

pursuant to the criteria of Executive Order 12866, since the 0.4 kg iodine threshold does not affect small businesses and since there is not a large industry for hydrogen chloride gas. Therefore, this proposed rule has not been reviewed by the Office of Management and Budget.

This action has been analyzed in accordance with the principles and criteria in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### List of Subjects in 21 CFR Part 1310

Drug traffic control, Reporting and recordkeeping requirements.

For reasons set out above, 21 CFR part 1310 is proposed to be amended as follows:

#### PART 1310—[AMENDED]

1. The authority citation for part 1310 continues to read as follows:

**Authority:** 21 U.S.C. 802, 830, 871(b).

2. Section 1310.02 is proposed to be amended by revising paragraph (b)(8) and adding paragraph (b)(11) to read as follows:

#### § 1310.02 Substances covered.

\* \* \* \* \*

(b) List II chemicals:

\* \* \* \* \*

(8) Hydrochloric acid (Including Hydrogen chloride gas)

\* \* \* \* \*

(11) Iodine

\* \* \* \* \*

3. Section 1310.04 is proposed to be amended by adding new paragraphs (f)(2)(ii) (H) and (I), and revising (f)(2)(iv) to read as follows:

#### § 1310.04 Maintenance of records.

\* \* \* \* \*

(f) \* \* \*

(2) \* \* \*

(i) \* \* \*

(ii) Domestic Sales

Chemical	Threshold by volume	Threshold by weight
* * * * *		
(H) Iodine ..	N/A .....	0.4 kilograms.
(I) Hydro-gen chlo-ride gas.	N/A .....	0.0 kilograms.

(iii) \* \* \*

(iv) Exports, Transshipments and International Transactions to Designated Countries As Set Forth in § 1310.08(b).

Chemical	Threshold by volume	Threshold by weight
(A) Hydro-chloric acid.	50 gallons ...	N/A.
(1) Hydro-gen chlo-ride gas.	N/A .....	27 kilograms.
(B) Sulfuric acid.	50 gallons ...	N/A.

\* \* \* \* \*

4. Section 1310.08 is proposed to be amended by adding new paragraphs (f) and (g) to read as follows:

#### § 1310.08 Excluded transactions

\* \* \* \* \*

(f) Import and export transactions of iodine.

(g) Import transactions of hydrogen chloride gas.

Dated: July 21, 1997.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control.*

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#### LEGAL SERVICES CORPORATION

#### 45 CFR Part 1643

#### Restriction on Assisted Suicide, Euthanasia, and Mercy Killing

**AGENCY:** Legal Services Corporation.

**ACTION:** Proposed rule.

**SUMMARY:** This rule is intended to implement a new statutory restriction that amends the Legal Services Corporation Act ("LSC" or "Corporation") and is applicable to recipients of grants from the Legal Services Corporation. The restriction prohibits the use of LSC funds by recipients for legal or other assistance that would cause, assist in, advocate for, or fund assisted suicide, euthanasia, or mercy killing.

**DATES:** Comments should be received on or before October 30, 1997.

**ADDRESSES:** Comments should be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First St. NE., 11th Floor, Washington, DC 20002-4250.

**FOR FURTHER INFORMATION CONTACT:** Office of the General Counsel, (202) 336-8817.

**SUPPLEMENTARY INFORMATION:** The Assisted Suicide Funding Restriction Act of 1997 ("Assisted Suicide Act" or "Act"), Pub. L. 105-12, was enacted and became effective on April 30, 1997. Several provisions of the Assisted

Suicide Act expressly apply to the Legal Services Corporation, one of which amends Section 1007(b) of the LSC Act, 42 U.S.C. 2996f(b)(11). This rule is intended to implement this legislation as it applies to the Corporation and its recipients.

#### Background and Summary of Law

The stated purpose of the Assisted Suicide Act is to maintain current Federal policy that Federal funds not be used to support, assist in, or advocate for assisted suicide, euthanasia or mercy killing. H. Rep. No. 46, 105th Cong., 1st Sess. at 3 (April 8, 1997). Although assisted suicide, euthanasia and mercy killing are illegal in almost all states, Congress was concerned that pending litigation might change the status quo and wanted to make it clear by legislation that, regardless of a change in State law, Federal policy would remain the same. H. Rep. at 3-4. Subsequent to the passage of the Act, the Supreme Court upheld as constitutional laws in the States of New York and Washington which prohibit assisted suicide and euthanasia. See *Vacco v. Quill*, 117 S. Ct. 2293 (1997); *Washington v. Glucksberg*, 117 S. Ct. 2302 (1997). The State of Oregon, on the other hand, adopted an initiative in 1996 that legalized physician-assisted suicide for competent, terminally ill adults. H. Rep. at 4. Court challenges have kept the law from going into effect and a new initiative to repeal the law will be on the ballot this November. See Associated Press, September 15, 1997 (1997 WL 2549490); *Lee v. Oregon*, 107 F.3d 1382 (9th Cir. Feb. 27, 1997); Petition for Certiorari Filed, 65 USLW 3783 (May 16, 1997) (No. 96-1824).

The Assisted Suicide Act applies to numerous Federally funded health care programs and facilities, such as Medicare, Medicaid, CHAMPUS and the veterans' and military health care systems. It also applies to certain legal aid and advocacy programs, including the Legal Services Corporation.

Section 9 of the Assisted Suicide Act amends Section 1007(b) of the LSC Act to provide that "No funds made available by the Corporation under this title, either by grant or contract, may be used \* \* \* to provide legal assistance in a manner inconsistent with the Assisted Suicide Funding Restriction Act of 1997." Section 5 of the Assisted Suicide Act sets out the restrictions as they apply to LSC funds by generally prohibiting the use of appropriated funds for legal or other assistance for the purpose of (1) securing or funding any

activity or service that would assist in or cause the suicide, euthanasia, or mercy killing of an individual; (2) compelling any person or entity to provide funding or service for such purposes; or (3) asserting or advocating a legal right to assisted suicide, euthanasia or mercy killing. Finally, Section 3(b) clarifies what activities are not included within the restrictions.

This proposed rule implements those sections of the Act that apply to the Corporation. A section-by-section analysis of this proposed rule is set out below.

#### *Section 1643.1 Purpose*

The purpose of this proposed rule is to ensure that LSC recipients do not use any LSC funds to engage in legal assistance activities inconsistent with the Assisted Suicide Act.

#### *Section 1643.2 Definitions*

The definitions in this section are all based primarily on the House Report for the Assisted Suicide Act and the common dictionary definitions of the terms. H. Rep. at 12; Random House Webster's College Dictionary (1997) ("Webster's"). Assisted suicide is defined as providing any means to another person to enable or assist that person to commit suicide. See Webster's at 80 (suicide aided by a person, esp. a physician, who organizes the logistics of the suicide). For example, if a doctor provided a person with a lethal drug overdose so that the person could commit suicide by ingesting the lethal overdose, the action of providing the drug overdose would constitute assisted suicide.

Euthanasia and mercy killing have the same meaning. The consistent use of both terms throughout the Act might suggest that they are two different activities. However, both the House Report and Webster's Dictionary give them the same meaning. Apparently, State laws commonly use the terms together or use one term or the other to mean the same activity.<sup>1</sup> Euthanasia and mercy killing are defined as the active means by one person to cause the death of another person for reasons assumed to be merciful, regardless of whether the person who is killed consents to be killed. According to the House Report, such a death is often considered merciful because the person is deemed

to be dying or suffering or the person is considered to be a burden on family, community or society. H. Rep. at 12.

Suicide is defined as the taking of one's own life voluntarily and intentionally and is included in this rule to clarify its meaning within the term assisted suicide.

#### *Section 1643.3 Prohibition*

This section prohibits the use of LSC funds by recipients for legal or other assistance for those activities delineated therein. Paragraph (a) prohibits a recipient from using LSC funds for any action that would cause or assist in causing the suicide, euthanasia or mercy killing of an individual. This would include, for example, providing a client with assistance to obtain the means of death or providing a client the financial means for death by suicide or euthanasia.

Paragraph (b) prohibits the use of LSC funds for compelling any person or private or governmental entity to engage in the activities prohibited in paragraph (a). For example, a recipient could not provide legal assistance to a client for the purpose of suing a public or private hospital to permit the individual to receive assistance in committing suicide in its facilities.

Paragraph (c) implements Section 5(a)(3) of the Assisted Suicide Act and prohibits asserting or advocating a legal right to cause or assist in causing the suicide, euthanasia, or mercy killing of an individual. This means, for example, that legal assistance could not be provided to assert that a law or regulation prohibiting or regulating assisted suicide, euthanasia, or mercy killing is unconstitutional or otherwise in violation of the law. It would also prohibit any lobbying efforts to promote or advocate for passage of legislation that would legalize assisted suicide, euthanasia, or mercy killing.

#### *Section 1643.4 Applicability*

Paragraph (a) of this section is based on Section 3 (b) of the Assisted Suicide Act, which clarifies that the Act's restrictions do not apply to or affect any limitation relating to certain activities. Subparagraphs (a)(1) through (a)(3) clarify that the restrictions are intended to include the use of active means of causing death, such as by lethal injection or the provision of a lethal oral drug overdose, but do not apply to or affect any limitation relating to decisions to withhold or withdraw medical care, medical treatment, nutrition, or hydration. Nor do the restrictions apply to or affect limitations relating to abortion activities. This means that the Corporation's current

restrictions on abortion activities are unaffected by this rule and are still in full force and effect in their current status, see 45 CFR § 1610.2 (a)(7) and (b)(10).

LSC recipients traditionally do not become involved in legal assistance in the area of assisted suicide or euthanasia, but they do provide legal assistance to clients in preparing advance directives, such as living wills and powers of attorney. The preparation of such documents will generally be unaffected by this rule, because the rule's restriction only applies to active means of causing death. Advance directives normally apply to passive actions, such as withholding or withdrawing nutrition or medical care. Only if an advance directive includes a directive to secure death by active means, that is, by assisted suicide, euthanasia or mercy killing, would it be restricted by this rule. This is unlikely since such actions are illegal in most States.

Subparagraph (a)(4) clarifies that the restriction does not include treatment aimed solely at alleviating suffering, even if the treatment has the unintended consequence of risking or shortening life. Thus, the restriction would not include the administration of morphine for the purpose of alleviating pain, even if its use might risk causing death or risk shortening life because it might also have the side effect of suppressing respiratory functions. The restriction, however, would include treatment that has a two-fold purpose of alleviating pain or discomfort and causing death.

Paragraph (b) clarifies that the prohibition on LSC funds does not apply to a recipient's non-LSC funds. Section 5 of the Assisted Suicide Act expressly applies the restriction only to "funds appropriated by Congress." This is also reflected in the House Report, which provides:

Section 5 is not intended to have the effect of de-funding an entire program, such as a Legal Services program or other legal or advocacy program, simply because some State or privately funded portion of that program may advocate for or file suit to compel funding or services for assisted suicide. This section is intended only to restrict Federal funds from being used for such activities.

House Report at 19–20. Recipients may have other Federal grants restricted by various provisions of the Assisted Suicide Act. This paragraph does not affect the recipient's obligation to comply with all the terms of such a grant. Although this rule restricts only the use of LSC grant funds, a recipient's other funds are still subject to any

<sup>1</sup> The terms are found in statutes from 45 States and the District of Columbia, which disapprove of euthanasia, mercy killing, suicide, or assisted suicide in their natural death/living will statutes, or in their durable power of attorney for health care acts. For citations to these statutes, see Relief or Reproach?: Euthanasia Rights in the Wake of Measure 16, 74 Oregon Law Review, 449, 462 notes 44 and 45 (Summer 1995).

restrictions that are included in other grant agreements.

#### *Section 1643.5 Recipient Policies, Procedures and Recordkeeping*

This section requires the recipient to establish written policies and procedures to guide the recipient's staff to ensure compliance with this rule. Recipients are also required to maintain sufficient documentation to demonstrate compliance with this part. The type of recordkeeping necessary to demonstrate compliance with this rule would be documentation that only non-LSC funds were used for any activities prohibited by this rule.

#### **List of Subjects in 45 CFR Part 1643**

Grants, Health Care, Legal Services, Lobbying.

For reasons set forth in the preamble, LSC proposes to amend Chapter XVI of Title 45 by adding part 1643 as follows:

#### **PART 1643—RESTRICTION ON ASSISTED SUICIDE, EUTHANASIA, AND MERCY KILLING**

Sec.

1643.1 Purpose.

1643.2 Definitions.

1643.3 Prohibition.

1643.4 Applicability.

1643.5 Recipient policies, procedures and recordkeeping.

**Authority:** Pub. L. 105-12; 42 U.S.C. 2996f (b)(11).

##### **§ 1643.1 Purpose.**

This part is intended to ensure that recipients do not use any LSC funds for any assisted suicide, euthanasia or mercy killing activities prohibited by this part.

##### **§ 1643.2 Definitions.**

(a) Assisted suicide means the provision of any means to another person with the intent of enabling or assisting that person to commit suicide.

(b) Euthanasia (or mercy killing) is the active means by one person to cause the death of another person for reasons assumed to be merciful, regardless of whether the person killed consents to be killed.

(c) Suicide means the act or instance of taking one's own life voluntarily and intentionally.

##### **§ 1643.3 Prohibition.**

No recipient may use LSC funds to assist in, support, or fund any activity or service which has a purpose of assisting in, or to bring suit or provide any other form of legal assistance for the purpose of:

(a) Securing or funding any item, benefit, program, or service furnished for the purpose of causing, or the purpose of assisting in causing, the

suicide, euthanasia, or mercy killing of any individual;

(b) Compelling any person, institution, or governmental entity to provide or fund any item, benefit, program, or service for such purpose; or

(c) Asserting or advocating a legal right to cause, or to assist in causing, the suicide, euthanasia, or mercy killing of any individual.

##### **§ 1643.4 Applicability.**

(a) The restriction in § 1643.3 shall not apply to or affect any limitation relating to:

(1) The withholding or withdrawing of medical treatment or medical care;

(2) The withholding or withdrawing of nutrition or hydration;

(3) Abortion; or

(4) The use of items, goods, benefits, or services furnished for purposes relating to the alleviation of pain or discomfort even if they may increase the risk of death, unless they are furnished for the purpose of causing or assisting in causing death.

(b) This part does not apply to activities funded with a recipient's non-LSC funds.

##### **§ 1643.5 Recipient policies, procedures and recordkeeping.**

The recipient shall adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part.

Dated: September 25, 1997.

**Suzanne B. Glasow,**

*Senior Assistant General Counsel.*

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## **DEPARTMENT OF TRANSPORTATION**

### **Federal Transit Administration**

#### **49 CFR Parts 653 and 654**

[Docket No. FTA-97-2925]

RIN 2132-AA56

#### **Prevention of Prohibited Drug Use in Transit Operations; Prevention of Alcohol Misuse in Transit Operations**

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In response to a request from a transit agency, the Federal Transit Administration (FTA) proposes to allow employers to use the results of post-accident drug and alcohol tests administered by State or local law enforcement personnel when the State and local law enforcement officials have

independent authority for the tests and the employer obtains the results in conformance with State and local law. In short, in a very limited number of cases, the employer would be relieved of administering post-accident drug and alcohol tests. If this amendment is adopted, it could ease the burden of employers in testing "safety-sensitive" employees after an accident has occurred; it may also relieve some "safety-sensitive" employees from taking duplicative post-accident drug and alcohol tests.

**DATES:** Comments on this proposed rule must be submitted by December 1, 1997.

**ADDRESSES:** Written comments must refer to the docket number that appears above and be submitted to the United States Department of Transportation, Central Dockets Office, PL-401, 400 Seventh Street, S.W. Washington, D.C. 20590. All comments received will be available for inspection at the above address from 10 a.m. to 5 p.m., e.t. Monday through Friday, except Federal holidays. Those desiring the agency to acknowledge receipt of their comments should include a self-addressed stamped postcard with their comments.

**FOR FURTHER INFORMATION CONTACT:** For program issues: Judy Meade, Director of the Office of Safety and Security (202) 366-2896 (telephone) or (202) 366-7951 (fax). For legal issues: Nancy Zaczek, Office of the Chief Counsel (202) 366-4011 (telephone) or (202) 366-3809 (fax). Electronic access to this and other rules may be obtained through FTA's Transit Safety and Security Bulletin Board at 1-800-231-2061 or through the FTA World Wide Web home page at <http://www.fta.bts.gov>; both services are available seven days a week.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

On February 14, 1994, FTA issued 49 CFR parts 653 and 654, which require recipients of certain categories of FTA funding to test safety-sensitive employees for the use of five prohibited drugs and the misuse of alcohol. In addition to five other types of testing, not relevant to this discussion, the rules require employers to conduct post-accident testing of certain safety-sensitive employees within eight hours of the accident for the misuse of alcohol and within 32 hours for the use of prohibited drugs. (The standards for determining which "safety-sensitive" employees must be tested are set out in the rule and are not relevant to this discussion.) If an employer cannot test