

## J. What is codification and is the EPA codifying Texas' hazardous waste program as authorized in this rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the CFR. We do this by referencing the authorized State rules in 40 CFR parts 272. We reserve the amendment of 40 CFR parts 272, subpart SS for this authorization of Texas' program changes until a later date. In this authorization application the EPA is not codifying the rules documented in this **Federal Register** notice.

## K. Corrections to the August 18, 1999 (64 FR 44836) Authorization Federal Register Document for Texas

In the **ADDRESSES** section of the August 18, 1999 authorization notice, the reference to "the State of Louisiana" is corrected to read "the State of Texas." In addition, the State's address referencing Louisiana Department of Environmental Quality is corrected to read "Texas Commission on Environmental Quality, (TCEQ), 12100 Park S Circle, Austin, Texas 78753-3087, (512) 239-6079."

## L. Administrative Requirements

The Office of Management and Budget (OMB) has exempted this action (RCRA State Authorization) from the requirements of Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). Therefore, this action is not subject to review by OMB. This action proposes to authorize State requirements for the purpose of RCRA 3006, and imposes no additional requirements beyond those imposed by State law. Because this proposed rule is not subject to Executive Order 12866, this proposed rule is not subject to Executive Order 13771 (82 FR 9339, February 3, 2017), entitled Reducing Regulations and Controlling Regulatory Costs. Accordingly, this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action proposed to authorize preexisting requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). For the same reason, this proposed action also does not significantly or uniquely affect the communities of Tribal governments, as

specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to authorize State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA.

This proposed action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This proposed rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), the EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a State authorization application; to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Executive Order 12898 (59 FR 7629, Feb. 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent

practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this rule proposed to authorize pre-existing State rules which are at least equivalent to, and no less stringent than existing federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, the proposed rule is not subject to Executive Order 12898.

## List of Subjects in 40 CFR Parts 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

**Authority:** This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: October 26, 2020.

**Kenley McQueen,**

*Regional Administrator, Region 6.*

[FR Doc. 2020-24242 Filed 11-4-20; 8:45 am]

**BILLING CODE 6560-50-P**

## LEGAL SERVICES CORPORATION

### 45 CFR Part 1635

#### Timekeeping Requirement

**AGENCY:** Legal Services Corporation.

**ACTION:** Proposed rule.

**SUMMARY:** The Legal Services Corporation (LSC) is proposing to amend its rule establishing timekeeping requirements for LSC funding recipients.

**DATES:** Comments must be received by February 3, 2021.

**ADDRESSES:** You may submit comments by any of the following methods:

- **Federal Rulemaking Portal:** Follow the instructions for submitting comments.
- **Email:** [lscrulemaking@lsc.gov](mailto:lscrulemaking@lsc.gov). Include "Part 1635 Rulemaking" in the subject line of the message.
- **Fax:** (202) 337-6519.
- **Mail:** Stefanie K. Davis, Senior Assistant General Counsel, Legal Services Corporation, 3333 K Street NW,

Washington, DC 20007, ATTN: Part 1635 Rulemaking.

• *Hand Delivery/Courier*: Stefanie K. Davis, Senior Assistant General Counsel, Legal Services Corporation, 3333 K Street NW, Washington, DC 20007, ATTN: Part 1635 Rulemaking.

*Instructions*: LSC prefers electronic submissions via email with attachments in Acrobat PDF format. LSC will not consider written comments sent to any other address or received after the end of the comment period.

**FOR FURTHER INFORMATION CONTACT:**

Stefanie K. Davis, Senior Assistant General Counsel, Legal Services Corporation, 3333 K Street NW, Washington, DC 20007; (202) 295-1563 (phone), (202) 337-6519 (fax), or [sdavis@lsc.gov](mailto:sdavis@lsc.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In 1995, LSC initiated rulemaking to require recipient employees to keep records of time spent working on LSC-funded activities. 60 FR 48956, Sep. 21, 1995. LSC took this step to “improve accountability of recipients for their Corporation funds, and in response to concerns expressed during Congressional hearings.” *Id.* LSC wanted to assure that recipients maintained adequate documentation to support allocation of costs to the LSC grant. *Id.* at 48957. Consequently, LSC intended the rule “to require all recipients to account for the time spent on all cases, matters and other activities by their *attorneys and paralegals*, whether funded by [LSC] or other sources.” *Id.* (emphasis added). LSC did not define either *attorney* or *paralegal*, although LSC did define the terms *cases* and *matters*.<sup>1</sup> *Id.* LSC did not prescribe either the format or the content of the required timekeeping reports. *Id.*

After receiving public comment, LSC adopted the proposed rule as final, with limited changes. 61 FR 14261, Apr. 1, 1996. In the preamble to the final rule, LSC stated that the rule applied to recipient attorneys and paralegals regardless of whether their salaries were paid using LSC funds. *Id.* Applying the rule to all attorneys and paralegals, LSC explained, reflected language that Congress included in a version of the fiscal year 1996 appropriations act that

it passed, but the President vetoed. *Id.* LSC retained the requirement because it anticipated that Congress and the President would agree on legislation containing a similar requirement for fiscal year 1996, which they did. Sec. 504(a)(10), Public Law 104-134, 110 Stat. 1321, 1321-54 (1996) (stating that LSC could not award appropriated funds to any person or entity unless “such person or entity agrees to maintain records of time spent on each case or matter with respect to which the person or entity is engaged.”).

In the preamble to the final rule, LSC explained how it expected recipients to implement the requirement to maintain “contemporaneous” time records. LSC stated that “contemporaneous” meant “in most cases, by the end of the day.” 61 FR at 14262.

LSC initiated its first revision of part 1635 in 1998. That year, the Office of Inspector General (OIG) conducted an audit of recipients’ compliance with specific regulations, including part 1635, and issued a report that formed the basis for Management’s recommended changes. In the report, OIG stated its finding that, based on records maintained in compliance with part 1635, it could not tell whether part-time employees of an LSC funding recipient engaged in restricted work during LSC-funded time. 63 FR 56594, Oct. 22, 1998.

In response to OIG’s findings, LSC proposed two changes. The first was to require recipients to ensure that the time records for both full- and part-time employees were consistent with their payroll time and attendance records. In other words, “the time spent by an employee must at least add up to the amount reflected in the attendance records.” *Id.* at 56595. LSC also proposed to require full-time and part-time attorneys and paralegals to record, for each case, matter, or supporting activity that they handled, the date and exact time of day they worked on that activity. *Id.* Alternatively, LSC proposed that part-time attorneys and paralegals could certify that they did not engage in restricted activities during the time they were working for the recipient. *Id.*

LSC did not finalize its revisions to part 1635 until 2000. At that time, LSC adopted the rule with two changes relevant here. 65 FR 41879, Jul. 7, 2000. First, LSC removed the proposed text requiring attorney and paralegal time records to be consistent with their payroll time and attendance records. *Id.* at 41880. Several commenters on the proposed rule expressed concern that a rule requiring employee time records to match the payroll records would put recipients at risk of violating the Fair

Labor Standards Act. *Id.* Although LSC did not agree with the commenter raising the concern, LSC removed the language because it believed the language was not necessary. *Id.* Second, LSC adopted the certification requirement for part-time attorneys and paralegals. *Id.* Put differently, part-time attorneys and paralegals do not have to report the date and exact time of day that they worked on cases, matter, or supporting activities, but must certify that they did not work on restricted activities during the hours they worked for a recipient.

Management believes that regulatory action is justified at this time for three reasons. First, the lack of a definition for the term *paralegal* creates a lack of uniformity across recipients regarding which employees must keep time. In other words, some recipients employ staff who are called paralegals, but who do only administrative work, while others employ staff who perform substantive legal work under an attorney’s supervision or who have satisfied their state’s requirements for holding oneself out as a paralegal, but who may not have the title of paralegal. Because the regulation does not define the term *paralegal*, it is unclear whether some or all recipient employees described in the preceding sentence must keep time consistent with part 1635. Consequently, LSC cannot be certain that part 1635 covers all recipient employees who are doing substantive work on the LSC grant, which appears to be what LSC intended when it originally drafted the rule to cover attorneys and paralegals. LSC proposes to remedy this problem by revising the language to include all employee staff, regardless of qualification or title, who are doing substantive work on identifiable awards. Conversely, employee staff who are not doing substantive work on identifiable awards need not record their time under part 1635.

Second, the federal government rules governing recipient timekeeping have changed significantly, as have best practices for nonprofit timekeeping. LSC believes it is reasonable to reconsider the requirements of part 1635 in light of these advances and determine whether to revise the rule to reflect the new standards. Finally, LSC proposes to remove any provisions of the rule that are obsolete.

LSC added rulemaking on part 1635 to its annual rulemaking agenda in April 2016. On January 30, 2020, the Operations and Regulations Committee (“Committee”) of the Board voted to recommend that the Board authorize rulemaking on part 1635. The Board

<sup>1</sup> LSC’s regulations at part 1600 define terms used throughout the regulations. 45 CFR part 1600. These terms govern unless LSC defined the term differently in a part. For purposes of this discussion, the Part 1600 definition of the term *attorney* (“a person who provides legal assistance to eligible clients and who is authorized to practice law in the jurisdiction where assistance is rendered”) applies. *Id.* § 1600.1. There is no part 1600 definition for the term *paralegal*.

voted to authorize rulemaking on January 31, 2020. On October 19, 2020, the Committee voted to recommend that the Board approve publication of an NPRM in the **Federal Register** with a 60-day public comment period. On October 20, 2020, the Board accepted the Committee's recommendation and voted to approve publication of the NPRM.

Materials regarding this rulemaking are available in the open rulemaking section of LSC's website at <http://www.lsc.gov/about-lsc/laws-regulations-guidance/rulemaking>.

## II. Section-by-Section Discussion of Proposed Changes

### *Section 1635.1 What is the purpose of this section?*

LSC proposes to make technical edits to this section for clarity.

### *Section 1635.2 Definitions*

LSC proposes to revise the definition of the term *case* in paragraph (a) to be more consistent with the definition of the same term in the Case Service Report Handbook (CSR Handbook). In the CSR Handbook, LSC defined a *case* as "the provision of LSC-permissible legal assistance to an eligible client with a legal problem, or a set of closely related legal problems, accepted for assistance in accordance with the requirements of the LSC Act, appropriations acts, regulations, and other applicable law." See Legal Services Corporation, Case Service Reporting Handbook, at 2 (2017). LSC is now proposing to revise the first sentence of the definition in part 1635 to read "*Case* means a form of program service in which a recipient employee provides legal assistance to one or more specific clients[. . .]."

LSC proposes to introduce a new definition for the term *case oversight* in paragraph (b) of this section. The new definition is necessary to ensure that supervisors accurately report the time they spend examining attorneys' and paralegals' case files for regulatory compliance, CSR compliance, and quality of legal assistance provided.

LSC proposes to relocate the definitions in existing paragraphs (b) through (d) of this section to paragraphs (c) through (e) in the revised rule with only minor technical edits.

### *Section 1635.3 Who is covered by the timekeeping requirement?*

LSC proposes to create a new section dedicated to explaining which recipient employees must report time consistent with the requirements of this section. LSC proposes to replace the language

limiting the application to part 1635 to recipient employees and paralegals with language extending part 1635 to any recipient employee whose salary is allocated, in whole or in part, to any of the recipient's funding sources as a direct cost.

As noted earlier in this preamble, LSC has determined that the current rule's use of the term *paralegal*, without a definition, makes it difficult to ensure that all recipient employees who do substantive work on the recipient's awards accounts for the time they spend on cases, matters, and supporting activities. Additionally, since LSC last revised part 1635 in 2000, states have explored novel structures that would permit nonlawyers, as well as paralegals, to practice law in a limited fashion. For example, in 2013, the Washington State Bar Association initiated the Limited License Legal Technician (LLLT) program, through which individuals could become licensed to provide litigants with a limited range of legal services in family law. Similarly, the Arizona Supreme Court recently adopted changes to the state rules governing the practice of law that will allow legal paraprofessionals to provide legal services in family law, limited criminal cases where no jail time is involved, limited civil cases, and administrative cases where permitted by the agency. As more states expand access to justice by authorizing nonlawyers to provide services traditionally limited to licensed attorneys, LSC anticipates that legal services providers will hire these paraprofessionals to assist their clients.

The purpose of part 1635 is to establish the standards for reporting time that any employee of an LSC funding recipient who provides legal assistance to clients must follow. LSC believes that removing the current language limiting the timekeeping requirement to attorneys and an undefined group of paralegals and instead tying the requirement to employees whose salaries are charged to awards as direct costs is necessary to ensure that the recipient's funds are spent in compliance with LSC's governing statutes and regulations. In other words, if a recipient employee handles cases and the recipient allocates the costs associated with those cases to the LSC grant as direct costs, then that employee must keep time consistent with part 1635, regardless of their title.

LSC cross-references the standards for allocating costs as direct costs contained in 45 CFR 1630.5(d) as the basis for determining which recipient employees must keep time under this section. In that section, LSC describes direct costs

as including "salaries and wages of recipient staff who are working on cases or matters that are identified with specific grants or contracts[.]" 45 CFR 1630.5(d). This connection means that a recipient employee who enters time worked on a case into the case management system with a code that designates the case as an LSC-funded case must comply with the timekeeping requirements contained in part 1635. If adopted, this proposed change would mean that a recipient employee who does not handle cases as part of their regular duties but who accepts a case or steps into a case on an emergency basis would have to keep time consistent with part 1635 for the periods in which that employee's salary is being allocated to an award as a direct cost.

*Example 1:* A recipient's executive director does not handle cases at all and does not participate in the recipient's legal information activities. The executive director's duties are purely administrative, and the costs associated with their salary are allocated across all the recipient's funding sources as indirect costs. Because none of the costs associated with the executive director's salary are allocated to the LSC grant as direct costs, the executive director does not need to keep time consistent with this part.

*Example 2:* A recipient's board has adopted a policy that management staff who are licensed attorneys will maintain a small caseload in addition to their administrative responsibilities. Costs associated with handling individual cases must be allocated to one of the recipient's grants as direct costs. Consequently, each manager must comply with this part when recording their time.

*Example 3:* A recipient's executive director does not handle cases on a regular basis. The executive director's salary is allocated across all the recipient's funding sources as an indirect cost. On the day of a court hearing, however, a recipient attorney could not attend due to a family emergency. The executive director represented the attorney's client at the hearing. For that pay period, the executive director must keep their time consistent with part 1635.

### *Section 1635.4 What are LSC's timekeeping standards?*

LSC proposes to replace existing section 1635.3 with a new section 1635.4 that adopts documentation requirements for personal compensation from the Uniform Guidance. Section 200.430(i) of the Uniform Guidance requires that "[c]harges to Federal awards for salaries and wages [ ] be

based on records that accurately reflect the work performed.” 2 CFR 200.430(i). LSC concurs with this policy and proposes to incorporate the requirements contained in § 200.430(i) in significant part.

LSC specifically seeks comment on the question of when employees covered by part 1635 must record their time in a recipient’s timekeeping system. Current section 1635.3(b)(1) states that “[t]ime records must be created contemporaneously[.]” 45 CFR 1635.3(b)(1). LSC established this requirement in the 1996 final rule for part 1635. 61 FR 14261, 14262, Apr. 1, 1996. LSC intended that “in most cases, records should be created no later than the end of the day.” *Id.* Recipients and LSC staff alike have identified two problems with this language. The first is that it is not always possible for attorneys and paralegals currently subject to part 1635 to enter their time by the end of the day for multiple reasons, including lack of remote access to the case management system. The second is that the rule is not clear on what type of time records must be created by the end of the day—personal timekeeping records or the entry of official time into the recipient’s timekeeping system.

LSC proposes to address the second issue by introducing language in this section stating that the rule applies to the entry of time into the recipient’s timekeeping system. LSC believes entry of time into the recipient’s official system is the appropriate activity to cover in this rule rather than employees’ individual timekeeping practices. However, LSC has not concluded what the appropriate time frame for entering time should be. LSC has considered several time periods in which employees covered by part 1635 should enter their time into the recipient’s official system, including by the end of the business day; within 48 hours of the completion of a business day; within two business days of the completion of a business day; within one week of the completion of a business day; or by the end of the pay period. *LSC requests public comment on this question.*

Paragraph (a) establishes the following requirements for recipients’ timekeeping records:

- Records are supported by a system of internal controls that provide reasonable assurance that charges to the recipient’s awards are accurate, allowable, and properly allocated;
- Records are incorporated into the recipient’s official records;
- Records reflect the total activity for which the recipient compensates the employee;

- Records encompass both LSC-funded and all other activities compensated by the recipient on an integrated basis, but may include the use of subsidiary records if permitted by the recipient’s written policies;

- Records comply with the recipient’s established accounting policies and procedures;

- Records support the allocation of employees’ salary or wages across specific activities or cost objectives if the employees work on more than one award or charge their salaries to one or more awards as direct costs; and

- Records must contain specific information for cases and matters that will allow recipients and LSC to connect cases and matters handled by recipient employees to the awards that they will be charged to.

LSC believes it is appropriate to incorporate the documentation standards applicable to Federal awards for two reasons. First, many of LSC’s also receive Federal funding and must comply with the same requirements under the Uniform Guidance. LSC does not see a reason to create different documentation standards except insofar as LSC needs to obtain specific information on cases, matters, and supporting activities handled to ensure compliance with LSC’s governing statutes and regulations. Second, LSC believes that allowing recipients to develop their own internal policies for recording and maintaining time records, rather than continuing to dictate how recipients keep time, will improve the quality and accuracy of recipient timekeeping records and the level of compliance with part 1635.

Paragraphs (b) and (c) are taken verbatim from the Uniform Guidance. Paragraph (b) requires recipients to maintain records for employees who are not exempt from Fair Labor Standards Act overtime requirements stating the total number of hours worked each day. Paragraph (c) requires recipients to use the same documentation and standards to justify counting salaries and wages of staff working on the LSC grant toward the cost matching requirements of any Federal awards that they use to charge the salaries to the LSC grant. This requirement ensures that recipients maintain consistency across funding sources when documenting time charged by employees to those sources.

LSC proposes to move current section 1635.3(b)(1) to paragraph (d) of this section with revisions. Existing section 1635.3(b)(1) requires recipient attorneys and paralegals to document their time “in increments not greater than one-quarter of an hour.” LSC proposes to allow recipients to establish the

increments for which employees subject to part 1635 report their time, recommending that the increment be no greater than one-quarter of an hour. The primary reason for proposing this change is that LSC recognizes that the same reporting increment may not work for all its recipients. In 2018, the last year for which numbers are available, LSC funding represented between less than 20% of some recipients’ total funding and more than 80% of other recipients’ total funding. *See* Lim, L., Layton, J., Abdelhadi, S., Bernstein, D., Ahmed, R. 2018. *LSC by the Numbers: The Data Underlying Legal Aid Programs* (2018). Legal Services Corporation, Washington, DC. Overall, LSC funding represented 34% of total funding for civil legal aid, with the remainder coming from sources such as state and local appropriations, court fees, Interest on Lawyers’ Trust Accounts (IOLTA) income, and other awards from federal, state, and local governments and private foundations. *Id.* LSC is sensitive to its role as a minority funder for many of its recipients and, accordingly, is attempting to balance its need for effective oversight measures with the demands that recipients’ other funders may place on them as a condition of receiving funds.

Recipients also vary in the number of funding sources they have, which further decreases the practicality of requiring all recipients to use the same time increment for timekeeping. In other words, while it may be reasonable for a recipient who has only two or three funding sources to require its employees to report their time in 15-minute increments, it may be more practical for a recipient whose staff are funded by a larger number of sources to keep time in smaller increments. When a recipient has only a small number of funding sources, it may be appropriate for the recipient to use a larger increment of time for reporting, including up to as long as half an hour or an hour. LSC recommends that to maximize the accuracy of reporting, recipients use increments no larger than 15 minutes. Although LSC does not propose imposing a maximum increment, LSC may consider adopting such a requirement after receiving public comments on this proposed rule.

LSC proposes to relocate existing section 1635.3(d), the certification requirement for part-time employees, to paragraph (e) of this section with revisions. LSC initially created this section to require paralegals and attorneys who work part-time for recipients and part-time for organizations that engage in restricted

activities to certify on a quarterly basis that they neither conduct restricted activities on recipient time nor use recipient resources to carry out such activities. LSC proposes to rewrite this paragraph for clarity and to eliminate the existing language regarding *de minimis* activities.

In current section 1635.3(d), part-time attorneys and paralegals do not need to certify when they have engaged in “*de minimis* action related to a restricted activity.” 45 CFR 1635.3(d). The paragraph states that “[a]ctions consistent with the *de minimis* standard are those that meet all or most of the following criteria: Actions that are of little substance; require little time; are not initiated by the part-time employee; and, for the most part, are unavoidable.” *Id.* A review of the preamble to the 2000 final rule for part 1635 indicates that LSC intended to exclude from the certification requirement activities that appear to be part of regular intake or reception duties. LSC’s examples of *de minimis* activity included answering the phone, establishing another non-LSC program time to discuss restricted activity, and opening and screening mail. Examples of activity that went beyond the *de minimis* standard included researching and preparing legal documents, meeting with or providing advice to the client, and conferring with third parties on behalf of the client.

65 FR 41879, 41881, July 7, 2000. While LSC believes that the certification requirement continues to be a necessary element of ensuring recipient compliance with the restrictions imposed by LSC’s governing statutes, it does not believe the language regarding *de minimis* activities is needed. The removal of this language does not reflect a relaxation of the rule; it is merely an administrative action intended to simplify the rule. Part-time employees remain prohibited from actively engaging in restricted activities during times they are compensated by the recipient and using recipient resources to engage in restricted activities and must continue to certify on a quarterly basis that they have done neither.

**Section 1635.5** *What are LSC’s standards for ensuring the proper allocation of employee compensation costs across awards?*

Through conducting onsite and remote oversight activities, LSC has experienced challenges in verifying that salary costs allocated to the LSC grant actually supported activities that were properly chargeable to the LSC grant. For that reason, LSC proposes to create a new section requiring recipients to

have a method for ensuring the accuracy of timekeeping records and proper allocation of salaries and wages charged to awards as direct costs. In paragraph (a), LSC proposes to require recipients to choose one method of cross-checking payroll records against timekeeping records: Linking their payroll system to their case management or manually reconciling the records on a regular basis. In paragraph (b), LSC proposes to require recipients, regardless of which method of comparing records they choose under paragraph (a), to reconcile their payroll and timekeeping records at least once a year and prior to making final entries into their accounting records. By taking this approach in the rule, LSC intends to allow recipients flexibility in how they reconcile the records supporting employee compensation costs while still requiring them to affirmatively compare the records before finalizing the accounting records for the relevant award year.

**Section 1635.6** *Who outside the recipient has access to these records?*

LSC proposes to make only stylistic changes to changes to this section.

Finally, LSC seeks specific comment on the burdens the proposed changes to this rule may place on recipients’ resources. LSC approached this rulemaking with the intention of simplifying the timekeeping requirement and decreasing recipients’ burden of compliance. LSC would appreciate comments about the measurable impact on employee time and any financial expenditures that complying with the rule as proposed would require.

#### **List of Subjects in 45 CFR Part 1635**

Grant program—law, Legal services, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Legal Services Corporation proposes to revise 45 CFR part 1635 as follows:

#### **PART 1635—TIMEKEEPING REQUIREMENT**

Sec.

1635.1 What is the purpose of this part?

1635.2 Definitions.

1635.3 Who is covered by the timekeeping requirement?

1635.4 What are LSC’s timekeeping standards?

1635.5 What do recipients need to do to link timekeeping records with case management systems?

1635.6 Who outside the recipient has access to these records?

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

#### **§ 1635.1 What is the purpose of this part?**

This part is intended to improve recipient accountability for the use of all funds by:

(a) Assuring that allocations of direct costs to a recipient’s LSC grant pursuant to 45 CFR part 1630 are supported by accurate records of the cases, matters, and supporting activities for which the funds have been expended;

(b) Enhancing the recipient’s ability to determine the cost of specific functions; and

(c) Increasing the information available to LSC for assuring recipient compliance with Federal law and LSC rules and regulations.

#### **§ 1635.2 Definitions.**

As used in this part—

(a) *Case* means a form of program service in which a recipient employee provides legal assistance to one or more specific clients, including but not limited to providing representation in litigation, administrative proceedings, and negotiations, and such actions as advice, providing brief services, and transactional assistance.

(b) *Case oversight* means a supervisor’s review of a case for regulatory compliance, consistency with Case Service Report reporting rules, and quality control purposes. Case oversight activities include, but are not limited to, review of file for retainer, citizenship attestation or documentation of eligible non-citizen status, and documentation of financial eligibility determination; review of closing codes; and review of advice provided or pleadings filed.

(c) *Matter* means an action that contributes to the overall delivery of program services but does not involve direct legal advice to or legal representation of one or more specific clients. Examples of matters include both direct services, such as community education presentations, operating pro se clinics, providing information about the availability of legal assistance, and developing written materials explaining legal rights and responsibilities; and indirect services, such as training, continuing legal education, supervision of program services, preparing and disseminating desk manuals, PAI recruitment, referral, intake when no case is undertaken, and tracking substantive law developments.

(d) *Restricted activities* means those activities that recipients may not engage in pursuant to 45 CFR part 1610.

(e) *Supporting activity* means any action that is not a case or matter.

#### **§ 1635.3 Who is covered by the timekeeping requirement?**

Any recipient employee whose compensation is charged to one or more

awards as a direct cost (as defined in 45 CFR 1630.5(d)) must keep time according to the standards set forth in § 1635.4.

**§ 1635.4 What are LSC's timekeeping standards?**

(a) *Standards for Documentation of Personnel Expenses.* Recipients must base allocations of salaries and wages on records that accurately reflect the work performed. These records must:

(1) Be supported by a system of internal control which provides reasonable assurance that the charges are accurate, allowable, and properly allocated;

(2) Be incorporated into the recipient's official records;

(3) Reflect the total activity for which the recipient compensates the employee;

(4) Encompass both LSC-funded and all other activities compensated by the recipient on an integrated basis, but may include the use of subsidiary records as defined in the recipient's written policies;

(5) Comply with the recipient's established accounting policies and practices;

(6) Support the distribution of the employee's salary or wages among specific activities or cost objectives if the employee works on more than one award or an indirect cost activity and a direct cost activity; and

(7) Contain. (i) For cases, a unique client name or case number, the amount of time spent on the case, a description of the activities performed, and the dates on which a recipient employee worked on the case;

(ii) For matters or supporting activities, the amount of time and type of activity on which a recipient employee spent time and sufficient information to link the activity to a specific award. For example, if a recipient employee conducts a legal information session on filing a pro se divorce petition, the employee could record "pro se divorce group information session, 1.5 hours, LSC grant."

(b) In accordance with Department of Labor regulations implementing the Fair Labor Standards Act (FLSA) (29 CFR part 516), charges for the salaries and wages of nonexempt employees, in addition to the supporting documentation described in this section, must also be supported by records indicating the total number of hours worked each day.

(c) Salaries and wages of employees used in meeting cost sharing or matching requirements of Federal awards must be supported in the same

manner as salaries and wages claimed for reimbursement from Federal awards.

(d) Recipients may establish the increments of time for which employees must record their activities (e.g., .25 hours, one-sixth of an hour). LSC recommends that recipients require employees to record their time in increments no greater than one quarter of an hour.

(e) *Certification requirement for part-time employees.* (1) Any recipient employee subject to this part who works part-time for the recipient and part-time for an organization that engages in restricted activities shall certify in writing that the employee has not engaged in restricted activity during any time for which the employee was compensated by the recipient or has not used recipient resources to carry out restricted activities.

(2) Employees shall make the required certification on a quarterly basis using a form determined by LSC.

**§ 1635.5 What are LSC's standards for ensuring the accuracy of timekeeping records and proper allocation of employee compensation costs across awards?**

(a) A recipient must do one of the following:

(1) Link its payroll records to its case management system; or

(2) For each employee described in 1635.3, reconcile the time reported in payroll records with the time recorded in the timekeeping records. Recipients must conduct this manual reconciliation on a regular basis required by their established accounting policies and practices.

(b) Recipients must reconcile their payroll and timekeeping records at least once a year before final entries are entered into the accounting system.

**§ 1635.6 Who outside the recipient has access to these records?**

Recipients must make time records required by this section available for examination by auditors and representatives of LSC, and by any other person or entity statutorily entitled to access to such records. LSC shall not disclose any time record except to a Federal, State, or local law enforcement official or to an official of an appropriate bar association for the purpose of enabling such bar association official to conduct an investigation of an alleged violation of the rules of professional conduct.

Dated: October 22, 2020.

**Stefanie Davis,**

*Senior Assistant General Counsel.*

[FR Doc. 2020-23811 Filed 11-4-20; 8:45 am]

**BILLING CODE 7050-01-P**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

[MB Docket No. 20-343; FCC 20-145; FRS 17191]

**FCC Seeks Comment on Proposed Application Limit for NCE FM New Station Applications in Upcoming 2021 Filing Window**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; proposed action.

**SUMMARY:** The Commission recently adopted changes to its rules and procedures for considering competing applications for new noncommercial educational (NCE) FM radio stations in *Reexamination of the Comparative Standards and Procedures for Licensing Noncommercial Educational Broadcast Stations and Low Power FM Stations*, MB Docket No. 19-3, Report and Order. In this document, the Commission announces that it is directing the Media Bureau (Bureau) to open a filing window for NCE FM new station applications for the FM reserved band (channels 201-220). The Bureau will issue a future Public Notice to announce the specific dates of the 2021 window. The Commission also seeks comment on a proposal establishing a ten-application limit in the upcoming 2021 filing window.

**DATES:** Comments are due on or before November 20, 2020, and reply comments are due or before November 30, 2020.

**ADDRESSES:** You may submit comments, identified by MB Docket No. 20-343, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the Federal Communications Commission's ECFS website: <http://apps.fcc.gov/ecfs/>. Follow the instructions for submitting comments.

- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail