

dollars. The values of COC₅₀, COC₉₀, and MC₅₀ in paragraph (j) of this section are expressed in December 2011 dollars. These values shall be adjusted for inflation to dollars as of January of the calendar year preceding the model year in which the NCP is first available by using the change in the overall Consumer Price Index, and rounded to the nearest whole dollar in accordance with ASTM E29–67 (reapproved 1980), Standard Recommended Practice for Indicating Which Places of Figures are to be Considered Significant in Specified Limiting Values. This method was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This document is available from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959, and is also available for inspection as part of Docket A–91–06, located at the U.S. EPA, Air and Radiation Docket and Information Center, 1301 Constitution Ave. NW., Room 3334, EPA West Building, Washington, DC 20004, (202) 202–1744 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>. This incorporation by reference was approved by the Director of the **Federal Register** on January 13, 1992. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the **Federal Register**.

* * * * *

(j) Effective in the 2012 and later model years, NCPs will be available for the following emission standard:

(1) Diesel heavy-duty engine oxides of nitrogen standard of 0.20 grams per brake horsepower-hour in § 86.007–11(a)(1)(i).

(i) For medium heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(1) COC₅₀: \$462.

(2) COC₉₀: \$682.

(3) MC₅₀: \$1,540 per gram per brake horsepower-hour.

(4) F: 1.30.

(5) UL: 0.5 grams per brake horsepower-hour.

(B) The following factor shall be used to calculate the engineering and development component of the NCP for the standard set forth in § 86.007–11(a)(1)(i) in accordance with § 86.1113–87(h): 0.009.

(ii) For heavy heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(1) COC₅₀: \$1,561.

(2) COC₉₀: \$1,919.

(3) MC₅₀: \$5,203 per gram per brake horsepower-hour.

(4) F: 1.23.

(5) UL: 0.5 grams per brake horsepower-hour.

(B) The following factor shall be used to calculate the engineering and development component of the NCP for the standard set forth in § 86.007–11(a)(1)(i) in accordance with § 86.1113–87(h): 0.004.

(2) Manufacturers may not generate emission credits for any pollutant from engines for which the manufacturer pays an NCP.

(3) The penalty shall be adjusted annually as specified in § 86.1113–87 with 2012 as the first year. Note that this means AAF₂₀₁₂ is equal to 1.

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BILLING CODE 6560–50–P

LEGAL SERVICES CORPORATION

45 CFR Parts 1606, 1618, and 1623

Termination, Limited Reductions in Funding, and Debarment Procedures; Recompensation; Enforcement; Suspension Procedures

AGENCY: Legal Services Corporation.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This Notice of Proposed Rulemaking (NPRM) proposes amendments to the Legal Services Corporation's regulations on termination procedures, enforcement, and suspension procedures.

DATES: Comments on the NPRM are due April 2, 2012.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Background

Introduction

The Legal Services Corporation (LSC) Act (the Act) provides general authority to the Corporation “to insure the compliance of recipients and their employees with the provisions of [the Act] and the rules, regulations, and guidelines promulgated pursuant to [the

Act].”¹ LSC's principal regulation discussing general enforcement authority and procedures is the Enforcement Procedures regulation at 45 CFR part 1618. In accordance with the requirements of part 1618, LSC uses a variety of enforcement tools, formal and informal, to ensure compliance. Among these are informal consultations and compliance training, on-site Case Service Report/Case Management System reviews, the imposition of Required Corrective Actions (RCAs), and the imposition of Special Grant Conditions (SGCs) at the beginning of a grant year. Several additional enforcement tools are provided for in LSC-adopted regulations and are available to the Corporation to address significant non-compliance by a recipient. In particular, LSC has adopted suspension procedures (45 CFR part 1623) and questioned-cost procedures (45 CFR part 1630). LSC has also adopted grant termination procedures (45 CFR part 1606) that provide for the termination of funding in whole or part in cases of a recipient's substantial noncompliance with LSC statutory or regulatory requirements and other policies, instructions, or grant terms and conditions. Under the grant-termination provisions, a reduction of five percent or more of a recipient's funding is considered a termination and can be implemented only in compliance with the termination procedures.² Reductions of funding of less than five percent are not considered terminations. In order to reduce a recipient's funding by less than five percent without using the 1606 termination procedures, additional procedures have to be established by rulemaking.³ LSC has not yet adopted regulations establishing such standards and procedures. LSC also has the authority under Part 1606 to debar recipients from eligibility to receive future grants.

The majority of LSC recipients are in substantial compliance with LSC requirements most of the time. When non-compliance occurs, recipients almost always work diligently and cooperatively with LSC staff to come promptly into compliance, but there have been exceptions. LSC is now considering adding enforcement tools to increase LSC's flexibility in addressing compliance issues.

LSC's consideration of the adoption of additional enforcement tools responds to concerns expressed by the Government Accountability Office

¹ LSC Act, section 2996e(b)(1)(A); 42 U.S.C. 1006(b)(1)(A).

² 45 CFR 1606.2(d).

³ 45 CFR 1606.2(d)(2)(v).

(GAO) in its report, *Legal Services Corporation: Improved internal controls needed in grants management and oversight*, GAO-08-37 (December 2007). In that report, the GAO noted that LSC has “limited options for sanctioning or replacing poor-performing recipients.” GAO-08-37 at 17. Indeed, as discussed at further length below, the existing enforcement mechanisms available to LSC are best suited to situations involving numerous and/or very significant violations, or to situations in which compliance issues are technical or minor. Consequently, several of LSC’s most potent existing enforcement mechanisms are not practicable in most instances and are therefore rarely used. Other, less onerous mechanisms are more practicable, but are largely dependent on the recipient’s cooperation. LSC does not have enforcement mechanisms well suited to violations or compliance issues in an intermediate range—material but not extreme, or multiple but not profuse, in situations where a recipient does not voluntarily take corrective action in a timely manner.

Existing Enforcement Mechanisms

LSC relies primarily on RCAs to remedy compliance problems. The LSC Office of Compliance and Enforcement (OCE) estimates that in approximately 90 percent of cases in which RCAs are imposed, recipients implement the RCAs on a timely and satisfactory basis. In approximately ten percent of the cases, however, a recipient fails to implement the required corrective actions in a timely or satisfactory manner.

In some instances in which recipients have failed to implement RCAs in a timely or satisfactory manner, LSC has imposed SGCs. Although SGCs may be substantively identical to the measures contained in RCAs, SGCs elevate the matter by formally incorporating the conditions into the recipient’s grant documents and ensure that the recipient’s Board Chair, who has to sign the SGCs, is aware of an ongoing problem. Although LSC has had some success with SGCs, LSC has also encountered instances in which a recipient that has failed to comply with an RCA has also failed to comply with an SGC. Moreover, SGCs have thus far only been imposed at the beginning of a grant year, impacting their availability and utility depending on the timing of a particular compliance situation.

In recent years, LSC has increasingly used short-term funding, that is, providing a grant for less than a year (e.g., month-to-month), to encourage compliance. But short-term funding can

be invoked only when a recipient is at the end of a grant term and competing for a new grant. Short-term funding can be destabilizing for a recipient, particularly if the recipient does not have significant non-LSC funding sources. Thus, although short-term funding can be a powerful enforcement mechanism, it is likely to be used only in limited situations.

Suspension of funding is another existing enforcement mechanism of limited utility. Suspension of funding is most effective to get a recipient to perform a specific action in a discrete period of time, such as providing access to records or adopting a new policy or procedure. Because suspension of funding can have significant effects on client service, it is generally not appropriate when the violation at issue cannot be “remedied” by future action (for example, the representation of an ineligible client in a closed matter cannot be “undone”). Even when suspension might be an appropriate tool, the current regulations cap the suspension period at 30 days, except for violations involving failure to provide the Office of Inspector General with an acceptable audit. In situations where LSC might otherwise have considered imposing a suspension, LSC has determined that the resources required to pursue the suspension process would not be well invested given that, under the current regulations, any funds withheld would have to be released to the recipient at the end of the 30-day suspension period, regardless of whether the violation had been remedied.

LSC has rarely invoked its most serious enforcement tools, termination and debarment. There are several reasons for this. First, in most instances termination and debarment are not warranted. But even in situations where such sanctions might be warranted, these tools are rarely used because of the protracted process and the extensive resources, both for LSC and the recipient, that these sanctions entail. In addition, LSC must carefully consider the disruption that termination would cause to client service in the recipient’s service area, particularly because a number of recipients have statewide service areas. Finding new providers is a significant challenge and serves as a disincentive for the Corporation to eliminate or disqualify existing grantees except under the most extreme circumstances.

The practical limitations on the suspension, termination, and debarment remedies have other important implications. Some violations are serious and significant even if the

recipient takes timely steps to ensure that the violations do not recur. In these situations, imposition of suspension, termination, or debarment may not be appropriate, but the imposition of a RCA may result in a perception that the recipient “got away with” the violation without a commensurate penalty.

In light of its experience with the existing enforcement mechanisms, LSC is proposing to amend its regulations at 45 CFR parts 1606, 1618, and 1623 to adopt standards and procedures for limited reductions in funding, to allow for the imposition of SGCs during a grant year, and to amend the maximum suspension period from 30 to 90 days. The proposed changes are discussed in greater detail below.

Amending Part 1606 To Include Standards and Procedures for Limited Reductions in Funding

The adoption of standards for a reduction in funding of less than five percent would provide LSC with additional flexibility in fashioning appropriate enforcement responses and obtaining recipient compliance. And when a reduction in funding of less than five percent is proposed, LSC should be able to use a less cumbersome process than the existing termination process, which applies to any funding reduction of five percent or more. In a few cases, a recipient has violated restrictions but a 1606 termination would have been excessive, and LSC has been without an available sanction commensurate with the nature of the violation. Recovery of expended funds through a questioned-cost proceeding, although a necessary and useful mechanism to ensure that recipient funds are used only as permitted, is in the nature of restitution and serves an essentially different purpose than a sanction such as a limited reduction in funding. Moreover, the amount of funds improperly expended may bear no relation to the seriousness of the violation and simply recovering them may, therefore, not be a remedy commensurate with the violation. In such cases, an intermediate sanction, such as a limited reduction in funding, could provide LSC with a meaningful and appropriate sanction to use to address the infraction. The option to impose a reduction in funding of less than five percent would also reduce the risk that a recipient’s client services or ability to implement corrective action would suffer due to a significant lack of resources.

Accordingly, LSC is proposing to add a new section to Part 1606 to implement procedures for the reduction of a recipient’s funding in an amount less than five percent of the recipient’s

current annual level of financial assistance. The proposed procedure is modeled on the suspension procedure in Part 1623, because those procedures provide a significant opportunity for recipient input and due process without being unduly complex.

Authority and Responsibility

The proposed § 1606.15(a)⁴ is an introductory paragraph setting forth a statement of LSC's authority to impose limited reductions in funding and LSC's responsibility to follow the procedures and requirements set forth in the section before doing so. LSC believes it is clear from the language of the proposed text that any reduction would be only for the particular grant year in which the reduction of funding is imposed. For example, if a recipient were in the second year of a three-year grant term and LSC imposed a two percent reduction in funding for that grant year, the reduction would affect the recipient's funds for that second year of the grant term only, and there would be no effect on the recipient's level of funding for the third year of the grant term.

Grounds and Criteria for Limited Reductions in Funding

Proposed paragraphs (b) and (c) address the permissible grounds and criteria for the imposition of a limited (less than five percent) reduction in funding. The proposed grounds for a limited reduction in funding are the same as those for both terminations and suspensions, although, as explained below, the procedures for a limited reduction would be less onerous. The proposed language also makes clear that the magnitude of a limited reduction in funding in a particular situation (e.g., one percent or three percent) will also be determined with reference to the same criteria. Any limited reduction in funding should be tailored to and commensurate with to the nature of the violation, and the proposed language is intended to reflect this expectation.

The Process for Limited Reductions in Funding

Proposed paragraphs (d) through (g) set forth the process LSC would follow to impose a limited (less than five percent) reduction in funding on a recipient and are based on the process set forth in § 1623.4 of the suspension rule. As noted above, LSC believes that the suspension procedures provide a straightforward procedure with a

significant opportunity for recipient input and due process. The provisions guarantee recipients written notice of proposed limited reductions in funding, include an explanation of the basis for the proposed reduction, along with the opportunity to provide a formal, written response. Recipients would also have an opportunity to request an informal, in-person meeting to resolve issues. LSC believes that the proposed procedures provide significant process protections to recipients without being nearly as resource-intensive and time-consuming as the formal hearing process used for terminations, and that the proposed protections are commensurate with the sanction of a funding reduction of less than five percent.

Other Conforming Amendments to Part 1606

LSC is proposing to amend the title of part 1606 to reference limited reductions in funding. Because a limited reduction in funding is not a termination, LSC believes that adding the reference to limited reductions in funding to the title of part 1606 is necessary for accuracy and will assist readers in locating the limited reduction in funding procedures in LSC's regulations. LSC is also proposing amendments to §§ 1606.2, "Definitions," and 1606.13, "Interim and termination funding; reprogramming," to harmonize these sections with the proposed new section.

First, LSC is proposing to amend § 1606.2(d)(2)(v), which specifies that a reduction in a recipient's funding of less than five percent is not a termination. That section currently provides that no such reduction shall be imposed except in accordance with regulations promulgated by the Corporation. Because LSC is now proposing to promulgate such regulations, LSC proposes to delete this sentence and substitute a cross-reference to the proposed new § 1606.15.

Second, LSC proposes to amend § 1606.3(b) to make clear that the magnitude of a termination of funding in a particular situation (e.g., five percent or twenty percent or a termination in whole) will be determined with reference to the criteria listed in this section. LSC believes that this expectation is implicit in the current regulation, and that any termination of funding should be tailored to and commensurate with the nature of the violation. LSC believes that the clarifying language reinforces this expectation and should be inserted here to be consistent with the proposed language in proposed new § 1606.15.

Third, LSC proposes to amend paragraphs (a), (b), and (d) of § 1606.13, "Interim and termination funding; reprogramming."⁵ Section 1606.13 currently addresses issues related to funding during and upon the conclusion of termination procedures and Corporation's use of funds recovered through a termination proceeding. LSC believes these provisions should be equally applicable in cases involving a limited reduction in funding. Accordingly, LSC proposes to amend paragraphs (a), (b), and (d) of § 1606.13 to include references to limited reduction in funding procedures pursuant to § 1606.15.

With respect to proposed paragraph (d), LSC is also proposing a substantive change. The current provision reflects the Corporation's longstanding policy that recovered funds are generally to be used in the service area which the funds originally supported, unless the Corporation exercises its discretion to reallocate the funds for some other basic field purpose, such as for making emergency or other special grants. Although this policy is appropriate in many cases involving recovered funds, in the case of limited reductions in funding and terminations, especially terminations in part, the funds are being recovered as a sanction against the recipient. As most service areas only have one recipient operating within them, a presumption or expectation that funds be returned to the same service area would imply a presumption toward or expectation of returning funds to the very recipient from which they had been taken as a sanction. It is highly likely that in such cases LSC would choose to exercise its discretion to reallocate the funds, so as to avoid returning the funds to the recipient from which they had been taken.⁶ It is therefore more appropriate for this section not to reflect any presumption or expectation and, instead, simply to give the Corporation discretion to reallocate the funds for basic field purposes.

Amending Part 1618 To Permit the Imposition of Special Grant Conditions During a Grant Year

LSC's current standard grant assurances (applicable to all recipients)

⁵ Amendment of paragraph (c) is not necessary because that paragraph addresses close-out funding, which applies only to circumstances involving a termination in whole.

⁶ It is more likely that in the case of a termination in whole that the Corporation would choose to exercise its discretion to return the recovered funds to the original service area to fund services by an interim or new recipient. In such a case, however, LSC would presumably be providing the funds to an entity other than the terminated recipient.

⁴ In accordance with **Federal Register** requirements, LSC is not quoting the proposed regulatory text language in this preamble. Readers are referred to the regulatory text section *supra*.

provide that SGCs may be imposed on a recipient prior to the awarding of a new grant or at the beginning of a new year of a multi-year grant term. The Corporation's experience has been that imposing SGCs is a particularly effective way of capturing a recipient's attention and securing compliance with LSC requirements. LSC believes it would be helpful to be able to impose SGCs on a recipient during the course of a grant year when a recipient has been found to be in violation of an applicable requirement. Such authority would make SGCs available whenever they might be necessary, rather than only at the beginning of a grant year, which may or may not correspond to the timing of the matter occasioning the SGC. Although this is an action LSC might be able to take without rulemaking, LSC is invoking the rulemaking process to provide an opportunity for public comment on this proposal.

Accordingly, LSC proposes to amend 45 CFR 1618.5 to add language providing that whenever there is substantial reason to believe that a recipient has persistently or intentionally violated the Act, or, after notice, has failed to take the appropriate remedial or disciplinary action to ensure compliance by its employees with the Act, and attempts at informal resolution have been unsuccessful, the Corporation may impose SGCs on the recipient during the grant year.

Amending Part 1623 To Increase Maximum Period of Suspension of Funding Pending Corrective Action

LSC is proposing to change the current maximum suspension limitation from 30 days to 90 days. Although section 1011(2) of the LSC Act provides that a suspension of financial assistance shall not be continued for longer than 30 days unless the recipient has been afforded reasonable notice and opportunity for a timely, full, and fair hearing conducted, when requested, by an independent hearing examiner, section 501(b) of LSC's FY 1998 appropriation legislation (which has been carried forth in each subsequent appropriation) expressly renders that provision inoperative. LSC is thus within its current statutory authority to increase the maximum suspension period through regulatory action. (Although it may appear irregular to adopt a regulation implementing a provision of law appearing in an appropriations act which, by its terms, is time-limited, there is ample precedent for this in the LSC context. LSC's authorizing legislation has not been amended since 1977, and since 1996 a

significant number of substantive restrictions and provisions superseding those in the LSC Act have been contained on a recurring basis in LSC's annual appropriations legislation. In order to comply with these provisions in a practical manner, LSC has adopted implementing regulations. This was the case with 1998 amendments to the suspension rule that LSC now proposes to further amend. See 63 FR 64646 (November 23, 1998).) As with limited reductions in funding, LSC believes that a longer potential maximum suspension period can be a useful option because of its expected deterrent effect (thereby enhancing the efficacy of non-monetary enforcement mechanisms) and as a meaningful enforcement tool in itself in the infrequent situations in which it would be needed.

The preamble to the current version of part 1606 explains that the 30-day limit was chosen to:

Reflect[] the presumption that a suspension of too long a duration would likely endanger a recipient's ability to continue service to its clients. A suspension is intended to be used for extraordinary circumstances when prompt intervention is likely to bring about immediate corrective action. The Corporation, therefore, should act quickly to determine that the problem is solved and is unlikely to reoccur, the appropriate corrective action has been taken, or initiate a termination process under part 1606.

63 FR 64646 at 64648 (Nov. 23, 1998). However, although the Corporation originally anticipated that proceeding to termination if a 30-day suspension was not successful in obtaining corrective action would be a practicable option, in practice that has not turned out to be the case (for the reasons discussed above). In addition because of the short duration of the current maximum suspension period, LSC has rarely actually imposed a suspension.⁷ Having the option of a longer term would make suspension a more practical option, and a 90-day cap would mitigate the concern about the potential effects of "a suspension of too long a duration" on client service expressed in the preamble quoted above. For example, a more practical suspension option would have been useful in a few situations in which recipients refused to provide LSC access to certain records. LSC believes that having had a more credible suspension option may have provided an incentive

⁷ The exception to this is in cases involving a recipient's failure to provide the Office of Inspector General with an acceptable audit. However, in these cases, the suspension term runs, as required by statute, until an audit is completed.

to those recipients to be more cooperative in producing these records.

LSC anticipates that the maximum 90-day suspension would be warranted only in rare cases, and would only seek to apply the minimum suspension period it believes would be necessary to result in the required corrective action being taken. Moreover, a recipient facing or subject to a suspension can forestall implementation or shorten the length of a suspension by taking the necessary actions to come into compliance. As is currently the case, full funding would be restored upon the timely and satisfactory implementation of all required corrective actions, or earlier at LSC's discretion if circumstances warranted (such as if the recipient were making regular and reasonable progress toward the implementation of corrective actions, even if not all actions had been completed, and if LSC determined that lifting the suspension was appropriate). Thus, although extending the maximum suspension period is an option with potentially significant consequences, LSC believes that the due process procedures that apply to the suspension process, combined with the fact that the recipient can take action that will terminate the suspension, provide adequate protection to recipients. LSC is of the opinion, however, that in situations where a suspension of longer than 90 days might be warranted, LSC other available sanctions (such as a reduction in funding as proposed herein or termination) would likely be as or more effective. LSC notes that Federal grant-making agencies are not limited to applying suspensions of funding to any particular maximum day limit.

For reasons set forth above, and under the authority of 42 U.S.C. 2996g(e), LSC proposes to amend 45 CFR chapter XVI as follows:

PART 1606—TERMINATION, LIMITED REDUCTION IN FUNDING, AND DEBARMENT PROCEDURES; RECOMPETITION

1. The authority citation for part 1606 continues to read as follows:

Authority: 42 U.S.C. 2996e(b)(1) and 2996f(a)(3); Pub. L. 105–199, 111 Stat 2440, Secs. 501(b) and (c) and 504; Pub. L. 104–134, 110 Stat. 1321.

2. The heading for part 1606 is revised to read as set forth above.

3. Amend § 1606.2 by revising paragraph (c) and adding paragraph (e) to read as follows:

§ 1606.2 Definitions.

* * * * *

(c) *Limited reduction in funding* means a reduction in funding of less than 5 percent of a recipient's current annual level of financial assistance imposed by the Corporation in accordance with § 1606.15 of this Part.

(e)(1) *Termination* means that a recipient's level of financial assistance under its grant or contract with the Corporation will be reduced in whole or in part prior to the expiration of the term of a recipient's current grant or contract. A partial termination will affect only the recipient's current year's funding, unless the Corporation provides otherwise in the final termination decision.

(2) A termination does not include:

(i) A reduction of funding required by law, including a reduction in or rescission of the Corporation's appropriation that is apportioned among all recipients of the same class in proportion to their current level of funding;

(ii) A reduction or deduction of LSC support for a recipient under the Corporation's fund balance regulation at 45 CFR part 1628;

(iii) A recovery of disallowed costs under the Corporation's regulation on costs standards and procedures at 45 CFR part 1630;

(iv) A withholding of funds pursuant to the Corporation's Private Attorney Involvement rule at 45 CFR part 1614; or

(v) A limited reduction of funding as defined in this paragraph.

4. Amend § 1603.3 by revising paragraph (b) introductory text to read as follows:

§ 1606.3 Grounds for a termination.

(b) A determination of whether there has been a substantial violation for the purposes of paragraph (a)(1) of this section, and the magnitude of any termination in whole or in part, will be based on consideration of the following criteria:

5. Amend § 1606.13 by revising paragraphs (a), (b), and (d) to read as follows:

§ 1606.13 Interim and termination funding; reprogramming.

(a) Pending the completion of termination or limited reduction in funding proceedings under this part, the Corporation shall provide the recipient with the level of financial assistance provided for under its current grant or contract with the Corporation.

(b) After a final decision has been made to terminate a recipient's grant or

contract or to impose a limited reduction in funding, the recipient loses all rights to the terminated or reduced funds.

(d) Funds recovered by the Corporation pursuant to a termination or limited reduction in funding shall be reallocated by the Corporation for basic field purposes at its sole discretion.

6. Add a § 1606.15 to read as follows:

§ 1606.15 Limited reductions of funding.

(a) The Corporation may, in accordance with the procedures and requirements set forth in this section, impose a limited reduction of funding by reducing a recipient's funding in an amount less than 5% of the recipient's current annual level of financial assistance.

(b) Grounds for limited reduction in funding. A limited reduction of funding may be imposed when the Corporation determines that termination in whole or in part of the recipient's grant is not warranted, but that there nevertheless has been a substantial violation by the recipient of an applicable provision of law, or a rule, regulation, guideline or instruction issued by the Corporation, or a term or condition of the recipient's current grant or contract with the Corporation.

(c) A determination whether there has been a substantial violation for the purposes of paragraph (b) of this section, and the magnitude of the limited reduction in funding, will be based on consideration of the criteria set forth in § 1606.3(b).

(d) When the Corporation has made a determination to impose a limited reduction in funding in accordance with this section, the Corporation shall provide a written determination to the recipient and the Chair of the recipient's governing body. The determination shall:

(1) State the grounds, the amount, and the effective date for the limited reduction in funding;

(2) Identify, with reasonable specificity, any facts or documents relied on as justification for the limited reduction in funding;

(3) Specify what, if any, corrective action the recipient can take to avoid the limited reduction in funding;

(4) Advise the recipient that it may request, within five business days of receipt of the determination, an informal meeting with the Corporation at which it may attempt to show that the limited reduction in funding should not be imposed; and

(5) Advise the recipient that, within 10 days of its receipt of the determination and without regard to

whether it requests an informal meeting, it may submit written materials in opposition to the limited reduction in funding.

(e) If the recipient requests an informal meeting with the Corporation, the Corporation shall designate the time and place for the meeting. The meeting shall occur within five business days after the recipient's request is received.

(f) If the recipient neither requests an informal meeting nor submits any written materials in opposition to the determination, the determination will be deemed effective at the end of the 10-day period following recipient's receipt of the determination.

(g) If an informal meeting is conducted and/or written materials are submitted by the recipient, the Corporation shall consider any written materials submitted by the recipient in opposition to the limited reduction in funding and any oral presentation or written materials submitted by the recipient at an informal meeting. After considering such materials, the Corporation shall decide within 30 days whether the limited reduction in funding should become effective and shall notify the recipient and the recipient's Board Chair in writing of its decision.

PART 1618—ENFORCEMENT PROCEDURES

7. The authority citation for Part 1618 continues to read as follows:

Authority: Secs. 1007(a)(8); 1006(b)(6); 1006(b)(4) (42 U.S.C. 2996f(a)(8); 2996e(b)(6); 29963(b)(4)).

8. Amend § 1618.5 by revising paragraph (b) to read as follows:

§ 1618.5 Duties of the Corporation.

(b) Whenever there is substantial reason to believe that a recipient has persistently or intentionally violated the Act, or, after notice, has failed to take the appropriate remedial or disciplinary action to ensure compliance by its employees with the Act, and attempts at informal resolution have been unsuccessful, the Corporation may proceed to suspend or terminate financial support to the recipient pursuant to the procedures set forth in parts 1623 and 1606, respectively; may impose Special Grant Conditions on the recipient during the grant year; or may take other action to enforce compliance with the Act.

PART 1623—SUSPENSION PROCEDURES

9. The authority citation for Part 1623 continues to read as follows:

Authority: 42 U.S.C. 2996e(b)(1); Pub. L. 104–134, 110 Stat. 1321, Sec. 509; Pub. L. 105–119, 111 Stat. 2440, Sec. 501(b).

10. Amend § 1623.4 by revising paragraph (e) to read as follows:

§ 1623.4 Suspension procedures.

* * * * *

(e) The Corporation may at any time rescind or modify the terms of the final determination to suspend and, on written notice to the recipient, may reinstate the suspension without further proceedings under this part. Except as provided in paragraph (f) of this section, the total time of a suspension shall not exceed 90 days, unless the Corporation and the recipient agree to a continuation of the suspension without further proceedings under this part.

* * * * *

Victor M. Fortuno,

Vice President & General Counsel.

[FR Doc. 2012–1984 Filed 1–30–12; 8:45 am]

BILLING CODE 7050–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648–BB56

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States; Amendment 18A

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

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS announces that the South Atlantic Fishery Management Council (Council) has submitted Amendment 18A to the Fishery Management Plan (FMP) for the Snapper-Grouper Fishery of the South Atlantic Region (Amendment 18A) for review, approval, and implementation by NMFS. The amendment proposes actions to update the current rebuilding strategy for black sea bass, modify the current system of accountability measures for black sea bass, limit effort in the black sea bass component of the snapper-grouper fishery, and improve fisheries data reporting in the for-hire sector of the snapper-grouper fishery.

DATES: Written comments must be received on or before April 2, 2012.

ADDRESSES: You may submit comments on the amendment identified by

“NOAA–NMFS–2011–0282” by any of the following methods:

- **Electronic submissions:** Submit electronic comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Mail:** Kate Michie, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.
- Instructions:** All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: <http://www.regulations.gov>, click on “submit a comment,” then enter “NOAA–NMFS–2011–0282” in the keyword search and click on “search”. To view posted comments during the comment period, enter “NOAA–NMFS–2011–0282” in the keyword search and click on “search”. NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

Electronic copies of Amendment 18A may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov>. Amendment 18A includes an Environmental Impact Statement, an Initial Regulatory Flexibility Analysis, a Regulatory Impact Review, and a Fishery Impact Statement.

FOR FURTHER INFORMATION CONTACT: Kate Michie, telephone: (727) 824–5305, or email: Kate.Michie@noaa.gov.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any fishery management plan or amendment to NMFS for review and approval, partial approval, or disapproval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, publish an announcement in the **Federal Register** notifying the public that the plan or amendment is available for review and comment.

The South Atlantic snapper-grouper fishery is managed under the FMP. The FMP was prepared by the Council and implemented by NMFS under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622.

Background

The primary purpose of Amendment 18A is to address derby fishing conditions in the black sea bass component of the snapper-grouper fishery by reducing effort in the fishery and reducing the rate of harvest to optimize use of the resource among fishery participants. Amendment 18A would also implement measures to update the current rebuilding strategy for black sea bass in response to the outcome a new stock assessment for the species, and improve data reporting in the for-hire sector of the snapper-grouper fishery.

Targeting of black sea bass has increased as restrictions are placed on other species, and black sea bass has been in a constant catch rebuilding plan since 2006, where the allowable catch is held steady as the stock rebuilds. Furthermore, as black sea bass rebuilds and the population size becomes larger, fish are being harvested at a faster rate. Due to these circumstances, the commercial and recreational annual catch limits (ACLs) have been met before the end of the fishing year for the past 3 fishing years, and the ACL closures have occurred earlier in each consecutive fishing year. In an effort to extend fishing opportunities further into the fishing season, the Council has approved several actions intended to reduce effort and the rate of harvest in the black sea bass segment of the snapper-grouper fishery.

To reduce effort in the commercial sector for black sea bass, Amendment 18A contains an action to establish a black sea bass pot endorsement program. In order to qualify for a black sea bass pot endorsement the following eligibility criteria must be met:

- (1) The permit holder must have a South Atlantic Unlimited Snapper-Grouper Permit that is valid (not expired) on the effective date of the final rule implementing Amendment 18A, if approved;
- (2) the South Atlantic Unlimited Snapper-Grouper Permit must have black sea bass landings with pot gear between January 1, 1999, and December 31, 2010, of at least 2,500 lb (1,134 kg), round weight; and
- (3) the South Atlantic Unlimited Snapper-Grouper Permit must have reported black sea bass landings with pot gear between January 1, 2008, and December 31, 2010. There are 31 South Atlantic Unlimited Snapper-Grouper Permit