

notice advising the Commission of such change.

(4)(i) Any exemption from the requirements of § 4.21, 4.22, 4.23, 4.24, 4.25 or 4.26 claimed hereunder with respect to a pool shall not affect the obligation of the commodity pool operator to comply with all other applicable provisions of Part 4, the Act and the Commission's rules and regulations, with respect to the pool and any other pool the pool operator operates or intends to operate.

(ii) Any exemption from the requirements of § 4.31, 4.33, 4.34, 4.35 or 4.36 claimed hereunder shall not affect the obligation of the commodity trading advisor to comply with all other applicable provisions of Part 4, the Act and the Commission's rules and regulations, with respect to any qualified eligible person and any other client to which the commodity trading advisor provides or intends to provide commodity interest trading advice.

(e) *Insignificant deviations from a term, condition or requirement of § 4.7.*

(1) A failure to comply with a term or condition of § 4.7 will not result in the loss of the exemption with respect to a particular pool or client if the commodity pool operator or the commodity trading advisor relying on the exemption shows that:

(i) The failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular qualified eligible person;

(ii) The failure to comply was insignificant with respect to the exempt pool as a whole or to the particular exempt account; and

(iii) A good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of § 4.7.

(2) A transaction made in reliance on § 4.7 must comply with all applicable terms, conditions and requirements of § 4.7. Where an exemption is established only through reliance upon paragraph (e)(1) of this section, the failure to comply shall nonetheless be actionable by the Commission.

PART 30—FOREIGN FUTURES AND OPTIONS TRANSACTIONS

3. The authority citation for part 30 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6, 6c and 12a, unless otherwise noted.

4. Section 30.6 is amended by revising paragraph (b) to read as follows:

§ 30.6 Disclosure.

* * * * *

(b) *Commodity pool operators and commodity trading advisors.* (1) With

respect to persons who satisfy the requirements of qualified eligible persons, as defined in § 4.7(a) of this chapter:

(i) A commodity pool operator registered or required to be registered under this part, or exempt from registration pursuant to § 30.5, may not, directly or indirectly, engage in any of the activities described in § 30.4(c) unless the pool operator, at or before the time it engages in such activities, first provides each prospective qualified eligible person with the Risk Disclosure Statement set forth in § 4.24(b)(2) of this chapter and the statement in § 4.7(b)(1)(i) of this chapter;

(ii) A commodity trading advisor registered or required to be registered under this part, or exempt from registration pursuant to § 30.5, may not, directly or indirectly, engage in any of the activities described in § 30.4(d) unless the trading advisor, at or before the time it engages in such activities, first provides each qualified eligible person with the Risk Disclosure Statement set forth in § 4.34(b)(2) of this chapter and the statement in § 4.7(c)(1)(i) of this chapter.

(2) With respect to persons who do not satisfy the requirements of qualified eligible persons, as defined in § 4.7(a) of this chapter:

(i) A commodity pool operator registered or required to be registered under this part, or exempt from registration pursuant to § 30.5, may not, directly or indirectly, engage in any of the activities described in § 30.4(c) unless the pool operator, at or before the time it engages in such activities, first provides each prospective participant with the Disclosure Document required to be furnished to customers or potential customers pursuant to § 4.21 of this chapter and files the Disclosure Document in accordance with § 4.26 of this chapter;

(ii) A commodity trading advisor registered or required to be registered under this part, or exempt from registration pursuant to § 30.5, may not, directly or indirectly, engage in any of the activities described in § 30.4(d) unless the trading advisor, at or before the time it engages in such activities, first provides each prospective client with the Disclosure Document required to be furnished to customers or potential customers pursuant to § 4.31 of this chapter and files the Disclosure Document in accordance with § 4.36 of this chapter.

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PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

5. The authority citation for part 140 continues to read as follows:

Authority: 7 U.S.C. 4a and 12a.

§ 140.99 [Amended]

6. In § 140.99, paragraphs (i)(A) and (B) are correctly designated as paragraphs (i)(1) and (2). In paragraph (i)(1), the phrase “§§ 4.5, 4.7(a), 4.7(b), 4.12(b), 4.13(b) and 4.14(a)(8) of this chapter” is revised to read “§§ 4.5, 4.7(d), 4.12(b), 4.13(b) and 4.14(a)(8) of this chapter”.

PART 180—ARBITRATION OR OTHER DISPUTE SETTLEMENT PROCEDURES

7. The authority citation for part 180 continues to read as follows:

Authority: 7 U.S.C. 6c, 6d, 6f, 6k, 7a, 12a, and 21, unless otherwise noted.

8. Section 180.3 is amended by revising paragraph (b)(2)(vi) to read as follows:

§ 180.3 Voluntary procedure and compulsory payments.

* * * * *

(b) * * *

(2) * * *

(vi) A person who is a “qualified eligible person” as defined in § 4.7(a) of this chapter.

* * * * *

Issued in Washington, D.C., on July 27, 2000, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–19445 Filed 8–3–00; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 0

[USMS NO. 100F; AG Order No. 2316–2000]

RIN 1105–AA64

Revision to United States Marshals Service Fees for Services

AGENCY: United States Marshals Service, Justice.

ACTION: Final rule.

SUMMARY: This rule revises the United States Marshals Service fees to reflect current costs to the United States Marshals Service for service of process in Federal court proceedings. A proposed rule with invitation to comment was published in the Federal Register on December 7, 1999, at 64 FR

68307. No comments were received within the 60-day comment period. Accordingly, the proposed rule is finalized without change.

DATES: Effective September 5, 2000.

FOR FURTHER INFORMATION CONTACT: Joe Lazar, Associate General Counsel, United States Marshals Service, 600 Army Navy Drive, CS-3, Arlington, Virginia 22202, telephone number (202) 307-9054.

SUPPLEMENTARY INFORMATION:

What Legal Authority does the United States Marshals Service Have to Charge Fees?

The Attorney General must establish fees to be taxed and collected for certain services rendered by the United States Marshals Service in connection with Federal court proceedings. 28 U.S.C. § 1921(b). These services include, but are not limited to, serving writs, subpoenas, or summonses, preparing notices or bills of sale, keeping attached property, and certain necessary travel. To the extent practicable, these fees shall reflect the actual and reasonable costs of the services provided. The Attorney General initially established the fee schedule in 1991 based on the actual costs, *e.g.*, salaries, overhead, etc., of the services rendered and the hours expended at that time. See 56 FR 2436 (January 23, 1991). Due to an increase in the salaries and benefits of United States Marshals Service personnel over time, the current fee schedule is inadequate and no longer reflects the actual and reasonable costs of the services rendered.

What Federal Cost Accounting and Fee Setting Standards and Guidelines are Being Used?

When developing fees for services, the United States Marshals Service adheres to the principles contained in OMB Circular No. A-25, User Charges. OMB Circular A-25 states that, as a general policy, a “user charge * * * will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public.”

The guidance contained in OMB Circular A-25 is applicable to the extent that it is not inconsistent with any Federal statute. Specific legislative authority to charge fees for services takes precedence over OMB Circular A-25 when the statute “prohibits assessment of a user charge on a service or addresses an aspect of the user charge (*e.g.*, who pays the charge; how much is the charge; where collections are deposited).” When a statute does not address issues of how to calculate fees

or what costs to include in the fee calculation, Federal agencies must follow the principles and guidance contained in OMB Circular A-25 to the fullest extent allowable. The guidance directs Federal agencies when calculating fees to charge the “full cost” of providing services that provide a specific benefit to recipients. OMB Circular A-25 defines full cost as including “all direct and indirect costs to any part of the Federal Government of providing a good, resource, or service. These costs include, but are not limited to, an appropriate share of”:

- Direct or indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement;
- Physical overhead, consulting, and other indirect costs including material and supply costs, utilities, insurance, travel, and rents or imputed rents on land, buildings, and equipment;
- The management and supervisory costs; and
- The costs of enforcement, collection, research, establishment of standards, and regulation.

What Processes Were Used to Determine the Amount of the Fee Revision?

As previously stated, the Attorney General initially established the fee schedule in 1991 based on the average salaries, benefits, and overhead of the Deputy U.S. Marshals who executed process on behalf of a requesting party. The 1991 rates are:

- For each item served (or service attempted) in person:
- (a) Within two hours, during published duty hours—a minimum charge of \$40 per Deputy (or guard). If necessary, for each associated additional hour, or portion thereof—\$20 per Deputy (or guard) per additional hour.
 - (b) Within two hours, after published duty hours—a minimum charge of \$50 per Deputy (or guard). If necessary, for each associated additional hour, or portion thereof—\$25 per Deputy (or guard) per additional hour.

In addition, the Attorney General established a flat fee of \$3 for each item served by mail or forwarded for service in another judicial district.

In November 1995, the Department of Justice, Office of Inspector General, issued an audit report on the United States Marshals Service’s Collection of Service Fees and Commissions (Audit Report 96-01).¹ In the report, the Office of Inspector General recommended that the United States Marshals Service

determine whether the fee schedule reflects actual and reasonable costs of the services provided. As a result of the audit report, in 1998, the United States Marshals Service conducted an analysis to determine whether, in light of the increase in salaries and expenses of its workforce over time, the existing fee schedule accurately reflects the costs of serving process. The following cost module reflects the average hourly cost of serving process in person on behalf of a requesting party.

	Cost module
Hourly Wage	\$27.53
Fringe Benefits	11.01
Indirect Costs	6.94
Total Personnel Costs	\$45.48

The hourly wage was determined by dividing the annual salary, including locality pay, of the average Deputy U.S. Marshal in 1998 who serves process into the total work hours in a year. The cost of Law Enforcement Availability Pay is also factored into the hourly wage of a Deputy U.S. Marshal.² The fringe benefits rate reflected 40 percent of wage costs. Finally, the indirect costs, which are reflective of the costs of administrative services, including management/supervisory compensation and benefits, depreciation, utilities, supplies, and equipment, are approximately 18 percent of the total wage and benefits costs.³ As a result of the cost module, the United States Marshals Service has determined that the existing fee schedule no longer reflects the actual and reasonable costs of serving process.

The total personnel costs of serving process were rounded to the nearest whole dollar. Thus, in order to recover the actual and reasonable costs of serving process, the United States Marshals Service will be charging \$45 per hour (or portion thereof) for each item served by one Deputy U.S. Marshal. In order to simplify the calculation of the fees, the United States Marshals Service is eliminating the minimum charge for serving process within two hours and, instead, will

² In 1994, Congress passed the Law Enforcement Availability Pay Act, Pub. L. No. 103-329, § 633, 108 Stat. 2425 (1994) (codified at 5 U.S.C. § 5545a), which provides that law enforcement officers, such as Deputy U.S. Marshals, who are required to work unscheduled hours in excess of each regular work day, are entitled to a 25% premium pay in addition to their base salary.

³ The indirect cost rate was derived by determining the proportion of management costs expended by the United States Marshals Service relative to direct program expenses assumed by the agency in Fiscal Year 1998.

¹ Copies of the audit report are available at www.usdoj.gov/oig/au9601/au9601.htm.

charge a fee based on a straight hourly rate for service.

The United States Marshals Service also conducted a survey of a representative sampling of its district offices to determine whether the \$3 flat fee for mailing process reflected the actual costs of mailing. The results of the survey indicated that the average actual cost of mailing process (which in most cases, required certified mail, return receipt delivery) is approximately \$7 per item. Thus, the United States Marshals Service has determined that the flat mailing fee of \$3 per item no longer reflects the costs of mailing. The United States Marshals Service will be charging a flat fee of \$8 per item as an accurate reflection of the costs of mailing or forwarding process. The \$8 fee is based on the combination of the average actual cost of mailing or forwarding process and the indirect costs associated with mailing or forwarding process.

What are the Other Revisions to the Fee Regulation?

The United States Marshals Service makes three additional clarifications to the fee regulation. One of the revisions establishes a specific fee for the administrative preparation of a notice of sale, bill of sale, or U.S. Marshal deed on behalf of a requesting party. The other two revisions are housekeeping revisions, setting forth the definitions of "item" and "process."

1. Fee for Administrative Preparation of Notice of Sale, Bill of Sale, or U.S. Marshal Deed

28 U.S.C. § 1921(a)(1)(D) authorizes the United States Marshals Service to collect a fee for the preparation of a notice of sale or bill of sale on behalf of a requesting party. When the Attorney General initially established the fee schedule in 1991, there was no specific provision made for a fee for the preparation of a notice of sale, bill of sale (in cases where personality is sold), or a U.S. Marshal deed (in cases where realty is sold).

The United States Marshals Service conducted an analysis to determine the administrative cost of preparing a notice of sale, bill of sale, or a U.S. Marshal deed. The following module reflects the average hourly administrative costs to complete this task.

	Cost Module
Average Hourly Wage of GS-7/9 Employee	\$21.49
Fringe Benefits	7.73
Indirect Costs	5.26

	Cost Module
Total Costs	\$34.48

The hourly wage was determined by dividing the average annual salary of an administrative employee who prepares the notice of sale, bill of sale, or U.S. Marshal deed into the total work hours in a year. The fringe benefits rate of 36 percent⁴ of wage costs was also added to reflect the average hourly personnel cost of preparing these documents. Finally, as previously described, the indirect costs are approximately 18 percent of the total wage and benefits costs.

The analysis disclosed that the average administrative employee spent approximately 30–45 minutes conducting the task of preparing each of these documents. Thus, the typical cost for the preparation of these documents is between \$17.24 and \$25.86 for each item. Because the time to prepare notices of sale, bills of sale, or U.S. Marshal deeds does not vary widely, and in most cases takes less than one hour to accomplish, the United States Marshals Service will be charging a flat fee of \$20 per item rather than calculating the fee based on a straight hourly rate per item.

2. Housekeeping Provisions

The calculation of the fee charged under the current fee regulation is dependent upon the number of endeavors to serve a piece of process, also referred to in the regulation as an "item." Although "item" is not defined in 28 U.S.C. § 1921 or the fee regulation, it has been defined by the United States Marshals Service in its internal guidance disseminated to its employees, as "all papers issued in one action which are served simultaneously on one person or organization." The regulation includes this definition of "item." Under this definition, a Deputy U.S. Marshal who serves one person with one or more pieces of process in one case at one time serves one item. When two different people or organizations, however, are served with one or more pieces of process from one case at one time, then the number of items served would be two. Although the United States Marshals Service has the discretion to determine the number of items upon which fees will be calculated, the United States Marshals Service will exercise reasonableness to avoid excessive charges.

⁴ The fringe benefits rate to budget for an administrative position is less than the rate to budget for a Deputy U.S. Marshal position.

Similarly, consistent with 28 U.S.C. 1921(a)(1)(A), the United States Marshals Service broadly defines "process" to include, but not be limited to, a summons and complaint, subpoena, writ, and the execution of court-ordered injunctions, and civil commitments on behalf of a requesting party. Process may also include the execution of ancillary court orders (other than subpoenas issued on behalf of indigent defendants and arrest warrants) in criminal cases. The regulation sets forth the United States Marshals Service's internal policy regarding this matter.

As previously stated, this rule revised the United States Marshals Service fees to reflect current costs to the United States Marshals Service for service of process in Federal court proceedings. A proposed rule with invitation to comment was published in the **Federal Register** on December 7, 1999, at 64 FR 68307. No comments were received within the 60-day comment period. Accordingly, the proposed rule is finalized without change.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. Under the current fee structure, the United States Marshals Service collected \$1,341,921 in service of process fees in FY1998.⁵ The implementation of this rule will provide the United States Marshals Service with an additional \$1,000,000 in revenue over the revenue that would be collected under the current fee structure. This revenue increase is a recovery of costs based on an increase in salaries, expenses, and employee benefits.

The economic impact on individual entities that utilize the services of the United States Marshals Service is minimal. The service of process fees only affect entities that pursue litigation in Federal court and, in most instances, seek to have the United States Marshals Service levy upon or seize property. The service of process fees, currently set at essentially \$20 per duty hour and \$25 per non-duty hour, will be increased to \$45 per hour. The fees are consonant with similar fees already paid by these entities in state court litigation.

⁵ This amount does not include \$1,152,565 in United States Marshals Service commissions collected for sales during FY1998. This rule does not affect commissions, only the fees charged for service of process.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866 (Regulatory Planning and Review), section 1(b) (Principles of Regulation). The Department of Justice, United States Marshals Service, has determined that this rule is a "significant regulatory action" under Executive Order 12866, section 3(f), and, accordingly, this rule has been reviewed by the Office of Management and Budget.

Executive Order 13132

This rule will not have substantial direct effects 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. Therefore, in accordance with section 6 of Executive Order 13132, the Department of Justice, United States Marshals Service, has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act of 1995

This rule does not contain collection of information requirements and would

not be subject to the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501-20).

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Joe Lazar, Associate General Counsel, United States Marshals Service, 600 Army Navy Drive, CS-3, Arlington, Virginia 22202, telephone number (202) 307-9054.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Whistleblowing.

Accordingly, Title 28, Part 0, Subpart U of the Code of Federal Regulations is amended as follows:

PART 0—[AMENDED]

1. The authority citation for Part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515-519.

2. Section 0.114 is transferred from subpart U to the end of subpart T; paragraphs (b) through (d) are redesignated as paragraphs (f) through (h), respectively; paragraph (a) is revised; and new paragraphs (b) through (e) are added to read as follows:

§ 0.114 Fees for services.

(a) The United States Marshals Service shall routinely collect fees according to the following schedule:

(1) For process forwarded for service from one U.S. Marshals Service Office or suboffice to another—\$8 per item forwarded;

(2) For process served by mail—\$8 per item mailed;

(3) For process served or executed personally—\$45 per hour (or portion thereof) for each item served by one U.S. Marshals Service employee, agent, or contractor, plus travel costs and any other out-of-pocket expenses. For each additional U.S. Marshals Service employee, agent, or contractor who is needed to serve process—\$45 per person per hour for each item served, plus travel costs and any other out-of-pocket expenses.

(4) For copies at the request of any party—\$.10 per page;

(5) For preparing notice of sale, bill of sale, or U.S. Marshal deed—\$20 per item;

(6) For keeping and advertisement of property attached—actual expenses incurred in seizing, maintaining, and disposing of property.

(b) Out-of-pocket expenses include, but are not limited to, advertising,

inventorying, storage, moving, insurance, guard hire, prisoner transportation and housing, and any other third-party expenditure incurred in executing process.

(c) Travel costs, including mileage, shall be calculated according to 5 U.S.C. chapter 57.

(d) "Item" is defined as all documents issued in one action which are served simultaneously on one person or organization.

(e) "Process" is defined to include, but is not limited to, a summons and complaint, subpoena, writ, orders, and the execution of court-ordered injunctions, and civil commitments on behalf of a requesting party. Process may also include the execution of ancillary court orders (other than subpoenas issued on behalf of indigent defendants and arrest warrants) in criminal cases.

* * * * *

Dated: July 28, 2000.

Janet Reno,

Attorney General.

[FR Doc. 00-19809 Filed 8-3-00; 8:45 am]

BILLING CODE 4410-04-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 026-CORR; FRL-6733-5]

Approval and Promulgation of Implementation Plans; State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This action corrects language to Title 40 of the Code of Federal Regulations that appeared in a direct final rule published in the **Federal Register** on April 19, 2000. It also corrects language that appeared in various other final **Federal Register** actions.

EFFECTIVE DATE: This action is effective August 4, 2000.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Office, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1184.

SUPPLEMENTARY INFORMATION: On April 19, 2000 at 65 FR 20913, EPA published a direct final rulemaking action approving a rule from the Sacramento Metropolitan Air Quality Management District of the California State