

**§ 52.1885 Control strategy: Ozone.**

\* \* \* \* \*  
 (ff) Approval—The 1997 8-hour ozone standard maintenance plans for the following areas have been approved:  
 \* \* \* \* \*

(pp) Approval—The 2008 8-hour ozone standard maintenance plans for the following areas have been approved:

(1) Approval—On April 21, 2016, the Ohio Environmental Protection Agency submitted a request to redesignate the Ohio portion of the Cincinnati, OH-KY-IN area to attainment of the 2008 ozone NAAQS. As part of the redesignation request, the State submitted a

maintenance plan as required by section 175A of the Clean Air Act. Elements of the section 175 maintenance plan include a contingency plan and an obligation to submit a subsequent maintenance plan revision in 8 years as required by the Clean Air Act. The 2020 motor vehicle emissions budgets for the Ohio and Indiana portions of the Cincinnati, OH-KY-IN area are 30.00 tons per summer day (TPSD) for VOC and 26.77 TPSD for NO<sub>x</sub>. The 2030 motor vehicle emissions budgets for the Ohio and Indiana portions of the area are 18.22 TPSD for VOC and 16.22 TPSD for NO<sub>x</sub>.

**OHIO—2008 8-HOUR OZONE NAAQS**  
 [Primary and secondary]

**PART 81—[AMENDED]**

■ 1. The authority citation for part 81 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

■ 2. Section 81.336 is amended by revising the entry for Cincinnati, OH-KY-IN in the table entitled “Ohio—2008 8-Hour Ozone NAAQS (Primary and secondary)” to read as follows:

**§ 81.336 Ohio.**

\* \* \* \* \*

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
Cincinnati, OH-KY-IN: <sup>2</sup> Butler County Clermont County Clinton County Hamilton County Warren County	December 16, 2016	Attainment.		
* * * * *				

<sup>1</sup> This date is July 20, 2012, unless otherwise noted.

<sup>2</sup> Excludes Indian country located in each area, unless otherwise noted.

\* \* \* \* \*

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**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:** The Legal Services Corporation (LSC) is revising its regulation on procedures for disclosure of information under the Freedom of Information Act to implement the statutorily required amendments in the FOIA Improvement Act of 2016. LSC is also making technical changes to improve the structure and clarity of its Freedom of Information Act (FOIA) regulations.

**DATES:** The final rule is effective as of December 16, 2016.

**FOR FURTHER INFORMATION CONTACT:** Helen Gerostathos Guyton, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW., Washington, DC 20007, (202) 295–1632

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**SUPPLEMENTARY INFORMATION:**

**I. Background**

LSC is subject to the FOIA by the terms of the Legal Services Corporation Act. 42 U.S.C. 2996d(g). LSC has implemented FOIA by adopting regulations that contain the rules and procedures LSC will follow in making its records available to the public. LSC last amended its FOIA regulations in 2008. 73 FR 67791, Dec. 31, 2008.

On June 30, 2016, President Obama signed into law the FOIA Improvement Act of 2016 (“2016 Amendments” or the “Act”). The Act codifies a number of transparency and openness principles and enacts housekeeping measures designed to facilitate FOIA requests and production. The revised regulations described in this final rule reflect the required changes prescribed by the Act. LSC also clarified the language and updated the structure of its FOIA regulations.

In light of the deadline established by Congress, LSC management requested that the Operations and Regulations Committee (Committee) recommend that the Board authorize expedited rulemaking and publication of this final rule. On October 16, 2016, the

Committee considered the request and voted to make the recommendation to the Board. On October 18, 2016, the Board voted to authorize expedited rulemaking and the publication of the final rule and request for comments. LSC published the final rule and request for comments on October 31, 2016, 81 FR 75330, and the comment period closed on November 30, 2016. LSC received no substantive adverse comments. LSC received comments from two parties recommending technical changes, which LSC has incorporated into this final rule where noted.

**II. Section-by-Section Analysis**

*Section 1602.1 Purpose*

There are no proposed changes to this section.

*Section 1602.2 Definitions*

LSC modified several existing definitions, deleted one definition, and added five new definitions to make its regulations clearer. LSC amended the Definitions section as follows:

*Duplication.* LSC modified this definition to require the release of records “in a form appropriate for release.” This change complies with

FOIA guidance that records be released in the format requested, where possible.

*LSC.* LSC replaced all references to “the Corporation” with “LSC” for simplicity. LSC introduced this definition to make clear that, unless otherwise specified, references to LSC in this rule include both the Corporation and LSC’s Office of Inspector General.

*Office.* LSC added this definition in order to simplify references to the Office of Inspector General and/or the Office of Legal Affairs, where appropriate.

*Office of Inspector General records.* LSC deleted this definition because the general definition of *records* includes the Office of Inspector General records, making this definition redundant.

*Person.* LSC’s prior regulations did not define *person*. To address this gap, LSC added a definition modeled after the definition of *person* contained in the FOIA, 5 U.S.C. 551(2). In response to the rule published in the **Federal Register** on October 31, 2016, 81 FR 75330, LSC received a comment recommending that it add “or a Federal agency” to the definition of *person* to clarify that a Federal agency is not a person. LSC is adopting that recommendation.

*Records.* LSC modified the definition of this term to comport with the definition of *records* in LSC’s Records Management Policy, which was updated in September 2015. It also incorporates Office of Inspector General records, which were previously defined separately.

*Rule.* LSC’s FOIA regulations cite to personnel rules, rules of procedure, and substantive rules, but do not define the term *rule*. To address this gap, LSC added a definition of *rule* modeled on the definition contained in the FOIA, 5 U.S.C. 551(4).

*Submitter.* On February 14, 2003, LSC published in the **Federal Register** a final rule adding provisions for a submitter’s rights process to its FOIA regulations. 68 FR 7433, Feb. 14, 2003. These provisions were modeled after the process outlined in Executive Order No. 12,600 (June 23, 1987). The 2003 final rule limited *submitter* solely to any person or entity from whom LSC receives grant application records. LSC is expanding the definition of *submitter* to include “any person or applicant for funds who provides confidential commercial information to LSC.” This definition more closely conforms with the spirit of E.O. 12,600 and ensures that submitters who may have an interest in the protection of their confidential commercial information are properly notified.

*Confidential Commercial Information.* LSC added a definition of *confidential commercial information* modeled on the

definition in E.O. 12,600 to comport with the new definition of *submitter* described above. LSC received a comment recommending that the phrase “because disclosure could reasonably be expected to cause substantial competitive harm” be deleted from the definition of *confidential commercial information* because substantial competitive harm is not the only reason that information could be withheld under Exemption 4. LSC is adopting that recommendation.

#### *Section 1602.3 Policy*

LSC made minor technical edits to clarify this section, including clarifying the foreseeability definition as recommended by one commenter.

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

LSC made minor technical edits to clarify this section.

#### *Section 1602.5 Public Reading Room*

This section sets out the process by which LSC makes available for public inspection the records described in the FOIA, 5 U.S.C. 552(a)(2). In the prior version of its FOIA regulations, LSC set out the specific categories of records that must be publicly disclosed. LSC deleted those specific provisions and replaced them with a broader reference to 552(a)(2) generally in anticipation of implementing the “Release to One, Release to All” policy. One commenter recommended that LSC implement “Release to One, Release to All” as a policy and delete the reference to the policy from its regulations. LSC also received a comment recommending that it delete reference to § 1602.10 as authority for LSC to withhold records from the public reading room because the FOIA itself provides sufficient authority. LSC is adopting these recommendations.

LSC also made minor technical revisions to clarify this section.

#### *Section 1602.6 Procedures for Using the Public Reading Room*

LSC added a provision to this section that will provide requesters with onsite computer and printer access to electronic reading room records. This provision is consistent with Federal agency practice and provides greater access to LSC’s records to the public at large.

#### *Section 1602.7 Index of Records*

LSC updated this section to reflect its current practice of maintaining its index of records electronically.

#### *Section 1602.8 Requests for Records*

The prior version of § 1602.8 included provisions relating to the format of requests for records, the timing of responses, and the format of responses to requests. There were no subheadings to distinguish these provisions within the section, making it difficult to follow. To improve readability, LSC restructured § 1602.8 by limiting the section solely to provisions related to the format of FOIA requests. LSC also added a provision that informs requesters of their right to specify the preferred form or format for the records sought and that requires requesters to provide their contact information to assist LSC in communicating with them about their request. One commenter recommended that LSC delete the phrase “LSC shall respond to such a request as promptly as possible”, referring to requests for fee waivers or reductions, because LSC would not adjudicate a fee waiver until fees are at issue. The proposed language suggested that all fee waivers would be adjudicated promptly, when this may not always occur. LSC is adopting this recommendation.

#### *Section 1602.9 Timing and Responses to Requests for Records*

This is a new section. As described in the discussion of § 1602.8, LSC determined that it would be clearer if the provisions for timing and responses to requests were contained in a separate section. LSC also made technical changes to the language and structure to improve clarity. In addition, LSC added provisions describing the dispute resolution processes available to the public as required by the 2016 Amendments. These provisions describe when a requester may seek assistance, including dispute resolution services, from an LSC FOIA Public Liaison or the U.S. National Archives and Record Administration’s Office of Government Information Services. In response to the final rule published on October 31, 2016, 81 FR 75330, LSC received a comment recommending that it articulate the procedures for consultations and referrals when it processes a request that contains within the records information of interest to another Office or Federal agency. LSC also received a comment recommending that it remove § 1602.9(b)(3)’s reference to “two or more components of LSC” because LSC has only two components, LSC and the Office of Inspector General. LSC is adopting both recommendations.

### Section 1602.10 Exemptions for Withholding Records

LSC amended this section to incorporate the 2016 Amendments' codification of the Department of Justice's foreseeable harm standard, which requires LSC to withhold information only if disclosure would harm an interest protected by an exemption or prohibited by law. It further obligates LSC to consider whether partial disclosure of information is possible when full disclosure is not and to take reasonable steps to segregate and release nonexempt information. One commenter recommended that LSC clarify the foreseeable harm standard. LSC is adopting this recommendation.

In addition, LSC modified its rule regarding the applicability of the deliberative process privilege, as required by the 2016 Amendments. The privilege now applies only to records created within 25 years of the date on which the records were requested.

Finally, LSC added exemptions 1, 8, and 9 from 5 U.S.C. 552(8)(B)(b) to its regulations. While these exemptions, which deal with national security, financial institutions, and geological information, generally do not apply to the work of LSC, their absence caused confusion because LSC's exemption numbers did not track the commonly used exemption numbers found in both the FOIA and case law. This change will eliminate any confusion.

### Section 1602.11 Officials Authorized To Grant or Deny Requests for Records

LSC deleted paragraph (a) of this section, which describes the role of the General Counsel in adequately and consistently applying the provisions of this part within LSC. The 2016 Amendments establish the role of the Chief FOIA Officer in ensuring compliance with FOIA, thereby superseding LSC's prior regulations.

### Section 1602.12 Denials

LSC added a provision to this section requiring it to include a provision in its denial decisions notifying the requester of his or her right to seek dispute resolution services from LSC's FOIA Public Liaison or the Office of Government Information Services.

### Section 1602.13 Appeals of Denials

LSC made minor technical edits to clarify this section. LSC also added a provision that requires LSC to notify a requester of the dispute resolution services offered by the Office of Government Information Services as a non-exclusive alternative to litigation. LSC received a comment recommending

that it include contact information for the Office of Government Information Services' voluntary dispute resolution services. LSC is adopting this recommendation.

### Section 1602.14 Fees

LSC added a provision to this section that prohibits LSC from assessing fees if its response time is delayed, subject to limited exceptions described in the 2016 Amendments. One commenter recommended that LSC add a provision excusing a failure to comply with the time limits set forth in the regulation when a court determines that exceptional circumstances exist. The commenter also recommended that LSC detail its fee structure and provide requesters an opportunity to reformulate their request at a lower cost. LSC is adopting both recommendations.

### Section 1602.15 Submitter's Rights Process

As previously described in the discussion of § 1602.2's definition of the term *submitter*, LSC expanded the submitter's rights process to include "any person or applicant for funds who provides confidential commercial information to LSC." This definition more closely conforms with the spirit of E.O. 12600 and ensures that submitters who may have an interest in the protection of their confidential information are properly notified.

Finally, LSC clarified an ambiguous provision that requires a submitter to provide to LSC within seven days his or her statement objecting to disclosure of his information. One commenter recommended that LSC delete the seven-day response period and instead specify in its notice to the requester a reasonable time period within which the submitter must respond. LSC also received a comment recommending that LSC's regulations comport with agency practice that makes the notice of proposed release the final administrative action by LSC. LSC is adopting these recommendations.

### List of Subjects in 45 CFR Part 1602

Freedom of information.

■ For the reasons stated in the preamble, the Legal Services Corporation revises 45 CFR part 1602 to read 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 Timing and responses to requests for records.
- 1602.10 Exemptions for withholding records.
- 1602.11 Officials authorized to grant or deny requests for records.
- 1602.12 Denials.
- 1602.13 Appeals of denials.
- 1602.14 Fees.
- 1602.15 Submitter's rights process.

**Authority:** 42 U.S.C. 2996g(e).

#### § 1602.1 Purpose.

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

#### § 1602.2 Definitions.

(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, LSC will look to the use to which a requester will put the documents requested. When LSC 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) *Confidential commercial information* means records provided to LSC by a submitter that arguably contain material exempt from release under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

(c) *Duplication* means the process of making a copy of a requested record pursuant to this part in a form appropriate for release in response to a FOIA request.

(d) *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.

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

(f) *LSC* means the Legal Services Corporation. Unless explicitly stated otherwise, LSC includes the Office of Inspector General.

(g) *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.

(h) *Office* refers to the Office of Legal Affairs and/or the Office of Inspector General (OIG).

(i) *Person* includes an individual, partnership, corporation, association, or public or private organization other than LSC or a Federal agency.

(j) *Records* are any type of information made or received by LSC or the OIG for purposes of transacting LSC or OIG business and preserved by LSC or the OIG (either directly or maintained by a third party under contract to LSC or the OIG for records management purposes) regardless of form (e.g., paper or electronic, formal or informal, copies or original) as evidence of LSC's or OIG's organization, functions, policies, decisions, procedures, operations, or other activities of LSC or the OIG or because the record has informational value.

(k) *Representative of the news media* means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. In this clause, 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 are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of "news") who make their products available for purchase or subscription or by free distribution to the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news media entities. A freelance journalist shall be regarded as working for a news media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation. LSC may also consider the past publication record of the requester in making such a determination.

(l) *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.

(m) *Rule* means the whole or a part of an LSC statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of LSC.

(n) *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.

(o) *Submitter* means any person or applicant for funds who provides confidential commercial information to LSC.

#### § 1602.3 Policy.

LSC will make records concerning its operations, activities, and business available to the public to the maximum extent reasonably possible. LSC will withhold records from the public only in accordance with the FOIA and this part. LSC will disclose records otherwise exempt from disclosure under the FOIA when LSC does not reasonably foresee that disclosure would harm an interest protected by an exemption and disclosure is not prohibited by law or protected under Exemption 3.

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

LSC routinely publishes in the **Federal Register** information on its basic structure and operations necessary to inform the public how to deal effectively with LSC. LSC will make reasonable efforts to currently update such information, which will include basic information on LSC'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) LSC will maintain a public reading room at its offices at 3333 K St. NW., Washington, DC 20007. This room will be supervised and will be open to the public during LSC's regular business hours. Procedures for use of the public

reading room are described in § 1602.6. LSC also maintains an electronic public reading room that may be accessed at <http://www.lsc.gov/about-lsc/foia/foia-electronic-public-reading-room>.

(b) Subject to the limitation stated in paragraph (c) of this section, LSC will make available for public inspection in its electronic public reading room the records described in 5 U.S.C. 552(a)(2).

(c) Records required by FOIA to be available in the public reading room may be exempt from mandatory disclosure pursuant to 5 U.S.C. 552(b). LSC will not make such records available in the public reading room. LSC may edit other records maintained in the reading room by redacting details about individuals to prevent clearly unwarranted invasions of personal privacy. In such cases, LSC will attach a full explanation of the redactions to the record. LSC will indicate the extent of the redactions unless doing so would harm an interest protected by the exemption under which the redactions are made. If technically feasible, LSC will indicate the extent of the redactions at the place in the record where the redactions were made.

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

(a) A person who wishes to inspect or copy records in the public reading room should arrange a time in advance, by telephone or letter request made to the Office of Legal Affairs, Legal Services Corporation, 3333 K Street NW., Washington, DC 20007 or by email to [FOIA@lsc.gov](mailto:FOIA@lsc.gov).

(1) In appropriate circumstances, LSC will advise persons making telephonic requests to use the public reading room that a written request would aid in the identification and expeditious processing of the records sought.

(2) 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.

(b) LSC will advise the requester as promptly as possible if, for any reason, it is not feasible to make the records sought available on the date requested.

(c) A computer terminal and printer are available upon request in the public reading room for accessing Electronic Reading Room records.

#### § 1602.7 Index of records.

LSC will maintain and make available for public inspection in an electronic format a current index identifying any matter within the scope of § 1602.4 and § 1602.5(b).

**§ 1602.8 Requests for records.**

(a) LSC will make its records promptly available, upon request, to any person in accordance with this section, unless:

(1) the FOIA requires the records to be published in the **Federal Register** (§ 1602.4) or to be made available in the public reading room (§ 1602.5); or

(2) LSC determines that such records should be withheld and are exempt from mandatory disclosure under the FOIA and § 1602.10.

(b)(1) *Requests for LSC records.* All requests for LSC records must be clearly marked Freedom of Information Act Request and shall be addressed to the FOIA Analyst, Office of Legal Affairs, Legal Services Corporation, 3333 K Street NW., Washington, DC 20007. Email requests shall be sent to [FOIA@lsc.gov](mailto:FOIA@lsc.gov). Requests for LSC Records may also be made online using the FOIA Requested Electronic Submission Form located at <http://www.lsc.gov/about-lsc/foia>.

(2) *Requests for Office of Inspector General records.* All requests for records maintained by the OIG must be clearly marked Freedom of Information Act Request and shall be addressed to the FOIA Officer, Office of Inspector General, Legal Services Corporation, 3333 K Street NW., Washington, DC 20007. Email requests shall be sent to [FOIA@oig.lsc.gov](mailto:FOIA@oig.lsc.gov).

(3) Any request not marked and addressed as specified in this section will be so marked by LSC personnel as soon as it is properly identified, and will be forwarded immediately to the appropriate Office. A request improperly addressed will be deemed to have been received as in accordance with § 1602.9 only when it has been received by the appropriate Office. Upon receipt of an improperly addressed request, the Chief FOIA Officer, Office of Inspector General Legal Counsel or their designees 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 LSC 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. Before submitting their requests, requesters may contact LSC's or OIG's FOIA Analyst or FOIA Public Liaison to discuss the records they seek and to receive assistance in describing the records. If LSC determines that a request does not reasonably describe the records sought, LSC will inform the requester what additional information is needed or why the request is otherwise

insufficient. Requesters who are attempting to reformulate or modify their request may discuss their request with LSC's or OIG's FOIA Analyst or FOIA Public Liaison. If a request does not reasonably describe the records sought, LSC's response to the request may be delayed.

(d) To facilitate the location of records by LSC, 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 LSC that 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 LSC who may have prepared or have knowledge of the record;

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

(e) Requests may specify the preferred form or format (including electronic formats) for the records sought. LSC 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. LSC reserves the right to limit the number of copies of any document that will be provided 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.

(f) Requesters must provide contact information, such as their phone number, email address, and/or mailing address, to assist LSC in communicating with them and providing released records.

(g) LSC is not required to create a record or to perform research to satisfy a request.

(h) 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 § 1602.14(g).

**§ 1602.9 Timing and responses to requests for records.**

(a)(1) Upon receiving a request for LSC or Inspector General records under § 1602.8, the Chief FOIA Officer, Office of Inspector General Legal Counsel or their designees shall make an initial determination of whether to comply with or deny such request. The Chief FOIA Officer, Office of Inspector

General Legal Counsel or their designees will send the determination to the requester within 20 business days after receipt of the request and will notify the requester of their right to seek assistance from an LSC FOIA Public Liaison.

(2) The 20-day period under paragraph (a)(1) of this section shall commence on the date on which the request is first received by the appropriate Office, but in no event later than 10 working days after the request has been received by either the Office of Legal Affairs or the Office of Inspector General. The 20-day period shall not be tolled by the Office processing the request except that the processing Office may make one request to the requester for information pursuant to paragraph (b) of this section and toll the 20-day period while

(i) It is awaiting such information that it has reasonably requested from the requester under this section; or

(ii) It communicates with the requester to clarify issues regarding fee assessment.

In either case, the processing Office's receipt of the requester's response to such a request for information or clarification ends the tolling period.

(b) *Consultation.* When records originated with the Office processing the request, but contain within them information of interest to another Office or Federal agency, the Office processing the request should typically consult with that other entity prior to making a release determination.

(c) *Referral.* (1) If the processing Office determines that the other Office or Federal agency is best able to determine whether to disclose the record, the processing Office will typically refer the responsibility for responding to the request for that record to the other Office or Federal agency. Ordinarily, the Office that originated the record is presumed to be the best Office to make the disclosure determination. However, if the Offices or Federal agency jointly agree that the processing Office is in the best position to respond regarding the record, then the record may be released by the processing Office after consultation with the other Office or Federal agency.

(2) Whenever a referral occurs, the processing Office must document the referral, maintain a copy of the record that it refers, and notify the requester of the referral, informing the requester of the name(s) of the Office or Federal agency to which the record was referred, including that Office's or Federal agency's FOIA contact information.

(d)(1) In unusual circumstances, as specified in paragraph (d)(3) of this section, LSC may extend the time limit

for up to 10 working days by written notice to the requester setting forth the reasons for such extension and the date on which LSC expects to send its determination.

(2) LSC may also provide an opportunity to the requester to narrow the request. In addition, to aid the requester, LSC shall make available a FOIA Public Liaison, who shall assist in the resolution of any disputes between the requester and LSC, and shall notify the requester of his right to seek dispute resolution services from the U.S. National Archives and Records Administration's Office of Government Information Services.

(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 Office, Federal agency, or organization having a substantial interest in the determination of the request.

(c)(1) When the processing Office cannot send a determination to the requester within the applicable time limit, the Chief FOIA Officer, Office of the Inspector General Legal Counsel, or their designees shall inform the requester of the reason for the delay, the date on which the processing Office expects to send its determination, and the requester's right to treat the delay as a denial and to appeal to LSC's President or Inspector General, in accordance with § 1602.13, or to seek dispute resolution services from a FOIA Public Liaison or the Office of Government Information Services.

(2) If the processing Office has not sent its determination 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 § 1602.13, or seek dispute resolution services from LSC's or OIG's FOIA Public Liaison or the National Archives and Records Administration's Office of Government Information Services. The Chief FOIA Officer, Office of Inspector General Legal Counsel, or their designees may ask the requester to forego appeal until a determination is made.

(d) After the processing Office determines that a request will be granted, LSC or the OIG will act with due diligence in providing a substantive response.

(e)(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 LSC 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 raising questions about LSC's integrity which may affect public confidence in LSC.

(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 LSC pursuant to § 1602.8.

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

(4) Within 10 calendar days of receiving a request for expedited processing, the Chief FOIA Officer, Office of Inspector General Legal Counsel or their designees 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, the requester may appeal in writing to LSC's President or Inspector General in the format described in § 1602.13(a). Any appeal of a denial for expedited treatment shall be acted on expeditiously by LSC.

#### **§ 1602.10 Exemptions for withholding records.**

(a) LSC shall—

(1) Withhold information under this section only if—

(i) LSC reasonably foresees that disclosure would harm an interest protected by an exemption described in paragraph (b); or

(ii) Disclosure is prohibited by law; and

(2)(i) Consider whether partial disclosure of information is possible whenever LSC determines that a full disclosure of a requested record is not possible; and

(ii) Take reasonable steps necessary to segregate and release nonexempt information;

(b) LSC may withhold a requested record from public disclosure only if one or more of the following exemptions authorized by the FOIA apply:

(1)(i) Matter that is specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy; and

(ii) Is in fact properly classified pursuant to such Executive Order;

(2) Matter that is related solely to the internal personnel rules and practices of LSC;

(3) Matter that 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 issue, or establishes particular criteria for withholding, or refers to particular types of matters to be withheld;

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

(5) Inter-agency or intra-agency memoranda or letters that would not be available by law to a party other than an agency in litigation with LSC, provided that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested;

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

(7) 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 that 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;

(8) Matter that is contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(c) In the event that one or more of the exemptions in paragraph (b) of this section applies, any reasonably segregable portion of a record shall be provided to the requester after redaction of the exempt portions. The amount of information redacted and the exemption under which the redaction is being made shall be indicated on the released portion of the record, unless doing so would harm the interest protected by the exemption under which the redaction is made. If technically feasible, the amount of information redacted and the exemption under which the redaction is being made shall be indicated at the place in the record where the redaction occurs.

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

(e) Records that may be exempt from disclosure pursuant to paragraph (b) of this section may be made available at the discretion of the LSC official authorized to grant or deny the request for records, after appropriate consultation as provided in § 1602.11. LSC will disclose records otherwise exempt from disclosure under the FOIA when LSC does not reasonably foresee that disclosure would harm an interest protected by an exemption and disclosure is not prohibited by law or protected under Exemption 3.

#### § 1602.11 Officials authorized to grant or deny requests for records.

(a) The Chief FOIA Officer, Office of Inspector General Legal Counsel or their designees are authorized to grant or deny requests under this part. In the absence of an Office of Inspector

General Legal Counsel, 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 Office of Inspector General Legal Counsel under this part.

(b)(1) The Chief FOIA Officer or designee shall consult with the Office of Inspector General Legal Counsel or designee prior to granting or denying any request for records or portions of records which originated with the OIG, or which contain information which originated with the OIG, but which are maintained by other components of LSC.

(2) The Office of Inspector General Legal Counsel or designee shall consult with the Chief FOIA Officer or designee prior to granting or denying any request for records or portions of records which originated with any component of LSC other than the OIG, or which contain information which originated with a component of LSC other than the OIG, but which are maintained by the OIG.

#### § 1602.12 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 § 1602.10(b) 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;

(6) An explanation of the right to appeal the denial and of the procedures for submitting an appeal, as described in § 1602.13, including the address of the official to whom appeals should be submitted; and

(7) An explanation of the right of the requester to seek dispute resolution services from a FOIA Public Liaison or the Office of Government Information Services.

(b) Whenever LSC 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).

#### § 1602.13 Appeals of denials.

(a) Any person whose written request has been denied is entitled to appeal the denial within 90 days of the date of the response by writing to the President of LSC or, in the case of a denial of a request for OIG records, the Inspector General, at the mailing or email addresses given in § 1602.8(b)(1) and (2). The envelope and letter or email 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, Inspector General or their designees for this purpose.

(c)(1) 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 § 1602.12(a)(1) through (4), and the provisions for judicial review of such decision under 5 U.S.C. 552(a)(4). The decision must also notify the requester of the dispute resolution services offered by the National Archives and Records Administration's Office of Government Information Systems as a non-exclusive alternative to litigation. A requester may contact the Office of Government Information Services in any of the following ways:

(i) Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road—OGIS, College Park, MD 20740.

(ii) *ogis.archives.gov*.

(iii) *Email: ogis@nara.gov*.

(iv) *Telephone: 202-741-5770*.

(v) *Facsimile: 202-741-5769*.

(vi) *Toll-free: 1-877-684-6448*.

(2) Dispute resolution through the Office of Government Information Services is a voluntary process. If LSC agrees to participate in the dispute resolution services provided by the Office of Government Information Services, it will actively engage in the process in an attempt to resolve the dispute.

(d) LSC will send its decision to the requester within 20 business days after receipt of the appeal, unless an additional period is justified due to

unusual circumstances, as described in § 1602.9, in which case LSC may extend the time limit for up to 10 working days by written notice to the requester setting forth the reasons for such extension and the date on which LSC expects to send its determination. The decision of the President or the Inspector General shall constitute the final action of LSC. All such decisions shall be treated as final opinions under § 1602.5(b)(1).

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

#### § 1602.14 Fees.

(a) LSC will not charge fees for information routinely provided in the normal course of doing business.

(b)(1) When records are requested for commercial use, LSC shall limit fees to reasonable standard charges for document search, review, and duplication.

(2) LSC shall not assess any search fees (or if the requester is a representative of the news media, duplication fees) if LSC has failed to comply with the time limits set forth in § 1602.9 and no unusual circumstances, as defined in that section apply.

(3)(i) If LSC has determined that unusual circumstances as defined in § 1602.9 apply and LSC has provided timely written notice to the requester in accordance with § 1602.9, a failure described in paragraph (2) is excused for an additional 10 days. If LSC fails to comply with the extended time limit, LSC may not assess any search fees (or, if the requester is a representative of the news media, duplication fees) except as provided in paragraphs (a)(3)(ii)–(iii) of this section.

(ii) If LSC has determined that unusual circumstances as defined in § 1602.9 apply and more than 5,000 pages are necessary to respond to the request, LSC may charge search fees or duplication fees if LSC has provided a timely written notice to the requester in accordance with § 1602.9 and LSC has discussed with the requester via written mail, electronic mail, or telephone (or made not less than three good faith attempts to do so) how the requester

could effectively limit the scope of the request in accordance with § 1602.9.

(iii) If a court has determined that exceptional circumstances exist, as defined by the FOIA, a failure to comply with the time limits shall be excused for the length of time provided by the court order.

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

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

(e) The schedule of charges and fees 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) *Administrative fee*: \$22.35/hour;

(ii) *Professional fee*: \$66.26/hour;

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

(2) *Duplication by paper copy*: 35 cents per page;

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

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

(5) *Express mail*: actual charges as incurred.

(f) LSC may charge for time spent searching even if it does not locate any responsive records or it withholds the records located as exempt from disclosure.

(g) *Fee waivers*. A requester may seek a waiver or reduction of 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 LSC 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 LSC, LSC 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 LSC." The subject of the requested records must concern identifiable operations or activities of LSC, 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 LSC operations or activities. The requested records must be meaningfully informative about LSC 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. LSC shall presume 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 LSC operations or activities. The disclosure must enhance the public's understanding of the subject in question to a significant extent.

(2) In order to determine whether disclosure of the information is not primarily in the commercial interest of the requester, LSC 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 of greater magnitude than is

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.

(h) Requesters must agree to pay all fees charged for services associated with their requests. LSC 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, LSC will consult with the requester prior to processing the request, and such requests will not be deemed to have been received by LSC until the requester agrees in writing to pay all fees charged for services. LSC will also make available its FOIA Public Liaison or other FOIA professional to assist any requester in reformulating a request to meet the requester's needs at a lower cost.

(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 (and the request will not be deemed to have been received by LSC until such payment is made); or

(2) LSC 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 five working days of receipt by LSC, giving the best estimate then available. The notification shall offer the requester the opportunity to confer with appropriate representatives of LSC 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 LSC for purposes of the initial 20-day response period until the requester

makes a deposit on the fee in an amount determined by LSC.

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

#### **§ 1602.15 Submitter's rights process.**

(a) When LSC receives a FOIA request seeking the release of confidential commercial information, LSC shall provide prompt written notice of the request to the submitter in order to afford the submitter an opportunity to object to the disclosure of the requested confidential commercial information. The notice shall reasonably describe the confidential commercial information requested, inform the submitter of the process required by paragraph (b) of this section, and provide a reasonable time period for the submitter to respond.

(b) If a submitter who has received notice of a request for the submitter's confidential commercial information wishes to object to the disclosure of the confidential commercial information, the submitter must provide LSC within the time period set forth in the notice, a detailed written statement identifying the information which it objects. The submitter must send its objections to the Office of Legal Affairs or, if it pertains to Office of Inspector General records, to the Office of Inspector General, 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. If the submitter fails to respond to the notice from LSC within the time period specified in the notice, 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) A specified disclosure date, which must be a reasonable time after the notice.

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

(1) LSC determines upon initial review of the requested confidential commercial information that 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's 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. Likewise, whenever a submitter files a lawsuit seeking to prevent the disclosure of the submitter's information, LSC shall notify the requester.

Dated: December 12, 2016.

**Stefanie K. Davis,**

*Assistant General Counsel.*

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## **NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

### **48 CFR Parts 1845 and 1852**

**RIN 2700-AE33**

#### **NASA Federal Acquisition Regulation Supplement: Contractor Financial Reporting of Property (2016-N024)**

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Final rule.

**SUMMARY:** NASA is issuing a final rule amending the NASA Federal Acquisition Regulation Supplement (NFS) to add a monthly reporting requirement for contractors having custody of \$10 million or more in NASA-owned Property, Plant and Equipment (PP&E).

**DATES:** *Effective:* January 17, 2017.