

Department) and the IRS will publish any comments submitted electronically or on paper to the public docket. Send paper submissions to: CC:PA:01:PR (REG-142338-07), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations Christopher A. Hyde of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) at (202) 317-5800 (not a toll-free number). Concerning submissions of comments and requests for a public hearing, Vivian Hayes at publichearings@irs.gov (preferred) or at (202) 317-6901 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and request for comments that appeared in the **Federal Register** on Tuesday, November 14, 2023 (88 FR 77922) announced that written or electronic comments must be received by January 16, 2024. In response to requests from multiple commenters, the due date to receive comments or request a public hearing has been extended to Thursday, February 15, 2024.

Oluwafunmilayo A. Taylor,
Section Chief, Publications and Regulations,
Associate Chief Counsel (Procedure &
Administration).

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 3, 9, 22, 23, 25, 33, and 52

[FAR Case 2019-015; Docket No. FAR-
2019-0015; Sequence No. 1]

RIN 9000-AN98

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

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

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are
proposing to amend 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: Interested parties should submit
written comments to the Regulatory
Secretariat Division at the address
shown below on or before March 11,
2024 to be considered in the formation
of the final rule.

ADDRESSES: Submit comments in
response to FAR Case 2019-015 to the
Federal eRulemaking portal at <https://www.regulations.gov> by searching for
“FAR Case 2019-015”. Select the link
“Comment Now” that corresponds with
“FAR Case 2019-015”. Follow the
instructions provided on the “Comment
Now” screen. Please include your name,
company name (if any), and “FAR Case
2019-015” on your attached document.
If your comment cannot be submitted
using <https://www.regulations.gov>, call
or email the point of contact in the **FOR
FURTHER INFORMATION CONTACT** section of
this document for alternate instructions.

Instructions: Please submit comments
only and cite “FAR Case 2019-015” in
all correspondence related to this case.
Comments received generally will be
posted without change to <https://www.regulations.gov>, including any
personal and/or business confidential
information provided. Public comments
may be submitted as an individual, as
an organization, or anonymously (see
frequently asked questions at <https://www.regulations.gov/faq>). To confirm
receipt of your comment(s), please
check <https://www.regulations.gov>,
approximately two to three days after
submission to verify posting.

FOR FURTHER INFORMATION CONTACT: For
clarification of content, contact Ms.
Zenaída Delgado, Procurement Analyst,
at 202-969-7207 or by email at
zenaida.delgado@gsa.gov. For
information pertaining to status,
publication schedules, or alternate
instructions for submitting comments if
<https://www.regulations.gov> cannot be
used, contact the Regulatory Secretariat
Division at 202-501-4755 or
GSARegSec@gsa.gov. Please cite FAR
Case 2019-015.

SUPPLEMENTARY INFORMATION:

I. Background

The Government uses suspension and
debarment procedures to protect its
business interests. These procedures
give Federal officials a means to bar
parties from participation in certain
transactions, while affording those
parties due process. Over time, two

separate suspension and debarment
regulatory systems have evolved: (1) the
FAR system within the Federal
Acquisition Regulation for procurement
matters; and (2) the Nonprocurement
system within the Nonprocurement
Common Rule (NCR), which covers
grants, cooperative agreements,
contracts of assistance, loans, and loan
guarantees. The regulations for the FAR
system are in subpart 9.4, Debarment,
Suspension, and Ineligibility, of Title 48
in the Code of Federal Regulations
(CFR). The Nonprocurement system is
in Title 2, Part 180 of the CFR and
directs Federal agencies to issue their
own implementing regulations
consistent with the NCR. Executive
Order 12689, “Debarment and
Suspension”, published in the **Federal
Register** at 54 FR 34131 on August 18,
1989, directed that suspension or
debarment under either system has a
reciprocal effect, thereby excluding
parties that have been excluded under
either system from both new
procurement and nonprocurement
transactions.

This proposed rule seeks to change
the FAR so that the two systems will be
in closer alignment where appropriate,
and incorporates existing practices
within the suspension and debarment
systems that are not currently in the
FAR. The intent behind this alignment
is to enhance transparency and
consistency within the Government’s
suspension and debarment procedures.

Currently, the two suspension and
debarment systems are similar, but not
identical. Although the two suspension
and debarment rules at their core are
designed toward the same end, follow
the same general principles, and use
essentially the same basic action notice
and decision-making process, there are
some differences between the rules.
Some are definitional (e.g., the NCR
definition of “civil judgment” is more
comprehensive than the FAR
definition), and some are procedural
(e.g., the NCR and FAR procedures
differ regarding deadlines for
suspending and debarring officials to
make exclusion decisions after the
record closes). One difference which is
not being changed in this rule is that a
notice of proposed debarment under the
FAR has the effect of immediately
excluding the party but does not have
this effect in the NCR. This is done in
part in recognition of the necessity to
continue to protect the Government’s
interests and taxpayer’s money by
minimizing business risk where
procurements are involved. The FAR
gives the suspending and debarring
official two tools with immediate
exclusion effect upon imposition—a

proposal for debarment and a suspension. Both have been in the FAR as recognized tools for decades, with different standards for use. The Federal Acquisition Regulatory Council (FAR Council) notes that contracts are more likely than nonprocurement transactions, such as Federal financial assistance, to require immediate exclusion when something goes wrong. See 2 CFR 180.810. Participants in nonprocurement transactions—while subject to the terms and conditions of a Federal award—are typically required to meet overall program goals and objectives, rather than perform to an exact contractual requirement. Federal financial assistance typically is for public purposes of support or economic stimulation, rather than for the direct benefit of the U.S. Government. See 31 U.S.C. 6303 to 6305. In this rule the FAR Council is continuing to keep both tools, so the suspending and debarring official will continue to have the discretion to choose whichever tool is appropriate for the particular situation. This rule also recognizes the use of a pre-notice letter, for the suspending and debarring official to consider using instead of an immediate exclusion.

The importance of protecting the Government's interests is reflected in recurring Appropriations Act language since 2012 (see, e.g., Pub. L. 112–55, Pub. L. 112–74, and Pub. L. 117–328), which states that funds may not be used to enter into a contract with any corporation that was convicted of a felony criminal violation under Federal law within the preceding 24 months, unless a Federal agency has considered suspension or debarment of the corporation and has made a determination that further action is not necessary to protect the interests of the Government. In instances in which an agency has issued a proposed debarment under the FAR, a Federal agency has considered that further action may be necessary concerning that particular party, and therefore, the exclusion is consistent with statutory intent.

II. Discussion and Analysis

The following summarizes the proposed changes to the FAR:

The definition of “suspending and debarring official” is added at FAR 2.101, and standardized throughout the FAR, to denote the title of the Government official who is authorized to impose suspension and debarment actions for the Federal Government. New definitions have been added at FAR 9.403 for “administrative agreement”, “conviction”, “pre-notice letter”, and “voluntary exclusion”. The

current definition of “civil judgment” is also updated for the rule. The definitions of “conviction”, “voluntary exclusion”, and “civil judgment” are equivalent to the NCR definitions at 2 CFR 180.920, 180.1020, and 180.915, respectively.

The rationale for adding a definition of “administrative agreement” to the FAR is that over the years suspending and debarring officials have come to recognize the value of resolving present responsibility concerns through administrative agreements. Such agreements provide an alternative for the Government to implement protective measures short of exclusion, particularly for those contractors who are working toward present responsibility but need additional time to implement appropriate remedial measures to mitigate the business risk to the Government. Administrative agreements often require that the parties to the agreement take certain verifiable actions to demonstrate present responsibility within a prescribed timeframe, such as the implementation of enhanced internal corporate governance practices and procedures and/or the use of independent third-party monitors. In unique circumstances, an administrative agreement may include a contractor's agreement not to participate in certain procurement and/or nonprocurement transactions or in specific activities for the term of the administrative agreement or pending the implementation of appropriate remedial measures. Administrative agreements are fact-specific, and therefore vary between agencies and from one agreement to another. Currently, FAR part 9 mentions administrative agreements in the context of the statutory requirement that administrative agreements must be entered into the Federal Awardee Performance and Integrity Information System (FAPIS) (see FAR 9.406–3(f) and 9.407–3(e)). However, the FAR is silent as to its definition. Incorporating a definition will provide clarity as to what constitutes an administrative agreement.

The rationale for a revised definition of “conviction” is that fact-finding proceedings should not be necessary when there is a sufficient evidentiary basis that the contractor was responsible for the misconduct for purposes of a proposed debarment. The definition of “conviction” in 2 CFR 180.920 is adopted and means 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 any other

resolution that is the functional equivalent of a judgment, 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. The new definition is located at FAR 9.403 rather than FAR 2.101, so it applies only to FAR subpart 9.4.

The new definition of “pre-notice letter” clarifies that the letter is not mandatory. Suspension and debarment procedures under both the FAR and the NCR recognize the authority of agencies to handle actions as informally as practicable consistent with principles of fundamental fairness (see FAR 9.406–3(b)(1) and 9.407–3(b)(1); 2 CFR 180.610). Accordingly, suspending and debarring officials may choose to engage in preliminary discussions with potential respondents or their counsel under a variety of circumstances. Adding a definition of “pre-notice letter” reflects existing practice. The Interagency Suspension and Debarment Committee has tracked the issuance of pre-notice letters in its reports since fiscal year 2009; the use of the letters has significantly increased over the past decade. Including a definition highlights another option that agencies may consider to resolve concerns involving contractor present responsibility, short of a formal notice under the suspension and debarment rules.

A new definition is added for “voluntary exclusion” which applies throughout FAR part 9 to denote the procedures the Federal Government uses with contractors for these types of agreements. Voluntary exclusions are briefly described in the NCR at 2 CFR 180.640 and 180.645. The FAR does not currently describe voluntary exclusions. A contractor may choose to agree to a voluntary exclusion so that it may represent itself in a more favorable light to various constituencies including but not limited to customers, creditors, and the public at large, by indicating that it chose to voluntarily exclude itself rather than be being involuntarily excluded by the Government through suspension or debarment. A contractor who is voluntarily excluded will be placed on the excluded parties list in the System for Award Management (SAM); the exclusion must have Governmentwide effect pursuant to the terms of the voluntary exclusion agreement.

FAR 9.406–1(a) contains remedial measures and mitigating factors for the debarring official to consider. The suspension regulations incorporate the factors by reference at FAR 9.407–1(b)(2). The proposed rule seeks to add

seven new aggravating or mitigating factors that a suspending and debarring official should consider before arriving at a decision. The factors are equivalent to NCR factors at 2 CFR 180.860(a) through (f), (j), (k), (m), and (s). Unlike the FAR, the NCR makes it clear that aggravating factors may also be considered by the suspending and debarring official. Incorporating these aggravating factors will provide consistency between the two rules, as well as more guidance and increased options for the suspending and debarring official to consider when making present responsibility determinations.

FAR 9.406–3(b)(1) and 9.407–3(b)(1) state that agencies may establish informal procedures governing the suspension and debarment decision-making process. Accordingly, this rule proposes changes that would authorize suspending and debarring officials to allow contractors and their representatives to present matters in opposition via additional methods of communication, such as telephone or internet, as such methods of communication are becoming more widely used and are consistent with principles of fundamental fairness. The new flexibilities are being added so that the Government and contractors will have additional means of communication when situations such as COVID–19 arise and the ability of the parties to meet in person is limited.

FAR 9.406–3(c)(1) and 9.407–3(c) add language that will allow the suspending and debarring official the flexibility to issue a notice of proposed debarment or notice of suspension by mail, facsimile, email, or certified mail with return receipt requested. The new flexibilities are being added so that the Government will have additional means of communication when emergency situations such as COVID–19 arise, and when delivering notices to contractors abroad; the use of the new methods is not restricted to those situations. The NCR allows notice to be served in person, sent by certified mail or its equivalent, or sent electronically by email or facsimile; see 2 CFR 180.975. If a contractor makes a case for nonreceipt of notice, FAR 9.406–4 allows a debarred person to seek reinstatement by requesting the debarment period or extent of debarment be reduced.

FAR 9.406–3(c)(2) adds language which requires the suspending and debarring official to send the notice of proposed debarment to the contractor, the contractor's identified counsel for purposes of the administrative proceedings, or the contractor's agent

for service of process. This does not go quite as far as the NCR, which allows notice to be sent instead to a partner, officer, director, owner, or joint venture partner; see 2 CFR 180.615. For each specifically named affiliate, the suspending and debarring official must send the notice to the affiliate itself, the affiliate's identified counsel for purposes of the administrative proceedings, or the affiliate's agent for service of process. The language is added so that the Government will have the widest latitude in assuring that the notice is received. These are the minimum notice requirements.

FAR 9.406–3(c)(3)(viii) and (ix), and 9.407–3(c)(7) and (8) require that the contractor respond with specific facts and other information, including identifying all of its affiliates. The language is substantively equivalent to the NCR language at 2 CFR 180.825 and 180.730.

FAR 9.406–3(d)(1) addresses the time a suspending and debarring official has to make a debarment decision in deciding actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts. If no suspension is in effect, the time currently is 30 working days after receipt of any information and argument submitted by the contractor, unless the suspending and debarring official extends this period for good cause. Under this proposed rule, the 30 working days time frame would change to 45 days, which under the definition of “day” at FAR 2.101 means calendar days. The NCR language at 2 CFR 180.870(a) is 45 days after the closing of the official record. The FAR language is changed to reflect 45 days after the closing of the official record. In addition to harmonizing the NCR and the FAR, the change will avoid conflicts with how other countries compute working days, in light of national or religious holidays. Forty-five calendar days is roughly equivalent to thirty working days.

FAR 9.406–3(e) and 9.407–3(d)(4) adds language that specifies that when the suspending and debarring official sends the notice of their decision, the notice procedures set forth in FAR 9.406–3(c)(1) and (2) shall be used. The new flexibilities are being added so that the Government will have additional means of communication when situations such as COVID–19 arise, and when delivering notices to contractors abroad; the use of the new methods is not restricted to those situations.

FAR 9.406–3(f) and 9.407–3(e)(1) add the requirement for the suspending and debarring official to enter an administrative agreement into FAPIIS,

whether the agreement resolves a suspension or debarment action or whether it was a potential suspension or debarment action. This requirement is being added to confirm that potential suspension or debarment actions are covered.

FAR 9.406–3(g) and 9.407–3(f) add the requirement for the suspending and debarring official to enter voluntary exclusions into the excluded parties section of SAM as is currently required under the NCR. This requirement is being added so that selecting officials can review these types of exclusions before awards are made.

FAR 9.406–3(h) and 9.407–3(g) confirm that, prior to initiating a proposed suspension or debarment, the suspending and debarring official may issue a pre-notice letter alerting the contractor to potential future action. The definition of “pre-notice letter” is added at FAR 9.403. A suspending and debarring official is not required to send a pre-notice letter prior to initiating suspension or debarment action.

Language is added to FAR 9.407–1(b)(1) explaining that the suspending and debarring official has wide discretion to impose suspensions when immediate action is necessary to protect the Government's interest. New language is also added to the section indicating that 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. The new language is equivalent to the NCR language at 2 CFR 180.705(b) and (c).

FAR 9.407–3(b)(2), (c)(6), and (d) revise the list of parties who can contribute advice on pending or contemplated legal proceedings, to include “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.” The language is equivalent to the NCR language at 2 CFR 180.735(a)(4). The FAR currently fails to take into account that suspensions can be based on State and local legal proceedings.

FAR 9.407–4(b) adds to the parties who may request a six-month extension of a suspension, when legal proceedings have not been initiated within 12 months after the date of the suspension notice. The parties would change from “an Assistant Attorney General” to “an office of a U.S. Assistant Attorney General, U.S. Attorney, or other responsible prosecuting official”. The language is equivalent to the NCR language at 2 CFR 180.760(b). Coordinating the need for an extension with an Assistant Attorney General as

directed by the FAR is burdensome and lengthy. On the other hand, agencies have reported that under the more flexible provisions of the NCR they have often coordinated extensions in a week.

Notwithstanding the proposed and/or final rule, terms of voluntary exclusion and administrative agreements executed prior to the final rule will remain in effect.

The proposed rule also makes conforming changes in FAR subparts 2, 3, 22, 23, 25, 33, and 52.

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 proposed 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 proposed rule seeks to improve consistency between the procurement and nonprocurement procedures on suspension and debarment. These changes in the FAR will 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, 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 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, Regulatory Planning and Review, dated September 30, 1993.

VI. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this proposed rule, if finalized, to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612, because the rule imposes minor procedural changes that are anticipated to have a positive impact on small entities. However, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and is summarized as follows:

DoD, GSA, and NASA are proposing to amend 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 proposed rule is to more closely align the two systems of procurement and nonprocurement suspension and debarment to enhance transparency and consistency within the FAR system. Promulgation of the FAR is authorized by 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

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 suspending and debarring official 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 2017, 2018, and 2019. Next, the entities on that list with unique identification numbers were compared 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 based on their primary NAICS code were identified.

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 2017 | FY 2018 | FY 2019 | Median |
|-----------------------------------------|---------------------|---------------------|---------------------|--------|
| | SB/total exclusions | SB/total exclusions | SB/total exclusions | SB % |
| Small Business/Total Exclusions | 152/203 | 189/253 | 180/245 | |
| Small Business Percentage | 75% | 75% | 73.4% | 75 |

The proposed rule does impose 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.

The proposed 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) or other compliance requirements for small entities.

44 U.S.C. 3518 and 5 CFR 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.

This proposed rule does not duplicate, overlap, or conflict with any other Federal rules.

DoD, GSA, and NASA were unable to identify any significant alternatives.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities

concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite "5 U.S.C. 610 (FAR Case 2019–015)", in correspondence.

VII. 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).

List of Subjects in 48 CFR Parts 2, 3, 9, 22, 23, 25, 33, and 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 propose amending 48 CFR parts 2, 3, 9, 22, 23, 25, 33, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 3, 9, 22, 23, 25, 33, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 2—DEFINITIONS OF WORDS AND TERMS

- 2. Amend section 2.101, in paragraph (b)(2) by—
- a. In the definition of “Conviction”, removing “*nolo contendere*.” and adding “*nolo contendere*. For use in subpart 9.4, see the definition at 9.403.” in its place;
- b. In the definition of “Debarment”, removing “a debarment” and adding “a suspending and debarment” in its place;
- c. Adding in alphabetical order the definition of “Suspending and debarment official”; and
- d. In the definition of “Suspension”, removing “suspending official” and adding “suspending and debarment official” in its place.

The addition reads as follows:

2.101 Definitions.

* * * * *

- (b) * * *
- (2) * * *

Suspending and debarment 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) “debarred or suspended” and adding “debarred, or 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.

* * * * *

- (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.

* * * * *

9.402 [Amended]

- 6. Amend section 9.402 by removing from paragraph (d) “Interagency Committee on Debarment and Suspension” and adding “Interagency Suspension and Debarment Committee” in its place.
- 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 “Debarment 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 revisions read as follows:

9.403 Definitions.

* * * * *

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

* * * * *

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).

* * * * *

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.

* * * * *

Nonprocurement Common Rule

* * * See 2 CFR part 180 and agency enacting regulations.

Pre-notice letter means a written correspondence issued to a potential respondent in a suspension or debarment matter, which does not immediately result in an exclusion or ineligibility. The letter is issued at the discretion of the suspending and debarment official. The letter is not a mandatory step in the suspension or debarment process.

* * * * *

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 debarment 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” and adding “exclusion, including each voluntary exclusion, accomplished” 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 23.506(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.

* * * * *

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) “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; and

■ b. Removing from paragraph (b) introductory text “or proposed for debarment, unless”, “or proposed for debarment as”, and “or Proposed for Debarment to” and adding “proposed for debarment, or voluntarily excluded, unless”, “proposed for debarment, or voluntarily excluded, as” and “Proposed for Debarment, or Voluntarily Excluded, to” in their places, respectively.

■ 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:

(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 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 and, if so, made the result of the investigation available to the suspending and debarring official.

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

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

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

(9) Whether the contractor has had adequate time to eliminate the circumstances within the contractor’s organization that led to the cause for debarment.

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

(11) Whether the contractor 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 planned, initiated, or carried out the wrongdoing, and the kind of positions held by the individuals involved in the wrongdoing.

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

(14) Whether the contractor’s principals tolerated the offense.

(15) Whether the contractor 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 part.

(16) Whether the contractor 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 part.

(17) Whether there are any other factors 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) 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 23.506(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 acquisition contracts pursuant to this regulation and contracts for the purchase of Federal personal property pursuant to the Federal Management Regulations (FMR) 41 CFR part 102–38 (see section 102–38.175, 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. Adding two sentences to the end of paragraph (b)(1);

■ c. Revising paragraph (c);

■ d. Revising the heading of paragraph (d);

■ e. Revising paragraph (d)(1);

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

■ g. Removing from paragraph (d)(2)(ii) “The debarring official” (twice) and adding “The suspending and debarring official” (twice) in their places;

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

■ i. Revising paragraphs (e) heading and (e)(1) introductory text;

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

■ k. Removing from paragraph (e)(2) “the debarring official” and “certified mail, return receipt requested” and adding “the suspending and debarring official” and “the procedures set forth in 9.406–3(c)(1) and (2)” in their places, respectively;

■ l. Revising paragraph (f); and

■ m. Adding paragraphs (g) and (h).

The revisions and additions read as follows:

9.406–3 Procedures.

* * * * *

(b) * * *

(1) * * * 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.

* * * * *

(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 mail, to the last known street address;

(ii) To the last known email address; 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;

(v) The agency’s procedures governing debarment decisionmaking;

(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.

(ix) That if the contractor fails to disclose the information in 9.406–3(c)(3)(viii), 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 suspending and debarring official’s receipt of final submissions, information and findings of fact, if any.

* * * * *

(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 by the procedures set forth in 9.406–3(c)(1) and (2)—* * *

(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>, then select FAPIIS), enter the requested information, and upload 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>) 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 paragraphs (b) and (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 paragraphs (b)(1) and (2);

■ 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.

* * * * *

(b)(1) Suspension is a serious action to be imposed on the basis of adequate evidence, pending the completion of 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 set forth 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.

* * * * *

(e)(1) When the suspending and debarring official has authority to suspend contractors from both acquisition contracts pursuant to this regulation and contracts for the purchase of Federal personal property pursuant to Federal Management Regulations (FMR) 41 CFR part 102–38 (see section 102–38.175), that official shall consider simultaneously suspending the contractor from the award of acquisition contracts and from the purchase of Federal personal property.

* * * * *

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. Adding two sentences to the end of 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 “certified mail, return receipt requested—” and adding “the procedures set forth in 9.406–3(c)(1) and (2)—” in its place;

■ e. Removing from paragraph (c)(1) introductory text “irregularities” and adding “irregularities—” in its place;

■ f. Removing from paragraph (c)(1)(i) “of a” and “Government or” and adding “Of a” and “Government; or” in their places, respectively;

■ g. Removing from paragraph (c)(1)(ii) “seriously” and adding “Seriously” in its place;

■ h. Removing from paragraph (c)(5) “facts; and” and adding “facts;” in its place;

■ i. Revise paragraph (c)(6);

■ j. Adding paragraphs (c)(7) and (8);

■ k. Revising paragraphs (d) introductory text and (d)(1);

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

■ m. Removing from paragraph (d)(2)(ii) “suspending official” (twice) and adding “suspending and debarring official” (twice) in their places;

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

■ o. Removing from paragraph (d)(3) introductory text “suspending official” and “imposition of” and adding “suspending and debarring official” and “imposition of—” in their places, respectively;

■ p. Removing from paragraph (d)(3)(i) “suspension” and “agency or” and adding “Suspension” and “agency; or” in their places, respectively;

■ q. Removing from paragraph (d)(3)(ii) “debarment” and adding “Debarment” in its place;

■ r. Revising paragraph (d)(4);

■ s. Revising paragraph (e)(1) and (2);

■ t. Removing from paragraph (e)(3) “suspending official” and adding

“suspending and debarring official” in its place; and

■ u. Adding paragraphs (f) and (g).

The revisions and additions read as follows:

9.407–3 Procedures.

* * * * *

(b) * * *

(1) * * * 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.

* * * * *

(c) * * *

(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 9.407–3(c)(7), 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.

* * * * *

(4) Prompt written notice of the suspending and debarring official’s decision shall be sent to the contractor and any affiliates involved, by the procedures set forth in 9.406–3(c)(1) and (2).

(e)(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>, then select FAPIIS), enter the requested information, and upload 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.

* * * * *

(f)(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>) 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) “suspending official” and adding “suspending and debarring official” in its place;

■ 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) to read as follows:

9.407–4 Period of suspension.

* * * * *

(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 from the text “or Proposed for Debarment, in” and adding “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.

* * * * *

(e) DHS and the Social Security Administration (SSA) may terminate a contractor’s 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 or debarred 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 suspending and debarring official determines not to suspend, or debar, or voluntarily exclude the contractor, then the contractor must reenroll in E-Verify.

PART 23—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

23.506 [Amended]

■ 24. Amend section 23.506 by removing from paragraph (c) “suspension and debarment” and adding “suspending and debarring” in its place.

PART 25—FOREIGN ACQUISITION

25.206 [Amended]

■ 25. 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]

■ 26. 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]

■ 27. 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]

■ 28. Amend section 25.703–2 by—
■ a. Removing from paragraph (b)(2) “suspending official” and adding “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.

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;
■ b. Revising the date of the clause;
■ c. Removing from paragraph (c) “suspended, or proposed for debarment by” and adding “suspended, proposed for debarment, or voluntarily excluded, by” in its place;
■ d. Removing from paragraph (d) introductory text “or proposed for debarment” and adding “proposed for debarment, or voluntarily excluded” in its place; and
■ e. Removing from paragraph (d)(4) “suspension, or proposed debarment” and adding “suspension, proposed debarment, or voluntary exclusion” in its place.

The revision reads as follows:

52.209–6 Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, Proposed for Debarment, or Voluntarily Excluded.

* * * * *

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

* * * * *

■ 31. Amend section 52.212–5 by—
■ a. Revising the date of the clause;
■ b. Revising paragraph (b)(12);
■ c. Revising the date of paragraphs (b)(32) and (40);
■ d. Revising the date of paragraph (e)(1)(xix); and
■ e. Amend Alternate II by revising the date of Alternate II and paragraph (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.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders-Commercial Products and Commercial Services (Date)

* * * * *

(b) * * *

____(12) 52.209–6, Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, Proposed for Debarment, or Voluntarily Excluded. (Date)(31 U.S.C. 6101 note).

* * * * *

____(32) 52.222–19, Child Labor-Cooperation with Authorities and Remedies (Date) (E.O. 13126).

* * * * *

____(40) 52.222–54, Employment Eligibility Verification (Date). (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.)

* * * * *

(e)(1) * * *
(xix) 52.222–54, Employment Eligibility Verification (Date) (E.O. 12989).

* * * * *

Alternate II. (Date) * * *

(e)(1) * * *

(ii) * * *

(R) 52.222–54, Employment Eligibility Verification (Date) (Executive Order 12989).

* * * * *

■ 32. Amend section 52.213–4 by—
■ a. Revising the date of the clause;
■ b. Revising the date of paragraph (b)(1)(iii) and removing “in 2.101” and adding “in FAR 2.101” in its place; and
■ c. Removing from paragraph (b)(2)(ii) “or Proposed for Debarment (NOV 2021)” and adding “Proposed for Debarment, or Voluntarily Excluded (Date)” in its place.

The revisions read as follows:

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

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services) ([Date])

* * * * *

(b) * * *

(1) * * *

(iii) 52.222–19, Child Labor—Cooperation with Authorities and Remedies (Date) * * *

* * * * *

■ 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.

* * * * *

Child Labor—Cooperation With Authorities and Remedies (Date)

* * * * *

- 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 (Date)

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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 suspending and debarring official determines not to suspend, debar, or voluntarily exclude the Contractor, then the Contractor must reenroll in E-Verify.

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[FR Doc. 2024–00172 Filed 1–8–24; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF TRANSPORTATION**Federal Motor Carrier Safety Administration****49 CFR Part 367**

[Docket No. FMCSA–2023–0268 RIN 2126–AC67]

Fees for the Unified Carrier Registration Plan and Agreement

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FMCSA proposes amendments to its regulations governing the annual registration fees that participating States collect from motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies for the Unified Carrier Registration (UCR) Plan and Agreement for the 2025 registration year and subsequent registration years. The fees for the 2025 registration year would be increased above the fees for the 2024 registration year by an average of 25.0 percent overall, with varying increases

between \$9 and \$9,000 per entity, depending on the applicable fee bracket. The proposal is based upon a recommendation from the UCR Plan.

DATES: Comments must be received on or before February 8, 2024.

ADDRESSES: You may submit comments identified by Docket Number FMCSA–2023–0268 using any of the following methods:

- **Federal eRulemaking Portal:** Go to <https://www.regulations.gov/docket/FMCSA-2023-0268/document>. Follow the online instructions for submitting comments.
- **Mail:** Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590–0001.
- **Hand Delivery or Courier:** Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.
- **Fax:** (202) 493–2251.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Riddle, Director, Office of Registration and Safety Information, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, FMCSAMCRS@dot.gov. If you have questions on viewing or submitting material to the docket, call Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION: FMCSA organizes this NPRM as follows:

- I. Public Participation and Request for Comments
 - A. Submitting Comments
 - B. Viewing Comments And Documents
 - C. Privacy
- II. Executive Summary
 - A. Purpose and Summary of the Regulatory Action
 - B. Costs and Benefits
- III. Abbreviations
- IV. Legal Basis
- V. Background
- VI. Discussion of Proposed Rulemaking
- VII. Severability
- VIII. Section-by-Section Analysis
- IX. Regulatory Analyses
 - A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), E.O. 14094 (Modernizing Regulatory Review), and DOT Regulatory Policies and Procedures
 - B. Congressional Review Act
 - C. Regulatory Flexibility Act
 - D. Assistance for Small Entities
 - E. Unfunded Mandates Reform Act of 1995
 - F. Paperwork Reduction Act
 - G. E.O. 13132 (Federalism)

H. Privacy

I. E.O. 13175 (Indian Tribal Governments)

J. National Environmental Policy Act of 1969

K. Rulemaking Summary

I. Public Participation and Request for Comments**A. Submitting Comments**

If you submit a comment, please include the docket number for this NPRM (FMCSA–2023–0268), indicate the specific section of this document to which your comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <https://www.regulations.gov/docket/FMCSA-2023-0268/document>, click on this NPRM, click “Comment,” and type your comment into the text box on the following screen.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

FMCSA will consider all comments and material received during the comment period.

Confidential Business Information (CBI)

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to the NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to the NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as “PROPIN” to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket of the NPRM. Submissions containing CBI should be sent to Mr. Brian Dahlin, Chief, Regulatory Evaluation Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 or via email at brian.g.dahlin@dot.gov. At this time,