred by the Government, and has made or agreed to make full restitution.

(6) Whether the contractor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment.

(7) Whether the contractor (including an individual) has implemented or agreed to implement remedial measures, including any identified by the Government.

(8)(i) Whether the contractor has instituted or agreed to institute new or revised review and control procedures, ethics training, or other relevant training programs.

(ii) For an individual, whether the individual has attended relevant remediation training.

(9) Whether the contractor (including an individual) has had adequate time to eliminate the circumstances that led to the cause for debarment.

(10)(i) Whether the contractor's management recognizes, accepts, and understands the seriousness of the misconduct giving rise to the cause for debarment and has implemented programs to prevent recurrence.

(ii) For an individual, whether the individual recognizes, accepts, and understands the seriousness of the misconduct giving rise to the cause for debarment and has adopted practices to prevent recurrence.

(11) Whether the contractor (including an individual) has a pattern or prior history of wrongdoing, the frequency of incidents and/or duration of the wrongdoing, and the actual or potential harm or impact that results, or may result, from the wrongdoing.

(12) Whether and to what extent the contractor (including an individual) planned, initiated, or carried out the (🗋 print page 513) wrongdoing, and the kind of positions within the contractor's organization held by the individual involved in the wrongdoing.

(13) Whether the wrongdoing was pervasive within the contractor's organization.

(14) Whether the individual or the contractor's principals tolerated the offense.

(15) Whether the contractor (including an individual) is or has been excluded or disqualified by an agency of the Federal Government or has not been allowed to participate in State or local contracts or assistance agreements on a basis of conduct similar to one or more of the causes for debarment specified in this subpart.

(16) Whether the contractor (including an individual) has entered into an administrative agreement with a Federal agency or a similar agreement with a State or local government that is not Governmentwide but is based on conduct similar to one or more of the causes for debarment specified in this subpart.

(17) Whether there are any other factors to consider for the contractor (including an individual) appropriate to the circumstances of a particular case.

(b) The existence or nonexistence of any aggravating or mitigating factors or remedial measures such as set forth in paragraph (a) of this section is not necessarily determinative of a contractor's present responsibility. Accordingly, if a cause for debarment exists, the contractor has the burden of demonstrating, to the satisfaction of the suspending and debarring official, its present responsibility and that debarment is not necessary.

(c) Debarment constitutes debarment of all divisions or other organizational elements of the contractor, unless the debarment decision is limited by its terms to specific divisions, organizational elements, or commodities. The suspending and debarring official may extend the debarment decision to include any affiliates of the contractor if they are—

(1) Specifically named; and

(2) Given written notice of the proposed debarment and an opportunity to respond (see 9.406-3(c)).

(d) A contractor's debarment, or proposed debarment, shall be effective throughout the executive branch of the Government, unless the agency head or a designee (except see 26.505(e)) states in writing the compelling reasons justifying continued business dealings between that agency and the contractor.

(e)(1) When the suspending and debarring official has authority to debar contractors from both contracts pursuant to the Federal Acquisition Regulation in this chapter and contracts for the purchase of Federal personal property pursuant to the Federal Management Regulation (FMR) in 41 CFR part 102-38 (https://www.ecfr.gov/current/title-41/part-102-38), that official shall consider simultaneously debarring the contractor from the award of acquisition contracts and from the purchase of Federal personal property.

(2) When debarring a contractor from the award of acquisition contracts and from the purchase of Federal personal property, the debarment notice shall so indicate and the appropriate FAR and FMR citations shall be included.

9.406-2 [Amended]

13. Amend section 9.406-2 by removing from the introductory text “The debarring” and adding “The suspending and debarring” in its place.

14. Amend section 9.406-3 by—

a. Removing from paragraph (a) “the debarring official” and adding “the suspending and debarring official” in its place;

b. Revising the heading of paragraph (b), paragraphs (b)(1) and (c), the heading of paragraph (d), and paragraph (d)(1);

c. Removing from paragraph (d)(2)(i) “The debarring official” and adding “The suspending and debarring official” in its place;

d. Removing from paragraph (d)(2)(ii) “The debarring official” wherever it appears and adding “The suspending and debarring official” in its place;

e. Removing from paragraph (d)(2)(iii) “The debarring official's” and adding “The suspending and debarring official's” in its place;

f. Revising the heading of paragraph (e) and paragraph (e)(1) introductory text;

g. Removing from paragraph (e)(1)(iv) “9.406-1(c)” and adding “9.406-1(d)” in its place;

h. Removing from paragraph (e)(2) “the debarring official” and “by certified mail, return receipt requested” and adding “the suspending and debarring official” and “using the procedures in paragraphs (c)(1) and (2) of this section” in their places, respectively;

i. Revising paragraph (f); and

j. Adding paragraphs (g) and (h).

The revisions and additions read as follows:

9.406-3 Procedures.

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(b) *Decision-making process.* (1) Agencies shall establish procedures governing the debarment decision-making process that are as informal as is practicable, consistent with principles of fundamental fairness. These procedures shall afford the contractor (and any specifically named affiliates) an opportunity to submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment. If the suspending and debarring official extends the opportunity for the contractor to submit material in opposition, then the official should also give a deadline for submission of materials. The suspending and debarring official may use flexible procedures to allow a contractor to present matters in opposition in person or remotely through appropriate technology; if so, the suspending and debarring official should change the notice in paragraph (c)(3)(iv) of this section to include those flexible procedures.

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(c) *Notice of proposal to debar.* A notice of proposed debarment shall be issued by the suspending and debarring official to the contractor and any specifically named affiliates.

(1) The written notice shall be sent—

(i) By U.S. mail or private delivery service to the last known street address, with delivery notification service;

(ii) By email to the point of contact email address in the contractor's SAM registration, if any, or to the last known email address as confirmed by the agency; or

(iii) By certified mail to the last known street address with return receipt requested.

(2) The notice shall be sent—

(i) To the contractor, the contractor's identified counsel for purposes of the administrative proceedings, or the contractor's agent for service of process; and

(ii) For each specifically named affiliate, to the affiliate itself, the affiliate's identified counsel for purposes of the administrative proceedings, or the affiliate's agent for service of process.

(3) The notice shall state—

(i) That debarment is being considered;

(ii) The reasons for the proposed debarment in terms sufficient to put the contractor on notice of the conduct or transaction(s) upon which it is based;

(iii) The cause(s) relied upon under 9.406-2 for proposing debarment;

(iv) That, within 30 days after receipt of the notice, the contractor may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment, including any additional specific information that raises a genuine dispute over the material facts;
(🗋 print page 514)

(v) The agency's procedures governing debarment decision making;

(vi) The effect of the issuance of the notice of proposed debarment;

(vii) The potential effect of an actual debarment;

(viii) That in addition to any information and argument in opposition to a proposed debarment, the contractor must identify—

(A) Specific facts that contradict the statements contained in the notice of proposed debarment. Include any information about any of the factors listed in 9.406-1(a). A general denial is insufficient to raise a genuine dispute over facts material to the proposed debarment;

(B) All existing, proposed, or prior exclusions and all similar actions taken by Federal, State, or local agencies, including administrative agreements that affect only those agencies;

(C) All criminal and civil proceedings not included in the notice of proposed debarment that grew out of facts relevant to the cause(s) stated in the notice; and

(D) All of the contractor's affiliates; and

(ix) That if the contractor fails to disclose the information in paragraph (c)(3)(viii) of this section, or provides false information, the agency taking the action may seek further criminal, civil, or administrative action against the contractor, as appropriate.

(d) *Suspending and debarring official's decision.* (1) In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the suspending and debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the contractor. If no suspension is in effect, the decision shall be made within 45 days from the date that the official administrative record is closed, unless the suspending and debarring official extends this period for good cause. The official record closes upon the expiration of the contractor's time to submit information and argument in opposition, including any extensions (see paragraph (b)(1) of this section).

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(e) *Notice of suspending and debarring official's decision.* (1) If the suspending and debarring official decides to impose debarment, the contractor and any affiliates involved shall be given prompt notice using the procedures in paragraphs (c)(1) and (2) of this section—

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(f) *Administrative agreements.* (1) If the contractor enters into an administrative agreement with the Government in order to resolve a debarment or potential debarment proceeding, the suspending and debarring official shall access the

website (available at *https://www.cpars.gov (https://www.cpars.gov),* then select FAPIIS), enter the requested information, and upload documentation reflecting the administrative agreement.

(2) The suspending and debarring official is responsible for the timely and accurate submission of documentation reflecting the administrative agreement. The submission should be made within 3 working days.

(3) With regard to information that may be covered by a disclosure exemption under the Freedom of Information Act, the suspending and debarring official shall follow the procedures at 9.105-2(b)(2)(iv).

(g) *Voluntary exclusions.* (1) If the contractor enters into a voluntary exclusion with the Government in order to resolve a debarment or potential debarment matter, the suspending and debarring official shall access the website (available at *https://www.sam.gov (https://www.sam.gov)*) and enter the requested information into the exclusions section of SAM (see 9.404(c)(3)).

(2) The suspending and debarring official is responsible for the timely and accurate submission of documentation reflecting the voluntary exclusion. The submission should be made within 3 working days.

(3) Regarding information that may be covered by a disclosure exemption under the Freedom of Information Act, the suspending and debarring official shall follow the procedures at 9.105-2(b)(2)(iv).

(h) *Pre-notice letters.* Prior to initiating a proposed debarment, a pre-notice letter may be issued at the discretion of the agency suspending and debarring official. A pre-notice letter is not required to initiate debarment under this subpart. (See 9.403.)

9.406-4 [Amended]

15. Amend section 9.406-4 by—

a. Removing from paragraph (b) and paragraph (c) introductory text “The debarring official” and adding “The suspending and debarring official” in their places; and

b. Removing from paragraph (c)(5) “the debarring official” and adding “the suspending and debarring official” in its place.

16. Amend section 9.407-1 by—

a. Removing from paragraph (a) “suspending official” and adding “suspending and debarring official” in its place;

b. Revising paragraph (b);

c. Removing from paragraph (c) introductory text “suspending official” and adding “suspending and debarring official” in its place;

d. Revising paragraph (e)(1); and

e. Removing from paragraph (e)(2) “FAR and FPMR” and adding “FAR and FMR” in its place.

The revisions read as follows:

9.407-1 General.

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(b)(1) Suspension is a serious action to be imposed on the basis of adequate evidence, pending the completion of an investigation or legal proceedings, when it has been determined that immediate action is necessary to protect the Government's interest. In deciding whether immediate action is necessary to protect the Government's interest, the suspending and debarring official has wide discretion. The suspending and debarring official may infer the necessity for immediate action to protect the Government's interest either from the nature of the circumstances giving rise to a cause for suspension or from potential business relationships or involvement with a program of the Federal Government. In assessing the adequacy of the evidence, agencies should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as contracts, inspection reports, and

correspondence. An indictment or other official findings by Federal, State, or local bodies that determine factual and/or legal matters, constitutes adequate evidence for purposes of suspension actions.

(2) The existence of a cause for suspension does not necessarily require that the contractor be suspended. The suspending and debarring official should consider the seriousness of the contractor's acts or omissions and may, but is not required to, consider remedial measures, mitigating factors, or aggravating factors, such as those in 9.406-1(a). A contractor has the burden of promptly presenting to the suspending and debarring official evidence of remedial measures or mitigating factors when it has reason to know that a cause for suspension exists. The existence or nonexistence of any remedial measures or aggravating or mitigating factors is not necessarily determinative of a contractor's present responsibility.

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(e)(1) When the suspending and debarring official has authority to suspend contractors from both contracts pursuant to the Federal Acquisition Regulation in this chapter and contracts for the purchase of Federal personal property pursuant to Federal Management Regulation (FMR) in 41 CFR part 102-38 (https://www.ecfr.gov/current/title-41/part-102-38), that official shall consider simultaneously suspending the contractor from the award of acquisition contracts and from the purchase of Federal personal property.

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9.407-2 [Amended]

17. Amend section 9.407-2 by removing from paragraphs (a) introductory text and (c) “The suspending official” and adding “The suspending and debarring official” in their places.

18. Amend section 9.407-3 by—

a. Removing from paragraph (a) “suspending official” and adding “suspending and debarring official” in its place;

b. Revising the heading of paragraph (b) and paragraph (b)(1);

c. Removing from paragraph (b)(2) introductory text “of Department of Justice advice, that” and adding “of advice from the Department of Justice, a U.S. Attorney's office, State attorney general's office, or a State or local prosecutor's office, that” in its place;

d. Removing from paragraph (c) introductory text “by certified mail, return receipt requested” and adding “using the procedures in 9.406-3(c)(1) and (2)” in its place;

e. Revising paragraph (c)(1);

f. Removing from the end of paragraph (c)(5) the word “and”;

g. Revising paragraph (c)(6);

h. Adding paragraphs (c)(7) and (8);

i. Revising paragraph (d) heading and paragraph (d)(1);

j. Removing from paragraph (d)(2)(i) “suspending official” and adding “suspending and debarring official” in its place;

k. Removing from paragraph (d)(2)(ii) “suspending official” wherever it appears and adding “suspending and debarring official” in its place;

l. Removing from paragraph (d)(2)(iii) “suspending official's” and adding “suspending and debarring official's” in its place;

m. Revising paragraphs (d)(3) and (4);

n. Adding a heading for paragraph (e);

o. Revising paragraphs (e)(1) and (2);

p. Removing from paragraph (e)(3) “suspending official” and adding “suspending and debarring official” in its place; and

q. Adding paragraphs (f) and (g).

The revisions and additions read as follows:

9.407-3 Procedures.

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(b) *Decision-making process.* (1) Agencies shall establish procedures governing the suspension decision-making process that are as informal as is practicable, consistent with principles of fundamental fairness. These procedures shall afford the contractor (and any specifically named affiliates) an opportunity, following the imposition of suspension, to submit, in person, in writing, or through a representative, information and argument in opposition to the suspension. If the suspending and debarring official extends the opportunity for the contractor to submit material in opposition, then the official should also give a deadline for submission of materials. The suspending and debarring official may use the flexible procedures in 9.406-3(b)(1); if so, the suspending and debarring official should change the notice in paragraph (c)(5) of this section to include those flexible procedures.

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(c) * * *

(1) That they have been suspended and that the suspension is based on an indictment or other adequate evidence that the contractor has committed irregularities—

(i) Of a serious nature in business dealings with the Government; or

(ii) Seriously reflecting on the propriety of further Government dealings with the contractor—any such irregularities shall be described in terms sufficient to place the contractor on notice without disclosing the Government's evidence;

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(6) That additional proceedings to determine disputed material facts will be conducted unless—

(i) The action is based on an indictment; or

(ii) A determination is made, on the basis of advice by the Department of Justice, a U.S. Attorney's office, State attorney general's office, or a State or local prosecutor's office, that the substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced;

(7) That, in addition to any information and argument in opposition to a suspension, the contractor must identify—

(i) Specific facts that contradict the statements contained in the notice of suspension. Include any information about any of the factors listed in 9.406-1(a). A general denial is insufficient to raise a genuine dispute over facts material to the suspension;

(ii) All existing, proposed, or prior exclusions and all similar actions taken by Federal, State, or local agencies, including administrative agreements that affect only those agencies;

(iii) All criminal and civil proceedings not included in the notice of suspension that grew out of facts relevant to the cause(s) stated in the notice; and

(iv) All of the contractor's affiliates; and

(8) That if the contractor fails to disclose the information in paragraph (c)(7) of this section or provides false information, the agency taking the action may seek further criminal, civil, or administrative action against the contractor, as appropriate.

(d) *Suspending and debarring official's decision.* (1) The suspending and debarring official's decision shall be based on all the information in the administrative record, including any submission made by the contractor, for actions—

(i) Based on an indictment;

(ii) In which the contractor's submission does not raise a genuine dispute over material facts; or

(iii) In which additional proceedings to determine disputed material facts have been denied on the basis of advice from the Department of Justice, a U.S. Attorney's office, State attorney general's office, or a State or local prosecutor's office.

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(3) The suspending and debarring official may modify or terminate the suspension or leave it in force (for example, see 9.406-4(c) for the reasons for reducing the period or extent of debarment). However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of—

(i) Suspension by any other agency; or

(ii) Debarment by any agency.

(4) Prompt written notice of the suspending and debarring official's decision shall be sent to the contractor and any affiliates involved, using the procedures in 9.406-3(c)(1) and (2).

(e) *Administrative agreement.* (1) If the contractor enters into an administrative agreement with the Government in order to resolve a suspension or potential suspension proceeding, the suspending and debarring official shall access the website (available at *https://www.cpars.gov (https://www.cpars.gov),* then select FAPIIS), enter the requested information, and (🗋 print page 516) upload documentation reflecting the administrative agreement.

(2) The suspending and debarring official is responsible for the timely and accurate submission of documentation reflecting the administrative agreement. The submission should be made within 3 working days.

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(f) *Voluntary exclusion.* (1) If the contractor enters into a voluntary exclusion with the Government in order to resolve a suspension or potential suspension proceeding, the suspending and debarring official shall access the website (available at *https://www.sam.gov (https://www.sam.gov)*) and enter the requested information into the exclusions section of SAM (see 9.404(c)(3)).

(2) The suspending and debarring official is responsible for the timely and accurate submission of documentation reflecting the voluntary exclusion. The submission should be made within 3 working days.

(3) Regarding information that may be covered by a disclosure exemption under the Freedom of Information Act, the suspending and debarring official shall follow the procedures at 9.105-2(b)(2)(iv).

(g) *Pre-notice letter.* Prior to initiating a suspension, a pre-notice letter may be issued at the discretion of the agency suspending and debarring official. A pre-notice letter is not required to initiate suspension under this subpart. (See 9.403.)

19. Amend section 9.407-4 by—

a. Removing from paragraph (a) “of investigation”, “suspending official”, and “this subsection” and adding “of an investigation”, “suspending and debarring official”, and “this section” in their places, respectively;

b. Removing from paragraph (b) “Assistant Attorney General requests” and adding “office of a U.S. Assistant Attorney General, U.S. Attorney, or other responsible prosecuting official requests” in its place; and

c. Revising paragraph (c).

The revision reads as follows:

9.407-4 Period of suspension.

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(c) The suspending and debarring official shall notify the Department of Justice or other responsible prosecuting official of the proposed termination of the suspension, at least 30 days before the 12-month period expires, to give that official an opportunity to request an extension on the Government's behalf.

9.409 [Amended]

20. Amend section 9.409 by removing the text “Protecting the Government's Interests when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment, in” and adding “Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, Proposed for Debarment, or Voluntarily Excluded, in” in its place.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1504 [Amended]

21. Amend section 22.1504 by—

a. Removing from paragraph (b)(2) “The suspending official” and adding “The suspending and debarring official” in its place; and

b. Removing from paragraph (b)(3) “The debarring official” and adding “The suspending and debarring official” in its place.

22.1704 [Amended]

22. Amend 22.1704 by removing from paragraph (c)(2)(i) introductory text “suspending or debarring” and adding “suspending and debarring” in its place.

23. Amend section 22.1802 by revising paragraph (e) to read as follows:

22.1802 Policy.

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(e) DHS and the Social Security Administration (SSA) may terminate a contractor's memorandum of understanding (MOU) and deny access to the E-Verify system in accordance with the terms of the MOU. If DHS or SSA terminates a contractor's MOU, the terminating agency must refer the contractor

to a suspending and debarring official for possible suspension or debarment action. During the period between termination of the MOU and a decision by the suspending and debarring official whether to suspend or debar, the contractor is excused from its obligations under paragraph (b) of the clause at 52.222-54. If the contractor is suspended, debarred, or subject to a voluntary exclusion as a result of the MOU termination, the contractor is not eligible to participate in E-Verify during the period of its suspension, debarment, or voluntary exclusion. If the contractor is not suspended, debarred, or subject to a voluntary exclusion, then the contractor must reenroll in E-Verify.

PART 25—FOREIGN ACQUISITION

25.206 [Amended]

24. Amend section 25.206 by removing from paragraph (c)(4) “suspending or debarring” and “Subpart 9.4” and adding “suspending and debarring” and “subpart 9.4” in their places, respectively.

25.607 [Amended]

25. Amend section 25.607 by removing from paragraph (c)(4) “suspending or debarring” and adding “suspending and debarring” in its place.

25.702-3 [Amended]

26. Amend section 25.702-3 by—

a. Removing from paragraph (b) “suspending official” and “Subpart” and adding “suspending and debarring official” and “subpart” in their places, respectively; and

b. Removing from paragraph (c) “The debarring” and “Subpart” and adding “The suspending and debarring” and “subpart” in their places, respectively.

25.703-2 [Amended]

27. Amend section 25.703-2 by—

a. Removing from paragraph (b)(1) “commercial services, ” and adding “commercial services,” in its place;

b. Removing from paragraph (b)(2) “suspending official” and adding “suspending and debarring official” in its place; and

c. Removing from paragraph (b)(3) “The debarring official” and adding “The suspending and debarring official” in its place.

PART 26—OTHER SOCIOECONOMIC PROGRAMS

26.505 [Amended]

28. Amend section 26.505 by removing from paragraph (c) “suspension and debarment” and adding “suspending and debarring” in its place.

PART 33—PROTESTS, DISPUTES, AND APPEALS

33.102 [Amended]

29. Amend section 33.102 by removing from paragraph (b)(3)(iii) “debarment official” and “Subpart” and adding “suspending and debarring official” and “subpart” in their places, respectively.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

30. Amend section 52.209-6 by—

a. Revising the section heading and clause title and date;

b. Removing from paragraph (c) “suspended, or proposed for debarment by” and adding “suspended, proposed for debarment, or voluntarily excluded, by” in its place;

c. Removing from paragraph (d) introductory text “or proposed for (🗋 print page 517) debarment” and adding “proposed for debarment, or voluntarily excluded” in its place; and

d. Removing from paragraph (d)(4) “suspension, or proposed debarment” and adding “suspension, proposed debarment, or voluntary exclusion” in its place.

The revisions read as follows:

52.209-6 Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, Proposed for Debarment, or Voluntarily Excluded.

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Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, Proposed for Debarment, or Voluntarily Excluded (JAN 2025)

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31. Amend section 52.212-5 by—

a. Revising paragraphs (b)(12), (32), and (40) and (e)(1)(xix); and

b. In Alternate II, revising the date of the alternate and paragraph (e)(1)(ii)(R).

The revisions read as follows:

52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services.

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(b) * * *

_ (12) 52.209-6, Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, Proposed for Debarment, or Voluntarily Excluded. (JAN 2025) (31 U.S.C. 6101 note (https://www.govinfo.gov/link/uscode/31/6101)).

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_ (32) 52.222-19, Child Labor—Cooperation with Authorities and Remedies (JAN 2025) (E.O. 13126 (/executive-order/13126)).

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_ (40) 52.222-54, Employment Eligibility Verification (JAN 2025) (Executive Order 12989 (/executive-order/12989)). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial products or commercial services as prescribed in FAR 22.1803.)

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(e)(1) * * *

(xix) 52.222-54, Employment Eligibility Verification (JAN 2025) (E.O. 12989 (/executive-order/12989)).

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Alternate II (JAN 2025) * * *

(e)(1) * * *

(ii) * * *

(R) 52.222-54, Employment Eligibility Verification (JAN 2025) (Executive Order 12989 (/executive-order/12989)).

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32. Amend section 52.213-4 by revising paragraphs (b)(1)(iii) and (b)(2)(ii) to read as follows:

52.213-4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services).

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(b) * * *

(1) * * *

(iii) 52.222-19, Child Labor—Cooperation with Authorities and Remedies (JAN 2025) (E.O. 13126 (/executive-order/13126)) (Applies to contracts for supplies exceeding the micro-purchase threshold, as defined in FAR 2.101 on the date of award of this contract).

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(2) * * *

(ii) 52.209-6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, Proposed for Debarment, or Voluntarily Excluded (JAN 2025) (Applies to contracts over the threshold specified in FAR 9.405-2(b) on the date of award of this contract).

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33. Amend section 52.222-19 by—

a. Revising the date of the clause;

b. Removing from paragraph (d)(2) “suspending official” and “Subpart” and adding “suspending and debarring official” and “subpart” in their places, respectively; and

c. Removing from paragraph (d)(3) “The debarring” and “Subpart” and adding “The suspending and debarring” and “subpart” in their places, respectively.

The revision reads as follows:

52.222-19 Child Labor—Cooperation With Authorities and Remedies.

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Child Labor—Cooperation With Authorities and Remedies (JAN 2025)

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34. Amend section 52.222-54 by—

a. Revising the date of the clause;

b. Removing from paragraph (b)(5)(i) “suspension or debarment” and adding “suspending and debarring” in its place; and

c. Revising paragraph (b)(5)(ii).

The revisions read as follows:

52.222-54 Employment Eligibility Verification.

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Employment Eligibility Verification (JAN 2025)

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(b) * * *

(5) * * *

(ii) During the period between termination of the MOU and a decision by the suspending and debarring official whether to suspend or debar, the Contractor is excused from its obligations under paragraph (b) of this clause. If the Contractor is not suspended, debarred, or subject to a voluntary exclusion, then the Contractor must reenroll in E-Verify.

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[FR Doc. 2024-31403 (/d/2024-31403) Filed 1-2-25; 8:45 am]

BILLING CODE 6820-EP-P

PUBLISHED DOCUMENT: 2024-31403 (90 FR 507)