

Clean Air Act (CAA) for the Baton Rouge ozone nonattainment area. EPA is proposing to approve the SIP revision because it satisfies the emissions inventory requirements for 8-hour ozone nonattainment areas. EPA is proposing to approve the revision pursuant to section 110 of the CAA.

**DATES:** Written comments should be received on or before October 5, 2009.

**ADDRESSES:** Comments may be mailed to Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Comments may also be submitted electronically or through hand deliver/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:**

Emad Shahin, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone 214-665-6717; fax number 214-665-7263; e-mail address [shahin.emad@epa.gov](mailto:shahin.emad@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct rule without prior proposal because the Agency views this as non-controversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

For additional information see the direct final rule, located in the rules section of this **Federal Register**.

Dated: August 21, 2009.

**Lawrence E. Starfield,**

*Acting Regional Administrator, Region 6.*  
[FR Doc. E9-21187 Filed 9-2-09; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 9, 12, and 52

[FAR Case 2008-027; Docket 2009-0030, Sequence 1]

RIN 9000-AL38

### Federal Acquisition Regulation; FAR Case 2008-027, Federal Awardee Performance and Integrity Information System

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

**ACTION:** Proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to implement Section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009. Section 872 requires the General Services Administration to establish and maintain a data system containing specific information on the integrity and performance of covered Federal agency contractors and grantees. Section 872 also requires awarding officials to review the data system and consider other past performance information when making any past performance evaluation or responsibility determination.

**DATES:** Interested parties should submit written comments to the Regulatory Secretariat on or before October 5, 2009 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAR case 2008-027 by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2008-027" under the heading "Comment or Submission". Select the link "Send a Comment or Submission" that corresponds with FAR Case 2008-027. Follow the instructions provided to complete the "Public Comment and Submission Form". Please include your name, company name (if any), and "FAR Case 2008-027" on your attached document.

- Fax: 202-501-4067.

• Mail: General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

*Instructions:* Please submit comments only and cite FAR case 2008-027 in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Ms. Meredith Murphy, Procurement Analyst, at (202) 208-6925 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAR case 2008-027.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background.**

The Duncan Hunter National Defense Authorization Act of 2009 (Public Law 110-417) was enacted on October 14, 2008. Section 872 of the Act, subject to the authority, direction, and control the Office of Management and Budget, requires the General Services Administration (GSA) to develop and maintain an information system containing specific information on the integrity and performance of covered Federal agency contractors and grantees.

In addition, the statute requires that contracting officers shall consider other past performance information available with respect to the offeror when making any responsibility determination. A responsibility determination, in accordance with the President's March 4, 2009, Government Contracting memorandum pertains to whether an offeror has historically completed projects both effectively and cost efficiently.

The statute stipulates that the information system shall be available to "appropriate acquisition officials of Federal agencies, to such other government officials as the Administrator (of the GSA) determines appropriate, and, upon request, to the Chairman and Ranking Member of the committees of Congress having jurisdiction." (section 872(e)(1)).

The OMB's Office of Federal Financial Management will provide similar, separate guidance to grantees, given that section 872 was enacted to provide a source of information on integrity and past performance of contractors and grantees.

##### **B. Sources of information.**

To the extent feasible, the Councils identified existing sources of

information that would not require the creation of additional information submissions. If no existing source was found, preference was given to obtaining information from Government sources rather than contractors.

1. *Existing sources within the Government.*

a. The Excluded Parties List System (EPLS) is an adequate source of information on entities that are currently suspended or debarred. However, in general, suspensions or debarments last for a maximum of 3 years. Since the law requires information for the preceding 5 years, it will be necessary to access the EPLS archives to obtain information on entities that were suspended or debarred within the last 5 years but are no longer suspended or debarred.

b. Past Performance Information Retrieval System (PPIRS) and Contractor Performance Assessment Reporting System (CPARS). PPIRS contains past performance reports from all agencies. Some, but not all, Federal agencies currently use CPARS to enter information into PPIRS.

2. *New Government sources.*

a. *Contracting officer.* Contracting officers will provide information on determinations of non-responsibility and terminations for default or cause.

b. *Suspension/Debarment Official (SDO).* The SDO will provide the necessary information on administrative agreements.

3. *Contractors.*

The proposed rule requires contractors with contracts and grants over \$10 million total to provide information relating to criminal, civil, and administrative proceedings directly.

**C. The planned Federal Awardee Performance and Integrity Information System (FAPIIS).**

This system will draw from existing systems where feasible and will also use existing systems as a location to store new information on contractor integrity.

The following business rules were developed to ensure timely availability of information and proper use of the information while also protecting against improper disclosure to the public:

1. Only Federal government personnel can view the information, except that a contractor can view its own information.

2. There must be a systems point of contact for system errors and a point of contact for each Government information entry.

3. Data is only accessible for a period of five years and will then be archived

for an additional one-year period to allow an audit trail.

4. A contractor will have an opportunity to post comments regarding information that has been posted by the Government. The comments will be retained as long as the associated information is retained, *i.e.*, for a total period of six years. Contractor comments will remain part of the record unless the contractor revises them.

5. Instructions used in the FAPIIS will apply to both contracts and grants.

6. The system will be designed with an automatic notification to the contractor when new information is posted to the contractor's record.

**D. Proposed changes to the FAR.**

The Councils are proposing to amend FAR subparts 9.1, Responsible Prospective Contractors; 9.4, Debarment, Suspension, and Ineligibility; and Part 52, Solicitation Provisions and Contract Clauses, as well as making conforming changes in Part 12, to implement this rule as follows:

1. *Contracting officer determination of non-responsibility:*

a. FAR 9.105-2(a)(3) will require the contracting officer to enter into the FAPIIS data on contracts, including orders, over the simplified acquisition threshold if the contracting officer makes a final determination that the otherwise successful offeror is not a responsible source due to lack of satisfactory performance record or satisfactory record of integrity and business ethics.

b. FAR 9.104-3(d) will clarify the relationship of the non-responsibility determination and the Certificate of Competency (COC). When making a non-responsibility determination for a small business, the contracting officer must refer the matter to the Small Business Administration (SBA). If the SBA does not issue a COC, then the contracting officer, if the determination of non-responsibility was based on past performance or integrity and business ethics, must enter the determination into the FAPIIS.

2. *Terminations.*

Terminations for default or cause under this proposed rule are not covered in detail because FAR Case 2008-016, Termination for Default Reporting, is in process to extend the Defense Federal Acquisition Regulation Supplement (DFARS) requirement for the contracting officer to report contract terminations for default or cause into a common data base (CPAR/PPIRS). The Councils will seek specific comments on terminations. Both FAR cases will be worked jointly.

3. *Administrative agreements.*

In some cases where the SDO determines that suspending or debarring a contractor is not in the Government's interest, the SDO can negotiate an administrative agreement with the contractor. This administrative agreement sets forth compliance actions that the contractor must take within a certain time frame in order to be determined presently responsible. SDOs will now have to enter data about administrative agreements into the FAPIIS. This requirement is added to FAR 9.406-3 and 9.407-3.

4. *Contractor information regarding responsibility matters.*

The law requires any person "with Federal agency contracts and grants valued in total greater than \$10,000,000" to input information required for inclusion in the information system. A new provision at 52.209-XX is added which requires an offeror to identify if it has cumulative active Federal contracts and grants with a total value (including any options) greater than \$10 million. This is prescribed where the contract is expected to exceed \$500,000.

If the offeror has more than \$10 million in current contracts and grants, then the offeror must go to the FAPIIS website (to be specified) and provide information on any of the occurrences required to be reported in the information system. (Section 872, paragraph (f)).

5. *Contracting officer utilization of the information system and other past performance information.*

Procedures are provided for contracting officer access to the information system and utilization of the information. The Councils are committed to avoiding de facto debarments. The procedures emphasize that certain past information in the system may no longer be relevant to a determination of present responsibility. It is recommended that a statement to this effect be posted on the screen when the contracting officer accesses the information.

If the contracting officer does obtain relevant information that has not already resulted in suspension or debarment, the contracting officer must promptly—

- Contact the offeror to request additional information such as the offeror deems necessary in order to demonstrate responsibility;

- Notify, prior to proceeding with award, in accordance with agency procedures, the agency official responsible for initiating debarment or suspension action, if the information appears appropriate for that official's consideration.

- Document the file as to how the information was considered in any responsibility determination.

#### 6. *Applicability to commercial items.*

Given that section 872 was enacted to provide a source of information on integrity and past performance of contractors and grantees, but does not specifically mention applicability to commercial items despite 41 U.S.C. 430, the Councils expect that the FAR Council will determine that the rule should apply to contracts for commercial items, as defined at FAR 2.101.

#### 7. *Applicability to commercially available off-the-shelf (COTS) item contracts.*

Section 4203 of Public Law 104–106, the Clinger-Cohen Act of 1996 (41 U.S.C. 431), governs the applicability of laws to the procurement of COTS items and is intended to limit the applicability of laws to COTS acquisitions. The Clinger-Cohen Act provides that, if a provision of law contains criminal or civil penalties or if the Administrator for Federal Procurement Policy makes a written determination that it is not in the best interest of the Federal Government to exempt COTS item contracts, the provision of law will apply.

Therefore, given section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, the Councils expect that the Administrator for Federal Procurement Policy will determine that the rule should apply to COTS item contracts.

This proposed rule is a significant regulatory action and, therefore, is subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

#### E. Regulatory Flexibility Act

The Councils do not expect this proposed rule 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, *et seq.*, because the rule will only impact an offeror that has failed to meet the Government's performance requirements or standards for integrity and business ethics. The FAR already contains standards for present responsibility of offerors. This information system provides an additional source for contracting officers to use making a responsibility determination. The proposed rule only imposes an information collection requirement on small businesses that have total Government grants and contracts exceeding \$10 million. An

Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 9, 12, and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2008–027), in correspondence.

#### F. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the proposed rule contains information collection requirements. Accordingly, the Regulatory Secretariat will submit a request for approval of a new information collection requirement concerning Federal Awardee Performance and Integrity Information System to the Office of Management and Budget under 44 U.S.C. Chapter 35, *et seq.*

##### *Annual Reporting Burden:*

The proposed rule requires that for each solicitation of \$500,000 or more, the offeror respond whether it has, or has not, current contracts and grants under performance that total at least \$10,000,000. Only if the offeror responds affirmatively is there any further information collection requirement. Given that the amount of current Federal contracts and grants is basic knowledge for any firm, the estimated number of hours for this initial response is 0.1 hours. Using data from the Federal Procurement Data System—Next Generation (FPDS-NG), it is estimated that there will be approximately 12,000 - 14,000 contracts over \$500,000 each year. Estimating between five and six responses to each solicitation, there will be 80,000 responses annually to the question regarding contracts/grants exceeding \$10 million.

It is estimated that 5,000 contractors will answer the first question affirmatively and then will have to enter data into the website. We have used a burden estimate of 0.5 hours to enter the company's data into the website. This time estimate does not include the time necessary to maintain the company's information internally. Most large businesses and some small businesses probably have established systems to track compliance. Such systems would be required in any complex organization to obtain the significant reductions that we have built into estimates of subsequent response time. At this time, all or most Government contractors have entered relevant company data in the Central Contractor Registration (CCR) in

accordance with another information collection requirement. Therefore, the estimate includes an average of 100 hours per year for recordkeeping for each of the 5,000 respondents that will be required to provide additional information, for a total of 500,000 annual recordkeeping hours. The total annual reporting burden is estimated as follows:

Public reporting burden for this collection of information is estimated to average 0.15 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

*Respondents:* 8,000.

*Responses per respondent:* approx.

11.

*Total annual responses:* 90,000.

*Preparation hours per response:* approx. 0.15 hours.

*Response burden hours:* 13,000.

*Recordkeeping hours:* 500,000.

*Total burden hours:* 513,000.

#### G. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than October 5, 2009 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW, Room 4041, Washington, DC 20405.

Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the FAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requester may obtain a copy of the justification from the General Services Administration, Regulatory Secretariat (VPR), Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 9000–00XX, Federal Awardee Performance and Integrity Information System, in all correspondence.

**List of Subjects in 48 CFR Parts 9, 12, and 52**

Government procurement.

Dated: August 27, 2009.

**Al Matera,**

*Director, Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 9, 12, and 52 as set forth below:

1. The authority citation for 48 CFR parts 9, 12, and 52 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

**PART 9—CONTRACTOR QUALIFICATIONS**

2. Amend section 9.104–3 by revising paragraph (d)(1) to read as follows:

**9.104–3 Application of standards.**

\* \* \* \* \*

(d) *Small business concerns.* (1)(i) Upon making a determination of nonresponsibility with regard to a small business concern, the contracting officer shall refer the matter to the Small Business Administration, which will decide whether to issue a Certificate of Competency (see Subpart 19.6).

(ii) If the determination of nonresponsibility is based on lack of a satisfactory performance record or lack of a satisfactory record of integrity and business ethics and SBA does not issue a Certificate of Competency, the contracting officer shall promptly document the determination of nonresponsibility in the FAPIIS.

\* \* \* \* \*

3. Redesignate section 9.104–6 as section 9.104–7 and add a new section 9.104–6 to read as follows:

**9.104–6 Federal Awardee Performance and Integrity Information System.**

(a) Before awarding a contract (including an order under FAR Subparts 8.4, 13.3 or 16.5) in excess of the simplified acquisition threshold, the contracting officer shall review the Federal Awardee Performance and Integrity Information System (FAPIIS), (available at \_\_\_\_\_). (*Website should provide information on how to gain access, passwords, etc.*)

(b) The contracting officer shall consider all the information in the FAPIIS and other past performance information when making a responsibility determination or past performance evaluation. Since the FAPIIS may contain information covering a five year period, some of that information may no longer be relevant to a determination of present responsibility, e.g., a prior

administrative action such as debarment or suspension that has expired or otherwise been resolved.

(c) If the contracting officer obtains relevant information from the FAPIIS regarding criminal, civil, or administrative proceedings in connection with the award or performance of a Government contract (including an order); terminations for default or cause; or determinations of non-responsibility because the contractor does not have a satisfactory performance record or a satisfactory record of integrity and business ethics, the contracting officer shall, unless the contractor has already been debarred or suspended—

(1) Promptly request such additional information from the offeror as the offeror deems necessary in order to demonstrate the offeror's responsibility to the contracting officer (but see 9.405); and

(2) Notify, prior to proceeding with award, in accordance with agency procedures (see 9.406–3(a) and 9.407–3(a)), the agency official responsible for initiating debarment or suspension action, if the information appears appropriate for the official's consideration.

(d) The contracting officer shall document the file for each contract (including orders) in excess of the simplified acquisition threshold to indicate the manner in which the information in the FAPIIS or past performance evaluation was considered in any responsibility determination or past performance evaluation, as well as the action that was taken as a result of the information. A contracting officer who makes a nonresponsibility determination is required to enter that information into the FAPIIS in accordance with 9.105–2(a)(3).

4. Revise the newly redesignated section 9.104–7 to read as follows:

**9.104–7 Solicitation provisions.**

(a) The contracting officer shall insert the provision at 52.209–5, Certification Regarding Responsibility Matters, in solicitations where the contract value is expected to exceed the simplified acquisition threshold.

(b) The contracting officer shall insert the provision at 52.209–XX, Information Regarding Responsibility Matters, in solicitations where the resultant contract value is expected to exceed \$500,000.

5. Amend section 9.105–1 by revising the introductory text of paragraph (c); by removing paragraph (c)(1); and redesignating paragraphs (c)(2) through

(c)(6) as paragraphs (c)(1) through (c)(5). The revised paragraph reads as follows:

**9.105–1 Obtaining information.**

\* \* \* \* \*

(c) In making the determination of responsibility, the contracting officer shall consider relevant past performance information (see 9.104–1(c) and Subpart 42.15); the Excluded Parties List System maintained in accordance with Subpart 9.4; and the FAPIIS (if required in accordance with 9.104–6). In addition, the contracting officer should use the following sources of information to support such determinations:

\* \* \* \* \*

6. Amend section 9.105–2 by revising paragraph (a) to read as follows:

**9.105–2 Determinations and documentation.**

(a) *Determinations.* (1)(i) The contracting officer's signing of a contract constitutes a determination that the prospective contractor is responsible with respect to that contract, but see 9.104–6(d).

(ii) When an offer on which an award would otherwise be made is rejected because the prospective contractor is found to be nonresponsible, the contracting officer shall make, sign, and place in the contract file a determination of nonresponsibility, which shall state the basis for the determination.

(2) If the contracting officer determines that a responsive small business lacks certain elements of responsibility, the contracting officer shall comply with the procedures in Subpart 19.6. When a certificate of competency is issued for a small business concern (see Subpart 19.6), the contracting officer may accept the factors covered by the certificate without further inquiry.

(3) The contracting officer shall enter the determination of nonresponsibility in the FAPIIS if—

(i) The contract (including an order) is valued at more than the simplified acquisition threshold;

(ii) The determination of nonresponsibility is based on lack of satisfactory performance record or satisfactory record of integrity and business ethics; and

(iii) The Small Business Administration does not issue a certificate of competency.

\* \* \* \* \*

7. Amend section 9.406–3 by adding paragraph (f) to read as follows:

**9.406–3 Procedures.**

\* \* \* \* \*

(f) If the contractor enters into an administrative agreement with the Government in order to resolve a debarment proceeding, the debarment official shall access the website at \_\_\_\_\_ and enter the requested information.

8. Amend section 9.407-3 by adding paragraph (e) to read as follows:

**9.407-3 Procedures.**

\* \* \* \* \*

(e) If the contractor enters into an administrative agreement with the Government in order to resolve a suspension proceeding, the suspension official shall access the website at \_\_\_\_\_ and enter the requested information.

**PART 12—ACQUISITION OF COMMERCIAL ITEMS**

9. Amend section 12.301 by adding paragraph (d)(3) to read as follows:

**12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.**

\* \* \* \* \*

(d) \* \* \*

(3) Insert the provision at 52.209-XX, Information Regarding Responsibility Matters, as prescribed in 9.104-7(b).

\* \* \* \* \*

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

10. Amend section 52.209-5 by removing from the introductory paragraph the phrase “9.104-6” and adding “9.104-7(a)” in its place; and by revising the date of the provision and paragraph (a)(1)(B) to read as follows:

**52.209-5 Certification Regarding Responsibility Matters.**

\* \* \* \* \*

**CERTIFICATION REGARDING RESPONSIBILITY MATTERS (DATE)**

(a) \* \* \*

(1) \* \* \*

(B)(i) Have [ ] have not [ ], within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property (If offeror checks “have”, the offeror shall also see 52.209-XX).

\* \* \* \* \*

11. Add section 52.209-XX to read as follows:

**52.209-XX Information Regarding Responsibility Matters.**

As prescribed at 9.104-7(b), insert the following provision:

**INFORMATION REGARDING RESPONSIBILITY MATTERS (DATE)**

(a) *Definition.*

*Principal*, as used in this provision, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment; and similar positions).

*Federal contracts and grants with total value (including any options) greater than \$10,000,000* means—

(1) The value, at the time of their award, of the current, active contracts and grants, including all priced options; and

(2) The total value, at the time of their award, of all current, active orders under indefinite-delivery, indefinite-quantity, 8(a), or requirements contracts (including task and delivery and multiple-award schedules).

(b) The offeror [ ] has [ ] does not have current active Federal contracts and grants with total value (including any options) greater than \$10,000,000.

(c) If the offeror checked “has” in paragraph (b) of this provision, the offeror represents, by submission of this proposal, that its information in the Federal Awardee Performance and Integrity Information System (FAPIS) is current, accurate, and complete as of the date of submission of this proposal with regard to the following information:

(1) Whether the offeror, and/or any of its principals, has or has not, within the last five years, been involved in civil or criminal proceeding, or any administrative proceeding, in connection with the award to or performance by the offeror of a Federal or State contract or grant, to the extent that such proceeding resulted in any of the following dispositions:

(i) In a criminal proceeding, a conviction.

(ii) In a civil proceeding, a finding of fault and liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more.

(iii) In an administrative proceeding, a finding of fault and liability that results in—

(A) The payment of a monetary fine or penalty of \$5,000 or more; or

(B) The payment of a reimbursement, restitution, or damages in excess of \$100,000.

(iv) To the maximum extent practicable and consistent with applicable laws and regulations, in a criminal, civil, or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the Contractor if the proceeding could have led to any of the outcomes specified in subparagraphs (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this section.

(2) If the offeror has been involved in the last five years in any of the occurrences listed in (c)(1) of this section, whether the offeror has provided the requested information with regard to each occurrence.

(d) The offeror, if awarded a contract as a result of this solicitation, shall update the information in the FAPIS on a semi-annual basis, throughout the life of the contract.

(End of provision)

[FR Doc. E9-21174 Filed 9-2-09; 8:45 am]

BILLING CODE 6820-EP-S

**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

**49 CFR Part 367**

[Docket No. FMCSA-2009-0231]

RIN 2126-AB19

**Fees for the Unified Carrier Registration Plan and Agreement**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** This proposed rule would establish annual registration fees and a fee bracket structure for the Unified Carrier Registration (UCR) Agreement for the calendar year beginning on January 1, 2010, as required under the Unified Carrier Registration Act of 2005, enacted as Subtitle C of Title IV of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, as amended.

**DATES:** You must submit comments on or before September 18, 2009.

**ADDRESSES:** You may submit comments, identified by docket number FMCSA-2009-0231 and/or RIN 2126-AB19, by any of the following methods—Internet, facsimile, regular mail, or hand-deliver.

*Federal eRulemaking Portal:* Federal Docket Management System (FDMS) Web site at <http://www.regulations.gov>. The FDMS is the preferred method for submitting comments, and we urge you to use it. In the “Comment” or “Submission” section, type Docket ID Number “FMCSA-2009-0231”, select “Go”, and then click on “Send a Comment or Submission.” You will receive a tracking number when you submit a comment.

*Fax:* 1-202-493-2251.

*Mail, Courier, or Hand-Deliver:* U.S. Department of Transportation, Docket Operations (M-30), West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

*Docket:* Comments and material received from the public, as well as background information and documents mentioned in this preamble, are part of docket FMCSA-2009-0231, and are available for inspection and copying on the Internet at <http://www.regulations.gov>. You may also