

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 505

[BOP-1079-F]

RIN 1120-AA75

Cost of Incarceration Fee

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: The Bureau of Prisons is revising its regulations on the cost of incarceration fee in order to remove obsolete references and to eliminate redundant provisions.

EFFECTIVE DATE: August 11, 1999.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514-6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is revising its regulations on the cost of incarceration fee (28 CFR part 505). A final rule on this subject was published in the **Federal Register** on December 15, 1994 (59 FR 64781).

The regulations are being revised in order to remove redundant provisions and to make organizational or editorial changes. The Director of the Bureau has been delegated the authority given to the Attorney General to assess and collect a fee from eligible inmates to cover the cost of incarceration. Procedures pertaining to the cost of incarceration fee which have been issued under authority retained by the Attorney General are contained in 28 CFR 0.96c.

Section 505.1 has been revised to make clear the connection with the provisions issued by the Attorney General in § 0.96c. Consequently, redundant references to the procedures in § 0.96c have been removed from this and other sections of the Bureau's regulations. The title of the Bureau's regulation and other provisions have been revised to conform to the phrasing used in § 0.96c (namely, "cost of incarceration" rather than "costs of incarceration"). Further specific changes are discussed below.

Revised § 505.1 notes the statutory constraints on imposing the cost of incarceration fee in instances where the court imposes or waives a fine pursuant to the Sentencing Guidelines 5E1.2(i). Section 505.2 has been revised to remove obsolete reference to the 1995

cost of incarceration fee and redundant provisions already contained in § 0.96c. The provisions in §§ 505.3 and 505.4 have been redesignated for organizational reasons. Section 505.3 now contains the provisions pertinent to exemption from fee assessment which were previously contained in former § 505.4. A reference in this section to the United States Sentencing Guidelines has been updated in conformance to a revision of the sentencing guidelines. Section 505.4 restates the provisions on calculation of assessment previously contained in former § 505.3. Revised § 505.4 clarifies that only one assessment for each separate period of incarceration is made for the inmate and includes provisions for prorating the assessment which had been contained in former § 505.5. Section 505.6 pertaining to fee waiver has been redesignated as new § 505.5 and has been revised to make consistent use of the word "inmate". Section 505.7 pertaining to procedures for payment has been redesignated as new § 505.6 and has been revised to clarify application of the inmate financial responsibility program.

Former § 505.8 pertaining to procedures for appeal has been removed. The procedures in that section are contained in the Bureau's Administrative Remedy Program (28 CFR part 542) and need not be restated separately. Finally, former § 505.9 pertaining to procedures for final disposition has been redesignated as new § 505.7.

Because these changes are either organizational or editorial in nature and have no adverse impact upon inmates, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

Executive Order 12612

This regulation will not have substantial direct effects on the States, on the relationship between the national

government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

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 \$100,000,000 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 § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 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.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Roy Nanovic, Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First St., Washington, DC 20534; telephone (202) 514-6655.

List of Subjects in 28 CFR Part 505

Prisoners.

Kathleen Hawk Sawyer,*Director, Bureau of Prisons.*

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p) and 0.96c, part 505 in subchapter A of 28 CFR, chapter V is revised as set forth below.

**SUBCHAPTER A—GENERAL
MANAGEMENT AND ADMINISTRATION****PART 505—COST OF
INCARCERATION FEE**

Sec.

505.1 Purpose and scope.

505.2 Annual determination of average cost of incarceration.

505.3 Inmates exempted from fee assessment.

505.4 Calculation of assessment by unit staff.

505.5 Waiver of fee by Warden.

505.6 Procedures for payment.

505.7 Procedures for final disposition.

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 31 U.S.C. 3717; Pub. L. 102–395, 106 Stat. 1842 (18 U.S.C. 4001 note); 28 CFR 0.95–0.99.

§ 505.1 Purpose and scope.

This part establishes procedures for the assessment and collection of a fee to cover the cost of incarceration. The Director of the Bureau of Prisons has been delegated the authority of the Attorney General (see 28 CFR 0.96c) to assess and collect a fee imposed by the Bureau in the event the court neither imposes nor waives a fine pursuant to the Sentencing Guidelines 5E1.2(d). For purposes of this part, revocation of parole or supervised release is to be

treated as a separate period of incarceration for which a fee may be imposed.

§ 505.2 Annual determination of average cost of incarceration.

Pursuant to 28 CFR 0.96c, the Bureau of Prisons staff is responsible for calculating the annual average cost of incarceration. This calculation is reviewed annually and the revised figure is published as a notice in the **Federal Register**.

§ 505.3 Inmates exempted from fee assessment.

Inmates who began service of sentence before January 1, 1995, or who have had a fine either imposed or expressly waived by the United States District Court, pursuant to Section 5E1.2 (e) of the United States Sentencing Guidelines, or any successor provisions, are exempt from fee assessment otherwise required by this part.

§ 505.4 Calculation of assessment by unit staff.

Bureau of Prisons Unit Team staff are responsible for computing the amount of the fee to be paid by each inmate who has not been exempted from fee assessment. The inmate will only be assessed an amount once for the cost of incarceration for each separate period of incarceration.

(a) Unit Team staff are to rely exclusively on the information contained in the Presentence Investigation Report and findings and orders of the sentencing court in order to determine the extent of an inmate's assets, liabilities and dependents.

(b) The fee is assessed in accordance with the following formula: If an inmate's assets are equal to or less than the poverty level, as established by the United States Department of Health and Human Services and published annually in the **Federal Register**, no fee

is to be imposed. If an inmate's assets are above the poverty level, Unit Team staff are to impose a fee equal to the inmate's assets above the poverty level up to the average cost to the Bureau of Prisons of confining an inmate for one year.

(c) If the amount of time that the inmate is in custody is less than 334 days (including pretrial custody time), the maximum fee to be imposed is to be computed by prorating the fee on a monthly basis.

§ 505.5 Waiver of fee by Warden.

The Warden may reduce or waive the fee if the inmate establishes that:

(a) He or she is not able and, even with the use of a reasonable installment schedule, is not likely to become able to pay all or part of the fee, or

(b) Imposition of a fee would unduly burden the inmate's dependents.

§ 505.6 Procedures for payment.

Fees imposed pursuant to this part are due and payable after notice of the Unit Team actions. When the inmate participates in the inmate financial responsibility program (see 28 CFR part 545, subpart B), fees are to be included under the category "other federal government obligations" and are to be paid before other financial obligations included in that same category. Fees may be subject to interest charges.

§ 505.7 Procedures for final disposition.

Before the inmate completes his or her sentence, Unit Team staff must review the status of the inmate's fee. Any unpaid amount will be referred for collection in accordance with Federal Claims Collection Standards (4 CFR Chapter II).

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