



WORLD SHIPPING COUNCIL
PARTNERS IN AMERICA'S TRADE

Comments of the

World Shipping Council

Submitted to the

Federal Maritime Commission

In the matter of

Update of Existing and Addition of New User Fees

Docket Number:
16-06

June 27, 2016

The World Shipping Council (“WSC” or “the Council”) respectfully files these comments in response to the Commission’s Notice of Proposed Rulemaking (NPRM) published in the above-referenced docket on May 27, 2016 (81 Fed. Reg 33637). The NPRM proposes to amend the Commission’s current user fees and invites the public to comment on whether the Commission should take such action.

A. Insufficient Cost Information Provided

The Commission proposes wide-ranging changes to its user fee schedule, including: 1) increasing user fees for filing agreements, applications for special permission, paper ocean transportation intermediary (OTI) applications, complaints and petitions and for performing records searches, document copying, and admissions to practice; 2) creating a new fee for performing expedited review of an agreement filing; 3) lowering fees for reviewing Freedom of Information Act (FOIA) requests, revising clerical errors on service contracts and NVOCC service agreements, and providing services to passenger vessel operators; and 4) repealing fees for adding interested parties to a docket mailing list, the Regulated Persons Index database, database reports on Effective Carrier Agreements, and filing petitions for rulemaking.

The Council acknowledges the Commission’s authority to establish and collect user fees under the statutory authority of the Independent Offices Appropriation Act of 1952 (IOAA) (31 USC 9701). The Council notes, however, that the IOAA requires that *“each charge be (1) fair; and (2) based on (A) the costs to the Government; (B) the value of the service or thing to the recipient.”* The Administrative Procedure Act (APA) (5 USC 551) also requires agencies to provide sufficient detail to allow the public to evaluate a proposed regulatory action and comment on the proposal.

Although the Commission included in the preamble to the NPRM a brief description of the methodology it used to assess fees and a general description of the proposed fee adjustments, the NPRM does not provide detailed information regarding the Commission’s costs for the specific services for which user fee adjustments are proposed.

The Commission also placed in the docket an *“Overhead Rate Methodology”* document to further explain its proposed user fee changes. That document, however, simply discusses the types of costs and procedures the Commission used to generate its overhead calculation; it does not provide detailed cost information for each service to justify each proposed fee change.

For example, although the document states, *“The fee generating activities were asked to identify the position, grade of the individual performing the task and the number of hours they spent on each good and/or service”*, the document does not provide any such activity and cost data, which would enable a regulated party to evaluate and comment on the proposed fee changes. The document also contains a spreadsheet entitled *“User Fee Calculations for Fiscal Year 2015”*, but that spreadsheet contains only the name of the user fee, the current and proposed fee amounts, and the calculated difference between the current and proposed fees.

Again, that document does not reveal any specific data used to calculate the cost basis for any particular fee.

In short, there is nothing upon which the public can comment, because the NPRM does not provide any data to describe or support the Commission's decisions and proposed actions.

B. Recommendation

The Council respectfully recommends that the Commission publish in the docket detailed information regarding the costs of each of the services for which user fee changes are proposed, including the revenue the Commission currently generates for each of these fees, the employee hours associated with each, and the average cost per hour for providing the service. The Commission is bound by the governing law and its own methodology to make those calculations. The law also requires that those details be shared with the public so that the public may understand and comment substantively on the proposals.

The Council also recommends that the Commission extend the comment deadline by 45 days after the detailed cost information described above has been published in the docket. Implementing these recommendations would provide the regulated community with the ability to analyze and comment on the Commission's proposed user fee changes, and would fulfill the Commission's statutory obligations under the IOAA and APA.

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