

DEPARTMENT OF JUSTICE**28 CFR Part 20**

[Docket No. FBI 118]

RIN 1110-AA29

**FBI Records Management Division
National Name Check Program Section
User Fees****AGENCY:** Federal Bureau of Investigation (FBI), Justice.**ACTION:** Final rule.

SUMMARY: This Final Rule sets out the Director of the FBI's authority to establish and collect fees for providing name-based background checks conducted by the National Name Check Program (NNCP) of the Records Management Division (RMD). The rule explains the methodology used to calculate the fees and provides that future fee adjustments will be made by notice published in the **Federal Register**.

DATES: This rule is effective June 7, 2010.

FOR FURTHER INFORMATION CONTACT: FBI, Records Management Division, National Name Check Program Section, 170 Marcel Drive, Winchester, VA 22602, Attention: Michael Cannon.

SUPPLEMENTARY INFORMATION:**I. Background**

On September 26, 2008, the FBI published a Notice of Proposed Rulemaking (NPRM) setting forth the FBI's statutory authority to establish and collect fees for named-based NNCP checks and other identification services performed by the RMD. See 73 FR 55,794 (2008) (to be codified at 28 CFR part 20). The FBI's user fees are differentiated by the FBI Division providing the service. The user fees for the NNCP checks provided by the RMD are the subject of this rulemaking. Fees for the criminal history record information checks provided by the Criminal Justice Information Services Division (CJIS) were the subject of a separate rulemaking and associated notice published in the **Federal Register** on April 13, 2010 at 75 FR 18751 and 18887. Because the FBI was uncertain which rule would be finalized first, both the CJIS fee NPRM and the NNCP fee NPRM proposed to amend 28 CFR 20.31 by adding an identical paragraph (e). The NNCP fee NPRM also proposed to add a new paragraph (f) regarding the collection of fees for named-based background checks. Because paragraph (e) already has been added to section 20.31 by the CJIS fee final rule, the

NNCP final rule has been conformed by adding only the new paragraph (f) to section 20.31.

The NPRM regarding the NNCP checks explained the methodology used to calculate the fees, provided a proposed fee schedule and explained that the fees may include an amount to establish a fund to defray expenses for the automation of fingerprint identification and criminal justice information services and associated costs. The NPRM further advised that the current fees would be published concurrently with this final rule as a notice in the **Federal Register**. This final rule implements the FBI's statutory fee authority. All future fee adjustments will be made by notice published in the **Federal Register**.

II. Legal Authority to Collect Fees

The FBI has collected fees for the NNCP since 1991, when the authority to establish and collect fees to process name-based CHRI checks, was set out in Public Law (Pub. L.) 101-515. This statutory authority was renewed annually by subsequent appropriations legislation. Under Public Law 101-162, the FBI also was authorized to establish and collect fees for name-based checks and to set the fees at a level to include an amount to defray expenses for the automation of fingerprint identification and associated costs. Congress, in Public Law 101-515, subsequently authorized the FBI to establish and collect these fees on a continuing basis. This authority was further expanded by Public Law 104-99 with insertion of the term "criminal justice information services" so the FBI was authorized to use the collected fees to "defray expenses for the automation of fingerprint identification and criminal justice information services and associated costs." The FBI does not charge a fee for NNCP services performed for criminal justice purposes, as those services are supported by federal appropriations.

III. Reasons for the Proposed Fee Schedule

While the RMD has automated some portions of the NNCP process, the current fees, which have not changed since 1991, do not reflect the expense of personnel time and other costs involved in the analysis of the pertinent information. The NNCP disseminates information from the FBI's Central Records System (CRS) in response to requests submitted by federal agencies, Congressional committees, the federal judiciary, friendly foreign police and intelligence agencies. The CRS contains the FBI's administrative, personnel, and

investigative files. The NNCP was established under Executive Order No. 10450, issued on April 27, 1953, 18 FR 2489, which mandated National Agency checks in the background investigation of prospective Government employees. The FBI performs the primary National Agency check on all U.S. Government employees and provides information to more than 40 federal agencies. The information from the CRS, disseminated under the NNCP, is evaluated by governmental agencies before bestowing privileges such as visas, naturalization or work authorizations under the Immigration and Nationality Act, Public Law 82-414 as amended, and other federal laws.

The CRS consists of administrative, applicant, criminal, personnel, and other files arranged by subject matter relating to an individual, an organization, or other matters. The CRS records are maintained at FBI Headquarters and FBI Field Offices. The CRS can be accessed through the General Indices, which are arranged in alphabetical order by subject, such as the names of individuals and organizations.

In 1995, the FBI implemented the Automated Case Support (ACS) system to access 105 million records from previous automated systems. The ACS consists of three automated applications that support case management functions for all investigative and administrative cases. The Investigative Case Management application is used to open, assign and track leads and close investigative and administrative cases. The Electronic Case File serves as the central electronic repository for the FBI's official text-based documents. The Universal Index (UNI) provides a complete subject and case index to approximately 99 million records in investigative and administrative cases. The UNI lists the names of individuals or entities, with identifying information such as date of birth and social security number.

The processing of an NNCP search begins with the search of a person's name in the UNI to locate all instances of the person's name and identifying information in the main and reference files. A main file concerns the subject of an FBI investigation, and a reference file concerns an individual whose name appears in part of an FBI investigation, such as an associate or witness. Over 60 percent of the initial NNCP electronic checks in UNI yield no identifiable information regarding the person and are termed "No record," and that information is reported to the requesting agency. If the search of UNI yields possibly identifiable information, the

NNCP request requires additional review and an additional manual name search is conducted. If identifiable information is located, the records are retrieved and reviewed for possible derogatory information concerning the subject of the NNCP request. The FBI forwards a summary of the derogatory information to the requesting agency.

By letter, dated August 30, 2007, to all RMD customers using the NNCP for noncriminal justice purposes, the FBI established the proposed fee schedule on an interim basis, effective October 1, 2007. RMD customers were advised of the revised fees prior to the start of FY 2008, thereby avoiding costly and confusing mid-year changes. The FBI will continue to analyze its costs in processing searches in the NNCP and will review related fee charges periodically, as recommended by Office of Management and Budget Circular No. A-25, (OMB Circular A-25) User Charges. Any adjustments to the FBI's fees will be announced by notice in the **Federal Register**.

IV. Standards and Guidelines Used To Calculate the Fee

Public Law 101-515 links the user fees charged for processing name checks and fingerprint identification records to the cost of providing these services. Such costs not only include the salaries of employees engaged in providing the services but, in accordance with generally accepted accounting principles, also include such expenses as capital investment, depreciation, automation, and so forth. Congress recognized these additional expenses of processing records by authorizing the FBI to establish user fees at a level to include an amount "to defray expenses for the automation of fingerprint identification and criminal justice information services and associated costs."

In the absence of express statutory authority, federal agencies are authorized to establish fees by the Independent Office Appropriation Act of 1952, 31 U.S.C. 9701, which is implemented by specific guidelines in OMB Circular A-25. Since the FBI has express statutory authority to establish and collect fees under Public Law 101-515, the FBI is not required to follow strictly the mandates of OMB Circular A-25; however, the FBI did look to OMB Circular A-25 for guidance. For example, OMB Circular A-25's definition of "full cost" ("all direct and indirect costs to any part of the Federal Government of providing a good, resource, or service") was used as a

model by the FBI in establishing the subject user fees, including direct and indirect personnel costs, physical overhead, and other indirect costs such as material costs, utilities and equipment.

V. Calculation of the Revised Fee

The FBI hired a contractor, Grant Thornton LLP., 333 John Carlyle Street, Alexandria, Virginia, 22314, (Grant Thornton) to conduct an independent analysis of pertinent costs and to recommend a revised fee schedule for the NNCP checks conducted by RMD. Referencing OMB Circular A-25; the Statement of Federal Financial Accounting Standards (SFFAS-4); Managerial Cost Accounting Concepts and Standards for the Federal Government; and other relevant financial management directives, Grant Thornton developed a cost accounting methodology and related cost models based upon the concept and principles of activity-based costing (ABC). The cost models identified the total resource costs associated with the services provided to RMD customers, including personnel (*e.g.*, salary and benefits), non-labor (*e.g.*, material, equipment, and facility) and overhead (*e.g.*, management and administration) costs, and assigned or allocated these costs to the various service categories using relevant cost drivers. The cost drivers were selected primarily for their strong cause-effect linkages between the resources and the activities and services that consumed them. The unit costs for RMD's NNCP services incorporated in this study were derived from a robust costing network that is based on the principles of ABC, a widely recognized and accepted cost accounting methodology. Grant Thornton generated the revised fee schedule based upon these unit costs.

The methodology focused on developing full cost information for NNCP's activities and services to provide a basis for the fee recommendations. FY 2005 costs were used to develop baseline cost information, and additional estimated costs and adjustments were included to estimate resources for FY 2008 and FY 2009. The projected cost information served as the basis for the fee recommendations.

Grant Thornton developed their cost accounting methodology using the following steps for the non-automation portion of the fee. First, NNCP services and activities performed for name checks were defined. Then operational labor costs, support labor costs and non-labor costs, including appropriate

overhead and support costs, were identified and assigned to activities and then to services. Estimated costs, transaction volumes and trends were analyzed to predict appropriate costs and transaction volumes for FY 2008. Finally, using the projected FY 2008 costs and the projected FY 2008 transaction volumes, the projected unit costs for each service were calculated. The recommended user fees were based on these projected unit costs.

As explained above, under Public Law 101-515, the FBI is also authorized to charge an additional amount for the automation of fingerprint identification and criminal justice information services and associated costs. Although NNCP fees have not included this additional amount to date, the FBI considers the service provided by the NNCP as being a criminal justice information service. The costs associated with enhancing the NNCP, including the automation efforts, were identified and included in the name check fee study reflected in the rule. The estimated costs for these automation efforts were based on best available information regarding planned information technology investments. The projected FY 2008 and FY 2009 volumes were then used to calculate the unit costs for this portion of the fee. Once the unit costs were calculated, Grant Thornton generated the revised fee schedule. The FBI then independently reviewed the Grant Thornton recommendations, compared them to current fee calculations and plans for future services, and determined that the revised schedules were both objectively reasonable and in consonance with the underlying legal authorities.

VI. Revised Fee Schedule

As noted above, the FBI established the fee schedule on an interim basis, effective October 1, 2007. Fee classes remained essentially the same, with the exception that manual submissions and expedited processing requests were consolidated into a single class. Under the interim fee schedule, the fee was increased only 10 cents for users submitting electronic requests that are limited to batch processing (from \$1.40 to \$1.50). The fee increases for name checks involving non-electronic submissions and other special services were more substantial because of the higher cost for processing manual submissions and expediting responses ahead of routine transactions. Unit costs are rounded up to the next \$0.25.

SUMMARY OF FEE CHANGES

Service	Previous fee	Interim fee	Total fee increase
Electronic Submission			
Batch Process Only	\$1.40	\$1.50	\$0.10
Batch + File Review	10.65	29.50	18.85
Manual Submission	12.00	56.00	44.00
Expedited Submission	22.65	56.00	33.35

The FBI will continue to analyze its costs and will review related fee charges periodically, as recommended by OMB Circular A-25. The final rule advises that future adjustments to the FBI's fees will be announced by notice in the **Federal Register**.

VII. Administrative Consultations With Interested Federal Agencies

The FBI has provided information about this rule to the largest three customers by volume of submissions, the United States Citizenship and Immigration Services, the Office of Personnel Management and the Department of State. The FBI will develop standards of performance and timeliness with these three federal customers. As appropriate, the FBI will pursue similar arrangements with its other federal customers.

Discussion of Comments

Only one comment on the proposed rule was received. An organization of research universities expressed concern that the rule might limit access to FBI records for research or medical purposes. This rule, however, simply sets out the Director of the FBI's authority to establish and collect fees for providing name-based background checks conducted by the NNCP of the RMD. The rule does not have any impact on procedures of access to research, statistical or human subject information. Therefore, after carefully reviewing the single comment to the NPRM, the FBI has determined that no changes to the rule are necessary.

VIII. Regulatory Certifications

Regulatory Flexibility Act

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires the agency to "prepare and make available for public comment an initial regulatory flexibility analysis" which will "describe the impact of the proposed rule on small entities." (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify, in lieu of preparing an analysis, that the proposed rulemaking is not expected to have significant economic impact on a substantial number of small entities.

Small entities are defined by the RFA to include small businesses, small organizations, and small governmental jurisdictions.

This rule only concerns federal agencies authorized to request name-based record background checks, and Federal agencies do not fall within the definition of a "small entity." Accordingly, the Director of the FBI hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12866 (Regulatory Planning and Review)

This regulation has been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and Review, section 1(b), Principles of Regulation. The FBI has determined that this rule is a significant regulatory action under Executive Order 12866, Regulatory Planning and Review, section 3(f) and accordingly this rule has been reviewed by the Office of Management and Budget.

Executive Order 12988 (Civil Justice Reform)

This final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 13132 (Federalism)

This final rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The rule does not alter any of the policy set out at 28 CFR Part 20, or 28 CFR, Parts 901-906. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act of 1995

This final rule does not contain a mandate that will result in the expenditure by state, local, and tribal governments (in the aggregate) or by the private sector of \$100 million 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 final rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the U.S. economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based companies to compete with foreign-based companies in domestic and export markets.

IX. Conclusion

After careful consideration, the Department does not believe that any change to the rule is necessary based on the comment it received.

List of Subjects in 28 CFR Part 20

Classified information, Crime, Intergovernmental relations, Investigations, Law enforcement, Privacy.

■ Accordingly, pursuant to the authority set forth in Public Law 101-515, as amended by Public Law 104-99, set out in the notes to 28 U.S.C. 534, Part 20 of Chapter I of Title 28 of the CFR is amended as follows.

PART 20—CRIMINAL JUSTICE INFORMATION SYSTEMS

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

Authority: 28 U.S.C. 534; Pub. L. 92-544, 86 Stat. 1115; 42 U.S.C. 3711, *et seq.*, Pub. L. 99-169, 99 Stat. 1002, 1008-1011, as amended by Pub. L. 99-569, 100 Stat. 3190, 3196; Pub. L. 101-515, as amended by Pub. L. 104-99, set out in the notes to 28 U.S.C. 534.

■ 2. Amend § 20.31 to add paragraph (f) to read as follows:

§ 20.31 Responsibilities.

* * * * *

(f) The FBI will collect a fee for providing noncriminal name-based

background checks of the FBI Central Records System through the National Name Check Program pursuant to the authority in Pub. L. 101-515 and in accordance with paragraphs (e)(1), (2) and (3) of this section.

Dated: April 26, 2010.

Robert S. Mueller, III,

Director, Federal Bureau of Investigation.

[FR Doc. 2010-10628 Filed 5-5-10; 8:45 am]

BILLING CODE 4410-02-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2010-0081]

RIN 1625-AA08

Special Local Regulations for Marine Events; Chester River, Chestertown, MD; Correction

ACTION: Temporary final rule; correction.

SUMMARY: In the *Federal Register* published on April 23, 2010, the Coast Guard established special local regulations during the reenactment portion of the "Chestertown Tea Party Festival." The Chestertown Tea Party Festival is a marine event to be held on the waters of the Chester River, Chestertown, MD on May 29, 2010. The special local regulation published with an error in the heading, specifically, the CFR title and part in the heading should have read "33 CFR Part 100," instead of "33 CFR Part 165."

DATES: This correction is effective May 6, 2010.

FOR FURTHER INFORMATION CONTACT: For information about this correction, contact Kevin d'Eustachio, Office of Regulations and Administrative Law, (202) 372-3854

kevin.m.deustachio@uscg.mil. For information about the original regulation, contact Mr. Ronald Houck, Sector Baltimore Waterways Management Division, Coast Guard; telephone (410) 576-2674, e-mail *Ronald.L.Houck@uscg.mil*.

SUPPLEMENTARY INFORMATION: In FR doc 2010-9496 appearing on page 21167 in the issue of Friday, April 23, 2010, the following corrections are made:

1. In the document heading on page 21167, correct the CFR citation to read "33 CFR Part 100".

Dated: April 28, 2010.

S. Venckus,

Office of Regulations and Administrative Law (CG-0943), U.S. Coast Guard.

[FR Doc. 2010-10606 Filed 5-5-10; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2010-0102]

RIN 1625-AA08

Special Local Regulation for Marine Events; Temporary Change of Dates for Recurring Marine Events in the Fifth Coast Guard District; Correction

ACTION: Temporary final rule; correction.

SUMMARY: In the *Federal Register* published on April 19, 2010, the Coast Guard temporarily changed the enforcement period of two special local regulations for recurring marine events in the Fifth Coast Guard District, one on April 17-18, 2010, and one on May 29-30, 2010. That publication contained several errors. These errors do not impact the events scheduled for this year, but could cause confusion about future years.

DATES: This correction is effective May 6, 2010.

FOR FURTHER INFORMATION CONTACT: For information about this correction, contact Kevin d'Eustachio, Office of Regulations and Administrative Law, telephone (202) 372-3854, e-mail *kevin.m.deustachio@uscg.mil*. For information about the original regulation, contact LT Tiffany Duffy, Project Manager, Sector Hampton Roads, Waterways Management Division, United States Coast Guard; telephone (757) 668-5580, e-mail *Tiffany.A.Duffy@uscg.mil*.

SUPPLEMENTARY INFORMATION: In FR doc 2010-8861 appearing on page 20294 in the issue of Monday, April 19, 2010, the following corrections are made:

1. In the summary on page 20294, in the first column, remove the words "proposes to temporarily change" and add in their place the words "temporarily changes".

2. On page 20294, in the third column, revise the "DATES" section to read as follows:

"DATES: This rule is effective in the CFR April 19, 2010, through May 31, 2010. This rule is effective with actual notice for

purposes of enforcement from April 7, 2010, through May 31, 2010."

3. On page 20296, in the third column, revise amendatory instruction number 2 to read as follows:

"2. In Sec. 100.501, suspend line No. 31 and 38 in the Table to Sec. 100.501 from April 17, 2010 through June 1, 2010."

4. On page 20296, in the third column revise amendatory instruction number 3 to read as follows:

"3. In Sec. 100.501 add lines No. 58 and 59 in Table to Sec. 100.501 to read as follows:"

Dated: April 28, 2010.

S. Venckus,

Office of Regulations and Administrative Law (CG-0943), U.S. Coast Guard.

[FR Doc. 2010-10602 Filed 5-5-10; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2010-0277]

RIN 1625-AA00

Safety Zone; Tri-City Water Follies Hydroplane Races Practice Sessions, Columbia River, Kennewick, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Columbia River in Kennewick, Washington for hydroplane race practice sessions being held in preparation for the Tri-City Water Follies Hydroplane Races. The safety zone is necessary to help ensure the safety of the practice session participants as well as the maritime public and will do so by prohibiting all persons and vessels from entering or remaining in the safety zone unless authorized by the Captain of the Port or his designated representative.

DATES: This rule is effective from 7 a.m. May 7, 2010 through 5:30 p.m. May 8, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2010-0277 and are available online by going to <http://www.regulations.gov>, inserting USCG-2010-0277 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground