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## **DEPARTMENT OF STATE**

### **22 CFR Part 22**

[Public Notice:8990]

**RIN: 1400-AD72**

### **Schedule of Fees for Consular Services, Department of State and Overseas Embassies and Consulates – Visa Services Fee Changes**

**ACTION:** Final rule.

**AGENCY:** Department of State.

**SUMMARY:** The Department of State amends the Schedule of Fees for Consular Services (Schedule) for visa fees. More specifically, the rule amends the Border Crossing Card fee paid by a Mexican citizen under age 15 whose parent or guardian has applied or is applying for a border crossing card (the “reduced Border Crossing Card fee”). The Department of State is increasing the fee in light of the passage of the Emergency Afghan Allies Extension Act of 2014, which added a \$1 surcharge to the fees for Machine Readable Visa (MRV) and Border Crossing Card (BCC) application processing. The Department must raise the reduced Border Crossing Card fee by \$1, for a total fee of \$17, to continue to collect the legislatively mandated fee amount of \$13 and all applicable surcharges.

**DATES:** Effective January 1, 2015, except for the amendment to §22.1 in amendatory instruction 3, which is effective October 4, 2015.

**ADDRESSES:** Interested parties may contact the Department by any of the following methods:

- Visit the Regulations.gov website at: <http://www.regulations.gov> and search the RIN, 1400-AD72 or docket number DOS-2014-0029.
- Mail (paper, disk, or CD-ROM): U.S. Department of State, Office of the Comptroller, Bureau of Consular Affairs (CA/C), SA-17 8th Floor, Washington, DC 20522-1707.
- E-mail: [fees@state.gov](mailto:fees@state.gov). You must include the RIN (1400-AD72) in the subject line of your message.

**FOR FURTHER INFORMATION CONTACT:** Celeste Scott, Special Assistant, Office of the Comptroller, Bureau of Consular Affairs, Department of State; phone: 202-485-6681, telefax: 202-485-6826; e-mail: [fees@state.gov](mailto:fees@state.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### *Background*

This final rule makes changes to the Schedule of Fees for Consular Services of the Department of State’s Bureau of Consular Affairs. The Department sets and collects its fees based on the concept of full cost recovery, but some fees are set by statute. Please note that certain “no fee” consular services are included in the Schedule of Fees so that members of the public will be aware of significant consular services provided by the Department at no charge to the recipient of the service. The Department of State is adjusting the reduced Border Crossing Card fee in light of the passage of the Emergency Afghan Allies Extension Act of 2014, Sec. 2, Pub. L. 113-160, which added a temporary \$1 surcharge to the fees for MRV and BCC application processing.

##### *What Is the Authority for This Action?*

The Department of State derives the general authority to set fees based on the cost of the consular services it provides, and to charge those fees, from the general user charges statute, 31 U.S.C. 9701. See, e.g., 31 U.S.C. 9701(b)(2)(A) (“The head of each agency . . . may prescribe regulations establishing the charge for a service or thing of value provided by the agency . . .

based on . . . the costs to the government.”). As implemented through Executive Order 10718 of June 27, 1957, 22 U.S.C. 4219 further authorizes the Department to establish fees to be charged for official services provided by U.S. embassies and consulates. Other authorities allow the Department to charge fees for consular services, but not to determine the amount of such fees, as the amount is statutorily determined.

Several statutes address specific fees relating to nonimmigrant visas. For instance, 8 U.S.C. 1351 establishes reciprocity as the basic principle for setting the nonimmigrant visa issuance fee, meaning that the fee charged an applicant from a foreign country is based, insofar as practicable, on the amount of visa or other similar fees charged to U.S. nationals by that foreign country. In addition to the reciprocity issuance fee, Sec. 140(a) of Pub. L. No. 103-236, 108 Stat. 382, as amended, reproduced at 8 U.S.C. 1351 (note), establishes a cost-based application processing fee for nonimmigrant MRVs and BCCs. *See also* 8 U.S.C. 1713(b). Such fees remain available to the Department until expended. 8 U.S.C. 1351 (note) and 1713(d). Furthermore, Sec. 501 of Pub. L. 110-293, Title V, 122 Stat. 2968, reproduced at 8 U.S.C. 1351 (note) requires the Secretary of State to collect an additional \$2 surcharge (the “HIV/AIDS/TB/Malaria surcharge”) on all MRVs and BCCs as part of the application processing fee; this surcharge must be deposited into the Treasury and goes to support programs to combat HIV/AIDS, tuberculosis, and malaria. Section 2 of Pub. L. 113-42, reproduced at 8 U.S.C. 1351 (note) imposes a temporary \$1 surcharge, called the Special Immigrant Visa Surcharge, on the fees for MRV and BCC application processing, to be deposited into the general fund of the Treasury. This provision sunsets two years after the first date on which the increased fee is collected, which was on October 4, 2013. Section 2 of Pub. L. 113-160, reproduced at 8 U.S.C. 1351 (note), also imposes a temporary \$1 surcharge on the fees for MRV and BCC application processing, to be deposited into the general fund of the Treasury, resulting in \$2 in Special Immigrant Visa Surcharges. This provision will sunset five and a half years after the first date on which the increased fee is collected, which will be on January 1, 2015.

The Border Crossing Card application processing fee for certain Mexican citizen minors is statutorily set at \$13, even though such BCCs cost the Department the same amount to process as all other MRVs and BCCs—that is, significantly more than \$13. *See*, Pub. L. 105-277, 112 Stat.

2681-50, div. A, Title IV, section 410, reproduced at 8 U.S.C. 1351 (note). Adding the two \$1 SIV surcharges and the \$2 HIV/AIDS/TB/Malaria surcharge brings the total for the Border Crossing Card application processing fee for certain Mexican citizen minors to \$17. The Department's costs beyond \$13 must, by statute, be recovered by charging more for all MRVs, as well as all BCCs that do not meet the requirements for the reduced fee. See Pub. L. 105-277, 112 Stat. 2681-50, div. A, Title IV, section 410(a)(3), reproduced at 8 U.S.C. 1351 (note) (requiring that the Department “shall set the amount of the fee [for processing MRVs and all other BCCs] at a level that will ensure the full recovery by the Department . . . of the costs of processing” all MRVs and BCCs, including reduced cost BCCs for qualifying Mexican citizen minors).

Certain people are exempted by law or regulation from paying specific fees or are expressly made subject to special fee charges by law. These are noted in the text below. They include, for instance, several exemptions from the nonimmigrant visa application processing fee for certain individuals who engage in charitable activities or who qualify for diplomatic visas. See 8 U.S.C. 1351; 22 CFR 41.107(c).

Although the funds collected for many consular fees must be deposited into the general fund of the Treasury pursuant to 31 U.S.C. 3302(b), various statutes permit the Department to retain some or all of the fee revenue it collects. The Department retains the MRV and BCC fees, see Pub. L. 103-236, Title I, 140(a)(2), 112 Stat. 2681-50, reproduced at 8 U.S.C. 1351 (note) and 8 U.S.C. 1713(d).

The Department last changed nonimmigrant visa fees in an interim final rule dated August 28, 2014. See 22 CFR Part 22 (79 FR 51247). Those changes to the Schedule went into effect September 12, 2014. The final rule regarding those fees has not yet been published.

#### *Why Is the Department Adjusting Certain Nonimmigrant Visa Services Fees at this Time?*

The Department of State is mandated by law to collect a Border Crossing Card application processing fee for certain Mexican citizen minors. Statutes imposing surcharges brought that fee

to a total of \$16. The Department is raising the Border Crossing Card application processing fee for certain Mexican citizen minors by \$1 to \$17 from January 1, 2015 to October 4, 2015 to reflect the required additional \$1 Special Immigrant Visa Surcharge during that time. On October 4, 2015 the first Special Immigrant Visa Surcharge corresponding to Pub. L. 113-42 will expire, and the Border Crossing Card application processing fee for certain Mexican citizen minors will decrease by \$1, returning to \$16.

## **Regulatory Findings**

### *Administrative Procedure Act*

The Department is publishing this rule as a final rule, with an effective date less than 30 days from the date of publication, based on the “good cause” exceptions set forth at 5 U.S.C. 553(b)(3)(B) and 553(d)(3). The Department is issuing this final rule with an effective date on January 1, 2015. The APA permits a final rule to become effective fewer than 30 days after the publication if the issuing agency finds good cause. 5 U.S.C. 553(d)(3). The Department finds that good cause exists for an early effective date in this instance because Congress has already mandated that the Border Crossing Card application processing fee for certain Mexican citizen minors be \$13, the HIV/AIDS/TB/Malaria Surcharge be \$2, and the Special Immigrant Visa Surcharges total \$2.

### *Regulatory Flexibility Act*

The Department has reviewed this rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities as defined in 5 U.S.C. 601(6). This rule increases the Border Crossing Card application processing fee for certain Mexican citizen minors.

### *Unfunded Mandates Act of 1995*

This rule will not 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 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, 2 U.S.C. 1501-1504.

*Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule as defined by 5 U.S.C. 804(2).

*Executive Orders 12866 and 13563*

The Department has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in the Executive Orders. This rule has been submitted to OMB for review.

This rule is necessary in light of the passage of the Emergency Afghan Allies Extension Act of 2014, which raises the Special Immigrant Visa Surcharge by \$1. The Department of State is mandated by law to collect a \$13 Border Crossing Card application processing fee for certain Mexican citizen minors. The Department is raising the Border Crossing Card application processing fee for certain Mexican citizen minors by \$1 to \$17 from January 1, 2015 to October 4, 2015 to coincide with the addition of the second \$1 Special Immigrant Visa Surcharge during that time. On October 4, 2015 the first Special Immigrant Visa Surcharge corresponding to Pub. L. 113-42 will expire, and the Department of State will reduce the Special Immigrant Visa Surcharge by \$1, returning to \$16.

Details of the fee changes are as follows:

<b>Item No.</b>	<b>Fee</b>	<b>Unit Cost</b>	<b>Current Fee</b>	<b>Change in Fee</b>	<b>Percentage Increase</b>	<b>Estimated Number of Applications Affected \1\</b>	<b>Estimated Change in Annual Fees Collected \2\</b>
<b>SCHEDULE OF FEES FOR CONSULAR SERVICES</b>							
* * * * *							
<b>NONIMMIGRANT VISA SERVICES</b>							

21. Nonimmigrant Visa Application and Border Crossing Card Processing Fees (per person):							
(f) Border crossing card – under age 15; for Mexican citizens if parent or guardian has or is applying for a border crossing card (valid 10 years or until the applicant reaches age 15; whichever is sooner)	\$17	\3\	\$16	\$1	6%	18,750	\$18,750
* * * * *							

\1\ Based on approximately 10 months of validity for this rule.

\2\ Using projected FY 2015 workload to generate projections.

\3\ The fee for Border Crossing Card applications by minors is statutorily set.

Historically, the workload for Border Crossing Card applications for certain Mexican citizen minors has not increased from year to year, potentially due to the small category of applicants who qualify for the reduced fee. For example, Mexican citizen minors only qualify for the reduced Border Crossing Card application fee if a parent or guardian already has applied or is applying for a Border Crossing Card. All Border Crossing Card applications for certain Mexican citizen minors are sought by and paid for entirely by foreign national applicants. The revenue increases resulting from those fees should not be considered to have a direct cost impact on the domestic economy.

*Executive Orders 12372 and 13132*

This regulation will not have substantial direct effects 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. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations, nor does it warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities do not apply to this regulation.

*Executive Order 13175*

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

*Paperwork Reduction Act*

This rule does not create or revise any reporting or record-keeping requirements.

**List of Subjects in 22 CFR Part 22**

Consular services, fees, passports and visas.

Accordingly, for the reasons stated in the preamble, 22 CFR part 22 is amended as follows:

**PART 22--SCHEDULE OF FEES FOR CONSULAR SERVICES—DEPARTMENT OF STATE AND FOREIGN SERVICE**

1. The authority citation for part 22 continues to read as follows:



Authority: 8 U.S.C. 1101 note, 1153 note, 1183a note, 1351, 1351 note, 1714, 1714 note; 10 U.S.C. 2602(c); 11 U.S.C. 1157 note; 22 U.S.C. 214, 214 note, 1475e, 2504(a), 4201, 4206, 4215, 4219, 6551; 31 U.S.C. 9701; Exec. Order 10,718, 22 FR 4632 (1957); Exec. Order 11,295, 31 FR 10603 (1966).

2. In § 22.1, effective January 1, 2015, amend § 22.1 by revising Item 21.(f) in the table to read as follows:

**§ 22.1 Schedule of fees.**

\* \* \* \* \*

**Schedule of Fees for Consular Services**

<b>Item No.</b>	<b>Fee</b>
* * * * *	
<b>NONIMMIGRANT VISA SERVICES</b>	
* * * * *	
21. * * *	
(f) Border crossing card - under age 15; for Mexican citizens if parent or guardian has or is applying for a border crossing card (valid 10 years or until the applicant reaches age 15, whichever is sooner)	\$17

\* \* \* \* \*

3. In § 22.1, effective October 4, 2015, amend § 22.1 by revising Item 21.(f) in the table to read as follows:

**§ 22.1 Schedule of Fees**

\* \* \* \* \*

**Schedule of Fees for Consular Services**

<b>Item No.</b>  * * * * *	<b>Fee</b>
<b>NONIMMIGRANT VISA SERVICES</b>	
* * * * *	
21. * * *	
(f) Border crossing card - under age 15; for Mexican citizens if parent or guardian has or is applying for a border crossing card (valid 10 years or until the applicant reaches age 15, whichever is sooner)	\$16

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Dated: December 24, 2014

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Patrick Kennedy  
Under Secretary of State for Management  
Department of State

**[FR Doc. 2014-30710 Filed 12/30/2014 at 8:45 am; Publication Date: 12/31/2014]**