

Annual responses by each respondent: 1.  
Total annual responses: 350.  
Estimated average hours per response: .40.  
Annual reporting burden: 140 hours.

This annual reporting burden of 140 hours represents a reduction of 72 hours as a result of the proposed new rule.

The burden associated with Commission Rule 3.10(a), Form 8-R, is expected to be reduced by 99 hours:

Estimated number of respondents (after proposed exemption): 2800.  
Annual responses by each respondent: 1.  
Total annual responses: 2800.  
Estimated average hours per response: .33.  
Annual reporting burden: 924 hours.

This annual reporting burden of 924 hours represents a reduction of 99 hours as a result of the proposed new rule.

The burden associated with Commission Rule 3.10(d) is expected to be reduced by 140 hours:

Estimated number of respondents (after proposed exemption): 3100.  
Annual responses by each respondent: 1.  
Total annual responses: 3100.  
Estimated average hours per response: .20.  
Annual reporting burden: 620 hours.

This annual reporting burden of 620 hours represents a reduction of 140 hours as a result of the proposed new rule.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Commodity Futures Trading Commission.

The Commission considers comments by the public on this proposed collection of information in—

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

- Evaluating the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Enhancing the quality, usefulness, and clarity of the information to be collected; and

- Minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information

contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Commission on the proposed regulations.

Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW, Washington DC 20581, (202) 418-5160.

#### List of Subjects in 17 CFR Part 4

Advertising, Brokers, Commodity futures, Commodity pool operators, Commodity trading advisors, Consumer protection, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR part 4 as follows:

#### PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

1. The authority citation for part 4 is revised to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 4, 6, 6b, 6c, 6l, 6m, 6n, 6o, 12a and 23.

2. Section 4.14 is amended by adding paragraph (a)(9) to read as follows:

#### § 4.14 Exemption from registration as a commodity trading advisor.

(a) \* \* \*

(9) It does not engage in any of the following activities:

- (i) Direct client accounts;
- (ii) Provide commodity interest trading advice based on, or tailored to, the commodity interest or cash market positions or other circumstances or characteristics of particular clients; or
- (iii) Provide commodity interest trading advice through interactive communications with individual clients, such as face-to-face or telephone conversations or electronic mail exchanges between individuals.

\* \* \* \* \*

Dated: December 2, 1999.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 99-31687 Filed 12-6-99; 8:45 am]

**BILLING CODE 6351-01-P**

## DEPARTMENT OF JUSTICE

### 28 CFR Part 0

[USMS No. 100P; AG No. 2277-99]

RIN 1105-AA64

### Revision to United States Marshals Service Fees for Services

**AGENCY:** United States Marshals Service, Justice.

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes to revise the United States Marshals Service fees to reflect current costs to the United States Marshals Service for service of process in Federal court proceedings.

**DATES:** Written comments must be submitted on or before February 7, 2000.

**ADDRESSES:** Please submit written comments to the Office of General Counsel, United States Marshals Service, 600 Army Navy Drive, CS-3, Arlington, Virginia 22202. Comments are available for public inspection at the above address by calling (202) 307-9054 to arrange for an appointment.

**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 U.S. 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 of 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 the 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 U.S. 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 guidelines 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 of 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 on a requesting party. The 1991 rates, which are still currently charged 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 U.S. Marshals Service's Collection of Service Fees and Commissions (Audit Report 96-01).<sup>1</sup> In the report, the Office of Inspector General recommended that the U.S. 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 U.S. 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.<sup>2</sup> 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

<sup>1</sup> Copies of the audit report are available at [www.usdoj.gov/oig/au9601/au9601.htm](http://www.usdoj.gov/oig/au9601/au9601.htm).

<sup>2</sup> 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.

wage and benefits costs.<sup>3</sup> As a result of the cost module, the U.S. 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 U.S. Marshals Service is proposing to charge \$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 U.S. Marshals Service is proposing to eliminate the minimum charge for serving process within two hours and, instead, charge a fee based on a straight hourly rate for service.

The U.S. 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 U.S. Marshals Service has determined that the flat mailing fee of \$3 per item no longer reflects the costs of mailing. The U.S. Marshals Service is proposing to charge 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 Other Revisions to the Fee Regulation Are Proposed?

The U.S. Marshals Service proposes to make 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 U.S. 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

<sup>3</sup> The indirect cost rate was derived by determining the proportion of management costs expended by the U.S. Marshals Service relative to direct program expenses assumed by the agency in Fiscal Year 1998.

established the fee schedule in 1991, there was not specific provision made for a fee for the preparation of a notice of sale, bill of sale (in cases where personalty is sold), or a U.S. Marshal deed (in cases where realty is sold).

The U.S. 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 cost to complete this task.

#### COST MODULE

Average Hourly Wage of GS-7/9	
Employee .....	\$21.49
Fringe Benefits .....	7.73
Indirect Costs .....	5.26
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 and deed into the total work hours in a year. The fringe benefits rate of 36 percent <sup>4</sup> 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 U.S. Marshals Service is proposing to charge 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 U.S. 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 proposed regulation will include 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 U.S. Marshals Service has the discretion to determine the number of items upon which fees will be calculated, the Service will exercise reasonableness to avoid excessive charges.

Similarly, consistent with 28 U.S.C. 1921(a)(1)(A), the U.S. 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 proposed regulation sets forth the U.S. Marshals Service's internal policy regarding this matter.

#### Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed 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 U.S. Marshals Service collected \$1,341,921 in service of process fees in FY1998.<sup>5</sup> The implementation of this proposed rule will provide the U.S. 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 U.S. 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 U.S. Marshals 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.

<sup>5</sup> This amount does not include \$1,152,565 in U.S. marshal commissions collected for sales during FY1998. This proposed rule does not affect commissions, only the fees charged for service of process.

#### Unfunded Mandates Reform Act of 1995

This proposed 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 on 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 proposed rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement 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 on domestic and export markets.

#### Executive Order 12866

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

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

### Paperwork Reduction Act of 1995

This proposed 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 proposed to be 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 (6) through (d) are redesignated as paragraphs (f) through (h), respectively; paragraph (a) is revised; and new paragraph (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 it 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: November 29, 1999.

**Janet Reno,**

*Attorney General.*

[FR Doc. 99–31636 Filed 12–6–99; 8:45 am]

**BILLING CODE 4410–04–M**

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Parts 85 and 86

[AMS–FRL–6503–8]

RIN 2060–AI12, 2060–AI23

#### Reopening of Comment Period for Control of Emissions of Air Pollution from 2004 and Later Model Year Highway Engines and Vehicles; Revision of Light-duty Truck Definition

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of reopening of comment period.

**SUMMARY:** EPA is reopening the comment period for the proposed rule for the control of emissions of air pollution from 2004 and later model year heavy-duty vehicles and engines. The Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** on October 29, 1999 (64 FR 58472). The close of the comment period for all issues related to the proposed rule was originally December 2, 1999. EPA is extending the closure of the comment period to December 16, 1999 for all issues except those related to the proposal to revise the light-duty

truck definition. Comments related to this issue, contained in the proposed rule Supplementary Information, Section IV.F, will continue to be accepted only through December 2, 1999.

**DATES:** Comments regarding the proposed rule Supplementary Information, Section IV.F, entitled “Proposal to Revise the Definition of Light-duty Truck,” at 64 FR 58502–58507, will be accepted through December 2, 1999. Comments regarding all other issues related to the proposed rule will be accepted until December 16, 1999.

**ADDRESSES:** Comments on the proposal should be sent to: EPA Air and Radiation Docket, Attn: Docket No. A–98–32, Room M–1500 (Mail Code 6102), 401 M Street SW, Washington, DC 20460. EPA requests that a copy of the comments also be sent to the contact person listed below.

**FOR FURTHER INFORMATION CONTACT:** Margaret Borushko, U.S. Environmental Protection Agency, Engine Programs and Compliance Division, 2000 Traverwood Drive, Ann Arbor, MI, 48105–2498. Telephone (734) 214–4334; Fax (734) 214–4816; e-mail borushko.margaret@epa.gov.

**SUPPLEMENTARY INFORMATION:** On October 29, 1999 EPA published a proposal regarding emission standards and compliance procedures for heavy-duty vehicles and engines that would take effect in the 2004 model year. The comment period on this proposal was scheduled to end on December 2, 1999.

EPA held a public hearing on November 2, 1999 to provide opportunities for interested parties to comment on issues pertaining to the proposed rule. At the hearing, several commenters requested a longer comment period. EPA has also received written requests to extend the comment period to give affected parties more time to address the issues raised in the NPRM.

Although EPA originally intended to finalize this rulemaking by December 31, 1999, and all available resources were committed to achieving this, EPA now agrees that extending the comment period may be beneficial. This extension does not apply to the comment period for the specific provision that proposes to revise the definition of light-duty truck (see 64 FR 58502–58507). This provision was initially discussed in the Tier 2 NPRM (see 64 FR 26089) and received significant comments on this issue at that time. EPA expects to include final provisions in the final Tier 2 rule, expected to be completed by December 31, 1999. Additional