additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The USEPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 22, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Methane, Municipal solid waste landfills, Nonmethane organic compounds, Reporting and recordkeeping requirements.

Dated: October 28, 1998.

David A. Ullrich,

Acting Regional Administrator, Region 5.

40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

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

Subpart O—Illinois

2. A new center heading and sections 62.3330, 62.3331, and 62.3332 are added to read as follows:

Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

§ 62.3330 Identification of plan.

The Illinois Plan for implementing the Federal Municipal Solid Waste Landfill Emission Guidelines to control air emissions from existing landfills in the State was submitted on July 21, 1998. The Illinois rules for Municipal Solid Waste Landfills are primarily found in Title 35: Environmental Protection; Subtitle B: Air Pollution; Chapter I: Pollution Control Board; Subchapter C: Emission Standards and Limitations for Stationary Sources; Part 220: Nonmethane Organic Compounds of the Illinois Administrative Code (35 IAC). Part 220 was adopted by the IPCB on June 17, 1998 and filed in the principal office on that day. Part 220 was published in the *Illinois Register* on July 10, 1998 at 22 *Ill. Reg.* 11790 and became effective on July 31, 1998. As part of the same rulemaking action, the IPCB amended 35 IAC Part 201: Permits and General Provisions; Subpart A: Definitions; Section 201.103 (a) by adding the following abbreviations: Mg = megagrams, M(3) = cubic meters, NMOC = nonmethane organic compounds, and yr = year. In Section 201.103 (b) the conversion factor for 1000 gal was changed from 3.785 cubic meters to 3.785 M(3). In Subpart C: Prohibitions, Section 201.146 was amended by adding paragraph (ggg) which states that municipal solid waste landfills with a maximum total design capacity of less than 2.5 million Mg or 2.5 million M(3) are not required to install a gas collection and control system pursuant to 35 Ill. Adm. Code 220 or 800 through 849 or Section 9.1 of the [Illinois Environmental Protection] Act. These amendments were published in the *Illinois Register* on July 10, 1998 at 22 *Ill. Reg.* 11824 and became effective on July 31, 1998.

§ 62.3331 Identification of sources.

The plan applies to all existing municipal solid waste landfills for which construction, reconstruction or modification was commenced before May 30, 1991 that accepted waste at any time since November 8, 1987 or that have additional capacity available for future waste deposition, as consistent with 40 CFR part 60.

§ 62.3332 Effective date.

The effective date of the plan for municipal solid waste landfills is January 22, 1999.

[FR Doc. 98–31074 Filed 11–20–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[MI49–01(a); FRL–6189–8]

Approval of Section 112(l) Program of Delegation; Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving, through a ''direct final'' procedure, a request for a program for delegation of the Federal air toxics program contained within 40 CFR Parts 61 and 63 pursuant to Section 112(l) of the Clean Air Act (Act) of 1990. The State's mechanism of delegation involves the straight delegation of all existing and future Section 112 standards unchanged from the Federal standards. The actual delegation of authority of individual standards, except for standards addressed specifically in this action, will be in the form of a letter from EPA to the Michigan Department of Environmental Quality (MDEQ). This request for approval of a mechanism of delegation encompasses all sources not covered by the Part 70 program. In the proposed rules section of this **Federal Register**, the EPA is proposing approval of, and soliciting comments on, this approval. If adverse comments are received on this action, the EPA will withdraw this final rule. It will then address the comments received in response to this action in a final rule based on the related proposed rule being published in the ''Proposed Rules'' section of this **Federal Register**. A second public comment period will not be held. Parties interested in commenting on this action should do so at this time. This approval makes the State's rule federally enforceable.

DATES: The ''direct final'' is effective on January 22, 1999, unless EPA receives adverse or critical written comments by December 23, 1998. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments should be sent to: Robert B. Miller, Chief, Permits and Grants Section, Air

Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State's submittal and other supporting information used in developing the approval are available for inspection during normal business hours at the following locations:

EPA Region 5, 77 West Jackson Boulevard, AR–18J, Chicago, Illinois, 60604

Air Quality Division, Michigan Department of Environmental Quality, 106 West Allegan Street, Lansing, Michigan 48909

Please contact Laura Gerleman at (312) 353–5703 to arrange a time if inspection of the submittal is desired.

FOR FURTHER INFORMATION CONTACT: Laura Gerleman, AR–18J, 77 West Jackson Boulevard, Chicago, Illinois, 60604, (312) 353–5703.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Section 112(l) of the Act enables the EPA to approve State air toxics programs or rules to operate in place of the Federal air toxics program. The Federal air toxics program implements the requirements found in Section 112 of the Act pertaining to the regulation of hazardous air pollutants. Approval of an air toxics program is granted by the EPA if the Agency finds that the State program: (1) is ''no less stringent'' than the corresponding Federal program or rule, (2) the State has adequate authority and resources to implement the program, (3) the schedule for implementation and compliance is sufficiently expeditious, and (4) the program is otherwise in compliance with Federal guidance. Once approval is granted, the air toxics program can be implemented and enforced by State or local agencies, as well as EPA. Implementation by local agencies is dependent upon appropriate subdelegation.

On October 12, 1995, Michigan submitted to EPA a request for delegation of authority to implement and enforce the air toxics program under Section 112 of the CAA. On January 8, 1996, EPA found the State's submittal complete. In this notice EPA is taking final action to approve the program of delegation for Michigan.

II. Review of State Submittal

A. Program Summary

Requirements for approval, specified in section 112(l)(5), require that a State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule. These requirements are also requirements for an adequate operating permits program under Part 70 (40 CFR 70.4). On January 10, 1997, EPA promulgated a final interim approval under Part 70 of the State of Michigan's Operating Permit Program. The **Federal Register** rulemaking included the approval of a mechanism for delegation of all Section 112 standards for sources subject to the Part 70 program. Sources subject to the Part 70 program are those sources that are required to operate pursuant to a Part 70 permit issued by the State, local agency or EPA. Sources not subject to the Part 70 program are those sources that are not required to obtain a Part 70 permit from either the State, local agency or EPA (see 40 CFR 70.3). This action supplements the Part 70 rulemaking in that Michigan will have the authority to implement and enforce the Section 112 air toxics program as provided by the approved mechanism of delegation regardless of a source's Part 70 applicability.

The Michigan program of delegation for sources not subject to Part 70 will not include delegation of Section 112(r) authority or radionuclide emissions standards. The program will, however, include the delegation of the 40 CFR Part 63 general provisions to the extent that they are not reserved to the EPA and are delegable to the State.

As stated above, this document constitutes EPA's approval of Michigan's program of straight delegation of all existing and future air toxics standards as they pertain to non-Part 70 sources, except for Section 112(r) standards or radionuclide emissions standards. Straight delegation means that the State will not promulgate individual State rules for each Section 112 standard promulgated by EPA, but will implement and enforce without changes the Section 112 standards promulgated by EPA. The Michigan program of straight delegation will operate as follows: For a future Section 112 standard for which MDEQ intends to accept delegation, EPA will automatically delegate the authority to implement a Section 112 standard to the State by letter unless MDEQ notifies EPA differently within 45 days of EPA final promulgation of the standard. MDEQ will incorporate non-part 70 standards by reference into the State code of regulations as expeditiously as practicable, and if possible, within 12 months of promulgation by EPA. Upon completion of regulatory action, MDEQ will submit to EPA proof of incorporation by reference for that standard. EPA will respond with a letter delegating enforcement authority to the State.

Michigan will assume responsibility for the timely implementation and enforcement required by the standard, as well as any further activities agreed to by MDEQ and EPA. Some activities necessary for effective implementation of the standard include receipt of initial notifications, recordkeeping, reporting and generally assuring that sources subject to the standard are aware of its existence. When deemed appropriate, MDEQ will utilize the resources of its Small Business Assistance Program to assist in general program implementation. The details of this delegation mechanism are set forth in a memorandum of agreement between EPA and MDEQ, copies of which are located in the docket associated with this rulemaking.

B. Criteria for Approval

On November 26, 1993, EPA promulgated regulations to provide guidance relating to the approval of State programs under Section 112(l) of the Act. 40 FR 62262. That rulemaking outlined the requirements of approval with respect to various delegation options. The requirements for approval, pursuant to Section 112(l)(5) of the Act, of a program to implement and enforce Federal Section 112 rules as promulgated without changes are found at 40 CFR 63.91. Any request for approval must meet all section 112(l) approval criteria, as well as all approval criteria of Section 63.91. A more detailed analysis of the State's submittal pursuant to Section 63.91 is contained in the Technical Support Document included in the official file of this rulemaking.

Under Section 112(l) of the Act, approval of a State program is granted by the EPA if the Agency finds that it: (1) is ''no less stringent'' than the corresponding Federal program, (2) that the State has adequate authority and resources to implement the program, (3) the schedule for implementation and compliance is sufficiently expeditious, and (4) the program is otherwise in compliance with Federal guidance.

C. Analysis

EPA is approving Michigan's mechanism of delegation for non-part 70 sources because the State's submittal meets all requirements necessary for approval under Section 112(l). The first requirement is that the program be no less stringent than the Federal program. The Michigan program is no less stringent than the corresponding Federal program or rule because the State has requested straight delegation of all standards unchanged from the Federal standards. Second, the State has

shown that it has adequate authority and resources to implement the program. Michigan's Natural Resources and Environmental Protection Act authorizes MDEQ to issue construction and operating permits to Part 70 and non-Part 70 sources of regulated pollutants to assure compliance with all applicable requirements of the Act. 55 MCL 324.5503(b). The authority to issue permits includes the authority to incorporate permit conditions that implement Federal Section 112 standards. Furthermore, Michigan has the authority to implement each Section 112 regulation, emission standard or requirement (regardless of Part 70 applicability), perform inspections, request compliance information, incorporate requirements into permits and to bring civil and criminal enforcement actions to recover penalties and fines. As for non-part 70 sources, Michigan will have the authority to enforce each Section 112 regulation, emission standard or requirement applicable to non-part 70 sources upon its incorporation into the State code of regulations. Adequate resources will be obtained through both State funding and Section 105 grant monies awarded to States by EPA to implement the program for non-Part 70 sources and through monies from the State's Title V program to fund acceptable Title V activities with respect to Part 70 sources.

Third, upon promulgation of a standard, Michigan will immediately begin activities necessary for timely implementation of the standard. These activities will involve identifying sources subject to the applicable requirements and notifying these sources of the applicable requirements. Also, upon promulgation of a standard, Michigan will expeditiously incorporate by reference the standard into the State code of regulations. Such schedule is sufficiently expeditious for approval.

Fourth, nothing in the Michigan program for straight delegation is contrary to Federal guidance.

D. Michigan's Audit Privilege and Immunity Law

On March 18, 1996, Michigan Governor John Engler signed the State's Environmental Audit Privilege and Immunity Law (Michigan's Privilege and Immunity Law of 1996), Part 148 of Michigan's Natural Resources and Environmental Protection Act. This law provides that sources can hold confidential broad categories of information contained in a voluntary environmental audit report. The law also provides sources immunity from certain State civil and criminal penalties for violations discovered through an environmental self audit, provided the violations are promptly reported and corrected. EPA believes that Michigan's Privilege and Immunity Law of 1996 affected the State's authority to assure compliance with and enforce Section 112 standards. In a letter dated July 1, 1997, to Russell Harding, Director of MDEQ, EPA stated what changes would need to be made to Michigan's Privilege and Immunity Law of 1996 in order to have sufficient enforcement authorities to meet, inter alia, the approval criteria in Part 63. On November 13, 1997, Michigan Governor John Engler signed into law Public Acts 133 and 134 of 1997 (Michigan's Privilege and Immunity Law of 1997), which is Part 148 of Michigan's Natural Resources and Environmental Protection Act, amending Michigan's Privilege and Immunity Law of 1996. Michigan's Privilege and Immunity Law of 1997 was submitted to EPA on November 21, 1997, in order to address EPA's concerns. In a letter dated December 12, 1997, EPA stated that with the newly enacted Michigan's Privilege and Immunity Law of 1997, along with MDEQ's commitment in a July 1, 1997 letter on the use of confidentiality agreements and the interpretations by the Attorney General, EPA's concerns have been addressed and the audit privilege issues have been resolved. With Michigan's Privilege and Immunity Law of 1997, Michigan now has adequate authority to assure compliance by all sources with each applicable standard.

E. Determinations

In approving this mechanism of delegation, EPA expects that the State will obtain concurrence from EPA on any matter involving the interpretation of Section 112 of the Clean Air Act or 40 CFR part 63 to the extent that implementation, administration, or enforcement of these sections have not been covered by EPA determinations or guidance.

III. Final Action

The EPA is promulgating final approval of the October 12, 1995, request by the State of Michigan of a mechanism for straight delegation of Section 112 standards unchanged from Federal standards because the request meets all requirements of 40 CFR 63.91 and Section 112(l) of the Act. Upon the effective date of this action, the implementation and enforcement authority of all existing Section 112 standards pertaining to non-part 70 sources, excluding Section 112(r) and radionuclide emissions standards, which have been incorporated by reference into the State code of regulations are delegated to the State of Michigan (specifically 40 CFR Part 63 Subpart M, Dry Cleaning, and 40 CFR Part 63 Subpart T, Halogenated Solvent Cleaning). As for the existing Section 112 standards which have not yet been incorporated by reference into the State code of regulations, the implementation authority of these standards are delegated to the State of Michigan upon the effective date of this action, and the enforcement authority will be delegated according to the procedures in the MOA. Future delegation of the Section 112 standards to the State will occur according to the procedures outlined in the MOA upon EPA's promulgation of the standard.

Effective immediately, all notifications, reports and other correspondence required under Section 112 standards should be sent to the State of Michigan rather than to the EPA, Region 5, in Chicago. Affected sources should send this information to the supervisor of the appropriate District office. For sources located in Wayne County, send this information also to the Director of Compliance and Enforcement of the Wayne County Department of the Environment. For information on the District offices or Wayne County office, contact: Michigan Department of Environmental Quality, Air Quality Division, 106 West Allegan Street, P.O. Box 30260, Lansing, Michigan 48909–7760, 517–373–7023.

EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the State Plan should adverse or critical written comments be filed. This action will be effective without further notice unless EPA receives relevant adverse written comment by December 23, 1998. Should EPA receive such comments, it will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on January 22, 1999.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Plan. Each request for revision to a State Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Executive Order 13045

This final rule is not subject to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under Executive Order 12866.

C. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875 (E.O. 12875), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. This rule delegates the Federal air toxics program to the MDEQ at MDEQ's request. Accordingly the requirements of section 1(a)of E.O. 12875 do not apply to this rule.

D. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084 (E.O. 13084), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This rule delegates the Federal air toxics program to the MDEQ at MDEQ's request. It imposes no new requirements. Accordingly the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This direct final rule will not have a significant impact on a substantial number of small entities because Straight delegation of the Section 112 standards unchanged from the Federal standards does not create any new requirements, but simply allows the State to administer requirements that have been or will be separately promulgated. Therefore, because this delegation approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of a State action. The CAA forbids EPA to base its actions concerning State plans on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. This Federal action merely approves delegation to a State of pre-existing requirements under Federal law, and imposes no new requirements on the private sector. The cost to the state, local, or tribal government, of implementing this program will be less than $100 million. The State also voluntarily requested this delegation under Section 112(l) for the purpose of implementing and enforcing the air toxics program with respect to sources not covered by Part 70. Since the State was not required by law to seek delegation, this Federal action does not impose a mandate on the State.

G. Submission to Congress and the Comptroller General

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

H. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 22, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure,

Air pollution control, Hazardous substances, Intergovernmental relations.

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

Dated: August 26, 1998.

Gail Ginsberg,

Acting Regional Administrator, Region V.

[FR Doc. 98–31076 Filed 11–20–98; 8:45 am]

BILLING CODE 6560–50–P

LEGAL SERVICES CORPORATION

45 CFR Parts 1606 and 1625

Termination and Debarment Procedures; Recompetition; Denial of Refunding

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule rescinds the Corporation's rule on denial of refunding and removes it from the Code of Federal Regulations. It also substantially revises the Corporation's rule governing the termination of financial assistance. These revisions are intended to implement major changes in the law governing certain actions used by the Corporation to deal with post-award grant disputes. The termination rule now includes new provisions authorizing the Corporation to recompete service areas and to debar recipients for good cause from receiving additional awards of financial assistance.

DATES: This rule is effective on December 23, 1998.

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

SUPPLEMENTARY INFORMATION: The Operations and Regulations Committee (Committee) of the Legal Services Corporation's (LSC or Corporation) Board of Directors (Board) met on April 5, 1998, in Phoenix, Arizona, to consider proposed revisions to the Corporation's rules governing procedures for the termination of funding, 45 CFR Part 1606, and denial of refunding, 45 CFR Part 1625. The Committee made several changes to the draft rule and adopted a proposed rule that was published in the **Federal Register** for public comment at 63 FR 30440 (June 4, 1998). On September 11, 1998, during public hearings in Chicago, Illinois, the Committee considered public comments on the proposed rule. After making additional revisions to the rule, the Committee recommended that the Board adopt the rule as final, which the Board did on September 12, 1998.

This final rule is intended to implement major changes in the law governing certain actions used by the Corporation to deal with post-award grant disputes. Prior to 1996, LSC recipients could not be denied refunding, nor could their funding be suspended or their grants terminated, unless the Corporation complied with Sections 1007(a)(9) and 1011 of the LSC Act, 42 U.S.C. 2996 et seq., as amended. For terminations and denials of refunding, the Corporation was required to provide the opportunity for a ''timely, full and fair hearing'' before an independent hearing examiner.

In 1996, the Corporation implemented a system of competition for grants that ended a recipient's right to yearly refunding. Under the competition system, grants are now awarded for specific terms, and, at the end of a grant term, a recipient has no right to refunding and must reapply as a competitive applicant for a new grant.[1] Accordingly, this rule rescinds 45 CFR part 1625, the Corporation's regulation on the denial of refunding, and removes it from the Code of Federal Regulations as no longer consistent with applicable law.

Comments expressed concern about the effect of the removal of this rule in the new competitive environment. The concern was that, rather than providing a new grant to an applicant, the Corporation might use month-to-month or short term grants within the competitive process to avoid providing hearing rights to recipients. One comment urged the Corporation to refrain from using repeated short term grants to troubled programs about which it has questions about future funding as a means to obviate the need for a due process hearing. According to the comment, short term funding should be used only in those situations where the Corporation fully intends to make a grant for the remainder of the grant term once a specific identified issue is resolved.

The Board requested that the preamble clarify that short term funding is not intended by the Corporation as a means to avoid hearing rights. It is a means to ensure continued legal representation in a service area when the Corporation determines no applicants in a competitive process warrant a long term grant. This could occur for a variety of reasons. For example, in a particular competition, one applicant may not be viable and the other, a current recipient, may be under investigation by the Corporation. Short term funding until the investigation is final is warranted in such a situation. The Corporation would not want to foreclose giving a long term grant to the program if the investigation reveals no substantive noncompliance issues. On the other hand, if the investigation reveals substantive noncompliance by the recipient, the Corporation would have been derelict in its duty if it had made a long term grant to a recipient it had reason to believe could not provide quality legal assistance or comply with grant terms and conditions.

Congress clearly intended the competition process to be a means for the Corporation to ensure that the most qualified programs receive LSC grants. Accordingly, the Corporation's competition rule provides discretion to the Corporation to take all practical steps to ensure continued legal assistance in a service area when the Corporation determines no applicants are qualified for a long term grant. See § 1634.8(c). Short term grants provide one means to that end. Nevertheless, it is not the intent of the Corporation that short term grants be used to avoid applicable hearing rights. They should only be used when they are warranted and appropriate, as discussed above.

The FY 1998 appropriations act made additional changes to the law affecting LSC recipients' rights to continued funding. See Pub. L. 105–119, 111 Stat. 2440 (1997). Section 504 provides authority for the Corporation to debar a recipient from receiving future grant awards upon a showing of good cause. Section 501(c) authorizes the Corporation to recompete a service area when a recipient's financial assistance has been terminated. Finally, Section 501(b) of the appropriations act provides that the hearing rights prescribed by Sections 1007(a)(9) and 1011 are no longer applicable to the provision, denial, suspension, or termination of financial assistance to recipients. This rule implements Section 501(b) as it applies to terminations and denials of refunding. Also in this publication of the **Federal Register** is a related final rule, 45 CFR Part 1623, which implements Sec. 501(b) as it applies to the suspension of financial assistance to recipients.

The change in the law on hearing rights does not mean that grant recipients have no rights to a hearing before the Corporation may terminate funding or debar a recipient. Sections 501(b) and 501(c) of the FY 1998

[1] It is well established that absent express statutory language to the contrary or a showing that the applicant's statutory or constitutional rights have been violated, pre-award applicants for discretionary grants have no protected property interests in receiving a grant and thus have no standing to appeal the funding decision by the grantor. See Cappalli, Federal Grants and Cooperative Agreements, § 3.28; Stein, J., Administrative Law, § 53.02[3][a] (1998); and *Legal Services Corporation of Prince Georges County* v. *Ehrlich*, 457 F. Supp. 1058, 1062–64 (D. Md. 1978).