

covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provision of the Act (Section 304) would be similarly precluded. If approved, the order would also constitute an addition to the Wyoming SIP. Compliance with the proposed order will not exempt the FMC Corporation from complying with applicable requirements contained in any subsequent revisions to the SIP which are approved by EPA.

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.

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

Dated: April 2, 1979.

Alan Merson,

Regional Administrator, Region VIII.

[FRL 1004-1; Docket No. A-79-6]

[FR Doc. 79-1179; Filed 4-13-79; 8:45 am]

BILLING CODE 6560-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 130]

Library Services and Construction; Availability of Draft Regulations

AGENCY: Office of Education, HEW.

ACTION: Notice of Availability of draft regulations.

SUMMARY: Notice is given that draft regulations implementing the 1977 amendments to the Library Services and Construction Act are now available to the public. These regulations implement Pub. L. 95-123 and govern three new provisions of the Act:

- (1) Federal funds spent for administration shall now be matched with State or other non-Federal funds;
- (2) The base year for meeting maintenance of effort requirements for services for handicapped and institutionalized persons is the second preceding FY to the year for which funds are requested; and
- (3) Additional emphasis has been placed on strengthening major urban resource libraries.

ADDRESS: Copies of these draft regulations may be obtained by writing to: Ms. Elizabeth Hughey, 400 Maryland Avenue, S.W., (Rm 3319B—ROB-3), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Hughey, (202) 472-5150.

SUPPLEMENTARY INFORMATION: The Library Services and Construction Act (LSCA) provides assistance to the States to extend public library services to areas where they do not exist and to improve these services where they are inadequate.

Originally enacted as the Library Services Act in 1956, Pub. L. 84-597, the LSCA has been amended and extended through subsequent years. Pub. L. 95-123 extends the program through fiscal year 1982.

The Act has four titles:

- I Library Services.
- II Public Library Construction.
- III Interlibrary Cooperation.
- IV Older Readers Services.

However, no funds have been requested or appropriated for this title since it was enacted.

Beginning with the extension in 1970, the emphases in title I (Library Services) have been to—

- (1) Provide library services to disadvantaged persons in both rural and urban areas;
- (2) Extend library services to the State's institutionalized residents and to the physically handicapped, including the blind;
- (3) Strengthen metropolitan public libraries that serve as national or regional resource centers; and
- (4) Improve and strengthen the capacity of State library administrative agencies to meet the needs of all the people of their respective States.

In 1975 another priority, library services to persons of limited English-speaking ability, was added as specified in the Education Amendments of 1974.

A new priority is added to title I (Library Services) in the 1977 amendments and is implemented by these regulations: To improve the capability of public libraries in densely populated areas to serve as major resource libraries.

Because of the value of their collections to individual users and to other libraries, these libraries need special assistance to furnish services at a level required to meet the demands for these services. This amendment is applicable only if the annual appropriation for title I (Library Services) exceeds \$60,000,000. Procedural requirements to carry out this new priority have been included in the Basic State Plan provisions of § 130.16 (*Basic State plan*) and the long-range program provisions of § 130.19 (*Long range program*) of the regulations.

In addition, these amendments provide that any Federal funds

expended for the administration of the Act must be equally matched by State or other non-Federal funds. The amendments provide, also, that funds available for expenditure for library services to the physically handicapped and the institutionalized in the current fiscal year shall be not less than the amount expended in the second preceding fiscal year.

A notice of Proposed Rule-making (NPRM) was published in the *Federal Register* on June 5, 1978 (43 FR 24334). Twelve comments were received in response to the NPRM. The overall reaction to the regulations was supportive.

These draft regulations have not been adopted as official views of either the U.S. Office of Education or the Department of Health, Education and Welfare. They have no legal effect.

Dated: April 9, 1979.

Ernest L. Boyer,

U.S. Commissioner of Education.

[FR Doc. 79-1179; Filed 4-13-79; 8:45 am]

BILLING CODE 3510-10-M

LEGAL SERVICES CORPORATION

[45 CFR Part 1624]

Rehabilitation Act of 1973; Implementation of Section 504

AGENCY: Legal Services Corporation.

ACTION: Proposed Regulation

SUMMARY: This proposed regulation implements section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 706, with regard to recipients of funds from the Legal Services Corporation. The Legal Services Corporation was created by Act of Congress, 42 U.S.C. 2006, and is entirely supported by funds provided by Congressional appropriation. The proposed regulation will replace an instruction published last year, 43 FR 13927-8 (April 3, 1978), and is intended to insure that federally assisted legal services programs and activities are operated without discrimination on the basis of handicap.

DATES: Comments must be received by May 16, 1979.

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

FOR FURTHER INFORMATION CONTACT: Linda Perle, 202-376-5100.

SUPPLEMENTARY INFORMATION: Section 504 of the Rehabilitation Act of 1973, as amended, prohibits discrimination on the basis of handicap by recipients of federal assistance. Pursuant to Executive Order 11914 (April 29, 1976)

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the Department of Health, Education, and Welfare was given the responsibility to coordinate the implementation of section 504 among all federal agencies and departments that dispense federal assistance. On January 13, 1978, H.E.W. issued regulations that defined generally the types of practices forbidden by the Rehabilitation Act and spelled out the responsibilities of federal agencies to implement and enforce Section 504. See 45 CFR 85.1-85.58.

The Corporation is not a federal agency or department, and is not required to issue implementation and enforcement regulations. Corporation-funded programs, however, are recipients of federal assistance and are subject to the non-discrimination requirements of section 504. The Corporation, therefore, has undertaken to ensure that its funds are not used in a manner that discriminates against the handicapped in violation of section 504.

On April 3, 1978, the Corporation published for comment a proposed instruction "designed to insure that every recipient of Corporation funds complies with section 504 of the Rehabilitation Act. . . ." Comments were received that raised a variety of issues about the form and content of the Corporation's response to section 504.

This proposed regulation has been prepared as a substitute for the original instruction. It contains substantially more detail than the instruction, but attempts to tailor the provisions to the realities of legal services practices.

In preparing the proposed regulation, the Corporation faced several general issues at the outset. The first related to the format in which the Corporation would present its Section 504 policy. Many commentators objected to the fact that the policy was originally stated as an instruction, rather than as a regulation. The use of this format was not intended to denigrate the importance of the policy, nor to imply that the Corporation would monitor compliance less forcefully than it does with respect to regulations. In order to prevent confusion, however, the Corporation has decided to issue the policy in the form of a regulation rather than an instruction.

The second general issue concerned the extent to which the regulation would follow the guidelines issued by the Department of Health, Education, and Welfare. See 45 C.F.R. Sections 85.1-85.58. As a general rule of thumb, the proposed regulation tracks those guidelines, so legal services programs that receive funds from more than one federal source will not have different standards to deal with, and the Corporation will be able to use

interpretations of the H.E.W. guidelines in its monitoring efforts whenever appropriate.

Nevertheless, because the H.E.W. guidelines were designed to cover a number of vastly different programs, many of the provisions are either irrelevant to or inappropriate for legal services programs. Those that are irrelevant were not included in the proposed regulation; those that cause problems were treated on a case-by-case basis. Some have been included in part; others have been modified to fit the circumstances of Corporation grantees; still others were excluded entirely where not necessary to the basic purposes of Section 504. In some instances the language of certain guidelines has been revised to reflect more clearly their purpose, without changing the substance of those provisions.

The remainder of this comment discusses those specific sections of the proposed regulation that differ from the original proposed instruction or from the H.E.W. guidelines. The order is keyed to the provisions as they appear in the proposed regulation.

Secs. 1624.1 (Purpose); 1624.2 (Application); and 1624.3 (Definitions)—The original instruction used the term "recipient" to designate the class of programs covered by the policy. Corporation regulations (45 C.F.R. Section 1600.1) define "recipient" to include only those "grantees or contractors receiving financial assistance from the Corporation under Section 1006(a)(1)(A) of the Act." This definition excludes some special grantees such as the Delivery Systems Study demonstrations and the Quality Improvement Projects that receive funds for innovative or experimental programs. The H.E.W. definition of "recipient" is much broader, and would include those special grants. Rather than using a different definition for a term that has come to have a specific meaning in the context of Corporation regulations, the proposed regulation uses an entirely new term—legal services program—that incorporates the broader H.E.W. definition.

The definition of "physical or mental impairment", Section 1624.3(c)(2)(i), in the original instruction inadvertently excluded certain terms used by H.E.W.—i.e., "reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine. . . ." These terms have been included in the draft regulation.

The definition of "is regarded as having an impairment", Section 1624.3(c)(2)(iv), in the original

instruction did not include the last provision that is found in the H.E.W. guidelines—" (C) has none of the impairments defined in paragraph (c)(2) of this section but is treated by a legal services program as having such an impairment." This omission was also inadvertent, and the provision is included in the proposed regulation.

Sec. 1624.4 (Discrimination Prohibited)—The original instruction contained a policy statement that was essentially identical to the first section of the general prohibitions against discrimination in the H.E.W. guidelines. See 45 CFR 85.51(a). In addition to this general prohibition, the H.E.W. guidelines contain several examples of practices considered to be discriminatory. Many of these examples are not relevant to legal services and might have an unintended and undesirable effect. In drafting the proposed regulation, therefore, the Corporation included only those examples that are directly relevant to the operations of legal services programs.

The H.E.W. guidelines contain a provision that relates to "the existence of permissibly separate or different programs or activities." See 45 CFR 85.51(b)(2). The import of the provision, which is reflected in Section 1624.4(b) of the proposed regulation, is to prohibit a program from designating a specialized unit or particular office as the *sole* location for the delivery of services to handicapped persons. It is not intended to prohibit a program from setting up special units to handle only problems that relate to handicapped status or to contradict the provisions permitting a program to make only specific locations physically accessible, as long as its services are accessible "when viewed as a whole." The language of Section 1624.4(b) has been redrafted to state in clear terms this intended meaning.

Section 1624.4(c) deals with the selection of locations or sites for legal services facilities. With minor changes the proposed provision tracks the language of the H.E.W. guidelines. See 45 CFR 85.51(b)(4). The second section of the guidelines, which prohibits selection of sites "that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons," is omitted, because it adds nothing of substance that is not covered by the general prohibitions against discrimination, and only confuses an otherwise clear requirement.

Section 1624.4(d) is a new provision, not found in the original Corporation

instruction of the H.E.W. guidelines. It is modeled on a provision of regulations issued by H.E.W. to implement Section 504 with respect to its own grantees. See 45 C.F.R. Section 84.5(d), and was included in recognition of the essential need for effective communication between a legal services program and its clients. The section requires all legal services programs that employ more than fifteen people, as well as those smaller programs that the Corporation determines to be capable, to provide auxiliary aids such as brailled materials or interpreters, where necessary to afford handicapped persons "an equal opportunity to benefit from the . . . program's services."

The fifteen-employee cut-off was chosen on the basis of two assumptions; first that a program with fifteen employees will have a sufficiently large budget to enable it to obtain access to such aids without jeopardizing the program's other activities, and, second, that a program of that size will serve a sufficiently large population to have a significant number of potential clients who could benefit by the availability of the aids.

The original instruction contained a provision requiring programs to "adopt procedures to insure that handicapped persons obtain information about the availability of legal services. . . ." The provision was designed to ensure that informational materials and other outreach activities would be prepared or conducted so that interested handicapped persons, including those with impaired vision or hearing, would have access to the available information that the program provides about its services. The provision, as originally drafted, went beyond what was intended, since it implied that programs were required to ensure that handicapped persons received information that might not be available to non-handicapped persons. The proposed provision, § 1624.4, tracks the language on communications suggested by the H.E.W. guidelines. See 45 C.F.R. 85.51(e).

Section 1624.4(f) essentially adopts the language of the H.E.W. guidelines that requires that handicapped persons be afforded a meaningful opportunity to participate in meetings or other planning activities. Because the setting of priorities is a fundamental requirement of the Legal Services Corporation Act, the proposed regulation emphasizes that handicapped persons must have an opportunity to participate in priority-setting activities under Part 1620 of the Regulations, 45 C.F.R. 1620. The latter Regulation, of course, requires both that

handicapped persons be included in the priority-setting process, and that their special needs for access to legal services be considered during that process.

Section 1624.5 (Accessibility of Legal Services)—The original instruction discussed the requirements of this section in terms of the "availability of legal assistance." The proposed regulation uses the phrase "accessibility of legal services", to clarify that these provisions relate primarily to physical access to facilities where legal services are provided. The H.E.W. guidelines also use the term "accessibility," and there seems to be no reason to deviate from that usage.

Section 1624.5(a) contains an express prohibition on discrimination against handicapped persons because of the inaccessibility of a program's facilities. It was added to state explicitly what was implicit in the proposed instruction and to track the language in the H.E.W. guidelines. See 45 C.F.R. 85.56.

Both the H.E.W. guidelines and the instruction noted that the accessibility requirement did not require a legal services program to make each and every part of its existing facilities accessible to and usable by handicapped persons. The instruction also included a list of alternative methods that could be used to achieve compliance. In drafting section 1624.5(b), this list of alternatives was omitted to emphasize that programs are required to "give priority to those methods that offer legal services to handicapped persons in the most integrated setting appropriate." Programs may use alternatives, such as home visits or delivery of services at alternative accessible sites, but the preferred methods of compliance are those that encourage "mainstreaming" of handicapped clients.

The original instruction required programs to determine the cost of structural changes that would make existing facilities accessible; no such changes were to be made without prior approval of the Regional Office. Section 1624.7(a) requires a similar determination ("cost of structural or other changes necessary to make each of its facilities accessible") as part of an overall self-evaluation, but removes the need for Regional Office approval. Such structural changes may well be minor; payment for major changes must be made in accordance with the procedures set forth in the Corporation's Audit and Accounting Guide.

The original instruction provided that a program "make every reasonable effort to insure that new facilities it rents or purchases are accessible to handicapped persons." In order to

insure the effectiveness of this requirement, a provision has been added in § 1624.5(c), obligating programs to certify to the Regional Office, prior to entering into a lease or contract, that the new facilities will be accessible or, if they will not be, describing the reasons and steps that will be taken to insure that services will be accessible. Recertification is required only if substantial changes are made that affect accessibility of the facility.

The H.E.W. guidelines contain a provision relating to new construction and alterations. See 45 C.F.R. 85.58. Although funds provided to legal services programs have not generally been used for the construction of buildings, they have been used for the alterations. Therefore, the appropriate H.E.W. language has been included in § 1624.5(d).

Section 1624.6 (Employment)—Section 1624.6 of the proposed regulation includes the general prohibition against discrimination in employment contained in the H.E.W. guidelines. Also included are provisions of the guidelines that list activities to which the prohibition applies, including such activities as recruitment, rates of pay, fringe benefits, and training opportunities. See 45 C.F.R. 85.52(b)(d).

The only significant departure from the language of the guidelines is in § 1624.6(d), which prohibits contractual or other relationships with agencies or organizations such as unions or employment agencies that have the effect of subjecting qualified handicapped applicants or employees to discrimination. . . . The provision has been clarified to reflect that it applies to discriminatory practices by agencies or organizations, and does not prohibit programs, for example, from refusing to hire handicapped applicants who are not union members or who are not referred by an employment agency with which the program has an exclusive contract, provided that the union or employment agency does not discriminate.

The original instruction contained a series of provisions describing the reasonable accommodations that must be made to the physical or mental limitations of a handicapped worker. These provisions are not spelled out in detail in the H.E.W. guidelines, but they are contained in the regulations that apply to programs funded by H.E.W. See 45 C.F.R. 84.12(b). These detailed provisions, § 1624.6(e), have been included in the proposed regulation to give programs necessary guidance in determining the circumstances under which accommodations must be made.

and the nature of those accommodations.

The only change from the general statement in the H.E.W. guidelines on accommodation relates to the burden of proof necessary to establish that an undue hardship would be imposed on program operations. The H.E.W. provisions require the recipient to demonstrate that undue burdens would be imposed, clearly placing the burden of proof on the recipient and giving the provision a substantial *in terrorem* effect. The proposed regulation is silent on where the burden of proof falls, leaving that question open for later interpretation as the Corporation develops more experience dealing with the provision.

The H.E.W. guidelines also contain prohibitions against the use of discriminatory employment tests or criteria and preemployment examinations or inquiries. The Corporation has substantially adopted these provisions in § 1624.6(f) and (g).¹

Section 1624.7 (Self-Evaluation)—The original instruction contained a provision requiring a recipient to conduct a self-evaluation of the extent to which its current facilities, policies and practices comply with the stated requirements, and prepare and submit to the Regional Office a plan to insure future compliance. The self-evaluation and the plan were to be completed within one year of the effective date of the instruction.

Section 1624.7 maintains the requirement for a self-evaluation, but omits the provision for a plan. Since the proposed regulation is considerably more detailed than the original instruction, there is less need for a formal compliance plan. In addition, programs are under increasing obligations from the Corporation and other funding sources to prepare plans for numerous aspects of their operations and provide information on a wide variety of issues. The plan requirement was omitted to avoid adding unnecessarily to the burgeoning administrative requirements under which Corporation grantees now operate.

Nevertheless, in order to ensure that programs begin the required self-

¹ Section 85.55 refers to 45 CFR 84.14 to describe the limited circumstances under which medical examinations and inquiries are permitted. They deal with situations such as remedial action to correct prior discrimination and medical examinations given to all newly hired employees prior to beginning duty. Section 85.55(d) deals with situations in which confidential medical information may be revealed and includes reference to "government officials investigating compliance with the Act." We have excluded this last provision of the section.

evaluation immediately and take seriously their responsibilities to make programs and activities accessible to handicapped persons, two additional changes have been made in the provision. First, the self-evaluation must be completed by January 1, 1980, regardless of the effective date of the regulation. Legal services programs have been on notice for some time that they are subject to the provisions of Section 504, and many are already obligated to meet the Section 504 requirements of other federal funding sources, particularly H.E.W. Given this reality, a January 1 deadline is reasonable. Second, the results of the self-evaluation, including plans and timetables for correcting deficiencies, are to be made available to the Corporation's Regional Offices for use in their regular monitoring activities, and to other persons who might have an interest in ensuring accessibility of legal services program activities.

Section 1624.8 (Enforcement)—The proposed regulation contains an enforcement section indicating that alleged violations of this part are to be handled in accordance with Part 1618 of the Corporation's regulations. This section was added to emphasize that enforcement of these regulations is an important part of the Corporation's overall responsibilities.

It is proposed that Title 45 of the Code of Federal Regulations be amended by adding a new Part 1624 to read as follows:

PART 1624 PROHIBITION AGAINST DISCRIMINATION ON THE BASIS OF HANDICAP

Sec.

- 1624.1 Purpose.
- 1624.2 Application.
- 1624.3 Definitions.
- 1624.4 Discrimination prohibited.
- 1624.5 Accessibility of legal services.
- 1624.6 Employment.
- 1624.7 Self-evaluation.
- 1624.8 Enforcement.

Prohibition Against Discrimination on the Basis of Handicap

§ 1624.1 Purpose.

The purpose of this part is to insure that every legal services program supported in whole or in part by Legal Services Corporation funds complies with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794.

§ 1624.2 Application.

This part applies to each legal services program receiving financial assistance from the Legal Services Corporation.

§ 1624.3 Definitions.

As used in this part, the term:

(a) "Legal services program" means any recipient, as defined by Part 1600.1 of these regulations, or any other public or private agency, institution, organization, or other entity, or any person to which or to whom financial assistance is extended by the Legal Services Corporation directly or through another agency, institution, organization or entity, but does not include the ultimate beneficiary of legal assistance;

(b) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property;

(c)(1) "Handicapped person" means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment;

(2) As used in subparagraph (1) the phrase:

(i) "Physical or mental impairment" means (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal, special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities;

(ii) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working;

(iii) "Has a record of such impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities;

(iv) "Is regarded as having an impairment" means (A) has a physical or mental impairment that does not substantially limit major life activities but is treated by a legal services program as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairments; or (C) has none of the impairments defined in paragraph (c)(2) of this section but is treated by a legal services program as having such an impairment;

(d) "Qualified handicapped person" means: (1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question; (2) with respect to other services, a handicapped person who meets the eligibility requirements for the receipt of such services from the legal services program.

§ 1624.4 Discrimination prohibited.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination by any legal services program, directly or through any contractual or another arrangement.

(b) A legal services program may not deny a qualified handicapped person the opportunity to participate in any of its programs or activities or to receive any of its services on the ground that there exists a separate or different program, activity or facility that is specifically designed to serve handicapped persons.

(c) In determining the geographic site or location of a facility, a legal services program may not make selections that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity of the legal services program.

(d) (1) A legal services program that employs fifteen or more persons at one or more locations shall provide appropriate auxiliary aids to persons with impaired sensory, manual or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the legal services program's services.

(2) The Corporation may require legal services programs with fewer than fifteen employees to provide auxiliary aids where the provision of aids would not significantly impair the ability of the legal services program to provide its services.

(3) For the purpose of § 1624.4(d) (1) and (2), auxiliary aids include, but are not limited to, brailled and typed material, interpreters, and other aids for persons with impaired hearing, speech or vision.

(e) A legal services program shall take appropriate steps to ensure that communications with its applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

(f) A legal services program may not deny handicapped persons the opportunity to participate as members of or in the meetings or activities of any planning or advisory board or process

established by or conducted by the legal services program, including but not limited to meetings and activities conducted in response to the requirements of Part 1620 of these regulations.

§ 1624.5 Accessibility of legal services.

(a) No qualified handicapped person shall, because a legal services program's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination by any legal services program.

(b) A legal services program shall conduct its activities so that its programs and activities, when viewed in their entirety, are readily accessible to handicapped persons. This paragraph does not necessarily require a legal services program to make each of its existing facilities or every part of an existing facility accessible to and usable by handicapped persons, or require a legal services program to make structural changes in existing facilities when other methods are effective in achieving compliance. In choosing among available methods for meeting the requirements of this paragraph, a legal services program shall give priority to those methods that offer legal services to handicapped persons in the most integrated setting appropriate.

(c) A legal services program shall make every reasonable effort to insure that new facilities that it rents or purchases are accessible to handicapped persons. Prior to entering into any lease or contract for the purchase of a building, a legal services program shall submit a statement to the appropriate Regional Office certifying that the facilities covered by the lease or contract will be accessible to handicapped persons, or if the facilities will not be accessible, the reasons why that facility was nevertheless selected and the specific steps that will be taken by the legal services program to insure that its services are accessible to handicapped persons who would otherwise use that facility. After a certification of accessibility has been submitted for a facility, a certificate need not be resubmitted with respect to the same facility, unless substantial changes have been made that affect the accessibility of that facility.

(d) New facilities shall be designed and constructed to be readily accessible to and usable by handicapped persons. Alterations to existing facilities shall, to the maximum extent feasible, be designed and constructed to make the

altered facilities readily accessible to and usable by handicapped persons.

§ 1624.6 Employment.

(a) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment by any legal services program.

(b) A legal services program shall make all decisions concerning employment under any program or activity to which this part applies in a manner that ensures that discrimination on the basis of handicap does not occur, and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(c) The prohibition against discrimination in employment applies to the following activities:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the legal services program.

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(d) A legal services program may not participate in any contractual or other relationship with agencies or organizations such as employment and referral agencies, labor unions, organizations providing or administering fringe benefits to employees of the legal services program, and organizations providing training and apprenticeship programs, if the practices of such agency or organization have the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart.

(e) A legal services program shall make reasonable accommodation to the

known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the accommodation would impose an undue hardship on the operation of the program.

(1) For purposes of this paragraph (e), reasonable accommodation may include (i) making facilities used by employees readily accessible to and usable by handicapped persons, and (ii) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(2) In determining whether an accommodation would impose an undue hardship on the operation of a legal services program, factors to be considered include the overall size of the legal services program with respect to number of employees, number and type of facilities, and size of budget, and the nature and costs of the accommodation needed.

(3) A legal services program may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is a need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

(f) A legal services program may not use employment tests or criteria that discriminate against handicapped persons and shall ensure that employment tests are adapted for use by persons who have handicaps that impair sensory, manual, or speaking skills.

(g) A legal services program may not conduct a pre-employment medical examination or make a pre-employment inquiry as to whether an applicant is a handicapped person or as to the nature or severity of a handicap except under the circumstances described in 45 CFR 84.14 (a)-(c).

(h) Any recruitment materials published or used by a legal services program shall include a statement that the legal services program does not discriminate on the basis of handicap in violation of Section 504 of the Rehabilitation Act of 1973.

§ 1624.7 Self-evaluation.

(a) By January 1, 1980 legal services program shall evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, the extent to which its current facilities, policies and practices comply with the requirements of this part and the cost of structural or other changes necessary to make each of its facilities accessible to handicapped persons.

(b) The results of this self-evaluation, including steps the legal services program plans to take to correct any deficiencies revealed and the timetable for completing such steps, shall be made available for review by the Corporation and other interested persons.

§ 1624.8 Enforcement.

The procedures described in Part 1618 of these regulations shall apply to any alleged violation of this part by a legal services program.

Stephen S. Walters,

Acting General Counsel, Legal Services Corporation.

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FEDERAL MARITIME COMMISSION

[46 CFR Chapter IV]

Self-Policing of Independent Liner Operators

AGENCY: Federal Maritime Commission.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: The Federal Maritime Commission is considering promulgating a rule under the authority of the Shipping Act, 1916, requiring independent liner operators in the U.S. foreign commerce to subject themselves to a self-policing program. The purpose of this Advance Notice is to solicit comments and information from the public on the nature, scope and operation of a self-policing system for independent liner operators.

DATES: Comments must be submitted on or before May 16, 1979.

ADDRESSES: Comments (original and 15 copies) to: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573.

FOR FURTHER INFORMATION CONTACT: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, Telephone (202) 523-5725.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission is responsible for administering provisions of the Shipping Act, 1916 (46 U.S.C. 801, *et seq.*) which forbid rebating and other malpractices by common carriers by water in the foreign commerce of the United States. Since 1965, an important aspect of the Commission's anti-rebating program has been its regulations requiring conferences and other rate-making bodies to undertake a program of self-policing (46 CFR Part 528). The Commission recently revised these regulations to require that self-policing be performed by "neutral bodies" in

most instances. Docket No. 73-64, *Additional Provisions and Reporting Requirements Applicable to Self-Policing Systems Under General Order 7*, September 14, 1979.

Present FMC self-policing regulations apply only to carriers engaged in rate-making activities approved under section 15 of the Shipping Act, 1916, (46 U.S.C. 814) ¹ and not to nonconference or "independent" carriers. ² However, rebating and similar schemes by which shippers obtain transportation at less than tariff rates, are not engaged in solely by carriers which belong to rate-making bodies.

Accordingly, the Commission is considering whether to adopt rules requiring independent carriers to participate in self-policing programs. It would be useful, however, to receive public comments regarding the appropriate nature, scope and feasibility of a policing requirement for independent carriers prior to proposing specific regulations. Specific comments are sought on the following issues as well as any related matters believed relevant:

1. Is policing of independents necessary or useful? Why or why not?
2. Is policing of independents feasible? Why or why not?
3. The Commission is considering a proposed rule which would either require independent liner operators to police themselves in an acceptable manner, or require such independents to subject themselves to policing by a neutral body. Commentators are requested to state which alternative is preferable, the reason for that opinion, the general procedures which will enable that alternative to most effectively function, and the statutory or other legal authority relied upon to support the views expressed.
4. To what extent can and should the specific provisions of General Order 7 be made applicable to independent liner operators?
5. Is it feasible to require independents to subject themselves to policing by the particular neutral body active in the applicable trade?
6. Is it feasible to assess penalties against independents for violations discovered by the policing authority? Who would collect the penalty? What would be done with the funds which are collected? Are there any other practical problems associated with assessment or collection of penalties?

¹ Section 528.6 of General Order 7 specifically exempts two-party rate agreements from the requirements of that Order.

² Section 15 expressly directs the Commission to disapprove agreements found to have "inadequate policing."