

pesticide on cottonseed at 0.5 ppm; meat, fat, and meat by-products of cattle, goats, hogs, horses, and sheep at 0.1 ppm; and milk at 0.02 ppm with an expiration date of October 31, 1992, to cover residues expected to be present during the period of conditional registration.

Based on the above information and data considered, the agency concludes that the tolerances would protect the public health. Therefore, the tolerances are established as set forth below with an expiration date of October 31, 1992. After receipt and evaluation of the data required to support the conditional registration of bifenthrin, the Agency will consider establishing a permanent tolerance.

Any person adversely affected by this regulation may, within 30 days after the date of publication in the Federal Register, file written objections with the Hearing Clerk (address above). Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164 (5 U.S.C. 601-612)), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from the tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950), (Sec. 408(c), 72 Stat. 1786 (21 U.S.C. 346(C)).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 5, 1988.

Douglas D. Camp, Jr.

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. New § 180.442 is added, to read as follows:

§ 180.442 Bifenthrin; tolerances for residues.

Tolerances, to expire October 31, 1992, are established for residues of the pyrethroid bifenthrin (2-methyl[1,1'-biphenyl]-3-yl)methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate) in or on the following commodities:

Commodities	Part per million
Cottonseed	0.5
Meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep	0.1
Milk	0.02

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LEGAL SERVICES CORPORATION

45 CFR Part 1607

Governing Bodies

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule revises § 1607.6 of 45 CFR Part 1607 of the Legal Services Corporation's regulations on recipient governing bodies. Section 1607.6 implements section 1007(c) of the Legal Services Corporation Act, which prohibits LSC program attorney board members from receiving compensation from "a recipient." 42 U.S.C. 2996f. Part 1607 as originally promulgated in 1976 substituted the definite article, "the recipient," for the indefinite article used in the Act, causing uncertainty as to the scope of the restriction. This revision, which makes the language in the regulation more closely comport with the letter and the meaning of the Act, is intended to reinforce the independence of recipient board members. The revision also more clearly defines what is included in the term "compensation." **EFFECTIVE DATE:** September 14, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy J. Shea, General Counsel, Office of the General Counsel, Legal Services Corporation, 400 Virginia Avenue SW., Washington, DC 20024-2751. (202) 863-1823.

SUPPLEMENTARY INFORMATION: Notice of proposed changes to 45 CFR Part 1607, LSC's regulations on recipient governing bodies, published at 52 FR 38900 (Oct. 19, 1987), was amended at 52 FR 42460 (Nov. 5, 1987) to extend the comment period to December 10, 1987, and, as a matter of discretion, until December 17, 1987, the day of the LSC Board's Operations and Regulations Committee

meeting. The notice proposed several changes to Part 1607, including § 1607.6. A total of 567 comments from state and local bar associations, Members of Congress, LSC programs, and other interested individuals and groups has been received. Approximately 145 comments addressed the proposed changes to § 1607.6. In addition, the LSC Board's Operations and Regulations Committee met in Philadelphia, Pennsylvania, on November 20, 1987, in Charleston, South Carolina, on December 17 and 18, 1987, and in Washington, DC, on January 28 and 29, 1988, to hear public comment and consider the proposed changes. On January 29, 1988, the Board, at the recommendation of the Operations and Regulations Committee, adopted revisions to § 1607.6 as final.

Approximately 143 comments opposed and 2 favored the proposed revision of section 1607.6 to prohibit receipt of compensation from "any recipient," rather than the current prohibition on "the recipient." The comments urged that Congress did not mean "any" when it used the indefinite article "a" in section 1007(c). Comments also asserted that the revision would prevent recipient attorneys from serving on national support centers where their first-hand knowledge and experience are valuable.

Section 1007(c) of the LSC Act prohibits LSC program attorney board members from receiving compensation from "a recipient." 42 U.S.C. 2996f. When the implementing regulation, 45 CFR Part 1607, was promulgated in 1976, the definite article was substituted for the indefinite article without any accompanying explanation. See 41 FR 18526 (May 5, 1976) (proposed rule); 41 FR 25899 (June 23, 1976) (final rule). As evidenced by comments to the proposed changes to Part 1607, some commenters insisted that Congress meant "the" even though it used the indefinite article "a" to modify "recipient" in the Act.

If the provision is construed to mean "a" recipient, then attorney board members may not be compensated by any LSC-funded recipient program. If it is construed to mean "the" recipient, then attorney board members may receive compensation from any LSC program except the recipient on whose board the attorneys serve.

The prohibition is intended to assure that recipient board members are independent, dispassionate, and free from institutional or individual conflicts that detract from the primacy of the provision of effective and efficient client service. The potential for conflict for a staff member who holds a director

position for the same recipient is indisputable. These same concerns apply, though more remotely, in the case of a recipient staff member who sits on other recipient boards. More specifically, many state and national support centers have directors who receive salaries from the same recipient programs to which the support centers provide services. The governing bodies of support centers regularly make decisions on how and where to allocate training, technical assistance, co-counseling, and other substantial resources to the legal services community. Support center directors who are staff members at other programs have a potential conflict with regard to resource allocation decisions insofar as they may have the opportunity to influence decisions to benefit their own programs. Expanding the rule's prohibition from "the" recipient to "a" recipient will reinforce the strong interest in independent governance.

The use of the indefinite article "a" in the LSC Act is not ambiguous and should be given its plain meaning. *United States v. Public Utilities Commission of California*, 345 U.S. 295, 315 (1953), as Congress expresses its intent through the ordinary meaning of the words it uses. *Rubin v. United States*, 449 U.S. 424, 430 (1981). No facial ambiguity in the tenor of section 1007(c) itself has been urged. Conspicuously, use of the definite article in the rule adopted in 1976 is not accompanied by any explanation of the departure from the terms of the statute. Nevertheless, review of the legislative history persuasively demonstrates that the indefinite article was deliberately chosen.

S. Rep. No. 495, 93rd Cong., 1st Sess. 17 (1973), addressing a bill leading to the 1974 LSC Act, S. 2686, 93rd Cong., 1st Sess. (1973), constitutes the main authority for the proposition that "a" should be deemed to mean "the," according to the commenters. The proposed Senate language prohibited compensation from "such" recipient, meaning "the" recipient. It is clear from both the proposed Senate language and the accompanying explanation that the Senate originally contemplated restricting compensation of attorney board members from only those programs on whose boards the attorneys served. S. Rep. No. 495, 93rd Cong., 1st Sess. 17 (1973). The House bill, H.R. 7824, 93rd Cong., 1st Sess. (1973), included a similar prohibition on receipt of compensation by attorneys from recipients. The proposed House language, however, used the indefinite

article and was clearly intended to prevent compensation from any LSC recipient. H.R. Rep. No. 247, 93rd Cong., 1st Sess. 12, 20 (1973).

The House version prevailed in conference. The Senate dropped its use of the word "such" in deference to the House use of "a." H.R. Conf. Rep. No. 1039, 93rd Cong., 2d Sess. 10, 28 (1974) and S. Conf. Rep. No. 84, 93rd Cong., 2d Sess. 10, 28 (1974). Though no explanation is given, the change was certainly deliberate.

Subsequent legislative deliberations. H. Rep. No. 201, 96th Cong., 1st Sess. 34 (1983) and H. Rep. No. 448, 99th Cong., 1st Sess. 38 (1985), some nine years after the LSC Act, on amendments that were never adopted, assumed that the prohibition against compensation from "a" recipient ran to "that" recipient. These suggestions, which were unaccompanied by any textual or legislative analysis, apparently were influenced by the regulation, § 1607.6, promulgated by the Corporation in 1978, which, of course, limited the prohibition to "the" recipient. The Supreme Court has consistently warned that the views of a subsequent Congress from a hazardous basis for inferring the intent of an earlier one. *Consumer Product Safety Commission v. GTE Sylvania, Inc.*, 447 U.S. 102, 117-18 (1980). Subsequent legislative history will rarely override a reasonable interpretation of a statute that is gleaned from its language and contemporaneous legislative history. *Id.* at 118 n. 13.

In short, review of the legislative history supports the conclusion that the indefinite article "a" was intended when Congress used it in section 1007(c) of the LSC Act.

Concern was expressed to the LSC Board that the revision would preclude healthy exchanges between support centers and their principal clients, the field programs. Certainly, the staffs of support centers and field officers have frequent contact. Nevertheless, to the degree that board level exchanges are deemed necessary, local program board members may still serve on the support center boards, as no restriction exists in this regard.

Section 1607.6 is also revised to clarify that "compensation" includes salary, per diem, or other like payments that constitute remuneration for services rendered, whether in salary, fees, commissions, or per diem. Payment for normal travel and other out-of-pocket expenses required for fulfillment of the obligations of board membership is excluded. The commenter registered no opposition to this change.

Language in the most recent LSC appropriations act, the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-202, 101 Stat. 1329 (1987), imposes certain constraints on the regulation by LSC of recipient governing bodies. The proposed change to § 1607.6, however, does not fall within the constraints of the appropriations act's language. The appropriations act prohibits the Corporation from imposing any requirements on governing bodies that are additional to, or more restrictive than, the provisions of Pub. L. 99-180 and section 1007(c) of the LSC Act. As set out above, the purpose of the change is to revise the language in section 1607.6 to comport more closely with the letter and the meaning of the Act. The change will thus not impose any requirement on governing bodies that goes beyond requirements already delineated in the Act.

Pursuant to Pub. L. 100-201, 101 Stat. 1329-39 (1987), the Corporation is required to give 15 days notice to the appropriations committees of both Houses of Congress prior to publishing revisions to its regulations as final. Reprogramming letters were duly sent to the appropriate committees, and a response expressing disapproval of the proposed revisions based on subsequent legislative deliberations was received from the Senate committee. After careful analysis, set out above, the Corporation concluded that the subsequent deliberations were far outweighed by the express language of the LSC Act and the contemporaneous legislative history. An expression of disapproval, while respectfully considered, does not affect the authority of LSC to publish its revisions as final, as only notice, and not approval, is statutorily required. See Pub. L. 99-180, 99 Stat. 1165 (1985), incorporated by reference in Pub. L. 100-202, 101 Stat. 1329 (1987); 130 CONG. REC. S8588-8589 (daily ed. June 28, 1984); and *Principles of Federal Appropriations Law 2-29* (GAO ed. 1982).

List of Subjects in 45 CFR Part 1607

Legal services.

For reasons set out above, 45 CFR Part 1607 is amended as follows:

1. The authority citation for Part 1607 is revised to read as follows:

Authority: Sec. 1007(c); 42 U.S.C. 2996f(c); Pub. L. 97-377; 96 Stat. 1830; Pub. L. 100-202; 101 Stat. 1329.

2. Section 1607.6 is revised to read as follows:

§ 1607.6 Compensation.

While serving on the governing body of a recipient, no board member shall

receive compensation from any recipient of the Corporation, whether such compensation is termed salary, per diem, or otherwise. A board member may receive payment for normal travel and other out-of-pocket expenses required for fulfillment of the obligations of board membership.

Timothy B. Shea,

General Counsel.

Date: August 9, 1988.

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