

**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:** Advance Notice of Proposed Rulemaking.

**SUMMARY:** The Federal Maritime Commission (Commission) is considering amending its current user fees and invites public comment on whether the Commission should amend its user fees. Specifically, the Commission is considering 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 is also considering 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 is considering 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 is also considering adding a new fee for requests for expedited review of an agreement filing.

**DATES:** Comments are due on or before: April 18, 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](mailto:secretary@fmc.gov).
- *Docket:* For access to the docket to read background documents or comments received, go to: <http://www.fmc.gov/16-06>, select Docket No. 16-06 from the drop-down list next to “Proceeding or Inquiry Number” and click the “Search” option.

**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](mailto: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.<sup>1</sup> 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.

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

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

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.<sup>2</sup> 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.

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 Equivalent (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

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<sup>2</sup> 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).

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.<sup>3</sup> 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 is considering would allow some user fees to remain unchanged; increase, reduce, or delete other fees; and add one new fee. The Commission is considering 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 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 considering adjusting upward these administrative fees based on an assessment of fiscal year 2015 costs. Similarly, the Commission is considering adjusting upward the user fees

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<sup>3</sup> 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.

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.<sup>4</sup> 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 Commission is considering continuing to offer the lower fees for electronic filing at the current fee amounts.<sup>5</sup>

The Commission is considering 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.

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<sup>4</sup> 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).

<sup>5</sup> 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.

For reviews of requests filed under FOIA and requests for revisions of clerical errors on service contracts, the Commission is considering lowering the fees due to the change in grade level of the professional staff that review FOIA requests.

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

The Commission is also considering 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.

By the Commission.

Karen V. Gregory  
Secretary