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DEPARTMENT OF JUSTICE

28 CFR Part 0

Docket No. USMS 110; AG Order

RIN 1105-AB42

Revision to United States Marshals Service Fees for Services

AGENCY: United States Marshals Service, Department of 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 April 12, 2013, at 78 FR 21862. Only one comment was received within the 60-day comment period and that comment supported adoption of the rule. Accordingly, the proposed rule is finalized without change.

DATES: Effective [Insert 30 days from date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Joe Lazar, Associate General Counsel, United States Marshals Service, 2604 Jefferson Davis Highway, Alexandria, VA 22301, telephone number (202) 307-9054 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Legal Authority for the United States Marshals Service 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. 28 U.S.C. 1921(a). To the extent practicable, these fees shall reflect the actual and reasonable costs of the services provided. 28 U.S.C. 1921(b).

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. 56 FR 2436 (Jan. 23, 1991). Due to an increase in the salaries and benefits of United States Marshals Service personnel over time, the initial fee schedule was amended in 2000, see 65 FR 47859 (Aug. 4, 2000), and again in 2008, see 73 FR 69552 (Nov. 19, 2008). The current fee schedule is inadequate and no longer reflects the actual and reasonable costs of the services rendered.

Federal Cost Accounting and Fee Setting Standards and Guidelines Being Used

When developing fees for services, the United States Marshals Service adheres to the principles contained in Office of Management and Budget Circular No. A-25 Revised (“Circular No. A-25”). Circular No. 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.” *Id.* § 6.

The United States Marshals Service follows the guidance contained in Circular No. A-25 to the extent that it is not inconsistent with any federal statute. When a statute “prohibits the 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),” the statute takes precedence over Circular No. A-25. *Id.* § 4(b). When a statute does not address issues of how to

calculate fees or what costs to include in fee calculations, Circular No. A-25 instructs that its principles and guidance should be followed “to the extent permitted by law.” *Id.* According to Circular No. A-25, federal agencies generally should charge the full cost or the market price of providing services that provide a special benefit to identifiable recipients. *Id.* § 6. Circular No. 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 may include an “appropriate share” of: (a) “[d]irect and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement;” (b) “[p]hysical overhead, consulting, and other indirect costs including material and supply costs, utilities, insurance, travel, and rents or imputed rents on land, buildings, and equipment;” (c) “management and supervisory costs;” and (d) “costs of enforcement, collection, research, establishment of standards, and regulation.” *Id.* § 6(d)(1).

Processes Used to Determine the Amount of the Fee Revision

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 fee schedule was revised in 2000 and again in 2008. The 2008 rates, which are still being charged, are set forth at 28 CFR 0.114(a) as follows:

- (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—\$55 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—\$55 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 the property.

In 2012, the United States Marshals Service conducted an analysis to determine whether, in light of the increase in salaries and expenses of its workforce over the previous time period, the existing fee schedule continued to reflect the costs of serving process. The following cost module was designed to reflect the average hourly cost of serving process in person on behalf of a requesting party.

COST MODULE

Hourly Wage	\$	32.97
Law Enforcement Availability Pay	\$	8.24
Fringe Benefits	\$	16.90
Indirect Costs	\$	7.41
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Total Personnel Costs	\$	65.52

The “hourly wage” in this module reflects the hourly basic rate for law enforcement officers at Grade 12, Step 1, as set forth in the Office of Personnel Management’s 2012 Salary Table for the “rest of the United States” (available at http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2012/law-enforcement-officer/rus_leo_h.pfd). The cost of Law Enforcement Availability Pay also was factored into the hourly wage of an average Criminal

Investigator (Deputy U.S. Marshal).¹ The fringe benefits rate reflected 41 percent of total wage costs. Finally, the indirect costs, which reflected the costs of administrative services, including management/supervisory compensation and benefits, depreciation, utilities, supplies, and equipment, constituted approximately 18 percent of the total wage and benefits costs. As a result of the cost module, the United States Marshals Service determined that the existing fee schedule no longer reflected the actual and reasonable costs of personally serving process.

The total personnel costs of serving process were rounded to the nearest five-dollar increment. Thus, in order to recover the actual and reasonable costs of serving process, the United States Marshals Service will charge \$65 per hour (or portion thereof) for each item served by one United States Marshals Service law enforcement officer. This represents a less than 20 percent increase (\$10 per hour) from the existing fee for serving process revised in 2008.

Only one comment was received on the proposed rule within the 60-day comment period and that comment supported adoption of the rule. 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 approximately \$1,245,000 in service of

¹ The Law Enforcement Availability Pay Act of 1994, Pub. L. No. 103-329, § 633, 108 Stat. 2425 (1994) (codified at 5 U.S.C. 5545a), provides that law enforcement officers, such as Criminal Investigators (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.

process fees in FY 2012.² The implementation of this rule will provide the United States Marshals Service with an estimated additional \$235,000 in revenue over the revenue that would be collected under the current fee structure. This revenue increase represents a recovery of costs based on an increase in salaries, expenses, and employee benefits over the previous four-year period.

The economic impact on individual entities that utilize the services of the United States Marshals Service will be minimal. The service of process fees only will 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 will be increased by only \$10 per hour from the previous rate increase more than four years ago. The fees will be consonant with similar fees already paid by these entities in state court litigation.

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

² This amount does not include \$986,000 in United States Marshals Service commissions collected for sales during FY 2012. This rule does not affect commissions, only the fees charged for service of process.

United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Executive Orders 12866 and 13563 - Regulatory Review

This regulation has been drafted and reviewed in accordance with section 1(b) of Executive Order 12866 ("Regulatory Planning and Review"), and with section 1(b) of Executive Order 13563 ("Improving Regulation and Regulatory Review").

The Department of Justice has determined that this rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Further, both Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Department has assessed the costs and benefits of this regulation and believes that the regulatory approach selected maximizes net benefits.

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 has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988

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

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).

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 T 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. In § 0.114, paragraph (a)(3) is amended by removing the fee “\$55” and adding the fee “\$65” in its place wherever it occurs.

_ Dated: September 23, 2013. _____

Eric H. Holder, Jr.
Attorney General

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