

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations issued under section 4958 of the Code. These regulations (REG-246256-96) appeared in the **Federal Register** (63 FR 41486), August 4, 1998, and in the Internal Revenue Bulletin (1998-34 IRB 9), August 24, 1998. No hearing was scheduled at the time of publication of the proposed regulations.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing, except that persons who did not file written comments within the time prescribed by the notice of proposed rulemaking (*i.e.*, November 2, 1998) will be permitted to make oral comments at the public hearing by submitting their requests to speak and outlines in a timely manner. Any persons who wish to present oral comments at the hearing on the proposed regulations should submit an outline of the oral comments/testimony to be presented at the hearing, as well as the time they wish to devote to each subject (signed original and eight (8) copies). Submissions must be received no later than February 24, 1999.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation, exclusive of the time consumed by the government panel in asking questions of the speaker and answers to those questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Federal Building more than 15 minutes before the hearing starts. Hearing times at the Los Angeles, California, videoconference site will be concurrent with the hearing in New Carrollton, Maryland (*i.e.*, 10 a.m. PDT).

Due to a limited seating capacity at the Los Angeles site, no more than 12 people may be accommodated at any one time in the videoconference room. Seating in the videoconference room will be made available based on the order of presentations. IRS personnel will be available at the Los Angeles videoconference site to assist speakers in using the videoconference equipment.

The IRS will prepare and provide at the hearing, free of charge, an agenda showing the scheduling of speakers. Testimony will begin with the speakers at the Los Angeles videoconference site

and conclude with presentations by the speakers in New Carrollton.

Cynthia Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 99-2585 Filed 2-4-99; 8:45 am]

BILLING CODE 4830-01-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-6231-2]

RIN 2060-AE94

Standards of Performance for New Stationary Sources: Volatile Organic Compound Emissions from the Synthetic Organic Chemical Manufacturing Industry Wastewater; Extension of Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of public comment period.

SUMMARY: The EPA is extending the public comment period on the supplement to the proposed rule for the Standards of Performance for New Stationary Sources: Volatile Organic Compound Emissions from the Synthetic Organic Chemical Manufacturing Industry Wastewater, which was published in the **Federal Register** on December 9, 1998 (63 FR 67988). The purpose of this notice is to extend the public comment period from February 9, 1999, to March 5, 1999, in order to provide commenters additional time to review the proposed rule.

DATES: Comments must be received on or before March 5, 1999.

ADDRESSES: Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (MC-6102), Attention, Docket No. A-94-32, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460. The docket is available for public inspection and for copying between 8:00 a.m. and 5:30 p.m. Monday through Friday at the above address, or by calling (202) 260-7548 or 260-7549. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed rule, contact Ms. Mary Tom Kissell, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, N.C., 27711. Her telephone number is (919) 541-4516. Her e-mail address is kissell.mary@epa.gov.

Dated: January 29, 1999.

Robert Perciasepe,

Assistant Administrator, OAR.

[FR Doc. 99-2789 Filed 2-4-99; 8:45 am]

BILLING CODE 6560-50-P

LEGAL SERVICES CORPORATION

45 CFR Part 1641

Debarment, Suspension and Removal of Recipient Auditors

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: This proposed 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. The Corporation solicits public comment on the rule in anticipation of adoption of a final rule.

DATES: Comments must be submitted on or before April 6, 1999.

ADDRESSES: Comments should be submitted to the Office of Inspector General, Legal Services Corporation, 750 First St. NE., 11th Floor, Washington, DC 20002-4250. Comments may be submitted by electronic mail (e-mail) to LTarantowicz@oig.lsc.gov.

FOR FURTHER INFORMATION CONTACT: Laurie Tarantowicz, Counsel, Office of Inspector General, (202) 336-8830, LTarantowicz@oig.lsc.gov.

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." Public Law 104-134, 110 Stat. 1321, § 509(d) (1996). This provision has continuing effect in fiscal years 1997, Public Law 104-208, 110 Stat. 3009, § 503(a) (1996) and 1998, Public Law 105-119, 111 Stat. 2440 (1997), and 1999, Public Law 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 proposed rule.

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 proposed 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 proposed 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 proposed rule applies to IPAs performing audit services for entities which receive LSC funds. LSC recipients and subrecipients are required to have an audit performed in accordance with guidance promulgated by the OIG. This is consistent with LSC's general policy extending the requirements and restrictions which apply to recipients to entities which 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 proposed rule. Many of the terms are defined in the proposed 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.

Paragraph (b) defines "audit services" as the annual financial statement audit of a recipient. This is the audit required by section 509(a) of LSC's fiscal year 1996 appropriations act. (As discussed above, 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., Public Law 105-277 (1998). For ease of reference, this provision of law is hereinafter referred to as "section 509.")

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 pleas of nolo contendere. 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 and removal actions. Under the proposed rule, the debarring official is the OIG legal counsel or person performing that function regardless of title or his or her designee. The IG may designate another staff person as the debarring official if the OIG legal counsel is unavailable.

Because the debarring official may be called upon to render judgment on

compliance with applicable auditing standards, some consideration was given to changing the debarring official from the OIG legal counsel to an OIG employee with professional experience in government auditing. Specifically, consideration was given to identifying the Assistant Inspector General for Audit (AIGA), a CPA, as the debarring official. The AIGA, however, will likely be the OIG official who initially identifies the facts giving rise to a possible cause for debarment and recommends that a debarment, suspension or removal action be pursued. The proposed rule identifies the OIG legal counsel as the debarring official because, weighing the two concerns, it was determined that fundamental fairness would require that the process allow for more reflection and some separation of the debarring official from the immediate audit work. Comments on this issue are specifically requested.

Paragraph (g) defines "indictment" for a criminal offense. An information 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," an independent public accountant.

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 proposed 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 proposed 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 "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 (l) 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 debarment exist. Removal may cover an IPA's contracts with one or more recipients.

Paragraph (m) defines "suspension." 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 based on a finding, by adequate evidence, that any of the causes for debarment may exist. Suspension may cover an IPAs 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.

Unless the decision is limited by its terms to specifically identified divisions or other organizational elements, debarment, suspension or removal of an IPA firm prohibits that firm and all its divisions and other organizational elements from performing audit services. The OIG intends to issue decisions which have an impact on only those organizational elements of an IPA firm which were materially involved in the relevant engagement because extending the debarment to other organization elements would go beyond what is necessary to achieve the purposes of debarment, suspension or removal.

In addition, 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. Such affiliates, 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 an individual officer director or partner responsible for the engagement, or an individual employee, independent contractor, 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 proposed 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. In addition, an IPA may be suspended in anticipation of the initiation of debarment proceedings, for example, upon conclusion of an investigation conducted by either the OIG or other authority, upon 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. 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 not 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 publish an amendment to the sample agreement. The OIG also believes it would be advisable to send out a notice to recipients when this rule becomes final suggesting that recipients attempt to modify existing contracts if possible, to specifically address removal. Such a term would be required in future contracts between recipients and their IPAs. 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.

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 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.

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 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).

Subsection (b) allows debarment when an IPA is currently debarred or suspended from contracting with any Federal agency or entity receiving Federal funds. This would include, for example, where the IPA has been debarred consistent with the government wide system for debarment.

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.

Subsection (e) allows debarment if the IPA has been found subject to a civil judgement for any action indicating a breach of trust, dishonesty or lack of integrity, or conspiracy to do the same.

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 1641.18, notice will be sent in such a way as to ensure that the OIG receives evidence of the IPA's receipt of the notice. 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, if requested, the meeting shall be an in person meeting 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.

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. Where 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 analysis and recommendation. Such fact finder need not be a member of the OIG staff.

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.

Section 1641.11 Suspension

A suspension is for a temporary period pending the completion of an investigation or other legal, administrative or debarment proceedings. This section applies section 1641.5, regarding debarment, to 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 the same as 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) exist as in debarment. In addition, an indictment for the listed types of offenses, rather than a conviction, is sufficient cause for suspension.

Section 1641.14 Notice of Proposed Suspension

The notice for suspension is the same as that for debarment, except a suspension notice 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 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.

Subpart D—Removal

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. Recipients 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 Notice of Proposed Removal; Response to Notice; Additional Proceedings

The notice, response and limited availability of additional proceedings are the same for removal as they are for debarment.

Subpart E—Decisions

Section 1641.18 Decisions of Debarring Official

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.

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.

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 which the OIG debars 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 1641.19 Exceptions to Debarment, Suspension and Removal

In unique circumstances, where 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 1641.20 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.

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 proposed 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 proposes to amend 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.

Subpart B—Debarment

- 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 Notice of proposed removal; response to notice; additional procedures.

Subpart E—Decisions

- 1641.18 Decisions of debarring official.
- 1641.19 Exceptions to debarment, suspension and removal.
- 1641.20 Appeal and reconsideration of debarring official decisions.

Authority: 42 U.S.C. 2996e(g); Pub. L. No. 105–277 (1998), incorporating by reference Pub. L. No. 104–208, § 503(a), 110 Stat. 1321, § 509(d) (1996).

Subpart A—General

§ 1641.1 Purpose/Applicability.

In order to assist in ensuring that recipients receive acceptable audits, this rule sets out the authority of the Legal Services Corporation (“LSC”) Office of Inspector General (“OIG”) to debar, suspend and 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 and 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.

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

(b) *Audit services* means the annual financial statement audit of a recipient.

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

(d) *Conviction* means a judgment or conviction of a criminal offense by any court, whether entered upon a verdict or plea including pleas of *nolo contendere*.

(e) *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 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.

(f) *Debarring official* is the official responsible for debarment, suspension and removal actions under this part. The OIG staff person performing the function of legal counsel or his or her designee is the debarring official. In the absence of an OIG legal counsel, the debarring official shall be the OIG staff person designated by the Inspector General.

(g) *Indictment* means an indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

(h) *IPA* means an independent public accountant.

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

(j) *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.

(k) *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.

(l) *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 referred to in § 1641.17 exist.

(m) *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 cover an IPA’s 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, debars, 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 of an IPA firm under this rule constitutes debarment, suspension or removal of all its divisions and other organizational elements, unless the decision is limited by its terms to one or more specifically identified divisions or other organizational elements.

(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 § 1641.18.

(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) Suspension shall be for a temporary period pending the completion of an investigation or other legal or debarment proceedings, including a proceeding conducted by 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 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 government agency requests its extension in writing. In such cases, the suspension may be extended for 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) OIG shall notify the appropriate official, state licensing body or other organization with authority over IPAs, or appropriate government agency, if any, 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. Providing such notification follows Federal policy.

(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 such recipient.

§ 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;

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

(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 do the same; 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 do the same.

§ 1641.8 Notice of proposed debarment.

(a) Before debarring an IPA, the OIG shall send it written notice of the proposed debarment. Such notice 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 such form as the debarring official deems appropriate and shall be held within 20 days of the response. If requested by the IPA, such meeting shall be an in person meeting 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 analysis and recommendation.

Subpart C—Suspension

§ 1641.11 Suspension.

(a) A suspension shall be for a temporary period pending the completion of an investigation or such other legal, administrative or debarment proceedings as may ensue.

(b) Section 1641.5 applies to a suspension action, except that the term “suspension” shall be substituted for the term “debarment.”

§ 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; or

(b) The IPA has been indicted for any offense described in § 1641.7.

§ 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 the information set out in § 1641.8, except the term “suspension” shall be substituted for the term “debarment”; and

(2) 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.

(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 pending or contemplated 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 debarring official before providing such services to other recipients. Debarred IPAs also must provide prior written notice of the removal to any such recipient.

§ 1641.17 Notice of proposed removal; response to notice; additional procedures.

(a) Sections 1641.6 through 1641.10 apply in the case of a removal action,

except the term “removal” shall be substituted for the term “debarment.”

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

Subpart E—Decisions

§ 1641.18 Decisions of debarring 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 the portion 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 material portions of the IPA's response and any relevant material submitted by an affected recipient. In the case of debarment, when additional proceedings are necessary to determine disputed material facts, the debarring official shall base the decision on the facts as found, together with consideration of any information and argument submitted by the IPA or an affected recipient and any other information in the administrative record.

(c) Failure of the OIG to meet a time requirement of this part does not preclude the OIG from debarment, suspending or removing an IPA.

(d) *Notice of decisions.* IPAs shall be given prompt notice of the debarring official's decision. A copy of the decision also will be sent to the affected recipient. If the debarring official debars, 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 § 1641.20; and

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

(e) If the debarring 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 debarring official deems it appropriate, the debarring 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.

§ 1641.19 Exceptions to debarment, suspension and removal.

Exceptions to the effects of debarment, suspension or removal may be available in unique circumstances, where 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.

§ 1641.20 Appeal and reconsideration of debarring official decisions.

(a) A debarred, suspended or removed IPA may submit the debarring 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.

(b) *Appeal.* (1) A debarred, suspended or removed IPA may appeal the decision to the Inspector General, who may uphold, reverse or modify the debarring 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 debarring 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) Reversal of the conviction or civil judgment upon which the debarment, suspension or removal 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 debarring official deems appropriate.

(3) A request for reconsideration based on the reversal of the conviction, civil judgment, or sanction 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 debarring official's decision imposing the debarment or suspension. Only one such request may be filed in any twelve month period.

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

Dated: February 2, 1999.

Victor M. Fortuno,
General Counsel.

[FR Doc. 99-2762 Filed 2-4-99; 8:45 am]

BILLING CODE 7050-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99-15, RM-9440]

Radio Broadcasting Services; Neihart, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Mountain West Broadcasting proposing the allotment of Channel 246C2 to Neihart, Montana, as that community's first local broadcast service. The channel can be allotted to Neihart without a site restriction at coordinates 46-56-18 NL and 110-44-18 WL. Canadian concurrence will be requested for the allotment of Channel 246C2 at Neihart.

DATES: Comments must be filed on or before March 22, 1999, and reply comments on or before April 6, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Victor A. Michael, President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, WY 82209.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of

Proposed Rule Making, MM Docket No. 99-15, adopted January 13, 1999, and released January 29, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857-3800, facsimile (202) 857-3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99-2755 Filed 2-4-99; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99-14, RM-9442]

Radio Broadcasting Services; Columbia Falls, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Mountain West Broadcasting proposing the allotment of Channel 276C3 to Columbia Falls, Montana, as that community's second FM broadcast service. The channel can be allotted to Columbia Falls without a site restriction at coordinates 48-22-30 NL and 114-10-54 WL. Canadian concurrence will be requested for the allotment of Channel 276C3 at Columbia Falls.

DATES: Comments must be filed on or before March 22, 1999, and reply comments on or before April 6, 1999.