



This document is scheduled to be published in the Federal Register on 09/19/2016 and available online at <https://federalregister.gov/d/2016-22215>, and on FDsys.gov

Billing Code: 4710-13

DEPARTMENT OF STATE

22 CFR Part 22

[Public Notice: 9520]

RIN 1400-AD81

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

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The Department of State proposes an adjustment to the Schedule of Fees for Consular Services of the Department of State's Bureau of Consular Affairs (“Schedule of Fees” or “Schedule”) for the execution fee for passport books and cards. The Department is adjusting this fee in light of the findings of the most recent annual update to the Cost of Service Model to better align the fees for consular services with the costs of providing those services.

DATES: The Department of State will accept comments on this proposed rule until [INSERT DATE 60 days AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested parties may submit comments to the Department by any of the following methods:

- Visit the Regulations.gov website at: <http://www.regulations.gov> and search for the Regulatory Information Number (RIN) 1400–AD81 or docket number DOS–2016-0029.
- Mail paper document: U.S. Department of State, Office of the Comptroller, Bureau of Consular Affairs (CA/C), SA–17 8th Floor, Washington, DC 20522–1707.
- Email: fees@state.gov. You must include the RIN (1400–AD81) in the subject line of your message.
- All comments should include the commenter’s name, the organization the commenter represents, if applicable, and the commenter’s address. If the Department is unable to read your comment for any reason, and cannot contact you for clarification, the Department may not be able to consider your comment. After the conclusion of the comment period, the Department will publish a Final Rule (in which it will address relevant comments) as expeditiously as possible.

FOR FURTHER INFORMATION CONTACT: James McDaniel, Management Analyst, Office of the Comptroller, Bureau of Consular Affairs, Department of State; phone: 202-485-6694, telefax: 202-485-6826; email: fees@state.gov.

SUPPLEMENTARY INFORMATION:

Background.

The proposed rule makes a change to the Schedule of Fees. The Department sets and collects its fees based on the concept of full cost recovery. The Department completed its most recent review of current consular fees and will implement a change to the Schedule of Fees based on the costs of services calculated by the Fiscal Year 2014 update to the Cost of Service Model.

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.

Several statutes address specific fees relating to passports. For instance, 22 U.S.C. 214(a) authorizes the Secretary of State to set the passport execution fee by regulation, and to authorize state and local government officials and the U.S. Postal Service to collect and retain the execution fee for each application for a passport accepted by such officials or the U.S. Postal Service.

Certain people are exempted by law or regulation from paying specific fees. They include, for instance, exemptions from the passport execution and application fees for officers or employees of the U.S. government proceeding abroad in the discharge of official duties and exemption from the passport execution fee if those officers or employees execute their application before a federal official. See 22 U.S.C. 214(a); 22 CFR 22.1; 22 CFR 51.52(b).

The Department last changed fees for passport services in an interim final rule dated September 8, 2015. See Department of State Schedule of Fees for Consular Services, Department of State and Overseas Embassies and Consulates, 22 CFR part 22 (80 FR 53704). Those changes to the Schedule went into effect September 26, 2015. A final rule regarding those fees has not yet been published.

Why Is the Department Adjusting Fees at This Time?

With certain exceptions – such as the reciprocal nonimmigrant visa issuance fee – the Department of State generally sets consular fees at an amount calculated to achieve recovery of the costs to the U.S. government of providing the consular service, in a manner consistent with general user charges principles, regardless of the specific statutory authority under which the fees are authorized. As set forth in OMB Circular A-25, as a general policy, each recipient should pay a reasonable user charge for government services, resources, or goods from which he or she derives a special benefit, at an amount sufficient for the U.S. government to recover the full costs to it of providing the service, resource, or good. See OMB Circular No. A-25, sec. 6(a)(2)(a). The OMB

guidance covers all Federal Executive Branch activities that convey special benefits to recipients beyond those that accrue to the general public. See *id.*, sections 4(a), 6(a)(1).

The Department reviews consular fees through an annual update to its Cost of Service Model to determine the appropriateness of each fee in light of OMB guidance. The Department proposes to make the change set forth below in the Schedule of Fees accordingly. The Cost of Service Model is an activity-based costing model that determines the current direct and indirect costs to the U.S. government associated with each consular good and service the Department provides. The model update identified the direct and indirect cost of the passport execution fee, and the update's results formed the basis of the change herein proposed to the Schedule.

Activity-Based Costing.

To set fees in accordance with the general user charges principles, the Department must determine the true cost of providing consular services. Following guidance provided in "Managerial Cost Accounting Concepts and Standards for the Federal Government," OMB's Statement #4 of Federal Accounting Standards (SFFAS #4), available at <http://www.fasab.gov/pdffiles/sffas-4.pdf>, the Department chose to develop and use an activity-based costing (ABC) model to determine the true cost of each of its consular services.

The Government Accountability Office (GAO) defines activity-based costing as a "set of accounting methods used to identify and describe costs and required resources for activities within processes." Because an organization can use the same staff and resources (computer equipment, production facilities, etc.) to produce multiple products

or services, ABC models seek to identify and assign costs to processes and activities, and then to individual products and services through the identification of key cost drivers referred to as "resource drivers" and "activity drivers." ABC models also seek to identify the amount of time an organization's personnel spend on each service and how much overhead cost (rent, utilities, facilities maintenance, etc.) is associated with delivering each service. ABC models require financial and accounting analysis, and modeling skills combined with a detailed understanding of an organization's business processes. ABC models require an organization to identify all activities required to produce a particular product or service ("activities") and all resources consumed (costs) in the course of producing that product or service. An organization also must measure the quantity of resources consumed ("resource driver"); and the frequency and intensity of demand placed on activities to produce services ("activity driver"). SFFAS Statement #4 provides a detailed discussion of the use of cost accounting by the U.S. government.

The Department's Cost of Service Model

The Department conducted periodic Cost of Service Studies using ABC methods to determine the costs of its consular services through 2009. In 2010, the Department moved to adopt an annually updated Cost of Service Model (CoSM) that measures all of its consular operations and costs, including all of the activities needed to provide consular services, whether fee-based or not. This provides a comprehensive and detailed look at all consular services and all services that the Department performs for other agencies in connection with its consular operations. The CoSM now includes approximately 80

distinct activities, and enables the Department to model its consular-related costs with a high degree of precision.

The Department uses three methods outlined in SFFAS Statement #4 (paragraph 149(2)) to assign resource costs to activities: (a) direct tracing; (b) estimation based on surveys, interviews, or statistical sampling; and (c) allocations. The Department uses direct tracing to assign the cost of, for example, a physical passport book or the visa foil placed in a visa applicant's passport. Assigning costs to activities such as adjudicating a passport or visa application requires estimation based on surveys, interviews, or statistical sampling to determine who performs an activity and how long it takes. Indirect costs (overhead) in the CoSM are allocated according to the level of effort needed for a particular activity. Where possible, the model uses overhead cost pools to assign indirect costs only to related activities. For instance, the cost of rent for domestic passport agencies is assigned only to passport costs, not to visas or other services the Department provides only overseas. The Department allocates indirect support costs to each consular service by the portion of each cost attributable to consular activities. For example, the model allocates a portion of the cost of the Department's Bureau of Human Resources to consular services. The total amount of this allocation is based on the number of Bureau of Human Resources staff members who support Bureau of Consular Affairs personnel. In turn, this amount is allocated among the different consular services by the level of effort to provide them.

To assign labor costs, the Department relies on a variety of industry-standard estimation methodologies. To document how consular staff divide their time overseas, the

Department conducts the Consular Overseas Data Collection (CODaC) survey of a representative sample of posts each year. The Department uses CODaC survey data in conjunction with volume data from more than 200 individual consular sections in consulates and embassies worldwide, to develop resource drivers to assign labor costs to activities. For consular activities that take place in the United States, the Department collects volume data from periodic workload reports, including Passport Agency Task Reports pulled from management databases that include Passport's Management Information System. Financial information is gathered from reports by the Bureau of Consular Affairs' Office of the Comptroller. The Department converts the cost and workload data it collects into resource drivers and activity drivers for each resource and activity.

Because approximately 70 percent of the workforce involved in providing consular services are full-time Federal employees, if demand for a service falls precipitously, the Department cannot shed employees as quickly as the private sector. Likewise, should demand rise precipitously, the Department cannot add employees quickly, because delivering the majority of consular services requires specially trained employees who cannot begin their training until they have completed the Federal hiring process and obtained a security clearance. Additionally, given government procurement rules and security requirements, the Department must commit to many of its facilities and infrastructure costs years before a facility becomes available. In spite of changes in demand, the Department is obligated to cover these costs. Given these and other constraints on altering the Department's cost structure in the short term, changes in service volumes can have dramatic effects on whether a fee is self-sustaining. Therefore,

the CoSM includes two years of predictive data and three years of actual data. Predictive workloads are based on projections by the Office of Visa Services, the Office of Passport Services, and other parts of the Bureau of Consular Affairs that are consistent with Department budget documents prepared for Congress.

The costs the Department enters into the CoSM include every line item of costs, including items such as physical material for making passports and visas, salaries, rent, supplies, and IT hardware and software. The Department then determines a resource driver (from, for example, the responses to the CODaC survey) for each of these costs, as discussed above and enters the resource drivers and assignments into the model. The Department then selects an activity driver, such as the volume data discussed above, for each activity, in order to assign these costs to each service type. This process allows the model to calculate a total cost for each of the Schedule of Fees' line items for visa services, passport services, and overseas citizens services, and services for other government agencies and no-fee services. The model then divides this total cost by the total volume of the service or product in question in order to determine a final unit cost for the service or product. Projected costs for predictive years also are included to take account of changes in the size of consular staff, workload, and similar factors. The resulting database constitutes the CoSM. The Department continues to refine and update the CoSM in order to set fees commensurate with the cost of providing consular services. Because the CoSM is a complex series of iterative computer processes incorporating more than a million calculations, it is not reducible to a tangible form such as a document. Inputs are formatted in spreadsheets for entry into the ABC software package. The ABC software package itself is an industry standard commercial off-the-shelf

product, SAP Business Objects. The software's output includes spreadsheets with raw unit costs, validation reports, and management reports.

A number of fees are set at levels other than cost. These include passport fees for minors, which are set below cost as a longstanding matter of policy, and the reduced Border Crossing Card Fee for Mexican Minors, which is set by law. The true cost of these services must be offset by other fees. These offsets are calculated on additional spreadsheets outside the model software. Final unit costs incorporate these offsets.

Schedule of Fees Updates.

The last broad set of amendments to the Schedule of Fees occurred in 2014, though the Department has made some specific amendments to it since that time. Some fees, including the Immigrant Visa petition and the Immigrant Visa ineligibility waiver (items 31(a) and 35(c) respectively), are set by the Department of Homeland Security and were most recently updated by that agency on November 23, 2010. The change to the current Schedule of Fees is discussed below. The CoSM estimate discussed below is based on projected workload for Fiscal Year 2016, and the proposed fee has been rounded to make it easier to collect.

Passport Execution Fee.

The Department proposes to increase the execution fee for passport books and cards from \$25 to \$35, excepting those persons who are exempted statutorily from paying the passport execution fee. The passport execution fee is applicable to all first-time passport applicants and certain other applicants who must apply in person, such as minors under

the age of 16. Applicants apply in-person at post offices and other acceptance facilities, such as local clerks of court, and at the Department's passport offices. The passport execution fee includes the costs associated with accepting passport applications and fees in-person, including salaries, benefits, and an allocated portion of overhead including, but not limited to, rent, utilities, supplies, and equipment. The Department's CoSM showed that these costs were more than \$33. The U.S. Postal Service – the acceptance agent for the majority of passport applications – regularly conducts a similar study and found that these costs were more than \$34. See 22 U.S.C. 214(a); 22 CFR 51.51(b).

The \$10 increase in the passport execution fee will result in a \$10 increase to the cost to first-time passport applicants and certain applicants who must appear at post offices and other acceptance facilities such as local clerks of court. Individuals who apply for a passport renewal by mail will not see a fee increase.

REGULATORY FINDINGS

Administrative Procedure Act.

The Department is publishing this rule as a proposed rule, with a 60-day provision for public comments.

Regulatory Flexibility Act.

The Department reviewed this proposed 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).

Unfunded Mandates Act of 1995.

This proposed 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 proposed rule is a major rule as defined by 5 U.S.C. 804(2).

Executive Order 12866.

The Department has reviewed this proposed rule to ensure its consistency with the regulatory philosophy and principles set forth in the Executive Orders. OMB determined that this rule is significant under Executive Order 12866, and the Department confirmed that it is economically significant as defined by the Executive Order.

This proposed rule is necessary in light of the Department of State’s CoSM finding that the cost of executing first-time passports is higher than the current fee. The Department is setting the fees in accordance with 31 U.S.C. 9701 and other applicable authority, as described in more detail above. 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.”). This regulation generally sets the fee for passport executions at the amount required to recover the costs associated with providing this service.

Details of the proposed fee change are as follows:

Item No.	Proposed Fee	Current Fee	Change in Fee	Percentage Increase	Estimated Annual Number of Applications \\1\	Estimated Change in Annual Fees Collected \\1\
SCHEDULE OF FEES FOR CONSULAR SERVICES						
* * * * *						
PASSPORT AND CITIZENSHIP SERVICES						
1. Passport Book or Card Execution: Required for first-time applicants and others who must apply in person	\$35	\$25	\$10	40%	11,763,831	\$117,638,310
Total						\$117,638,310
* * * * *						

\\1\ Based on projected FY 2016 workload.

The Department of State does not anticipate that demand for passport services affected by this proposed rule will change significantly because of these fee changes, and welcomes public comment on that expectation.

The Department does not believe that passport application fees are a significant determining factor when U.S. citizens decide to travel internationally. The price of a passport book or card remains minor in comparison with other costs associated with

foreign travel, given that taxes and surcharges alone on an international airfare can easily surpass \$100. As a result, the Department does not believe passport demand will be significantly affected by increases of the size proposed.

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 or 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 determined that this proposed 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 information collection contained in this proposed rule is pursuant to the Paperwork Reduction Act, 44 U.S.C. Chapter 35. Information Collection 1405-0004, form DS-11 is related to this proposed rule. The Notice of Proposed Rulemaking proposes an increase

in the passport execution fee, from \$25 to \$35, based on the result of the Department CoSM, which found that the government's cost of executing a first-time passport is higher than the fee that the Department was charging an individual applicant. The CoSM is an activity-based costing model that determines the current direct and indirect costs to the U.S. government associated with each consular good and service the Department provides.

This information collection was renewed on August 30, 2016, with an expiration date of August 31, 2019. This notice request comments as it pertains to the proposed fee increase from \$25 to \$35.

(1) Title of Information Collection: Application for a U.S. Passport

(2) OMB Control Number: 1405-0004

(3) Type of Request: Revision of a Currently Approved Collection

(4) Form Number: DS-11

(5) Respondents: Individuals or Households

(6) Estimated Number of Respondents: 11,763,831

(7) Estimated Number of Responses: 11,763,831

(8) Average Time Per Response: 85 Minutes

(9) Total Estimated Burden Time: 16,665,427 hours

(10) Frequency: On occasion

(11) Obligation to Respond: Required to Obtain a Benefit

(12) Submit comments to OMB by the following methods:

Office of Management and Budget (OMB):

- Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:
- Email: oir_submission@omb.eop.gov. You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.

Fax: 202-395-5806. Attention: Desk Officer for Department of State.

Abstract of proposed collection:

The DS-11 solicits data necessary for Passport Services to issue a U.S. passport (book and/or card format) pursuant to authorities granted to the Secretary of State by 22 U.S.C. 211a et seq. and Executive Order (E.O.) 11295 (August 5, 1966) for the issuance of passports to U.S. nationals.

The issuance of U.S. passports requires the determination of identity, nationality, and entitlement with reference to the provisions of Title III of the Immigration and Nationality Act (INA) (8 U.S.C. 1401-1504), the 14th Amendment to the Constitution of the United States, other applicable treaties and laws, and implementing regulations at 22 CFR parts 50 and 51. The specific regulations pertaining to the Application for a U.S. passport are at 22 CFR 51.20 through 51.28.

Methodology:

The information collected on the DS-11 is used to facilitate the issuance of passports to U.S. citizens and nationals. The primary purpose of soliciting the information is to establish citizenship, identity, and entitlement to the issuance of the U.S. passport or

related service, and to properly administer and enforce the laws pertaining to the issuance thereof.

Passport Services collects information from U.S. citizens and non-citizen nationals when they complete and submit the Application for a U.S. passport. Passport applicants can either download the DS-11 from the internet or obtain one from an Acceptance Facility/Passport Agency. The form must be completed and executed at an acceptance facility or passport agency, and submitted with evidence of citizenship and identity.

List of Subjects in 22 CFR Part 22

Consular services, Fees, Passports.

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

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

1. The authority citation for part 22 is revised 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), 2651a, 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. Revise item 1 in the table “Schedule of Fees for Consular Services” in § 22.1 to read as follows:

§ 22.1 Schedule of fees.

* * * * *

Schedule of Fees for Consular Services

Item No.	Fee
Passport and Citizenship Services	
1. Passport Book or Card Execution: Required for first-time applicants and others who must apply in person (Applicants applying for both the book and card simultaneously on the same application pay only one execution fee.)	\$35
* * * * *	* *

Dated: July 31, 2016.

Patrick F. Kennedy
Under Secretary for Management
[FR Doc. 2016-22215 Filed: 9/16/2016 8:45 am; Publication Date: 9/19/2016]