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DEPARTMENT OF STATE

22 CFR Part 22

[Public Notice 9450]

RIN 1400-AD71

Schedule of Fees for Consular Services, Department of State and Overseas Embassies and Consulates

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule finalizes the interim final rule published in the *Federal Register* on September 8, 2015. Specifically, the rule implemented changes to the Schedule of Fees for Consular Services (“Schedule”) for certain passport and citizenship services fees. This rulemaking addresses public comments and adopts as final the changes to these fees.

DATES: In accordance with the Congressional Review Act, this rule is effective on [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]

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SUPPLEMENTARY INFORMATION: For the complete explanation of the background of this rule, including the rationale for the change, the authority of the Department of State (“Department”) to make the fee changes in question, and an explanation of the study that produced the fee amounts, consult the prior public notices cited in the “Background” section below.

Background

The Department published an interim final rule in the *Federal Register*, 80 FR 53704, on September 8, 2015, amending sections of 22 CFR part 22. Specifically, the rule amended the Schedule of Fees for Consular Services and provided 60 days for comments from the public. During this 60-day comment period, 15 comments were received by mail, email, and through the submission process at *regulations.gov*.

This rule establishes the following fees for the categories below:

- Administrative Processing of Request for Certificate of Loss of Nationality (CLN) \$2,350
- Passport Book Application Fee (age 16 and older) from \$70 to \$50
- Passport Book Application Fee (under age 16) from \$40 to \$20
- Passport Security Surcharge from \$40 to \$60

The original publication of the interim final rule included an incorrect effective date of September 23, 2015, for the above changes in the Passport Book Application fees and Passport Security Surcharge. That date subsequently was corrected. *See* 80 FR 55242. The correct effective date is reflected herein; it is September 26, 2015.

Analysis of Comments

In the 60-day period since the publication of the interim final rule, 15 comments were received. Twelve of the comments were about the Administrative Processing of Request for CLN fee. The other three comments were about Executive Branch fees or U.S. citizenship.

Many of the comments suggested that the fee for Administrative Processing of Request for CLN creates a barrier to expatriation. Most asserted that the fee is excessive and that many individuals will be unable to pay it. However, one comment expressed support for collecting the fee from those attempting to evade taxes. Several asked for clarification about the amount of the fee, including one comment seeking confirmation

that the Department had not doubled the CLN fee. Two challenged the analysis of processing costs used to justify the fee. Several cited the Expatriation Act of 1868 or the Universal Declaration of Human Rights when asserting that expatriation is a constitutional or human right.

In collecting the CLN fee, the Department has not restricted or burdened the right of expatriation. Further, the fee is not punitive and is unrelated to the Foreign Account Tax Compliance Act (FATCA) mentioned in some comments, except to the extent that the Act caused an increase in consular workload that must be paid for by user fees. Rather, the fee is a cost-based user fee for consular services. Conforming to guidance from the Office of Management and Budget (OMB), federal agencies make every effort to ensure that each service provided to specific recipients is self-sustaining, charging fees that are sufficient to recover the full cost to the government. (See OMB Circular A-25, ¶ 6(a)(1), (a)(2)(a).) Because costs change from year to year, the Department conducts an annual update of the costs for providing consular services in the form of a Cost of Service Model (CoSM). In addition to enabling the government to recover costs, the study also helps the Department to avoid charging consumers more than the cost of the services they consume. The CoSM is an activity-based costing (ABC) model that the Department developed following guidance provided in Statement 4 of OMB's Statement of Federal Financial Accounting Standards, available at <http://www.fasab.gov/pdffiles/sffas-4.pdf>. Setting the fee at \$2,350 reflects the cost for the service as determined by the model. In sum, the Administrative Processing of Request for CLN fee is a "user charge," which reflects the full cost to the U.S. government of providing the service, as determined through analysis based on federal financial accounting standards.

The Department has not doubled the CLN fee. In the past, the Department collected a fee only from U.S. nationals (*i.e.*, U.S. citizens and non-citizen nationals) taking the oath of renunciation. The Department did not charge a fee for the service of documenting a non-renunciatory relinquishment, which it performed much less frequently. However, requests for documentation of relinquishment of nationality on the basis of a non-renunciatory relinquishment have increased significantly in recent years, and the Department expects the number to remain at an elevated level in the future. The

services performed for both individuals who renounce nationality and individuals who apply for documentation on the basis of a non-renunciation relinquishment are similar, requiring close and detailed case-by-case review of the factors involved. The fiscal year 2013 CoSM update demonstrated that both services are extremely costly. For these reasons, the \$2,350 fee now applies to relinquishments under 8 U.S.C. 1481(a)(1) to 8 U.S.C. 1481(a)(4) (and predecessor statutes) and to relinquishments by renunciation under 8 U.S.C. 1481(a)(5). With this change, the Department renamed the service “Administrative Processing of Request for Certificate of Loss of Nationality.”

The right of expatriation is addressed in the Immigration and Nationality Act and the Universal Declaration of Human Rights. The CLN fee does not impinge on the right of expatriation. Rather, the fee reflects the resources necessary for the U.S. government to verify that all constitutional and other requirements for expatriation are satisfied in every case. As described in the interim final rule and in an earlier rule that raised the fee for taking the oath of renunciation to \$2,350 (80 FR 51464), expatriation for a U.S. national requires a thorough, serious, time-consuming process, in view of U.S. Supreme Court jurisprudence that declared unconstitutional an involuntary or forcible expatriation. In *Afroyim v. Rusk*, 387 U.S. 253 (1967) and *Vance v. Terrazas*, 444 U.S. 252 (1980), the Supreme Court ruled that expatriation requires the voluntary commission of an expatriating act with the intention or assent of the citizen to relinquish citizenship. It is therefore incumbent upon the Department to maintain and implement procedures that allow consular officers and other Department employees to ensure these requirements are satisfied in every expatriation case.

Several commenters requested information on the relinquishment process, *e.g.* payment options and documentation. Individuals desiring to relinquish their U.S. citizenship should consult travel.state.gov and may contact the appropriate U.S. embassy with any questions on the process. Embassy contact information can be found at usembassy.gov.

Conclusion

The Department adjusted the fees in light of the CoSM's findings that the U.S. government was not covering fully its costs for providing these consular services. Pursuant to OMB guidance, the Department endeavors to recover the cost of providing services that benefit specific individuals, as opposed to the general public. See OMB Circular A-25, ¶ 6(a)(1), (a)(2)(a). For this reason, the Department has adjusted the Schedule of Fees.

Regulatory Findings

A. Administrative Procedure Act (APA)

The Department of State published this rule as an interim final rule on September 8, 2015, and provided 60 days for comment. 80 FR 53704. The rule will be effective 60 days after publication, in accordance with the APA.

B. Regulatory Flexibility Act/Executive Order 13272: Small Business

The Department of State has reviewed this rulemaking and certifies that this rule will not have a significant economic impact on a substantial number of small entities.

C. The Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104-4, 109 Stat. 48, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of \$100 million or more by State, local, or tribal governments, or by the private sector. This rule will not result in any such expenditure, nor will it significantly or uniquely affect small governments.

D. The Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or adverse effects on competition, employment, investment, productivity, innovation, or the ability of the United States-based companies to compete with foreign-based companies in domestic and import markets.

E. Executive Orders 12866 and 13771

The Office of Management and Budget reviewed this rule, and determined it is not an EO 13771 regulatory action because this rule is not significant under EO 12866. As this rule is not a significant regularly action, it is except from the requirements of Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs.” See OMB Memorandum M-17-21, “Guidance Implementing Executive Order 13771” of April 5, 2017.

F. Executive Order 13563

The Department of State has considered this rule in light of Executive Order 13563 and affirms that this regulation is consistent with the guidance therein.
G. Executive Orders 12372 and 13132: Federalism

H. Executive Order 13175 — Consultation and Coordination With Indian Tribal Governments

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of section 5 of Executive Order 13175 do not apply to this rulemaking.

I. Paperwork Reduction Act

This rule does not impose or revise information collections subject to the provisions of the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

For a summary of the regulatory findings and analyses regarding this rulemaking, please refer to the findings and analyses published with the interim final rule, which can be found at 80 FR 53704, which are adopted herein. Section 22.1, Items 2.(a), 2.(b), and 2.(g) of this rule became effective September 26, 2015. Section 22.1, Item 8 became effective November 9, 2015. As noted above, the Department considered the comments submitted in response to the interim final rule and does not adopt them. Thus, the rule remains in effect.

List of Subjects in 22 CFR Part 22

Consular services, Fees, Passports and visas.

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

Accordingly, the interim final rule amending 22 CFR part 22, which was published in the Federal Register, 80 FR 53704, on September 8, 2015 is adopted as final without change.

Carl C. Risch,
Assistant Secretary for Consular Affairs,
Department of State

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