

compounds (VOCs), other organic compounds, methane, and hazardous air pollutants.

EPA approved this direct final rulemaking without prior proposal because the Agency viewed it as a noncontroversial amendment and anticipated no adverse comments. The final rule was published in the **Federal Register** with a provision for a 30 day comment period (63 FR 17683). At the same time, EPA announced that this final rule would convert to a proposed rule in the event that adverse comments were submitted to EPA within 30 days of publication of the rule in the **Federal Register** (63 FR 17683, April 10, 1998). The final rulemaking action would be withdrawn by publishing a document announcing withdrawal of this action.

Adverse comments were submitted to EPA within the prescribed comment period. Therefore, EPA is amending 40 CFR part 62, subpart NN, by removing the April 10, 1998 final rulemaking action. All public comments received will be addressed in a subsequent rulemaking action based on the proposed rule.

EFFECTIVE DATE: June 18, 1998.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 566-2190 or by e-mail at topsale.james@epamail.gov.

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Non-methane organic compounds, Methane, Municipal solid waste landfills, Reporting and recordkeeping requirements.

Dated: June 9, 1998.

W. Michael McCabe,

Regional Administrator, Region III.

40 CFR Part 62 is amended as follows:

PART 62—[AMENDED]

Subpart NN—Pennsylvania

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

§§ 62.9630—62.9632 [Removed]

2. The undesignated centerheading and §§ 62.9630 through 62.9632 are removed.

[FR Doc. 98-16254 Filed 6-17-98; 8:45 am]

BILLING CODE 6560-50-P

LEGAL SERVICES CORPORATION

45 CFR Part 1644

Disclosure of Case Information

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule implements a provision in the Legal Services Corporation's (LSC or Corporation) FY 1998 appropriations act which requires basic field recipients to disclose certain information to the public and to the Corporation regarding cases their attorneys file in court. The case information that is provided to the Corporation will be subject to disclosure under the Freedom of Information Act.

DATES: This rule is effective July 20, 1998.

FOR FURTHER INFORMATION CONTACT: Suzanne Glasow, Office of the General Counsel, 202-336-8817.

SUPPLEMENTARY INFORMATION: This final rule is intended to implement Section 505 of the Corporation's FY 1998 appropriations act, which requires basic field recipients to disclose certain information to the public and to the Corporation regarding cases filed in court by attorneys employed by recipients. See Public Law 105-119, 111 Stat. 2440. The Corporation issued a program letter on December 9, 1997, providing recipients with guidance on compliance with Section 505 until such time as a rule could be promulgated by the Corporation. On February 6, 1998, the Corporation's Operations and Regulations Committee (Committee) of the Corporation's Board of Directors (Board) met to consider a draft proposed rule to implement the case disclosure requirement. After deliberation, the Committee adopted a proposed rule that was published in the **Federal Register** for public comment. See 63 FR 8387 (Feb. 19, 1998).

The Corporation received 4 comments on the proposed rule. The comments agreed that, for the most part, the proposed rule accurately reflected legislative intent. For those provisions of the rule that the commenters believed went beyond the intent of Section 505, suggestions were made for changes. Several comments also asked for clarification on certain issues either in the commentary or the text of the final rule. The Committee met on April 5, 1998, to consider public comment. After making revisions to the proposed rule, the Committee recommended the rule as revised to the Board as a final rule. The Board adopted the rule as recommended by the Committee on April 6, 1998, for

publication as a final rule in the **Federal Register**.

A section-by-section analysis and discussion of changes made from the proposed rule is provided below.

Section-by-Section Analysis

Section 1644.1 Purpose

The purpose section states that the rule is intended to ensure that recipients disclose certain required information to the public and to the Corporation on cases filed in court by their attorneys.

Section 1644.2 Definitions

The case disclosure provision requires that recipients disclose certain information, among which is the cause of action, for each case filed in court by their attorneys. To clarify this requirement, this final rule includes three definitions. Paragraph (a) of § 1644.2 defines to disclose the cause of action. The term means to provide a sufficient description of a particular case to indicate the principal nature of the case. Examples would include: breach of warranty, bankruptcy, divorce, domestic violence, petition to quiet title, action to recover property, and employment discrimination action.

Paragraph (b) clarifies the type of recipient subject to the case disclosure requirement. Recipient is defined as an entity that receives funds under Sec. 1006(a)(1)(A) of the LSC Act, 42 U.S.C. 2996e(a)(1)(A), that is, a basic field recipient which provides direct legal assistance to the poor. Although Section 505 does not specifically apply to subrecipients, as a matter of policy, the proposed rule extended the case disclosure requirement to subrecipients which provide direct legal representation to eligible clients.

The comments generally disagreed with this policy and urged the Corporation to exclude subrecipients from the reach of the requirement or, at least, limit the application of the requirement to activities under an LSC subgrant. In addition, comments pointed out that the interplay of the discussion of this issue in the preamble and the language in the rule itself created confusion as to whether the rule was intended to apply to all cases filed by subrecipients or only to cases filed by subrecipients that are funded under a subgrant.

The Board revised the definition of recipient and the applicability provisions in § 1644.3¹ in order to clarify the intended application of the case disclosure requirement to subrecipients. It was the intent of the

¹ The section numbers for §§ 1644.3 and 1644.4 have been reversed from the proposed rule.

proposed rule to apply the requirement to cases funded under subgrants provided for the direct legal assistance to the poor, except for PAI subgrants. The language in the text and preamble, however, did not make this clear. The revised language better states the intent and also clarifies that the disclosure requirement does not apply to a subrecipient's non-LSC funded activities. This means that subrecipients are required to disclose information only for cases funded by their LSC subgrants. The final rule thus ensures that information will be available to the public regarding all cases filed by recipients and any cases filed by subrecipients that are funded under an LSC subgrant for the direct representation of eligible clients, except for PAI subgrants.

Paragraph (c) defines the term attorney, for the purposes of this part, to mean any attorney who is employed by a recipient. This would include attorneys employed as regular or contract employees, regardless of whether such attorneys are employed full-time or part-time. One comment asked for additional language in the definition that would clarify that attorney does not include any private attorney who, under the recipient's PAI program, receives compensation from a recipient under the terms of a contract or *judicare* arrangement, or who undertakes representation of eligible clients on a *pro bono* basis. Although the Board agreed with the substance of the comment, it did not revise the definition of attorney. Instead, it added § 1644.3(b) to the rule, which provides that the case disclosure requirement does not apply to private attorneys who provide legal assistance as part of a recipient's PAI activities.

Section 1644.3 Applicability

This section, which has been renumbered, clarifies the scope of the case disclosure requirement. Technical and clarifying revisions were made to this section by the Board, and language was added to clarify the applicability of this rule to subrecipients, as discussed under § 1644.2 above. Subparagraph (a)(1) clarifies that the disclosure requirement is limited to cases filed on behalf of plaintiffs and petitioners. This is consistent with the language of Section 505, which requires case information about "each case filed by its [a recipient's] attorneys." This language clearly applies to "each case" filed, not to individual filings in a particular case. Thus, the case disclosure requirement does not require updates on the status of cases for which information has already been filed. In addition, the

language of Section 505 refers to cases filed by a recipient attorney. The general understanding of the meaning of filing a case is that it refers to the initiation of a case, such as the filing of a complaint by a plaintiff. Accordingly, disclosure is not required for submissions of pleadings such as an answer or a cross claim on behalf of a defendant in a case that was not initiated by a recipient.

Although the case disclosure requirement normally applies only to the original filing of a case, subparagraph (a)(2) applies the requirement when there is an appeal filed in court by a recipient, the recipient's client is the appellant, and the recipient was not the attorney of record in the case below. The Board revised this provision from the proposed rule to add the requirement that the case be one where the recipient's client is the appellant. This is consistent with § 1644.3(a)(1), which limits the case disclosure requirement to cases filed on behalf of plaintiffs or petitioners.

Subparagraph (a)(3) applies the requirement to a request for judicial review of an administrative action filed in a court of competent jurisdiction. The language of this provision was revised to state more accurately the situation covered by the provision.

Finally, paragraph (b) provides that this rule does not apply to cases filed by private attorneys as part of a recipient's private attorney involvement activities pursuant to part 1614. PAI attorneys are not attorneys employed by recipients; rather, they are generally private attorneys with their own private practices who have been recruited by recipients to provide some legal assistance to eligible clients, either *pro bono* or on a compensated basis.

Section 1644.4 Case Disclosure Requirement

This section sets out the basic requirements of the case disclosure provision. Paragraph (a) provides that the disclosure requirement applies to each case filed in court by a recipient's attorneys. The preamble to the proposed rule explained that the disclosure requirement does not apply to cases filed by part-time attorneys outside of their employment with the recipient. One comment asked that this clarification be made explicit in the rule. The Board agreed and added language to § 1644.4(a) of the final rule that provides that the rule applies only to cases filed by recipient attorneys "on behalf of a client of the recipient." A similar revision was also made for § 1644.3(a)(1).

Name and address of parties: Subparagraphs 1644.4(a)(1) through (a)(4) list the information a recipient must disclose about applicable cases. First, the name and full address of each party to a case must be disclosed unless one of the two statutory protections discussed below applies. The term "full address" means an address sufficient to contact a party to the case by mail, such as a street address or post office box number with the city, State and zip code. This provision is not intended to require recipients to provide a name and address of a party when they have no knowledge of and cannot reasonably obtain such information. This could occur, for example, when the information is not a matter of public record, the party is not a client of the recipient, and the private attorney for that party refuses to provide the information. However, the recipient must make a reasonable effort to obtain the information.

Pursuant to Section 505, a name or address need not be disclosed if (1) the name or address is protected by an order or rule of court or by State or Federal law, or (2) the recipient's attorney reasonably believes that revealing the information would put the client of the recipient at risk of physical harm. These protections are consistent with the express legislative intent of the purpose and scope of the requirement. The legislative history indicates that Congress intends that the disclosure requirement apply to "the most basic information" about a case which is already public and on file in court records, but does not apply to information, for example, that would risk harm to a person or that is protected by the attorney-client privilege. See 143 Cong. Rec. H 8004-8008 (Sept. 26, 1997).

One comment from an LSC recipient stated that the program receives a grant through the Victims of Crime Act (VOCA), which only funds legal assistance to protect victims of violence. In the view of the recipient, virtually all cases handled under the VOCA grant are likely to come within the physical harm exemption. Accordingly, the recipient asked that the rule include a blanket exemption for cases filed under grants specifically targeted for domestic violence victims.

The Board did not adopt the recommendation. The remedy provided by statute allows individual attorneys to decide for particular cases whether the physical harm exemption applies. Although many of the clients served under the VOCA grant may indeed fall within the physical harm exemption, the Board was not convinced that

virtually all such clients do. Nor was the Board convinced that the burden of making individual judgments for each case is a substantial burden on recipients.

During public consideration of the rule, a question was raised about the rule's policy for protecting relatives of the client, whose physical safety would be put at risk by disclosure of the client's name and address. For example, if the children of the client rather than the client had been threatened with physical harm, could the rule's exemption from disclosing the name and address be applied to protect the children? The Board noted that the statute does not expressly provide protections for any person other than the client of the recipient, but also noted that it is clear from the legislative history of the requirement that Congress did not intend for the requirement to put anyone in harm's way. The Board did not revise the rule, but directed staff to provide guidance for situations where a family member of a client would be put at risk of physical harm.

Accordingly, when a recipient's attorney determines that a relative of the client would be put at risk of physical harm by disclosure of the client's name and address, the recipient may withhold the information, but the attorney should keep a record of that determination. This policy is based on the reasonable presumption that if one family member is put at risk by revealing the client's name and address, then it is likely that the client and any other family member who could be found by revealing the information are also at risk. This is especially true in cases where the relative at risk is a child of the client. For other situations where it may not be clear whether the risk-of-harm exception applies, a recipient should consult the Corporation for guidance.

Cause of action: The case disclosure requirement also requires disclosure of the cause of action for any applicable case. This requirement is intended to provide the public and the Corporation with information regarding the nature or types of cases filed in court by legal services attorneys, so that there is a public awareness of how legal services funds are being expended.

Name and address of court/case number: Finally, the case disclosure provision requires disclosure of the name and full address of the court where a case is filed and the case number assigned to the case. **Full address** means an address sufficient to contact the court by U.S. mail.

Paragraph (b) of this section requires recipients to provide their case information to the Corporation in

semiannual reports as specified by the Corporation. The Corporation will provide guidance to recipients on how and when to provide the information. This paragraph also clarifies that reports submitted to the Corporation are subject to public disclosure by the Corporation under the Freedom of Information Act (FOIA).

The disclosure requirement in this rule is separate from the FOIA and nothing in this rule is intended to suggest that LSC recipients are subject to the FOIA. They are not. (However, they are subject to other disclosure requirements applicable to recipients in 45 CFR part 1619.) The Corporation, on the other hand, is subject to the FOIA, and this rule requires the Corporation to treat the case information submitted to it by recipients as subject to disclosure under the FOIA.

Paragraph (c) provides that a recipient must make the case information described in paragraph (a) available in written form to any person who requests such information. This rule does not mandate how recipients must maintain the case information for disclosure to the public, except that it must be provided in written form. However maintained, the case information must be made available within a reasonable time after a request is made by any member of the public. Paragraph (c) also permits recipients to charge reasonable mailing and document copying fees.

Comments expressed confusion regarding exactly what information recipients are required to disclose and inquired whether requests would be limited to certain time frames or whether recipients must respond to requests for information in a form different from that maintained by a recipient. For example, a recipient may choose to maintain a list of every case filed after January 1, 1998, in the order in which the cases were filed. If a request asks only for cases dealing with domestic violence, the recipient is not required to prepare another list separating out domestic violence cases. The recipient is only required to provide the list it has compiled, and the requester would have to search the list to find the domestic violence cases. This does not mean that a recipient may not choose to provide the information in different formats; it is just not required to do so by this rule.

In regard to time frames, recipients must disclose the required case information when requested by a member of the public for all cases filed by their attorneys after January 1, 1998, whenever the request is made. This rule does not include any cut-off dates or other specifics on the manner of

reporting or disclosing information in the rule. If the Corporation determines that information loses its value after a period of time, so that it does not need to be maintained by recipients, it will provide clear written guidance on the matter.

Another comment asked that disclosure be required only for cases filed after the effective date of this rule if the client refuses to permit disclosure, since the client may have had no prior information about the rule and could not have consented to disclosure as a condition of representation.

The Board did not agree. The Corporation issued a program letter to all recipients on December 9, 1997, clearly stating that the law would be in effect as of January 1, 1998, and that recipients must start implementation of the case disclosure requirements set out in the letter. The letter advised recipients to inform affected clients, prior to filing a lawsuit, of the possible disclosure of the information required by this law.

Section 1644.4(c) provides that a recipient must make its case information available in written form, upon request from any person. One comment asked for clarification as to whether the word *person* includes government agencies, departments or subdivisions, non-profit corporations, public corporations, foreign corporations, or a person outside a program's service area. The term is intended to be all inclusive and is not limited by geography, or by the fact that the requesting person is asking on behalf of an organization or government entity. The legislative history clearly indicates an intent to make the information public to any requester. This is consistent with the interpretation of the terms *person* and *public* in the FOIA. The Board requested that this interpretation be included in this preamble.

Section 1644.5 Recipient Policies and Procedures

This section requires the recipient to establish written policies and procedures to guide the recipient's staff to ensure compliance with this rule. Such procedures could include information regarding how any person may be given access to or be provided with copies of a recipient's case disclosure information. The procedures could also set out the costs for copying or mailing such information.

List of Subjects in 45 CFR part 1644

Grant programs, Legal services, Reporting and recordkeeping.

For reasons set forth in the preamble, LSC amends Chapter XVI of Title 45 by adding part 1644 as follows:

PART 1644—DISCLOSURE OF CASE INFORMATION

Sec.

1644.1 Purpose.

1644.2 Definitions.

1644.3 Applicability.

1644.4 Case disclosure requirement.

1644.5 Recipient policies and procedures.

Authority: Pub. L. 105-119, 111 Stat. 2440, Sec. 505; Pub. L. 104-134, 110 Stat. 1321; 42 U.S.C. 2996g(a).

§ 1644.1 Purpose.

The purpose of this rule is to ensure that recipients disclose to the public and to the Corporation certain information on cases filed in court by their attorneys.

§ 1644.2 Definitions.

For the purposes of this part:

(a) *To disclose the cause of action* means to provide a sufficient description of the case to indicate the type or principal nature of the case.

(b) *Recipient* means any entity receiving funds from the Corporation pursuant to a grant or contract under section 1006(a)(1)(A) of the Act.

(c) *Attorney* means any full-time or part-time attorney employed by the recipient as a regular or contract employee.

§ 1644.3 Applicability.

(a) The case disclosure requirements of this part apply:

(1) To actions filed on behalf of plaintiffs or petitioners who are clients of a recipient;

(2) Only to the original filing of a case, except for appeals filed in appellate courts by a recipient if the recipient was not the attorney of record in the case below and the recipient's client is the appellant;

(3) To a request filed on behalf of a client of the recipient in a court of competent jurisdiction for judicial review of an administrative action; and

(4) To cases filed pursuant to subgrants under 45 CFR part 1627 for the direct representation of eligible clients, except for subgrants for private attorney involvement activities under part 1614 of this chapter.

(b) This part does not apply to any cases filed by private attorneys as part of a recipient's private attorney involvement activities pursuant to part 1614 of this chapter.

§ 1644.4 Case disclosure requirement.

(a) For each case filed in court by its attorneys on behalf of a client of the recipient after January 1, 1998, a

recipient shall disclose, in accordance with the requirements of this part, the following information:

(1) The name and full address of each party to a case, unless:

(i) the information is protected by an order or rule of court or by State or Federal law; or

(ii) the recipient's attorney reasonably believes that revealing such information would put the client of the recipient at risk of physical harm;

(2) The cause of action;

(3) The name and full address of the court where the case is filed; and

(4) The case number assigned to the case by the court.

(b) Recipients shall provide the information required in paragraph (a) of this section to the Corporation in semiannual reports in the manner specified by the Corporation. Recipients may file such reports on behalf of their subrecipients for cases that are filed under subgrants. Reports filed with the Corporation will be made available by the Corporation to the public upon request pursuant to the Freedom of Information Act, 5 U.S.C. 552.

(c) Upon request, a recipient shall make the information required in paragraph (a) of this section available in written form to any person. Recipients may charge a reasonable fee for mailing and copying documents.

§ 1644.5 Recipient policies and procedures.

Each recipient shall adopt written policies and procedures to implement the requirements of this part.

June 15, 1998.

Victor M. Fortuno,

General Counsel.

[FR Doc. 98-16243 Filed 6-17-98; 8:45 am]

BILLING CODE 7050-01-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 387, 390, 391, 392, 395, 396, and 397

[FHWA Docket No. FHWA-97-2328; MC-97-3]

RIN 2125-AD72

Review of the Federal Motor Carrier Safety Regulations; Regulatory Removals and Substantive Amendments

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is adopting a final rule to remove, amend, and redesignate

certain provisions of the Federal Motor Carrier Safety Regulations concerning financial responsibility; general applicability and definitions; accident recordkeeping requirements; qualifications of drivers; driving of commercial motor vehicles; hours of service of drivers; inspection, repair, and maintenance; and the transportation of hazardous materials. The agency considers many of these regulations to be obsolete, redundant, unnecessary, ineffective, or burdensome. Others are more appropriately regulated by State and local authorities, better addressed by company policy, in need of clarification, or more appropriately contained in another section. This action is consistent with the FHWA's Zero Base Regulatory Review and the President's Regulatory Reinvention Initiative.

EFFECTIVE DATE: July 20, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Office of Motor Carrier Research and Standards, (202) 366-4009, or Mr. Charles E. Medalen, Office of the Chief Counsel, (202) 366-1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

As part of its Zero Base Regulatory Review Program, the FHWA published a notice of proposed rulemaking in the **Federal Register** on January 27, 1997 (62 FR 3855) to request comment on an extensive list of changes proposed concerning Parts 387, 390, 391, 392, 395, 396, and 397 of the Federal Motor Carrier Safety Regulations (FMCSRs). The agency had implemented an earlier set of changes to the FMCSRs on November 23, 1994 (59 FR 60319) after receiving comments to a notice of proposed rulemaking published on January 10, 1994 (59 FR 1366). The agency had also published a final rule on July 28, 1995 (60 FR 38739) making technical corrections to keep the FMCSRs accurate and up to date.

Discussion of Comments

The FHWA extended the comment period for the NPRM on March 27, 1997 (62 FR 14662). Comments to the docket were accepted through May 12, 1997.

Comments were received from 55 organizations, companies, and individuals as follows:

Ten States (State of California Business, Transportation, and Housing Agency; Colorado Department of Public