



22 CFR Part 54

[Public Notice: 11237]

RIN 1400-AE37

Passports; Procedures for Passport Couriers

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The Department of State (the Department) proposes regulations to continue a registration program and hand delivery procedures for courier companies used by applicants to transport their passport applications, and U.S. passports issued to them, to and from participating passport agencies. The purpose of these proposed rules is to continue the program that was established by policy, to maintain vigilance over the security of the passport application process, require companies to register with the Department prior to providing hand delivery services to certain applicants for U.S. passports, and to follow a uniform set of hand delivery procedures.

DATES: Written comments must be received on or before [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-AE37 or docket number DOS-2020-0045.

Mail (paper, disk, or CD-ROM): Office of Adjudication, Passport Services, U.S. Department of State, 44132 Mercure Circle, P.O. Box 1227, Sterling, VA 20166-1227,
ATTN: Courier Regulation

Email: ca-courierreg@state.gov. You must include the RIN (1400-AE37) 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 anticipates publishing a final rule (in which it will address relevant comments) as expeditiously as possible.

FOR FURTHER INFORMATION CONTACT: Karen A. Pizza, Office of Adjudication, ca-courierreg@state.gov, (202) 485-8800.

SUPPLEMENTARY INFORMATION:

Why is the Department proposing this rule?

The mission of the Passport Services directorate within the Bureau of Consular Affairs, Department of State, is to issue secure travel documents while providing the highest level of customer service, professionalism, and integrity. Passport Services recognizes that some applicants residing in the continental United States who are using expedited passport processing (22 CFR 51.56) might want to hire a private courier company to deliver their passport applications to a domestic passport agency for processing and to retrieve their issued passports. This hand delivery program for registered courier companies recognizes that for these domestic applicants with urgent travel needs, peace of mind comes from the additional support that a courier company may offer. Accordingly, this program is limited to applicants requesting expedited passport processing, and is available both to applicants who are required to submit an application by personal appearance pursuant to 22 CFR 51.21 (i.e. a DS-11), (and in these cases executed before a designated passport acceptance agent pursuant to 22 CFR 51.22(b)), as well as to applicants who may submit a renewal passport application pursuant to 22 CFR 51.21(b) (i.e. a DS-82). As this program applies only to domestic passport agencies, its scope is limited to the continental United States.

To facilitate the processing of passport applications and promote fair and efficient use of Department resources, this rule formalizes procedures for private domestic courier companies that applicants use to transport their passport applications and issued passports to and from domestic passport agencies. The procedures proposed in this rulemaking are a formalization and update of practices and procedures already in place, which are familiar to private courier companies. These procedures will be implemented by domestic passport agencies participating in the Department's passport hand delivery program for registered courier companies.

How will the program work?

A courier company must be registered at a passport agency before it may hand deliver passport applications or passports to or from that passport agency. The courier company must be registered with each passport agency at which it proposes to offer hand delivery services.

The Department will collect identifying information from the courier company for its registration and require the courier company to certify that the requirements set out in this proposed rule are met by all of its employees who will hand deliver passport applications or passports. The Department will notify a courier company and the passport agency or agencies where its registration is accepted, and the start date after which it can provide hand delivery services at each agency.

Passport agencies' resources are utilized to serve customers who apply in person at a passport agency, to process applications of customers who apply at a passport acceptance facility or renew through the mail, and to process applications submitted by registered courier companies. The priority is to serve customers with urgent travel who apply in person. Passport agencies assign resources to each of these work flows based upon historical data and demand projections to best meet the needs of U.S. citizens, particularly those with immediate travel.

The total number of companies that may be registered at each passport agency will be established by the Department and is based upon available resources and workload. The passport agency must be able to simultaneously provide continued and uninterrupted service to applicants who are not utilizing hand delivery services. Once the total number of slots allotted for registered companies has been filled, an unregistered courier company may request to be placed on the Department's waitlist. (A slot is the daily maximum number of passport applications that may be submitted to a passport agency.)

What does the passport applicant do?

In general, domestic passport applicants must apply for a passport through the mail or at a passport acceptance facility. Applicants with urgent travel plans, as defined by Passport Services on its website, travel.state.gov, may apply in person at a domestic passport agency or hire a private courier company to submit their applications to the passport agency.

Passport applicants using a form DS-11 to apply for a passport must have the application executed by a passport acceptance agent ("acceptance agent") in accordance with 22 CFR 51.21(a). Designated passport acceptance facilities are listed on the Department's website at travel.state.gov. When an applicant appears before an acceptance agent (such as, for example, at a U.S. Post Office), the applicant must inform the acceptance agent whether he or she intends to hire a courier company to hand deliver the executed application to a passport agency. As part of the documentation provided to the acceptance agent, an applicant using a courier company must submit a letter of authorization authorizing one registered courier company to deliver the application, respond to any correspondence from the passport agency concerning the application, and retrieve the issued passport and supporting documentation on the applicant's behalf. The acceptance agent will seal the letter of authorization with the executed passport application and release the executed passport application to the applicant, who can then

give the executed passport application to a private courier company registered to provide hand-carry services at a passport agency.

Passport applicants using a form DS-82 to apply for a renewal passport are not required to have the application executed by an acceptance agent. Applicants wishing to use a registered courier company to deliver the renewal application to a passport agency must submit a letter of authorization with their application.

Processing the passport application

A passport agency may only accept hand delivered applications from a courier company that is registered with that passport agency. Individual employees of the courier company must be certified by the company in order to hand deliver applications or issued passports to or from the passport agency. Each courier employee must show valid government-issued photo identification when delivering applications or picking up passports and/or supporting documentation from a passport agency.

Continuing as a registered courier company

The proposed rule provides several requirements that must be met by companies and their employees to participate in the program, and outlines certain behaviors that could result in a courier company being terminated from the program. For example, a registered courier company must immediately notify the passport agency or agencies with which it is registered of any changes in courier company or employee information submitted as part of the registration process.

Failure to follow the requirements in this proposed rule, including the requirements in proposed §54.30, could result in a courier company losing its registration temporarily or permanently with the passport agency or agencies where it is registered.

Although Passport Services would like to enable urgently departing citizens to have access to this optional private service, the Department's goal is to maintain vigilance over the security of the passport application process. These uniform national procedures will

facilitate the Department's efforts to thwart attempts to distribute misinformation to passport applicants, or commit offenses such as fraud or identity theft.

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/Executive Order 13272: Small Business Impacts

The Department has reviewed this rule and, by approving it, certifies that the de minimis cost will not have a significant economic impact on a substantial number of small entities as defined in 5 U.S.C. 601(6). However, to better inform the public as to the costs and burdens of this rule, the Department notes that this regulation will affect the operations of approximately 370 companies participating in the Department's passport hand delivery program for couriers in the following ways. The Department welcomes feedback on these estimates.

Numbers of Small Businesses

Currently, approximately 370 courier companies and 1285 courier company employees are registered across the 14 U.S. passport agencies that are already participating in the program. Although this regulation proposes a new system of allocating slots on an annual first-come, first-serve basis, the number of courier companies registered in the program is expected to remain relatively constant.

Companies in the program may include private passport and visa service expediting companies, courier and messenger services, travel companies, law firms, corporate travel departments, and commercial photography services, among others. We estimate that courier companies in this program or seeking to enroll in the program have less than 1,500 employees, well below the Small Business Administration size standard.

Company and Employee Eligibility for Registration

To register in this program, courier companies are required to provide contact information at participating passport agencies at which they wish to register on an annual basis. This proposed rule will also require courier company owners to certify that the company has no judgments for illegal business practices, that the owners and employees are lawfully permitted to work in the United States, do not have a record of a felony, or any misdemeanor related to mismanaging funds, identity theft, and/or document fraud, and that the owners and employees are not under indictment for such an offense. In addition, courier company owners will be required to submit a copy of proof of the company's registration with the city or state, such as a valid business tax certificate or license, issued by the competent state or city authority, as appropriate, where each passport agency at which the company wishes to register with is located. For example, if a company wishes to register at the San Francisco Passport Agency, the company must submit a valid San Francisco Business Registration Certificate. The Department will only allow the company name listed on the business tax certificate or license, including the "doing business as" (DBA) name when appropriate, to register. The owner listed on the supporting document(s) must match that provided in the company's registration at a passport agency. This requirement is designed to prevent companies from registering under multiple fictitious names to acquire more slots. This information will be requested on the DS-5538 Courier Company Registration Form. The costs associated with registering a company are estimated to require 20 minutes, multiplied by 370 courier companies, divided by 60 minutes, multiplied by \$76.17 weighted wage, or an annual \$9,394.30 hour burden cost, in addition to the costs of printing two \$.22 pages of the DS-5538 Courier Company Registration Form, making a \$.22 photocopy of a government-issued photo identification card, and making a \$.22 photocopy of a valid business license, or a total additional cost of \$325.60 annually. The business license photocopies will be a new cost.

Employees trusted with delivering applications and retrieving issued passports and supporting materials are currently required to provide their contact information at the passport agencies where they register to perform hand delivery services. Employees may not submit applications on behalf of another courier company. Thus, an employee may only be registered to submit applications for one company; however, a company may register more than one of its employees at a passport agency. This requirement is to ensure that the Department can readily identify eligible courier company employees who are authorized to hand deliver passport applications and retrieve completed passports at a passport agency, and to mitigate a common practice among some courier companies in which they register employees from other companies to provide these services on their behalf. Such employees and/or the company owners will be required to certify that they do not have a record of a felony, or any misdemeanor related to mismanaging funds, identity theft, document fraud, and are not under indictment for such an offense. Courier companies will also have to certify that they participate in the Department of Homeland Security's E-verify program, maintain a drug free work place and provide notice in writing to each customer as to whether or not the courier company maintains liability insurance. Employers must certify that the employee is legally authorized to work in the United States. In addition, employers are required to certify that the employee is not subject to a felony, or any misdemeanor related to mismanaging funds, identity theft, and/or document fraud. This information will be requested on the DS-5539 Courier Employee Registration Form. The costs associated with registering an employee are estimated to require 40 minutes, multiplied by approximately 1285 employees, divided by 60 minutes, multiplied by \$20.19 weighted wage, or an annual \$17,296.10 hour burden cost, plus additional costs of printing two \$.22 pages of the DS-5539 Courier Employee Registration Form, and making a \$.22 photocopy of a government-issued photo identification card, or a total additional cost of \$848.10 annually.

The costs associated with participating in the Department of Homeland Security's E-verify program will vary based on the number of employees a courier company has. There is no fee to participate in the program; however, a courier company owner or manager will need to spend time registering for the program, learning to use the system, reviewing the Memorandum of Understanding signed as part of the program, and entering employee data into the E-verify system. Therefore, the estimated cost of participating in the program is \$406.23 per company, plus an additional \$30.46 per each employee whose information the company must enter into the e-verify system. These costs multiplied by 370 courier companies with approximately 1285 employees is \$189,446.20 annually.

The costs associated with complying with the requirements contained in the Drug Free Work Place Act, 41 U.S.C. 8102, include developing a policy to maintain a drug free workplace, providing written notice to employees of the company's policy, providing employees with a drug free workplace awareness program, and reporting violations of the drug free workplace policy to the Department. The estimated cost of developing the drug free workplace awareness program and conducting training for employees is \$182.73 per company and \$13.91 per employee. That cost multiplied by 370 courier companies with approximately 1285 employees is \$85,484.35 annually. The estimated cost of printing the one page notice of the drug free work place policy is \$.22 per page. Since the notice must be provided to an estimated 1285 employees, the total cost is \$282.70 annually.

Company Participation

Registered companies participating in this program are required to deliver a DS-4283 Courier Drop-Off List with each set of applications delivered to a passport agency. The information provided on these forms assists the Department in tracking the intake of applications and materials delivered by courier companies to a passport agency. The costs associated with providing these forms are estimated to require 10 minutes,

multiplied by 238,554 lists received in 2018, divided by 60 minutes, multiplied by \$20.19 weighted wage for employees, or an annual \$802,734 hour burden cost, plus additional costs of printing one \$.22 page of the DS-4283 Courier Drop-Off List, multiplied by 238,554 DS-4283 Courier Drop-Off List Forms received by the Department in 2018, or a total additional estimated cost of \$52,482 annually. This is not a new cost. The DS-4283 is currently in use, approved under the Paperwork Reduction Act (Office of Management and Budget (OMB) Control No. 1405-0222).

Unfunded Mandates Reform 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 for the purposes of Congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801-808). 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 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.

Executive Order 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 and submitted the rule to the Office of Management and Budget's Office of Information and Regulatory Affairs.

The Department requires company owners and employees to submit documentation of their eligibility to participate in the program, including the submission of a copy of proof of the company's registration with the city or state, such as a valid business tax

certificate or license, issued by the competent state or city authority, as appropriate, where each passport agency at which the company wishes to register with is located. The Department believes that companies already register their business with the city or state in which they provide products or services in the course of their normal business practices. As a result, the cost to companies of providing a photocopy is minimal. This requirement will help the Department ensure greater fairness in the distribution of slots by preventing companies from registering under multiple fictitious names and unfairly obtain additional slots. The cost of obtaining a photocopy of proof of city or state registration is estimated at \$.22 per copy, multiplied by approximately 370 respondents, or a \$81.40 new cost.

The costs associated with registering a company are estimated to require 20 minutes, multiplied by 370 courier companies, divided by 60 minutes, multiplied by \$76.17 weighted wage, or an annual \$9,394.30 hour burden cost, in addition to the costs of printing two \$.22 pages of the DS-5538 Courier Company Registration Form, making a \$.22 photocopy of a government-issued photo identification card, and making a \$.22 photocopy of a valid business license, or a total additional cost of \$325.60 annually.

The costs associated with registering an employee are estimated to require 40 minutes, multiplied by approximately 1285 employees, divided by 60 minutes, multiplied by \$20.19 weighted wage, or an annual \$17,296.10 hour burden cost, plus additional costs of printing two \$.22 pages of the DS-5539 Courier Employee Registration Form, and making a \$.22 photocopy of a government-issued photo identification card, or a total additional costs of \$848.10 annually.

The costs associated with participating in the Department of Homeland Security's E-verify program will vary based on the number of employees a courier company has. There is no fee to participate in the program; however, a courier company owner or manager will need to spend time registering for the program, learning to use the system, reviewing the Memorandum of Understanding signed as part of the program, and

entering employee data into the E-verify system. Therefore, the estimated cost of participating in the program is \$406.23 per company, plus an additional \$30.46 per each employee whose information the company must enter into the E-verify system. These costs multiplied by 370 courier companies with approximately 1285 employees is \$189,446.20 annually.

The costs associated with complying with the requirements contained in the Drug Free Work Place Act, 41 U.S.C. 8102, include developing a policy to maintain a drug free workplace, providing written notice to employees of the company's policy, providing employees with a drug free workplace awareness program, and reporting violations of the drug free workplace policy to the Department. The estimated cost of developing the drug free workplace awareness program and conducting training for employees is \$182.73 per company and \$13.91 per employee. That cost multiplied by 370 courier companies with approximately 1285 employees is \$85,484.35 annually. The estimated cost of printing the one page notice of the drug free work place policy is \$.22 per page. Since the notice must be provided to an estimated 1285 employees, the total cost is \$282.70 annually.

Under E.O. 12866 and OMB Circular A-4, agencies are encouraged to consider alternative solutions to the proposed regulatory action. The Department of State considered, but is not proposing at this time, allocating available slots through an alternative mechanism other than "first come, first serve," as described above. First, the Department considered assigning a fee to each slot in alignment with full cost recovery to the Department of State, as described in OMB Circular A-25 ("A user charge...will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public."). A user fee would ensure that the special benefits provided by being a registered passport courier with access to slots for passport application submission would align with the costs the Department of State incurs by dedicating staff time and resources for this service.

Additionally, the Department considered, but does not propose, allowing for distribution of slots amongst couriers via annual auctioning, permit trading, or other market-based solutions. The Department of State broadly solicits comment on its approach, including the alternatives discussed in this section, for how it will allocate slots via this program. The Department specifically seeks comment regarding:

- Should the Department charge a fee on a per-registration or per-slot basis? If so, the Department would rely on its Cost of Service Model to estimate the costs of this service and set the fee, but the Department seeks further comment regarding any additional considerations that could bear on where such a fee would be set?
- How should slots be allocated to passport courier firms? Are you aware of other allocation systems?

Executive Orders 12372 and 13132– Federalism

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– Consultation and Coordination with Indian Tribal Governments

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

The information collection contained in this proposed rule is pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. Chapter 35, and, if approved, will be

assigned an OMB Control Number. As part of this rulemaking, the Department is seeking comment on the administrative burden associated with this collection of information. This proposed rule requires certain collections of information and the Department has submitted an information collection request to OMB for review and approval under the PRA.

This information collection will provide a way for courier companies to register with the Department to provide hand delivery passport courier services to the public. Note that OMB Control No. 1405-0222, Courier Drop-Off List for U.S. Passport Applications also relates to this rulemaking.

- (1) *Type of Information Collection:* New
- (2) *Title of the Form/Collection:* Passport Hand Delivery Program for Couriers
- (3) *Agency form numbers:* DS-5538 Courier Company Registration Form, DS-5539 Courier Employee Registration Form, DS-4283 Courier Drop-off List
- (4) *Affected public:* This information collection will be used by courier company owners and their employees.
- (5) *An estimate of the total number of respondents:* The Department estimates a total of 370 respondents per year.
- (6) *An estimate of the total annual public burden (in hours) associated with the collection:* The average burden associated with the DS-5538 Courier Company Registration Form information collection is estimated to be 20 minutes per respondent. As there are 370 registered companies, the Department estimates the total annual burden for this information collection to be 123.3 hours. The average burden associated with the DS-5539 Courier Employee Registration Form information collection is estimated to be 40 minutes per respondent, and 1285 employees currently participate in the program. Therefore, the Department estimates the total annual burden for this information collection to be 856.67 hours.

(9) Submit comments to both OMB and the Department of State by the following methods:

Office of Management and Budget (OMB):

- *E-mail:* oira_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.

Department of State:

- *Web:* Persons with access to the Internet may view this notice and provide comments by going to the regulations.gov web site at:
<http://www.regulations.gov/index.cfm>. Search for Docket No. DOS-2020-0045 or for RIN number 1400-AE37.
- *Mail:* Office of Adjudication, Passport Services, U.S. Department of State, 44132 Mercure Circle, P.O. Box 1227, Sterling, VA 20166-1227, ATTN: Courier Regulation, *E-mail:* ca-courierreg@state.gov: - You must include the DS form number, information collection title, and the OMB control number in any correspondence.

(8) The Department seeks public comment on:

- whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- the accuracy of the Department's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- the quality, utility, and clarity of the information to be collected;
- how to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or

- other forms of information technology, e.g., permitting electronic submission of responses;
- should the Department charge a fee on a per-registration or per-slot basis? If so, the Department would rely on its Cost of Service Model to estimate the costs of this service and set the fee, but the Department seeks further comment regarding any additional considerations that could bear on where such a fee would be set.
 - how should slots be allocated to passport courier firms? Are you aware of other allocation systems?

Abstract of proposed collection:

This information collection will enable companies to register to participate in the Department's passport hand delivery program for couriers, as well as certify that they and their employees meet the Department's requirements for the program.

Methodology:

The forms introduced by this information collection will be made available online on the Department's website and upon request at participating passport agencies, and must be submitted to the Department as noted in this rule.

List of Subjects in 22 CFR Part 54

Administrative practice and procedure, Passports.

Accordingly, for the reasons stated in the preamble, 22 CFR part 54 is proposed to be added to read as follows:

PART 54—PROCEDURES FOR REGISTERED COURIERS

Subpart A – General

Sec.

54.10 Purpose.

54.11 Definitions.

Subpart B – Requirements for Courier Companies

54.20 Courier company registration.

54.21 Submitting applications to a participating passport agency.

54.22 Annual company registration and allocation of slots.

Subpart C – Courier Company and Employee Conduct

54.30 Requirements for registered courier companies and employees.

54.31 Administrative review of restrictive actions.

AUTHORITY: 22 U.S.C. 2651a; 22 U.S.C. 211a, 213; 22 U.S.C. 2670; E.O. 11295, 31

FR 10603, 3 CFR, 1966-1970 Comp., p. 570.

Subpart A – General

§54.10 Purpose.

To facilitate the processing of passport applications and promote fair and efficient use of Department of State (the Department) resources, this part establishes certain procedures for courier companies used by applicants residing in the continental United States at participating domestic passport agencies to hand deliver their passport applications and obtain issued passports.

§54.11 Definitions.

For the purposes of this part, the following definitions apply:

(a) *Hand delivery services* refers to the written authorization given by an applicant to a courier company to deliver a passport application to the Department for processing, to correspond with the Department about the passport application, and to retrieve an issued passport and supporting documentation on behalf of the applicant.

(b) *Registration to provide hand delivery services* refers to the written permission given by the Department to a courier company to perform hand delivery services for passport applicants at a participating domestic passport agency or agencies.

(c) *Slot(s)* refers to the daily maximum number of passport applications by service type (i.e., Same-Day, Two-Day, Three-Day, and Expedited Mail-Outs) that the Department permits a courier company to hand deliver at a passport agency. A slot is a

privilege; it does not constitute property and the courier company to which it is temporarily allocated does not obtain a protected property interest. Slots may be granted, withdrawn, or reallocated by the Department at its discretion consistent with the provisions of §54.22.

(d) *Categorical limits* refer to the restrictions on slot service type. The Department may alter categorical limits at each passport agency at its discretion, consistent with the provisions of §54.22.

(e) *Wait list* refers to the list maintained by the Department that ranks the order of courier companies that applied to register with the Department pursuant to §54.20 but did not receive slots.

(f) *National Courier Program* refers to those domestic passport agencies that permit courier companies to hand-deliver passport applications and retrieve completed passports at their agencies, courier companies, and employees who are registered at participating domestic passport agencies, and the requirements and procedures that must be followed in order for a registered courier company to hand deliver passport applications and retrieve completed passports at a passport agency.

(g) *Customer* refers to any passport applicant for whom a courier company provides hand delivery services.

(h) *Employee* refers to any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee, as well as any individual who performs services for remuneration for a courier company.

(i) *Owner* refers to a corporation, S corporation, partnership, and association, as well as a natural person who owns a courier company.

(j) *Courier company* refers to a private-sector entity that charges a passport applicant a service fee for hand delivering his or her passport application to a domestic U.S. passport agency and retrieving the completed passport and/or related documents on

behalf of the applicant. The service fee charged by a courier company is in addition to the passport fees collected by the Department of State for processing a passport application.

Subpart B – Requirements for Courier Companies

§54.20 Courier company registration.

(a) A list of passport agencies participating in the Department's National Courier Program will be provided on the Department's website, www.travel.state.gov. This list is subject to change at the Department's discretion.

(b) The Department will determine which passport agencies will participate and the number of courier companies that may be registered at any given time on an annual basis, consistent with §54.22. A courier company that does not receive registration in a calendar year may be placed on a wait list in rank order, based on the time and date the Department received the courier company's registration documents.

(c) Only courier companies that are registered at a passport agency may hand deliver passport applications and pick up completed passports and/or related documents on behalf of the applicants. Non-registered courier companies are prohibited from hand delivering passport applications to a passport agency.

(d) To register, a courier company must submit a registration package to the Department that includes:

(1) Courier company and employee identifying information;

(2) A certification that the courier company owner:

(i) Does not have a record of either a Federal or state felony conviction, or a misdemeanor conviction for embezzlement, identity theft, misappropriation, document fraud, or dishonesty in carrying out a responsibility involving public trust; and

(ii) Is not currently under indictment for a felony or a misdemeanor for embezzlement, identify theft, misappropriation, document fraud, or dishonesty in carrying out a responsibility involving public trust;

(3) Certifications that each employee performing hand-carry services:

(i) Is legally authorized to work in the United States;

(ii) Does not have a record of either a Federal or state felony conviction, or a misdemeanor conviction for embezzlement, identity theft, misappropriation, document fraud, or dishonesty in carrying out a responsibility involving public trust; and

(iii) Is not currently under indictment for a felony, or a misdemeanor for embezzlement, identify theft, misappropriation, document fraud, or dishonesty in carrying out a responsibility involving public trust; and

(4) Certifications that each courier company:

(i) Is enrolled in the Department of Homeland Security's E-Verify System; and

(ii) Provides notice in writing to each customer as to whether or not the courier company maintains liability insurance that would cover losses to customers resulting from action or inaction on the part of courier company owners or employees.

(5) Courier companies must also certify that the company maintains a Drug Free Workplace by:

(i) Publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the company's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;

(iii) Establishing an ongoing drug-free awareness program to inform its employees about:

(A) The dangers of drug abuse in the work place;

(B) The company's policy of maintaining a drug-free workplace;

- (C) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (D) The penalties that may be imposed upon employees for drug abuse violations in the workplace;
- (iii) Providing all employees with a copy of the statement required by paragraph (d)(5)(i) of this section;
 - (iv) Notifying its employees in writing about—
 - (A) The company's policy of maintaining a drug-free workplace;
 - (B) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (C) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
 - (v) Notifying all employees in writing, that as a condition of employment, the employee will—
 - (A) Abide by the terms of the statement required by paragraph (d)(5)(i) of this section; and
 - (B) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than five days after such conviction;
 - (vi) Notifying the Department in writing within ten days after receiving notice of an employee's conviction under a criminal drug statute for a violation occurring in the workplace. The notice shall include the position title of the employee; and
 - (vii) Within 30 days after receiving notice under paragraph (d)(5)(v) of this section of a conviction, taking one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(A) Taking appropriate personnel action against such employee, up to and including termination; or

(B) Requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(6) A copy of proof of the company's registration with the city or state, such as a valid business tax certificate or license, issued by the competent state or city authority, as appropriate, where each passport agency at which the company wishes to register with is located. For example, if a company wishes to register at the San Francisco Passport Agency, the company must submit a valid San Francisco Business Registration Certificate.

(i) The Department will only allow the company name listed on the business tax certificate or license, including the "doing business as" (DBA) name when appropriate, to register.

(ii) The owner(s) listed on these documents must match the owner(s) listed on the courier company's registration.

(e) The Department may not register a courier company with outstanding judgments that were based on illegal business practices, or a courier company that is owned or operated by an individual who has owned or operated a courier company that was permanently banned from hand delivering passport applications to a passport agency.

(f) A courier company must notify the Department in writing and within 14 calendar days of any changes to the responses provided on or in support of company or employee registrations, including changes in ownership, acquisition, merger, or "doing business as" (DBA) name, as well as company and employee eligibility certifications.

The successor courier company must resubmit a new registration package, including employee certifications, under the new courier company's name. Slots are not a property

interest and are not transferrable. Courier companies and employees must remain eligible to participate in the Department's National Courier Program at all times.

(g) The Department may cancel the registration of any registered courier company that fails to submit a completed passport application, using their allotted slots, within 30 consecutive calendar days. The cancellation is effective the day the Department sends written notification to the courier company.

§54.21 Submitting applications to a participating passport agency.

(a) A courier company must be registered at each participating passport agency where it performs hand delivery services. Courier companies that attempt to hand deliver passport applications at a passport agency where they are not registered are subject to permanent ban from participation in the Department's National Courier Program, at the Department's discretion.

(b) Each passport application hand delivered to a participating passport agency by a registered courier company must include:

(1) A letter of authorization permitting the registered courier company to deliver the passport application, correspond with the Department about the passport application, and retrieve the issued passport and associated documents.

(2) Documentation showing that the passport applicant is departing the United States within 14 calendar days or needs a passport within four weeks to obtain a foreign visa.

(c) When picking up passports and supporting documentation at the passport agency, courier company employees must show valid government-issued photo identification.

(d) Courier companies must return undeliverable passports and supporting documentation within 14 calendar days of pick-up to the passport agency that issued the passports.

(e) A courier company must notify applicants within 24 hours of becoming aware of any passports and/or passport applications that are damaged, lost, or stolen while in the courier company's possession.

(f) A courier company must not make, accept, maintain, or submit copies of passports, passport applications, or supporting documentation, except as provided in procedures established by the Department described in paragraph (g) of this section.

(g) In addition to the regulations in paragraphs (a) through (g) of this section, the Department may establish hand delivery procedures for registered couriers that are consistent with the requirements contained in this part. Courier companies and their employees that fail to follow these procedures may be subject to the penalties described in §54.30. The Department will provide these procedures in writing to registered courier companies, and send written notification to registered courier companies of any updates to these procedures at least 30 calendar days in advance of implementing changes.

§54.22 Annual company registration and allocation of slots.

(a) The Department will determine the total number of slots available to courier companies and establish categorical limits.

(b) During the annual registration period, company owners must submit a DS-5538 form for themselves and a DS-5539 form for each designated employee with all requested information and supporting documentation. Registration will be on a first-come, first-served basis, until the maximum number of registered companies at a passport agency has been reached. A company's rank order will be determined according to the date and time that the Department received a company's complete registration submission. The Department will not process any incomplete submission nor will it retain partial documents.

(c) Slots will be distributed equally among registered courier companies.

(d) The Department will, at least once per year, reassess workload, resources, slot allocation, slot usage, the number of registered courier companies, and the number of

wait-listed courier companies to determine whether slots or categorical limits should be increased, decreased, or redistributed. The Department will send written notice to affected courier companies of any changes to the courier company's slot allocation or categorical limits at least 30 calendar days in advance of implementing such changes.

(e) If additional slots become available, they will be allocated to courier companies in the order dictated by the wait list. Wait-listed courier companies must confirm they will accept the available slots and send written notice to the Department of any updates to their registration submissions within 30 calendar days. Wait-listed courier companies will not be permitted to perform hand delivery services until their registration is updated and acknowledged by the Department in writing. Wait-listed courier companies that fail to provide such documentation in the required timeframe will forfeit the available slots, and the Department will then make the slots available to the next courier company on the wait list.

(f) If no courier companies are on a wait list, any additional slots that become available at a passport agency will be distributed among courier companies registered at the passport agency according to their date of registration, with the oldest registered courier company receiving slots first.

(g) Courier companies that submit more applications than their allocated slots or categorical limits permit, or otherwise attempt to circumvent their submission maximums in any way, may face restrictions in their registration, as provided in §54.30.

Subpart C – Courier Company and Employee Conduct

§54.30 Requirements for registered courier companies and employees.

(a) Courier companies are responsible for their employees' conduct and for ensuring that their employees do not violate the rules set forth in this part or the Department's hand delivery procedures for registered couriers described in § 54.21(g). Courier companies must immediately report any employee conduct that violates this part or the

Department's hand delivery procedures for registered couriers described in § 54.21(g) to the Department. Failure to do so may result in penalties in accordance with this section.

- (b) Failure to follow any of the requirements of this part or the Department's hand delivery procedures for registered couriers described in § 54.21(g) may result in the courier company and/or employee receiving a warning, suspension, cancellation of registration, or permanent ban from the Department's National Courier Program. Where a particular action arises, which in the Department's view, compromises the integrity of the program, passport application, or issued passport in a manner not described in this part, the Department will take action at its discretion. The Department will notify the courier company and/or employee of relevant penalties in writing. The notification will set forth the specific reasons for the penalty and the procedures for review available under § 54.31.
- (c) While the Department may exercise discretion in assessing penalties for each violation, examples of violations which may trigger penalties ranging from a written warning to a permanent ban include but are not limited to:
 - (1) *Failing to abide by submission, pick-up, or waiting room conduct requirements.* Failing to abide by any of the submission or pick-up requirements outlined in this part or the Department's hand delivery procedures for registered couriers described in § 54.21(g).
 - (2) *Copying passport applications.* Making copies of and/or faxing passport applications or supporting materials, except as provided in the Department's hand delivery procedures for registered couriers described in § 54.21(g).
 - (3) *Submitting courier company checks that cannot be cashed.* Submitting a courier company check that is returned for any reason.
 - (4) *Attempting to circumvent slot or categorical limits.* Attempting to circumvent or bypass slot or categorical limits by any means.

(5) *Selling or swapping slots.* Attempting to sell or swap slots between courier companies.

(6) *Providing misleading information regarding a courier company's relationship with the Department.* Implying, misrepresenting, or misleading in speech, print, electronic, or any other form of communication, a courier company's relationship or status with a particular passport agency or the Department. A courier company may state that it is "registered" at a particular passport agency, but may not state that it is "authorized" or "approved by" the U.S. Government, the Department, or a particular passport agency. Use of the Department official seal (or the Great Seal of the United States, the obverse of which is depicted on the covers of U.S. passports) is strictly prohibited.

(7) *Providing misleading information regarding a courier company's ability to expedite applications or issue passports.* Implying, misrepresenting, or misleading in speech, print, electronic, or any other form of communication, that the courier company is able to have an applicant's passport processed more quickly than if the applicant applied directly at a passport agency; or that the courier company executes, adjudicates, or prints passports. All applicants receive the same timeliness of service by the Department based on the urgency of travel needs.

(8) *Returning undeliverable passports and supporting documentation to a passport agency after 14 days.* Failing to return undeliverable passport(s) and supporting documentation within 14 calendar days of pickup to the passport agency that issued the passport when the applicant cannot be located.

(9) *Leaving passport application materials or passports unattended.* Losing control of passport applications, passports, correspondence, or supporting documentation while such documents are in the custody of a courier company.

(10) *Failing to protect an applicant's personal information.* Compromising the privacy and integrity of an applicant's personal information, including but not limited to selling an applicant's personal information to a third party, sharing it with a third party, or buying it from a third party; and/or failure to notify an applicant that his or her personal information has been lost, stolen, or possibly compromised.

(11) *Tampering with passport application materials.* Tampering with a passport application or misrepresenting facts pertaining to an application. This includes, but is not limited to:

- (i) Signing a passport application, a supporting document, or a letter of authorization on behalf of another individual;
- (ii) Providing any other false information affecting passport application processing or issuance, including a fake itinerary;
- (iii) Opening a sealed envelope containing an executed passport application;
or
- (iv) Providing a photo of an individual other than the applicant.

(12) *Depositing applicant funds into account.* Depositing funds intended for the Department or any passport agency into a business or personal account.

(13) *Retaining an application five days after its execution or signature.* Failing to timely submit passport applications to a passport agency after an applicant's personal appearance before a passport acceptance agent in accordance with § 51.21(a), or after the applicant signs a renewal passport application in accordance with § 51.21(b).

(14) *Executing an application.* Executing a passport application for an applicant.

(15) *Coaching fraudulent information.* Coaching applicants to provide fraudulent or misleading information on or in support of a passport application. This includes, but is not limited to:

(i) Knowingly directing an individual to engage fraudulent notarial services or to produce a fake travel itinerary; and/or

(ii) Coaching an individual to make a fraudulent statement on any document submitted to a passport agency or sign a document submitted with a passport application on behalf of another individual.

(16) *Failure to report changes in ownership.* Failing to report changes in ownership of a courier company. This includes continuing to do business under the name and registration of the previous courier company or owner without notifying the Department.

(17) *Providing false information on a registration form/failure to report material changes.* Submitting false or misleading information or failing to report material changes to responses provided on or in support of a courier company or employee registration form.

§54.31 Administrative review of restrictive actions.

(a) A courier company and/or employee whose registration has been suspended, cancelled, or permanently banned may send a written request for an administrative review to the Department within 14 calendar days of receipt of the notice of such restrictive action. The request must include a written, sworn statement or declaration submitted under penalty of perjury, describing the events at issue and providing reasons that the courier company and/or employee believes it/he/she should not be found in violation of the requirements of this part and/or the Department's hand delivery procedures for registered couriers described in § 54.21(g).

(b) Upon examining the materials provided by the courier company and/or employee and the relevant documentation of the incident forwarded by the passport agency, a review board consisting of at least three members of the Department will submit a written recommendation to the Managing Director for Passport Issuance Operations. After reviewing the request for an administrative review and the

recommendation of the review board, the Managing Director for Passport Issuance Operations will decide whether to uphold the suspension, cancellation, or permanent ban of the courier company's and/or employee's registration to provide hand delivery services.

(c) The Department will promptly notify the courier company and/or employee of the decision in writing. If the decision upholds the Department's action, the notification will contain the reasons for the decision. The decision is final and not subject to further administrative review.

Carl Risch,

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