

requirement under FFDC section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDC section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive order to

include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDC section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any “tribal implications” as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.” This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

#### **XI. 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 to the Comptroller General of the United States. EPA will submit a report containing this rule 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 this final rule in the **Federal Register**. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

#### **List of Subjects in 40 CFR Part 180**

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

Dated: February 4, 2003.

**Debra Edwards,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

#### **PART 180—[AMENDED]**

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

**Authority:** 21 U.S.C. 321(q), 346(a) and 371.

#### **§ 180.508 [Removed]**

2. Section 180.508 is removed.

3. Section 180.1223 is added to subpart D to read as follows:

#### **§ 180.1223 Imazamox; exemption from the requirement of a tolerance.**

The herbicide imazamox, (±) 2, -[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-5-(methoxymethyl)-3-pyridinecarboxylic acid, is exempt from the requirement of a tolerance on all food commodities when applied as a herbicide in accordance with good agricultural practices.

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**BILLING CODE 6560-50-S**

#### **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 makes several revisions to the LSC regulations implementing the Freedom of Information Act. The revisions add provisions detailing the submitter's rights process, provide LSC with express authority to defer action on pending and additional requests and appeals when a requester has an outstanding fee balance, and clarify the applicable fee waiver standards. LSC is also revising the applicable fee structure to better reflect LSC's costs in complying with FOIA. Finally, the Final Rule contains technical changes to reflect current LSC nomenclature.

**DATES:** This Final Rule is effective March 17, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mattie C. Condray, Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 750 First Street, NE., Washington, DC 20002-4250; (202) 336-8817 (phone); (202) 336-8952 (fax); *mcondray@lsc.gov*.

**SUPPLEMENTARY INFORMATION:** LSC is subject to the Freedom of Information Act (FOIA) by the terms of the Legal Services Corporation Act. 42 U.S.C. 2996d(g).<sup>1</sup> LSC has implemented FOIA by adopting regulations which contain the rules and procedures the Corporation follows in making agency records available to the public under FOIA. As part of an overall review of LSC's regulations, LSC determined that a variety of amendments to LSC's FOIA regulation are in order and Part 1602 was assigned a high priority for rulemaking. In light of the above, at the August 24, 2002, meeting of the Board of Directors, the Board identified Part 1602 as an appropriate subject for rulemaking and LSC subsequently announced that it was initiating a Notice and Comment rulemaking to consider revisions to its FOIA regulations. Subsequently, LSC published a Notice of Proposed Rulemaking (NPRM) on November 18, 2002 (67 FR 69498).

LSC received seven comments on the NPRM, all of which generally supported the proposed revisions. Upon receipt of the comments, LSC drafted a Final Rule for the consideration of the Operations and Regulations Committee of the Board of Directors. This Final Rule was adopted by the Board of Directors at its meeting of February 1, 2003.

#### Submitter's Rights Process

Pursuant to current LSC practice, if a request is received for the grant application records of a current or prospective recipient, LSC provides that applicant with an opportunity to request that some or all of the records requested be withheld from disclosure prior to LSC sending its response to the requester. This practice, which is consistent with current FOIA law, is not described or discussed in the regulations. The submitter's rights process affords important rights to grant applicants and also impacts requesters who have to wait until the submitter's rights process has been completed to obtain releasable records subject to this process. LSC believes that it is

important, therefore, for this process to be explicitly set forth in Part 1602. Accordingly, LSC proposed to add a new section 1602.14, Submitter's rights process, to formally incorporate the Corporation's current practice into the regulations.

At the outset, LSC notes that its submitter's rights process is based on the submitter's rights process outlined in Federal Executive Order No. 12,600 (June 23, 1987). E.O. 12,600 required Federal agencies to "establish procedures to notify submitters of records containing confidential information [information arguably subject to FOIA Exemption 4] \* \* \* when those records are requested under the Freedom of Information Act \* \* \*." (Emphasis added) Although LSC is not a Federal agency, and, therefore, not subject to E.O. 12,600, LSC chose to develop a policy consistent with the Order. LSC believes that grant application records are the only records likely to contain "confidential information," the release of which could cause competitive harm. Thus, the current submitter's rights process is only invoked in relation to requests for grant application information, but not other records submitted by recipients. LSC proposed to keep the process limited to requests for grant application materials, but specifically invited comment on whether there are other records submitted by recipients which would likely be subject to withholding under Exemption 4.

LSC received five comments specifically addressing this issue. Two of the five comments supported the proposed submitter's rights section as proposed. The other three comments all supported the proposed section while also urging LSC to broaden the process to cover any information submitted by grantees and which might be subject to any exemption from disclosure under FOIA. Although the commenters make good points about specific records being likely to be exempt from disclosure, LSC is not persuaded that the submitter's rights process should be extended to cover records other than grant applications and exemption 4 information, disclosure of which could cause competitive harm.

Some of the information specifically referenced by the commenters, such as client names, financial records, etc., are already specifically protected from disclosure under 509(i) of the appropriations act (thus implicating FOIA exemption 3—information specifically protected from disclosure by law). LSC already knows not to disclose this information and believes that including requests for records that

would be subject to this disclosure to the submitter's rights process would only add unnecessary administrative obstacles to fulfilling its obligations under FOIA. Moreover, whether information contained in client files, statements of facts, 1644 disclosure forms, and personnel files (examples mentioned by at least one commenter) would be subject FOIA exemption 6 (personal privacy) information or exemption 7 (law enforcement/personal privacy) information is a question which is properly decided by the Corporation under FOIA exemptions on a case-by-case basis under the case law interpreting FOIA. To date, LSC has experienced no problems concerning releasing or withholding requested information contained in recipient provided records. Accordingly, LSC declines to broaden the proposed submitter's rights process beyond the circumstances envisioned by the Executive Order and has been implemented at LSC.

Accordingly, LSC adopts new section 1602.14 as proposed. Under the new section, when the Corporation receives a FOIA request seeking the release of a submitter's grant application(s), or portions thereof, the Corporation will provide prompt written notice of the request to the submitter in order to afford the submitter with an opportunity to object to the disclosure of the requested records (or any portion thereof). If a submitter who has received notice of a request for the submitter's records objects to the disclosure of the records (or any portion thereof), the submitter will have to submit a written detailed statement identifying the information for which disclosure is objected to and specifying the grounds for withholding the information under the confidential information exemption of FOIA or this Part. The submitter's statement will have to be provided to LSC within seven business days of the date of the notice from the Corporation and if the submitter fails to respond to the notice from LSC within that time, LSC will deem the submitter to have no objection to the disclosure of the information.

Upon receipt of written objection to disclosure by a submitter, LSC will be required to consider the submitter's objections and specific grounds for withholding in deciding whether to release the disputed information. Whenever LSC decides to disclose information over the objection of the submitter, LSC will be required to give the submitter written notice that the Corporation was rejecting the submitter's withholding request (including an explanation of why the

<sup>1</sup> Absent this authority, LSC would not otherwise be subject to FOIA since LSC is not an agency, department or instrumentality of the Federal government. 42 U.S.C. 2996d(e)(1).

request was being rejected) and informing the submitter that the submitter shall have 5 business days from the date of the notice of proposed release to appeal that decision to the LSC President, whose decision will be final.

Under paragraph (d), the submitter's rights process will not apply if (1) LSC determines, upon initial review, that the information requested is exempt from disclosure; (2) the information has been previously published or officially made available to the public; or (3) disclosure of the information is required by statute (other than FOIA) or LSC regulations.

In addition, LSC is including provisions requiring that: (1) Whenever a requester files a lawsuit seeking to compel disclosure of a submitter's information, LSC will have to promptly notify the submitter; (2) whenever LSC provides a submitter with notice and opportunity to object to disclosure under this section, LSC will also notify the requester; and (3) whenever a submitter files a lawsuit seeking to prevent the disclosure of the submitter's information, LSC will notify the requester.

LSC also adds a definition of the term "submitter" as that term is used in this section. The definition to be added at section 1602.2(k) would define "submitter" as any person or entity from whom the Corporation receives a grant application.

#### **Authority To Defer Action Pending Receipt of Payment of Fees**

Many, if not most, agency FOIA regulations contain a provision permitting the agency to suspend continuing work on any pending requests and appeals from requesters who are 30 or more days in arrears on FOIA fees which they have been charged. LSC regulations provide LSC with the authority to require anticipated fees for new requests be paid in advance for requesters with outstanding overdue bills, but do not expressly contain the authority to cease processing other existing requests, including appeals. Having this express authority would be helpful to the Corporation to avoid wasting resources on "nuisance" requesters who chronically have several requests and/or appeals pending before the Corporation at the same time, while being in arrears on properly assessed fees from prior requests to the Corporation. Accordingly, LSC proposed to add a new paragraph to section 1602.13, Fees, to provide for this authority. Specifically, the new language proposed would provide express authority to the Corporation to cease processing existing requests,

including action on appeals, from a requester who is more than 30 days late in paying a properly assessed FOIA fee.

LSC received three comments which generally supported the proposed new provision, but which requested that LSC clarify that the provision would not apply in circumstances in which a fee waiver decision remains in dispute through a properly filed and pending appeal or lawsuit. This was LSC's intent. Use of the phrase "properly assessed fee" in the preamble to the NPRM and "properly charged FOIA fee" in the proposed regulatory text was intended to convey this meaning. LSC is, however, happy to clarify that the phrase "properly charged FOIA fee" in the text of the regulation is intended to mean fees that have been fairly assessed and which are not the subject of a timely filed and pending appeal or lawsuit.

LSC adopts the new language as proposed. This new language appears as a new paragraph (j) and the current paragraphs (j), (k) and (l) are redesignated as paragraphs (k), (l), and (m), respectively.

#### **Fee Waiver Criteria**

Requesters of records under FOIA are generally expected to pay reasonable fees related to the processing of FOIA requests. However, the statute also provides for waivers or reductions of fees when certain enumerated criteria are met. Section 1602.13(f) of the current regulation restates the basic fee waiver criteria as set forth in the statute. By way of contrast, the Department of Justice (DOJ) FOIA regulations on fee waiver criteria are more detailed, providing more guidance, based on long standing case law in this area, on the meaning of each of the factors to be considered in assessing fee waiver requests. LSC believes it would be helpful to both LSC and requesters for the LSC FOIA regulations to provide additional guidance in this area. By having a better understanding of the criteria, requesters can better prepare fee waiver requests and there will be less opportunity for disagreements and confusion as to when a fee waiver or reduction is appropriate. LSC, accordingly, proposed to add language to each of the subparagraphs setting forth the factors upon which fee waiver determinations are made that provides a greater explanation of that factor.

LSC received four comments specifically addressing the proposed revisions to the fee waiver criteria. All of these comments supported the proposed clarifications, although one commenter also provided suggestions

for additional clarifications to the factors.

LSC proposed to add a sentence to subparagraph (i), which currently reads in its entirety "The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the Corporation or Federal government," explaining that the subject of the requested records must concern identifiable operations or activities of the Corporation or the Federal government, with a connection that is direct and clear, not remote or attenuated. LSC received no objection to this proposed addition and LSC adopts the new sentence as proposed.(i)

The second factor currently reads, in its entirety, "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." LSC proposed to add language noting that the requested records must be meaningfully informative about government operations or activities in order to be likely to contribute to an increased public understanding of those operations or activities and that the disclosure of information that is already in the public domain, in either a duplicative or a substantially identical form, would not be likely to contribute to such understanding where nothing new would be added to the public's understanding.

LSC received no comments objecting to the proposed additional language. One commenter suggested that LSC add additional language defining the terms "public domain" and "substantially identical form" as those terms are used in this section. Specifically, the commenter urges LSC define "public domain" as information that is "readily available" to the public and "substantially identical form" as excluding compilations or summaries of information that is in the public domain. Each of these proposals stem from case law interpreting the statute.

While LSC appreciates these suggestions, LSC does not believe it is necessary to define the terms "public domain" and "substantially identical form" in the regulation. LSC believes that these terms are reasonably straightforward. Moreover, in LSC's experience, requesters seeking fee waivers have not evinced much confusion about the meaning of these terms in making their fee waiver applications. LSC is interested in adding some additional language to the factors to aid requesters in understanding the fee waiver standards, but is also mindful

that nearly every term in FOIA has case law interpreting its meaning. It would be difficult and, in some cases, inappropriate to attempt to distill all of the existing case law into regulatory language. Thus, while LSC does not take issue with the meanings the applicable case law has developed for those terms, LSC believes that the terms are sufficiently clear on their face as not to need additional regulatory definition. Of course, in applying the fee waiver standards, LSC is, and will continue to be, mindful of the interpretations of terms as set forth in the applicable case law.

The third factor currently reads:

(iii) The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested records will contribute to "public understanding."

LSC proposed to provide additional guidance on the meaning of this factor by adding language explaining that: the disclosure must contribute to a reasonably broad audience of persons interested in the subject, as opposed to the personal interest of the requester; a requester's expertise in the subject area and ability and intention to effectively convey information to the public shall be considered; and that it shall be presumed that a representative of the news media will satisfy this consideration.

LSC received no comments objecting to the proposed additional language. One commenter suggested that LSC add additional language defining the term "public" as including one or more segments of the public. LSC agrees that the term "public" in this instance may refer to a segment of the public, and not just to the public "at large," and intends that the regulation be understood to have this meaning. However, LSC believes that the addition of the phrase "reasonably broad audience of persons interested in the subject" conveys that meaning. Thus, LSC believes that the language, as proposed, is appropriate.

The fourth factor currently reads:

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

LSC proposed to include additional guidance in this factor that the public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure must be enhanced by the disclosure to a significant extent.

LSC received one comment in opposition to this language. The

commenter found the additional proposed language to be confusing and not helpful to clarifying the meaning of the factor. Alternatively, the commenter suggested that, if LSC were to leave the language in the regulation, that LSC include greater explanation in the preamble of the meaning of the additional language.

The proposed new language is intended to clarify that this factor is assessing whether the disclosure sought would be "significant" by comparing the likely level of public understanding of the subject matter of the disclosure as it exists at that moment to what the level of understanding would be after disclosure. LSC is not sure in what way this is confusing, but has no objection to providing additional explanation in the preamble if it will aid in understanding of the rule. Generally, the fourth factor examines whether the information that is the subject of the disclosure either has been so widely disseminated and publicized or is so lacking in substantial informative value, such that the disclosure of the information is not likely to add any new perspective or facts (or the like), as to increase the public's understanding of the subject.

Section 1602.13(f)(2) sets forth the factors used by LSC to determine whether disclosure of the information is not primarily in the commercial interest of the requester. The first factor currently reads:

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

LSC proposed to add a sentence to this subparagraph explaining that LSC shall consider any commercial interest of the requester (with reference to the definition of "commercial use" in this Part) or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. LSC received no comments objecting to the proposed additional language.

The second factor reads:

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

LSC proposed to add language specifying that a fee waiver or reduction is justified where the public interest standard is greater in magnitude than that of any identified commercial interest in disclosure and that LSC ordinarily shall presume that where a

news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. That is, if the public interest standard has been satisfied, the fact that a news media requester has a commercial interest (*i.e.*, in selling newspapers, etc.) will not ordinarily serve to prevent that requester from getting a fee waiver or reduction. LSC further proposes to add language providing that disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed primarily to serve a public interest. LSC received no comments objecting to the proposed additional language.

In each of these cases, the language proposed to be added is consistent with the current regulations and LSC practice, FOIA case law and government-wide FOIA practice. As noted above, LSC believes the additions will aid in public understanding of the meaning and application of the fee waiver criteria. Accordingly, LSC adopts the new language on the fee waiver standards as proposed.

Three of the commenters also suggested that LSC should generally grant fee waivers in connection with most, if not all, requests received from the legal services community. One of these comments further suggested that LSC formally adopt language providing a blanket fee waiver to all requests from grantees.

LSC is authorized and required to provide fee waivers in accordance with the standards set forth in the FOIA. The statutory standards require fee waiver determinations to be made on a case-by-case basis in reference to the enumerated fee waiver criteria. As such, for LSC to either incorporate into the regulations or even adopt an informal policy to grant a blanket fee waiver policy in connection with requests from grantees or others in the legal services community would exceed LSC's authority under FOIA. LSC will continue, as it has always done, to consider requests individually and grant fee waivers and/or assess fees as required by the statute.

#### Miscellaneous Amendments

There are several instances throughout the regulation where the regulation makes reference to the "Office of the General Counsel." The Office of the General Counsel was renamed the Office of Legal Affairs in 1999. LSC, therefore, proposed to substitute the name "Office of Legal Affairs" for "Office of the General Counsel" each time it appears in

sections 1602.6 and 1602.8 of the regulations. LSC received no objections to the proposed substitutions and LSC adopts them as proposed.

Section 1602.5, Public reading room, sets forth, among other things, the address of LSC's public reading room. The address listed, 750 First Street, NE., Washington, DC, 20002, is currently correct. However, LSC will be moving in June 2003 to new permanent headquarters. LSC proposed to add language to this section providing the address of the LSC public reading room in LSC's new home: 3333 K St., NW., Washington, DC 20007. LSC received no objections to the proposed addition and LSC adopts the change as proposed.

In accordance with FOIA, LSC charges fees for processing FOIA requests and providing copies of requested documents. LSC's schedule of applicable fees is set forth in section 1602.13(e). The current schedule of fees was adopted in 1998 and no longer accurately reflects LSC's costs in responding to FOIA requests. LSC, therefore, proposed to increase fees for search and review time and for copying.

LSC received no objections to the proposed fee increases. One commenter, however, did request that LSC apply the new fee schedule only to requests filed after the effective date of the amendment. LSC agrees that this is appropriate and LSC intends that the new fees will be assessed only on requests received on or after the effective date of this Final Rule.

LSC adopts the changes to the fee schedule as proposed. Specifically, LSC amends the search and review fee rates to reflect recent (2002) pay rates as follows:

Band 1: \$16.15  
Band 2: \$26.66  
Band 3: \$39.15  
Band 4: \$51.41  
Band 5: \$54.99

LSC notes that the existing regulation provides for one blended rate for Bands 4 and 5. LSC is now separating these rates, providing separate search and review time rates for Bands 4 and 5. These changes will permit LSC to recover fees that are more in line with its actual costs relating to search and review activities.

Under the existing regulation, LSC charges \$0.10 per page for standard paper photocopying. LSC's actual costs for photocopying are now closer to \$0.15 per page. LSC is increasing copying costs to \$0.13 per page so as to better reflect LSC's costs, while still providing a small discount to requesters. In addition, LSC substitutes the term "Express mail" for "special

delivery" where it appears in section 1602.13(e)(7) to reflect current terminology.

#### List of Subjects in 45 CFR Part 1602

Freedom of Information, Reporting and recordkeeping requirements.

For reasons set forth above, LSC amends 45 CFR Part 1602 as follows:

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

1. The authority citation for Part 1602 continues to read as follows:

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

2. Section 1602.2 is amended by adding a new paragraph (k) to read as follows:

#### § 1602.2 Definitions.

\* \* \* \* \*

(k) Submitter means any person or entity from whom the Corporation receives grant application records.

3. Paragraph (a) of § 1602.5 is revised to read as follows:

#### § 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. After June 1, 2003, the Corporation's public reading room will be located at its office at 3333 K Street, NW., Washington, DC, 20007. 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.

\* \* \* \* \*

4. Section 1602.6 is amended by revising the words "Office of the General Counsel" in the second sentence to read "Office of Legal Affairs."

5. Paragraph (b) of § 1602.8 is amended by revising the words "Office of the General Counsel" each of the three times that phrase appears in the paragraph to read "Office of Legal Affairs."

6. Section 1602.13 is amended by:  
a. Revising paragraphs (e) and (f);  
b. Redesignating paragraphs (j) through (l) as paragraphs (k) through (m), respectively; and  
c. Adding a new paragraph (j).

#### § 1602.13 Fees.

\* \* \* \* \*

(e) The schedule for 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: \$16.15
- (ii) Band 2: \$26.66
- (iii) Band 3: \$39.15
- (iv) Band 4: \$51.41
- (v) Band 5: \$54.59

(vi) 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: 13 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) Express mail: actual charges as incurred.

(f) Fee waivers. A requester may seek a waiver or reduction of fees below the fees established under paragraph (e) of this section. A fee waiver or reduction request will be granted where LSC has determined that the requester has demonstrated that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations 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 shall consider the following four factors:

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the Corporation or Federal government." The subject of the requested records must concern identifiable operations or activities of the Corporation or Federal government, with a connection that is direct and clear, not remote or attenuated.

(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. The requested records must be meaningfully informative about government operations or activities in order to be likely to contribute to an increased public understanding of those operations or activities. The disclosure of information that is already in the public domain, in either a duplicative or a substantially identical form, would not be likely to contribute to such

understanding where nothing new would be added to the public's understanding.

(iii) The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested records will contribute to "public understanding." The disclosure must contribute to a reasonably broad audience of persons interested in the subject, as opposed to the personal interest of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration.

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of Corporation or Federal government operations or activities. The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent.

(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. LSC shall consider any commercial interest of the requester (with reference to the definition of "commercial use" in this Part) or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure.

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily" in the commercial interest of the requester. A fee waiver or reduction is justified where the public interest is greater in magnitude than that of any identified commercial interest in disclosure. LSC ordinarily shall presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed primarily to serve a public interest.

(3) Where LSC has determined that a fee waiver or reduction request is

justified for only some of the records to be released, LSC shall grant the fee waiver or reduction for those records.

(4) Requests for fee waivers and reductions shall be made in writing and must address the factors listed in this paragraph as they apply to the request.

\* \* \* \* \*

(j) When a requester has previously failed to pay a properly charged FOIA fee within 30 days of the date of billing, the Corporation may require the requester to pay the full amount due, plus any applicable interest, and to make an advance payment of the full amount of any anticipated fee before the Corporation begins to process a new request or continues to process a pending request (including appeals) from that requester.

\* \* \* \* \*

7. Section 1602.14 is added to read as follows:

**§ 1602.14 Submitter's rights process.**

(a) When the Corporation receives a FOIA request seeking the release of a submitter's grant application(s), or portions thereof, the Corporation shall provide prompt written notice of the request to the submitter in order to afford the submitter with an opportunity to object to the disclosure of the requested grant application(s) (or any portion thereof). The notice shall reasonably describe the grant application(s), or portions thereof, requested and inform the submitter of the process required by paragraph (b) of this section.

(b) If a submitter who has received notice of a request for the submitter's grant application(s) desires to object to the disclosure of the grant application(s) (or any portion thereof), the submitter must identify the information for which disclosure is objected and provide LSC with a written detailed statement to that effect. The statement must be submitted to the FOIA Officer in the Office of Legal Affairs and must specify the grounds for withholding the information under FOIA or this Part. In particular, the submitter must demonstrate why the information is commercial or financial information that is privileged or confidential. The submitter's statement must be provided to LSC within seven business days of the date of the notice from the Corporation. If the submitter fails to respond to the notice from LSC within that time, LSC will deem the submitter to have no objection to the disclosure of the information.

(c) Upon receipt of written objection to disclosure by a submitter, LSC shall consider the submitter's objections and specific grounds for withholding in

deciding whether to release the disputed information. Whenever LSC decides to disclose information over the objection of the submitter, LSC shall give the submitter written notice which shall include:

(1) A description of the information to be released and a notice that LSC intends to release the information;

(2) A statement of the reason(s) why the submitter's request for withholding is being rejected; and

(3) Notice that the submitter shall have 5 business days from the date of the notice of proposed release to appeal that decision to the LSC President, whose decision shall be final.

(d) The requirements of this section shall not apply if:

(1) LSC determines upon initial review of the requested grant application(s), or portions thereof, the requested information should not be disclosed;

(2) The information has been previously published or officially made available to the public; or

(3) Disclosure of the information is required by statute (other than FOIA) or LSC regulations.

(e) Whenever a requester files a lawsuit seeking to compel disclosure of a submitter's information, LSC shall promptly notify the submitter.

(f) Whenever LSC provides a submitter with notice and opportunity to oppose disclosure under this section, LSC shall notify the requester that the submitter's rights process under this section has been triggered. Whenever a submitter files a lawsuit seeking to prevent the disclosure of the submitter's information, LSC shall notify the requester.

**Victor M. Fortunato,**

*General Counsel and Vice President for Legal Affairs.*

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**DEPARTMENT OF DEFENSE**

**48 CFR Parts 201, 202, et al., and Appendix G to Chapter 2**

**Defense Federal Acquisition Regulation Supplement; Technical Amendments**

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

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**SUMMARY:** DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement to update organizational names and addresses and cross references.

**EFFECTIVE DATE:** February 14, 2003.