Under this proposal, EPA's approval of the control strategy in this SIP revision would terminate automatically if the State does not fulfill its commitment within the nine month period specified. In addition, if the State does submit the required demonstration or SIP revision on time, EPA's approval of the control strategy in the current SIP would terminate upon EPA's determination that the demonstration or SIP revision submitted does not satisfy the requirements of the Clean Air Act or EPA's regulations.

Proposed Action on Sulfur Dioxide Strategy

Based upon the information currently available to EPA discussed above, the control strategy and emission limitations for the Kennecott smelter appear reasonably likely to attain and maintain the national standards for SO_2 in the nonattainment area. Therefore, EPA proposes to approve the revised plan conditioned upon satisfaction of the additional requirements discussed above. In addition, EPA is proposing to remove federally promulgated limits, for the Kennecott facility contained in 40 CFR 52.2325.

The requirements of Part D of the Clean Air Act will be satisfied for the Salt Lake County and Tooele County nonattainment area once SO_2 emission limits for the Kennecott smelter are finally approved. Therefore, final approval of this SIP revision would result in satisfaction of the requirements of Part D and would remove the Section 110(a)(2)(I) construction ban from the Salt Lake County and Tooele County nonattainment area.

Proposed Redesignations

The following facts are relevent to the appropriate Section 107 status:

(1) Measured data at the Magna and Beach monitoring sites in the lower elevation have not shown violations since 1981.

(2) There has been no definitive showing that all the off-company property in the elevated terrain has in fact reached attainment.

(3) It is EPA policy that nonattainment boundaries coincide with logical political boundaries whenever possible.

(4) The plan relies upon the 1200 foot stack which cannot now be given unqualified approval by EPA because of the uncertain status of the stack height regulations.

Until the issues listed above are resolved, EPA proposes to retain the nonattainment designation as it exists.

Interested persons are invited to comment on the revisions to the Utah SIP and EPA's proposed actions. Comments should be submitted to the address listed in the front of this notice.

Under Executive Order 12291, today's action is not "major". It has been submitted to the Office of Management and Budget for review.

Under 5 U.S.C. 605b, the Administrator has certified that SIP approvals/redesignations do not have a significant economic impact on a substantial number of small entities.

This notice of proposed rulemaking is issued under the authority of Sections 107 and 110 of the Clean Air Act (42 U.S.C. 7407 and 7410).

List of Subjects 40 CFR Part 52

Air Pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Air pollution control, National Parks, Wilderness areas.

Dated: March 12, 1984.

John G. Welles,

Regional Administrator.

[FR Doc. 84-7875 Filed 3-22-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 60

[AH-FRL 2551-1]

Standards of Performance for New Stationary Sources; Fossil-Fuel-Fired Steam Generators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Reopening of Public Comment Period.

SUMMARY: On October 21, 1983, revisions to the existing new source performance standards for large fossil-fuel-fired steam generating units constructed after August 17, 1971, (40 CFR Part 60, Subpart D) were proposed (48 FR 48960). These revisions would establish sulfur dioxide compliance, emission monitoring, and reporting requirements on a 30-day rolling average basis.

In response to several requests, additional materials were added to the docket for the proposed revisions. As a result, on January 17, 1984, the public comment period was reopened for 60 days (40 FR 1997).

Additionally, on March 6, 1984, the Natural Resources Defense Council requested that the public comment period be extended. As a result, the period for receiving written comments on the proposed revisions is being reopened for 30 days.

DATES: Comments on the proposed revisions are requested by (30 days from the date of today's notice.)

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Central Docket Section (LE-131), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C., 20460. Attention: Docket No. A-81-15.

Docket. Docket No. A-81-15 containing supporting information used in developing the proposed revisions is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, D.C., 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Porter or Mr. Walter Stevenson, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, N.C., 27711. Telephone: (919) 541-5624.

Dated: March 16, 1984.

Joseph A. Carman,

Assistant Administrator for Air and Radiation.

[FR Doc. 84-7877 Filed 3-22-84; 8:45 am]

BILLING CODE 6560-50-M

LEGAL SERVICES CORPORATION

45 CFR Part 1614

Private Attorney Involvement

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: This proposed rule adopts as a Corporation regulation Instruction 83-6: Attorney Involvement by Recipients of Funding, published in the **Federal Register** on November 29, 1983. This instruction provides direction to recipients of Legal Services Corporation funding on allocating amounts of the recipient's financial support from the Corporation to provide the opportunity for involvement of private attorneys in the delivery of legal assistance to eligible clients. The proposed rule formalizes the structures and procedures of the continued Corporation interest in private attorney involvement.

DATE: Comments must be received on or before April 23, 1984.

ADDRESS: Comments may be submitted to the Office of the General Counsel, Legal Services Corporation, 733 Fifteenth Street, NW. Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Richard N. Bagenstos, Assistant General Counsel, Office of the General Counsel, (202) 272–4010.

SUPPLEMENTARY INFORMATION: The proposed regulation sets forth the policy adopted by the Board of Directors on October 2, 1981, which requires that a substantial amount of recipient funds be made available to provide opportunities for involvement of private attorneys to deliver legal assistance to eligible clients. Implementation through both *pro bono* and compensated mechanisms is encouraged by the Corporation.

"Substantial amount" is defined as at least twelve and one-half percent of the recipient's Legal Services Corporation annualized basic field award. This is an increase from the ten percent previously required by the Corporation. One-time special grants from the Corporation are not to be considered in determining the private attorney involvement requirement. Recipients of migrant or Native American funding are to use their best efforts to meet the requirements or the Corporation must be satisfied that private legal involvement is not feasible.

The Corporation's private attorney involvement requirement is based on both local program experience and on the Corporation's own formal research and experimentation. This research demonstrates that there are several effective and economical ways in which to involve private attorneys, on either a voluntary or a partially-compensated basis, in the delivery of legal services to eligible clients. Over the years, it has become clear that mixed delivery systems provide for effective and economical delivery service.

The proposed regulation defines a wide range of activities permitted in involving private attorneys in the delivery of legal assistance to eligible clients. The primary consideration is, of course, that the highest quality of civil legal services be provided to the clients in an effective and economical manner. The proposed regulation outlines specific methods to be undertaken by recipients to involve private attorneys in providing such legal assistance and states the components various systems should include.

There are specific financial considerations and procedures which the recipient must utilize to account for costs allowable for private attorney involvolvement. These are set out in detail in the proposed regulation.

Section 1614.3(d)(9) provides that grants for private attorney involvement shall be accounted for on a cost-reimbursable basis. This means that, at the end of a grant period, funds transferred for private attorney involvement activities to a sub-grantee must be returned to the recipient if not actually expended for private attorney involvement activities. It does not mean that costs must first be incurred by a sub-grantee and reimbursement sought from the recipient.

In § 1614.3(d)(10), the requirement in the Instruction for interim billing has been removed from the Proposed Rule. While the Corporation believes such a practice would maximize efficient management and promote cash flow controls, it is responding to numerous comments in removing that requirement.

The proposed regulation also maintains the procedural measures implemented in Instruction 83–6 and 1984 Grant Applications, to be utilized by the recipient. The recipient must develop a specific plan and a budget to meet the requirements of the regulation. This plan and budget shall be a part of the recipient's refunding application or initial grant application. However, in response to comments on the Instruction, the annual requirement that each program certify that it is spending the sums necessary to comply with this Part has been removed.

The proposed regulation concludes with a statement with regard to revolving litigation fund systems. The Office of Field Services will not endorse or approve such mechanisms.

The purpose of the "revolving litigation fund prohibition" is to prevent the creation of systems or projects which encourage the acceptance of fee-generating cases. The Act and 45 CFR 1609 expressly discourage the acceptance of fee-generating cases except under certain circumstances. This prohibition does not, however, prevent payment of costs or reimbursement of expenses incurrred by private attorneys in normal situations where litigation might result in attorney fees. Examples of such situations would be case assignments through a judicare or *pro bono* panel.

List of Subjects in 45 CFR Part 1614

Legal services, Private attorneys.

For the reasons set out above, a new 45 CFR Part 1614 is proposed to be added as follows:

PART 1614—PRIVATE ATTORNEY INVOLVEMENT

Sec.

Authority: Sec. 1007(a)(2)(C) and sec. 1007(a)(3); 42 U.S.C. 2996f(a)(2)(C) and 42 U.S.C. 2996f(a)(3).

§ 1614.1 Purpose.

(a) This part is designed to provide direction to recipients of Legal Services Corporation funding on allocating a substantial amount of the recipient's financial support from the Legal Services Corporation to encourage the involvement of private attorneys in the delivery of legal assistance to eligible clients. The term "substantial amount" is defined as at least twelve and one-half percent (12½%) of the recipient's LSC annualized basic field award. Funds received from the Corporation as one-time special grants shall not be considered in determining the private bar involvement requirement.

(b) Recipients of Native American or migrant funding shall provide the opportunity for involvement in the delivery of services by the private bar in a manner which is generally open to broad participation in those activities undertaken with those funds, or shall demonstrate to the satisfaction of the Corporation that such involvement is not feasible.

§ 1614.2 General policy

(a) This part implements the policy adopted by the Board of Directors of the Corporation on October 2, 1981, and ratified and modified by the Board on November 21, 1983, requiring that a substantial amount of funds be made available to encourage the involvement of private attorneys in the delivery of legal assistance to eligible clients through both *pro bono* and compensated mechanisms, and that such funds be expended in an economical and efficient manner.

(b) Recipients of national and state support grant awards shall apply the percentage requirement to that portion of their programs related to any direct advocacy activities on behalf of eligible clients.

(c) Private attorney involvement (PAI) shall be an integral part of a total local program undertaken within the established priorities of that program in a manner that furthers the statutory requirement of high quality, economical and effective client-centered legal assistance to eligible clients. Decisions concerning implementation of the substantial involvement requirement rest with the recipient through its governing body, subject to review and evaluation by the Corporation.

§ 1614.3 Range of activities.

(a) Activities undertaken by the recipient to meet the requirements of

this Part might include, but are not limited to:

(1) Direct delivery of legal assistance to eligible clients through organized *pro bono*, reduced fee plans, judicare panels, private attorney contracts, and/or organized referral systems; except that "revolving litigation fund" systems, as described in Section 1614.5 of this Part, shall neither be used nor funded under this Part nor funded with any LSC support;

(2) Support provided by private attorneys to the recipient in its delivery of legal assistance to eligible clients on either a reduced fee or *pro bono* basis through the provision of community legal education, training, technical assistance, research, advice and counsel; co-counseling arrangements; or the use of private law firm facilities, libraries, computer-assisted legal research systems or other resources; and,

(3) Support provided by the recipient in furtherance of activities undertaken pursuant to this Section including the provision of training, technical assistance, research, advice and counsel; or the use of recipient facilities, libraries, computer-assisted legal research systems or other resources.

(b) The specific methods to be undertaken by a recipient to involve private attorneys in the provision of legal assistance to eligible clients will be determined by the recipient taking into account the following factors:

(1) The priorities established pursuant to Part 1620 of these regulations;

(2) The effective and economical delivery of legal assistance to eligible clients;

(3) The linguistic and cultural barriers to effective advocacy;

(4) The actual or potential conflicts of interest between specific participating attorneys and individual eligible clients; and,

(5) The substantive and practical expertise, skills, and willingness to undertake new or unique areas of the law of participating attorneys.

(c) Systems designed to provide direct services to eligible clients by private attorneys on either *pro bono* or reduced fee basis, shall include at a minimum, the following components:

(1) Intake and case acceptance procedures consistent with the recipient's established priorities in meeting the legal needs of eligible clients;

(2) Case assignments which ensure the referral of cases according to the nature of the legal problems involved and the skills, expertise, and substantive experience of the participating attorney;

(3) Case oversight and follow-up procedures to ensure the timely disposition of cases to achieve, if possible, the result desired by the client and the efficient and economical utilization of recipient resources; and,

(4) Support and technical assistance procedures which are appropriate and, to the extent feasible, provide access for participating attorneys to materials, training opportunities, and back-up on substantive law and practice considerations.

(d) The recipient shall utilize financial systems and procedures to account for costs allowable in meeting this Part. Such systems shall have the following characteristics:

(1) They shall meet the requirements of the Corporation's *Audit and Accounting Guide for Recipients and Auditors*;

(2) They shall accurately identify and account for:

(i) The recipient's administrative, overhead, staff, and support costs related to private attorney involvement activities;

(ii) Payments to private attorneys for support or direct client services rendered;

(iii) Contractual payments to individuals or organizations which will undertake administrative, support, and/or direct services to eligible clients on behalf of the recipient consistent with the provisions of this Part; and,

(iv) Other such actual costs as may be incurred by the recipient in this regard.

(3) Income and expenses relating to the PAI effort must be reported separately in the year-end audit. This may be done by establishing a separate fund or by providing a separate supplemental schedule of income and expenses related to the PAI effort as part of the audit.

(4) Auditors will be required to perform sufficient audit tests to enable them to render an opinion on the recipient's compliance with the requirements of this Part.

(5) Programs must maintain the internal records necessary to demonstrate that funds have been utilized for private attorney involvement consistent with this Part. Internal records should include:

(i) Contracts on file which set forth payment systems, hourly rates, maximum allowable fees, etc.;

(ii) Bills/invoices which are submitted before payments are made;

(iii) Job descriptions that reflect the assignment of specific responsibilities for PAI activities to specific program staff; and

(iv) Staff time records.

(6) If any direct or indirect staff time is to be allocated as a cost to private attorney involvement, such costs must be documented by detailed timesheets accounting for all of that employees' time, not just the time spent on private attorney involvement activities.

(7) Direct payments to private attorneys shall be supported by invoices and internal procedures performed by the program to ensure that the services billed have actually been delivered.

(8) Non-personnel costs shall be allocated on the basis of reasonable operating data. All methods of allocating funds shall be clearly documented.

(9) Contracts concerning transfer of LSC funds for PAI activities shall indicate that such funds will be accounted for in accordance with LSC guidelines. The organization receiving funds will be considered a sub-recipient or sub-grantee and will be bound by all accounting and audit requirements of the *Audit Guide* and 45 CFR Part 1627. These grants shall be accounted for on a cost-reimbursable basis so that the primary recipient will be responsible for unspent funds. This part does not pertain to contracts with individual lawyers or law firms who only provide legal services directly to eligible clients.

(10) Each recipient which utilizes a compensated private bar mechanism, whether judicare, contract, or some other form, must develop a system which includes a schedule for uniform assignment of encumbrances to similar types of cases, a procedure to determine net encumbrances, and a mechanism to relate specific encumbrances to specific cases and to determine statistically the appropriateness of the encumbrance system.

(11) Net encumbrances shall not be included in the calculation of whether a program has met the requirements of this Part, nor should they be recorded as an expense for audit purposes. Only actual expenditures or those amounts shown as accounts payable or accrued liabilities according to GAAP at the end of the fiscal period may be utilized to determine whether or not the program has met the requirements of this part.

(12) In private attorney models, attorneys may be reimbursed for actual costs and expenses, but attorney fees may not be paid at a rate which exceeds 50 percent of the local prevailing market rate for that type of service.

§ 1614.4 Procedure.

(a) The recipient shall maintain the plan and budget required by Instruction 83-6 to meet the requirements of this Part which shall be a part of the

refunding application or initial grant application. The budget shall be modified as necessary to fulfill this Part. That plan shall take into consideration:

(1) The legal needs of eligible clients in the geographical area served by the recipient and the relative importance of those needs consistent with the priorities established pursuant to Section 1007(a)(2)(C) of the Legal Services Corporation Act (42 U.S.C. 2996f(a)(2)) and Part 1620 of the Regulations (45 CFR Part 1620) adopted pursuant thereto;

(2) The delivery mechanisms potentially available to provide the opportunity for private attorneys to meet the established priority legal needs of eligible clients in an economical and effective manner; and

(3) The results of the consultation as required below.

(b) The recipient shall consult with significant segments of the client community, private attorneys, and bar associations, including minority and women's bar associations, in the recipient's service area in the development of its annual plan to provide for the involvement of private attorneys in the provision of legal assistance to eligible clients.

(c) Recipients must assure that the market value of PAI activities substantially exceeds the direct and indirect costs being allocated to meet the requirements of this Part.

§ 1614.5 Prohibtion of revolving litigation funds.

(a) The Office of Field Services shall not endorse or approve revolving litigation fund systems which systematically encourage the acceptance of fee-generating cases by advancing funds to private attorneys for costs, expenses and/or attorney fees.

(b) This prohibition does not prevent reimbursement or payment of costs and expenses incurred by private attorneys in normal situations in which litigation may result in attorney fees, such as case assignments through a judicare or *pro bono* panel.

Dated: March 20, 1984.

Donald P. Bogard,

President, Legal Services Corporation.

[FR Doc. 84-7986 Filed 3-22-84; 8:45 am]

BILLING CODE 6820-35-M

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45 CFR Part 1628

Procedures Governing Recipient Fund Balances

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: This proposed rule adopts as a Corporation regulation Instruction 83-4: Recipient Fund Balances, published in the Federal Register on October 27, 1983, which requires Corporation approval of the disposition of any recipient fund balances that exceed specified limits. Certain technical amendments have been incorporated into this proposed regulation to address more fully this issue. This proposed rule also requires the prior written approval of the Corporation where a recipient seeks to use current year grant funds to liquidate operating deficits from a preceding period(s).

DATES: Comments must be received on or before April 23, 1984.

ADDRESS: Comments may be submitted to the Office of the General Counsel, Legal Services Corporation, 733 Fifteenth Street NW., Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Richard N. Bagenstos, Assistant General Counsel, Office of the General Counsel, (202) 272-4010.

SUPPLEMENTARY INFORMATION: Over a period of time and for various reasons, some recipients have accumulated significant fund balances. These individual instances have given rise to severe criticism of Corporation management. Specifically, the *Review of Legal Services Corporation's Activities Concerning Program Evaluation and Expansion*, issued by the United States General Accounting Office on August 28, 1980, stated in reference to fund balances: "We recommend that the President of the Legal Services Corporation require regional offices to closely monitor the expenditures of funds by grantees to minimize year end fund carryovers and adjust subsequent year funding of grantees with excess fund balances."

Corporate directives were thereafter issued through internal memoranda, dated December 18, 1980 and reiterated on March 18, 1982. These directives formalized and expanded upon existing policies. At its meeting on October 30, 1982, the Legal Services Corporation Board of Directors instructed staff to take appropriate action consistent with its Resolution On Fund Balance Policy. A grant condition was attached to the 1983 Refunding grants requiring adherence to the Fund Balance Instruction, 83-1, which was published in the Federal Register for comment on November 27, 1982 and published as a final Instruction on January 5, 1983.

That Instruction has been determined by a district court to be unenforceable for the recovery of 1982 fund balances because it was published after January 1, 1983, the effective date for 1983 grants. That decision has been appealed by the Corporation. The Corporation redrafted Instruction 83-1 and published it in the October 27, 1983 Federal Register, as Instruction 83-4: Recipient Fund Balances, which will be implemented to recover FY1983 fund balances.

Corporation policy regarding fund balances has remained relatively consistent throughout these documents. In the proposed regulation, the Corporation continues to define an excess fund balance to mean a total fund balance amount in excess of 10% of the recipient's annual funding level.

The proposed regulation also includes explicit language with regard to deficit fund balances, a subject not adequately addressed by a previous Corporation policy. Operating deficits are considered to be a more severe violation of the recipient's responsibility to safeguard and manage Corporation funds, often indicative of serious problems which can have a long-lasting impact on program operations.

A recipient is permitted to reduce an operating deficit incurred in one grant period by fund balance amounts qualifying under the regulation for carryover into a subsequent grant period(s), except those amounts which were carried over by the recipient under a specific waiver from the Corporation. A recipient may not, however, unilaterally offset that operating deficit against funds awarded by LSC for a succeeding period. Legal Services Corporation awards grants for a twelve month period. These grants are not intended nor should they be expected to absorb the burden of prior period costs. The Legal Services Corporation will, therefore, require specific prior written approval for the carryover of those costs.

The Corporation is issuing this proposed regulation pursuant to its mandate to ensure the delivery of high quality legal services in an effective and economical manner. Recovered fund balance amounts will be reprogrammed for the direct provision of legal services to eligible clients.

List of Subjects in 45 CFR Part 1628

Legal services, Fund balances.

For the reasons set out above a new 45 CFR Part 1628 is proposed to be added as follows:

PART 1628—RECIPIENT FUND BALANCES

Sec.

1628.1 Purpose.

Sec.
1628.2 Definitions.
1628.3 Policy.
1628.4 Procedure.
1628.5 Operating deficits.

Authority: Sec. 1006(b)(1)(A), 1007(a)(3); 42 U.S.C. 2996e(b)(1)(A), 42 U.S.C. 2996f(a)(3).

§ 1628.1 Purpose.

(a) This part is designed to ensure the timely allocation of Legal Services Corporation (LSC) funds for the effective and economical provision of high quality legal assistance to eligible clients. To that end, recipients will be permitted to maintain and re-program from year to year fund balances of no more than 10% of their annualized LSC support.

(b) A waiver of this policy up to a maximum of 25% of the recipient's annualized grant amount may be obtained under certain conditions as described in § 1628.3(d). Funds carried over in excess of 10% or above the level permitted by a specific waiver will be recovered as set forth in § 1628.3(a).

§ 1628.2 Definitions.

(a) LSC "support" for the reporting period shall be defined as the sum of: (1) The annualized LSC grant award(s); (2) any additional income derived from an LSC grant (interest, rents, etc.); and, (3) reimbursements or recoveries of attorney fees, proceeds from the sale of assets, or other compensation or income ...ted to any LSC grant.

(b) The LSC "fund balance amount" shall be determined solely by reference to the recipient's annual audit. (The fund balance reported in the recipient's annual audit is subject to review and approval by the Corporation's Audit Division. Noncompliance with provisions of the Corporation's *Audit and Accounting Guide for Recipients and Auditors* may result in an increase or decrease in the fund balance as reported in the audit.)

(c) The "fund balance percentage" shall be determined by expressing the fund balance amount as a percentage of the recipient's LSC support for the reporting period.

(d) "Recipient" as used in this Part, means any recipients as defined in Section 1002(6) of the LSC Act and any grantee or contractor receiving funds from the Corporation under Section 1006(a)(1) or 1006(a)(3) of the Act.

§ 1628.3 Policy.

(a) In the absence of a waiver from the Corporation, any fund balance amount in excess of 10% of LSC support shall be repaid to the Corporation in a lump sum or by pro rata deductions from the recipient's grant checks for a specific number of months. The Corporation ...determine which of the specified ...ods of repayment is reasonable and appropriate in each case after consultation with the recipient.

(b) After the Corporation's receipt and review of the recipient's annual audit, the Corporation shall provide written notice to the recipient of the fund balance amount due and payable to the Corporation as well as the method for repayment 30 days prior to the effective date for repayment either to occur or to commence in accordance with § 1628.3(a).

(c) In no way shall any such reduction and/or deduction in LSC support be construed to affect permanently the annualized funding level of the recipient, nor shall any such reduction and/or deduction in LSC support be considered to be a termination or denial of refunding under 45 CFR Parts 1606 and 1625 respectively.

(d) A waiver of the 10% ceiling may be granted at the discretion of the Corporation in extraordinary circumstances; such a waiver may be granted by the Corporation to extend the ceiling for fund balance amounts established under this regulation to a maximum of 25% of LSC support. Further, in addition to the established 10% ceiling, recipients who operate compensated private bar programs or components shall be granted a waiver to allow them to maintain carryover funds not to exceed 25% of the expense for attorney fees as reported in the latest audit, provided that such additional carryover is utilized exclusively to fund a cash reserve or encumbrance system for payment of attorney fees. (Note: The applicable recipients must submit a timely written request to obtain this waiver.) However, under no circumstance will a recipient be allowed to retain a fund balance in excess of 25% of support.

(e) All one-time or special purpose grants awarded by the Corporation shall have an effective date and termination date. Such grants are not subject to this fund balance policy. Revenue and expenses relating to such grants must be reflected separately in the audit report submitted to the Corporation. This may be done by establishing a separate fund or by providing a separate supplemental schedule of revenue and expenses related to such grants as a part of the audit report. No funds provided under a one-time or special purpose grant may be expended subsequent to the termination date of the grant without the prior written approval of the Corporation. All unexpended funds under such grants shall be returned to the Corporation.

§ 1628.4 Procedure.

(a) Any recipient whose audited fund balance exceeds the ceiling set forth in §1628.1 shall submit to the Corporation, within 120 days after the close of the recipient's fiscal year, a statement of the fund balance which occurred according to the annual audit required by Section 1009(c)(1) of the Legal Services Corporation Act, as amended. The funds will be recovered as set forth in §1628.3, unless excluded by a specific waiver.

(b) The recipient may, within 120 days after the close of its fiscal year, apply to the Corporation for a waiver of the 10% ceiling. Such application must specify:

(1) The fund balance amount according to the recipient's annual audit;

(2) The reason such fund balance has been attained;

(3) The recipient's plan for the disposition or reserve of such fund balance amount within the current grant period;

(4) The amount of fund balance projected to be carried forward at the close of the recipient's then current fiscal year; and

(5) The extraordinary circumstances justifying the retention of the fund balance.

(c) Excess fund balance amounts shall not be expended by the recipient prior to approval of the waiver application by the Corporation.

(d) The decision of the Corporation regarding the granting of a waiver shall be guided by the statutory mandate requiring the recipient to provide high quality legal services in an effective and economical manner. The Corporation shall grant a waiver of the 10% ceiling established under this regulation where a recipient who operates a compensated private bar program or component needs to maintain a cash reserve. In addition, the Corporation shall give special consideration to the following factors in reviewing a waiver request submitted pursuant to this regulation:

(1) Emergencies, unusual occurrences, or other extraordinary circumstances giving rise to the existence of a fund balance in excess of 10%, and the special needs of clients.

(2) The need for a recipient which operates a compensated bar program or component to maintain a cash reserve.

(e) Excess fund balance amounts approved for expenditure must be separately reported in the current fiscal year audit. This may be done by establishing a separate fund or by providing a separate supplemental schedule as part of the audit report.

§1628.5 Operating Deficits.

(a) Sound financial management practices such as those established in LSC's "Fundamental Criteria of an Accounting and Financial Reporting System," should preclude deficit spending. Use of current year grant funds to liquidate operating deficits from a preceding period(s) requires the prior written approval of the Corporation.

(b) The recipient may, within 120 days of the close of its fiscal year, apply to the Corporation for approval of the costs associated with the liquidation of the operating deficit.

(c) In the absence of approval by the Corporation, the operating deficit incurred by a recipient during a grant period shall be disallowed under this regulation. However, a recipient may seek to resolve the disposition of such costs in accordance with the requirements established by Instruction 83–8, "Standard Operating Procedure for Questioned Costs," published in the Federal Register on November 29, 1983.

(d) The recipient's request must specify the same information relative to the deficit fund balance as that set forth in §1628.4(b) (1), (2), (3), and (4). Additionally, the recipient must develop and submit a plan approved by its Board of Directors describing the measures which will be implemented to prevent a recurrence of an operating deficit. The Corporation reserves the right to require changes in the submitted plan.

(e) The decision of the Corporation regarding acceptance of these deficit-related costs shall be guided by the statutory mandate requiring the recipient to provide high quality legal services performed in an effective and economical manner. Special consideration will be given for emergencies, unusual occurrences, or other extraordinary circumstances giving rise to this situation.

Dated: March 20, 1984.

Donald P. Bogard,

President, Legal Services Corporation.

[FR Doc. 84–7985 Filed 3–22–84; 8:45 am]

BILLING CODE 6820–35–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1135

[Ex Parte No. 290; Sub-2]

Railroad Cost Recovery Procedures; Decision

AGENCY: Interstate Commerce Commission.

ACTION: Determinations on notice of proposed rulemaking.

SUMMARY: The Commission has voted to change its rules for the computation of the labor portion of the interim mid-quarter index of railroad costs under 49 U.S.C. 10707a(a)(2)(B) (the RCAF) in order to satisfy certain portions of the Northeast Rail Service Act of 1981 (NERSA). That Act requires the Consolidated Rail Corporation (Conrail) to enter into negotiations with its unions to achieve certain wage concessions. NERSA provides that the cost reductions resulting from the provisions of the Act cannot be used to limit the maximum levels of Conrail's rates. In order to satisfy these provisions, the labor portion of the RCAF shall be computed using labor costs for Conrail restated at the national contract levels and actual labor costs for all other railroads included in the index. The remainder of our decision on the methodologies involved in the RCAF, as raised by our notice of proposed rulemaking, will be disposed of in a future decision. The petitions for reconsideration of our decisions of December 19 and 27, 1983, are hereby denied. We will, however, restate the RCAF in light of miscalculations in the December 27 decision.

FOR FURTHER INFORMATION CONTACT:

William T. Bono (202) 275–7354, or Robert C. Hasek (202) 275–0938

SUPPLEMENTARY INFORMATION:

Background

Section 203 of the Staggers Rail Act of 1980, codified at 49 U.S.C. 10707a, requires the Commission to publish a rail cost adjustment factor (RCAF) on at least a quarterly basis. That section of the Staggers Act requires the numerator of the RCAF to be the latest published index of rail costs, as compiled or verified by the Commission. The current denominator is the index which was controlling (120.9) for the fourth quarter of 1983, rebased to 100.0. That Act also requires the RCAF index to reflect the changing composition of railroad costs, including the quality and mix of materials and labor.

In Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures*, 364 I.C.C. 841 (1981), the Commission adopted an interim indexing methodology. In adopting that interim indexing methodology, the Commission stated that "the Producer Price Index (PPI) would be used for measuring the 'all other' category, until AAR's 'all inclusive' index became available."

AAR filed its proposed "all inclusive" index with the Commission on January 29, 1982. That index made several changes in the methods of calculating the indices for wages, fringe benefits, fuel and the market basket of materials and supplies. It also substituted alternative methodologies for calculating the indices for the "all other" category which was measured by the PPI in the interim methodology.

In a decision served April 27, 1982 (47 FR 18012, April 27, 1982), the Commission reopened Ex Parte No. 290 (Sub-No. 2) for the purpose of soliciting public comments on AAR's proposed "all inclusive" index.

In a Notice of Proposed Rulemaking, served June 20, 1983 (48 FR 29024, June 24, 1983), we proposed the adoption of a modified version of AAR's "all inclusive" index of railroad costs and invited comments on the proposed revised indexing methodology and other matters related to the index.

In that notice, we observed that Section 1159 of the Northeast Rail Service Act of 1981, Pub. L. No. 97–35 (NERSA), provided that certain cost reductions resulting from application of its provisions could not be used to limit the maximum level of Conrail's rates. We proposed a methodology for reconciling NERSA provisions with the requirement in Section 10707a of the Staggers Rail Act requiring an index of railroad costs applicable to all railroads. We proposed the application of "national contract" wage provisions to Conrail's labor expenses to determine Conrail's portion of the wage component of the index. We proposed that Conrail's labor costs be computed as if the "national contract" (and not Conrail's actual wage levels) applied to Conrail's labor. We observed that the use of "national contract" provisions rather than the actual Conrail contract provisions may provide the most practical way to preserve Conrail's benefits mandated by NERSA while also assuring that our single nationwide index reflects, as closely as possible, railway labor costs. Public comments were invited.

In its quarterly index submission filed September 9, 1983, AAR revised the methodology for the computation of the labor portion of the index. This revised computation of the labor component excluded all of Conrail's labor costs. AAR, in submitting this revised labor index, stated that Conrail was excluded because Section 1159 of NERSA provides that cost reductions resulting from its application shall not be used to limit the maximum level of Conrail's rates.

In a decision served September 21, 1983 (48 FR 43413, September 23, 1983), we approved a restated version of the index submitted by AAR, including Conrail's labor costs at actual levels.