

not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect 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. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal Agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

#### F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a

preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule simply promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under paragraph 32(e) of Figure 2–1 of Commandant Instruction M16475.1D.

Under paragraph 32(e) of Figure 2–1 of Commandant Instruction M16475.1D, an environmental analysis checklist and a categorical exclusion determination are not required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, are in our online docket at <http://www.regulations.gov> and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

#### List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend § 117.287 by revising paragraphs (c), (d)(1), and (d)(2) as follows:

##### § 117.287 Gulf Intracoastal Waterway.

\* \* \* \* \*

(c)(1) The Stickney Point Bridge, GICW mile 68.6, South Sarasota, Florida shall open on signal, except that from 6 a.m. to 7 p.m., daily, the draw need only open on the hour and half-hour.

(c)(2) The draw of the Siesta Drive Bridge, mile 71.6 at Sarasota, Florida shall open on signal, except that from 6 a.m. to 7 p.m., daily, the draw need only open on the hour and half-hour.

(d)(1) The draw of the Cortez (SR 684) Bridge, mile 87.4. The draw shall open on signal, except that from 6 a.m. to 7 p.m., daily, the draw need only open on the quarter hour and three-quarter hour.

(d)(2) The draw of the Anna Maria (SR 64) (Manatee Avenue West) Bridge, mile 89.2. The draw shall open on signal, except that from 6 a.m. to 7 p.m., daily, the draw need only open on the quarter hour and three-quarter hour.

\* \* \* \* \*

**S.A. Buschman,**

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 2017–02896 Filed 2–10–17; 8:45 am]

**BILLING CODE 9110–04–P**

#### LEGAL SERVICES CORPORATION

##### 45 CFR Part 1609

##### Fee-Generating Cases

**AGENCY:** Legal Services Corporation.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule revises the Legal Services Corporation (LSC or Corporation) regulation regarding fee-generating cases. This proposed rule clarifies the definition of “fee-generating case,” clarifies that brief advice is permitted by the regulation, and revises how a recipient accounts for attorneys’ fees awards.

**DATES:** Comments must be submitted by March 15, 2017.

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

• *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the instructions for submitting comments.

• *Email*: [lscrulemaking@lsc.gov](mailto:lscrulemaking@lsc.gov).

Include "Comments on Revisions to Part 1609" in the subject line of the message.

• *Fax*: (202) 337-6519.

• *Mail*: Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW., Washington, DC 20007, ATTN: Part 1609 Rulemaking.

• *Hand Delivery/Courier*: Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW., Washington, DC 20007, ATTN: Part 1609 Rulemaking.

*Instructions*: Electronic submissions are preferred 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, 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

Section 1007(b)(1) of the Legal Services Corporation Act of 1974 prohibits recipients from using LSC funds "to provide legal assistance (except in accordance with guidelines promulgated by the Corporation) with respect to any fee-generating case[.]" 42 U.S.C. 2996f(b)(1). LSC implemented this provision through 45 CFR part 1609. In the preamble to part 1609, LSC explained that the private bar is generally "eager to accept contingent fee cases and cases in which there may be an award of attorneys' fees to be paid by the opposing party pursuant to [statute]." 41 FR 38505, Sept. 10, 1976. LSC therefore drafted part 1609 to "insure that recipients do not use scarce legal services resources when private attorneys are available to provide effective representation and . . . assist eligible clients to obtain appropriate and effective legal assistance." 45 CFR 1609.1(a), (b). Nevertheless, LSC recognized that "there may be instances when no private attorney is willing to represent an individual, because the recovery of a fee is unlikely, the potential fee is too small, or some other reason." 41 FR 38505, Sept. 10, 1976.

To balance these considerations, part 1609 (1) defines "fee-generating case" to prohibit recipients from accepting cases that a private attorney would take, and (2) provides exceptions to the prohibition for when adequate

representation by the private bar is unavailable and implements safeguards to prevent recipients from taking cases the private bar would accept. *Id.* The definition of "fee-generating case" includes "every situation in which an attorney reasonably may expect to receive a fee for services from any source except the client." 41 FR 38505. Specifically, LSC defined "fee-generating case" as "any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client, from public funds, or from the opposing party." *Id.* Section 1609.3 then clarified circumstances in which a recipient may use LSC funds to provide legal assistance in a fee-generating case, such as after the case has been rejected by the local lawyer referral service or by two private attorneys. 45 CFR 1609.3(a)(1).

In 1996, LSC proposed two changes to clarify the meaning of "fee-generating case." First, LSC proposed "[a] technical numerical change" to the definition of "fee-generating case" which was intended "to clarify that the definition includes fees from three sources: an award (1) to a client, (2) from public funds, or (3) from the opposing party." 61 FR 45765, Aug. 29, 1996. This proposed change resulted in comments about whether LSC intended to make substantive changes to the definition. 62 FR 19398, Apr. 21, 1997. Because the Board did not intend to change the definition and sought to avoid confusion about its intent, the Board rejected the numerical changes to the proposed rule. *Id.*

Nevertheless, the Board adopted a second proposed change by adopting language that explained what is not a "fee-generating case." *Id.* The revision excluded court appointments from the definition because such cases, even where fees are paid, are considered a professional obligation. *Id.* Additionally, the revision excluded situations where recipients undertake representation under a contract with a government agency or other entity and the agency or entity pays the recipient "because a contract payment does not constitute fees that come from an award to a client or attorneys' fees that come from the losing party in a case, or from public funds." *Id.*; see 45 CFR 1609.2(b). LSC has not made substantive changes to the definition of "fee-generating case" since this revision. See 76 FR 23502, Apr. 27, 2011.

When a recipient may take a fee-generating case, Part 1609 also prescribes how recipients account for attorneys' fees received in the case. Part

1609 requires the proceeds be remitted to the recipient. 41 FR 38505. In 1984, LSC adopted a new section, § 1609.6, that required attorneys' fees received by the recipient to be returned to the fund from which the resources to litigate the case came. 49 FR 19657, May 9, 1984. In other words, if the recipient funded a particular case half with LSC funds and half with private funds, § 1609.6 required the recipient to allocate any attorneys' fees received to each fund in equal proportion. The new section also required that fees be recorded during the accounting period in which the program receives the award. *Id.*

In 1996, LSC's appropriation legislation provided that no LSC funds could be used to provide financial assistance to a recipient that receives attorneys' fees pursuant to any federal or state law. Sec. 504(a)(13), Public Law 104-134, 110 Stat. 1321, 1321-55; 75 FR 21507, Apr. 26, 2010. To implement this legislation, LSC created a separate rule, 45 CFR part 1642. 62 FR 25862, May 12, 1997 (final rule); 61 FR 45762, Aug. 29, 1996 (interim final rule). LSC moved § 1609.6 to part 1642 and revised the provision to require recipients to allocate fees from cases or matters supported in whole or in part with LSC funds to the LSC fund in the same proportion that the case or matter was funded with LSC funds. *Id.* In a departure from then-existing § 1609.6, LSC did not propose to dictate how recipients allocated remaining fees to their non-LSC accounts. *Id.*

In 2010, Congress repealed the prohibition on accepting and retaining attorneys' fees. Sec. 533, Public Law 111-117, 123 Stat. 3034, 3157. LSC subsequently repealed part 1642 but retained two provisions relevant to accounting for attorneys' fee awards and accepting reimbursement of costs from a client. 75 FR 6816, Feb. 11, 2010 (interim final rule); 75 FR 21506, Apr. 26, 2010 (final rule). LSC placed these two provisions in part 1609 at §§ 1609.4 and 1609.6, respectively. 75 FR 21508. LSC has made no changes to either section since then.

LSC added rulemaking on part 1609 to its annual rulemaking agenda in June, 2015. On July 18, 2016, the Committee voted to recommend that the Board authorize rulemaking on part 1609. On January 26, 2017, the Committee voted to recommend that the Board approve publication of this NPRM in the **Federal Register** for notice and comment. On January 28, 2017, the Board accepted the Committee's recommendation and voted to approve publication of this NPRM.

## II. Proposed Changes

### Section 1609.1 Purpose

LSC proposes to make no changes to this section.

### Section 1609.2 Definition

Recipients have repeatedly requested guidance regarding what constitutes a “fee-generating case” as defined in § 1609.2(a). Questions have included whether paid court appointments are “fee-generating cases” and whether “advice and counsel” or “brief services” are prohibited if the case may, during the course of subsequent extended representation, develop into a “fee-generating case.” Recipients have also sought guidance regarding permissible sources of fees.

Section 1609.2 currently provides, “*Fee-generating case* means any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client, from public funds or from the opposing party.” 45 CFR 1609.2(a). A reader could interpret “award” as modifying only “to a client” and not to include an “award . . . from public funds or [an award] from the opposing party.” Thus, under the current definition, a recipient might accept a case that may result in an award from public funds, a result not intended by LSC. Therefore, LSC proposes removing “from public funds or from the opposing party” from the definition.

Additionally, LSC proposes to revise part 1609 to clarify that a recipient may provide brief services to an eligible client despite the possibility that the case may result in fees otherwise restricted by part 1609. In AO–2015–002, LSC considered whether a recipient may provide “advice and counsel” or “limited services” (as defined in 45 CFR 1611.2(a) and (e)) to an eligible client where the matter might constitute a fee-generating case if extended services were provided. Based on the language of § 1609.3, which prohibits recipients from using LSC funds to provide assistance in “every situation in which an attorney reasonably may expect to receive a fee[.]” LSC concluded an “attorney’s reasonable expectation of such fees would not typically arise until after . . . initial advice or brief services was under way or had been completed.” AO–2015–002, June 17, 2015. LSC proposes incorporating this clarification into part 1609 by adding a separate paragraph to § 1609.2(b). The new paragraph would explain that “advice and counsel” or “limited services” in matters that may later constitute fee-

generating cases are not prohibited by part 1609.

Finally, in response to questions regarding court appointments, revised § 1609.2(b) states that a court appointment pursuant to a statute or court rule or practice that is equally applicable to all attorneys in the jurisdiction is not a fee-generating case. 45 CFR 1609.2.

### Section 1609.3 General Requirements

LSC proposes a technical change to the heading of § 1609.3 to more accurately reflect the topic it addresses. Section 1609.3 briefly sets forth the general prohibition on a recipient’s using LSC funds to provide legal assistance in a fee-generating case. The bulk of § 1609.3, however, prescribes the circumstances and procedures under which recipients may accept fee-generating cases. To more aptly reflect the substance of § 1609.3, LSC proposes to rename § 1609.3 “Authorized representation in a fee-generating case.”

### Section 1609.4 Accounting For and Use of Attorneys’ Fees

LSC proposes to revise part 1609’s accounting requirement for receipt of attorneys’ fees. Currently § 1609.4 requires that attorneys’ fees received by a recipient supported at least in part by LSC funds be allocated to the LSC grant account in the proportion to which the LSC funds were used. § 1609.4(a). This language requires this accounting only for attorneys’ fees received by the *recipient*, which could be interpreted to mean that attorneys’ fees awarded to a staff attorney in his or her own name need not be remitted to the recipient or be subject to the accounting requirement.

To clarify that attorneys’ fee awards received by either the recipient or a recipient’s staff attorney are subject to the accounting requirement, LSC proposes the following revisions to § 1609.4. First, LSC proposes to require recipients to file any petitions for attorneys’ fees in the name of the recipient and not in the name of any staff attorney. To the extent a jurisdiction may allow an attorneys’ fee petition in the recipient’s name rather than a staff attorney, this change would help ensure that the court would award attorneys’ fees to the organization and not to an individual staff attorney. LSC proposes placing this addition as § 1609.4(a), and redesignating the current paragraphs (a) and (b) of this section as paragraphs (b) and (c), respectively.

Second, LSC proposes to state explicitly that, in the event a jurisdiction requires that attorneys’ fee

petitions be made in a staff attorney’s name, the staff attorney must remit the award to the recipient, which must then allocate an award of attorneys’ fees to its LSC grant account in proportion to the amount of LSC funds used to obtain the award. LSC believes that these two changes will accommodate variations in state and local rules governing the award of attorneys’ fees and help ensure that any attorneys’ fee awards supported by LSC funds are adequately credited to LSC funds.

Finally, to more aptly describe the substance of § 1609.4, LSC proposes changing the heading to “Requesting and receiving attorneys’ fees.”

### Section 1609.5 Acceptance of Reimbursement From a Client

To create consistency in the verbs used in the headings for § 1609.4 and § 1609.5 and more aptly describe the substance of the latter section, LSC proposes to change the heading to “Receiving reimbursement from a client.” LSC proposes no substantive changes to this section.

### Section 1609.6 Recipient Policies, Procedures and Recordkeeping

LSC proposes to make no changes to this section.

## List of Subjects in 45 CFR Part 1609

Administrative practice and procedure, Grant programs—law, Legal services.

For the reasons set forth in the preamble, the Legal Services Corporation proposes to amend 45 CFR part 1609 as follows:

## PART 1609—FEE-GENERATING CASES

■ 1. The authority citation for part 1609 continues to read as follows:

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

■ 2. Revise paragraph (a) and add paragraph (b)(3) to § 1609.2 to read as follows:

### § 1609.2 Definitions.

(a) *Fee-generating case* means any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client.

(b) \* \* \*

(3) A recipient provides only advice and counsel or limited services, as those terms are defined in 45 CFR 1611.1(a) and (e), to an eligible client.

■ 3. Revise the heading of § 1609.3 to read as follows:

**§ 1609.3 Authorized representation in a fee-generating case.**

\* \* \* \* \*

**■ 4. Revise § 1609.4 to read as follows:****§ 1609.4 Requesting and receiving attorneys' fees.**

(a) Any petition seeking attorneys' fees for representation supported in whole or in part with funds provided by LSC, shall, to the extent permitted by law, be filed in the name of the recipient.

(b) Attorneys' fees received by a recipient or an employee of a recipient for representation supported in whole or in part with funds provided by LSC shall be allocated to the fund in which the recipient's LSC grant is recorded in the same proportion that the amount of LSC funds expended bears to the total amount expended by the recipient to support the representation.

(c) Attorneys' fees received shall be recorded during the accounting period in which the money from the fee award is actually received by the recipient and may be expended for any purpose permitted by the LSC Act, regulations and other law applicable at the time the money is received.

**■ 5. Revise the heading of § 1609.5 to read as follows:****§ 1609.5 Receiving reimbursement from a client.**

\* \* \* \* \*

Dated: February 6, 2017.

**Stefanie K. Davis,**

*Assistant General Counsel.*

[FR Doc. 2017-02717 Filed 2-10-17; 8:45 am]

**BILLING CODE 7050-01-P**

**DEPARTMENT OF TRANSPORTATION****Federal Railroad Administration****49 CFR Parts 236 and 238**

[Docket No. FRA-2013-0060; Notice No. 2]

**RIN 2130-AC46**

**Passenger Equipment Safety Standards; Standards for Alternative Compliance and High-Speed Trainsets**

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM); reopening of comment period.

**SUMMARY:** On December 6, 2016, FRA published an NPRM proposing to amend its regulations on passenger equipment safety standards. By this document, FRA is reopening the NPRM's comment period, which closed February 6, 2017.

**DATES:** The comment period for the NPRM, (81 FR 88006, Dec. 6, 2016), is reopened. Written comments must be received by March 21, 2017. Comments received after that date will be considered to the extent practicable.

**ADDRESSES:** *Comments:* Comments related to Docket No. FRA-2013-0060 may be submitted by any of the following methods:

- *Web site:* The Federal eRulemaking Portal, [www.regulations.gov](http://www.regulations.gov). Follow the Web site's online instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12-140, Washington, DC 20590.
- *Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12-140, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Instructions:* All submissions must include the agency name, docket name, and docket number or Regulatory Identification Number (RIN) for this rulemaking (2130-AC46). Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

*Docket:* To access the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or visit the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12-140, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Devin Rouse, Mechanical Engineer, Passenger Rail Division, Office of Railroad Safety, Federal Railroad Administration, 1200 New Jersey Avenue SE., Mail Stop 25, Washington,

DC 20590 (telephone: 202-493-6185); or Mr. Michael Hunter, Trial Attorney, Office of Chief Counsel, Federal Railroad Administration, 1200 New Jersey Avenue SE., Mail Stop 10, Washington, DC 20590 (telephone: 202-493-0368).

**SUPPLEMENTARY INFORMATION:** The NPRM addresses three main subject areas: (1) Tier III trainset safety standards; (2) alternative crashworthiness and occupant protection performance requirements for Tier I passenger equipment; and (3) the maximum authorized speed for Tier II passenger equipment.

In a December 12, 2016 letter, the American Public Transportation Association (APTA) requested a 30-day extension of the NPRM's comment period. APTA stated it needs additional time to thoroughly review the NPRM and review and consolidate comments on the NPRM from its members and affiliates.

As the comment period for the NPRM closed on February 6, 2017, FRA is reopening the comment period consistent with guidance issued January 20, 2017, intended to provide the new Administration an adequate opportunity to review new and pending regulations. Written comments must be received by March 21, 2017. Comments received after that date will be considered to the extent practicable.

**Privacy Act**

Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), available at [www.dot.gov/privacy](http://www.dot.gov/privacy).

**Authority:** 49 U.S.C. 20103, 20107, 20133, 20141, 20302-20303, 20306, 20701-20702, 21301-21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

Issued in Washington, DC, on February 8, 2017.

**Patrick Warren,**

*Executive Director.*

[FR Doc. 2017-02877 Filed 2-10-17; 8:45 am]

**BILLING CODE 4910-06-P**