



FEDERAL MARITIME COMMISSION

46 CFR PARTS 502, 503, 515, 520, 530, 535, 540, 550, 555, and 560

Docket No. 16-06

RIN 3072-AC34

Update Of Existing And Addition Of New User Fees

AGENCY: Federal Maritime Commission

ACTION: Notice of Proposed Rulemaking

SUMMARY: The Federal Maritime Commission (Commission) proposes amending its current user fees and invites public comment on whether the Commission should amend its user fees. Specifically, the Commission proposes increasing fees for: filing complaints and certain petitions; records searches, document copying, and admissions to practice; paper filing of ocean transportation intermediary (OTI) applications; filing applications for special permission; and filing agreements.

The Commission also proposes lowering fees for: reviewing Freedom of Information Act (FOIA) requests; revising clerical errors on service contracts; revising clerical errors on non-vessel-operating common carrier (NVOCC) service agreements; and Commission services to passenger vessel operators (PVOs).

In addition, the Commission proposes repealing four existing fees for: adding interested parties to a specific docket mailing list; the Regulated Persons Index database; database reports on Effective Carrier Agreements; and filing petitions for rulemaking. The Commission also proposes adding a new fee for requests for expedited review of an agreement filing.

DATES: Comments are due on or before June 27, 2016.

ADDRESSES: You may submit comments, identified by the docket number in the heading of this document, by any of the following methods:

- *E-mail:* secretary@fmc.gov. Include in the subject line: “Docket No. 16-06, Comments on “Update of User Fees.” Comments should be attached to the e-mail as a Microsoft Word or text-searchable PDF document. Comments containing confidential information should not be submitted by e-mail.

- *Mail:* Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573-0001. *Phone:* (202) 523-5725. *E-mail:* secretary@fmc.gov.

- *Docket:* For access to the docket to read background documents or comments received, go to: <http://www.fmc.gov/16-06>.

FOR FURTHER INFORMATION CONTACT: Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573-0001. *Phone:* (202) 523-5725. *E-mail:* secretary@fmc.gov.

SUPPLEMENTARY INFORMATION:

The Commission’s current user fees are based on an assessment of fiscal year 2004 costs and have not been updated since 2005.¹ Consequently, many of the current user fees no longer represent the Commission’s actual costs for providing services. The Commission is seeking comments on possible adjustments to its user fees based on fiscal year 2015 costs assessed through a new methodology for calculating costs for services provided by the Commission.

¹ The Commission established the fee for filing or updating OTI license applications electronically in 2007.

The Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701, authorizes agencies to establish charges (user fees) for services and benefits that it provides to specific recipients. Under the IOAA, charges must be fair and based on the costs to the Government, the value of the service or thing to the recipient, the public policy or interest served, and other relevant facts. The IOAA also provides that regulations implementing user fees are subject to policies prescribed by the President, which are currently set forth in OMB Circular A-25, *User Charges* (revised July 8, 1993).

OMB Circular A-25 requires agencies to conduct a periodic reassessment of costs and, if necessary, adjust or establish new fees. Under OMB Circular A-25, fees should be established for Government-provided services that confer benefits on identifiable recipients over and above those benefits received by the general public. OMB Circular A-25 also provides that agencies should determine or estimate costs based on the best available records in the agency, and that cost computations must cover the direct and indirect costs to the agency providing the activity.

Fee Assessment Methodology

Applying the guidance for assessing fees provided in OMB Circular A-25, the Commission has revised its methodology for computing fees to determine the full costs of providing services.² A detailed description of the methodology, as established by the Commission's Office of Budget and Finance, is available in the docket to this rulemaking.

² The revised methodology also satisfies the recommendations set forth in the Commission's Office of Inspector General's report, *Review of FMC's User Fee Calculations* (May 27, 2010).

The Commission has developed data on the time and cost involved in providing particular services to arrive at the updated direct and indirect labor costs for those services. As part of its assessment, the Commission utilized salaries of Full Time Equivalents (FTEs) assigned to fee-generating activities to identify the various direct and indirect costs associated with providing services. Direct labor costs include clerical and professional time expended on an activity. Indirect labor costs include labor provided by bureaus and offices that provide direct support to the fee-generating offices in their efforts to provide services, and include managerial and supervisory costs associated with providing a particular service. Other indirect costs include Government overhead costs, such as fringe benefits and other wage-related Government contributions contained in OMB Circular A-76, *Performance of Commercial Activities* (revised May 29, 2003) and office general and administrative expenses.³ The sum of these indirect cost components gives an indirect cost factor that is added to the direct labor costs of an activity to arrive at the fully distributed cost.

Proposed Fee Adjustments

The adjustments the Commission proposes will allow some user fees to remain unchanged; increase, reduce, or delete other fees; and add one new fee. The Commission proposes making upward adjustments of fees to reflect increases in salary and indirect (overhead) costs. For some services, an increase in processing or review time may

³ OMB Circular A-76 lists the following indirect labor costs: leave and holidays, retirement, worker's compensation, awards, health and life insurance, and Medicare. General and administrative costs are expressed as a percentage of basic pay. These include all salaries and overhead such as rent, utilities, supplies, and equipment allocated to Commission offices that provide direct support to fee-generating offices such as the Office of the Managing Director, Office of Information Technology, Office of Human Resources, Office of Budget and Finance, and the Office of Management Services.

account for all or part of increase in the amount of the proposed fees. For other services, fees may be lower than current fees due to an overall reduced cost to provide those services.

The Commission assesses nominal processing fees for services related to the filing of complaints and certain petitions; various public information services, such as records searches, document copying, and admissions to practice; and filing applications for special permission. Due to an increase in the processing cost of these services, the Commission is proposing adjusting upward these administrative fees based on an assessment of fiscal year 2015 costs. Similarly, the Commission proposes adjusting upward the user fees associated with agreements filed under 46 CFR Part 535 because of the increase in reviewing and analyzing the agreement filings.

With respect to OTI license applications, the Commission offers lower fees for electronic filing of license applications through its FMC-18 automated filing system. The Commission first adopted lower fees in 2007 to promote the use of the electronic filing option by the public and to facilitate the transfer of OTI records from a paper-based format to a more convenient and accessible digital format.⁴ As intended, the majority of OTI applicants are using the automated system and paying the reduced fees. In fiscal year 2015, the total number of OTI applicants using the automated filing system at the reduced fees was 619, and the total number of OTI applicants filing their applications in paper format at the higher fees was 44. This program has been successful and the

⁴ FMC Docket No. 07-08, *Optional Method of Filing Form FMC-18, Application for a License as an Ocean Transportation Intermediary*, 72 FR 44976, 44977 (Aug. 10, 2007).

Commission proposes continuing to offer the lower fees for electronic filing at the current fee amounts.⁵

The Commission proposes decreasing fees for the Commission's services to passenger vessel operators (PVOs) under 46 CFR Part 540. These services include reviewing and processing the application for certification on performance; the supplemental application on performance for the addition or substitution of a vessel; the application for certification on casualty, and the supplemental application on casualty for the addition or substitution of a vessel.

For reviews of requests filed under FOIA, the Commission proposes lowering the fees due to the change in grade level of the professional staff that review FOIA requests. For revisions of clerical errors on service contracts, the Commission proposes lowering the fee due to the reduction in processing time.

The Commission proposes repealing the user fee for obtaining a copy of the Regulated Persons Index given that it is currently available on the Commission's website. The Commission also proposes repealing the current fee assessed for adding an interested party to a specific docket mailing list under § 503.50(d), and the fee assessed under § 535.401(h) for obtaining a Commission agreement database report.

In addition, the Commission proposes repealing the user fee for filing petitions for rulemaking found in § 503.51(a). This would align the Commission with the practice of other agencies, the vast majority of which do not impose a fee to file petitions for

⁵ While the automated filing system allows users to file their applications electronically, the automated system for processing the applications is still under development. The fees for the electronic filing of OTI applications will be addressed by the Commission when the entire FMC-18 automated system is complete and operational, and the costs of the system and its impact on the review of OTI applications can be quantified.

rulemaking. Repealing this user fee would also enhance access to the rulemaking process, thereby making it fairer and more open.

The Commission also proposes adding a new fee for processing requests for expedited review of an agreement under § 535.605, which allows filing parties to request that the 45-day waiting period be shortened to meet an operational urgency. The Commission believes that a fee for processing such requests is necessary to recoup the cost of publishing a separate Federal Register notice for expedited review. This new fee would be assessed in addition to the underlying agreement filing fee required by § 535.401(g).

The Commission welcomes comments on its new fee calculation methodology and possible fee adjustments.

Regulatory Analysis and Notices

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.*, requires an agency to review regulations to assess their impact on small entities and prepare an initial regulatory flexibility analysis (IRFA), unless the agency head determines that the regulatory action will not have a significant impact on a substantial number of small entities. The proposed adjusted user fees reflect the costs of specific Commission services for identifiable recipients. The economic impact of user fees on a small entity results from the entity requesting a particular service that requires payment of a fee for that service. The dollar amount of each user fee proposed in this rule is not substantial enough to have a significant economic impact on any entity subject to the user fee. The proposed increases in user fees is below the rise in inflation and employment cost from

the last assessment in fiscal year 2004. Furthermore, the Commission's regulations provide for a waiver or reduction of any fee in extraordinary situations. 46 CFR § 503.42. The Chairman of the Commission, therefore, certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.⁶

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) requires an agency to seek and receive approval from the Office of Management and Budget (OMB) before making most requests for information if the agency is requesting information from more than ten persons. 44 U.S.C. 3507. The agency must submit collections of information in proposed rules to OMB in conjunction with the publication of the proposed rulemaking. 5 CFR 1320.11. The Commission is not proposing any collections of information, as defined by 44 U.S.C. 3502(3) and 5 CFR § 1320.3(c), as part of this proposed rule.

Regulation Identifier Number

The Commission assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda, available at <http://www.reginfo.gov/public/do/eAgendaMain>.

List of Subjects

⁶ In extraordinary situations, the Commission will accept requests for waivers or fee reductions. Such request must demonstrate that the waiver or reduction of a fee is in the best interest of the public, or that payment of a fee would impose an undue hardship.

46 CFR Part 502

Administrative practice and procedure, Claims, Equal access to justice, Investigations, Lawyers, Maritime carriers, Penalties, Reporting and recordkeeping requirements

46 CFR Part 503

Classified information, Freedom of Information, Privacy, Sunshine Act.

46 CFR Part 515

Exports, Freight forwarders, Non-vessel-operating common carriers, Ocean transportation intermediaries, Licensing requirements, Financial responsibility requirements, Reporting and recordkeeping requirements.

46 CFR Part 520

Common carrier, Freight, Intermodal transportation, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 530

Freight, Maritime carriers, Report and recordkeeping requirements.

46 CFR Part 531

Freight, Maritime carriers, Report and recordkeeping requirements.

46 CFR Part 535

Administrative practice and procedure, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 540

Insurance, Maritime carriers, Penalties, Reporting and recordkeeping requirements, Surety bonds.

46 CFR Part 550

Administrative practice and procedure, Maritime carriers.

46 CFR Part 551

Administrative practice and procedure, Maritime carriers.

46 CFR Part 555

Administrative practice and procedure, Investigations, Maritime carriers.

46 CFR Part 560

Administrative practice and procedure, Maritime carriers.

For the reasons set forth above, the Federal Maritime Commission proposes to amend 46 CFR parts 502, 503, 515, 520, 530, 535, 540, 550, 555, and 560 as follows:

PART 502-RULES OF PRACTICE AND PROCEDURE

1. The authority citation for Part 502 continues to read as follows:

Authority: 5 U.S.C. 504, 551, 552, 553, 556(c), 559, 561-569, 571-584; 591-596; 18 U.S.C. 207; 28 U.S.C. 2112(a); 31 U.S.C. 9701; 46 U.S.C. 305, 40103-40104, 40304, 40306, 40501-40503, 40701-40706, 41101-41109, 41301-41309, 44101-44106; 5 CFR Part 2635.

Subpart D-Rulemaking

2. In § 502.51, amend paragraph (a) by removing “§ 502.74” and adding in its place “§ 502.69” and removing the fourth sentence.

Subpart E-Proceedings; Pleadings; Motions; Replies

3. In § 502.62, paragraph (a)(6) is revised to read as follows:

§ 502.62 Private party complaints for formal adjudication.

(a)***

(6) *Filing fee*: The complaint must be accompanied by remittance of a \$289 filing fee.

* * * * *

4. In § 502.75, revise paragraph (a)(3) to read as follows:

§ 502.75 Declaratory orders and fee.

(a) * * *

(3) Petitions must be accompanied by remittance of a \$289 filing fee.

* * * * *

5. In § 502.76, revise paragraph (b) to read as follows:

§ 502.76 Petitions-general and fee.

* * * * *

(b) Petitions must be accompanied by remittance of a \$289 filing fee. [Rule 76.]

Subpart K-Shortened Procedure

6. The last sentence of § 502.182 is revised to read as follows:

§ 502.182 Complaint and memorandum of facts and arguments and filing fee.

* * * The complaint must be accompanied by remittance of a \$289 filing fee. [Rule 182.]

Subpart Q-Refund or Waiver of Freight Charges

7. In § 502.271, revise paragraph (d)(5) to read as follows:

§ 502.271 Special docket application for permission to refund or waive freight charges.

* * * * *

(d) * * *

(5) Applications must be accompanied by remittance of a \$117 filing fee.

* * * * *

Subpart S-Informal Procedure for Adjudication of Small Claims

8. The last sentence of § 502.304(b) is revised to read as follows:

§ 502.304 Procedure and filing fee.

* * * * *

(b) * * * Such claims must be accompanied by remittance of an \$85 filing fee.

* * * * *

PART 503-PUBLIC INFORMATION

9. The authority citation for Part 503 continues to read as follows:

Authority: 5 U.S.C. 331, 552, 552a, 552b, 553; 31 U.S.C. 9701; E.O. 13526 of January 5, 2010 (75 FR 707), sections 5.1(a) and (b).

10. In § 503.50, Paragraph (c)(1) introductory text, paragraphs (c)(1)(i) and (ii); the first sentence of paragraph (c)(2); paragraph (c)(3)(i), (ii) and (iii), paragraph (c)(4); and paragraph (e) are revised to read as follows:

§ 503.50 Fees for services.

* * * * *

(c) * * *

(1) Records search (including electronic search) will be performed by Commission personnel at the following rates:

(i) Search will be performed by clerical/administrative personnel at a rate of \$27 per hour and by professional/executive personnel at a rate of \$57 per hour.

(ii) Minimum charge for record search is \$27.

(2) Charges for review of records to determine whether they are exempt from disclosure under § 503.33 must be assessed to recover full costs at the rate of \$57 per hour. * * *

(3) * * *

(i) If performed by requesting party at the rate of ten cents per page (one side).

(ii) By Commission personnel, at the rate of ten cents per page (one side) plus \$27 per hour.

(iii) Minimum charge for copying is \$5.

* * * * *

(4) The certification and validation (with Federal Maritime Commission seal) of documents filed with or issued by the Commission will be available at \$84 for each certification.

* * * * *

(e) Applications for admission to practice before the Commission for persons not attorneys at law must be accompanied by a fee of \$153 pursuant to § 502.27 of this chapter.

Subpart H-Access to Any Record of Identifiable Personal Information

11. In § 503.69, paragraphs (b)(1) and (2) are revised to read as follows:

§ 503.69 Fees.

* * * * *

(b) * * *

(1) The copying of records and documents will be available at the rate of ten cents per page (one side), limited to size 8 ¼" x 14" or smaller.

(2) The certification and validation (with Federal Maritime Commission seal) of documents filed with or issued by the Commission will be available at \$84 for each certification.

* * * * *

**PART 515-LICENSING, FINANCIAL RESPONSIBILITY REQUIREMENTS,
AND GENERAL DUTIES FOR OCEAN TRANSPORTATION
INTERMEDIARIES**

12. The authority citation for Part 515 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. 305, 40102, 40104, 40501-40503,
40901-40904, 41101-41109, 41301-41302, 41305-41307; Pub. L. 105-383, 112 Stat.
3411; 21 U.S.C. 862.

Subpart A-General

13. In § 515.5, paragraphs (c)(2)(i) and (ii) are revised to read as follows:

§ 515.5 Forms and Fees.

* * * * *

(c) * * *

(2) * * *

(i) Application for new OTI license as required by § 515.12(a): Automated filing \$250;
paper filing pursuant to waiver \$1,055.

(ii) Application for change to OTI license or license transfer as required by § 515.20(a)
and (b): Automated filing \$125; paper filing pursuant to waiver \$735.

* * * * *

Subpart D-Duties and Responsibilities of Ocean Transportation Intermediaries;

Reports to Commission

15. The last sentence of § 515.34 is removed and the second sentence is revised to read as
follows:

§ 515.34 Regulated Persons Index.

* * *The database is available at no charge on the Commission's website at
www.fmc.gov.

PART 520-CARRIER AUTOMATED TARIFFS

16. The authority citation for Part 520 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. 305, 40101-40102, 40501-40503, 40701-40706,
41101-41109.

Subpart B-Filing Requirements

17. The last sentence of § 520.14 paragraph (c)(1) is revised to read as follows:

§ 520.14 Special permission.

* * * * *

(c) * * *

(1) * * * Every such application must be submitted to the Bureau of Trade Analysis and
be accompanied by a filing fee of \$299.

* * * * *

PART 530-SERVICE CONTRACTS

18. The authority citation for Part 530 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. 305, 40301-40306, 40501-40503, 41307.

Subpart B-Filing Requirements

19. In § 530.10 paragraph (c) introductory text is revised to read as follows:

§ 530.10 Amendment, correction, cancellation, and electronic transmission errors.

* * * * *

(c) *Corrections*. Requests must be filed, in duplicate, with the Commission's Office of the Secretary within forty-five (45) days of the contract's filing with the Commission, accompanied by remittance of an \$95 service fee, and must include:

* * * * *

PART 531-NVOCC SERVICE ARRANGEMENTS

20. The authority citation for Part 531 continues to read as follows:

Authority: 46 U.S.C. 40103

21. In § 531.8 paragraph (b)(1) is revised to read as follows:

§ 531.8 Amendment, correction, cancellation, and electronic transmission errors.

* * * * *

(b) * * *

(1) Requests must be filed, in duplicate, with the Commission's Office of the Secretary within forty-five (45) days of the contract's filing with the Commission, accompanied by remittance of an \$95 service fee.

* * * * *

PART 535-AGREEMENTS BY OCEAN COMMON CARRIERS AND OTHER PERSONS SUBJECT TO THE SHIPPING ACT OF 1984

22. The authority citation for Part 535 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. 305, 40101-40104, 40301-40307, 40501-40503, 40901-40904, 41101-41109, 41301-41302, and 41305-41307.

Subpart D-Filing of Agreements

24. In § 535.401 paragraphs (g) and (h) are revised to read as follows:

§ 535.401 General requirements.

* * * * *

(g) *Fees.* The filing fee is \$3,218 for new agreements and any agreement modifications requiring Commission review and action; \$526 for agreements processed under delegated authority (for types of agreements that can be processed under delegated authority, see § 501.27(e) of this chapter); \$303 for carrier exempt agreements; and \$90 for terminal exempt agreements.

(h) The fee for a request for expedited review of an agreement pursuant to § 535.605 is \$159. This fee must be paid in addition to the carrier agreement filing fee required by paragraph (g) of this section.

PART 540-PASSENGER VESSEL FINANCIAL RESPONSIBILITY

25. The authority citation for Part 540 continues to read as follows:

Authority: 5 U.S.C. 552, 553; 31 U.S.C. 9701; 46 U.S.C. 305, 44101-44106.

Subpart A-Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation

26. The last two sentences in § 540.4 paragraph (e) are revised to read as follows:

§ 540.4 Procedure for establishing financial responsibility.

* * * * *

(e) * * * An application for a Certificate (Performance), excluding an application for the addition or substitution of a vessel to the applicant's fleet, must be accompanied by a filing fee remittance of \$2,284. An application for a Certificate (Performance) for the addition or substitution of a vessel to the applicant's fleet must be accompanied by a filing fee remittance of \$1,224.

* * * * *

Subpart B-Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages

27. The last two sentences in § 540.23 paragraph (b) are revised to read as follows:

§ 540.23 Procedure for establishing financial responsibility.

* * * * *

(b) * * * An application for a Certificate (Casualty), excluding an application for the addition or substitution of a vessel to the applicant's fleet, must be accompanied by a filing fee remittance of \$1,085. An application for a Certificate (Casualty) for the addition or substitution of a vessel to the applicant's fleet must be accompanied by a filing fee remittance of \$593.

* * * * *

Subpart D-Petitions for Section 19 Relief

28. Revise § 550.402 to read as follows:

§ 550.402 Filing of petitions.

Except for petitions for rulemaking, all requests for relief from conditions unfavorable to shipping in the foreign trade must be by written petition. An original and fifteen copies of a petition for relief under the provisions of this part must be filed with the Secretary, Federal Maritime Commission, Washington, DC 20573. The petition must be accompanied by remittance of a \$289 filing fee.

**PART 555-ACTIONS TO ADDRESS ADVERSE CONDITIONS AFFECTING
U.S.-FLAG CARRIERS THAT DO NOT EXIST FOR FOREIGN CARRIERS IN
THE UNITED STATES**

29. The authority citation for Part 555 continues to read as follows:

Authority: 5 U.S.C. 553; sec. 10002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. 42301-42307).

30 The last sentence in § 555.4 paragraph (a) is revised to read as follows:

§ 555.4 Petitions.

(a) * * * The petition must be accompanied by remittance of a \$289 filing fee.

* * * * *

**PART 560- ACTIONS TO ADDRESS CONDITIONS UNDULY IMPAIRING
ACCESS OF U.S.-FLAG VESSELS TO OCEAN TRADE BETWEEN FOREIGN
PORTS**

31. The authority citation for Part 560 continues to read as follows:

Authority: 5 U.S.C. 553; secs. 13(b)(6), 15 and 17 of the Shipping Act of 1984, 46 U.S.C. 305, 40104, and 41108(d); sec. 10002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. 42301-42307).

32. The last sentence in §560.3 paragraph (a)(2) is revised to read as follows:

§ 560.3 Petitions for relief.

(a) * * *

(2) * * * The petition must be accompanied by remittance of a \$289 filing fee.

* * * * *

By the Commission.

Karen V. Gregory

Secretary

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