

(e) If a party fails, without good cause, to produce a person or document required under § 1606.9(c), the presiding officer may make an adverse finding on the fact or issue with respect to which production was required.

(f) Technical rules of evidence shall not apply. The presiding officer shall make any procedural or evidentiary ruling that may help to insure full disclosure of the facts, to maintain order, or to avoid delay. Irrelevant, immaterial, repetitious or unduly prejudicial matter may be excluded.

(g) Official notice may be taken of published policies, rules, regulations, guidelines and instructions of the Corporation, of any matter of which judicial notice may be taken in a federal court, or of any other matter whose existence, authenticity, or accuracy is not open to serious question.

(h) A record or summary of the hearing shall be made in a manner determined by the presiding officer, and shall be made available to a party upon payment of its cost.

**§ 1606.11 Obligations of the Corporation.**

At a hearing under § 1606.10:

(a) The Corporation shall have the obligation of proving, by a preponderance of the evidence, the existence of any disputed fact relied upon as justification for denial of refunding on a ground described in paragraph (e) or (d) of § 1606.4; and

(b) On all other issues, the Corporation shall have the obligation of establishing a substantial basis for denying the application for refunding.

**§ 1606.12 Briefs and argument.**

(a) Within ten days after the close of the hearing, each party may, and upon request of the presiding officer, shall, submit to the presiding officer, with service upon all other parties, proposed findings of fact and argument on matters of law or policy.

(b) The presiding officer may direct or permit oral argument at the close of the hearing or after submission of briefs.

**§ 1606.13 Recommended decision.**

(a) As soon as practicable after the hearing, and normally within twenty days after its conclusion, the presiding officer shall issue a written recommended decision.

(1) Granting the application for refunding, subject to any modification or condition that may be deemed necessary on the basis of information adduced at the hearing; or

(2) Denying the application for refunding.

(b) The recommended decision shall contain findings of the significant and relevant facts and shall state the reasons for the decision. Findings of fact shall be based solely on the evidence adduced at the hearing or on matters of which official notice was taken.

**§ 1606.14 Final decision.**

(a) If neither the Corporation nor the recipient requests review by the Presi-

dent, a recommended decision shall become final ten days after receipt by a recipient.

(b) The recipient or the Corporation may seek review by the President of a recommended decision. A request shall be made in writing within ten days after receipt by the party of the recommended decision, and shall state in detail the reasons for seeking review.

(c) Within thirty days after receipt of a request for review of a recommended decision, the President may adopt, modify, or reverse the recommended decision, or direct further consideration of the matter. In the event of modification or reversal, the President's decision shall conform to the requirements of § 1606.13(b).

(d) If the presiding officer is the President, within thirty days after the conclusion of a hearing, a final decision that conforms to the requirements of § 1606.13 shall be issued.

(e) A decision by the President shall become final upon receipt by a recipient.

**§ 1606.15 Time extension and waiver.**

(a) Any period of time provided in these rules may, upon good cause shown and determined, be extended (1) By the person making the preliminary determination, prior to the time the presiding officer is designated; (2) By the presiding officer, prior to the issuance of a recommended decision; or (3) By the President at any time.

(b) Requests for extensions of time shall be considered in light of the overall objective that the procedures prescribed by this part ordinarily shall be concluded within 90 days of the preliminary determination.

(c) Any other provision of these rules may be waived or modified (1) By the presiding officer, if other than the President, with the assent of the recipient and of counsel for the Corporation, or (2) By the President upon good cause shown and determined.

**§ 1606.16 Right to Counsel.**

At a hearing under § 1606.10, the Corporation and the recipient each shall be entitled to be represented by counsel, or by another person. The attorney designated may be an employee, or may be outside counsel retained for the purpose, who may be compensated at the reasonable and customary rate for an attorney practicing in the vicinity of the attorney retained. Unless prior written approval is received from the Corporation, such fees shall not exceed the daily equivalent of the rate of level V of the Executive Schedule specified in section 5316 of Title 5, United States Code.

**§ 1606.17 Reimbursement.**

If an application for refunding is granted after a Preliminary Determination has been issued under § 1606.5, a recipient, at the discretion of the President, may receive reimbursement by the Corporation, in whole or in part, for reasonable and actual expenses that were required in connection with proceedings under this part.

**§ 1606.18 Interim funding.**

Failure by the Corporation to meet a time requirement of this part shall not entitle a recipient to refunding. If the Corporation fails to take final action upon an application for refunding prior to the expiration of the term of a recipient's current grant or contract, the Corporation shall provide the recipient with interim funding necessary to maintain its current level of legal assistance activities under the Act until

(a) The application for refunding has been approved and funds pursuant thereto received, or

(b) A final decision denying the application has been made.

**§ 1606.19 Termination funding.**

After a final decision to deny refunding, and without regard to whether a hearing has occurred, the Corporation may authorize temporary funding if necessary to enable a recipient to close or transfer current matters in a manner consistent with the recipient's professional responsibility to its present clients.

**§ 1606.2 Notice.**

A notice required to be sent to a recipient under this part shall be sent to the director of the recipient, and may be sent to the chairperson of its governing body.

THOMAS EHRLICH,  
*President,*  
*Legal Services Corporation.*

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[ 45 CFR Part 1621 ]

CLIENT GRIEVANCE PROCEDURE

Proposed Rulemaking

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996i ("the Act"). Section 1006(b)(1), 42 U.S.C. 2996(b)(1), provides that the Corporation shall have authority to insure compliance of the Act.

Pursuant to section 1006(e) of the Act, the Corporation hereby affords notice and publishes for comment the following proposed regulations concerning client grievance procedures. Public comment will be received by the Corporation at its headquarters offices, Suite 700, 733 15th Street, NW., Washington, D.C. 20005 on or before February 25, 1977. Comments must be in writing and may be accompanied by a memorandum or brief in support thereof. Comments received may be seen at the above offices during business hours Monday through Friday.

Final regulations will be issued by the Corporation after review and consideration of public comments received pursuant to this notice.

COMMENT

A person who is denied legal assistance by a recipient, or who is dissatisfied with the assistance rendered, is unable to ob-

tain legal assistance from another source. And, although a client does not pay a fee, adequate recourse should be available when the client believes that the services provided by a recipient do not meet the high standards of effectiveness required by the Act. Further, the fact that a recipient carries on its activities with funds from a public source imposes an additional responsibility beyond those imposed on every lawyer by the Code of Professional Responsibility. An effective client grievance procedure is an appropriate means of insuring the accountability of a recipient to its clients.

The proposed regulation requires the establishment by the governing body of a recipient of a grievance committee with authority to consider complaints that have not been resolved by staff action. The Code of Professional Responsibility does not prevent a committee containing nonlawyers from inquiring into a lawyer's conduct of a case when the committee is acting at the request of the client. Ethical prohibitions against interference with the professional judgment of a lawyer are designed to insure that the lawyer will be directly responsible to the client, and not subject to interference or control by an intermediary. See ABA Formal Opinions 237 and 294. Inquiry by a grievance committee acting at the request of the client is consistent with these opinions.

If a client expresses dissatisfaction with any aspect of the assistance provided by a recipient, it would be appropriate for the recipient to inform the client of the existence of a local group, such as the National Clients Council or the National Welfare Rights Organization, that may be able to counsel the client about the subject of the complaint.

#### PART 1621—CLIENT GRIEVANCE PROCEDURE

Sec.

- 1621.1 Purpose.  
1621.2 Governing Body Grievance Committee.  
1621.3 Procedures.

**AUTHORITY:** Sec. 1006(b)(1) (42 U.S.C. 3906e(b)(1)).

##### § 1621.1 Purpose.

By providing an effective remedy for a client who believes that legal assistance has been denied improperly, or who is dissatisfied with the assistance provided, this part seeks to insure that every recipient will be accountable to its clients and will provide the high quality legal assistance required by the Act.

##### § 1621.2 Governing Body Grievance Committee.

The governing body of a recipient shall establish a grievance committee, composed of lawyer and client representatives in the same proportion in which they are on the governing body.

##### § 1621.3 Procedures.

(a) A recipient shall establish effective procedures for determining the validity of a complaint that assistance has been improperly denied or ineffectively ren-

dered. The procedures adopted shall be subject to approval by the Corporation.

(b) The procedures shall include:

(1) Adequate notice to clients of how to make a complaint;

(2) Provision of assistance to a client who requests help in presenting a complaint; and

(3) An opportunity for a complainant to appear before the grievance committee established by the governing body if the director of the recipient is unable to resolve the matter.

(c) A record of every complaint and its disposition shall be preserved for review by the Corporation.

THOMAS EHRLICH,

President,

Legal Services Corporation.

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## DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 17]

### ENDANGERED AND THREATENED WILDLIFE AND PLANTS

#### Proposed Provisions for Interagency Cooperation

Proposed regulations to assist the Federal agencies in complying with section 7 of the Endangered Species Act of 1973.

The Assistant Secretary for Fish and Wildlife and Parks, U.S. Department of the Interior, and the Director, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, hereby jointly issue substantively identical proposed rulemakings that would establish rules and procedures for interagency cooperation pursuant to section 7 of the Endangered Species Act of 1973, 16 U.S.C. 1531-1543 (hereinafter cited as Act). The U.S. Fish and Wildlife Service (hereinafter cited in this preamble as FWS) regulations would be established in Part 17 of Chapter I of Title 50, Code of Federal Regulations, while the National Marine Fisheries Service (hereinafter cited in this preamble as NMFS) regulations (published elsewhere in this issue, see FR Doc 77-3383, published in the proposed rules section of this issue under the Department of Commerce) would be established in Parts 217 and 223 of Chapter II of Title 50, Code of Federal Regulations. The NMFS regulations in Parts 217 and 223 are only for those species under the jurisdictional responsibilities of the Secretary of Commerce (endangered species are identified in 50 CFR 222.23(a) and threatened species are identified in 50 CFR 227.4). The FWS regulations in Part 17 would apply to all other endangered and threatened species.

#### BACKGROUND

The Act became effective on December 28, 1973. Recognizing that all Federal agencies must cooperate to conserve and protect endangered and threatened species and their habitat, section 7 of the Act states:

#### INTERAGENCY COOPERATION

Section 7. The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

By internal memorandum of October 16, 1974, the Secretary of the Interior further defined Interior's responsibilities under section 7 and established the lead role of the FWS within the Department of the Interior.

In a joint letter to all Federal agencies on December 3, 1974, the Secretaries of the Interior and Commerce pointed out the responsibilities of the agencies under section 7 and asked for their cooperation in implementing the Act. The letter of December 3 also clarified the responsibilities of the FWS and the NMFS as lead agencies for the two Departments in implementation of the Act.

On April 22, 1976, the Director of the FWS and the Director of the NMFS published a joint notice in the FEDERAL REGISTER (49 FR 17764-17765) describing how "critical habitat" would be determined for endangered and threatened species pursuant to section 7 of the Act.

On May 29, 1976, the FWS and NMFS convened a conference for affected Federal agencies to discuss the Act and its implications for the activities and programs of the agencies. At this meeting, the Federal agencies requested that guidelines be developed to assist them in meeting their responsibilities under section 7.

In response to that request, the FWS and NMFS convened an Ad Hoc Interagency Committee of representatives from 11 Federal agencies to advise the two Services in developing the necessary guidelines.

An April 23, 1976, "Guidelines to Assist the Federal Agencies in Complying with Section 7 of the Endangered Species Act of 1973" were transmitted to all Federal agencies by the FWS and NMFS. These guidelines are an interim measure to furnish a broad and flexible framework within which Federal agencies may prepare internal procedures to fulfill their responsibilities under section 7. However, as stated in the guidelines, they are "a starting point for the development and promulgation of regulations."

At the request of the Office of Management and Budget, copies of the guidelines were again transmitted to the Federal agencies on May 20, 1976, and comments due by August 1, 1976, were solicited for a "quality of life" review. As of