

DEPARTMENT OF STATE**22 CFR Part 22**

[Public Notice: 11442]

RIN 1400-AE12

Schedule of Fees for Consular Services—Documentary Services Fee

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule adopts as final the Notice of Proposed Rulemaking published in the **Federal Register** on October 16, 2020. This final rule adjusts the Schedule of Fees for Consular Services (Schedule of Fees) by incorporating the fee for authentication of a document in the United States into the Schedule of Fees and increasing it from \$8 to \$20.

DATES: This final rule is effective on July 15, 2021.

FOR FURTHER INFORMATION CONTACT: Robert Schlicht, Management Analyst, Office of the Comptroller, Bureau of Consular Affairs, Department of State; phone: 202-485-8915, telefax: 202-485-6826; email: fees@state.gov.

SUPPLEMENTARY INFORMATION:**Background**

This final rule adjusts the Schedule of Fees for Consular Services (Schedule of Fees) by incorporating the fee for authentication of a document in the United States into the Schedule of Fees and increasing it from \$8 to \$20. The Department of State (Department) published a Notice of Proposed Rulemaking (NPRM) on October 16, 2020 (85 FR 65750), with 60 days provided for public comment. This rule addresses the relevant comments. Justification for this rulemaking and fee change, including relevant authorities and information on the study used to calculate this fee, can be found in the NPRM.

Analysis of Comments

The proposed rule was published for comments on October 16, 2020, 85 FR 65750. The comment period closed December 15, 2020. The Department received four comments, all of which are addressed below.

Two commenters suggested that the Department should consider the impact of the fee increase on the public and private sectors. While the Department is sympathetic to the impact the fee increase may have on those who seek this service, the Department generally sets consular fees at an amount

calculated to achieve full cost recovery for the U.S. Government of providing the consular service consistent with 31 U.S.C. 9701 and guidance from the Office of Management and Budget (OMB). As set forth in OMB Circular A-25, as a general policy, each recipient should pay a 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 of providing the service, resource, or good. See OMB Circular No. A-25, sec. 6(a)(2)(a). The fee for the authentication of a document is set based on the cost of the service and charged only to individual applicants requesting the service.

One commenter suggested that the Department should set the fee at the calculated unit cost of \$18.83, rather than round the fee to \$20. It has been the Department's policy, as set forth in prior rulemakings, that consular fees should be rounded to the nearest \$5. This policy makes it easier to collect consular fees at domestic facilities, and allows for easier currency exchange at embassies and consulates around the world. A review of other agencies that calculate and set user fees found that rounding unit costs to set fees is a standard best practice.

One commenter also suggested that the Department should take steps to automate processes to reduce costs. The Department of State's Bureau of Consular Affairs strives to optimize business functions to increase efficiency and effectively manage financial and capital resources funded by consular fees. In an effort to improve business practices, the Department documents standard operating procedures and provides regular training to ensure the processes are followed. Additionally, the Department provides regular oversight of the document authentication process to protect the integrity of the process and promote standardization and efficiency. Although steps are taken to improve processing and efficiency, automating the entire authentication process is not possible at this time. Documents can only be properly authenticated by specially trained adjudicators that work in the Office of Authentications. As explained in the proposed rule, the current fee does not currently recover the costs of providing the service. The Cost of Service Model results have consistently established that the Department should charge a higher fee for this service to ensure full cost recovery.

One commenter suggested that the Cost of Service Model would benefit from an external audit to bolster confidence in the model's results. The Department follows guidance provided in "Managerial Cost Accounting Concepts and Standards for the Federal Government," OMB's Statement #4 of Federal Accounting Standards (SFFAS #4), and uses Activity Based Costing to calculate unit costs and set fees, which are industry standards and best practices for setting user fees. The model is updated annually, and the Department has meticulous processes in place to validate data and model results during each model update. Over time, the model has been evaluated by auditors, including the Office of Inspector General for the Department and the U.S. Government Accountability Office, and the Department incorporated feedback from those findings and continues to improve methodology to best capture the full cost to the U.S. government of providing consular services.

One commenter suggested that the proposed fee for an authentication of a document in the United States is too low because it does not include the compensation and benefits costs for Foreign Service Officers. The commenter also suggested that non-U.S. citizens should cover the cost of these services because U.S. citizens do not benefit from this service and therefore taxpayers should not be burdened with the costs. The cost basis and justification for this fee are explained in-depth in the proposed rule—only the costs related to providing the service, including compensation and benefits for domestic full-time civil service employees that do this work, are included in the calculated unit cost. Because Foreign Service Officers do not provide this service when it is performed domestically, their compensation and benefit costs are not included in the fee. The Cost of Service Model, however, has calculated the full cost of providing this service, and the fee is set to recover these costs. As noted above, the fee applies only to individuals seeking the authentications service domestically.

Finally, one commenter emphasized the importance of a sufficient explanation for a cost-basis for the fee and concluded that the Department had provided such explanation.

Conclusion

The Department will adjust the fee for authentication of a document in the

United States in light of the Cost of Service Model's findings that the U.S. government is not recovering fully its costs for providing the service. Consistent with OMB guidance, the Department endeavors to recover through user fees the cost of providing services that benefit specific individuals, as opposed to the general public. See OMB Circular A-25, sec. 6(a)(1), (a)(2)(a). For this reason, the Department will adjust the Schedule of Fees.

Regulatory Findings

Administrative Procedure Act

The Department published this rulemaking as a proposed rule, and provided 60 days for public comment. It will be effective 30 days after publication, in accordance with 5 U.S.C. 553(d).

Regulatory Flexibility Act

The Department has reviewed this rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities as defined in 5 U.S.C. 601(6).

Unfunded Mandates Act of 1995

This rule is not expected to 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.

Congressional Review Act

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

Executive Orders 12866 and 13563

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

This rule is necessary in light of the need to incorporate the domestic authentications fee into the Schedule of Fees for Consular Services and the Department of State's Cost of Service Model finding that the cost of authenticating a document in the United States is higher than the current fee. The Department is setting the fee in accordance with 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."). This rule sets the fee for domestic authentications at the amount required to recover the full costs associated with providing this service.

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

Paperwork Reduction Act

This rulemaking relates to an information collection request for the DS-4194, Request for Authentications Service, which is being processed separately.

List of Subjects in 22 CFR Part 22

Consular services, Fees.

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

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

1. The authority citation for part 22 reads as follows:

Authority: 8 U.S.C. 1101 note, 1153 note, 1157 note, 1183a note, 1184(c)(12), 1201(c), 1351, 1351 note, 1713, 1714, 1714 note; 10 U.S.C. 2602(c); 22 U.S.C. 214, 214 note, 1475e, 2504(h), 2651a, 4206, 4215, 4219, 6551; 31 U.S.C. 9701; Exec. Order 10,718, 22 FR 4632 (1957); Exec. Order 11,295, 31 FR 10603 (1966).

2. In § 22.1, amend the table by adding entry 46 under the heading "Documentary Services" to read as follows:

§ 22.1 Schedule of fees.

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SCHEDULE OF FEES FOR CONSULAR SERVICES

Table with 2 columns: Item No. and Fee. Row 46: Authentications (by the Office of Authentications domestically): (a) Each basic authentication service (Items 47-50 vacant). Fee: \$20.

Ian Brownlee,

Acting Assistant Secretary for Consular Affairs, Department of State.

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