

second comment period on this action. Any parties interested in commenting must do so at this time.

**DATES:** Comments on this action must be received by October 11, 2002.

**ADDRESSES:** Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please telephone Edward Doty at (312) 886-6057 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Edward Doty, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Telephone: (312) 886-6057. E-mail address: [doty.edward@epa.gov](mailto:doty.edward@epa.gov).

**Authority:** 42 U.S.C. 4201-7601q.

Dated: August 23, 2002.

**Gary Gulezian,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 02-22980 Filed 9-10-02; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[MN69-7294b; FRL-7265-1]

#### Approval and Promulgation of Implementation Plans; Minnesota

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to approve a site-specific revision to the Minnesota particulate matter (PM) State Implementation Plan (SIP) for Metropolitan Council Environmental Service's (MCES) Metropolitan Wastewater Treatment Plant located on Childs Road in St. Paul, Ramsey County, Minnesota. The Minnesota Pollution Control Agency requested in its June 1, 2001 submittal that EPA approve into the Minnesota PM SIP certain portions of the federally enforceable state operating permit for the MCES Metropolitan Wastewater Treatment Plant and remove the MCES Administrative Order from the state PM

SIP. The request is approvable because it satisfies the requirements of the Clean Air Act. Specifically, EPA is proposing to approve into the SIP only those portions of the permit cited as "Title I Condition: State Implementation Plan for PM<sub>10</sub>." In addition, EPA is proposing to remove the MCES Metropolitan Wastewater Treatment Plant Administrative Order from the state PM SIP. In the final rules section of this **Federal Register**, EPA is approving the SIP revision as a direct final rule without prior proposal, because we view this as a noncontroversial revision amendment and anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to this proposed rule. If adverse comments are received, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

**DATES:** Written comments must be received on or before October 11, 2002.

**ADDRESSES:** Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR-18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590.

**FOR FURTHER INFORMATION CONTACT:** Christos Panos, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR-18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8328.

**SUPPLEMENTARY INFORMATION:** For additional information, see the Direct Final notice which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available for inspection at the above address. (Please telephone Christos Panos at (312) 353-8328 before visiting the Region 5 Office.)

Dated: August 13, 2002.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 02-22978 Filed 9-10-02; 8:45 am]

**BILLING CODE 6560-50-P**

## LEGAL SERVICES CORPORATION

### 45 CFR Part 1604

#### Outside Practice of Law

**AGENCY:** Legal Services Corporation.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Legal Services Corporation proposes to amend its regulation relating to the outside practice of law by full-time legal services attorneys. The rule would be substantively restructured and revised to clarify the scope of the restrictions on outside practice so that program attorneys would not face undue restrictions in complying with their professional obligations. The proposed rule would also amend several definitions and allow for the separate treatment of court appointments.

**DATES:** Comments should be received on or before November 12, 2002.

**ADDRESSES:** Comments must be submitted in writing and may be sent by regular mail, or may be transmitted by fax or email to: Mattie C. Condray, Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 750 First St., NE., 11th Floor, Washington, DC 20002-4250; 202/336-8952 (fax); [mcondray@lsc.gov](mailto:mcondray@lsc.gov) (email).

**FOR FURTHER INFORMATION CONTACT:** Mattie C. Condray, Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 750 First St., NE., 11th Floor, Washington, DC 20002-4250; (202) 336-8817 (phone); 202/336-8952 (fax); [mcondray@lsc.gov](mailto:mcondray@lsc.gov) (email).

**SUPPLEMENTARY INFORMATION:** On January 17, 1995, the Legal Services Corporation (LSC or the Corporation) published for public comment proposed revisions to 45 CFR part 1604, LSC's regulation on the outside practice of law. 60 FR 3367. Although LSC received public comment on the proposed revisions, no final action was ever taken on the rule. Many of the issues outstanding in 1995 remain important today and LSC is interested in adopting final revisions to part 1604. LSC is not, however, issuing a final rule because several of the prior proposed revisions may not be consistent with statutory changes imposed by Congress in the intervening years. Moreover, there may be other issues with the regulation which have arisen in the past seven years which are not adequately addressed by the prior proposed rule without further consideration. Accordingly, LSC is re-issuing a Notice of Proposed Rulemaking (NPRM). LSC

specifically invites comment on the impact of the restriction on claiming and accepting attorneys' fees, other restrictions stemming from the 1996 appropriations act, program integrity requirements, and time-keeping requirements on the proposals contained herein and the general issue of outside practice of law by LSC recipient attorneys.

### Section-by-Section Analysis

#### Section 1604.1 Purpose

This section sets out the framework for other changes that appear in this NPRM. LSC proposes to add language to authorize a recipient to adopt written policies to permit its program attorneys to engage in *pro bono* legal assistance and to comply with their obligations as members of the Bar and officers of the court. The proposed rule recognizes, however, that those demands must not interfere with the attorneys' overriding responsibility to serve the program's clients. LSC further proposes to clarify that this part should not be construed to permit recipients to unduly restrict legal services attorneys from engaging in those activities. The use of the word "unduly" acknowledges that there may be some restrictions imposed by the LSC Act, LSC appropriations or other legislation and/or LSC regulations, or by recipients that are necessary to comply with applicable law or accomplish the overriding goals of the LSC Act.

#### Section 1604.2 Definitions

##### Section 1604.2(a) "Full-time Attorney"

LSC proposes to delete the definition of "attorney," because it is inconsistent with the definition of "attorney" in part 1600 of the Corporation's regulations, Definitions. Instead, LSC proposes to substitute a definition of "full-time attorney" that incorporates the definition of "attorney" in Part 1600. Under the proposed rule, a "full-time attorney" would be defined as an attorney who is a full-time employee of a recipient. LSC has not proposed a separate definition for the term "full-time," preferring to leave the decision as to what constitutes "full-time" to the recipient's own personnel and outside practice policies and to any appropriate statutory definitions found elsewhere.

##### Section 1604.2(b) "Outside Practice of Law"

LSC proposes to amend this definition to explain what outside practice is, rather than what it is not. The regulation is intended to and currently applies only to the outside practice of law by recipients' employees and not to other

outside activities by recipients' employees that do not constitute the outside practice of law. LSC believes that this amendment will clarify this point and aid in the comprehension and usability of the regulation.

LSC further proposes to substitute the words "receiving that" for "entitled to receive." This revision would make it clear that an attorney could represent a client in an outside practice case who is eligible for representation from the recipient even if the client is also receiving legal assistance from the recipient, as long as the recipient is representing the client on a different matter.

LSC notes that this definition is not intended to include work done by legal services attorneys when serving in the military reserves as JAG Corps attorneys. Although LSC has chosen not to include language on this issue in the rule, it intends to continue the policy established in prior General Counsel opinions, which have consistently found that an attorney is not engaged in the outside practice of law while serving as a JAG Corps reserve officer. Comments are solicited as to whether the rule should include language expressly stating this policy.

##### Section 1604.2(c) "Court Appointment"

LSC proposes to add a definition for the term "court appointment." The proposed definition, "an appointment in a criminal or civil case made by a court or administrative agency under a statute or court rule or practice," is based on the language relating to court appointments currently found in sections 1604.4 and 1604.5 of the regulation, rather than the following language in § 1006(d)(6) of the Act:

Attorneys employed by a recipient shall be appointed to provide legal assistance without reasonable compensation only when such appointment is made pursuant to a statute, rule, or practice applied generally to attorneys practicing in the court where the appointment is made.

The proposed definition on appointments is broader than the statutory one, which applies only to uncompensated appointments; but LSC believes it is appropriate because it is more protective of program resources.

#### Section 1604.3 General Policy

LSC proposes to expand and amend this section to require recipients to adopt written policies relating to the outside practice of law, rather than permitting programs to determine on an ad hoc basis, whether outside practice is to be permitted in a particular instance

(as is the case under the existing rule). LSC anticipates, however, that such policies would give the recipient's executive director substantial discretion in making outside practice of law determinations.

Under the proposed rule, the required policies would be permitted to permit the outside practice of law by full-time attorneys only to the extent permitted by Part 1604, but would be permitted to contain additional limitations not imposed by Part 1604. This provision is intended to address the concern that, in revising this regulation to take account of the evolving obligations of all attorneys to do *pro bono* work, recipients would be subject to pressures from their attorneys to do outside practice that was not absolutely required by professional obligations and that interfered with the program's ability to serve the clients it is funded to serve. This concern is especially important in view of the fact that LSC recipients lack adequate resources to serve more than a small fraction of the eligible persons who have real legal needs. LSC believes that the proposed language will ensure that recipients can adopt policies that balance the demands of the profession, the attorney's desire to do outside work, and the needs of the community served by the program.

The restrictions of this part, as currently applicable and as proposed, apply only to full-time attorneys. Although LSC does not propose to address the outside practice of law by part-time attorneys, the regulation would expressly provide that recipients' policies may include restrictions on outside practice by part-time attorneys.

#### Section 1604.4 Permissible Outside Practice

LSC proposes to combine and revise the provisions currently in sections 1604.4, Compensated Outside Practice, and 1604.5, Uncompensated Outside Practice, into one section retitled Permissible Outside Practice.

Under the current structure of the regulation, the general rule on the outside practice of law is stated in the negative; that is, the outside practice of law is prohibited except as provided. LSC proposes to, instead, state the rule in the affirmative, providing guidance on the terms under which the outside practice of law may be approved. The proposed revision also refers to a full-time attorney's responsibilities to clients, rather than simply "full-time responsibilities." LSC intends an executive director to make a case-by-case determination as to whether involvement in a specific case or matter would be consistent with a full-time

attorney's responsibilities to the program's clients. A full-time attorney's responsibilities to program clients should be determined by reference to the program's definition of "full-time," not by reference to a specific attorney's working habits. Thus, an attorney in the habit of working substantial amounts of overtime on program activities should not be penalized for deciding to allot some of that attorney's own time to an outside practice case rather than to program activities. In addition, an attorney should be permitted to take reasonable amounts of leave to engage in permitted outside practice.

LSC proposes to include language intended to address a concern that, if a program attorney handled outside practice cases that were controversial or dealt with areas prohibited to the recipient (e.g., abortion litigation), the employing recipient would be seen as handling the cases and viewed as using outside practice as a way to get around other restrictions. The proposed language, which is similar to language in the regulation on prohibited political activities, would require the attorney to make it clear that this was not a program case, and to do whatever was necessary to ensure that it not be perceived as such. In practical terms, the restriction might require the attorney to use a home address or post office box for correspondence, or a home telephone number or direct dial number that would not go through the recipient's switchboard or voice mail greeting, or other similar processes to ensure that the recipient was not identified as the sponsor of the representation. The proposed restriction on identification would not apply to court appointments or to cases which are undertaken to fulfill a mandatory *pro bono* obligation, which are treated separately in the regulation.

Proposed paragraph (c) sets forth the five specific situations in which the outside practice of law would be permitted: a newly employed closing cases from a previous law practice; when the attorney is acting on behalf of him or herself, a close friend, family member or another member of the recipient's staff; when the attorney is acting on behalf of a religious, community, or charitable group; when the attorney is participating in a *pro bono* or legal referral program affiliated with or sponsored by a bar association, other legal organization or religious, community or charitable group; or when the attorney is satisfying an obligation to participate in *pro bono work* under applicable State or local rules or practices of professional responsibility.

With respect to newly employed attorneys, proposed paragraph (c)(1) is intended to make explicit what has always been implicit under the current part 1604, i.e., that work for a client from a previous practice should not be done on program time.

LSC proposes to expressly permit an attorney to represent another member of the recipient's staff without having to prove that the individual is a close friend. LSC also proposes to add language to make it clear that the attorney may represent him or herself.

LSC also proposes to amend the current provision permitting representation of religious, community or charitable groups, to permit the representation of an individual client who has been referred to him or her by such a group through a formal *pro bono* or referral program that does regular referrals. For example, under the proposed rule it would be permissible for an attorney to represent a client who has been referred by the ACLU, NAACP or Catholic Charities. Prior General Counsel opinions have permitted outside practice both on behalf of organizations as well as on behalf of individuals referred by those organizations and LSC believes that it is appropriate to incorporate these interpretations into the rule.

LSC proposes to add a paragraph, (c)(5), to make it clear that legal services attorneys should be permitted to act in the same way as other attorneys with respect to *pro bono* work that is undertaken to meet professional obligations, whether the obligation is aspirational, as under state rules that are modeled on Rule 6.1 of the American Bar Association's ("ABA") Model Rules of Professional Conduct, or mandatory, as is now the case in a few local jurisdictions across the country.

#### Section 1604.51 Compensation

The 1995 NPRM contained a new proposed provision on compensation, providing, among other things, that a recipient would be allowed to permit an attorney to accept attorneys' fees for certain cases, as long as the fees would be remitted to the recipient. While this proposed provision was clearly permissible at the time it was proposed, LSC is concerned that it is no longer consistent with the current statutory and regulatory restrictions on the claiming, collecting and retention of attorney's fees. In order to solicit comment on this issue, LSC is reprinting the original text of the preamble and the proposed regulatory text as they appeared in 1995:

Although the statute prohibits all compensated outside practice, the

exception in proposed paragraph (a) for work on cases held over from a previous private practice is justified under the general principle that neither LSC nor the recipient can interfere with an attorney's professional responsibilities to a client. Since the representation was undertaken before the lawyer became a legal services attorney, fairness dictates that the attorney should be permitted to take fees for completion of the work.

Paragraph (b) proposes that a recipient may permit an attorney to accept attorneys' fees for § 1604.4(c)(2)–(5) cases, as long as the fees are remitted to the recipient. Several project directors have questioned why an attorney cannot keep fees awarded for outside practice approved by the recipient. The answer is simple. The LSC Act provision on outside practice, § 1007(a)(4), prohibits all compensated outside practice, subject to overriding considerations of professional responsibility, but permits uncompensated outside practice under LSC guidelines.

What this section does, in essence, is to define as "uncompensated outside practice" any representation where the attorney does not seek or receive personal compensation for the representation. Thus, the attorney can perform work *pro bono*, without any fee, but can also undertake work where fees could potentially be awarded, as long as the attorney does not keep any such fee but remits it to the recipient.

Proposed § 1604.5(b)(2) provides that attorneys' fees shall be remitted to a recipient when allowed by applicable rules of professional responsibility. The Committee added the reference to the rules of professional responsibility because of a concern that restrictions on fee-splitting could, in some states, prohibit an attorney from turning over attorneys' fees from an outside practice case to the recipient. Recipients would need to consult the status of the law in their state. The Committee understands that, in general, fee-splitting between a staff attorney and a legal services organization such as a recipient is not restricted under state or local rules, but requests comments on the issue.

The Committee also raised the issue of how such attorneys' fees would be treated for tax purposes. Because the Corporation does not generally regulate the tax obligations of recipients' employees, this issue does not appear to be one that should be addressed by regulation. Rather, it is a matter of local concern which a recipient may want to consider when drafting its policies on outside practice.

The LSC Act and LSC's regulation on fee-generating cases, 45 CFR part 1609,

have consistently been interpreted as prohibiting recipients from taking attorneys' fees from a client's recovery of damages or retroactive statutory benefits. That restriction is accordingly incorporated into this provision of the rule.

Paragraph (b)(3) is intended to make it clear that if a recipient receives attorneys' fees from one of its attorneys' outside practice cases, it could reimburse the attorney, the client, the *pro bono* or legal referral organization, or anyone else who had contributed resources to cover costs or out-of-pocket expenses to support the representation.

#### Section 1604.6 Use of Recipient Resources

For the five types of outside practice cases described in proposed § 1604.4(c)(1)–(5), this proposed provision proposes would allow attorneys to use some recipient resources if necessary to carry out the attorney's professional responsibilities. However, it would be up to the local recipient to establish policies that would determine whether its attorneys could use recipient resources for a specific case to the extent allowed by this rule.

More specifically, LSC proposes, for newly employed attorneys closing old cases, that a recipient may allow its attorneys to use only a *de minimis* amount of program resources, including time. Under a "*de minimis*" standard, an attorney could make a brief phone call or use the fax machine during working hours, but would have to take leave for court appearances. For other cases, LSC proposes a somewhat less strict standard. In those situations, a recipient would be permitted to allow its attorneys to use a limited amount of program resources, including time, for those cases. Under the "limited" standard, in addition to whatever an attorney could do under the *de minimis* standard, the attorney could, for example, make a brief court appearance during normal working hours without taking leave. An attorney could also be permitted to use a program computer or typewriter to prepare pleadings or other documents. However, if the attorney participated in a long trial or extended negotiation, he or she would normally be required to take leave to do so. LSC also proposes that if a recipient has a procedure to identify copying, postage and similar costs, and the attorney reimbursed the recipient, the use of those resources would also be permissible under either standard. This position is consistent with the longstanding LSC policy. Finally, language is included that would allow

an attorney to use a recipient's resources only when the recipient's LSC or private funds are not used for any activities for which the use of such funds is prohibited.

LSC seeks comments on the appropriateness of using recipient resources for any outside practice, and whether or not the distinction between "*de minimis*" and "limited" use of resources makes sense and is workable. In particular, LSC invites comment on the impact the 1996 restrictions, LSC's program integrity rules at 45 CFR Part 1610 and LSC's timekeeping rules at 45 CFR part 1635 on the proposals set forth herein.

#### Section 1604.7 Court Appointments

This proposed section would treat court appointments and mandatory *pro bono* representation separately from outside practice, because there are substantially different considerations for court appointments and mandatory *pro bono* than there are for *pro bono* or other outside cases that an attorney undertakes on a strictly voluntary basis.

Proposed paragraph (a)(1) simply restates a general rule that applies to court appointments as well as to outside practice under the current part 1604 regarding the permissibility of a full-time attorney accepting a court appointment to provide representation. Proposed paragraph (a)(2) is based on § 1006(d)(6) of the LSC Act. It is intended to protect recipients from efforts that have been made by some judges to appoint legal services attorneys to handle court appointments in lieu of private attorneys, and/or to refuse to provide compensation for appointed cases handled by legal services attorneys, when private attorneys appointed to similar cases would have been paid. Proposed paragraph (a)(3) is also a requirement carried over from the current part 1604, although it makes more sense under this proposal, since the proposed rule makes it clear that legal services attorneys can handle court appointments on program time.

LSC proposes to add a new paragraph providing that, if an attorney is mandated to engage in *pro bono* representation by applicable state or local court rules or practices or by rules of professional responsibility, such representation shall be treated in the same manner as court appointments for the purposes of paragraphs (a)(1), (a)(3), (b) and (c) of this section. While LSC recognizes that the ABA Model Rules do not currently mandate *pro bono* services for any attorney, LSC also recognizes that mandatory *pro bono* is under active consideration in a number of states and

is a reality in certain local jurisdictions. It is the intent of LSC that legal services attorneys be permitted to undertake outside representation to fulfill any mandatory professional obligations to provide *pro bono* assistance to which they are now or may be subject in the future.

Finally, this section would allow a full-time attorney to use program resources to undertake representation required by court appointment or mandatory *pro bono*, and would allow the attorney to identify the recipient as his or her employer when engaged in such representation.

#### List of Subjects in 45 CFR Part 1604

Legal services.

For the reasons set forth in the preamble, LSC proposes to revise 45 CFR part 1604 to read as follows:

### PART 1604—OUTSIDE PRACTICE OF LAW

Sec.

- 1604.1 Purpose.
- 1604.2 Definitions.
- 1604.3 General policy.
- 1604.4 Permissible outside practice.
- 1604.5 Compensation.
- 1604.6 Use of recipient resources.
- 1604.7 Court appointments.

**Authority:** 42 U.S.C. 2996e(b)(3), 2996e(d)(6), 2996f(a)(4), 2996g(e).

#### § 1604.1 Purpose.

This part is designed to authorize recipients to adopt written policies that permit legal services attorneys employed by recipients to engage in *pro bono* legal assistance and to comply with the reasonable demands made upon them as members of the Bar and as officers of the Court, as long as those demands do not hinder fulfillment of their overriding responsibility to serve those eligible for assistance under the Act. Nothing in this part shall be construed to permit recipients to unduly restrict the ability of any attorney to engage in such activities.

#### § 1604.2 Definitions.

As used in this part—

(a) *Full-time attorney* means an attorney who is employed full-time by a recipient in legal assistance activities supported in major part by the Corporation, and who is authorized to practice law in the jurisdiction where assistance is provided.

(b) *Outside practice of law* means the provision of legal assistance to a client who is not receiving that legal assistance from the employer of the full-time attorney rendering assistance, but does not include court appointments except where specifically stated.

(c) *Court appointment* means an appointment in a criminal or civil case made by a court or administrative agency under a statute or court rule or practice.

#### **§ 1604.3 General policy.**

(a) A recipient shall adopt written policies governing the outside practice of law by full-time attorneys that are consistent with the applicable rules of professional responsibility.

(b) A recipient's policies may permit the outside practice of law by full-time attorneys only to the extent allowed by this part, but may impose additional restrictions as necessary to meet the recipient's responsibilities to clients.

(c) A recipient may also adopt policies that apply to outside practice by attorneys employed part-time by the recipient, but are not required to do so under the provisions of this part.

#### **§ 1604.4 Permissible outside practice.**

A recipient may permit a full-time attorney to engage in a specific case or matter that constitutes the outside practice of law if:

(a) The director of the recipient or the director's designee determines that representation in such case or matter is consistent with the attorney's responsibilities to the recipient's clients;

(b) Except as provided in § 1604.7, the attorney does not intentionally identify the case or matter with the Corporation or the recipient; and

(c) The attorney is—

(1) Newly employed and has a professional responsibility to close cases from a previous law practice, and does so on the attorney's own time as expeditiously as possible; or

(2) Acting on behalf of him or herself, a close friend, family member or another member of the recipient's staff; or

(3) Acting on behalf of a religious, community, or charitable group; or

(4) Participating in a *pro bono* or legal referral program affiliated with or sponsored by a bar association, other legal organization or religious, community or charitable group; or

(5) Satisfying an obligation to participate in *pro bono* work under applicable State or local rules or practices of professional responsibility.

#### **§ 1604.5 Compensation.**

(a) A recipient may permit a full-time attorney to seek and receive personal compensation for work performed pursuant to § 1604.4(c)(1).

(b) A recipient may permit a full-time attorney to seek and accept a fee paid by, awarded or approved by a court or administrative body or included in a settlement if—

(1) The attorney is acting pursuant to § 1604.4(c)(2) through (5);

(2) Subject to the applicable law and rules of professional responsibility, any such fees paid to the attorney are remitted to the recipient; and

(3) The fee is not deducted from the individual client's recovery of compensatory damages or retroactive benefits.

(c) From the fees remitted to the recipient pursuant to paragraph (b)(2) of this section, the recipient may reimburse any individual or organization for actual costs or out-of-pocket expenses incurred in the representation.

#### **§ 1604.6 Use of recipient resources.**

(a) For cases undertaken pursuant to § 1604.4(c)(1), a recipient's written policies may permit a full-time attorney to use *de minimis* amounts of the recipient's resources for permissible outside practice if necessary to carry out the attorney's professional responsibilities, as long as the recipient's Corporation or private funds are not used for any activities for which the use of such funds is prohibited.

(b) For cases undertaken pursuant to § 1604.4(c)(2) through (5), a recipient's written policies may permit a full-time attorney to use limited amounts of the recipient's resources for permissible outside practice if necessary to carry out the attorney's professional responsibilities, as long as the recipient's Corporation or private funds are not used for any activities for which the use of such funds is prohibited.

#### **§ 1604.7 Court appointments.**

(a) A recipient may permit a full-time attorney to accept a court appointment if the director of the recipient determines that:

(1) Such an appointment or case is consistent with the attorney's responsibilities to the recipient's clients;

(2) The appointment was made and the attorney will receive compensation for the court appointment under the same terms and conditions as are applied generally to attorneys practicing in the court where the appointment is made; and

(3) Subject to the applicable law and rules of professional responsibility, the attorney agrees to remit to the recipient any compensation received.

(b) A recipient may permit a full-time attorney to use program resources to undertake representation pursuant to a court appointment.

(c) A full-time attorney may identify the recipient as his or her employer when engaged in representation pursuant to a court appointment.

(d) If, under the applicable State or local court rules or practices or rules of professional responsibility, legal services attorneys are mandated to provide *pro bono* legal assistance in addition to the attorneys' work on behalf of the recipient's clients, such legal assistance shall be treated in the same manner as court appointments under paragraphs (a)(1), (a)(3), (b) and (c) of this section.

**Victor M. Fortunato,**

*Vice President for Legal Affairs and General Counsel.*

[FR Doc. 02-23089 Filed 9-10-02; 8:45 am]

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## **DEPARTMENT OF TRANSPORTATION**

### **Surface Transportation Board**

#### **49 CFR Part 1002**

[STB Ex Parte No. 542 (Sub-No. 4)]

### **Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services—2002 New Fees**

**AGENCY:** Surface Transportation Board, Transportation.

**ACTION:** Notice of proposed rulemaking and request for comments.

**SUMMARY:** The Board proposes to: establish 22 fees for services for which no fee currently is assessed; raise the below-cost fee that currently applies to six fee items; update fees for nine existing fee items; and amend, renumber and delete certain rules to conform to existing and proposed fee collection policies and processes. The Board proposes these changes under the Independent Offices Appropriations Act and OMB Circular A-25, User Fees. We request comments on these proposals.

**DATES:** Comments are due on October 11, 2002.

**ADDRESSES:** Send comments (an original plus 10 copies) referring to *Ex Parte* No. 542 (Sub-No. 4) to: Surface Transportation Board, Case Control Branch, 1925 K Street, NW., Washington, DC 20423-0001.

**FOR FURTHER INFORMATION CONTACT:** Anne K. Quinlan (202) 565-1727 or David T. Groves (202) 565-1551. (Federal Information Relay Service (FIRS) for the hearing impaired: 1 (800) 877-8339.)

**SUPPLEMENTARY INFORMATION:** The Independent Offices Appropriations Act, 31 U.S.C. 9701 (IOAA), is the basis for user fees charged by Federal agencies. Under the IOAA, agencies are