

EPA APPROVED ALBUQUERQUE/BERNALILLO COUNTY, NM REGULATIONS

State citation	Title/subject	State approval/ effective date	EPA approval date	Explanation
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New Mexico Administrative Code (NMAC) Title 20—Environment Protection, Chapter 11—Albuquerque/Bernalillo County Air Quality Control Board				
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Part 102 (20.11.102 NMAC)	Oxygenated Fuels	12/11/2005	2/11/2010 [Insert FR page number where document begins].	
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[FR Doc. 2010-2792 Filed 2-10-10; 8:45 am]
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LEGAL SERVICES CORPORATION
45 CFR Parts 1609, 1610, and 1642

Attorneys' Fees; Fee-Generating Cases; Use of Non-LSC Funds, Transfers of LSC Funds, Program Integrity

AGENCY: Legal Services Corporation.
ACTION: Interim final rule and request for comments.

SUMMARY: LSC is repealing its regulatory prohibition on the claiming of, and the collection and retention of attorneys' fees pursuant to Federal and State law permitting or requiring the awarding of such fees. This action is taken in accordance with the elimination on the statutory prohibition on attorneys' fees in LSC's FY 2010 appropriation legislation. LSC is also moving provisions on accounting for and use of attorneys' fees and acceptance of reimbursements from clients from Part 1642 (which is being eliminated) to Part 1609 of LSC's regulations. LSC is also making technical changes to Part 1609 and Part 1610 of its regulations to remove cross references to the obsolete statutory and regulatory citations.

DATES: This Interim Final Rule is effective March 15, 2010. Comments on this Interim Final Rule are due on March 15, 2010.

ADDRESSES: Written comments may be submitted by mail, fax or e-mail to Mattie Cohan, Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 3333 K Street, NW., Washington, DC 20007; 202-295-1624 (ph); 202-337-6519 (fax); mcohan@lsc.gov.

FOR FURTHER INFORMATION CONTACT: Mattie Cohan, Senior Assistant General Counsel, 202-295-1624 (ph); mcohan@lsc.gov.

SUPPLEMENTARY INFORMATION:

Background

LSC's FY 1996 appropriation legislation provided that none of the funds appropriated in that Act could be used to provide financial assistance to any person or entity (which may be referred to in this section as a recipient) that claims (or whose employee claims), or collects and retains, attorneys' fees pursuant to any Federal or State law permitting or requiring the awarding of such fees. Section 504(a)(13), Public Law 104-134, 110 Stat. 1321 (April 26, 1996). Since appropriations legislation expires with the end of the Fiscal Year to which it applies, for the statutory restriction on attorneys' fees to remain in place by statute, it needed to be, and was, carried forth in each subsequent appropriation law by reference. See, e.g., Consolidated Appropriations Act, 2009, Public Law 111-8, 123 Stat. 524 (March 11, 2009).

LSC adopted regulations found in 1996 and 1997 which implemented the statutory attorneys' fees restriction. 45 CFR part 1642; 61 FR 45762 (August 29, 1996); 62 FR 25862 (May 12, 1997). The attorneys' fees regulation restates the basic prohibition on claiming or collecting and retaining attorneys' fees, providing that except as permitted by § 1642.4 (providing exceptions cases filed prior to the prohibition and for cases undertaken by private attorneys providing pro bono services in connection with a recipient's private attorney involvement program), no recipient or employee of a recipient may claim, or collect and retain attorneys' fees in any case undertaken on behalf of a client of the recipient. 46 CFR 1642.3. The regulation provides further

guidance to recipients by, among other things, providing a regulatory definition of attorneys' fees; setting forth rules for the applicability of the restriction to private attorneys providing legal assistance to a recipient's private attorney involvement program; and providing express authority to recipients to accept reimbursements of costs from a client. The regulation also sets forth rules for the accounting for and use of those attorneys' fees which recipients are not prohibited from claiming, collecting or retaining.

On December 16, 2009 President Obama signed the Consolidated Appropriations Act of 2010 into law. Public Law 111-117. This act provides LSC's appropriation for FY 2010. Like its predecessors, this law incorporates the various restrictions first imposed by the FY 1996 legislation by reference. However, section 533 of that same law also provides that Section 504(a) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1996 (as contained in Pub. L. 104-134) is amended by striking paragraph (13). Taken together, these provisions serve to incorporate by reference all of the restrictions in section 504 of the FY 1996 law, except for paragraph (a)(13), which contained the restriction on attorneys' fees. As such, there is no current statutory restriction on LSC providing the money FY 2010 appropriated to it to any recipient which claims, or collects and retains attorneys' fees.

The current law lifts the statutory restriction, but does not affirmatively provide recipients the right to claim or collect and retain attorneys' fees, nor does it prohibit LSC from restricting a recipient's ability to claim or collect and retain attorneys' fees. As such, in accordance with LSC inherent regulatory authority, the regulation

remains in place notwithstanding the lifting of the statutory restriction unless and until repealed.

Repeal of Part 1642

At its Board Meeting on January 30, 2010, the LSC Board of Director's determined that retaining the regulatory restriction is no longer either necessary or appropriate. LSC's determination reflects a number of considerations. First, LSC notes that the lifting of the restriction indicates that Congress itself has had a change of heart regarding this restriction. Although Congress did not prohibit LSC from retaining the restriction, the fact that Congress chose not to reimpose this particular restriction (and no others) does indicate that support for this restriction has waned and that the policy arguments in support of the original restriction are no longer reflective of the will of Congress. Rather, the legislative history suggests that Congress chose not to reimpose the attorneys' fees restriction in express recognition of the fact that the restriction imposes several significant burdens on recipient. *See*, H. Rpt. 111–149 at p. 163; Transcript of Hearing of the Subcommittee on Commerce, Justice and Science of the House Committee of Appropriations of April 1, 2009 at pp. 220–223. As such, LSC believes that repealing the regulatory restriction is consistent with the expectations of Congress.

Moreover, LSC agrees that the restriction imposes unnecessary burdens on recipients and places clients at a disadvantage with respect to other litigants. Specifically, the ability to make a claim for attorneys' fees is often a strategic tool in the lawyers' arsenal to obtain a favorable settlement from the opposing side. Restricting a recipient's ability to avail itself of this strategic tool puts clients at a disadvantage and undermines clients' ability to obtain equal access to justice. The attorneys' fees restriction can also be said to undermine one of the primary purposes of fee-shifting statutes, namely to punish those who have violated the rights of persons protected under such statutes. In addition, in a time of extremely tight funding, the inability of a recipient to obtain otherwise legally available attorneys' fees places an unnecessary financial strain on the recipient. If a recipient could collect and retain attorneys' fees, it would free up other funding of the recipient to provide services to additional clients and help close the justice gap.¹ More

fundamental, the restriction results in clients of grantees being treated differently and less advantageously than all other private litigants, which LSC believes is unwarranted and fundamentally at odds with the Corporation's Equal Justice mission.

This action lifts the regulatory prohibition on claiming, or collecting and retaining attorneys' fees available under Federal or State law permitting or requiring the awarding of such fees. Accordingly as of the effective date of the regulation, recipients will be permitted make claims for attorneys' fees in any case in which they are otherwise legally permitted to make such a claim.² Recipients will also be permitted to collect and retain attorneys' fees whenever such fees are awarded to them.

With the repeal of the restriction, recipients will be permitted to claim and collect and retain attorneys' fees with respect to any work they have performed for which fees are available to them, without regard to when the legal work for which fees are claimed or awarded was performed. LSC considered whether recipients should be limited seek or obtain attorneys fees related to "new" work; that is, work done only as of the date of the statutory change or the effective date of this Interim Final Rule. LSC rejected that position because the attorneys' fees prohibition applies to the particular activity of seeking and receiving attorneys' fees, but is irrelevant to the permissibility of the underlying legal work. Limiting the ability of recipients to seek and receive attorneys' fees on only future case work would create a distinction between some work and other work performed by a recipient, *all of which was permissible when performed*. LSC finds such a distinction to be artificial and not necessary to effectuate Congress' intention.

LSC also believes that not limiting the work for which recipients may now seek or obtain attorneys' fees will best afford recipients the benefits of the lifting of the restriction. There may well be a number of ongoing cases where the

generating cases) are not affected by the lifting of the statutory ban on the claiming and collecting and retention of attorneys' fees and would not be affected by any regulatory amendment to part 1642. Accordingly, amendment of part 1642 would not have an adverse impact on the private bar nor provide any incentive for recipients to seek out fee-generating cases at the expense of the needs of other clients.

² Until this Interim Final Rule becomes effective, LSC has adopted a policy under which it will exercise its enforcement discretion and not take enforcement action against any recipient that filed a claim for or collected and retained attorneys' fees between the period of December 16, 2009 and the effective date of the regulation.

newly available option of the potentiality of attorneys' fees will still be effective to level the playing field and afford recipients additional leverage with respect to opposing counsel in those cases. Likewise, being able to obtain attorneys' fees in cases in which prior work has been performed would likely help relieve more financial pressure on recipients than a "new work only" implementation choice would because it would increase sources and amount of work for which fees might potentially be awarded.

Amendment of Part 1609 and Part 1610

As noted above, part 1642 contains two provisions not directly related to the restriction on claiming and collecting attorneys' fees. These provisions address the accounting for and use of attorneys' fees and the acceptance of reimbursement from a client. 45 CFR 1642.5 and 1642.6. These provisions used to be incorporated into LSC's regulation on fee-generating cases at 45 CFR part 1609, but were separated out and included in the new part 1642 regulation when it was adopted. Amending these provisions is not necessary to effectuate the lifting of the attorneys' fees restriction and they provide useful guidance to recipients. In fact, with recipients likely collecting and retaining fees more often than they have since 1996, the provision on accounting for and use of attorneys' fees will be of greater importance than it has been. Retaining these provisions would continue to provide clear guidance to the benefit of both recipients and LSC. Accordingly, LSC is moving these provisions back into part 1609 as §§ 1609.4 and 1609.5, with only technical amendment to the regulatory text to remove references to part 1642. The current § 1609.4 will be renumbered as 1609.6.

LSC is also making technical conforming amendments to delete references to part 1642 and the attorneys' fees statutory prohibition that are now obsolete. Having obsolete and meaningless regulatory provisions is not good regulatory practice and can at the very least lead to unnecessary confusion. Accordingly, LSC is deleting paragraph (c) of section 1609.3, General requirements, to eliminate that paragraph's reference to the attorneys' fees restriction in part 1642. Similarly, LSC is making a technical conforming amendment to its regulation at part 1610. Part 1610 sets forth in regulation the application of the appropriations law restrictions to a recipient's non-LSC funds. Section 1610.2 sets forth the list of the restrictions as contained in section 504 of the FY 1996

¹ It should be noted that the LSC Act's restriction on recipients taking fee-generating cases (and the implementing regulatory restriction on fee-

appropriations act, and the implementing LSC regulations which are applicable to a recipient's non-LSC funds. Subsection (b)(9) is the provision that references the attorneys' fees restriction (504(a)(13) and part 1642) and is now obsolete.

Request for Comments

LSC is implementing these changes as an Interim Final Rule with a Request for Comments. LSC believes this action is authorized and appropriate because LSC is removing (and not imposing any additional) prohibitions or requirements on recipients and is doing so in response to a specific statutory change removing a similar prohibition. LSC believes that this course of action will provide necessary clarity to recipients and will permit recipients and their clients to benefit from the statutory and regulatory changes at the earliest possible date. However, LSC is seeking comment on the changes being made herein and anticipates issuing a Final Rule discussing any comments. Interested parties may submit comments as provided herein. Comments are due to LSC no later than March 15, 2010.

List of Subjects

45 CFR Parts 1609 and 1610

Grant programs—Law, Legal services.

45 CFR Part 1642

Grant programs—Law, Lawyers, Legal services.

■ For reasons set forth above, and under the authority of 42 U.S.C. 2996g(e), LSC hereby amends 45 CFR chapter XVI as follows:

PART 1609—FEE-GENERATING CASES

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

Authority: 42 U.S.C. 2996f(b)(1) and 2996e(c)(6).

§ 1609.3 [Amended]

■ 2. Paragraph (c) of § 1609.3, is removed.

§ 1609.4 [Redesignated as § 1609.6]

■ 3. Section 1609.4 is redesignated as § 1609.6.

■ 4. A new § 1609.4 is added to read as follows:

§ 1609.4 Accounting for and use of attorneys' fees.

(a) Attorneys' fees received by a recipient for representation supported in whole or in part with funds provided by the Corporation shall be allocated to the fund in which the recipient's LSC grant is recorded in the same proportion

that the amount of Corporation funds expended bears to the total amount expended by the recipient to support the representation.

(b) 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. A new § 1609.5 is added to read as follows:

§ 1609.5 Acceptance of reimbursement from a client.

(a) When a case results in recovery of damages or statutory benefits, a recipient may accept reimbursement from the client for out-of-pocket costs and expenses incurred in connection with the case, if the client has agreed in writing to reimburse the recipient for such costs and expenses out of any such recovery.

(b) A recipient may require a client to pay court costs when the client does not qualify to proceed *in forma pauperis* under the rules of the jurisdiction.

PART 1610—USE OF NON-LSC FUNDS, TRANSFERS OF LSC FUNDS, PROGRAM INTEGRITY

■ 6. The authority citation for part 1610 is revised to read as follows:

Authority: 42 U.S.C. 2996i; Pub. L. 104–208, 110 Stat. 3009; Pub. L. 104–134, 110 Stat. 1321; Pub. L. 111–117; 123 Stat. 3034.

§ 1610.2 [Amended]

■ 7. Section 1610.2 is amended by removing paragraph (b)(9) and redesignating paragraphs (b)(10) through (b)(14) as paragraphs (b)(9) through (b)(13) respectively.

PART 1642—[REMOVED AND RESERVED]

■ 8. Part 1642 is removed and reserved.

Victor M. Fortuno,
Interim President.

[FR Doc. 2010–2895 Filed 2–10–10; 8:45 am]

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DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

47 CFR Part 300

[Docket Number 100125044–0044–01]

RIN 0660–AA10

Revision to the Manual of Regulations and Procedures for Federal Radio Frequency Management

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Final Rule.

SUMMARY: The National Telecommunications and Information Administration (NTIA) hereby makes certain changes to its regulations, which relate to the public availability of the Manual of Regulations and Procedures for Federal Radio Frequency Management (NTIA Manual). Specifically, the NTIA updates the version of the Manual of Regulations and Procedures for Federal Radio Frequency Management with which Federal agencies must comply when requesting use of the radio frequency spectrum.

EFFECTIVE DATE: This regulation is effective on February 11, 2010. The incorporation by reference of certain publications listed in the rule is approved by the Director of the **Federal Register** as of February 11, 2010.

ADDRESSES: A reference copy of the NTIA Manual, including all revisions in effect, is available in the Office of Spectrum Management, 1401 Constitution Avenue, NW, Room 1087, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: William Mitchell, Office of Spectrum Management at (202) 482–8124 or wmitchell@ntia.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

NTIA authorizes the U.S. Government's use of the radio frequency spectrum. 47 U.S.C. § 902(b)(2)(A). As part of this authority, NTIA developed the NTIA Manual to provide further guidance to applicable Federal agencies. The NTIA Manual is the compilation of policies and procedures that govern the use of the radio frequency spectrum by the U.S. Government. Federal government agencies are required to follow these policies and procedures in their use of the spectrum.

Part 300 of title 47 of the Code of Federal Regulations provides