

government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely disapproves certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, Executive Order 13132 does not apply to this action.

*Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP EPA is proposing to disapprove would not apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

*Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed SIP disapproval under section 110 and subchapter I, part D of the CAA will not in-and-of itself create any new regulations but simply disapproves certain State requirements for inclusion into the SIP.

*Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 (66 FR 28355, May 22,

2001) because it is not a significant regulatory action under Executive Order 12866.

*National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the CAA.

*Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629, Feb. 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submissions, EPA’s role is to approve or disapprove State choices, based on the criteria of the CAA. Accordingly, this action merely proposes to disapproves

certain State requirements for inclusion into the SIP under section 110 and subchapter I, part D of the CAA and will not in-and-of itself create any new requirements. Accordingly, it does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898.

*Statutory Authority*

The statutory authority for this action is provided by sections 110 of the CAA, as amended (42 U.S.C. 7410).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter.

Dated: January 28, 2011.

**Susan Hedman,**

*Regional Administrator, Region 5.*

[FR Doc. 2011–2497 Filed 2–3–11; 8:45 am]

**BILLING CODE 6560–50–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

**44 CFR Part 67**

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1167]

**Proposed Flood Elevation Determinations**

*Correction*

In proposed rule document 2010–31151 beginning on page 77598 in the issue of Monday, December 13, 2010, make the following correction:

**§ 67.4 [Corrected]**

On page 77599, in § 67.4, in the table St. Charles County, Missouri, and Incorporated Areas, the 12th and 13th entries are corrected to read as set forth below:

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

**St. Charles County, Missouri, and Incorporated Areas**

*	*	*	*	*	*
Lake Sainte Louise .....	Entire shoreline within community .....	None	+546	City of Lake St. Louis.	
Little Dardenne Creek .....	At the confluence with Dardenne Creek .....	+553	+554	Unincorporated Areas of St. Charles County.	
	Approximately 0.9 mile upstream of Morrison Lane ....	None	+719		

[FR Doc. C1-2010-31151 Filed 2-3-11; 8:45 am]  
BILLING CODE 1505-01-D

**LEGAL SERVICES CORPORATION**

**45 CFR Part 1609**

**Fee-Generating Cases**

**AGENCY:** Legal Services Corporation.  
**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This Notice of Proposed Rulemaking (NPRM) proposes to amend the Legal Services Corporation’s regulation on fee-generating cases to clarify that it applies only to LSC and private non-LSC funds.

**DATES:** Comments on this NPRM are due on March 7, 2011.

**ADDRESSES:** Written comments may be submitted by mail, fax or email 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](mailto:mcohan@lsc.gov).

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

**SUPPLEMENTARY INFORMATION:**

**Background**

Generally, the substantive LSC restrictions on LSC recipients fall into two categories: “entity restrictions” and “LSC funds restrictions.” “Entity restrictions” apply to all activities of a recipient regardless of the funding source (except for the use of tribal funds as intended) and generally originate in section 504 of LSC’s FY 1996 appropriations act (the provisions of which have been carried forward in subsequent appropriations). In contrast,

“LSC funds restrictions” usually originate from the LSC Act and apply to the use of LSC funds and private funds, but not to tribal or public non-LSC funds used as intended. LSC’s regulation at 45 CFR part 1609, Fee-Generating Cases, is based on § 1007(b)(1) of the LSC Act, which provides that no funds made available by the Corporation may be used to provide legal assistance, except as per LSC regulation, with respect to any fee-generating case. The fee-generating case provision of the LSC Act is an “LSC funds restriction.” However, § 1609.3(a), as currently written, is not limited to the use of LSC funds. Rather it reads as an “entity restriction” reaching all of an LSC recipient’s funds. This language follows the same structure as other entity restrictions such as part 1617—Class Actions, which states that “Recipients are prohibited from initiating or participating in any class action.” 45 CFR 1617.3.

From its initial adoption in 1976 through 1996 Part 1609 followed the language of the LSC Act and was expressly applied as an LSC funds restriction. At that time, § 1609.3 provided that: “[n]o recipient shall use funds received from the Corporation to provide legal assistance in a fee-generating case unless” one of the regulatory exceptions applied. 41 FR 18528 (proposed rule May 5, 1976), 41 FR 38505 (final rule Sept. 10, 1976), and 49 FR 19656 (final rule May 9, 1984) (the last final rule prior to 1996) (emphasis added).

In 1996 LSC revised part 1609 in conjunction with the enactment of the part 1642 entity prohibition on recipients claiming or collecting and retaining attorneys’ fees. In the revision the language was changed from the prior “Corporation funds” prohibition to the more general “no recipient” entity

prohibition. Notably though, there is no discussion in the preamble to the proposed or final regulation of any significant substantive change in scope. 61 FR 45765 (proposed rule August 29, 1996) and 62 FR 19398 (final rule April 21, 1997). Nor is there any such discussion in any of the relevant LSC Board transcripts. Rather, the only mention of the change in language is the following discussion of the revised § 1609.3:

This section defines the limits within which recipients may undertake fee-generating cases. This new section reorganizes and replaces §§ 1609.3 and 1609.4 of the current rule *in order to make them easier to understand*.

*Id.* (appearing in the preambles to both the proposed and final rules) (emphasis added). The regulatory history contains extensive discussions of policy and regulatory nuances regarding the then-new attorneys’ fees provisions and their relationship with the fee-generating case restriction in part 1609. These discussions involved the LSC Board, LSC management, the LSC OIG and representatives of recipients. Considering the attention paid to this and the other regulations implemented in 1996 and 1997, it seems very unusual that LSC would adopt such a significant substantive change to part 1609 without any discussion, any description of the change in the preamble to the rule, or any comments by the OIG or representatives of recipients.

Notwithstanding the 1997 regulatory change, LSC has not applied part 1609 as an entity restriction, but has rather continued to apply it as an restriction applying only to a recipient’s LSC and private non-LSC funds. For example, the LSC Compliance Supplement to the LSC Audit Guide, which provides guidance to auditors regarding recipient compliance with the substantive LSC