

“Tulocay District,” and currently there is no petition requesting the establishment of a viticultural area in the subject area using a variation of Tulocay, such as Tulocay District, or any other name, such as Coombsville or Coombsville District. It is noted that these findings do not preclude future consideration of a petition, supported by sufficient name evidence, proposing the establishment of a viticultural area in the subject area using a name other than “Tulocay.”

- Consumer confusion could ensue regarding the identity and quality of wines bearing the term “Tulocay” if that term, which for more than 30 years has been identified with wines produced by Tulocay Winery from grapes grown in multiple California counties, were suddenly to disappear as a brand name of Tulocay Winery products and be used on labels for wines produced by other wineries primarily from grapes grown within a small portion of Napa County. Such consumer confusion resulting from the approval of the proposed Tulocay AVA is contrary to the purpose of the FAA Act.

For the reasons stated above, the proposal to establish the Tulocay viticultural area is withdrawn.

Signed: March 17, 2008.

**John J. Manfreda,**  
*Administrator.*

Approved: June 13, 2008.

**Timothy E. Skud,**  
*Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).*

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## DEPARTMENT OF JUSTICE

### 28 CFR Part 20

[Docket No. FBI 114]

RIN 1110-AA26

### FBI Criminal Justice Information Services Division User Fees

**AGENCY:** Federal Bureau of Investigation (FBI), Justice.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The FBI is authorized to establish and collect fees for providing fingerprint-based and name-based Criminal History Record Information (CHRI) checks and other identification services submitted by authorized users for noncriminal justice purposes including employment and licensing. The FBI may set such fees at a level to 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 proposed rule explains the methodology used to calculate the revised fees, provides the proposed fee schedule, and advises that future fee adjustments will be made by notice published in the **Federal Register**. After public comment, a final rule and notice of the final fee schedule will be published concurrently in the **Federal Register**.

**DATES:** Written comments must be received on or before August 18, 2008.

**ADDRESSES:** You may submit comments, identified by Docket No. FBI 114, by either of the following methods:

- *Federal Regulations Web site:* You may review this regulation on <http://www.Regulations.gov> and use the comment form for this regulation to submit your comments. You must include Docket No. FBI 114 in the subject box of your message.

- *Mail:* You may use the U.S. Postal Service or other commercial delivery services to submit written comments to the FBI Criminal Justice Information Services Division, 1000 Custer Hollow Road, Module E-3, Clarksburg, West Virginia 26306, Attention: Christopher L. Enourato. To ensure proper handling, please reference Docket No. FBI 114 in your comment. When submitting written comments, please allow for delivery time plus at least two days for internal mail security scanning and delivery.

**FOR FURTHER INFORMATION CONTACT:**

Christopher L. Enourato, FBI, Criminal Justice Information Services Division, 1000 Custer Hollow Road, Module E-3, Clarksburg, West Virginia 26306, telephone number 304-625-2910.

**SUPPLEMENTARY INFORMATION:**

- Posting of Public Comments
- Background
- Fee Calculation
- Revised Fee Schedule
- Administrative
- Regulatory Certifications

#### I. Posting of Public Comments

Please note that all comments on the proposed rule are considered part of the public record and made available for public inspection online at <http://www.Regulations.gov>. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase “PERSONAL IDENTIFYING

INFORMATION” in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase “CONFIDENTIAL BUSINESS INFORMATION” in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on <http://www.Regulations.gov>.

Personal identifying information identified and located as set forth above will be placed in the agency’s public docket file, but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. If you wish to inspect the agency’s public docket file in person by appointment, please see the “For Additional Information” paragraph.

#### II. Background

For the purposes of this discussion, the FBI user fees are classified according to the FBI division that provides the check in question: the Records Management Division (RMD) or the Criminal Justice Information Services (CJIS) Division. The proposed rule implements the FBI’s statutory authority to establish and collect fees for noncriminal justice fingerprint-based and name-based CHRI checks and other identification services performed by the CJIS Division. Fees for name checks performed by RMD will be the subject of a separate rulemaking. Further, under 28 CFR 16.33, the FBI is authorized to collect a fee for the production of an FBI identification record in response to a written request by the subject of the record; adjustments to that fee will be set out in a third rulemaking.

The proposed rule explains the methodology used to calculate the FBI’s revised fees, provides a proposed fee schedule, and advises that future fee adjustments will be made by notice published in the **Federal Register**. After public comment, a final rule and notice of the final fee schedule will be published concurrently in the **Federal Register**. The rule will be published at 28 CFR Part 20.

### *Legal Authority To Collect Fees*

The FBI has collected user fees for fingerprint-based CHRI checks since 1982, when the authority to establish and collect fees to process fingerprint-based CHRI checks for noncriminal justice purposes, such as employment and licensing, was set out in Public Law (Pub. L.) 97–257. This statutory authority was renewed annually by subsequent appropriations legislation. Under Public Law 101–162, the FBI was also 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 same statutory language concerning the FBI’s authority to establish and collect fees for conducting CHRI checks was included in the Private Security Officer Employment Authorization Act of 2004, Section 6402 of the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108–458. As explained later, the National Child Protection Act, as amended by the Volunteers for Children Act (VCA), Title 42, United States Code (U.S.C.), Section 5119a, provides user fee authority for fingerprint-based CHRI checks of volunteers who work in qualified entities with children, the elderly, or disabled persons.

### *No Fees for Criminal Justice CHRI Checks*

Under Public Law 101–515 and other statutes, the FBI is authorized to charge a fee for noncriminal justice CHRI checks for such purposes as employment and licensing. The FBI does not charge a fee for identification services performed for criminal justice purposes, including checks of applicants for criminal justice employment, which are financially supported by federal appropriations.

### *Proposed Changes to the Fee Schedule*

The proposed fee schedule reflects changes in both the FBI’s business processes and the volume of noncriminal justice submissions. In 1982, the average response time was 27 work days to process the 60,000 noncriminal justice checks submitted

each month. In 1994 when the user fees were last adjusted, the FBI’s response time to process 333,000 noncriminal justice fingerprint-based CHRI checks in the same time period was 16 work days. In fiscal year (FY) 2006 with a more efficient automated identification system in place, the average response time for 885,000 noncriminal justice fingerprint checks submitted electronically each month was merely 3 hours and 30 minutes.

When user fees were first implemented in 1982, the authorized user community received actual notice of fee changes through CJIS Information Letters (formerly called Contributor Letters). The fees were adjusted from time-to-time to reflect rising personnel costs and the increasing volume of noncriminal justice submissions, and the revised fee information was provided to the authorized user community through CJIS Information Letters.

Consistent with that past practice, by CJIS Information Letter dated June 1, 2007, the fee schedule in the proposed rule was established on an interim basis effective October 1, 2007. Although the proposed rule will establish the user fees by notice and comment rulemaking, it was necessary to advise the authorized user community of the revised fees prior to the start of FY 2008. Setting the revised fees on an interim basis will allow contributors to make necessary changes to fee processing and accounting procedures before the start of the federal fiscal year, thereby avoiding costly and confusing midyear changes.

The FBI will continue to analyze its costs and will review related fee charges periodically, as recommended by Office of Management and Budget Circular No. A–25, User Charges (OMB Circular A–25). The proposed rule advises that future adjustments to the FBI’s fees will be announced by notice in the **Federal Register**.

### **III. Fee Calculation**

#### *Standards and Guidelines Used To Calculate the Fees*

Public Law 101–515 links the user fees charged for processing fingerprint identification records and name checks to the cost of providing these services. This authority also permits 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 Offices Appropriation Act of 1952, 31 U.S.C. 9701, which is implemented by specific guidelines in OMB Circular A–25. Since the FBI has specific 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. In establishing the fees set out in this proposed rule, the FBI referred to OMB Circular A–25 for guidance in calculating fees based on costs. For example, in calculating the fees, OMB Circular A–25’s definition of full cost “as all direct and indirect costs to any part of the Federal Government of providing a good, resource, or service” was used to include direct and indirect personnel costs, physical overhead, and other indirect costs such as material costs, utilities, travel, and equipment.

Congress in the VCA, 42 U.S.C. 5119a, limited the fee that can be charged to a volunteer to \$18, or the actual cost of providing the service, whichever is less. The statutory term “actual cost” does not appear in OMB Circular A–25, which uses the term full cost, defined as all direct and indirect costs of providing a service. Thus, the FBI defined the actual cost as the full cost of providing this service, when calculating the fee for checks of volunteers under the VCA.

#### *Methodology Used To Calculate the User Fees*

The FBI hired a contractor, BearingPoint, Inc., 1676 International Drive, McLean, Virginia 22102 (BearingPoint), to conduct an independent analysis of pertinent costs and to recommend a revised fee schedule for the fingerprint-based and name-based CHRI checks conducted by the CJIS Division. 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, BearingPoint developed a cost accounting methodology and related cost models based upon the concepts and principles of activity-based costing (ABC).

ABC is a business management process that provides information about the relationships between inputs (costs) and outputs (products or services) by quantifying how work is performed (activities). The ABC model used to calculate the user fees was developed using commercially available ABC software and followed generally accepted cost accounting procedures for cost assignment and unit cost calculation. Organizational resources were assigned to activities, and then the

activities were assigned to services based upon reported patterns of consumption. BearingPoint identified the total resources associated with the fingerprint-based and name-based CHRI check services and assigned these costs to the services 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. BearingPoint worked extensively with FBI staff, including programmatic subject matter experts and statistical experts, to gather the information necessary to devise the cost accounting methodology and to construct a representative ABC model. BearingPoint developed its cost accounting methodology in six steps for the nonautomation portion of the fee.

1. Operational labor costs were reviewed and assigned to activities and then to services.

2. Support labor costs were reviewed and assigned to activities and then to services.

3. Nonlabor costs, including unfunded personnel and judgment fund costs, were reviewed and assigned to activities and then to services.

4. Cost estimates were made for FY 2008, when the revised user fees are expected to be implemented.

5. Transaction volumes and trends were analyzed to predict appropriate transaction volumes for FY 2008.

6. 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. A similar process was used to develop this portion of the fee. It was determined that the most appropriate basis for the calculation of this portion of the fee was the capital investment and anticipated depreciation costs for automated fingerprint identification and other criminal justice information service capabilities and enhancements to certain automated systems. The costs for these automation efforts were obtained from the FBI's asset management and financial management systems and records, and program planning documentation. By employing this methodology, users paying the fee will pay for services based on the cost of the automation which is already in place at the time their request is processed. While the funds collected will be used

to develop future capabilities, the cost basis of the fee will be the automation in place. The projected FY 2008 volumes were then used to calculate the unit costs for this portion of the fee.

Once the unit costs were calculated, BearingPoint generated the revised fee schedule. The FBI then independently reviewed the BearingPoint 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.

#### *Overview of the Costs Included in the Fee Calculation*

The fee calculation was made by gathering the labor and nonlabor costs of those divisions of the FBI that directly or indirectly support the provision of the fingerprint-based and name-based CHRI check services, and then using various drivers to assign those costs to the identified activities. The activities were then assigned to the specific fingerprint-based and name-based CHRI check services or to a general category for all other costs. The ABC model examined in detail only those costs which were related to the fingerprint-based and name-based CHRI check services. These services included both the criminal justice and law enforcement and the noncriminal justice identification services performed by the CJIS Division of the FBI. The discussion below is limited to those costs in the ABC model which were assigned to the fingerprint-based and name-based CHRI check services that are supported by the user fees. In other words, even though the ABC model calculated unit costs for various criminal justice fingerprint-based CHRI check services, these costs will not be discussed in this regulation since they are funded with appropriations and not with user fees.

The costs for providing the fee-supported fingerprint-based and name-based CHRI check services include the personnel costs for both direct and indirect support, as well as nonlabor costs such as travel, training, rent, equipment, utilities, printing, contract support, and supplies. In addition, depreciation for existing nonautomation assets was included per OMB Circular A-25 guidance. Finally, portions of the FBI's costs for workers compensation, unemployment compensation, and the judgment fund, used to pay judgments against the United States where appropriations have not otherwise been provided, were included. These costs were derived from the FBI's financial systems and audited financial statements. The FY 2008 predicted costs

were obtained by recalculating the depreciation and adding an inflation factor for labor and other nonlabor expenses. The OMB pay raise and inflation factors provided in OMB Circular A-11, Preparation, Submission, and Execution of an Agency Budget, were used. The costs associated with providing the services do not include any of the automation costs which instead were captured in the capital investment and depreciation costs for the automation portion of the fee described below.

The automation costs are divided into those which support fingerprint identification services currently in operation and those which support other criminal justice information services. Both types of automation costs are authorized by Public Law 101-515. The FBI chose to separate these costs to facilitate calculation of the cost of providing fingerprint-based CHRI checks for volunteers, since the VCA limits the fee to the actual cost or \$18.00, whichever is less. The FBI is interpreting the actual cost of providing the service to include only the costs for the automation of fingerprint services currently in operation; the actual cost does not include the costs for the automation of other criminal justice information services.

The costs for the automation of the fingerprint identification services include depreciation costs for the fingerprint identification infrastructure and the costs for developing a disaster recovery capability which would allow the FBI's essential fingerprint identification services to continue in all circumstances as required by OMB Circular A-130, Management of Federal Information Resources (OMB Circular A-130).

The costs for the automation of other criminal justice information services are based on the depreciation of assets already in place and the costs of enhancements which have passed through the approval gates for the planning stages of system development under the FBI's life cycle management directive. These enhancements include the Next Generation Identification program, which will increase the speed, capacity, and functionality of the FBI's fingerprint identification process, and the Biometric Interoperability Program which will provide two-way access to information in other major fingerprint databases such as the Department of Homeland Security's database of nonimmigrant visitors to the United States. The costs also include the automation of certain aspects of the National Crime Information Center (NCIC), the Law Enforcement National

Data Exchange (N-DEX) program, and the Uniform Crime Reporting (UCR) program.

There is one additional component of cost which was considered when determining the fees. Federal agencies, certain state agencies, and approved nongovernmental entities that submit fingerprint-based CHRI checks function as de facto centralized billing service providers (CBSPs) by collecting the appropriate fee from individuals or subordinate agencies and submitting a consolidated payment. It is more cost-effective for the FBI to bill a CBSP than to process individual direct payments for single fingerprint-based CHRI check submissions. The FBI employs this centralized billing methodology to collect payment for more than 9.8 million fingerprint-based CHRI checks each year. Under the fee schedule proposed in this rule, the FBI will continue the practice of allowing approved CBSPs to retain a portion (currently \$2.00) of the fee for fingerprint-based CHRI checks for performing this centralized billing service. In order to allow the CBSPs to retain this portion of the fee, it is necessary to include this cost when determining the full costs which the fee must cover. At this time, this cost is calculated by multiplying the amount the CBSPs are allowed to retain by the volume of billed transactions. The centralized billing process will be subject to further analysis and, consequently, may be revised in the future.

#### *Proposed Changes to the Fee Schedule* Fingerprint-Based CHRI Checks

The FBI utilizes categories or fee classes to set the charges for fingerprint-based CHRI checks.

Current fee classes are determined by the:

- Type of submission—manual or electronic.
- Source of funding—federally appropriated or other funding.
- Volunteer status under the VCA.

Proposed fee classes will be determined by the:

- Type of transaction—manual, electronic, or electronic submission with manual response.
- Volunteer status under the VCA.

Note that under the proposed rule, there is no distinction in fees based on the source of funding.

#### Name-Based CHRI Checks

As noted earlier, the RMD and the CJIS Division of the FBI both provide name-based checks of FBI maintained records. The CJIS Division name-based

CHRI checks provide CHRI from records of individuals fingerprinted as a result of arrest or incarceration. The FBI maintained records have been submitted voluntarily by state, local, tribal and federal law enforcement agencies. The noncriminal justice name-based checks are searched against the descriptive data in the FBI maintained records, using the applicant's name and descriptive data, such as his date of birth. Since the CHRI response, if any, to the name-based CHRI request is not obtained through positive identification, such as fingerprints, the FBI does not confirm that the CHRI is related to the applicant. The name-based CHRI checks are available only to authorized federal agencies for purposes specifically authorized by statute, e.g., pursuant to the Security Clearance Information Act, 5 U.S.C. 9101. The FBI had previously established fee classes for name-based CHRI checks which differentiated between manual and electronic submissions. The proposed rule continues these same classes.

#### New Services

If the FBI offers a new service or otherwise requires a new fee class in the future, the charge for this new fee class will be based upon the closest existing fee class until such time as a new fee class can be established. Authorized users will be advised of the new service or new fee class by CJIS Information Letter or other CJIS communication. The FBI will calculate a fee for the new fee class using the methodology discussed in this NPRM, and will publish a revised fee schedule as a notice in the **Federal Register**.

#### *Discussion of Proposed Changes to Fees and Fee Classes*

Proposed changes to the fees and fee classes, due to automation costs, types of transaction, and the submission of volunteers under the VCA are discussed in detail below.

#### Automation Cost

As noted above, OMB Circular A-25 defines "full costs" to include all direct and indirect costs, including the cost of improving or automating processes used to provide the services in question. Similarly, Public Law 101-515 authorizes the FBI to establish fees for fingerprint-based and name-based CHRI checks at a level sufficient to defray the expenses of automating fingerprint identification and criminal justice information services and associated costs. Even so, the FBI did not previously charge federal agencies the full costs contemplated by OMB Circular A-25 or Public Law 101-515.

The FBI proposes to establish fees for all users, at a level that will permit all costs, including automation expenses, to be fully defrayed, as authorized by Public Law 101-515. The FBI has determined that actual costs for volunteers submitting under the VCA will be defined to include the cost of the automation of the fingerprint services, but not to include the cost of the automation of other criminal justice information services.

#### Type of Transaction

Under the proposed rule, the type of transaction will be a determining factor in calculating the fee charged for all fingerprint-based and name-based CHRI checks, except for volunteer checks submitted under the VCA which are calculated separately.

#### 1. Fingerprint-Based Checks

Under current business practice, requests for fingerprint-based CHRI checks may be submitted manually, by sending a hard-copy fingerprint card, or electronically, by sending fingerprint images through the Integrated Automated Fingerprint Identification System (IAFIS). Responses to manual submissions are provided in hard-copy format and responses to electronic submissions are provided in an electronic format. Some agencies have been authorized by the CJIS Division to request hard-copy responses to electronic submissions.

Processing electronic submissions is more efficient and cost-effective than processing manual submissions which require entry of the descriptive data and scanning of the fingerprint images to convert the hard-copy card into an electronic format for processing by the IAFIS. After processing, the IAFIS response is then converted to a hard-copy format for delivery by mail to the requester. The independent analysis by BearingPoint determined that the cost of processing a manually submitted fingerprint-based CHRI check is significantly higher than the cost of processing an electronically submitted fingerprint-based CHRI check. Under current business practice, agencies paying with federally appropriated funds are charged higher fees for processing manual checks than for electronic fingerprint-based CHRI checks, while agencies paying with other funds are charged the same fee for both types of transactions. Under the proposed rule, the FBI will charge all agencies higher fees for manual than for electronic checks.

Under current business practice, an agency submitting fingerprints electronically but requesting a manual

response is charged the fee for a manual submission and response. BearingPoint also calculated the cost of processing a transaction with an electronic submission of fingerprints and a manual response, and that calculation was used to establish a separate fee class for processing electronic submission/manual response transactions.

## 2. Name-Based CHRI Checks

Under current business practice, if specifically authorized by statute, requests for name-based CHRI checks may be submitted manually or electronically by federal agencies. The proposed rule continues these same fee classes.

### Volunteer Submissions Under the VCA

Fingerprint-based CHRI checks for volunteers submitted under the VCA are in a separate fee class since the pertinent statute provides that the fee charged by the FBI in such cases may not exceed \$18.00 or the actual cost of the background check, whichever is less. The FBI is interpreting actual cost to be the full cost as defined by OMB Circular A-25. The FBI has determined that full cost for volunteers submitting under the VCA will include the direct and indirect personnel and nonpersonnel costs, the cost of the automation of the fingerprint services, and the cost of billing services, where applicable. The full cost for volunteers submitting under the VCA will not include the cost of the automation of other criminal justice information services. Due to the very small volume of volunteer transactions, it is more cost-effective to charge all volunteer submissions under the VCA the same fee regardless of submission type.

### *Detail of the Costs Used To Calculate the Fee*

The costs of providing the fingerprint-based and name-based CHRI check services were calculated using the ABC model constructed by BearingPoint. The costs include operational labor costs; support labor costs; nonlabor costs including unfunded personnel and judgment fund costs; fingerprint identification automation costs; other criminal justice information service automation costs; and billing costs. These costs are discussed in more detail below.

Operational labor costs for fingerprint-based and name-based CHRI checks include the costs of those FBI employees who are involved in the operations and maintenance of the IAFIS and the processing of these transactions. Examples of these employees would include fingerprint

examiners who use the IAFIS to make positive fingerprint identifications; information technology specialists who run the automated system network and communications lines; and a variety of other specialist positions providing customer service, billing, communication, policy, audit, and other direct support for the fingerprint-based and name-based CHRI check processes. The majority of these employees spend all of their time supporting these processes except the information technology specialists whose support is often provided for the whole CJIS Division infrastructure including other systems. BearingPoint conducted a robust analysis of the time these employees spent in support of each system within the overall infrastructure known as the system of systems. The costs for these employees are assigned to the user fee classes of service based on the results of this analysis.

Support labor costs for fingerprint-based and name-based CHRI checks include the costs of those FBI employees who are not directly involved in the CHRI check processes but who provide necessary support for these operations. Like the information technology specialists who support the whole CJIS Division infrastructure, many of the FBI employees perform activities which support a wide array of services. The costs for these employees were assigned to the user fee classes of service and to the general account for all other services based upon an analysis of the level of effort these positions provide to support the fingerprint-based and name-based CHRI check services. Examples of these employees would include human resource specialists, budget analysts, financial analysts, administrative support specialists, legal specialists, and some higher level management positions.

Nonlabor costs include items such as travel, utilities, printing, contractor support, supplies, and equipment. These costs also include depreciation for the facilities and buildings that the FBI owns. The equipment costs do not include any costs for the IAFIS. These costs could be listed here, but rather are listed in the fingerprint identification automation section for clarity. In all cases, these costs are assigned to the fingerprint-based and name-based CHRI check services and to the general account for all other services as appropriate based on detailed analysis of how these items are used.

Unfunded personnel costs were analyzed and the Federal Employee Compensation Account Workers Compensation and Unemployment Compensation costs were included in

the ABC model constructed by BearingPoint. In 1956, Congress established a judgment fund to cover payment for legal judgments against the United States. The FBI's contribution to the judgment fund was also included in the ABC model. These costs were assigned to the fingerprint-based and name-based CHRI check services as well as to the general account as appropriate.

The fingerprint identification process automation costs include depreciation on the cost of automating the process for fingerprint-based and name-based CHRI checks. Note that these name-based CHRI checks are searches based on the biographic identifiers associated with fingerprint-based CHRI files and as such are part of the fingerprint identification process. These costs also include the costs for implementing a Continuity of Operations Program (COOP) as mandated by OMB Circular A-130. Again, these costs were assigned to the fingerprint-based and name-based check services as appropriate. COOP costs cover more than the fingerprint identification system since the FBI plan covers the entire infrastructure. These costs were also assigned to the general account as appropriate. The fingerprint identification process automation costs could be collected under OMB Circular A-25 as full costs of providing these services, but are being identified separately since the FBI also has specific authority under Public Law 101-515 to collect user fees to cover these costs.

Public Law 101-515 also authorizes the FBI to collect user fees to cover the automation costs for other criminal justice information services. These services are not specifically defined, and the FBI retains the authority to determine which system automation efforts will be classified as criminal justice information systems and funded with user fees. For the purposes of calculating these proposed fees, costs for automating certain functionalities, such as the NCIC, UCR, and the N-DEX, were included.

### Electronic Fingerprint-Based CHRI Checks

The categories of cost were calculated for the electronic fingerprint-based CHRI check service as described above:

#### ELECTRONIC FINGERPRINT-BASED CHRI CHECK COSTS

[In thousands]

|                                             |          |
|---------------------------------------------|----------|
| Operational Labor .....                     | \$30,085 |
| Support Labor .....                         | 11,119   |
| Nonlabor .....                              | 38,152   |
| Fingerprint Identification Automation ..... | 86,829   |

**ELECTRONIC FINGERPRINT-BASED  
CHRI CHECK COSTS—Continued**  
[In thousands]

|                                                              |                   |
|--------------------------------------------------------------|-------------------|
| Other Criminal Justice Information Services Automation ..... | 50,253            |
| Billing Costs .....                                          | 25,223            |
| <b>Total Costs .....</b>                                     | <b>*\$241,661</b> |

**\*Note:** Numbers may not add up due to rounding.

**Electronic Submission/Manual  
Response Fingerprint-Based CHRI  
Checks**

After the ABC model constructed by BearingPoint was developed, the CJIS Division added a new fee class for fingerprint-based CHRI checks, submitted electronically but requiring a manual response. In order to calculate the cost of these transactions, BearingPoint examined the costs and activities which are applicable to the processing of transactions submitted electronically but receiving a manual response. These costs can not be detailed in the same manner as the costs within the model because this fee was calculated outside of the model as a unit cost.

**Manual Fingerprint-Based CHRI Checks**

The categories of cost were calculated for the manual fingerprint-based CHRI check service as described above:

**MANUAL FINGERPRINT-BASED CHRI  
CHECK COSTS**  
[In thousands]

|                                                              |                  |
|--------------------------------------------------------------|------------------|
| Operational Labor Costs .....                                | \$6,380          |
| Support Labor .....                                          | 3,439            |
| Nonlabor .....                                               | 8,803            |
| Fingerprint Identification Automation .....                  | 7,371            |
| Other Criminal Justice Information Services Automation ..... | 4,266            |
| Billing .....                                                | 2,141            |
| <b>Total Costs .....</b>                                     | <b>*\$32,400</b> |

**\*Note:** Numbers may not add up due to rounding.

**Volunteer Fingerprint-Based CHRI  
Checks**

As previously stated, the fee for fingerprint-based CHRI checks for volunteers submitting under the VCA is statutorily limited to \$18.00 or the actual cost, whichever is less. The FBI has interpreted actual costs to be the full costs that could be collected under OMB Circular A-25. This includes the automation costs for the fingerprint identification process, but does not include the automation costs for other criminal justice information services. As stated previously, due to the small

volume of volunteer transactions, it is not cost effective to charge different fees for volunteers based upon the type of transaction. The categories of cost were calculated for the volunteer fingerprint-based CHRI check service as described above:

**VOLUNTEER FINGERPRINT-BASED  
CHRI CHECK COSTS**  
[In thousands]

|                                                              |                  |
|--------------------------------------------------------------|------------------|
| Operational Labor Costs .....                                | \$557.           |
| Support Labor .....                                          | 206.             |
| Nonlabor .....                                               | 706.             |
| Fingerprint Identification Automation .....                  | 1,606.           |
| Other Criminal Justice Information Services Automation ..... | Not applied.     |
| Billing Costs .....                                          | 467.             |
| <b>Total Costs .....</b>                                     | <b>*\$3,541.</b> |

**\*Note:** Numbers may not add up due to rounding.

**Electronic Name-Based CHRI Checks**

Now that automation has significantly reduced response times for fingerprint-based CHRI checks, name checks are becoming obsolete. While these services are still being offered, the volume of these transactions has continued to decline due in large part to the increased speed of the fingerprint-based CHRI check service. Automation costs have not been added to the name-based CHRI check costs. Since name-based CHRI checks are only available to certain federal agencies, it is known that all submissions are billed and a separate billing cost was not calculated. The categories of cost were calculated for the electronic name-based CHRI check service as described above:

**ELECTRONIC NAME-BASED CHRI  
CHECK COSTS**  
[In thousands]

|                                                              |                |
|--------------------------------------------------------------|----------------|
| Operational Labor Costs .....                                | \$144.         |
| Support Labor .....                                          | 132.           |
| Nonlabor .....                                               | 160.           |
| Fingerprint Identification Automation .....                  | Not applied.   |
| Other Criminal Justice Information Services Automation ..... | Not applied.   |
| Billing .....                                                | Not applied.   |
| <b>Total Costs .....</b>                                     | <b>*\$435.</b> |

**\*Note:** Numbers may not add up due to rounding.

**Manual Name-Based CHRI Checks**

As explained for electronic name-based CHRI checks, these costs do not include the automation or billing costs. The categories of cost were calculated for the manual name-based CHRI check service as described above:

**MANUAL NAME-BASED CHRI CHECK  
COSTS**  
[In thousands]

|                                                              |                |
|--------------------------------------------------------------|----------------|
| Operational Labor .....                                      | \$182.         |
| Support Labor .....                                          | 89.            |
| Nonlabor .....                                               | 83.            |
| Fingerprint Identification Automation .....                  | Not applied.   |
| Other Criminal Justice Information Services Automation ..... | Not applied.   |
| Billing .....                                                | Not applied.   |
| <b>Total Costs .....</b>                                     | <b>*\$355.</b> |

**\*Note:** Numbers may not add up due to rounding.

*The Volumes Used To Calculate the Fee*

The historical volumes of transactions for each type of service were reviewed. In 1982, when the user fee was implemented, the FBI processed 60,000 noncriminal fingerprint-based CHRI checks per month, or about 720,000 per year. The volume of all fingerprint-based CHRI checks has grown steadily; the FBI processed over 10 million noncriminal fingerprint-based CHRI checks in FY 2005, of which over 9 million were subject to a user fee. However, within this steady growth, there is an overall trend for manual transactions to decrease and for electronic transactions to grow even more rapidly than the overall volumes indicate.

After careful analysis of alternative approaches, it was determined that the most appropriate method to use for predicting the volumes for the fee calculation was a three-year average variance. The volume changes from FY 2003 to FY 2004, from FY 2004 to FY 2005, and from FY 2005 to FY 2006 were calculated and then averaged to determine a growth factor which was added to the FY 2006 volume to determine the projected FY 2007 volume. The growth factor was then added again to the projected FY 2007 volume to project the FY 2008 volume. An exception was made for the new fee class for fingerprint-based CHRI checks submitted electronically but receiving a manual response. In the past, these transactions were billed as manual transactions. In developing a volume projection, the FBI analyzed the transactions submitted by the current authorized users and estimated that 100,000 fingerprint-based CHRI checks submitted electronically but receiving a manual response would be processed in FY 2008. This number was then subtracted from the manual FY 2008 projection and added as the electronic submission/manual response FY 2008 projection. The historical and projected volumes for fee-producing name-based

and fingerprint-based CHRI checks are shown in the chart below.

| Service                                     | FY 2003 actual volume | FY 2004 actual volume | FY 2005 actual volume | FY 2006 actual volume | Three-year average variance | FY 2007 projected volume | FY 2008 projected volume |
|---------------------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------------|--------------------------|--------------------------|
| <b>Fingerprint-Based CHRI Checks</b>        |                       |                       |                       |                       |                             |                          |                          |
| Manual .....                                | 2,000,448             | 1,434,654             | 1,382,073             | 1,442,527             | - 185,974                   | 1,256,553                | *970,580                 |
| Electronic Submission/Manual Response ..... | NA                    | NA                    | NA                    | NA                    | NA                          | NA                       | *100,000                 |
| Electronic .....                            | 5,777,395             | 6,668,981             | 7,874,995             | 9,877,755             | 1,366,787                   | 11,244,542               | 12,611,328               |
| Volunteer .....                             | 64,401                | 92,176                | 150,384               | 165,756               | 33,785                      | 199,541                  | 233,326                  |
| <b>Name-Based CHRI Checks</b>               |                       |                       |                       |                       |                             |                          |                          |
| Manual .....                                | 377                   | 261                   | 313                   | 281                   | - 32                        | 249                      | 217                      |
| Electronic .....                            | 503,665               | 325,420               | 353,570               | 326,815               | - 58,950                    | 267,865                  | 208,915                  |

\* 100,000 transactions moved from Manual to Electronic In/Manual Out service category to reflect implementation of the new fee class. These transactions are currently billed as manual transactions.

#### IV. Revised Fee Schedule

BearingPoint's final fee recommendations were made by dividing the costs for each service by the projected volume of transactions. The resulting unit costs were then rounded up to the next quarter dollar

(\$.25), an amount chosen to ensure calculation of full costs while avoiding calculation of excessive user fee revenues. The FBI then independently reviewed the BearingPoint 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. The following chart provides the revised fee schedule for the new classes defined above. The net amount to be remitted by a CSBP is provided for information purposes.

#### FINGERPRINT-BASED CHRI CHECKS

| If the check is a/an . . .                              | The fee to be remitted with a direct payment is . . . | But, the amount to be remitted by a CBSP is . . . |
|---------------------------------------------------------|-------------------------------------------------------|---------------------------------------------------|
| Electronic transaction .....                            | \$19.25                                               | \$17.25                                           |
| Electronic submission/manual response transaction ..... | 26.00                                                 | 24.00                                             |
| Manual transaction .....                                | 30.25                                                 | 28.25                                             |
| Volunteer under the VCA transaction .....               | 15.25                                                 | 13.25                                             |

#### NAME-BASED CHRI CHECKS

[Only available to federal agencies with statutory authority to request checks]

| If the check is a/an . . .   | The fee is . . . |
|------------------------------|------------------|
| Electronic transaction ..... | \$2.25           |
| Manual transaction .....     | 6.00             |

Under the revised schedule, user fees for many fingerprint-based and name-based CHRI checks will increase compared to current charges. However, the fees for fingerprint-based CHRI checks funded with other than federal appropriations and the fees for volunteers under the VCA will decrease and the fees for manual name-based CHRI checks will remain steady.

#### V. Administrative

*Consultation With Federal, State, Tribal, and Local Governmental and Other Entities That Submit Fingerprint-Based and Name-Based CHRI Checks*

The FBI has provided information about this proposed rule to the CJIS Advisory Policy Board (APB), an

advisory committee chartered under provisions of the Federal Advisory Committee Act of 1972, 5 U.S.C. Appendix 2. The APB is comprised of representatives of local, state and federal law enforcement and criminal justice agencies and is responsible for reviewing policy, technical, and operational issues related to the criminal justice information services of the FBI. The FBI has also provided information about the proposed rule to the Compact Council, created pursuant to the National Crime Prevention and Privacy Compact Act of 1998, 42 U.S.C. 14611-14616. The Compact Council, comprised of state and federal noncriminal justice and criminal justice agencies, is permitted to promulgate rules and procedures governing the exchange, as authorized by federal and state statutes, of CHRI for noncriminal justice purposes. The FBI has also provided information about this proposed rule to several of the federal agencies which submit fingerprint-based or name-based CHRI checks.

#### Effective Date for the New Fees

The FBI seeks public comment in response to this proposed rule. Subsequent to the receipt of comments, the FBI will publish a final rule in the **Federal Register** which will outline the FBI's authority to establish, collect, and revise its fees. The FBI will publish concurrently a notice in the **Federal Register** which will provide the fee schedule. This new schedule will be put into effect in 90 days following publication of the notice.

#### Other Proposed Revisions or Studies

The FBI is committed to regularly reviewing and updating the costs for providing fingerprint-based and name-based CHRI checks. The fees will be revised, as appropriate, based on changes in cost and volume. Additionally, the FBI plans to conduct specific analyses in the following areas.

1. As mentioned earlier, the FBI will be revising the fee for the production of an FBI identification record in response to the written request by the subject

thereof as authorized in 28 CFR 16.33 in a separate rule.

2. As explained previously, record checks under Public Law 101–515 may be provided by both the RMD and the CJIS Division of the FBI. The proposed rule implements fees for the checks provided by the CJIS Division only. User fees for checks performed by RMD will be the subject of a separate rulemaking.

3. The FBI, as stated in section III above, will conduct an in-depth analysis of the amount that CBSPs are allowed to retain to cover the administrative costs that would be incurred by the FBI if centralized billing services were not available. This analysis will also develop and review alternative strategies to the practice of centralized billing services.

#### *Communication Regarding the Fees*

Any changes to the Fee Schedule will be published in the **Federal Register**. The FBI will continue to provide policy updates and suggestions for improved service, including tips for avoiding delays and errors, through CJIS Information Letters. Information on technical changes in fee collection processes, including instructions for the appropriate use of system codes that affect fees charged, will also be provided through CJIS Information Letters.

### **VI. 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.

The fees for providing fingerprint-based and name-based CHRI background checks for noncriminal justice purposes normally are imposed upon the individual subject of the background check, rather than upon small entities. In addition, under the new fee schedule that became effective October 1, 2007, the fee imposed on nonfederal users submitting electronic fingerprint-based CHRI dropped nearly 20 percent per request. This lower fee is applicable to more than 90 percent of

the total nonfederal fingerprint-based checks. However, the fee for manual searches was increased, reflecting comparatively higher processing costs for those services. As a result of these different fees, the FBI expects that users will seek the lower costs associated with providing electronic fingerprint submissions.

State and federal agencies and certain private entities serve as CBSPs, or entities that collect and submit an individual’s fingerprints to the FBI and remit the fee charged to the individual. There are no small businesses, organizations or governmental jurisdictions currently providing billing services as CBSPs.

With regard to name-based CHRI checks, there is no direct or indirect impact on small entities, as only federal agencies are authorized to request name-based CHRI 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 as 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 OMB.

#### *Executive Order 12988 (Civil Justice Reform)*

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

#### *Executive Order 13132 (Federalism)*

This proposed 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 fees for providing fingerprint-based and name-based CHRI background checks for noncriminal justice purposes are imposed upon the individual subject of the background check, rather than on the state. Some states serve as CBSPs by collecting and submitting an individual’s fingerprints to the FBI and remitting the fee charged to the individual. The proposed rule does not alter the amount the FBI allows CBSPs

to retain for providing these services, but merely makes small adjustments to the fee schedule already in place. The proposed 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 proposed 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. While CBSPs may need to adjust their internal automated systems and processes, the change in fee amount is a foreseeable and expected eventuality and therefore, it is expected that these internal systems and processes were created with the capability of adjusting to changed fees without great cost or effort. 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 proposed rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This proposed 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.

#### **List of Subjects in 28 CFR Part 20**

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

Accordingly, for the reasons set forth in the preamble, Part 20 of Chapter I of Title 28 of the CFR is proposed to be amended as follows:

### **PART 20—CRIMINAL JUSTICE INFORMATION SYSTEMS**

1. The authority citation for part 20 is revised 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 (e) to read as follows:

**§ 20.31 Responsibilities.**

\* \* \* \* \*

(e) The FBI may routinely establish and collect fees for noncriminal justice fingerprint-based and other identification services as authorized by federal law. These fees apply to federal, state and any other authorized entities requesting fingerprint identification records and name checks for noncriminal justice purposes.

(1) The Director of the FBI shall review the amount of the fee periodically, but not less than every four years, to determine the current cost of processing fingerprint identification records and name checks for noncriminal justice purposes.

(2) Fee amounts and any revisions thereto shall be determined by current costs, using a method of analysis consistent with widely accepted accounting principles and practices, and calculated in accordance with the provisions of 31 U.S.C. 9701 and other federal law as applicable.

(3) Fee amounts and any revisions thereto shall be published as a notice in the **Federal Register**.

Dated: May 12, 2008.

**Robert S. Mueller, III,**

*Director, Federal Bureau of Investigation.*

[FR Doc. E8–13819 Filed 6–18–08; 8:45 am]

**BILLING CODE 4410–02–P**

## DEPARTMENT OF LABOR

### Employment Standards Administration

#### 29 CFR Parts 403 and 408

**RIN 1215–AB62**

#### Office of Labor-Management Standards; Labor Organization Annual Financial Reports

**AGENCY:** Office of Labor-Management Standards, Employment Standards Administration, United States Department of Labor.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** This document extends the period for comments on the proposed rule published on May 12, 2008 (73 FR 27346). The proposed rule would make

several revisions to the current Form LM–2, which is used by the largest labor organizations to file their annual financial reports under the Labor-Management Reporting and Disclosure Act of 1959, as amended, and would establish a procedure and standards by which the Secretary of Labor may revoke a particular labor organization's privilege to file a simplified annual report, Form LM–3, for a limited time where appropriate, after investigation, due notice and opportunity for a hearing. The comment period, which was to expire on June 26, 2008, is extended to July 11, 2008.

**DATES:** Comments on the proposed rule published on May 12, 2008 (73 FR 27346) must be received on or before July 11, 2008.

**ADDRESSES:** You may submit comments, identified by RIN 1215–AB62, by any of the following methods:

Internet—Federal eRulemaking Portal. Electronic comments may be submitted through [www.regulations.gov](http://www.regulations.gov). To locate the proposed rule, use key words such as “Labor-Management Standards” or “Form LM–2” to search documents accepting comments. Follow the instructions for submitting comments. Please be advised that comments received will be posted without change to [www.regulations.gov](http://www.regulations.gov), including any personal information provided.

**Mail:** Mailed comments should be sent to: Kay H. Oshel, Director of the Office of Policy, Reports and Disclosure, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5609, Washington, DC 20210.

Because of security precautions, the Department continues to experience delays in U.S. mail delivery. You should take this into consideration when preparing to meet the deadline for submitting comments.

Ensure that your comments are received within the specified open comment period. Before acting on this proposal, OLMS will consider all comments received on or before July 11, 2008. Comments received after that date will be considered only if it is possible to do so without incurring delay.

OLMS recommends that you confirm receipt of your mailed comments by contacting (202) 693–0123 (this is not a toll-free number). Individuals with hearing impairments may call (800) 877–8339 (TTY/TDD).

Only those comments submitted through [www.regulations.gov](http://www.regulations.gov), hand-delivered, or mailed will be accepted.

Comments will be available for public inspection during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Kay H. Oshel, Director of the Office of Policy, Reports and Disclosure, at: Kay H. Oshel, U.S. Department of Labor, Office of Labor-Management Standards, 200 Constitution Avenue, NW., Room N–5609, Washington, DC 20210, (202) 693–1233 (this is not a toll-free number), (800) 877–8339 (TTY/TDD).

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of May 12, 2008 (73 FR 27346), the Department published a notice of proposed rulemaking that would make several revisions to Form LM–2 and would establish a procedure and standards by which the Secretary of Labor may revoke a particular labor organization's privilege to file a simplified annual report, Form LM–3, for a limited time where appropriate, after investigation, due notice and opportunity for a hearing.

Interested persons were invited to submit comments on or before June 26, 2008, 45 days after the publication of the notice. Based on requests that the Department extend the period for submitting comments, the Department has decided to extend the comment period until July 11, 2008.

The proposed rule, including the proposed revised Form LM–2 and its instructions, is available on the Web site maintained by OLMS at <http://www.olms.dol.gov>. Anyone who is unable to access this information on the Internet can obtain the information by contacting the Employment Standards Administration at 200 Constitution Avenue, NW., Room N–5609, Washington, DC 20210, at [olms-public@dol.gov](mailto:olms-public@dol.gov) or at (202) 693–0123 (this is not a toll-free number). Individuals with hearing impairments may call 1–800–877–8339 (TTY/TDD).

Signed at Washington, DC, this 13th day of June, 2008.

**Dixon M. Wilson,**

*Deputy Assistant Secretary for Employment Standards.*

**Don Todd,**

*Deputy Assistant Secretary for Labor-Management Programs.*

[FR Doc. E8–13837 Filed 6–18–08; 8:45 am]

**BILLING CODE 4510–CM–P**