

under FOR FURTHER INFORMATION CONTACT.

### III. Regulatory Assessment Requirements

This action does not impose any new requirements. It only defers the effective date of a previously issued final rule. Any assessments necessary for the final rule are discussed in that final rule and are not affected by today's action. In fact, this action does not require review by the Office of Management and Budget under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). For the same reason, it does not require any action under Title II of the *Unfunded Mandates Reform Act of 1995* (Pub. L. 104-4), Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). In addition, since this type of action does not require any proposal, no action is needed under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

### IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the action in the **Federal Register**. This is a deferral of the compliance date of a rule, and is not a "major rule" as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 159

Environmental protection, Pesticides and pests, Policy statements, Reporting and recordkeeping requirements.

Dated: July 16, 1998.

**Lynn R. Goldman,**

*Assistant Administrator for Prevention, Pesticides and Toxic Substances.*

Therefore, 40 CFR part 159 is amended as follows:

#### PART 159—[AMENDED]

1. The authority citation for part 159 continues to read as follows:

**Authority:** 7 U.S.C. 136–136y.

2. Section 159.159 is amended by revising the introductory text of paragraph (a) to read as follows:

#### § 159.159 Information obtained before promulgation of the rule.

(a) Notwithstanding any other provision of this part, information held by registrants on August 17, 1998 which has not been previously submitted to the Agency, but which is reportable under the terms of this part, must be submitted to the Agency if it meets any of the following criteria:

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[FR Doc. 98-20615 Filed 7-31-98; 8:45 am]

BILLING CODE 6560-50-F

### LEGAL SERVICES CORPORATION

#### 45 CFR Part 1602

#### Procedures for Disclosure of Information Under the Freedom of Information Act

**AGENCY:** Legal Services Corporation.

**ACTION:** Final rule.

**SUMMARY:** This final rule substantially revises the Legal Services Corporation's (LSC or Corporation) regulation on the disclosure of information under the Freedom of Information Act. This revised rule implements the 1996 amendments to the FOIA regarding electronic records, time limits, and standards for processing requests for records. In addition, the rule is restructured for clarity, titles are revised to better identify the purpose of the sections, and revisions are made to incorporate procedures for Office of Inspector General records.

**DATES:** This final rule is effective September 2, 1998.

**FOR FURTHER INFORMATION CONTACT:** Suzanne B. Glasow, 202-336-8817.

**SUPPLEMENTARY INFORMATION:** The Legal Services Corporation revised and published its Freedom of Information Act (FOIA) rule as final in 1993, principally to include the Office of Inspector General (OIG) in the FOIA process. However, the rule was

withdrawn before it became effective. In 1996, Congress amended the FOIA. See "Electronic Freedom of Information Act Amendments of 1996." Pub. L. 104-231. The Office of Information and Privacy of the Department of Justice has issued a final rule and guidances on the 1996 amendments, which LSC has relied on for many of this rule's revisions. See 63 FR 29591 (June 1, 1998). Generally, the 1996 amendments deal with electronic records, but changes were also made to time limits and to procedures and standards for processing requests. 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 revise 45 CFR Part 1602, which sets out the Corporation's procedures for the disclosure of information under the FOIA. After making changes to the draft rule, the Committee adopted a proposed rule that was published in the **Federal Register** on March 9, 1998. See 63 FR 11303 (March 9, 1998).

The Corporation received only one comment on the proposed rule from the Public Citizen Litigation Group (Public Citizen), a nonprofit consumer advocacy organization. Public Citizen disagreed with the rule's interpretation of a provision in Sec. 552(a)(2) of FOIA which requires agencies to make their public reading room records created after November 1, 1996, available electronically. Section 1602.5 of the proposed rule applied this requirement only to records "created" by the Corporation. Public Citizen argued that the requirement should also apply to records obtained by the Corporation from outside sources, such as recipient reports and grant applications. Public Citizen was specifically concerned about the new category of reading room records included in the 1996 FOIA amendments, that is, records released pursuant to a request for records that the Corporation determines are likely to become the subject of subsequent requests (subsequent request records). See § 1602.8.

The Board did not agree and the final rule continues to apply the electronic record requirement only to records "created by the Corporation" after November 1, 1996. This is consistent with the interpretation of the Office of Information and Privacy of the Department of Justice (DOJ) and applicable case law. The Office of Information and Privacy, which specializes in FOIA and the Privacy Act, advised Federal agencies in 1997 that records generated from outside the agency "are not created by the agency and should not be regarded as subject to

the new electronic availability requirement." DOJ FOIA Update, Winter 1997 at 4-5. In addition, the final DOJ FOIA rule continues this interpretation and applies the electronic records requirement only to public reading room records created by DOJ. 63 FR 29591-29604 (June 1, 1998).

Case law also supports this interpretation. In *United States Dep't of Justice v. Tax Analysts*, 492 U.S. 136, 144 (1989), the Supreme Court recognized that agency records subject to FOIA fall into 2 categories: records that are "created" by agencies and records that are "obtained" by agencies. The electronic reading room requirement uses the term "created" and nothing in the legislative history of the 1996 amendments requires the term "created" to include records obtained by an agency. See H. R. Rep. No. 104-795 (1996). This interpretation is consistent with the nature of reading room records. Except for subsequent request records obtained from outside of the agency, records required by FOIA to be maintained in an agency's public reading room are records created by an agency. Such records include an agency's final opinions and orders, statements of policy and interpretations adopted by the agency, administrative staff manuals and instructions to staff that affect the public, and an index of such records in their public reading rooms. Sec. 552(a)(2) of FOIA.

Of course, the Corporation may choose, as a matter of discretion, to make subsequent request records that are generated from outside the Corporation available electronically in any case in which it determines that to do so would be most cost effective in serving public access needs under subsection 552(a)(2)(D) of FOIA.

Other technical changes have also been included in this final rule. For example, headings have been added to several paragraphs for clarity and the reference to regional offices has been deleted because the Corporation no longer has any regional offices. A section-by-section analysis follows.

### Section-by-Section Analysis

#### Section 1602.1 Purpose

The purpose of this part is to set out the rules and procedures the Corporation follows to make information available to the public under the FOIA. This section is revised to reflect the addition of a new section, § 1602.4, that implements the FOIA requirement that certain Corporation records be published in the **Federal Register**.

#### Section 1602.2 Definitions

Several definitions from the prior rule have been deleted in this final rule. The definitions of "clerical," "management," "professional staff," and "professional support," are deleted because they are no longer consistent with the Corporation's personnel system. The definition of "direct costs" is also deleted. It was used in the prior rule only in § 1602.4 to clarify the cost of duplication of the index. The final rule applies the same standard duplication charges to the index that apply to other Corporation records.

#### Requirement To Use OMB Definitions

FOIA requires that agencies promulgate rules specifying a schedule of fees based on guidance published by the Director of the Office of Management and Budget (OMB). See 52 FR 10012 (March 27, 1987). The terms defined in this section that are used in the section on fees, § 1602.13, were promulgated in 1988 and are based, as required, on the OMB guidance. See 53 FR 6151-6154 (March 1, 1988).

*Commercial use request.* The definition of this term is based on the OMB guidance, and the term is based on a standard for determining fees in the FOIA. The definition eliminates a reference to looking at the identity of the requester to help determine whether the request is for commercial use. OMB included the references to the requester's identity in its proposed guidance, but deleted it in the final guidance.

*Duplication.* The definition of this term is based on the OMB guidance, and the term is included in the section on fees (§ 1602.13) which permits charging of fees for certain duplication of records.

*Educational institution, non-commercial scientific institution, representative of the news media.* The definitions of these terms are based on the OMB guidance and are used in the section on fees, § 1602.13. Minor technical revisions have been made.

*Office of Inspector General records.* The definition of this term distinguishes OIG records from Corporation records. This definition and other OIG provisions in this rule are proposed to provide regulatory authority to the OIG to process and to grant or deny FOIA requests for OIG records.

*Records.* The definition of records is revised to clarify that the term includes electronic records.

*Review.* This term is used in the section on fees (§ 1602.13) and is based on the OMB guidance. The revisions are technical. The prior definition included a reference to commercial use requests,

because review fees are charged only for such requests. The section on fees which uses this term, however, makes it clear that review fees are charged only for commercial use requests, so it is redundant to include reference to commercial use requests in the definition of review. The first sentence of the definition describes how the review process preliminarily identifies portions of information that clearly are exempt. If the reviewer is not certain whether certain information is exempt, and there is a need for qualified staff to resolve any legal or policy issues on disclosure, the time spent resolving such issues or policy is not included in the meaning of review, as is made clear in the third sentence of this definition.

*Search.* The term "search" is used in the section on fees (§ 1602.13). The revisions are intended to conform the definition to the revised definition in the FOIA as amended in 1996 and includes searching for information by automated means.

#### Section 1602.3 Policy

This section generally states that it is the policy of the Corporation to make every reasonable effort to comply with the requirements of the FOIA. The revisions to this section are technical or eliminate unnecessary information. A reference to "a recipient" is added.

#### Section 1602.4 Records Published in the Federal Register

This is a new section. Section 552(a)(1) of FOIA requires each agency to currently publish in the **Federal Register** for the guidance of the public a range of basic information regarding its structure and operations, including information on the agency's organization, functions, procedural and substantive rules, and general statements of policy. The Corporation routinely publishes such information in the **Federal Register** as it is revised or amended. Such publications include its regulations, notices, and requests for proposals. Information on the Corporation's structure and location is annually published in the United States Government Manual, a special publication of the **Federal Register**.

#### Section 1602.5 Public Reading Room

This section sets out the process by which the Corporation makes available for public inspection and copying records listed in paragraph (b) of this section, as required by Sec. 552(a)(2) of the FOIA. This rule changes the title of this section from central records room to public reading room to better describe the function of the room. Paragraph (a)

provides the address and hours of business of the public reading room.

Paragraph (b) lists the types of reading room records. These records include final opinions and orders, statements of policy and interpretations adopted by the Corporation that are not published in the **Federal Register** and administrative staff manuals and instructions that affect the public or recipients. A new category of public reading room record are records provided pursuant to a public request (see § 1602.8) that the Corporation determines are likely to be subject to multiple subsequent requests. For example, the website for the Federal Bureau of Investigation includes records on Elvis Presley, Marilyn Monroe, Elliot Ness, Baby Face Nelson, Jackie Robinson and Will Rodgers. Currently, the Corporation has not identified any subsequent request records.

The use of the term "will be made available" in paragraph (b) is intended to clarify that certain public reading room records will normally be maintained in the public reading room while others will be kept in close proximity elsewhere in the Corporation's headquarters in Washington DC. In response to a request, any records kept in close proximity will be made available for inspection and copying in the public reading room.

Paragraph (c) sets out the protections from public disclosure that may apply to certain reading room records and the process the Corporation will use to edit or delete protected information.

Paragraph (d) provides that reading room records created by the Corporation after November 1, 1996, and an index of such records, will be made available electronically. The Corporation is in the process of converting such records to electronic form. As they are so converted, they will be made available electronically in the public reading room.

Paragraph (e) states that the Corporation will make most of its electronic public reading room records available on its websites.

#### *Section 1602.6 Procedures for Use of Public Reading Room*

This section describes the process by which a member of the public may inspect and copy public reading room records. Persons interested in using the public reading room are advised to make arrangements ahead of time to facilitate their access to the requested information.

#### *Section 1602.7 Index of Records*

The FOIA requires the Corporation to maintain and make available an index of reading room records. This section clarifies that the index the Corporation maintains will be made available in the Corporation's public reading room and on the Corporation's websites. A revision is proposed that would make the cost of duplicating the index consistent with the charges for duplication of other Corporation records.

#### *Section 1602.8 Requests for Records*

The FOIA also addresses a third category of records, which are records required to be made available by the Corporation upon request by any person unless they are exempt from mandatory disclosure under any of the FOIA exemptions. This type of record is any Corporation record that is not a public reading room record or a record published in the **Federal Register**. Such records commonly include information obtained by the Corporation from its grantees, correspondence, financial and statistical reports obtained or created by the Corporation, compliance review reports and competition records.

Section 1602.8 sets out the process by which the Corporation makes such records available. It has been restructured and revised to better describe the procedures for submitting and processing requests for records. Minor revisions are made to paragraph (a) to make it consistent with other revisions to the rule.

Paragraphs (b), (c) and (d) describe how requests should be made. In order to facilitate the location of records by Corporation staff, requests should reasonably describe the records sought.

Paragraph (e) clarifies that the FOIA does not require the Corporation to create a record or perform research on a matter to satisfy a request.

Paragraph (f) requires that a requester be promptly informed of any estimated fees that may be charged for the request as set out in the rule's section on fees, § 1602.13.

Paragraph (g) provides that any request for a fee waiver or reduction should be included in the FOIA request, and that the Corporation must respond promptly to such requests for a fee waiver or reduction.

Paragraphs (i) through (l) set out the process and time limits for responding to requests. The OIG provisions are new and are included in recognition of the establishment of an OIG at the Corporation.

Paragraph (m) provides a process and standard for dealing with requests for

expedited treatment and implements the 1996 amendments to the FOIA. One criterion that will be considered when determining whether to provide expedited processing is whether there is an urgent need to inform the public about actual or alleged Corporation or government activity and the requester is a person primarily engaged in disseminating information. Consistent with the DOJ rules, a person primarily engaged in disseminating information is a full-time representative of the news media, as defined in this part, or a person whose primary profession is that of a representative of the news media.

#### *Section 1602.9 Exemptions for Withholding Records*

This section delineates the exemptions that protect certain records from mandatory disclosure. All of the exemptions in this section are based on the FOIA, although not all FOIA exemptions are included in this rule, because certain exemptions are not applicable to the Corporation. For example, the exemption for information on geological information related to wells is not included. Technical changes are made to this section to better conform the language to the FOIA.

The language for § 1602.9(a)(6)(iv) is revised in recognition of the establishment of the OIG at the Corporation. This FOIA exemption protects documents that might identify a confidential source, and also, in the case of a criminal investigation, that might identify the information furnished by the source. LSC's prior rule made no reference to information compiled for law enforcement purposes. Because the OIG conducts investigations into criminal activities, addition of this reference to such information is appropriate. This exemption was included in the published rule that was withdrawn in 1993. A reference to "a recipient" is also added to § 1602.9(a)(6)(ii).

Paragraph (b) explains the process by which the Corporation will segregate protected information from information that must be made available to the requester. The 1996 amendments to the FOIA require the Corporation to indicate the amount and location of deleted material (if technically feasible), unless such action would harm the interest protected by the applicable exemption.

Paragraph (c) sets out the standard by which the Corporation may exercise discretion to release information otherwise protected from disclosure. The consultation language is intended to address OIG records.

### Section 1602.10 Officials Authorized To Grant or Deny Requests for Records

This section identifies the officials within the Corporation authorized to grant or deny requests for records. The revisions to paragraphs (a) and (b) are added to include the OIG in the Corporation's processing of FOIA requests when OIG records are requested and to be consistent with the Corporation's current procedures.

### Section 1602.11 Denials

This section sets out the process the Corporation shall follow when a request for records is denied.

### Section 1602.12 Appeals of Denials

This section describes the process by which a person may appeal a denial. Provisions including the OIG in the appeal process have been added.

### Section 1602.13 Fees

Revisions to this section are largely technical. Paragraph (e) sets out the schedule of charges for services regarding the production or disclosure of the Corporation's records. Revisions to paragraph (e) reflect changes to the Corporation's salary system. The term "band" in paragraph (e) refers to a specific range of pay, just as the term "schedule" refers to a pay range for Federal employees.

References to the Corporation have been added to paragraph (f) to apply certain fee waiver provisions to the Corporation as well as to governmental entities.

A revision to paragraph (j) is proposed to allow rather than require the Corporation to charge interest, which is consistent with the OMB guidance.

### List of Subjects in 45 CFR Part 1602

Freedom of information.

For reasons set forth in the preamble, LSC revises 45 CFR part 1602 as follows:

### PART 1602—PROCEDURES FOR DISCLOSURE OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT

Sec.

- 1602.1 Purpose.
- 1602.2 Definitions.
- 1602.3 Policy.
- 1602.4 Records published in the **Federal Register**.
- 1602.5 Public reading room.
- 1602.6 Procedures for use of public reading room.
- 1602.7 Index of records.
- 1602.8 Requests for records.
- 1602.9 Exemptions for withholding records.
- 1602.10 Officials authorized to grant or deny requests for records.

- 1602.11 Denials.
- 1602.12 Appeals of denials.
- 1602.13 Fees.

**Authority:** 42 U.S.C. 2996d(g); 5 U.S.C. 552.

#### § 1602.1 Purpose.

This part contains the rules and procedures the Legal Services Corporation follows in making records available to the public under the Freedom of Information Act.

#### § 1602.2 Definitions.

As used in this part—

(a) *Commercial use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the Corporation will look to the use to which a requester will put the documents requested. When the Corporation has reasonable cause to doubt the requester's stated use of the records sought, or where the use is not clear from the request itself, it will seek additional clarification before assigning the request to a category.

(b) *Duplication* means the process of making a copy of a requested record pursuant to this part. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable electronic documents, among others.

(c) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, or an institution of professional or vocational education which operates a program or programs of scholarly research.

(d) *FOIA* means the Freedom of Information Act, 5 U.S.C. 552.

(e) *Non-commercial scientific institution* means an institution that is not operated on a "commercial" basis and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(f) *Office of Inspector General records* means those records as defined generally in this section which are exclusively in the possession and control of the Office of Inspector General of the Legal Services Corporation.

(g) *Records* means books, papers, maps, photographs, or other documentary materials, regardless of whether the format is physical or electronic, made or received by the

Corporation in connection with the transaction of the Corporation's business and preserved by the Corporation as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Corporation, or because of the informational value of data in them. The term does not include, inter alia, books, magazines, or other materials acquired solely for library purposes.

(h) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they will be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

(i) *Review* means the process of examining documents located in response to a request to determine whether any portion of any such document is exempt from disclosure. It also includes processing any such documents for disclosure. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(j) *Search* means the process of looking for and retrieving records that are responsive to a request for records. It includes page-by-page or line-by-line identification of material within documents and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. Searches may be conducted manually or by automated means and will be conducted in the most efficient and least expensive manner.

#### § 1602.3 Policy.

The Corporation will make records concerning its operations, activities, and business available to the public to the

maximum extent reasonably possible. Records will be withheld from the public only in accordance with the FOIA and this part. Records exempt from disclosure under the FOIA may be made available as a matter of discretion when disclosure is not prohibited by law, and disclosure would not foreseeably harm a legitimate interest of the public, the Corporation, a recipient, or any individual.

#### § 1602.4 Records published in the Federal Register.

The Corporation routinely publishes in the **Federal Register** information on its basic structure and operations necessary to inform the public how to deal effectively with the Corporation. The Corporation will make reasonable efforts to currently update such information, which will include basic information on the Corporation's location, functions, rules of procedure, substantive rules, statements of general policy, and information regarding how the public may obtain information, make submittals or requests, or obtain decisions.

#### § 1602.5 Public reading room.

(a) The Corporation will maintain a public reading room at its office at 750 First Street, NE., Washington DC 20002-4250. This room will be supervised and will be open to the public during the regular business hours of the Corporation for inspecting and copying records described in paragraph (b) of this section.

(b) Subject to the limitation stated in paragraph (c) of this section, the following records will be made available in the public reading room:

(1) All final opinions, including concurring and dissenting opinions, and orders issued in the adjudication of cases;

(2) Statements of policy and interpretations adopted by the Corporation that are not published in the **Federal Register**;

(3) Administrative staff manuals and instructions to the staff that affect the public or recipients;

(4) Copies of records, regardless of form or format, released to any person in response to a public request for records pursuant to § 1602.8 which the Corporation has determined are likely to become subject to subsequent requests for substantially the same records, and a general index of such records;

(5) The current index required by § 1602.7;

(6) To the extent feasible, other records considered to be of general interest to recipients or members of the public in understanding activities of the

Corporation or in dealing with the Corporation in connection with those activities.

(c) Certain records otherwise required by FOIA to be available in the public reading room may be exempt from mandatory disclosure pursuant to section 552(b) of the FOIA and § 1602.9. Such records will not be made available in the public reading room. Other records maintained in the public reading room may be edited by the deletion of identifying details concerning individuals to prevent a clearly unwarranted invasion of personal privacy. In such cases, the record shall have attached to it a full explanation of the deletion. The extent of the deletion shall be indicated, unless doing so would harm an interest protected by the exemption under which the deletion is made. If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made.

(d) Records required by the FOIA to be maintained and made available in the public reading room that are created by the Corporation on or after November 1, 1996, shall be made available electronically. This includes the index of published and reading room records, which shall indicate which records are available electronically.

(e) Most electronic public reading room records will also be made available to the public on the Corporation's websites at <http://www.lsc.gov> and <http://oig.lsc.gov>.

#### § 1602.6 Procedures for use of public reading room.

Any member of the public may inspect or copy records described in § 1602.5(b) in the public reading room during regular business hours. Because it will sometimes be impossible to produce records or copies of records on short notice, a person who wishes to inspect or copy records is advised to arrange a time in advance, by telephone or letter request made to the Office of the General Counsel. Persons submitting requests by telephone will be notified whether a written request would be advisable to aid in the identification and expeditious processing of the records sought. Written requests should identify the records sought in the manner provided in § 1602.8(b) and should request a specific date for inspecting the records. The requester will be advised as promptly as possible if, for any reason, it may not be possible to make the records sought available on the date requested.

#### § 1602.7 Index of records.

The Corporation will maintain a current index identifying any matter within the scope of § 1602.4 and § 1602.5(b) (1) through (5). The index will be maintained and made available for public inspection and copying at the Corporation's office in Washington, DC. The cost of a copy of the index will not exceed the standard charge for duplication set out in § 1602.13(e). The Corporation will also make the index available on its websites.

#### § 1602.8 Requests for records.

(a) Except for records required by the FOIA to be published in the **Federal Register** (§ 1602.4) or to be made available in the public reading room (§ 1602.5), Corporation records will be made promptly available, upon request, to any person in accordance with this section, unless it is determined that such records should be withheld and are exempt from mandatory disclosure under the FOIA and § 1602.9.

(b) Requests. Requests for records under this section shall be made in writing, with the envelope and the letter or e-mail request clearly marked Freedom of Information Request. All such requests shall be addressed to the Corporation's Office of the General Counsel. Requests by letter shall use the address given in § 1602.5(a). E-mail requests shall be addressed to [info@smtp.lsc.gov](mailto:info@smtp.lsc.gov). Any request not marked and addressed as specified in this paragraph will be so marked by Corporation personnel as soon as it is properly identified, and will be forwarded immediately to the Office of the General Counsel. A request improperly addressed will not be deemed to have been received for purposes of the time period set forth in paragraph (i) of this section until it has been received by the Office of the General Counsel. Upon receipt of an improperly addressed request, the General Counsel or designee shall notify the requester of the date on which the time period began.

(c) A request must reasonably describe the records requested so that employees of the Corporation who are familiar with the subject area of the request are able, with a reasonable amount of effort, to determine which particular records are within the scope of the request. If it is determined that a request does not reasonably describe the records sought, the requester shall be so informed and provided an opportunity to confer with Corporation personnel in order to attempt to reformulate the request in a manner that will meet the needs of the requester and the requirements of this paragraph.

(d) To facilitate the location of records by the Corporation, a requester should try to provide the following kinds of information, if known:

(1) The specific event or action to which the record refers;

(2) The unit or program of the Corporation which may be responsible for or may have produced the record;

(3) The date of the record or the date or period to which it refers or relates;

(4) The type of record, such as an application, a grant, a contract, or a report;

(5) Personnel of the Corporation who may have prepared or have knowledge of the record;

(6) Citations to newspapers or publications which have referred to the record.

(e) The Corporation is not required to create a record or to perform research to satisfy a request.

(f) Estimated fees. The Corporation shall advise the requester of any estimated fees as promptly as possible. The Corporation may require that fees be paid in advance, in accordance with § 1602.13(i), and the Corporation will advise a requester as promptly as possible if the fees are estimated to exceed \$25 or any limit indicated by the requester.

(g) Any request for a waiver or reduction of fees should be included in the FOIA request, and any such request should indicate the grounds for a waiver or reduction of fees, as set out in § 1602.13(f). The Corporation shall respond to such request as promptly as possible.

(h) Format. The Corporation will provide records in the form or format indicated by the requester to the extent such records are readily reproducible in the requested form or format.

(i)(1) The General Counsel or designee, upon request for any records made in accordance with this section, except in the case of a request for Office of Inspector General records, shall make an initial determination of whether to comply with or deny such request and dispatch such determination to the requester within 20 days (excepting Saturdays, Sundays, and legal public holidays) after receipt of such request, except for unusual circumstances, in which case the time limit may be extended for up to 10 working days by written notice to the requester setting forth the reasons for such extension and the date on which a determination is expected to be dispatched.

(2) Initial response/delays. If the General Counsel or designee determines that a request or portion thereof is for Office of Inspector General records, the General Counsel or designee shall

promptly refer the request or portion thereof to the Office of Inspector General and send notice of such referral to the requester. In such case, the Counsel to the Inspector General or designee shall make an initial determination of whether to comply with or deny such request and dispatch such determination to the requester within 20 working days after receipt of such request, except for unusual circumstances, in which case the time limit may be extended for up to 10 working days by written notice to the requester setting forth the reasons for such extension and the date on which a determination is expected to be dispatched.

(3) Unusual circumstances. As used in this part, "unusual circumstances" are limited to the following, but only to the extent reasonably necessary for the proper processing of the particular request:

(i) The need to search for and collect the requested records from establishments that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency or organization, such as a recipient, having a substantial interest in the determination of the request or among two or more components of the Corporation having substantial subject matter interest therein.

(j) If a request is particularly broad or complex so that it cannot be completed within the time periods stated in paragraph (i) of this section, the Corporation may ask the requester to narrow the request or agree to an additional delay.

(k) When no determination can be dispatched within the applicable time limit, the General Counsel or designee or the Counsel to the Inspector General or designee shall inform the requester of the reason for the delay, the date on which a determination may be expected to be dispatched, and the requester's right to treat the delay as a denial and to appeal to the Corporation's President or Inspector General, in accordance with § 1602.12. If no determination has been dispatched by the end of the 20-day period, or the last extension thereof, the requester may deem the request denied, and exercise a right of appeal in accordance with § 1602.12. The General Counsel or designee or the Counsel to the Inspector General or designee may

ask the requester to forego appeal until a determination is made.

(l) After it has been determined that a request will be granted, the Corporation will act with due diligence in providing a substantive response.

(m)(1) Expedited treatment. Requests and appeals will be taken out of order and given expedited treatment whenever the requester demonstrates a compelling need. A compelling need means:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged Corporation or Federal government activity and the request is made by a person primarily engaged in disseminating information;

(iii) The loss of substantial due process rights; or

(iv) A matter of widespread and exceptional media interest in which there exist possible questions about the Corporation's or the Federal government's integrity which affect public confidence.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time. For a prompt determination, a request for expedited processing must be properly addressed and marked and received by the Corporation pursuant to paragraphs (b) of this section.

(3) A requester who seeks expedited processing must submit a statement demonstrating a compelling need that is certified by the requester to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing.

(4) Within ten calendar days of its receipt of a request for expedited processing, the General Counsel or designee or the Inspector General or designee shall decide whether to grant the request and shall notify the requester of the decision. If a request for expedited treatment is granted, the request shall be given priority and shall be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously by the Corporation.

#### § 1602.9 Exemptions for withholding records.

(a) A requested record of the Corporation may be withheld from public disclosure only if one or more of the following categories exempted by the FOIA apply:

(1) Matter which is related solely to the internal personnel rules and practices of the Corporation;

(2) Matter which is specifically exempted from disclosure by statute (other than the exemptions under FOIA at 5 U.S.C. 552(b)), provided that such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issues, or establishes particular criteria for withholding, or refers to particular types of matters to be withheld;

(3) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(4) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the Corporation;

(5) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(6) Records or information compiled for law enforcement purposes including enforcing the Legal Services Corporation Act or any other law, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person or a recipient of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(b) In the event that one or more of the exemptions in paragraph (a) of this section apply, any reasonably segregable portion of a record shall be provided to the requester after deletion of the portions that are exempt. The amount of information deleted shall be indicated on the released portion of the record, unless doing so would harm the interest

protected by the exemption under which the deletion is made. If technically feasible, the amount of information deleted shall be indicated at the place in the record where the deletion is made. In appropriate circumstances, at the discretion of the Corporation officials authorized to grant or deny a request for records, and after appropriate consultation as provided in § 1602.10, it may be possible to provide a requester with:

(1) A summary of information in the exempt portion of a record; or

(2) An oral description of the exempt portion of a record.

(c) No requester shall have a right to insist that any or all of the techniques in paragraph (b) of this section should be employed in order to satisfy a request.

(d) Records that may be exempt from disclosure pursuant to paragraph (a) of this section may be made available at the discretion of the Corporation official authorized to grant or deny the request for records, after appropriate consultation as provided in § 1602.10. Records may be made available pursuant to this paragraph when disclosure is not prohibited by law, and it does not appear adverse to legitimate interests of the Corporation, the public, a recipient, or any person.

#### **§ 1602.10 Officials authorized to grant or deny requests for records.**

(a) The General Counsel shall furnish necessary advice to Corporation officials and staff as to their obligations under this part and shall take such other actions as may be necessary or appropriate to assure a consistent and equitable application of the provisions of this part by and within the Corporation.

(b) The General Counsel or designee and the Counsel to the Inspector General or designee are authorized to grant or deny requests under this part. In the absence of a Counsel to the Inspector General, the Inspector General shall name a designee who will be authorized to grant or deny requests under this part and who will perform all other functions of the Counsel to the Inspector General under this part. The General Counsel or designee shall consult with the Office of Inspector General prior to granting or denying any request for records or portions of records which originated with the Office of Inspector General, or which contain information which originated with the Office of Inspector General, but which are maintained by other components of the Corporation. The Counsel to the Inspector General or designee shall consult with the Office of the General

Counsel prior to granting or denying any requests for records.

#### **§ 1602.11 Denials.**

(a) A denial of a written request for a record that complies with the requirements of § 1602.8 shall be in writing and shall include the following:

(1) A reference to the applicable exemption or exemptions in § 1602.9 (a) upon which the denial is based;

(2) An explanation of how the exemption applies to the requested records;

(3) A statement explaining why it is deemed unreasonable to provide segregable portions of the record after deleting the exempt portions;

(4) An estimate of the volume of requested matter denied unless providing such estimate would harm the interest protected by the exemption under which the denial is made;

(5) The name and title of the person or persons responsible for denying the request; and

(6) An explanation of the right to appeal the denial and of the procedures for submitting an appeal, including the address of the official to whom appeals should be submitted.

(b) Whenever the Corporation makes a record available subject to the deletion of a portion of the record, such action shall be deemed a denial of a record for purposes of paragraph (a) of this section.

(c) All denials shall be treated as final opinions under § 1602.5(b).

#### **§ 1602.12 Appeals of denials.**

(a) Any person whose written request has been denied is entitled to appeal the denial within 90 days by writing to the President of the Corporation or, in the case of a denial of a request for Office of Inspector General records, the Inspector General, at the addresses given in § 1602.5(a) and § 1602.8(b). The envelope and letter or e-mail appeal should be clearly marked: "Freedom of Information Appeal." An appeal need not be in any particular form, but should adequately identify the denial, if possible, by describing the requested record, identifying the official who issued the denial, and providing the date on which the denial was issued.

(b) No personal appearance, oral argument, or hearing will ordinarily be permitted on appeal of a denial. Upon request and a showing of special circumstances, however, this limitation may be waived and an informal conference may be arranged with the President or designee, or Inspector General or designee, for this purpose.

(c) The decision of the President or the Inspector General on an appeal shall be in writing and, in the event the

denial is in whole or in part upheld, shall contain an explanation responsive to the arguments advanced by the requester, the matters described in § 1602.11(a) (1) through (4), and the provisions for judicial review of such decision under section 552(a)(4) of the FOIA. The decision shall be dispatched to the requester within 20 working days after receipt of the appeal, unless an additional period is justified pursuant to § 1602.8(i) and such period taken together with any earlier extension does not exceed 10 days. The decision of the President or the Inspector General shall constitute the final action of the Corporation. All such decisions shall be treated as final opinions under § 1602.5(b).

(d) On an appeal, the President or designee shall consult with the Office of Inspector General prior to reversing in whole or in part the denial of any request for records or portions of records which originated with the Office of Inspector General, or which contain information which originated with the Office of Inspector General, but which are maintained by other components of the Corporation. The Inspector General or designee shall consult with the President prior to reversing in whole or in part the denial.

#### § 1602.13 Fees.

(a) No fees will be charged for information routinely provided in the normal course of doing business.

(b) Fees shall be limited to reasonable standard charges for document search, review, and duplication, when records are requested for commercial use;

(c) Fees shall be limited to reasonable standard charges for document duplication after the first 100 pages, when records are sought by a representative of the news media or by an educational or non-commercial scientific institution; and

(d) For all other requests, fees shall be limited to reasonable standard charges for search time after the first 2 hours and duplication after the first 100 pages.

(e) The schedule of charges for services regarding the production or disclosure of the Corporation's records is as follows:

(1) Manual search for and review of records will be charged as follows:

(i) Band 1: \$10.26 per hour;

(ii) Band 2: \$16.12 per hour;

(iii) Band 3: \$25.22 per hour;

(iv) Band 4-5: \$42 per hour;

(v) Charges for search and review time less than a full hour will be billed by quarter-hour segments;

(2) Computer time: actual charges as incurred;

(3) Duplication by paper copy: 10 cents per page;

(4) Duplication by other methods: actual charges as incurred;

(5) Certification of true copies: \$1.00 each;

(6) Packing and mailing records: no charge for regular mail;

(7) Special delivery or express mail: actual charges as incurred.

(f) Fee waivers. Fees will be waived or reduced below the fees established under paragraph (e) of this section if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Corporation or Federal government and is not primarily in the commercial interest of the requester.

(1) In order to determine whether disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Corporation or Federal government, the Corporation will consider the following four criteria:

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the Corporation or the Federal government";

(ii) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of Corporation or Federal government operations or activities;

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding"; and

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of the Corporation or Federal government operations or activities.

(2) In order to determine whether disclosure of the information is not primarily in the commercial interest of the requester, the Corporation will consider the following two factors:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

(3) These fee waiver/reduction provisions will be subject to appeal in

the same manner as appeals from denial under § 1602.12.

(g) No fee will be charged under this section unless the cost of routine collection and processing of the fee payment is likely to exceed \$6.50.

(h) Requesters must agree to pay all fees charged for services associated with their requests. The Corporation will assume that requesters agree to pay all charges for services associated with their requests up to \$25 unless otherwise indicated by the requester. For requests estimated to exceed \$25, the Corporation will first consult with the requester prior to processing the request, and such requests will not be deemed to have been received by the Corporation until the requester agrees in writing to pay all fees charged for services.

(i) No requester will be required to make an advance payment of any fee unless:

(1) The requester has previously failed to pay a required fee within 30 days of the date of billing, in which case an advance deposit of the full amount of the anticipated fee together with the fee then due plus interest accrued may be required. (The request will not be deemed to have been received by the Corporation until such payment is made.); or

(2) The Corporation determines that an estimated fee will exceed \$250, in which case the requester shall be notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. Such notification shall be transmitted as soon as possible, but in any event within 5 working days of receipt by the Corporation, giving the best estimate then available. The notification shall offer the requester the opportunity to confer with appropriate representatives of the Corporation for the purpose of reformulating the request so as to meet the needs of the requester at a reduced cost. The request will not be deemed to have been received by the Corporation for purposes of the initial 20-day response period until the requester makes a deposit on the fee in an amount determined by the Corporation.

(j) Interest may be charged to those requesters who fail to pay the fees charged. Interest will be assessed on the amount billed, starting on the 31st day following the day on which the billing was sent. The rate charged will be as prescribed in 31 U.S.C. 3717.

(k) If the Corporation reasonably believes that a requester or group of requesters is attempting to break a request into a series of requests for the purpose of evading the assessment of fees, the Corporation shall aggregate

such requests and charge accordingly. Likewise, the Corporation will aggregate multiple requests for documents received from the same requester within 45 days.

(l) The Corporation reserves the right to limit the number of copies that will be provided of any document to any one requester or to require that special arrangements for duplication be made in the case of bound volumes or other records representing unusual problems of handling or reproduction.

Dated: July 29, 1998.

**Victor M. Fortuno,**

*General Counsel.*

[FR Doc. 98-20643 Filed 7-31-98; 8:45 am]

BILLING CODE 7050-01-P

## FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22, 24, 26, 27, 90 and 97

[ET Docket No. 96-2, FCC 98-140]

### Arecibo Coordination Zone

AGENCY: Federal Communications Commission.

ACTION: Final rule.

**SUMMARY:** This Memorandum Opinion and Order ("MO&O") clarifies the rules regarding the Arecibo Radio Astronomy Observatory (Observatory) Coordination Zone that covers the islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra within the Commonwealth of Puerto Rico (the Puerto Rican Islands). This action will promote efficient coordination between the Observatory and service applicants in the Coordination Zone.

**EFFECTIVE DATE:** September 2, 1998.

**FOR FURTHER INFORMATION CONTACT:** Rodney Small, Office of Engineering and Technology, (202) 418-2452.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Memorandum Opinion and Order*, ET Docket 96-2, FCC 98-140, adopted June 29, 1998, and released July 2, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC, and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857-3800, 1231 20th Street, NW Washington, DC 20036.

### Summary of the Memorandum Opinion and Order

1. In the *Report and Order* (R&O), 62 FR 55525, October 27, 1997, in this

proceeding, we established a Coordination Zone that covers the Puerto Rican Islands. The policies that we established regarding the Coordination Zone require that: (1) applicants for new radio facilities in various communications services must provide notification of their proposed operations to the Observatory no later than the time their license applications are submitted to us; (2) applicants for modified radio facilities in these services must provide notification of their proposed operations to the Observatory no later than the time their license applications are submitted to us, but only if the modified facilities pose an interference threat to the operations of the Observatory; and (3) applicants for new radio facilities in commercial wireless services in which individual station licenses are not issued must provide notification of their proposed operations to the Observatory at least 45 days in advance of their proposed operations if their facilities pose an interference threat to the operations of the Observatory.

2. In the R&O, we provided the Observatory 20 days to file comments with us regarding each service applicant's potential for interference, and applicants are responsible for making reasonable efforts to accommodate the interference concerns of the Observatory. We did not establish interference standards, but required the operator of the Observatory—Cornell University (Cornell)—to provide interference guidelines to service applicants so that applicants may consider protection to the Observatory in the early design phase of radio facilities.

3. Puerto Rico Telephone Company (PRTC) filed a petition for reconsideration of the R&O, in which it urges us to reconsider three aspects of this decision. First, PRTC contends, we have inappropriately left control of interference standards to Cornell. PRTC argues that we should establish specific standards or, alternatively, require Cornell to develop standards and submit them to us for review. Second, PRTC urges us to place restrictions on what "reasonable efforts" will be required to satisfy Cornell in a given instance. PRTC contends that the record in the proceeding is not clear as to whether even as significant a change to a broadcast station's operating parameters as mandatory time-sharing of frequencies with the Observatory would be deemed "reasonable" by the Commission. Finally, PRTC urges us to reconsider our decision to apply coordination filing requirements to commercial wireless services for which

we award licenses for geographic service areas but not for individual operating facilities. PRTC argues that it is inconsistent to create a duty to file notifications with Cornell when such licensees are not required to file any information with us, and that the *Notice of Proposed Rule Making* (NPRM), 61 FR 10709, March 15, 1996, in this proceeding gave no notice that we were considering creating such a duty.

4. As discussed in the R&O, interference guidelines may significantly lessen coordination problems, and Cornell has pledged to develop such guidelines. We are convinced that a guideline approach is preferable to a standards approach. We find it efficient for Cornell to develop guidelines because it has gained expertise over many years through informal coordination with service applicants in the Coordination Zone. We reiterate our statement in the R&O that telecommunications service providers in Puerto Rico provide highly important services that must be maintained. Further, we believe it is in Cornell's self-interest to develop realistic guidelines so as to avoid unnecessary disputes with service applicants. Accordingly, we are affirming our decision and requiring Cornell to establish interference guidelines for each service in the Coordination Zone.

5. In the R&O, we stated that "reasonable efforts [to minimize interference from various telecommunications services to the Observatory] will vary from case-to-case, dependent on the degree of harm to the Observatory's operations and the extent of the change needed to prevent such harm" and "to attempt to set forth a general definition of the term 'reasonable efforts' is extremely difficult, if not impossible." Accordingly, we are denying PRTC's request to place general restrictions on the types of reasonable efforts that will be required of service applicants in the Coordination Zone.

6. However, while what is reasonable in each individual situation will vary, we can alleviate PRTC's specific concern regarding time-sharing of frequencies. As we stated in the R&O: "We also observe that adoption of a Coordination Zone would neither allocate additional spectrum for RAS [Radio Astronomy Service] use, nor provide the Observatory additional rights to spectrum allocated to other services." Requiring service providers in the Coordination Zone to time-share spectrum with the Observatory would provide it "additional rights to spectrum allocated to other services."