

**§ 32.412**

**40 CFR Ch. I (7-1-00 Edition)**

**§ 32.412 Opportunity to contest suspension.**

(a) *Submission in opposition.* Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(1) If the respondent desires a hearing, it shall submit a written request to the suspending official within the 30-day period following receipt of the notice of suspension.

(2) [Reserved]

(b) *Additional proceedings as to disputed material facts.* (1) If the suspending official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents, unless:

(i) The action is based on an indictment, conviction or civil judgment, or

(ii) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(2) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

[53 FR 19196, 19204, May 26, 1988, as amended at 53 FR 19197, May 26, 1988]

**§ 32.413 Suspending official's decision.**

The suspending official may modify or terminate the suspension (for example, see § 32.320(c) for reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency. The decision shall be rendered in accordance with the following provisions:

(a) *No additional proceedings necessary.* In actions: based on an indictment, conviction, or civil judgment; in which there is no genuine dispute over material facts; or in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary or capricious or clearly erroneous.

(c) *Notice of suspending official's decision.* Prompt written notice of the suspending official's decision shall be sent to the respondent.

**§ 32.415 Period of suspension.**

(a) Suspension shall be for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings, unless terminated sooner by the suspending official or as provided in paragraph (b) of this section.

(b) If legal or administrative proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General or United States Attorney requests its extension in writing, in which case it may be extended for an additional six months. In no event may

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a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of an impending termination of a suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

### § 32.420 Scope of suspension.

The scope of a suspension is the same as the scope of a debarment (see § 32.325), except that the procedures of §§ 32.410 through 32.413 shall be used in imposing a suspension.

### § 32.430 Appeal.

(a) The suspension determination under § 32.413 shall be final. However, any party to the action may request the Director, Office of Grants and Debarment (OGD Director), to review the findings of the suspending official by filing a request with the OGD Director within 30 calendar days of the party's receipt of the suspension determination, or its reconsideration. The request must be in writing and set forth the specific reasons why relief should be granted.

(b) A review under this section shall be at the discretion of the OGD Director. If a review is granted, the suspending official may stay the effective date of a suspension order pending resolution of appeal. If a suspension is stayed, the stay shall be automatically lifted if the OGD Director affirms the suspension.

(c) The review shall be based solely upon the record. The OGD Director may set aside a determination only if it is found to be arbitrary, capricious, an abuse of discretion, or based upon a clear error of law.

(d) The OGD Director's subsequent determination shall be in writing and mailed to all parties.

(e) A determination under § 32.413 or a review under this section shall not be subject to a dispute or a bid protest under parts 30, 31, or 33 of this subchapter.

[53 FR 19197, May 26, 1988, as amended at 59 FR 50693, Oct. 5, 1994; 62 FR 47149, Sept. 8, 1997]

## Subpart E—Responsibilities of GSA, Agency and Participants

### § 32.500 GSA responsibilities.

(a) In accordance with the OMB guidelines, GSA shall compile, maintain, and distribute a list of all persons who have been debarred, suspended, or voluntarily excluded by agencies under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(b) At a minimum, this list shall indicate:

(1) The names and addresses of all debarred, suspended, ineligible, and voluntarily excluded persons, in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for each listing; and

(6) The agency and name and telephone number of the agency point of contact for the action.

### § 32.505 EPA responsibilities.

(a) The agency shall provide GSA with current information concerning debarments, suspension, determinations of ineligibility, and voluntary exclusions it has taken. Until February 18, 1989, the agency shall also provide GSA and OMB with information concerning all transactions in which EPA has granted exceptions under § 32.215 permitting participation by debarred, suspended, or voluntarily excluded persons.

(b) Unless an alternative schedule is agreed to by GSA, the agency shall advise GSA of the information set forth in § 32.500(b) and of the exceptions granted under § 32.215 within five working days after taking such actions.

(c) The agency shall direct inquiries concerning listed persons to the agency that took the action.

(d) Agency officials shall check the Nonprocurement List before entering covered transactions to determine whether a participant in a primary transaction is debarred, suspended, ineligible, or voluntarily excluded (Tel. #).