

(c) Any other provision of these rules may be waived or modified: (1) By the presiding officer 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 the recipient's grant or contract is continued or 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 continuation of its grant or contract or to refunding. Pending a final determination under this Part, the Corporation shall provide the recipient with interim funding necessary to maintain its current level of legal assistance activities under the Act.

**§ 1606.19 Termination funding.**

After a final determination to terminate a recipient's grant or contract or 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.

**§ 1606.20 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 Corp.

[FR Doc. 77-37319 Filed 12-30-77; 8:45 am]

[ 6820-35 ]

[ 45 CFR Part 1623 ]

**PROCEDURES GOVERNING SUSPENSION OF FINANCIAL ASSISTANCE**

AGENCY: Legal Services Corporation.

**ACTION:** Proposed regulation.

**SUMMARY:** Section 1011 of the Legal Services Corporation Act requires that the Corporation establish procedures to ensure that financial assistance to a recipient will not be suspended without an opportunity for the recipient to show cause why the suspension should not occur. This Part responds to that requirement by specifying the circumstances in which suspension is authorized, and establishing procedures for the recipient to present its case in opposition to a proposed suspension.

**DATES:** Comments must be received on or before February 2, 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:**

At the outset, it should be emphasized that the suspension power is in many ways the most extreme sanction available to the Corporation in discharging its responsibilities under the Act. Financial assistance is continued during proceedings to deny applications for refunding and to terminate financial assistance, and in most instances the Corporation establishes a new grantee to provide service in the community affected. This is not the case with suspension. That power should, therefore, be used only as a last resort to correct serious deficiencies in a program where the recipient has refused to do so voluntarily.

In light of these considerations, this Part provides that financial assistance can be suspended only where a recipient is guilty of a substantial failure to comply with a provision of law, a Corporation rule, regulation, guideline, or a term or condition of its current grant, or has substantially failed to provide high quality, economical, and effective legal assistance. In most cases, suspension proceedings cannot be initiated unless the recipient has been informed of its failure and had a reasonable opportunity to correct it.

The second major restriction on the power to suspend financial assistance is that a particular suspension cannot be in effect for a total of more than 30 days. The Corporation employee who orders suspension may set the effective date of the suspension to coincide with the Corporation's schedule for making grant payments, and may rescind or modify the suspension at any time based on considerations such as the progress made toward compliance and the ability of the recipient to continue serving existing clients. After financial assistance has been suspended for a total of 30 days, however, the Corporation must initiate termination proceedings if it believes further action is necessary. The recipient may, of course, agree to an extension of the suspension instead, if it believes that compliance is imminent and

does not wish to suffer the expense and dislocation of termination proceedings.

It is proposed to amend 45 CFR chapter XVI by adding the following new Part 1623:

- Sec.
- 1623.1 Purpose.
- 1623.2 Definition.
- 1623.3 Grounds for suspension.
- 1623.4 Suspension.
- 1623.5 Time extension and waiver.
- 1623.6 Interim funding.

**AUTHORITY:** Sec. 1006(b) (1) and (3), 1007 (a) (1), 1007(a) (3), 1007(a) (2), 1007(d), 1006(c) 1011 (42 U.S.C. 2998e(b) (1) and (3), 2996f(a) (1), 2996f(a) (3), 2996f(a) (2), 2996f (d), 2996g(c), 2996j).

**§ 1623.1 Purpose.**

By providing procedures for prompt review that will ensure informed deliberation by the Corporation when there is reason to believe that financial assistance to a recipient should be suspended, this Part seeks to avoid unnecessary disruption in the delivery of legal assistance to eligible clients.

**§ 1623.2 Definition.**

"Suspension" means any action temporarily suspending or curtailing financial assistance to a recipient in whole or in part prior to the expiration of the recipient's current grant from or contract with the Corporation.

**§ 1623.3 Grounds for suspension.**

Financial assistance provided to a recipient may be suspended when:

(a) There has been substantial failure by a recipient to comply with a provision of law, or a rule, regulation, or guideline issued by the Corporation, or a team or condition of the recipient's current grant from or contract with the Corporation; or

(b) There has been substantial failure by a recipient to provide high quality, economical, and effective legal assistance, as measured by generally accepted professional standards, the provisions of the Act, or a rule, regulation, or guideline issued by the Corporation.

(c) In the absence of unusual circumstances, suspension shall not take place unless the Corporation has given the recipient notice of its failure and an opportunity to take effective corrective action.

**§ 1623.4 Suspension.**

(a) When there is reason to believe that financial assistance to a recipient should be suspended, the Corporation shall serve a written preliminary determination on the recipient stating the grounds and effective date for the proposed suspension, and identifying, with reasonable specificity, any facts or documents relied upon as justification for the suspension. The preliminary determination shall also specify any corrective action that the recipient must take to avoid or end the suspension.

(b) The preliminary determination shall advise the recipient that it may, within five days of receipt of the preliminary determination, request an informal meeting with the Corporation at which it may attempt to show that the

## PROPOSED RULES

proposed suspension should not become effective. The Corporation shall designate the place for such a meeting and shall set the time at least five days after the recipient's request is received. The preliminary determination shall also advise the recipient that, within ten days of its receipt of the preliminary determination and without regard to whether it requested an informal meeting, it may submit written materials in opposition to the proposed suspension.

(c) The Corporation shall consider any written materials submitted by the recipient in opposition to the proposed suspension and any oral presentation or written materials submitted by the recipient at the informal meeting, if one is requested. If after considering these materials the Corporation concludes that the recipient has failed to show that the suspension should not become effective, it may suspend financial assistance to the recipient in whole or in part and under such terms and conditions as it deems proper.

(d) Written notice of the suspension shall be promptly transmitted to the recipient, and the suspension shall become effective when the notice is received by the recipient or on such later date as is specified in the notice.

(e) The Corporation employee ordering suspension may at any time rescind or modify the terms of the suspension and, on written notice to the recipient, reinstate the suspension without further proceedings under this Part. In no event shall the total time of suspension exceed thirty days, unless the Corporation and the recipient agree to a continuation of the suspension for an additional period of time and without further proceedings under this Part.

#### § 1623.5 Time extension and waiver.

(a) Any period of time provided in this Part may, upon good cause shown and determined, be extended by the person issuing the preliminary determination under § 1623.4 or by the President.

(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 30 days of the preliminary determination.

(c) Any other provision of this Part may be waived or modified by agreement of the recipient and the Corporation, or by the President upon good cause shown and determined.

#### § 1623.6 Interim funding.

Failure by the Corporation to meet a time requirement of this Part shall not entitle a recipient to continued funding. Pending the completion of suspension proceedings under this Part, the Corporation shall provide the recipient with interim funding necessary to maintain its current level or legal assistance activities under the Act.

THOMAS ERELICH,  
President, Legal  
Services Corporation.

[FR Doc. 77-37818 Filed 12-30-77; 8:45 am]

## [ 4910-22 ]

DEPARTMENT OF  
TRANSPORTATION

Federal Highway Administration

[BMCS Docket No. MC-33, MC-47, and  
MC-69]

[ 49 CFR Parts 391 and 395 ]

FEDERAL MOTOR CARRIER SAFETY  
REGULATIONSWithdrawal of Notices of Proposed  
RulemakingAGENCY: Federal Highway Adminis-  
tration, DOT.

ACTION: Closing dockets.

SUMMARY: This notice will close the  
named dockets since the subject matter  
contained therein has been incorporated  
into more recent dockets by this agency.

EFFECTIVE DATE: January 3, 1978.

FOR FURTHER INFORMATION CON-  
TACT:

Mr. Gerald J. Davis, 202-426-9767,  
Regulations Division, Bureau of Motor  
Carrier Safety; or Mrs. Kathleen S.  
Markman, 202-426-0790, Office of  
Chief Counsel, Federal Highway Ad-  
ministration, 400 Seventh Street, SW.,  
Washington, D.C. 20590. Office hours  
are Monday through Friday from 7:45  
a.m. to 4:15 p.m. EST.

## SUPPLEMENTARY INFORMATION:

The subject matter contained in BMCS  
Docket No. MC 33, Apprenticeship Pro-  
gram for Drivers Less Than 21 Years  
Old, published September 14, 1971, at 39  
FR 18428, has been incorporated into  
BMCS Docket No. MC 74, Tractor-  
Trailer Driver Training Standard—Rec-  
ommended Practice Phase, published  
June 14, 1976 in 41 FR 22584. The subject  
matter contained in BMCS Docket No.  
MC 47, Driver's Daily Logs: Use of 7-Day  
Log Form, published September 10, 1974,  
at 39 FR 32620, and BMCS Docket No.  
MC 69, Driver's 4-Day Log, published  
January 22, 1976, at 41 FR 3311, have  
been incorporated into BMCS Docket No.  
MC 69-2, Multi-Day Log, published  
April 4, 1977, at 42 FR 17891.

The following dockets are hereby  
closed:

BMCS Docket No. MC 33, Apprenticeship  
Program for Drivers Less Than 21  
Years Old.

BMCS Docket No. MC 47, Drivers Daily  
Logs: Use of 7-Day Log Forms.

BMCS Docket No. MC 69, Driver's  
4-Day Log.

(Authority: 49 U.S.C. 304, 49 U.S.C. 1655 and  
49 CFR Parts 1 and 301.)

Issued on December 18, 1977.

KENNETH L. PIERSON,  
Acting Director, Bureau  
of Motor Carrier Safety.

[FR Doc. 77-37807 Filed 12-30-77; 8:45 am]

## [ 4910-22 ]

[Docket No. MC-80, Notice No. 77-11]

[ 49 CFR Part 392 ]

## TOXIC GASES IN TRUCK CABS

AGENCY: Federal Highway Adminis-  
tration (FHWA).ACTION: Advance notice of proposed  
rulemaking.

SUMMARY: The Department of Trans-  
portation, FHWA, has received a num-  
ber of complaints and inquiries alleging  
that toxic gases concentrations found in  
truck cabs exist at levels high enough to  
be harmful to human health and well  
being. This Advance Notice is being is-  
sued to invite comments and request in-  
formation relative to the extent of the  
problem and to inquire as to what regu-  
lations, if any, should be issued. All com-  
ments will be considered before any fur-  
ther rulemaking action is taken.

DATES: Comments are due on or before  
February 2, 1978.

ADDRESS: Submit comments (original  
and 2 copies) to: Director, Bureau of  
Motor Carrier Safety, Federal Highway  
Administration, Department of Trans-  
portation, 400 Seventh Street, SW.,  
Washington, D.C. 20590.

FOR FURTHER INFORMATION CON-  
TACT:

Principal Program Contact, Gerald  
J. Davis, Chief, Driver Requirements  
Branch, Regulations Division, Bureau  
of Motor Carrier Safety, Federal High-  
way Administration, Department of  
Transportation, Washington, D.C.  
20590, 202-426-9767.

Principal Lawyer, Attorney Gerald M.  
Tjerney, Motor Carrier and Highway  
Safety Law Division, Office of the Chief  
Counsel, Federal Highway Adminis-  
tration, Department of Transporta-  
tion, Washington, D.C. 20590, 202-  
426-0834.

## SUPPLEMENTARY INFORMATION:

In April 1975, the Federal Highway  
Administration (FHWA) began an initial  
investigation of toxic gases in truck cabs  
after having received complaints from  
truck drivers (employed by one motor  
carrier), and a union official. The drivers  
alleged that they were driving unsafe  
equipment because of the harmful and  
hazardous fumes in their tractor cabs, in  
violation of the Federal Motor Carrier  
Safety Regulations (FMCSR).

The FHWA's investigation conducted  
on the subject carrier showed that ex-  
haust gases entered through openings in  
the cab and were sucked in through an  
air conditioner drain hose located di-  
rectly over the engine. It was noted that  
one driver employed by this carrier, had  
been hospitalized with a high concen-  
tration of carbon monoxide in his blood.

Although the carrier appeared to have  
taken corrective steps to alleviate the ex-  
haust fume problem, it was decided that  
a FHWA observer should conduct road  
tests to measure the concentration of