

Counter Medications as Self-Treatments Among Adults with Asthma," *Journal of Allergy and Clinical Immunology*, 100:(6\1) 789, December 1997.

9. Mannino, D. M. et al., "Surveillance for Asthma—United States, 1980–1999," *Morbidity and Mortality Weekly Report*, 51(SS01):1–13, March 29, 2002.

10. Analysis completed by FDA based on retail sales data from drug stores and supermarkets provided by ACNielsen for the 52 weeks ending September 9, 2006.

11. U.S. Environmental Protection Agency, final rule, "Protection of Stratospheric Ozone: Allocation of Essential Use Allowances for Calendar Year 2006," 71 FR 58504, October 4, 2006.

12. Rozek, R. P., and E. R. Bishko, "Economics Issues Raised in the FDA's Proposed Rule on Removing the Essential-Use Designation for Albuterol MDIs," National Economic Research Associates, August 13, 2004 (FDA Docket No. 2003P–0029/C25).

13. Analysis completed by FDA based on prescription data provided by IMS Health, National Prescription Audit, 2004; IMS Health, IMS MIDAS (TM), Q1/2004–Q2/2004.

14. Gal, A., and N. R. Chari, "TEVA, SEPR: SGP to Phase Out CFC Albuterol Production by Early 2007; TEVA and SEPR Likely to Benefit," report prepared for Sanford C. Bernstein & Co., LLC (New York), October 17, 2006.

15. Berger, W. E. et al., "The Utility of the Health Plan Employer Data and Information Set (HEDIS) Asthma Measure to Predict Asthma-Related Outcomes," *Annals of Allergy, Asthma and Immunology*, 93:538, December 2004.

16. Centers for Medicare and Medicaid Services, *Medicaid at-a-Glance 2005: A Medicaid Information Source*, available at <http://www.cms.hhs.gov/MedicaidEligibility/downloads/MedGlance05.pdf>.

17. Department of Health and Human Services, notice, "Annual Update of the HHS Poverty Guidelines," 71 FR 3848, January 24, 2006.

#### List of Subjects in 21 CFR Part 2

Administrative practice and procedure, Cosmetics, Devices, Drugs, Foods.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act, the Clean Air Act, and under authority delegated to the Commissioner of Food and Drugs, after consultation with the Administrator of the Environmental Protection Agency, 21 CFR part 2 is amended as follows:

#### PART 2—GENERAL ADMINISTRATIVE RULINGS AND DECISIONS

■ 1. The authority citation for 21 CFR part 2 continues to read as follows:

**Authority:** 15 U.S.C. 402, 409; 21 U.S.C. 321, 331, 335, 342, 343, 346a, 348, 351, 352, 355, 360b, 361, 362, 371, 372, 374; 42 U.S.C. 7671 *et seq.*

#### § 2.125 [Amended]

■ 2. In § 2.125, remove and reserve paragraph (e)(2)(v).

Dated: November 13, 2008.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E8–27436 Filed 11–17–08; 11:15 am]

**BILLING CODE 4160–01–S**

#### DEPARTMENT OF JUSTICE

#### 28 CFR Part 0

[Docket No. USMS 102; AG Order No. 3017–2008]

RIN 1105–AB14

#### 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 personal service and execution of process in federal court proceedings. A proposed rule with request for comment was published in the *Federal Register* on June 16, 2008, at 73 FR 33955. No comments were received within the 60-day comment period. Accordingly, the proposed rule is finalized without change.

**DATES:** Effective December 19, 2008.

**FOR FURTHER INFORMATION CONTACT:** Joe Lazar, Associate General Counsel, United States Marshals Service, Washington, DC 20530–1000, telephone number (202) 307–9054.

#### SUPPLEMENTARY INFORMATION:

#### Legal Authority for the U.S. Marshals Service to Charge Fees

The Attorney General must establish fees to be taxed and collected for certain services rendered by the U.S. 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 U.S. Marshals Service personnel over time, the initial fee schedule was amended in 2000. 65 FR 47859 (Aug. 4, 2000). The current fee schedule is inadequate and no longer reflects the actual and reasonable costs of personal service and execution of process.

#### Federal Cost Accounting and Fee Setting Standards and Guidelines Being Used

When developing fees for services, the U.S. 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 U.S. Marshals Service follows the guidance contained in Circular No. A–25 to the extent that it is not inconsistent with any federal statute. Specific legislative authority to charge fees for services takes precedence over Circular No. A–25 when the 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)." *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 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 include, but are not limited to, an appropriate share of":

- Direct and 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. *Id.* § 6(d).

**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 served or executed process on behalf of a requesting party. The fee schedule was revised in 2000. The 2000 rates, which still currently are charged are:

- (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 the property.

In 2007, the U.S. Marshals Service conducted an analysis to determine whether, in light of the increase in salaries and expenses of its workforce over the previous seven-year 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 .....	\$33.00
Fringe Benefits .....	14.18
Indirect Costs .....	10.28
<b>Total Personnel Costs .....</b>	<b>57.46</b>

The hourly wage was determined by dividing the annual salary, including locality pay, of the average Deputy U.S. Marshal in 2007 who served process into the total work hours for the year. The cost of Law Enforcement Availability Pay also was factored into the hourly wage of an average Deputy

U.S. Marshal.<sup>1</sup> The fringe benefits rate reflected 43 percent of wage costs. Finally, the indirect costs, which reflected the costs of administrative services, including management/supervisory compensation and benefits, depreciation, utilities, supplies, and equipment, comprised approximately 22 percent of the total wage and benefits costs. As a result of the cost module, the U.S. 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 U.S. Marshals Service will be charging \$55 per hour (or portion thereof) for each item served by one Deputy U.S. Marshal. This represents a 20 percent increase (\$10 per hour) from the existing fee for serving process revised in 2000.

**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 U.S. Marshals Service collected \$1,610,552.72 in service-of-process fees in FY2007.<sup>2</sup> The implementation of this rule will provide the U.S. Marshals Service with an estimated additional \$325,000 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 seven-year period.

The economic impact on individual entities that utilize the services of the U.S. 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

<sup>1</sup> The Law Enforcement Availability Pay Act of 1994, Public Law No. 103-329, § 633, 108 Stat. 2425 (1994) (codified at 5 U.S.C. 5545a), 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.

<sup>2</sup> This amount does not include \$534,518 in U.S. Marshal commissions collected and the recovery of out-of-pocket expenses for sales during FY2007. This rule does not affect commissions, only the fees charged for service of process.

increase seven 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 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 has determined that this rule is not a “significant regulatory action” under Executive Order 12866, section 3(f), and, accordingly, this rule has not 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 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 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.

**§ 0.114 [Amended]**

■ 2. In § 0.114, paragraph (a)(3) is amended by removing the fee “\$45” and adding the fee “\$55” in its place wherever it occurs.

Dated: November 12, 2008.

**Michael B. Mukasey,**  
*Attorney General.*

[FR Doc. E8–27465 Filed 11–18–08; 8:45 am]

**BILLING CODE 4410–04–P**

**DEPARTMENT OF VETERANS AFFAIRS****38 CFR Part 4**

**RIN 2900–AM75**

**Schedule for Rating Disabilities; Evaluation of Residuals of Traumatic Brain Injury (TBI); Correction**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Correcting amendment.

**SUMMARY:** This document contains a minor correction to the final rulemaking that the Department of Veterans Affairs (VA) published at 73 FR 54693 on September 23, 2008. The rulemaking relates to a revision of the portion of VA’s Schedule for Rating Disabilities that addresses neurological conditions and convulsive disorders to provide detailed and updated criteria for evaluating residuals of traumatic brain injury (TBI).

**DATES:** *Effective Date:* November 19, 2008.

**FOR FURTHER INFORMATION CONTACT:** Rhonda F. Ford, Chief, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans

Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–9739 (This is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** VA published a document in the **Federal Register** on September 23, 2008, at 73 FR 54693, revising the portion of the Rating Schedule regarding traumatic brain injury (TBI). In the **Federal Register** document, a period was left off the end of Note (4) of diagnostic code 8045 in 38 CFR 4.124a. Additionally, we provided updates to 38 CFR part 4, Appendices A and C to reflect the changes to the TBI rating criteria. An extra “4.124a” was erroneously added in Appendix A, and “Traumatic Brain Injury residuals” with diagnostic code 8045, was not added alphabetically. This document corrects those errors.

**List of Subjects in 38 CFR Part 4**

Disability benefits, Pensions, Veterans.

Approved: October 29, 2008.

**William F. Russo,**

*Director, Regulations Management.*

■ For the reasons set out in the preamble, VA is correcting 38 CFR part 4 as follows.

**PART 4—SCHEDULE FOR RATING DISABILITIES**

■ 1. The authority citation for part 4 continues to read as follows:

**Authority:** 38 U.S.C. 1155, unless otherwise noted.

■ 2. In § 4.124a, diagnostic code 8045, Note (4), add a period at the end of the paragraph.

■ 3. In Appendix A to Part 4, under the “Sec.” heading, remove from the table the second entry “4.124a”.

■ 4. In Appendix C to Part 4—Alphabetical Index of Disabilities table, remove the entry “Traumatic brain injury residuals” and its diagnostic code “8045” and add it in alphabetical order after the entry “Toxic nephropathy”.

[FR Doc. E8–27457 Filed 11–18–08; 8:45 am]

**BILLING CODE 8320–01–P**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 180**

**[EPA–HQ–OPP–2007–0226; FRL–8389–1]**

**Iproconazole; Pesticide Tolerances**

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of iproconazole

from seed treatment in or on cotton, peanut, soybean, dry shelled pea and bean (Subgroup 6C), cereal grains (Group 15) except rice, and forage, fodder, and straw of cereal grains (Group 16) except rice. Chemtura Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective November 19, 2008. Objections and requests for hearings must be received on or before January 20, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0226. All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Tawanda Maignan, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8050; e-mail address: [maignan.tawanda@epa.gov](mailto:maignan.tawanda@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. General Information***A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).