

ORIGINAL

(S E R V E D)
(FEBRUARY 25, 2005)
(FEDERAL MARITIME COMMISSION)

**FEDERAL MARITIME COMMISSION
46 CFR PARTS 502, 503, 515, 520, 530, 535, 540, 550, 555, and 560.**

[Docket No. 04-11]

**UPDATE OF EXISTING AND ADDITION OF NEW
FILING FEES**

RIN 3072-AC27

AGENCY: Federal Maritime Commission.

ACTION: Final Rule.

SUMMARY: The Federal Maritime Commission (“Commission”) revises its existing fees for filing petitions and complaints; various public information services, such as record searches, document copying, and admissions to practice; filing ocean transportation intermediary license applications; applications for special permission; service contracts; agreements; and passenger vessel performance and casualty certificate applications. These revised fees reflect current costs to the Commission. In addition, the Commission is establishing a separate fee for the filing of terminal exempt agreements.

DATE: Effective on April 4, 2005.

FOR FURTHER INFORMATION CONTACT:

Bryant L. VanBrakle, Secretary
Federal Maritime Commission
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SUPPLEMENTARY INFORMATION:

I. BACKGROUND

On August 31, 2004, the Commission published in the Federal Register a notice of proposed rulemaking (“NPR”), 69 FR 53027, in Docket No. 04-11, Update of Existing and Addition of New Filing Fees. This NPR proposed to update the Commission’s current filing and service fees which have been in effect since July 15, 2002, and are no longer representative of the Commission’s actual costs for providing such services. Fee increases primarily reflected increases in salary and indirect (overhead) costs. For some services, the increase in processing or review time accounted in part for the increase in the level of fees. For other services, fees were lower due to overall reduced costs to provide those services.

The Commission also established a separate fee for terminal exempt agreements. Currently, the Commission maintains the same filing fee for carrier and terminal exempt agreements; however, terminal exempt agreements generally require less processing time than carrier exempt agreements. Consequently, the Commission proposed to establish a separate filing fee for terminal exempt agreements to reflect better the difference in processing times.

II. COMMENTS

The Commission received one comment, from B. Sachau, a private citizen. The commenter suggested that fees should be much higher because, since 2002, everything has gone up by a commenter-estimated one hundred percent. The commenter also suggested that fees should be updated annually, and that all fees should be a minimum of \$550, except for document searches, which should cost \$8.00 per hour maximum. Further, the commenter suggested that it should not cost anything to have one’s name on a mailing list for specific dockets.

III. DISCUSSION

The Commission followed established OMB guidelines enumerated in OMB Circular A-25 (“Circular”) when developing its user fee schedule. The Circular provides that costs be determined from agency records, and that costs cover the direct and indirect costs to the Government of carrying out an activity, including, but not limited to, personnel costs, physical overhead, management and supervisory costs, and the costs of enforcement, collection, search, establishment of standards and regulations, etc. This method of determining fees addresses the concern raised in the comment that fees pay for the operation of the agency. With regard to specific fee suggestions in the comments, no documentary basis is provided for setting fees at an arbitrary minimum, for increasing fees beyond those proposed in the NPR, for setting document search costs at a certain maximum amount, or for providing mailing list services for no fee. As the Commission followed standard Government guidelines in developing its fees and the comment provides no basis for their modification, the fees set out in the NPR will be made final.

This Final Rule reflects changes in certain CFR section numbers and Commission bureau names which were put into effect in other Commission rulemakings which became final after the NPR was issued in this proceeding.

The Commission intends to update its fees biennially in keeping with OMB guidance. In updating its fees, the Commission will incorporate changes in employee salaries into direct labor costs associated with its services, and recalculate its indirect costs (overhead) based on the current level of costs.

In accordance with the Regulatory Flexibility Act, 5 U.S.C. § 601 et seq., the Chairman of the Federal Maritime Commission has certified that the rule will not have a significant economic

impact on a substantial number of small entities. As stated in the NPR, while the Commission recognized that the rule may impact businesses that qualify as small entities under Small Business Administration guidelines, the Commission is required to assess recipients of specific governmental services reasonable charges to recover the costs of providing these services. The charges in the rule reflect the costs of specific Commission services mandated by statute, and these services benefit the shipping industry and the foreign commerce of the United States. The Commission believes that the charges in the rule will not have a harmful effect on entities within the Commission's jurisdiction, the general public, or the U.S. economy. Furthermore, the Commission's regulations provide for waiver or reduction of any charge in extraordinary situations pursuant to 46 C.F.R. § 503.41. Requests for fee waiver or reduction are to be made to the Secretary of the Commission, and should demonstrate either that the waiver or reduction is in the best interest of the public or that imposition of the fee would impose an undue hardship. No comments disputed the Commission's certification. The certification, therefore, remains in effect.

This regulatory action was not subject to OMB review under Executive Order 12866, dated September 30, 1993. This regulatory action is not a "major rule" under 5 U.S.C. 804(2). This rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1980, as amended. Therefore, OMB review is not required.

List of Subjects

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, Reporting 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 amends 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, 571-596; 5 U.S.C. 571-584; 12 U.S.C. 1141j(a); 18 U.S.C. 207; 26 U.S.C. 501(c)(3); 28 U.S.C. 2112(a); 31 U.S.C. 9701; 46 U.S.C. app. 817d, 817e, 1114(b), 1705, 1707-1711, 1713-1716; E.O. 11222 of May 8, 1965, 30 FR 6469, 3 CFR, 1964-1965 Comp. P. 306; 21 U.S.C. 853a; Pub. L. 105-258, 112 Stat. 1902.

Subpart D-Rulemaking

2. The fourth sentence of § 502.51(a) is revised to read as follows:

§ 502.51 Initiation of procedure to issue, amend, or repeal a rule.

(a) * * *

Petitions shall be accompanied by remittance of a \$241 filing fee. * * *

* * * * *

Subpart E-Proceedings; Pleadings; Motions; Replies

c. Section 502.62(g) is revised to read as follows:

§ 502.62 Complaints and fee.

* * * * *

(g) The complaint shall be accompanied by remittance of a \$221 filing fee.

* * * * *

4. Section 502.68(a)(3) is revised to read as follows:

§ 502.68 Declaratory orders and fee.

(a) * * *

(3) Petitions shall be accompanied by remittance of a \$241 filing fee.

* * * * *

5. Section 502.69(b) is revised to read as follows:

§ 502.69 Petitions-General and fee.

* * * * *

(b) Petitions shall be accompanied by remittance of a \$241 filing fee. [Rule 69.]

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 shall be accompanied by remittance of a \$221 filing fee. [Rule 182.]

Subpart Q-Refund or Waiver of Freight Charges

7. § 502.271(d)(5) is revised 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 \$77 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 shall be accompanied by remittance of a \$67 filing fee.

* * * * *

PART 503-PUBLIC INFORMATION

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

Authority: 5 U.S.C. 552, 552a, 552b, 553; 31 U.S.C. 9701; E.O. 12958 of April 20, 1995 (60 FR 19825), sections 5.2(a) and (b).

10. In § 503.43, paragraphs (c)(1) (i) and (ii), the first sentence of paragraph (c)(2), paragraph (c)(3)(ii) and (iii), paragraph (c)(4), paragraph (d) and paragraph (e) are revised to read as follows:

§ 503.43 Fees for services.

* * * * *

(c) * * *

(1) * * *

(i) Search will be performed by clerical/administrative personnel at a rate of \$19 per hour and by professional/executive personnel at a rate of \$48 per hour.

(ii) Minimum charge for record search is \$19.

(2) Charges for review of records to determine whether they are exempt from disclosure under § 503.33 shall be assessed to recover full costs at the rate of \$79 per hour. * * *

(3) * * *

(ii) By Commission personnel, at the rate of five cents per page (one side) plus \$19 per hour.

(iii) Minimum charge for copying is \$4.75.

* * * * *

(4) The certification and validation (with Federal Maritime Commission seal) of documents filed with or issued by the Commission will be available at \$94 for each certification.

(d) To have one's name and address placed on the mailing list of a specific docket as an interested party to receive all issuances pertaining to that docket: \$9 per proceeding.

(e) Applications for admission to practice before the Commission for persons not attorneys at law must be accompanied by a fee of \$104 pursuant to § 502.27 of this chapter.

Subpart G-Access to Any Record of Identifiable Personal Information

11. In § 503.69, paragraph (b)(2) is revised to read as follows:

§ 503.69 Fees.

* * * * *

(b) * * *

(2) The certification and validation (with Federal Maritime Commission seal) of documents filed with or issued by the Commission will be available at \$94 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. app. 1702, 1707, 1709, 1710, 1712, 1714, 1716, and 1718; Pub. L. 105-383, 112 Stat. 3411; 21 U.S.C. 862.

Subpart A-General

13. In § 515.5, paragraphs (a), (b)(1), (b)(2), and (b)(3) are revised to read as follows:

§ 515.5 Forms and Fees.

(a) Forms. License form FMC-18 Rev., and financial responsibility forms FMC-48, FMC-67, FMC-68, FMC-69 may be obtained from the Commission's website at <http://www.fmc.gov>, the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, D.C. 20573, or from any of the Commission's area representatives.

(b) * * *

(1) Application for license as required by § 515.12(a): \$825;

(2) Application for status change or license transfer as required by §§ 515.18(a) and 515.18(b): \$525; and

(3) Supplementary investigations required by § 515.25(a): \$225.

Subpart D-Duties and Responsibilities of Ocean Transportation Intermediaries;

Reports to Commission

14. The second sentence of § 515.34 is revised to read as follows:

§ 515.34 Regulated Persons Index.

* * *

The database may be purchased for \$108 by contacting the Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC 20573.* * *

PART 520-CARRIER AUTOMATED TARIFFS

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

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1701-1702, 1707-1709, 1712, 1716; and sec. 424 of Pub. L. 105-383, 112 Stat. 3411.

Subpart B-Filing Requirements

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

§ 520.14 Special permission.

(c) * * *

(1) * * *

Every such application shall be submitted to the Bureau of Trade Analysis and be accompanied by a filing fee of \$195.

* * * * *

PART 530-SERVICE CONTRACTS

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

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1704, 1705, 1707, 1716.

Subpart B-Service Contracts

18. Section 530.10(c), introductory text, is revised to read as follows:

§ 530.10 Amendment, correction, and cancellation.

* * * * *

(c) * * *

Corrections. Requests shall 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 a \$315 service fee, and shall include:

* * * * *

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

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

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1701-1707, 1709-1710, 1712 and 1714-1718; Pub. L. 105-383, 112 Stat. 3411.

Subpart D-Filing of Agreements

20. In section 535.401, paragraphs (f) and (g) are revised to read as follows:

§ 535.401 General requirements.

* * * * *

(f) Fees. The filing fee is \$1,780 for new agreements requiring Commission review and action; \$851 for agreement modifications requiring Commission review and action; \$397 for agreements processed under delegated authority (for types of agreements that can be processed under delegated authority, see § 501.26(e) of this chapter); \$138 for carrier exempt agreements; and \$75 for terminal exempt agreements.

(g) The fee for the Commission's agreement database report is \$6.

* * * * *

PART 540-PASSENGER VESSEL FINANCIAL RESPONSIBILITY

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

Authority: 5 U.S.C. 552, 553; 31 U.S.C. 9701; secs. 2 and 3, Pub. L. 89-777, 80 Stat. 1356-1358; 46 U.S.C. app. 817e, 817d; 46 U.S.C. 1716.

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

22. The last two sentences in § 540.4(b) are revised to read as follows:

§ 540.4 Procedure for establishing financial responsibility.

* * * * *

(b) * * *

An application for a Certificate (Performance), excluding an application for the addition or substitution of a vessel to the applicant's fleet, shall be accompanied by a filing fee remittance of \$2,767. An application for a Certificate (Performance) for the addition or substitution of a vessel to the applicant's fleet shall be accompanied by a filing fee remittance of \$1,382.

* * * * *

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

23. The last two sentences in § 540.23(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, shall be accompanied by a filing fee remittance of \$1,206. An application for a Certificate (Casualty) for the addition or substitution of a vessel to the applicant's fleet shall be accompanied by a filing fee remittance of \$605.

* * * * *

PART 550-REGULATIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE FOREIGN TRADE OF THE UNITED STATES

24. The authority citation for Part 550 continues to read as follows:

Authority: 5 U.S.C. 553; sec. 19(a)(2), (e), (f), (g), (h), (i), (j), (k) and (l) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(a)(2), (e), (f), (g), (h), (i), (j), (k) and (l), as amended by Pub. L. 105-258; Reorganization Plan No. 7 of 1961, 75 Stat 840; and sec. 10002 of the Foreign Shipping Practices Act of 1988, 46 U.S.C. app. 1710a.

Subpart D-Petitions for Section 19 Relief

25. Section 550.402 is revised to read as follows:

§ 550.402 Filing of petitions.

All requests for relief from conditions unfavorable to shipping in the foreign trade shall be by written petition. An original and fifteen copies of a petition for relief under the provisions of this part shall be filed with the Secretary, Federal Maritime Commission, Washington, DC 20573. The petition shall be accompanied by remittance of a \$241 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

26. 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. app. 1710a), as amended by Pub. L. 105-258.

27. In § 555.4, paragraph (a) is revised to read as follows:

§ 555.4 Petitions.

(a) A petition for investigation to determine the existence of adverse conditions as described in § 555.3 may be submitted by any person, including any common carrier, shipper, shippers' association, ocean freight forwarder, or marine terminal operator, or any branch, department, agency, or other component of the Government of the United States. Petitions for relief under this part shall be in writing, and filed in the form of an original and fifteen copies with the Secretary, Federal Maritime Commission, Washington, DC 20573. The petition shall be accompanied by remittance of a \$241 filing fee.

* * * * *

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

28. 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. app. 1712(b)(6), 1714 and 1716, as amended by Pub. L. 105-258; sec. 10002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. app. 1710a), as amended by Pub. L. 105-258.

29. Section 560.3(a)(2) is revised to read as follows:

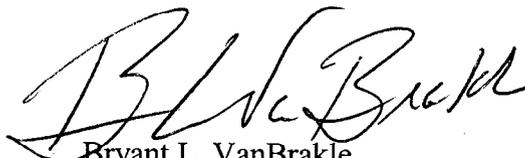
§ 560.3 Petitions for relief.

(a) * * *

(2) An original and fifteen copies of such a petition including any supporting documents shall be filed with the Secretary, Federal Maritime Commission, Washington, DC 20573. The petition shall be accompanied by remittance of a \$241 filing fee.

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By the Commission.


Bryant L. VanBrakle
Secretary

Federal Maritime Commission
 Summary of Fees
 Effective April 4, 2005

CFR REFERENCE	APPLICATION OR SERVICE	CURRENT FEE
PART 502	Rules of Practice and Procedure	
502.51(a)	Petitions	241.00
502.68(a)(3)	Declaratory Orders	
502.69(b)	Petitions	
502.271(d)(5)	Special Dockets	77.00
502.62(g)	Formal Complaints	221.00
502.182		
502.304(b)	Informal Procedures	67.00
PART 503	Public Administration	
503.43(c)(1),(2),(3)	Search, review and copying of documents 5 cents per page with min. \$4.75 \$19/hour clerical/administrative personnel \$48/hour for professional/executive personnel \$79/hour FOIA review \$19/minimum charge for record search	Various
503.43(c)(4)	Validation of Documents	94.00
503.69(b)(1)(2)		
503.43(d)	Mailing List	9.00
503.43(e)	Non-Attorney Admission to Practice	104.00
PART 515	Licensing, Financial Responsibility Requirements, and General Duties for Ocean Transportation Intermediaries	
515.5(b)(1)	Application for License	825.00
515.5(b)(3)	Supplementary Investigation	225.00
515.5(b)(2)	Application for Status Change or License Transfer	525.00
515.34	Sale to Public of RPI	108.00
PART 520	Carrier Automated Tariffs	
520.14(c)(1)	Application for Special Permission	195.00
PART 530	Service Contracts	

CFR REFERENCE	APPLICATION OR SERVICE	CURRENT FEE
530.10(c)	Clerical Errors on Service Contracts	315.00
PART 535	Agreements by Ocean Common Carriers and Other Persons Subject to the Shipping Act of 1984	
535.401(g)	New Agreement Requiring Commission Review	1,780.00
535.401(g)	Agreement Amendments Requiring Commission Review	851.00
535.401(g)	Agreement Filing Review under Delegated Authority	397.00
535.401(g)	Carrier Exempt Agreement Filings	138.00
535.401(g)	Terminal Exempt Agreement Filings	75.00
535.401(h)	Database Report on Effective Carrier Agreements	6.00
PART 540	Passenger Vessel Financial Responsibility	
540.4(b)	Passenger Vessel Certificate (Performance) Addition or substitution of vessel	2,767.00 1,382.00
540.23(b)	Passenger Vessel Certificate (Casualty) Addition or substitution of vessel	1,206.00 605.00
PART 550	Regulations to Adjust or Meet Conditions Unfavorable to Shipping in the Foreign Trade of the United States	
550.402	Petitions	241.00
PART 555	Actions to Address Adverse Conditions Affecting U.S.-Flag Carriers that do not Exist for Foreign Carriers in the United States	
555.4(a)	Petitions	241.00
PART 560	Actions to Address Conditions Unduly Impairing Access of U.S.-Flag Vessels to Ocean Trade Between Foreign Ports	
560.3(a)(2)	Petitions	241.00