

rus plant in Pocatello, Idaho, into compliance with certain regulations contained in the federally approved Idaho State implementation plan (SIP) by July 1, 1979. Because the order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a delayed compliance order under the Clean Air Act (the act). If approved by EPA, the order will constitute an addition to the SIP. In addition, a source in compliance with an approved order may not be sued under the Federal enforcement or citizen suit provisions of the act for violations of the SIP regulations covered by the order. The purpose of this notice is to invite public comment on EPA's proposed approval of the order as a delayed compliance order.

DATE: Written comments must be received on or before August 28, 1978.

ADDRESSES: Comments should be submitted to Director, Enforcement Division, EPA, Region X, 1200 Sixth Avenue, Seattle, Wash. 98101. The State order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT:

John Pfander, EPA, Idaho Operations Office, 422 West Washington, Boise, Idaho 83702, 208 384-1450.

SUPPLEMENTARY INFORMATION: FMC Corp. operates an elemental phosphorus plant at Pocatello, Idaho. The order under consideration addresses emissions from the furnace stack scrubbers, the burden level, and ore crusher at the facility, which are subject to regulations E and F, rules and regulations for the control of air pollution in Idaho. The regulations limit the emissions of particulate matter, visible emissions, and fugitive dust, and is part of the federally approved Idaho State Implementation plan. The order requires final compliance with the regulation by July 1, 1979, through installation of secondary scrubbers on the furnace stacks. A medusa crossover system is to be installed for control of fugitive emissions. The source has consented to the terms of the order and has satisfied all increments due at this time.

Because this order has been issued to a major source of particulate emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a delayed compliance order under section 113(d) of the Clean Air Act (the act). EPA proposes

to approve the order because it satisfies the appropriate requirements of this subsection.

If the order is approved by EPA, source compliance with its terms would preclude Federal enforcement action under section 113 of the act against the sources for violations of the regulation covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provisions of the act (section 304) would be similarly precluded. If approved, the order would also constitute an addition to the Idaho SIP.

All interested persons are invited to submit written comments on the proposed order. Written comments received by the date specified above will be considered in determining whether EPA may approve the order. After the public comment period, the Administrator of EPA will publish in the **FEDERAL REGISTER** the Agency's final action on the order in 40 CFR Part 65.

The provisions of 40 CFR Part 65 will be promulgated by EPA soon, and will contain the procedure for EPA's issuance, approval, and disapproval of orders under section 113(d) of the act. In addition, part 65 will contain sections summarizing orders issued, approved, and disapproved by EPA. A prior notice proposing regulations for part 65, published at 40 FR 14878 (April 2, 1975), will be withdrawn, and replaced by a notice promulgating these new regulations.

(42 U.S.C. 7413, 7601.)

Dated: July 5, 1978.

DONALD P. DUBOIS,
Regional Administrator,
Region X.

(FR Doc. 78-20859 Filed 7-27-78; 8:45 am)

[6820-35]

LEGAL SERVICES CORPORATION

[45 CFR Part 1602]

FREEDOM OF INFORMATION ACT

Amendments to the Regulations

AGENCY: Legal Services Corporation.

ACTION: Proposed amendment.

SUMMARY: The Legal Services Corporation proposes to amend regulations issued in accordance with the Freedom of Information Act. The only substantive change would be in the fees charged for locating and reproducing materials requested under the act. The fees have been adjusted to reflect actual cost to the Corporation. Other changes are technical or stylistic in nature.

DATES: Comments must be received on or before September 11, 1978.

ADDRESS: Legal Services Corporation, 733 15th Street NW., Suite 700, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT:

Stephen S. Walters, 202-376-5113.

SUPPLEMENTARY INFORMATION: Section 1005(g) of the Legal Services Corporation Act, 42 U.S.C. 2996d(g) provides that the Corporation shall be subject to the provisions of the Freedom of Information Act, 5 U.S.C. 552.

A final regulation was published in the **FEDERAL REGISTER** on November 13, 1975 (40 FR 62847). The only substantive change the proposed amendment is in section 1602.13, *Fees*. These have been adjusted to reflect the actual charge to the Corporation of locating and reproducing materials requested under the Freedom of Information Act. The provisions of section 1602.13 authorizing waiver of fees under certain conditions remain in effect. Section 1602.8, *Regional Records Rooms* has been revised to show the addresses of the Corporation's regional offices as of June 15, 1978. The phrases to be deleted from the Definitions section are now included in Part 1600, the general Definitions section that was published on May 5, 1976 (41 FR 18511), and applies to all the regulations. The other changes are stylistic.

Accordingly, it is proposed that 45 CFR Part 1602 be revised to read as follows:

PART 1602—PROCEDURES FOR DISCLOSURE OR PRODUCTION OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT

- Sec.
- 1602.1 Purpose.
- 1602.2 Definitions.
- 1602.3 Policy.
- 1602.4 Index of Records.
- 1602.5 Central Records Room.
- 1602.6 Regional Records Rooms.
- 1602.7 Use of Records Rooms.
- 1602.8 Availability of Records on Request.
- 1602.9 Invoking Exemption to Withhold a Requested Record.
- 1602.10 Officials Authorized to Grant or Deny Requests for Records.
- 1602.11 Denials.
- 1602.12 Appeals of Denials.
- 1602.13 Fees.

AUTHORITY: Section 1005(g); 42 U.S.C. 2996d(g).

§ 1602.1 Purpose.

This Part prescribes the procedures by which records of the Legal Services Corporation may be made available pursuant to section 1005(g) of the Legal Services Corporation Act, 42 U.S.C. § 2996d(g), and the Freedom of Information Act, as amended in 1974, 5 U.S.C. 552

§ 1602.2 Definitions.

As used in this Part—

ance with paragraphs (b) and (c) of this section, unless it is determined that such records should be withheld and are exempt from mandatory disclosure under the FOIA and § 1602.9 of these regulations.

(b) *Requests.*

(1) A request will be acceptable if it identifies a record with sufficient particularity to enable officials of the Corporation to locate the record with a reasonable amount of effort. Requests seeking records within a reasonably specific category will be deemed to conform to the statutory requirement of a request which "reasonably describes" such records if professional employees of the Corporation who are familiar with the subject area of the request would be able, with a reasonable amount of effort, to determine which particular records are encompassed within the scope of the request, and to search for, locate, and collect the records without unduly burdening or materially interfering with operations because of the staff time consumed or the resulting disruption of files. If it is determined that a request does not reasonably describe the records sought as specified in this paragraph, the response denying the request on that ground shall specify the reasons why the request failed to meet the requirements of this paragraph and shall extend to the requesting party an opportunity to confer with Corporation personnel in order to attempt to reformulate the request in a manner that will meet the needs of the requesting party and the requirements of this paragraph.

(2) To facilitate the location of records by the Corporation, a requesting party should try to provide the following kinds of information, if known: (i) the specific event or action to which the record refers; (ii) the unit or program of the Corporation which may be responsible for or may have produced the record; (iii) the date of the record or the date or period to which it refers or relates; (iv) the type of record, such as an application, a grant, a contract, or a report; (v) personnel of the Corporation who may have prepared or have knowledge of the record; (vi) citations to newspapers or publications which have referred to the record.

(3) The Corporation is not required to create a record to satisfy a request for information. When the information requested exists in the form of several records at several locations, the requesting party should be referred to those sources if following the information would unduly burden or materially interfere with operations of the Corporation.

(4) All requests for records under this section shall be made in writing, with the envelope and the letter clearly

marked: "Freedom of Information Request." All such requests shall be addressed to the records officer at the headquarters of the Corporation or at any regional records office. Any request not marked and addressed as specified in this sub-paragraph will be so marked by Corporation personnel as soon as it is properly identified, and forwarded immediately to the records officer. A request improperly addressed will not be deemed to have been received for purposes of the time period set forth in paragraph (c) of this section until forwarding to the appropriate office has been effected. On receipt of an improperly addressed request, the records officer shall notify the requesting party of the date on which the time period commenced to run.

(5) A person desiring to secure copies of records by mail should write to the records officer at the headquarters in Washington, D.C. The request must identify the records of which copies are sought in accordance with the requirements of this paragraph, and should indicate the number of copies desired. Fees may be required to be paid in advance in accordance with § 1602.13. The requesting party will be advised of the estimated fee, if any, as promptly as possible. If a waiver of fees is requested, the grounds for such request should be included in the letter.

(c) The records officer, upon request for any records made in accordance with this Part, shall make an initial determination of whether to comply with or deny such request and dispatch such determination to the requesting party within 10 days (excepting Saturdays, Sundays, and legal public holidays) after receipt of such request, except for unusual circumstances in which case the time limit may be extended for not more than 10 working days by written notice to the requesting party setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. In determining whether to issue a notice of extension of time for a response to a request beyond the 10-day period, Corporation officials shall consult with the Office of the General Counsel. As used herein, "unusual circumstances" are limited to the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct

records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the Corporation having substantial subject matter interest therein.

(d) If no determination has been dispatched at the end of the 10-day period, or the last extension thereof, the requesting party may deem his request denied, and exercise a right of appeal in accordance with § 1602.12. When no determination can be dispatched within the applicable time limit, the records officer shall nevertheless continue to process the request. On expiration of the time limit, he shall inform the requesting party of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of his right to treat the delay as a denial and to appeal to the President in accordance with § 1602.12; and he may ask the requesting party to forego appeal until a determination is made.

(e) After it has been determined that a request will be granted, the Corporation will act with diligence in providing a substantive response.

§ 1602.9 Invoking Exemptions to Withhold a Requested Record.

(a) A requested record of the Corporation may be withheld from public disclosure only if one or more of the following categories exempted by the FOIA apply:

(1) Matter which is related solely to the internal personnel rules and practices of the Corporation;

(2) Matter which is specifically exempted from disclosure by statute;

(3) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(4) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the Corporation;

(5) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(6) Investigatory records compiled for enforcing the Act or any other law, but only to the extent that the production of such records would (i) interfere with enforcement proceedings, (ii) deprive a person of a right of a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful

national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel;

(b) In the event that one or more of the above exemptions applies, any reasonably segregable portion of a record shall be provided to the requesting party after deletion of the portions that are exempt. In appropriate circumstances, subject to the discretion of Corporation officials, it may be possible to provide a requesting party with: (1) A summary of information in the exempt portion of a record or (2) an oral description of the exempt portion of a record. In determining whether any of the foregoing techniques should be employed in accordance with this paragraph or whether an exemption should be waived in accordance with paragraph (c) of this section, Corporation officials shall consult with the Office of General Counsel. No requesting party shall have a right to insist that any or all of the foregoing techniques should be employed in order to satisfy a request.

(c) Records that may be exempted from disclosure pursuant to paragraph (a) of this section may be made available as a matter of discretion when disclosure is not prohibited by law, if it does not appear adverse to legitimate interests of the Corporation, the public, or any person.

§ 1602.10 Official authorized to grant or deny requests for records.

The General Counsel shall furnish necessary advice to Corporation officials and staff as to their obligations under this Part and shall take such other actions as may be necessary or appropriate to assure a consistent and equitable application of the provisions of this Part by and within the Corporation. Other officials of the Corporation shall consult with the General Counsel before denying request under this Part, or before granting requests for waiver or modified application of an exemption or for categories of documents which the General Counsel determines may present special or unusual problems. The General Counsel and, subject to consultation with him where required, the Records Officer, each Regional Director, and each Regional Records Officer are authorized to grant or deny requests under this Part.

§ 1602.11 Denials.

(a) A denial of a written request for a record that complies with the requirements of § 1602.8 shall be in writing and shall include the following:

(1) A reference to the applicable exemption or exemptions in § 1602.9(a) upon which the denial is based;

(2) An explanation of how the exemption applies to the requested records;

(3) A statement explaining why it is deemed unreasonable to provide segregable portions of the record after deleting the exempt portions;

(4) The name and title of the person or persons responsible for denying the request; and

(5) An explanation of the right to appeal the denial and of the procedures for submitting an appeal, including the address of the official to whom appeals should be submitted.

(b) Whenever the Corporation makes a record available subject to the deletion of a portion of the record, such action shall be deemed a denial of a record for purposes of paragraph (a) of this section.

(c) All denials shall be treated as opinions and shall be maintained and indexed accordingly, subject only to the necessity of deleting identifying details the release of which would constitute a clearly unwarranted invasion of personal privacy.

§ 1602.12 Appeals of denials.

(a) Any person whose written request has been denied is entitled to appeal the denial within 90 days by writing to the president of the Corporation at the headquarters in Washington, D.C. The envelope and letter should be clearly marked: "Freedom of Information Appeal." An appeal need not be in any particular form, but should adequately identify the denial, if possible, by describing the requested record, identifying the official who issued the denial, and providing the date on which the denial was issued.

(b) No personal appearance, oral argument, or hearing will ordinarily be permitted on appeal of a denial. Upon request and a showing of special circumstances, however, this limitation may be waived and an informal conference may be arranged with the president, or the president's specifically designated representative, for this purpose.

(c) The decision of the president on an appeal shall be in writing and, in the event the denial is in whole or in part upheld, shall contain an explanation responsive to the arguments advanced by the requesting party, the matters described in § 1602.11(a)(1)-(4), and the provisions for judicial review of such decision under section 552(a)(4) of the FOIA. The decision shall be dispatched to the requesting party within 20 working days after receipt of the appeal, unless an additional period is justified pursuant to § 1602.8(c) and such period taken together with any earlier extension does

not exceed 10 days. The president's decision shall constitute the final action of the Corporation. All such decisions shall be treated as final opinions under § 1602.5(b).

§ 1602.13 Fees.

(a) Information provided routinely in the normal course of doing business will be provided at no charge.

(b) The records officer may waive or reduce fees where special circumstances, including but not limited to the benefit of the general public, warrant. A records officer shall waive fees where the requesting party is indigent unless the fees would exceed \$25 and may waive or reduce fees for the request of an indigent where the fees would exceed \$25. These provisions will be subject to appeal in the same manner as appeals from denial under § 1602.12.

(c) There shall be no fee charged for services rendered by the Corporation pursuant to this part, unless the charges, as calculated in paragraph (e) of this section, exceed \$6.50. Where the charges are calculated to exceed \$6.50, the fee shall be the difference between \$6.50 and the calculated charges.

(d) Ordinarily, no fee shall be levied where the records requested are not provided or made available. However, if the time expended in processing the request is substantial, and if the requesting party has been notified of the estimated cost pursuant to paragraph (f) of this section, and has been specifically advised that it cannot be determined in advance whether any records will be made available, fees may be charged.

(e) The schedule of charges for services regarding the production or disclosure of the Corporation's records is as follows:

(1) Search for records and production of information based on the following schedule of direct labor charges: (a) Programmer = \$6.25/quarter hour; (b) Analyst = \$3.50/quarter hour and (c) Processor = \$1.50/quarter hour

(2) Computer time: Actual charges as incurred.

(3) Reproduction, duplication, or copying of records: \$0.10 per page.

(4) Reproduction, duplication, or copying of microfilm: Actual charge as incurred.

(5) Certification of true copies: \$ each.

(f) Where it is anticipated that the fee chargeable under this part will amount to more than \$25, and the requesting party has not indicated in advance his willingness to pay so high a fee, the requesting party shall be notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In such cases, request will not be deemed to have

been received until the requesting party is notified of the anticipated cost and agrees to bear it. Such a notification shall be transmitted as soon as possible, but in any event within 5 working days, giving the best estimate then available. The notification shall offer the requesting party the opportunity to confer with appropriate representatives of the Corporation for the purpose of reformulating the request so as to meet his needs at a reduced cost.

(g) Where the anticipated fee chargeable under this part exceeds \$25, an advance deposit of 25 percent of the anticipated fee may be required. Where a requesting party has previously failed to pay a required fee, an advance deposit of the full amount of the anticipated fee together with the fee then due and payable may be required.

(h) The Corporation reserves the right to limit the number of copies that will be provided of any document to any one requesting party, or to require that special arrangements for duplication be made in the case of bound volumes or other records representing unusual problems of handling or reproduction.

Alice Daniel,
General Counsel,
Legal Services Corporation.

(FR Doc 78 21099 Filed 7 27 78; 8 45 am)

[6820 35]

[43 CFR Part 1620]

PRIORITIES IN ALLOCATION OF RESOURCES

AGENCY: Legal Services Corporation.

ACTION: Proposed amendment.

SUMMARY: The Corporation proposes to revise its regulation concerning the priority-setting procedures for recipients who provide legal assistance. This proposal would require that recipients set priorities in a more systematic way and involve clients in every step. This rule is being proposed after the Corporation has considered public comments which were received in response to a previously published proposed rule.

DATES: Comments must be received on or before September 11, 1978.

ADDRESS: Legal Services Corporation, 733 15th Street NW., Suite 700, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT:

Stephen S. Walters, 202 376 5113.

SUPPLEMENTARY INFORMATION: Section 1007(a)(2)(C) of the Legal Services Corporation Act requires the Corporation to insure that recipients adopt procedures for determining and

implementing priorities in the allocation of their resources for the provision of legal assistance. Section 9(b)(1) of the 1977 amendments to the Legal Services Corporation Act requires that, in setting and implementing priorities, recipients take into account the relative needs of eligible clients "including particularly the needs for service on the part of significant segments of the population of eligible clients with special difficulties of access to legal services or special legal problems . . .". The elderly and handicapped are cited as examples of groups with such problems. The legislative history of this provision makes clear that it was not intended to establish a preference for certain groups of eligible clients. Rather, it is intended to insure that the needs of all significant segments of the client community are considered, and that the consideration addresses the need for expanded access to service as well as substantive problems.

A proposed amendment to part 1620 was published for comment on March 17, 1978 (43 FR 11241). Many of the comments received urged revision of the regulation to require recipients to approach the setting of priorities in a more systematic way, and to involve clients in every step. The Corporation recognizes the validity of these concerns and has made substantial revisions in response to them.

Some comments urged that an additional step be added to the priority-setting process, that is, a requirement that the views of clients be documented and a written statement of reasons be prepared whenever those reasons are departed from. Others view such a requirement as inconsistent with the draft's attempt to set out only the basic elements of priority-setting, leaving the details to be worked out by individual recipients in light of their particular needs. The documentation requirement is set forth in the bracketed provision 1620.2(d). The Corporation is particularly interested in receiving comments on the wisdom and helpfulness of including or excluding that section.

At present, Part 1620 reads as follows:

Sec.
1620.1 Purpose.
1620.2 Procedure.

AUTHORITY: Sec. 1007(a)(2); 42 U.S.C. 2996(a)(2).

Section 1620.1 Purpose. This Part is designed to insure that a recipient will allocate its resources in an economical and effective manner.

Section 1620.2 Procedure. (a) A recipient shall adopt procedures for establishing priorities in the allocation of its resources. The procedures adopted shall insure participation by clients and employees of the recipient, and shall provide opportunity for com-

ment by interested members of the public. Priorities shall be reviewed periodically.

(b) The following factors shall be among those considered in establishing priorities:

- (1) The resources of the recipient;
- (2) The population of eligible clients in the geographic area served by the recipient;
- (3) The availability of another source of free or low-cost legal assistance in a particular category of cases or matters;
- (4) The urgency of particular legal problems of the clients of the recipient; and
- (5) The general effect of the resolution of a particular category of cases or matters on persons least able to afford legal assistance in the community served.

The proposed revision of Part 1620 reads as follows:

PART 1620—PRIORITIES IN ALLOCATION OF RESOURCES

Sec.
1620.1 Purpose.
1620.2 Procedure.
1620.3 Review.

AUTHORITY: Sec. 1007(a)(2); 42 U.S.C. 2996(a)(2).

§ 1620.1 Purpose.

This Part is designed to insure that a recipient, through policies adopted by its governing body, takes into account the views of eligible clients, staff and other interested persons in establishing priorities for allocating its resources in an economical and effective manner, consistent with the purposes and requirements of the act and other provisions of Federal law.

§ 1620.2 Procedure.

(a) A recipient shall adopt procedures for establishing priorities in the allocation of its resources. The procedure adopted shall:

(1) Provide for an assessment of the needs of eligible clients in the geographic area served by the recipient, and their relative importance, based on comments from eligible clients solicited in a manner reasonably calculated to reflect the attitudes of all significant segments of the eligible client population. The assessment shall determine the need for outreach, training of the recipient's employees, and support services, as well as substantive legal problems; and

(2) Insure participation by all significant segments of the client community and the recipient's employees in the setting of priorities, in the development of the work plan required by subsection (c), and in the review required by section 1620.3, and provide the opportunity for comment by interested members of the public.

(b) The following factors shall be among those considered by the recipient in establishing priorities:

(1) The needs assessment described in subsection (a)(1) above;