

EPA APPROVED RHODE ISLAND REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
Air Pollution Control Regulation 32.	Control of VOCs from Marine Vessel Loading Operations.	4/8/96	12/2/99 [Insert FR citation from published date]	Definition of VOC revised. All of No. 32 is approved with the exception of Section 32.2.2 which the state did not submit as part of the SIP revision.
Air Pollution Control Regulation 33.	Control of VOCs from Architectural Coatings and Industrial Maintenance Coatings.	4/8/96	12/2/99 [Insert FR citation from published date]	Definition of VOC revised All of No. 33 is approved with the exception of Section 33.2.2 which the state did not submit as part of the SIP revision.
Air Pollution Control Regulation 35.	Control of VOCs and Volatile Hazardous Air Pollutants from Wood Products Manufacturing Operations.	7/7/96	12/2/99 [Insert FR citation from published date]	All of No. 35 is approved with the exception of Section 35.2.3 which the state did not submit as part of the SIP revision.
Air Pollution Control Regulation 36.	Control of Emissions from Organic Solvent Cleaning.	4/18/96	12/2/99 [Insert FR citation from published date]	All of No. 36 is approved with the exception of Section 36.2.2 which the state did not submit as part of the SIP revision.
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EPA APPROVED RHODE ISLAND SOURCE SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Explanations
Cranston Print Works	A. H. File No. 95-30-AP.	12/19/95	12/2/99 [Insert FR citation from published date]	Non-CTG VOC RACT Determination.
CCL Custom Manufacturing.	A. H. File No. 97-02-AP.	4/10/97 10/27/99	12/2/99 [Insert FR citation from published date]	Non-CTG VOC RACT Determination.
Victory Finishing Technologies.	A. H. File No. 96-05-AP.	5/24/96	12/2/99 [Insert FR citation from published date]	Alternative VOC RACT Determination.
Quality Spray and Stenciling.	A. H. File No. 97-04-AP.	10/21/97 7/13/99	12/2/99 [Insert FR citation from published date]	Alternative VOC RACT Determination.
Guild Music	A. H. File No. 95-65-AP.	11/9/95	12/2/99 [Insert FR citation from published date]	Alternative VOC RACT Determination.

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LEGAL SERVICES CORPORATION

45 CFR Part 1641

Debarment, Suspension and Removal of Recipient Auditors

AGENCY: Legal Services Corporation.
ACTION: Final rule.

SUMMARY: This rule implements a provision in the Legal Services Corporation's ("Corporation" or "LSC") fiscal year 1996 and subsequent fiscal year appropriations acts which authorized the Office of Inspector General ("OIG") to remove, suspend, or bar an independent public accountant,

upon a showing of good cause, from performing audit services . . . after notice to the auditor and an opportunity for hearing. This rule sets out the debarment, suspension and removal authority of the OIG and informs independent public accountants performing audit services for LSC recipients of their rights, and the standards that will apply, in connection with debarment, suspension and removal actions.

DATES: This final rule is effective January 3, 2000.

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SUPPLEMENTARY INFORMATION: The Corporation's fiscal year 1996 appropriations act authorized the LSC

Inspector General ("IG") to "remove, suspend, or bar an independent public accountant, upon a showing of good cause, from performing audit services . . . after notice to the auditor and an opportunity for hearing." Pub. L. No. 104-134, 110 Stat. 1321, § 509(d) (1996). This provision has continuing effect in fiscal years 1997, Pub. L. No. 104-208, 110 Stat. 3009, § 503(a) (1996) and 1998, Pub. L. No. 105-119, 111 Stat. 2440 (1997), and 1999, Pub. L. No. 105-277 (1998). In accordance with the statutory direction to "develop and issue rules of practice," 110 Stat. 1321, § 509(d), the OIG issues this rule. On September 11, 1998, the LSC Board of Directors' Operations and Regulations Committee held public hearings on proposed 45 CFR Part 1641. The proposed rule was published in the **Federal Register** on

February 5, 1999, was published on the OIG's website, and notification was sent to recipient auditors. No comments were received. The Committee again held public hearings on the proposed rule on April 16 and June 11, 1999. After making additional revisions to the rule, the Committee recommended that the Board adopt the rule as final, which the Board did on June 12, 1998.

Pursuant to Executive Order, the Federal government has a government wide system of suspension and debarment. The Executive Office of the President, Office of Management and Budget, has issued guidance setting forth procedures for agencies to follow in establishing procedures for making suspension and debarment decisions. Policy Letter 82-1. Based on this guidance, agencies have promulgated regulations, all substantially similar, implementing suspension and debarment. These regulations have been developed after extensive public comment and have withstood considerable judicial scrutiny. This rule is based on the government wide system, but includes some modifications based on the OIG's specific statutory authorization to debar, suspend and remove, and on the particular circumstances of independent public accountants and their relationship to LSC recipients.

Section-by-Section Analysis

Subpart A—General

Section 1641.1 Purpose/Applicability

Recipients are required by statute to have an annual audit conducted by an independent public accountant (IPA). In order to assist in ensuring that recipients receive acceptable audits, the OIG is authorized to debar, suspend and remove IPAs from performing audit services for recipients. This rule sets out that authority and informs IPAs of their rights, and the standards that will apply, in connection with debarment, suspension and removal actions.

This rule applies to IPAs performing audit services for all entities that receive LSC funds, including subrecipients. This is consistent with LSC's general policy extending the requirements and restrictions applicable to recipients to entities that receive transfers of LSC funds from recipients, see 45 CFR 1610.7, and with LSC's regulation governing subgrants, 45 CFR Part 1627, which requires subrecipients to obtain an audit in accordance with LSC's audit policy, 45 CFR 1627.3(c).

Section 1641.2 Definitions

This section defines the key terms used in the rule. Many of the terms are

defined in the rule as they are defined in the government wide system.

Paragraph (a) defines "adequate evidence," which is the standard of proof for imposing a suspension, as information sufficient to support the reasonable belief that a particular act or omission has occurred. This is a less stringent standard than "preponderance of the evidence," the standard applicable to debarment and removal actions. The courts have likened the adequate evidence standard to the probable cause standard for obtaining a search warrant. See *Electro-Methods, Inc. v. United States*, 728 F.2d 1471, 1473 (Fed. Cir. 1984); *Horne Brothers, Inc. v. Laird*, 463 F.2d 1268, 1271 (D.C. Cir. 1972). Under the Federal Acquisition Regulations (FAR), "[i]n assessing the adequacy of 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." 29 CFR 9.407-1(b)(1).

Paragraph (b) defines "audit services." This section has been modified from the proposed rule to expressly set out the elements of an annual financial statement audit. This is the audit required by section 509(a) of LSC's fiscal year 1996 appropriations act. Section 509 of the fiscal year 1996 appropriations act has been incorporated by reference in subsequent fiscal year appropriations acts and continues to be effective, see, e.g., Pub. L. No. 105-277 (1998). For ease of reference, this provision of law is hereinafter referred to as "section 509." Debarment, suspension and removal affects only the ability of recipients to hire an IPA to perform "audit services" as defined. Leaving aside the question of the wisdom of doing so, even if the IPA is debarred, suspended or removed, a recipient may hire the IPA to perform other services, such as, preparation of a tax return or setting up the recipient's accounting system. Of course, recipients should consider the fact of debarment, etc., when deciding whether to hire an IPA to perform such other services.

Paragraph (c) defines "contract" as an agreement between a recipient and an IPA for an IPA to provide audit services to the recipient. Debarment and suspension affects future contracts between a recipient and an IPA; removal affects existing contracts.

Paragraph (d) defines "conviction" as a judgment or conviction of a criminal offense by any court, whether entered upon a verdict or plea, including but not limited to pleas of *nolo contendere*. After some consideration, the

Committee decided that, in order to debar or remove an IPA, a conviction must be final, see sections 1641.7 and 1641.18. The conviction need not be final in order to suspend an IPA, see section 1641.13.

An IPA may be debarred suspended or removed if convicted of any offense indicating a breach of trust, dishonesty or lack of integrity, or conspiracy to do the same, by any court, whether federal, state, county or municipal. For examples of such offenses, see the discussion under section 1641.7(d) of this section-by-section analysis.

Paragraph (e) defines "debarment." Debarment is a decision by the debarring official to prohibit an IPA from soliciting or entering into new contracts to perform audit services for recipient(s). Debarment does not affect existing contracts between a recipient and an IPA. A debarment must be based on a finding, by a preponderance of the evidence, that any of the causes for debarment exist. Debarment may cover an IPA's contracts with all recipients or with one or more specific recipients.

Paragraph (f) defines "debarring official." This is the official responsible for debarment, suspension or removal actions. In the normal course, the OIG legal counsel will be the debarring official. The final rule eliminates the authority of the OIG legal counsel to designate another to act as the debarring official. Instead, the final rule provides the Inspector General with the discretion to appoint another OIG staff member or an individual outside the OIG as the debarring official. The Inspector General would designate someone other than legal counsel as the debarring official when there is no OIG legal counsel or when the OIG legal counsel, in the judgment of the Inspector General, should not serve as the debarring official because, for example, there exists a conflict of interest.

An issue was raised concerning whether the debarring official should in some cases be required to be an individual having no prior involvement in the matter, e.g., a neutral independent hearing examiner. Due process does not require this. See Note, *Moving Toward a Better-Defined Standard of Public Interest in Administrative Decisions to Suspend Government Contractors*, 36 Am. U. L. Rev. 693, n. 43 (citing *Schweiker v. McClure*, 456 U.S. 188, 195 (1982) (presuming hearing officers unbiased unless showing of specific reason for disqualification); *Withrow v. Larkin*, 421 U.S. 35, 47 (1975) (stating that combination of investigative and adjudicative function does not, without

more, create unconstitutional risk of bias); *Transco Sec., Inc. of Ohio v. Freeman*, 639 F.2d 318, 325 (6th Cir.) (holding high level administrative review satisfies due process, neutral judicial officer unnecessary), cert. denied, 454 U.S. 820 (1981)).

Paragraph (g) defines "indictment" for a criminal offense. This definition was modified to make clear that an information, presentment, or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment. An IPA may be suspended if indicted for any offense indicating a breach of trust, dishonesty or lack of integrity, or conspiracy to do the same.

Paragraph (h) defines "IPA." This definition was modified to clarify that IPA means either an individual independent public accountant or a firm of accountants.

Paragraph (i) defines "knowingly" to mean that an act was done voluntarily and intentionally and not because of mistake or accident. This term is used in the rule in the context of prohibiting recipients from knowingly awarding contracts to, extending or modifying existing contracts with, or soliciting proposals from IPAs that have been debarred or suspended.

Paragraph (j) defines "material fact" as one which is necessary to determine the outcome of an issue or case and without which the case could not be supported. In certain respects, whether material facts are in dispute determines the extent of the procedures afforded the IPA under the rule. For example, if the debarring official determines that the IPA's response to the notice of proposed debarment does not raise a genuine issue of material fact, the debarment proceeding will be conducted entirely by written submissions.

Paragraph (k) defines "person." The definition of this term was added to the final rule to clarify that the term, particularly in its use in the definition of "indictment," means an individual or a firm, partnership, corporation, association, or other legal entity.

Paragraph (l) defines "preponderance of the evidence," which is the standard of proof for imposing a debarment or removal, as proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not. This is a more stringent standard than "adequate evidence," the standard applicable to suspension actions.

Paragraph (m) defines "removal." Removal is a decision by the debarring official to prohibit an IPA from performing audit services in subsequent years of an existing contract. Suppose,

for example, that a recipient has entered into a contract with an IPA under which the IPA will perform an audit of the recipient for years 1, 2 and 3. If the IPA is conducting the year-1 audit of the recipient when the IPA is removed by the OIG, removal of the IPA will not prohibit the IPA from completing the year-1 audit. Removal will prohibit the IPA from conducting the year-2 and year-3 audits. Removal must be based on a finding, by a preponderance of the evidence that any of the causes for removal exist. Removal may cover an IPA's contracts with one or more recipients.

Paragraph (n) defines "suspension." This paragraph was modified in the final rule to clarify that suspension is a decision by the debarring official prohibiting an IPA from soliciting or entering into new contracts to perform audit services for recipient(s). Suspension does not affect existing contracts between recipients and IPAs. A suspension must be supported by adequate evidence. Suspension may preclude an IPA from soliciting or entering into new contracts with all recipients or with one or more specific recipients.

Section 1641.3 Scope of Debarment, Suspension and Removal

This section sets out the scope of debarment, suspension or removal; that is, the effect of such action on the IPA and, for example, the IPA's divisions and affiliates.

Debarment, suspension or removal of an individual IPA prohibits that IPA from performing audit services as an individual or as an employee, independent contractor, agent or other representative of an IPA firm.

This section has been reworded to clarify that a debarment, suspension, or removal shall have an impact on only those organizational elements of an IPA firm which were materially involved in the relevant engagement. Extending the debarment to other organizational elements would go beyond what is necessary to achieve the purposes of debarment, suspension or removal.

If there is a cause to debar, suspend, or remove, the OIG may include in its debarment, suspension or removal of an IPA firm any firm that is an affiliate, subcontractor, joint venturer, agent or representative of the IPA firm. An affiliate, etc., may be included in the decision only if such firm was materially involved in the relevant engagement and only if such affiliate, etc., was specifically named and given notice of the proposed action and an opportunity to respond.

Similarly, the OIG may include in its debarment, suspension or removal of an IPA firm the individual officer, director or partner responsible for the engagement, or an individual employee, independent contractor or agent, representative or other individual associated with the IPA firm. Such individuals may be included in the decision only if specifically named and given notice of the proposed action and an opportunity to respond. If not named in the decision, such individuals would be prohibited from performing audit services only as a representative of the debarred firm. Otherwise, such individuals are not prohibited from performing audit services.

Section 1641.4 Duration of Debarment, Suspension and Removal

This section provides that a debarment, suspension or removal only becomes effective after the IPA has been provided the opportunity to avail itself of the procedures outlined in this rule (notice and an opportunity to be heard) and a decision is issued by the debarring official.

Subsection (a) sets out the length of time that a debarment will be effective. Generally, a debarment should not exceed three years. Debarment may be effective for less than three years if appropriate after consideration of the evidence presented by the IPA. Debarment may exceed three years in extraordinary circumstances. A longer period may be appropriate, for example, if an IPA has been debarred by a Federal agency for a longer period, see section 1641.7(b), or if an IPA has been convicted of an offense referred to in section 1641.7(d) and will be incarcerated for a period exceeding three years. If a suspension precedes a debarment, the suspension period will be considered in determining the debarment period and the debarment may be effective for less than three years.

After debarment for a specified period has been instituted, the debarring official may extend the debarment for an additional period if necessary to protect LSC funds. The debarment period may not be extended based solely on the facts and circumstances upon which the initial debarment was based, but must be based on new facts, not previously in the record, and will be effective only after the procedures outlined in the rule have been followed.

Subsection (b) defines the duration of suspension. A suspension is a temporary measure, which may be instituted while debarment proceedings are being conducted. This subsection has been modified in the final rule to

clarify that, if a cause for suspension exists, but an investigation or other legal or debarment proceedings should be completed prior to the initiation of a debarment, an IPA may be suspended pending the completion of such investigation or proceedings. This could occur, for example: pending completion of an investigation conducted by either the OIG or other authority, pending completion of a debarment proceeding conducted by a Federal agency, pending the outcome of a criminal prosecution, or pending the outcome of proceedings conducted by a sanctioning or licensing body with authority over IPAs, such as the American Institute of Certified Public Accountants (AICPA) or a State Board of Accountancy. If debarment proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated. However, if a law enforcement official, including the police or a prosecuting authority, an official from another OIG, a state licensing body or other organization with authority over IPAs, or a government agency requests an extension of the suspension in writing, the suspension may be extended. This subsection also has been modified to clarify that the OIG shall notify such officials or organizations of the suspension and of its pending termination. Unless a debarment has been initiated, a suspension may not be imposed for more than 18 months.

Subsection (c) defines the duration of removal. A removal is effective for the years remaining on the existing contract between the IPA and the recipient. Because removal affects existing contracts, there is an obvious concern that removal might cause financial harm to the recipient. Although current contracts between recipients and their IPAs may vary, the sample contract included as an appendix to the Audit Guide for Recipients and Auditors (Audit Guide) contains a provision which may be interpreted to allow the recipient to end its relationship with the IPA in the event of removal, see Audit Guide, Appendix B. To clearly address removal (and recognize debarment and suspension), the OIG intends to notify recipients that contracts with IPAs should specifically address this potentiality. In the meantime, if a removal action is considered against an IPA with a current contract that does not include such a term, the OIG will consider this when contemplating removal of the IPA.

Subpart B—Debarment

Section 1641.5 Debarment

The OIG may debar an IPA from performing audit services to all recipients or may debar an IPA from performing audit services for one or more specific recipients. This section informs the IPA and recipients of the effect of both types of debarment. Recipients are prohibited from knowingly awarding contracts to, extending or modifying existing contracts with, or soliciting proposals from debarred IPAs. Although IPAs debarred from providing audit services to selected recipients may contract with other recipients, the IPA must give prior written notice to the debarring official before providing such services to other recipients. In addition, the debarred IPA is required to provide prior written notice of the debarment to any recipient seeking its services. Minor clarifying changes were made to this section.

Section 1641.6 Procedures for Debarment

This section sets out the general procedures for debarment. The specific procedures are set out more fully in subsequent sections. The OIG shall provide an IPA with an opportunity to be heard prior to debarring the IPA. Such hearing will consist entirely of written submissions unless the debarring official finds that there is a genuine dispute of material fact. In addition, an informal meeting may be held between the debarring official and the IPA.

Section 1641.7 Causes for Debarment

The subsections in this section set out the causes for debarment. The causes are based on those set out in the government wide system, but have been modified to recognize the particular circumstances of IPAs performing audits of LSC recipients. The existence of a cause for debarment does not necessarily require that the IPA be debarred; the seriousness of the IPA's acts or omissions and any mitigating circumstances shall be considered in making any debarment decisions.

Subsection (a) allows the OIG to debar an IPA that has failed significantly to comply with government auditing standards established by the Comptroller General of the United States, generally accepted auditing standards and/or OIG audit guidance. Under section 509, LSC recipients are required to have audits conducted in accordance with guidance established by the OIG. Such guidance appears in the OIG Audit Guide, including the Compliance Supplement for Audits of

LSC Recipients, and audit bulletins issued by the OIG. The OIG audit guidance incorporates government auditing standards. Under the IG Act, the OIG is required to ensure that audits are conducted in accordance with government auditing standards (established by the Comptroller General). In determining whether there is a failure to comply with standards or OIG audit guidance, the OIG primarily will be concerned about the effect of the failure on the reliability of the audit report. Minor clarifying edits were made to this subsection.

Subsection (b) allows debarment when an IPA is currently debarred from contracting with any Federal agency or entity receiving Federal funds. This would include, for example, when the IPA has been debarred consistent with the government wide system for debarment. The proposed rule included suspension as well as debarment from government contracting as a cause for debarment. The Committee determined that a suspension was not a sufficient cause for debarment and deleted reference to suspension.

Subsection (c) allows debarment if the IPA's license to practice accounting has been revoked, terminated or suspended by a state licensing body or other organization with authority over IPAs.

Subsection (d) allows debarment if the IPA has been convicted of any offense indicating a breach of trust, dishonesty or lack of integrity, or conspiracy to do the same. Offenses indicating a breach of trust, dishonesty or lack of integrity include, for example, fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, making false claims, or receiving stolen property. This section has been modified: a conviction is a cause for debarment only if the conviction is final. A conviction is final when all appeals have been exhausted or the time for appeal has expired.

Subsection (e) allows debarment if the IPA has been found subject to a civil judgment for any action indicating a breach of trust, dishonesty or lack of integrity, or conspiracy to do the same. This section has been modified: a civil judgment is cause for debarment only when the judgment is final. A civil judgment is final when all appeals have been exhausted or the time for appeal has expired.

Section 1641.8 Notice of Proposed Debarment

This section sets out the information which must be included in the notice of proposed debarment sent to the IPA. Because the IPA will have a specified

time from receipt of the notice to respond, see section 1641.9, notice will be sent in a way that ensures that the OIG receives evidence of the IPA's receipt of the notice. Thus, for example, the OIG may send the notice via certified mail, return receipt requested, or via Federal Express, requiring that the recipient sign to evidence receipt, or by any other means that will provide evidence that the specific addressee has received the notice. Although the notice may be sent via electronic mail, that shall not be the only means by which notice is sent. Under this section, a copy of the notice is sent to any affected recipient and the recipient may comment on the proposed action within the time that the IPA has to respond under section 1641.9.

Section 1641.9 Response to Notice of Proposed Debarment

This section gives the IPA 30 days from receipt of the notice within which to respond. Such response must be in writing and should include information and argument in opposition to the proposed debarment. The response may request a meeting with the debarring official to permit the IPA to discuss issues of fact or law relating to the proposed debarment or to otherwise resolve the matter. Although the meeting shall take such form as the debarring official deems appropriate, the IPA may request an in person meeting. Any in person meeting shall be held at LSC headquarters. The meeting must be held within 20 days of the response. Under subsection (d), if the IPA fails to respond to the notice, this shall be deemed an admission of the existence of the cause(s) for debarment set out in the notice and an acceptance of the period of debarment, and the debarring official may enter a final decision without further proceedings. Minor clarifying edits were made to this section.

Section 1641.10 Additional Proceedings as to Disputed Material Facts

If the debarring official finds that the IPA's submission raises a genuine dispute of material fact and the action is not based on a conviction or civil judgment under section 1641.7(d) or (e), the IPA will be afforded an opportunity to appear (with counsel), submit documentary evidence, present witnesses, and confront any witnesses the OIG presents. When there is no genuine dispute of material fact, an evidentiary hearing is not warranted. In the case of a conviction or civil judgment, the facts underlying the conviction or civil judgment would have been fully adjudicated in another

forum and a hearing on those facts would be inappropriate. In addition, there should be no dispute about the existence of the conviction or civil judgment.

If, on the other hand, the debarring official finds that the IPA's submission does not raise a genuine issue of material fact, no such additional proceedings will be provided and the hearing shall be held entirely by written submissions (except to the extent a meeting is held under section 1641.9(c)).

If additional proceedings are to be held, the IPA shall be notified, and such notice shall identify the procedures under which the proceeding will be conducted. A transcribed record of such proceedings shall be prepared, with a copy provided to the IPA without cost. At the debarring official's discretion, disputed material facts may be referred to a fact finder for fact finding, analysis and recommendation. Such fact finder need not be a member of the OIG staff. Minor clarifying edits were made to this section.

Subpart C—Suspension

The sections in this subpart set out the causes, procedures and effect of a suspension. Suspension procedures are similar to those for debarment. However, the procedures have been streamlined by shortening the time periods and providing for a strictly show cause procedure, entirely by written submissions, except that an informal meeting may be held. Because suspension procedures are similar to debarment procedures, the proposed rule used incorporation by reference to the debarment procedures. After consideration, the Committee determined that in most cases, this either did not work or was not clear. Therefore, the final rule sets out the procedures more fully than did the proposed rule.

Section 1641.11 Suspension

The OIG may suspend an IPA from performing audit services to all recipients or may suspend an IPA from performing audit services for one or more specific recipients. This section informs the IPA and recipients of the effect of both types of suspension.

Section 1641.12 Procedures for Suspension

Before suspending an IPA, the OIG will provide a show cause hearing held entirely by written submissions (except that a meeting between the IPA and the debarring official may be held). The specific procedures are set out more fully in subsequent sections.

Section 1641.13 Causes for Suspension

The causes for suspension are similar to those for debarment. In a suspension, however, there must be adequate evidence that the cause(s) may exist, rather than a preponderance of the evidence that the cause(s) do exist as in debarment. In addition, an indictment for or conviction of the listed types of offenses, rather than a final conviction, is sufficient cause for suspension, as is the described type of civil judgment, whether or not the judgment is final. Finally, a suspension, rather than a debarment, from contracting with a Federal agency or entity receiving Federal funds is sufficient cause for suspension.

Section 1641.14 Notice of Proposed Suspension

The notice for suspension is similar to that for debarment. A suspension notice, however, includes a directive, returnable in 10 days, to show cause why a suspension should not be instituted.

Section 1641.15 Response to Notice of Proposed Suspension

The IPA's response to the notice of proposed suspension must be received within 10 days of receipt of the notice. The response should contain information similar to that discussed under section 1641.9 relating to debarment. Similar provisions allow for a meeting between the IPA and the debarring official and describe the effect of not responding. This section contains one modification. The Committee felt that, in order for a law enforcement or other official to prevent a meeting between the IPA and the OIG, a proceeding (including an investigation or other legal or debarment proceeding) involving the IPA should be pending, rather than merely contemplated.

Subpart D—Removal

Because removal procedures are similar to debarment procedures, the proposed rule used incorporation by reference to the debarment procedures. After consideration, the Committee determined that in most cases, this either did not work or was not clear. Therefore, the final rule sets out the procedures more fully than did the proposed rule.

Section 1641.16 Removal

The OIG may remove an IPA from performing audit services for one or more recipients. This section informs the IPA and recipients of the effect of a removal. Removed IPAs are prohibited from performing audit services for subsequent years under an existing

contract. Recipients, moreover, are prohibited from extending existing contracts with removed IPAs. It is likely that the OIG would simultaneously debar (or prohibit the IPA from entering into future contracts with recipients) and remove the IPA, see section 1641.17(b). Absent complete debarment, IPAs removed from providing audit services to selected recipients may contract with other recipients. The IPA, however, must give prior written notice to the debarring official before providing such services to other recipients. In addition, the removed IPA is required to provide prior written notice of the removal to any recipient seeking its services.

Section 1641.17 Procedures for Removal

This section sets out the general procedures for removal. The specific procedures are set out more fully in subsequent sections. The OIG shall provide an IPA with an opportunity to be heard prior to removing the IPA. Such hearing will be held entirely by written submissions unless the debarring official finds that there is a genuine dispute of material fact. In addition, an informal meeting may be held between the debarring official and the IPA. This section also puts IPAs on notice that a Notice of Proposed Removal normally will be accompanied by a Notice of Proposed Debarment, and that the proceedings may be consolidated.

Section 1641.18 Causes for Removal

This section sets out the causes for removal. The causes for removal are the same as the causes for debarment (section 1641.7).

Section 1641.19 Notice of Proposed Removal

Notice required for removal is similar to that required for debarment (section 1641.8).

Section 1641.20 Response to Notice of Proposed Removal

The response to the notice of proposed removal should contain information similar to that which would be submitted in response to a notice of debarment. Unlike debarment, which may be effective for varying periods of time, a removal, by definition, is for the years remaining on an existing contract. The response to a notice of removal, therefore, will not include argument in mitigation of the period of removal, as it would in the case of debarment.

Section 1641.21 Additional Proceedings as to Disputed Material Facts

If the debarring official finds that the IPA's submission raises a genuine dispute of material fact and the action is not based on a conviction or civil judgment under section 1641.18(d) or (e), the IPA will be afforded an opportunity to appear (with counsel), submit documentary evidence, present witnesses, and confront any witnesses the OIG presents. When there is no genuine dispute of material fact, an evidentiary hearing is not warranted.

Subpart E—Decisions

Section 1641.22 Decisions of Debarring Official

This section provides information relevant to the debarring official's decision on debarment, suspension or removal.

Subsection (a) sets out the standard of proof for debarment and removal (preponderance of the evidence) and for suspension (adequate evidence).

Subsection (b) sets out the information that will be included in the administrative record, which will form the basis for the decision. This subsection has been modified in the final rule to remove redundancies and to make clear what the administrative record will consist of in cases in which additional proceedings under section 1641.10 or section 1641.21 are conducted.

Subsection (c) notifies IPAs that the failure of the OIG to meet a time requirement does not preclude the OIG from taking the debarment, suspension or removal action. This subsection has been modified to allow the OIG limited discretion to waive a time requirement placed on the IPA by this rule.

Subsection (d) sets forth the information that will be contained in the debarring official's decision. Among other things, this includes notifying the IPA that the decision will become a matter of public record. In the government wide system for suspension and debarment, the General Services Administration (GSA) is required to maintain and distribute a current list of all entities debarred or suspended by Federal agencies or by the General Accounting Office (GAO). Although we cannot include IPAs debarred by the OIG debar on this GSA list, the OIG plans to maintain a list of debarred, suspended and removed IPAs, to distribute the list to recipients, and to maintain the list on the OIG website.

Subsection (e) sets out the debarring official's authority to withdraw the notice of debarment, suspension or removal, where appropriate, or to

terminate the proceedings, and subsection (f) sets out the debarring official's authority to settle the action and to place appropriate conditions on the IPA.

Section 1641.23 Exceptions to Debarment, Suspension and Removal

In unique circumstances, when there are compelling reasons to use a particular IPA for a specific task, the recipient requiring such services may submit to the OIG a request to except the IPA from the effects of the debarment, suspension or removal. The Inspector General may provide an exception for a particular contract upon a written determination that a compelling reason exists for using the IPA in a particular instance. Under certain circumstances, a compelling reason may be that the recipient is in a rural area and there are no other IPAs within a reasonable distance from the recipient.

Section 1641.24 Appeal and Reconsideration of Debarring Official Decisions

This section allows for appeal or reconsideration of the debarring official's decision to debar, suspend or remove an IPA. The section has been modified in the final rule to make clear that if any relief is granted upon appeal or reconsideration, the relief shall be limited to that granted in the decision on appeal or reconsideration. The section also has been modified to make it consistent with the Committee's determination that an IPA may be debarred or removed based on a conviction or civil judgment only when the conviction or judgment is final. Thus, those subsections dealing with reconsideration based on the reversal of a conviction or civil judgment have been modified to make clear that this ground for reconsideration applies only to suspensions.

Appeals are decided by the Inspector General, who may uphold, reverse or modify the debarring official's decision. A written appeal may be filed by a debarred or removed IPA within 30 days of receipt of the decision and by a suspended IPA within 15 days of receipt. At his discretion, the Inspector General may stay the effect of the debarring official's decision pending the conclusion of review, after determining that a compelling reason to do so exists.

Requests for reconsideration are decided by the debarring official. Such requests must be in writing and supported by documentation justifying the action on reconsideration. Modification of the decision on

reconsideration is appropriate only in the circumstances set out in the rule.

List of Subjects in 45 CFR Part 1641

Accounting, Grant programs, Hearing and appeal procedures, Legal services.

For reasons set forth in the preamble, LSC amends Chapter XVI of Title 45 by adding part 1641 as follows:

PART 1641—DEBARMENT, SUSPENSION AND REMOVAL OF RECIPIENT AUDITORS

Subpart A—General

Sec.

1641.1 Purpose/Applicability.

1641.2 Definitions.

1641.3 Scope of debarment, suspension and removal.

1641.4 Duration of debarment, suspension and removal.

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1641.5 Debarment.

1641.6 Procedures for debarment.

1641.7 Causes for debarment.

1641.8 Notice of proposed debarment.

1641.9 Response to notice of proposed debarment.

1641.10 Additional proceedings as to disputed material facts.

Subpart C—Suspension

1641.11 Suspension.

1641.12 Procedures for suspension.

1641.13 Causes for suspension.

1641.14 Notice of proposed suspension.

1641.15 Response to notice of proposed suspension.

Subpart D—Removal

1641.16 Removal.

1641.17 Procedures for removal.

1641.18 Causes for removal.

1641.19 Notice of proposed removal.

1641.20 Response to notice of proposed removal.

1641.21 Additional proceedings as to disputed material facts.

Subpart E—Decisions

1641.22 Decisions of debarring official.

1641.23 Exceptions to debarment, suspension and removal.

1641.24 Appeal and reconsideration of debarring official decisions.

Authority: 42 U.S.C. 2996e(g); Pub. L. 105-277.

Subpart A—General

§ 1641.1 Purpose/Applicability.

In order to assist in ensuring that recipients receive acceptable audits, this part sets out the authority of the Legal Services Corporation (“LSC”) Office of Inspector General (“OIG”) to debar, suspend or remove independent public accountants (“IPAs”) from performing audit services for recipients. This rule informs IPAs of their rights to notice and an opportunity to be heard on actions involving debarment,

suspension or removal, and the standards upon which such actions will be taken. This part applies to IPAs performing audit services for recipients, subrecipients or other entities which receive LSC funds and are required to have an audit performed in accordance with guidance promulgated by the OIG.

§ 1641.2 Definitions.

Adequate evidence means information sufficient to support the reasonable belief that a particular act or omission has occurred.

Audit services means the annual financial statement audit of a recipient, including an audit of the recipient’s financial statements, systems of internal control, and compliance with laws and regulations.

Contract means an agreement between a recipient and an IPA for an IPA to provide audit services to the recipient.

Conviction means a judgment or conviction of a criminal offense by any court, whether entered upon a verdict or plea, including but not limited to, pleas of *nolo contendere*.

Debarment means a decision by the debarring official to prohibit an IPA from soliciting or entering into new contracts to perform audit services for recipient(s) based upon a finding by a preponderance of the evidence that any of the causes for debarment set out in § 1641.7 exist. Debarment may cover an IPA’s contracts with all recipients or with one or more specific recipients.

Debarring official is the official responsible for debarment, suspension or removal actions under this part. The OIG legal counsel is the debarring official. In the absence of an OIG legal counsel or in the discretion of the Inspector General, the debarring official shall be the OIG staff person or other individual designated by the Inspector General.

Indictment means a charge by a grand jury that the person named therein has committed a criminal offense. An information, presentment, or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

IPA means an independent public accountant or firm of accountants.

Knowingly means that an act was done voluntarily and intentionally and not because of mistake or accident.

Material fact means one which is necessary to determine the outcome of an issue or case and without which the case could not be supported.

Person means an individual or a firm, partnership, corporation, association, or other legal entity.

Preponderance of the evidence means proof by information that, compared

with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

Removal means a decision by the debarring official to prohibit an IPA from performing audit services in subsequent years of an existing contract with one or more specific recipients based upon a finding by a preponderance of the evidence that any of the causes set out in § 1641.18 exist.

Suspension means a decision by the debarring official, in anticipation of a debarment, to prohibit an IPA from soliciting or entering into new contracts to perform audit services for recipient(s) based upon a finding of adequate evidence that any of the causes referred to in § 1641.13 exist. Suspension may preclude an IPA from soliciting or entering into new contracts with all recipients or with one or more specific recipients.

§ 1641.3 Scope of debarment, suspension and removal.

An IPA may be debarred, suspended or removed under this part only if the IPA is specifically named and given notice of the proposed action and an opportunity to respond in accordance with this part.

(a) *Actions against individual IPAs.* Debarment, suspension or removal of an individual IPA, debar, suspends or removes that individual from performing audit services as an individual or as an employee, independent contractor, agent or other representative of an IPA firm.

(b) *Actions against IPA firms.* (1) Debarment, suspension or removal shall affect only those divisions or other organizational elements materially involved in the relevant engagement and as to which there is cause to debar, suspend or remove.

(2) The debarment, suspension or removal action contemplated in paragraph (b)(1) of this section may include any firm that is an affiliate, subcontractor, joint venturer, agent or representative of the IPA firm only if such firm was materially involved in the relevant engagement and is specifically named and given notice of the proposed action and an opportunity to respond in accordance with this part.

(3) The debarment, suspension or removal action contemplated in paragraph (b)(1) of this section may include an individual officer, director, or partner responsible for the engagement, or an individual employee, independent contractor, agent, representative or other individual associated with an IPA firm only if such individual is specifically named and given notice of the proposed action and

an opportunity to respond in accordance with this part.

§ 1641.4 Duration of debarment, suspension and removal.

A debarment, suspension or removal is effective as set out in the debarring official's decision to debar, suspend or remove, issued pursuant to § 1641.22.

(a) *Debarment.* (1) Debarment generally should not exceed three years, but may be for a shorter period based on a consideration of the evidence presented by the IPA. Debarment may exceed three years in extraordinary circumstances.

(2) If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(3) The debarring official may extend an existing debarment for an additional period if the debarring official determines, based on additional facts not previously in the record, that an extension is necessary to protect LSC funds. The standards and procedures in this part shall be applied in any proceeding to extend a debarment.

(b) *Suspension.* (1) The debarring official may determine that a cause for suspension exists, but that an investigation or other legal or debarment proceeding should be completed before proceeding to a debarment. Suspension shall be for a temporary period pending the completion of an investigation or other legal or debarment proceedings, including a proceeding conducted by the OIG, a law enforcement or other government agency, an investigative or audit official from another OIG, a court, or a state licensing body or other organization with authority over IPAs.

(2) If debarment proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an official or organization conducting a proceeding referred to in paragraph (b)(1) of this section requests its extension in writing. In such cases, the suspension may be extended up to an additional six months. In no event may a suspension be imposed for more than 18 months, unless debarment proceedings have been initiated within that period.

(3) The OIG shall notify the appropriate official or organization conducting a proceeding referred to in paragraph (b)(1) of this section, if any, of the suspension within 10 days of its implementation, and shall notify such official or organization of an impending termination of a suspension at least 30 days before the 12-month period expires to allow an opportunity to request an extension.

(4) The limit on the duration of a suspension in paragraph (b)(2) of this section may be waived by the affected IPA.

(c) *Removal.* Removal shall be effective for the years remaining on the existing contract(s) between the IPA and the recipient(s).

Subpart B—Debarment

§ 1641.5 Debarment.

(a) IPAs debarred from providing audit services for all recipients are prohibited from soliciting or entering into any new contracts for audit services with recipients for the duration of the specified period of debarment. Recipients shall not knowingly award contracts to, extend or modify existing contracts with, or solicit proposals from, such IPAs. Debarred IPAs also are prohibited from providing audit services to recipients as agents or representatives of other IPAs.

(b) IPAs debarred from providing audit services for one or more specific recipient(s) are prohibited from soliciting or entering into any new contracts for audit services with such recipient(s) for the duration of the period of debarment as determined pursuant to this part. The affected recipient(s) shall not knowingly award contracts to, extend or modify existing contracts with, or solicit proposals from, such IPAs. Debarred IPAs also are prohibited from providing audit services to the affected recipient(s) as agents or representatives of other IPAs, and are required to provide prior written notice to the debarring official before providing such services to other recipients. Debarred IPAs also must provide prior written notice of the debarment to any recipient for which the IPA provides audit services.

(c) IPAs debarred from providing audit services for one or more specific recipient(s) are prohibited from soliciting or entering into any new contracts for audit services with such recipient(s) for the duration of the period of debarment as determined pursuant to this part. The affected recipient(s) shall not knowingly award contracts to, extend or modify existing contracts with, or solicit proposals from, such IPAs. Debarred IPAs also are prohibited from providing audit services to the affected recipient(s) as agents or representatives of other IPAs, and are required to provide prior written notice to the debarring official before providing such services to other recipients. Debarred IPAs also must provide prior written notice of the debarment to any recipient for which the IPA provides audit services.

§ 1641.6 Procedures for debarment.

Before debarring an IPA, the OIG shall provide the IPA with a hearing in accordance with the procedures set out in §§ 1641.7 through 1641.9. Such hearing shall be held entirely by written submissions, except:

(a) Additional proceedings shall be held under § 1641.10 if the debarring official finds there is a genuine dispute of material fact; and/or

(b) A meeting may be held under § 1641.9(c).

§ 1641.7 Causes for debarment.

The debarring official may debar an IPA from performing audit services in accordance with the procedures set forth in this part upon a finding by a preponderance of the evidence that:

(a) The IPA has failed significantly to comply with government auditing

standards established by the Comptroller General of the United States, generally accepted auditing standards and/or OIG audit guidance as stated in the OIG Audit Guide for Recipients and Auditors, including the Compliance Supplement for Audits of LSC Recipients, and in OIG Audit Bulletins;

(b) The IPA is currently debarred from contracting with any Federal agency or entity receiving Federal funds, including when the IPA has stipulated to such debarment;

(c) The IPA's license to practice accounting has been revoked, terminated or suspended by a state licensing body or other organization with authority over IPAs;

(d) The IPA has been convicted of any offense indicating a breach of trust, dishonesty or lack of integrity, or conspiracy to commit such an offense, and the conviction is final; or

(e) The IPA has been found subject to a civil judgment for any action indicating a breach of trust, dishonesty or lack of integrity, or conspiracy to take such action, and the judgment is final.

§ 1641.8 Notice of proposed debarment.

(a) Before debarring an IPA, the OIG shall send the IPA written notice of the proposed debarment. The notice shall be sent in a manner that provides evidence of its receipt and shall:

(1) State that debarment is being considered;

(2) Identify the reasons for the proposed debarment sufficient to put the IPA on notice of the conduct or transaction(s) upon which a debarment proceeding is based;

(3) Identify the regulatory provisions governing the debarment proceeding; and

(4) State that debarment may be for a period of up to three years or longer under extraordinary circumstances. If the OIG has determined that extraordinary circumstances warranting debarment in excess of three years may exist, the notice shall so state.

(b) A copy of the notice also shall be sent to the affected recipient(s), if any, which may comment on the proposed action in the time frame set out in § 1641.9.

§ 1641.9 Response to notice of proposed debarment.

(a) The IPA shall have 30 days from receipt of the notice within which to respond.

(b) The response shall be in writing and may include information and argument in opposition to the proposed debarment, including any additional specific information pertaining to the

possible causes for debarment, and information and argument in mitigation of the proposed period of debarment.

(c) The response may request a meeting with the debarring official to permit the IPA to discuss issues of fact or law relating to the proposed debarment, or to otherwise resolve the pending matters. Any such meeting shall take the form that the debarring official deems appropriate and shall be held within 20 days of the response. If the IPA requests an in person meeting, it shall be held at LSC headquarters.

(d) Failure to respond to the notice shall be deemed an admission of the existence of the cause(s) for debarment set forth in the notice and an acceptance of the period of debarment. In such circumstances, without further proceedings, the debarring official may enter a final decision stating the period of debarment.

§ 1641.10 Additional proceedings as to disputed material facts.

(a) In actions not based upon a conviction or civil judgment under § 1641.7 (d) or (e), if the debarring official finds that the IPA's submission raises a genuine dispute of material fact, the IPA shall be afforded an opportunity to appear (with counsel, if desired), submit documentary evidence, present witnesses, and confront any witnesses the OIG presents. If the debarring official finds that the IPA's submission does not raise a genuine issue of material fact, additional proceedings will not be provided. In such case, the hearing shall be held entirely by written submissions, except that a meeting may be held under § 1641.9(c).

(b) If the debarring official determines additional proceedings to be warranted, OIG shall notify the IPA. Such notice shall include notice of the procedures under which such proceedings shall be conducted.

(c) A transcribed record of any additional proceedings shall be prepared and a copy shall be made available to the IPA without cost.

(d) The debarring official may refer disputed material facts to a fact finder, who need not be a member of the OIG staff, for fact finding, analysis and recommendation.

Subpart C—Suspension

§ 1641.11 Suspension.

(a) IPAs suspended from providing audit services for all recipients are prohibited from soliciting or entering into any new contracts for audit services with recipients for the duration of the suspension. Recipients shall not knowingly award contracts to, extend or

modify existing contracts with, or solicit proposals from, such IPAs. Suspended IPAs also are prohibited from providing audit services to recipients as agents or representatives of other IPAs.

(b) IPAs suspended from providing audit services for one or more specific recipient(s) are prohibited from soliciting or entering into any new contracts for audit services with such recipient(s) for the duration of the period of suspension as determined pursuant to this part. The affected recipient(s) shall not knowingly award contracts to, extend or modify existing contracts with, or solicit proposals from, such IPAs. Suspended IPAs also are prohibited from providing audit services to the affected recipient(s) as agents or representatives of other IPAs, and are required to provide prior written notice to the debarring official before providing such services to other recipients. Suspended IPAs also must provide prior written notice of the suspension to any recipient for which the IPA provides audit services.

§ 1641.12 Procedures for suspension.

Before suspending an IPA, the OIG shall provide the IPA with a show cause hearing in accordance with the procedures set out in §§ 1641.13 through 1641.15. Such hearing shall be held entirely by written submissions, except that a meeting may be held under § 1641.15(c).

§ 1641.13 Causes for suspension.

The debarring official may suspend an IPA in accordance with the procedures set forth in this part upon adequate evidence that:

(a) A cause for debarment under § 1641.7 may exist;

(b) The IPA has been indicted for or convicted of any offense described in § 1641.7;

(c) The IPA has been found subject to a civil judgment described in § 1641.7(e), whether the judgment is final or not.

(d) The IPA has been suspended from contracting with a Federal agency or entity receiving Federal funds including when the IPA has stipulated to the suspension.

§ 1641.14 Notice of proposed suspension.

(a) Before suspending an IPA, OIG shall send it written notice of cause to suspend. Such notice shall:

(1) Include a directive to show cause, signed by the debarring official, which shall inform the IPA that unless the IPA responds within 10 days as provided in § 1641.15, a suspension will be imposed;

(2) Identify the reasons for the proposed suspension sufficient to put

the IPA on notice of the conduct or transaction(s) upon which a suspension proceeding is based;

(3) Identify the regulatory provisions governing the suspension proceeding; and

(4) State that, if imposed, the suspension shall be for a temporary period pending the completion of a investigation or other legal or debarment proceeding.

(b) A copy of the notice also shall be sent to the affected recipient(s), if any, who may comment on the proposed action in the time frame set out in § 1641.15.

§ 1641.15 Response to notice of proposed suspension.

(a) The IPA shall have 10 days from receipt of the notice within which to respond.

(b) The response shall be in writing and may include information and argument in opposition to the proposed suspension, including any additional specific information pertaining to the possible causes for suspension, and information and argument in mitigation of the proposed period of suspension.

(c) The response may request a meeting with the OIG official identified in the notice to permit the IPA to discuss issues of fact or law relating to the proposed suspension, or to otherwise resolve the pending matters.

(1) Any such meeting shall take such form as the debarring official deems appropriate and shall be held within 10 days of the response.

(2) No meeting will be held if a law enforcement official, an investigative or audit official from another OIG, a state licensing body or other organization with authority over IPAs, or a governmental agency has advised in writing that the substantial interest of a governmental unit would be prejudiced by such a meeting and the debarring official determines that the suspension is based on the same facts as the pending legal proceedings referenced by the law enforcement official.

(d) Failure to respond to the notice shall be deemed an admission of the existence of the cause(s) for suspension set forth in the notice and an acceptance of the period of suspension. In such circumstances, the OIG may proceed to a final decision without further proceedings.

Subpart D—Removal

§ 1641.16 Removal.

Removed IPAs are prohibited from performing audit services in subsequent years under an existing contract(s) with one or more specific recipients. The

affected recipient(s) shall not extend existing contracts with such IPAs. Removed IPAs also are prohibited from providing audit services to the affected recipient(s) as agents or representatives of other IPAs, and are required to provide prior written notice to the debarbing official before providing such services to other recipients. Removed IPAs also must provide prior written notice of the removal to any such recipient.

§ 1641.17 Procedures for removal.

(a) Before removing an IPA, the OIG shall provide the IPA with a hearing in accordance with the procedures set out in §§ 1641.18 through 1641.21. Such hearing shall be held entirely by written submissions, except:

(1) Additional proceedings shall be held under § 1641.21 if the debarbing official finds there is a genuine dispute of material fact; and/or

(2) A meeting may be held under § 1641.20(c).

(b) A Notice of Proposed Removal normally will be accompanied by a Notice of Proposed Debarment, and the proceedings may be consolidated.

§ 1641.18 Causes for removal.

The debarbing official may remove an IPA from performing audit services in accordance with the procedures set forth in this part upon a finding by a preponderance of the evidence that:

(a) The IPA has failed significantly to comply with government auditing standards established by the Comptroller General of the United States, generally accepted auditing standards and/or OIG audit guidance as stated in the OIG Audit Guide for Recipients and Auditors, including the Compliance Supplement for Audits of LSC Recipients, and in OIG Audit Bulletins;

(b) The IPA is currently debarred from contracting with any Federal agency or entity receiving Federal funds, including when the IPA has stipulated to such debarment;

(c) The IPA's license to practice accounting has been revoked, terminated or suspended by a state licensing body or other organization with authority over IPAs;

(d) The IPA has been convicted of any offense indicating a breach of trust, dishonesty or lack of integrity, or conspiracy to commit such an offense, and the conviction is final; or

(e) The IPA has been found subject to a civil judgment for any action indicating a breach of trust, dishonesty or lack of integrity, or conspiracy to take such action, and the judgment is final.

§ 1641.19 Notice of proposed removal.

(a) Before removing an IPA, the OIG shall send the IPA written notice of the proposed removal. The notice shall be sent in a manner that provides evidence of its receipt and shall:

(1) State that removal is being considered;

(2) Identify the reasons for the proposed removal sufficient to put the IPA on notice of the conduct or transaction(s) upon which a removal proceeding is based;

(3) Identify the regulatory provisions governing the removal proceeding; and

(4) State that removal shall be for the years remaining on the existing contract(s) between the IPA and the recipient(s).

(b) A copy of the notice also shall be sent to the affected recipient(s), if any, which may comment on the proposed action in the time frame set out in § 1641.20.

§ 1641.20 Response to notice of proposed removal.

(a) The IPA shall have 30 days from receipt of the notice within which to respond.

(b) The response shall be in writing and may include information and argument in opposition to the proposed removal, including any additional specific information pertaining to the possible causes for removal.

(c) The response may request a meeting with the debarbing official to permit the IPA to discuss issues of fact or law relating to the proposed removal, or to otherwise resolve the pending matters. Any such meeting shall take the form that the debarbing official deems appropriate and shall be held within 20 days of the response. If the IPA requests an in person meeting, it shall be held at LSC headquarters.

(d) Failure to respond to the notice shall be deemed an admission of the existence of the cause(s) for removal set forth in the notice and an acceptance of the removal. In such circumstances, without further proceedings, the debarbing official may enter a final decision removing the IPA.

§ 1641.21 Additional proceedings as to disputed material facts.

(a) In actions not based upon a conviction or civil judgment under § 1641.18(d) or (e), if the debarbing official finds that the IPA's submission raises a genuine dispute of material fact, the IPA shall be afforded an opportunity to appear (with counsel, if desired), submit documentary evidence, present witnesses, and confront any witnesses the OIG presents. If the debarbing official finds that the IPA's submission

does not raise a genuine issue of material fact, additional proceedings will not be provided. In such case, the hearing shall be held entirely by written submissions, except that a meeting may be held under § 1641.20(c).

(b) If the debarbing official determines additional proceedings to be warranted, OIG shall notify the IPA. Such notice shall include notice of the procedures under which such proceedings shall be conducted.

(c) A transcribed record of any additional proceedings shall be prepared and a copy shall be made available to the IPA without cost.

(d) The debarbing official may refer disputed material facts to a fact finder, who need not be a member of the OIG staff, for fact finding, analysis and recommendation.

Subpart E—Decisions

§ 1641.22 Decisions of debarbing official.

(a) *Standard of proof.* (1) A debarment or removal must be based on a finding that the cause or causes for debarment or removal are established by a preponderance of the evidence in the administrative record of the case.

(2) A suspension must be based on a finding that the cause or causes are established by adequate evidence in the administrative record of the case.

(b) The administrative record consists of any information, reports, documents or other evidence identified and relied upon in the Notice of Proposed Debarment, the Notice of Proposed Suspension, or the Notice of Proposed Removal, together with any relevant material contained in the IPA's response or submitted by an affected recipient. In the case of debarment or removal, when additional proceedings are necessary to determine disputed material facts, the administrative record also shall consist of any relevant material submitted or presented at such proceedings.

(c) Failure of the OIG to meet a time requirement of this part does not preclude the OIG from debarbing, suspending or removing an IPA. In extraordinary circumstances, the OIG may grant an IPA an extension of the time requirements set out in this part.

(d) *Notice of decisions.* IPAs shall be given prompt notice of the debarbing official's decision. A copy of the decision also will be sent to the affected recipient. If the debarbing official debar, suspends or removes an IPA, the decision shall:

(1) Set forth the finding(s) upon which the decision is based;

(2) Set forth the effect of the debarment, suspension or removal

action and the effective dates of the action;

(3) Refer the IPA to its procedural rights of appeal and reconsideration under § 1641.24; and

(4) Inform the IPA that a copy of the debarment official's decision will be a public document and the fact of debarment, suspension or removal will be a matter of public record.

(e) If the debarment official decides that a debarment, suspension, or removal is not warranted, the Notice may be withdrawn or the proceeding may be otherwise terminated.

(f) If the debarment official deems it appropriate, the debarment official may, at any time, settle by agreement with the IPA a debarment, suspension, or removal action. Such a negotiated settlement may include the imposition of appropriate conditions on the IPA.

§ 1641.23 Exceptions to debarment, suspension and removal.

Exceptions to the effects of debarment, suspension or removal may be available in unique circumstances, when there are compelling reasons to use a particular IPA for a specific task. Requests for such exceptions may be submitted only by the recipient requiring audit services. The Inspector General may except a contract from the effects of debarment, suspension or removal upon a written determination that a compelling reason exists for using the IPA in the particular instance.

§ 1641.24 Appeal and reconsideration of debarment official decisions.

(a) *Appeal and reconsideration generally.* A debarred, suspended or removed IPA may submit the debarment official's decision for appeal or reconsideration in accordance with this section. Within 60 days, IPAs shall be given notice of decisions on appeal and reconsideration. The relief, if any, granted upon appeal or reconsideration shall be limited to the relief stated in the decision on the appeal or reconsideration.

(b) *Appeal.* (1) A debarred, suspended or removed IPA may appeal the decision to the Inspector General, who may uphold, reverse or modify the debarment official's decision.

(2) The appeal shall be filed in writing:

(i) By a debarred or removed IPA, within 30 days of receipt of the decision;

(ii) By a suspended IPA, within 15 days of receipt of the decision.

(3) The Inspector General, at his or her discretion and after determining that a compelling reason exists, may stay the effect of the debarment, suspension or

removal pending conclusion of his or her review of the matter.

(c) *Reconsideration.* (1) A debarred, suspended or removed IPA may submit a request to the debarment official to reconsider the debarment, suspension or removal decision, reduce the period of debarment or removal, or terminate the suspension.

(2) Such requests shall be in writing and supported by documentation that the requested action is justified by:

(i) In the case of suspension, reversal of the conviction or civil judgment upon which the suspension was based;

(ii) Newly discovered material evidence;

(iii) Bona fide change in ownership or management;

(iv) Elimination of other causes for which the debarment, suspension or removal was imposed; or

(v) Other reasons the debarment official deems appropriate.

(3) A request for reconsideration of a suspension which was based a conviction, civil judgment, or sanction that has been reversed may be filed at any time.

(4) Requests for reconsideration based on other grounds may only be filed during the period commencing 60 days after the debarment official's decision imposing the debarment or suspension. Only one such request may be filed in any twelve month period.

(5) The debarment official's decision on a request for reconsideration is subject to the appeal procedure set forth in paragraph (b) of this section.

Dated: November 22, 1999.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel, Corporate Secretary.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 980519132-9315-03; I.D.022498F]

RIN 0648-AK49

Magnuson-Stevens Act Provisions; List of Fisheries and Gear, and Notification Guidelines

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS revises the list of authorized fisheries and fishing gear used in those fisheries (LOF) contained in 50 CFR 600.725(v). Effective December 1, 1999, no person or vessel may employ fishing gear or participate in a fishery in the exclusive economic zone (EEZ) not included in this LOF without giving 90 days' advance notice to the appropriate Fishery Management Council (Council) or, with respect to Atlantic highly migratory species (HMS), the Secretary of Commerce (Secretary).

DATES: Effective December 1, 1999.

ADDRESSES: Copies of the regulatory impact review for the final rule for this action can be obtained from Dr. Gary C. Matlock, Director, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Send comments regarding the collection-of-information requirements associated with this rule to the above address and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Mark Millikin, NMFS, (301) 713-2344.

SUPPLEMENTARY INFORMATION:

Background

Section 305(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1855(a)) requires the Secretary to publish in the **Federal Register**, after notice and an opportunity for public comment, a list of authorized fisheries under the authority of each Council and all fishing gear used in such fisheries in the EEZ, as well as the fisheries and fishing gear used in those fisheries under the authority of the Secretary of Commerce (Secretary) with respect to HMS. A fish, regardless of whether targeted, may be retained only if it is taken within a listed fishery, is taken with a gear authorized for that fishery, and is taken in conformance with all other applicable regulations. This LOF is based on information submitted by the Councils and by the Director, Office of Sustainable Fisheries, NMFS (Director), in the case of HMS, and upon public comments received.

On June 4, 1998, NMFS published a proposed LOF and invited public comment thereon (63 FR 30455). On January 27, 1999, NMFS by final rule published the LOF (64 FR 4030). On July 28, 1999, NMFS delayed the effectiveness of the LOF and invited additional public comments (64 FR 40781). This final rule revises the LOF