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DEPARTMENT OF STATE

22 CFR Part 22

Public Notice: 6851

RIN: 1400-AC57

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

AGENCY: Bureau of Consular Affairs, State.

ACTION: Proposed Rule.

SUMMARY: This rule amends the Schedule of Fees for Consular Services (Schedule) for nonimmigrant visa application and border crossing card processing fees. The rule raises from \$131 to \$140 the fee charged for the processing of an application for most non-petition-based nonimmigrant visas (Machine-Readable Visas or MRVs) and adult Border Crossing Cards (BCCs). The rule also provides new application fees for certain categories of petition-based nonimmigrant visas and treaty trader and investor visas (all of which are also MRVs). Finally, the rule increases the \$13 BCC fee charged to Mexican citizen minors who apply in Mexico, and whose parent or guardian already has a BCC or is applying for one, by raising that fee to \$14 by virtue of a congressionally mandated surcharge that goes into effect this year. The Department of State is adjusting the fees to ensure that sufficient resources are available to meet the costs of providing consular services in light of an independent cost of service study's findings that the U.S. Government is not fully covering its costs for the processing of these visas under the current cost structure.

DATES: Written comments must be received on or before 60 days from the date of publication in the *Federal Register*.

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

- Persons with access to the Internet may view this notice and submit comments by going to the regulations.gov web site at: <http://www.regulations.gov/index.cfm>.
- Mail (paper, disk, or CD-ROM): U.S. Department of State, Office of the Executive Director, Bureau of Consular Affairs, U.S. Department of State, Suite H1001, 2401 E Street NW Washington, DC 20520.
- E-mail: fees@state.gov. You must include the RIN (1400-AC57) in the subject line of your message.

FOR FURTHER INFORMATION CONTACT: Amber Baskette, Office of the Executive Director, Bureau of Consular Affairs, Department of State; phone: 202-663-3923, telefax: 202-663-2599; e-mail: fees@state.gov.

SUPPLEMENTARY INFORMATION:

Background

What Is the Authority for This Action?

The Department of State derives the general authority to set the amount of fees for the consular services it provides, and to charge those fees, from the general user charges statute, 31 U.S.C. § 9701. *See, e.g.*, 31 U.S.C. § 9701(b)(2)(A) (“The head of each agency ... may prescribe regulations establishing the charge for a service or thing of value provided by the agency ... based on ... the costs to the Government.”). As implemented through Executive Order 10718 of June 27, 1957, 22 U.S.C. § 4219 further authorizes the Department to establish fees to be charged for official services provided by U.S. embassies and consulates. Other authorities allow the Department to charge fees for consular services, but not to determine the amount of such fees, as the amount is statutorily determined. Examples related to nonimmigrant visas include: (1) the \$13 fee, discussed below, for machine-readable BCCs for certain Mexican citizen minors, Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, Pub. L. 105-277, 112 Stat. 2681-50, Div. A, Title IV, § 410(a), (reproduced at 8 U.S.C. § 1351 note); and (2) the reciprocal nonimmigrant visa issuance fee, 8 U.S.C. § 1351.

A number of other statutes address specific fees and surcharges related to nonimmigrant visas. A cost-based, nonimmigrant visa processing fee for MRVs and BCCs is authorized by section 140(a) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, Public Law 103-236, 108 Stat. 382, as amended, and such fees remain available to the Department until expended. *See, e.g.*, Enhanced Border Security and Visa Entry Reform Act of 2002, Pub. L. 107-173, 116 Stat. 543; *see also* 8 U.S.C. § 1351 note (reproducing amended law allowing for retention of MRV and BCC fees). Furthermore, section 239(a) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (“Wilberforce Act”) requires the Secretary of State to collect a \$1 surcharge on all MRVs and BCCs in addition to the processing fee, including on BCCs issued to Mexican citizen minors qualifying for a statutorily mandated \$13 processing fee; this surcharge must be deposited into the Treasury. *See* Pub. L. 110-457, 122 Stat. 5044, Title II, § 239, (reproduced at 8 U.S.C. § 1351 note).

The Department last changed MRV and BCC fees in an interim final rule dated December 20, 2007. 72 Fed. Reg. 72243. *See* Department of State Schedule for Fees and Funds, 22 C.F.R. §§ 22.1–22.5 Those changes to the Schedule went into effect January 1, 2008.

Why Is the Department Raising the Nonimmigrant Visa Fees at this Time?

Consistent with OMB Circular A-25 guidelines, the Department contracted for an independent cost of service study (CoSS), which used an activity-based costing model from August 2007 through June 2009 to provide the basis for updating the Schedule. The results of that study are the foundation of the current changes to the Schedule.

The CoSS concluded that the average cost to the U.S. Government of accepting, processing, adjudicating, and issuing a non-petition-based MRV application, including an application for a BCC, is approximately \$136.37 for Fiscal Year 2010. (The only exception is the non-petition-based E category visa, discussed below, for which costs are greater than \$136.37.) The CoSS arrived at the \$136.37 figure taking into account actual and projected costs of worldwide nonimmigrant visa operations, visa workload, and other related costs. This cost also includes the unrecovered costs of processing BCCs for certain Mexican citizen minors. That processing fee is statutorily frozen at \$13, even though such BCCs cost the Department the same amount to process as all other MRVs and BCCs—that is, significantly more than \$13. (As discussed below, a statutorily imposed \$1 surcharge brings the total fee for Mexican citizen minor BCCs to \$14.) The Department's costs beyond \$13 must, by statute, be recovered by charging more for all MRVs, as well as all BCCs not meeting the requirements for the reduced fee. *See* Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, Pub. L. 105-277, Div. A, Title IV, § 410(a)(3) (reproduced at 8 U.S.C. § 1351 note) (Department “shall set the amount of the fee [for processing MRVs and all other BCCs] at a level that will ensure the full recovery by the Department ... of the costs of processing” all MRVs and BCCs, including reduced cost BCCs for qualifying Mexican citizen minors).

Subsequent to the completion of data-gathering for the CoSS, the Department's Bureau of Consular Affairs decided to consolidate visa operations support services through an initiative called the Global Support Strategy (GSS) in Fiscal Year 2010. GSS consolidates in one contract costs of services currently being paid by MRV and BCC applicants to various private vendors, including appointment setting, fee collection, offsite data collection services and document delivery. The GSS contract, which will be awarded competitively, was initiated due to concerns that fees for visa services varied from country to country; the Department's intent is to charge a consistent fee worldwide to applicants for the same type of visa. Final costs for GSS are not yet known because the contract has not yet been awarded, but according to Department estimates startup costs incurred in Fiscal Year 2009 are certain to be at least \$2 per application. When this additional cost is factored in along with the costs of recovering losses from the Mexican citizen minor BCC, the estimated cost to the U.S. Government of accepting, processing, and adjudicating non-petition-based MRV (except E category) and BCC applications becomes \$138.37.

In addition, section 239(a) of the Wilberforce Act requires the Department to collect a fee or surcharge of \$1 (“Wilberforce surcharge”) in addition to cost-based fees charged for MRVs and BCCs, to support anti-trafficking programs. *See* Wilberforce Act, Pub. L. 110-457, Title II, § 239.

Combining the \$138.37 cost to the U.S. Government with the \$1 Wilberforce surcharge, the Department has determined that the fee for non-petition-based MRV (except E category) and BCC applications, with the exception of certain Mexican citizen minors' BCCs statutorily set at \$13, will be \$140. This \$140 fee will allow the Government to recover the full cost of processing these visa applications during the anticipated period of the current Schedule, and to comply with its statutory obligation to collect from applicants the \$1 Wilberforce surcharge. The Department rounded up to \$140 to make it easier for U.S. embassies and consulates to convert to foreign currencies, which are most often used to pay the fee.

For all applicants other than those Mexican citizen minors who qualify for the reduced fee, the BCC fee is being raised to \$140 because the document, which is available to certain Mexican citizens, has almost identical processing procedures and functions for those persons in the same manner as an MRV functions for all other nonimmigrant visa applicants.

As noted above, for Mexican citizens under 15 years of age who apply for a BCC in Mexico, and have at least one parent or guardian who has a BCC or is also applying for one, the BCC fee is statutorily set at \$13. *See Consolidated and Emergency Supplemental Appropriations Act of 1999, Pub. L. 105-277, Div. A, Title IV, § 410(a)(1)(A)* (reproduced at 8 U.S.C. § 1351 note). Nevertheless, the \$1 Wilberforce surcharge applies to this fee by the terms of law establishing the surcharge, which postdates Public Law 105-277, Division A, Title IV, § 410(a)(1)(A) and does not exempt it from its application. *See Wilberforce Act, Pub. L. 110-457, Title II, § 239(a)*. Therefore, the Department must now charge \$14 for this category of BCC.

In addition, the 2007–2009 CoSS found that the cost of accepting, adjudicating, and issuing MRV applications for the following categories of visas is appreciably higher than for other categories: E (treaty-trader or treaty-investor); H (temporary workers and trainees); K (fiancé(e)s and certain spouses of U.S. citizens); L (intracompany transferee); O (aliens with extraordinary ability); P (athletes, artists, and entertainers); Q (international cultural exchange visitors) and R (aliens in religious occupations). Each of these visa categories requires a review of extensive documentation and a more in-depth interview of the applicant than BCCs and other categories of MRVs. The Department has concluded that it would be more equitable to those applying for BCCs and other categories of MRVs, for which such extensive review is not necessary, to establish separate fees that more accurately reflect the cost of processing these visas. Therefore, this rule establishes the following fees for these categories corresponding to projected cost figures for the visa category as determined by the CoSS and incorporating the \$1 Wilberforce surcharge (*see Wilberforce Act, Pub. L. 110-457, Title II, § 239(a)* (surcharge applies to all nonimmigrant MRVs)):

H, L, O, P, Q and R: \$150

E: \$390

K: \$350.

The Department rounded these fees to the nearest \$10 for the ease of converting to foreign currencies, which are most often used to pay the fee.

When Will the Department of State Implement this Proposed Rule?

The Department intends to implement this proposed rule, and initiate collection of the fees set forth herein, as soon as practicable following the expiration of the 60-day public comment period following this proposed rule's publication in the *Federal Register*, and after the Department has had the opportunity to fully consider any public comments received and promulgate the associated final regulation.

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, in accordance with the Regulatory Flexibility Act, 5 U.S.C. § 605(b), has reviewed this rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities as defined in 5 U.S.C. § 601(6). This rule raises the application and processing fee for nonimmigrant visas. Although the issuance of some of these visas is contingent upon approval by DHS of a petition filed by a United States company with DHS, and these companies pay a fee to DHS to cover the processing of the petition, the visa itself is sought and paid for by an individual foreign national overseas who seeks to come to the United States for a temporary stay. The amount of the petition fees that are paid by small entities to DHS is not controlled by the amount of the visa fees paid by individuals to the Department of State. While small entities may cover or reimburse employees for application fees, the exact number of such entities that does so is unknown. Given that the increase in petition fees accounts for only 7% of the total percentage of visa fee increases, the modest 15% increase in the application fee for employment-based nonimmigrant visas is not likely to have a significant economic impact on the small entities that choose to reimburse the applicant for the visa fee.

Unfunded Mandates Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$1 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 section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. § 804(2). 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 United States-based companies to compete with foreign-based companies in domestic and import markets.

Executive Order 12866

OMB considers this rule to be a “significant regulatory action” under Executive Order 12866, section 3(f), Regulatory Planning and Review, Sept. 30, 1993. 58 Fed. Reg. 51735. This rule is necessary in light of the Department of State’s CoSS finding that the cost of processing non-immigrant visas has increased since the fee was last set in 2007. The Department is setting the non-immigrant visa fees in accordance with 31 U.S.C. § 9701 and other applicable legal 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 sets the fees for non-immigrant visas at the amount required to recover the costs associated with providing this service to foreign nationals.

Accordingly, this rule has been submitted to OMB for review.

Details of the proposed fee changes are as follows:

Item No.	Proposed Fee	Current Fee	Change in Fee	Percentage Increase	Estimated Annual Number of Applications¹	Estimated Increase in Annual Fees Collected²
21. Nonimmigrant visa application and border crossing card processing fees:						
(a) Non-petition-based category (except E category)	\$140	\$131	\$9	7%	5,499,494	\$49,495,446
(b) H, L, O, P, Q and R category	\$150	\$131	\$19	15%	498,034	\$9,462,646

¹ Based on FY2009 actuals.

² Using FY2009 actuals to generate projections.

(c) E category	\$390	\$131	\$259	198%	38,466	\$9,962,694
(d) K category	\$350	\$131	\$219	167%	41,345	\$9,054,555
(e) Border crossing card – age 15 and over	\$140	\$131	\$9	7%	673,128	\$6,058,152
(f) Border crossing card – under age 15	\$14	\$13	\$1	8%	224,376	\$224,376

Historically, nonimmigrant visa workload has increased year to year at approximately 5%. However, global economic conditions led to a 12.7% drop in demand in Fiscal Year 2009. We anticipate that with global economic recovery, demand will return to its historical pattern of growth after Fiscal Year 2010. With regard to the economic impact as a whole, the more than 92% of nonimmigrant visa applications that are not petition-based are sought by and paid for entirely by foreign national applicants. The revenue increases resulting from those fees should not be considered to have a direct cost impact on the domestic economy.

Executive Order 13132

This rule 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, Federalism, Aug. 4, 1999, the Department has determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. 64 Fed. Reg. 43255.

Paperwork Reduction Act

This rule does not impose any new or modify any existing reporting or record-keeping requirements.

List of Subjects in 22 CFR Part 22

Consular services, fees, passports and visas.

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

PART 22--[AMENDED]

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

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

2. Revise § 22.1 Item 21 to read as follows:

SCHEDULE OF FEES FOR CONSULAR SERVICES

Item No.	Fee
* * * * *	
Nonimmigrant Visa Services	
21. Nonimmigrant visa application and border crossing card processing fees (per person):	
(a) Non-petition-based nonimmigrant visa (except E category)	\$140
(b) H, L, O, P and R category nonimmigrant visa	\$150
(c) E category nonimmigrant visa	\$390
(d) K category nonimmigrant visa	\$350
(e) Border crossing card – age 15 and over (valid 10 years)	\$140
(f) Border crossing card –under age 15; for Mexican citizens if parent or guardian has or is applying for a border crossing card (valid 10 years of until the applicant reaches age 15, whichever is sooner)	\$14
* * * * *	

December 9, 2009. _____

(Date)

Patrick Kennedy,

Under Secretary of State for Management,
Department of State.

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