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**DEPARTMENT OF STATE**

**22 CFR Part 22**

[Public Notice: 9230]

RIN: 1400-AD47

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

**AGENCY:** Department of State.

**ACTION:** Final rule.

**SUMMARY:** This rule adopts as final the interim final rule published in the *Federal Register* on August 28, 2014. Specifically, the rule implemented changes to the Schedule of Fees for Consular Services (“Schedule”) for a number of different fees. This rulemaking addresses public comments and adopts as final the changes to these fees.

**DATES:** The Effective date of the final rule published in the Federal Register of August 28, 2014 (79 FR 51247) is confirmed effective September 6, 2014.

**FOR FURTHER INFORMATION CONTACT:** Jill Warning, Office of the Comptroller, Bureau of Consular Affairs, Department of State; phone: 202-485-6683, telefax: 202-485-6826; e-mail: [fees@state.gov](mailto:fees@state.gov).

**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*, 79 FR 51247, on August 28, 2014, 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, more than 70 comments were received, either by mail, email, or through the submission process at [www.regulations.gov](http://www.regulations.gov).

This rule establishes the following fees for the categories below:

- Administrative Processing of Formal Renunciation of U.S. Citizenship from \$450 to \$2,350
- E Category Nonimmigrant Visas from \$270 to \$205
- K Category Nonimmigrant Visas from \$240 to \$265
- Immigrant Visa Application Processing Fees (per person)
  - Immediate relative and family preference applications from \$230 to \$325

- Employment-based applications from \$405 to \$345
- Other immigrant visa applications (including I-360 self-petitioners and special immigrant visa applicants) from \$220 to \$205
- Affidavit of Support Review from \$88 to \$120
- Special Visa Services
  - Determining Returning Resident Status from \$275 to \$180
  - Waiver of Two-Year Residency Requirement from \$215 to \$120
- Consular Time Charges from \$231 to \$135

The fee change for the reduced Border Crossing Card fee for Mexican citizens under age 15 whose parent or guardian has or is applying for a Border Crossing Card is not included in this final rule. This fee was included in the interim final rule published in August 2014, and raised from \$15 to \$16. The same month, Congress ordered this fee to be increased by \$1 pursuant to Section 2 of Pub. L. 113-160. This additional increase was implemented in a final rule published on December 31, 2014, which raised this fee from \$16 to \$17. See 79 FR 79064. Therefore, this fee is not included in this final rule.

The original publication of the interim final rule included an incorrect effective date of September 6, 2014, for the above changes in fees. That date was subsequently corrected, but the correction contained an error (erroneously stating “September 12, 2104”). See 79 F.R. 52197. The correct effective date is reflected herein; it is September 12, 2014.

#### *Analysis of Comments*

In the 60-day period since the publication of the interim final rule, more than 70 comments were received.

The large majority of the comments received expressed concern about the increased fee for the Administrative Processing of Formal Renunciation of U.S. Citizenship.

Most commenters requested to pay a lower fee for the renunciation service, suggesting that they be grandfathered in to the previous fee of \$450. The majority of these commenters had initiated the process of renouncing their nationality prior to the announcement of the new fee.<sup>1</sup> Over half of commenters requested to pay the previous fee after the new fee went into effect, five commenters asked for earlier appointments in order to pay the previous fee, and one commenter requested a refund for the difference between the new fee and the previous fee. Several commenters characterized the 15-day notice of the fee change as unfair and suggested that they should have been notified earlier if the fee was likely to change.

The Department's policy for citizenship-related services, including the Administrative Processing of Formal Renunciation of U.S. Citizenship, is to collect the fee in effect at the time that the service is provided. Although the renunciation process involves multiple steps, the service is rendered when the oath to renounce one's nationality is sworn. U.S. nationals who intend to renounce their nationality and have a meeting or information session with the consular post for that purpose, but who change their minds and do not

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<sup>1</sup> Section 101(a)(22) of the Immigration and Nationality Act (INA) states that "the term 'national of the United States' means (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States." Therefore, U.S. citizens are also U.S. nationals. Section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481) governs how a U.S. national shall lose U.S. nationality. Therefore, the terms "national" and "nationality" are used throughout this rule except for references to specific instances of "citizen" or "citizenship."

take the oath, are *not* charged the fee. In the interest of fairness, the Department must assess the renunciation fee when the core service is performed, rather than upon the provision of information. Therefore, the Department does not offer a lower fee or refunds for those who receive the renunciation service after the new fee went into effect on September 12, 2014. Furthermore, embassies and consulates do not have authority to waive the fee, reduce the fee, or provide a refund where the fee is properly collected. In addition, although one commenter contended that the rule-making process was “truncated,” the interim final rule was published pursuant to the “good cause” exceptions set forth at 5 U.S.C. 553(b)(3)(B) and 553(d)(3). The Department deemed that delaying implementation would be contrary to the public interest because several fees included in this rulemaking pay for consular services that are critical to national security. Rules that are exempt from notice and comment are often effective immediately upon publication, so the 15-day notice in this case was more notice than is often provided in such instances.

More than one-third of the comments suggested that the increased fee to process renunciations is a burden. These commenters asserted that the new fee is too costly. Some expressed concern about their own ability to afford the higher fee, pointing to personal circumstances including low income, student status, and senior citizen status. In addition, a few of these commenters asserted that nationality renunciation is a constitutional or human right. They stated that the increased fee acts as a deterrent to renouncing one’s nationality, thereby violating the right to expatriate, and suggested that the renunciation service should be offered at no or low cost. Specifically, two commenters cited the Expatriation Act of 1868 and Universal Declaration of Human Rights, both of which address the right of expatriation.

In raising the fee to process renunciations, the Department has not restricted or burdened the right of expatriation. Further, the fee is not punitive, and is unrelated to the IRS tax legislation criticized in some comments, except to the extent that the legislation 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 Cost of Service Model (CoSM) to obtain the most accurate calculation of the costs of providing consular services. 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. In sum, the increased fee for processing renunciations is a “user charge,” which reflects the full cost to the U.S. government of providing the service.

On a per-service basis, renunciation is among the most time-consuming of all consular services. In the past, however, the Department charged less than the full cost of the renunciation service. The total number of renunciations was previously small and constituted a minor demand on the Department’s resources. Consequently, it was difficult to assess accurately the cost of the service. In contrast, in recent years, the number of people requesting the renunciation service has risen dramatically, driven in part by tax legislation affecting U.S. taxpayers abroad, including the Foreign Account Tax Compliance Act (FATCA), materially increasing the resources devoted to providing the service. At one post alone, renunciations rose from under 100 in 2009 to more than

1,100 in the first ten months of 2014. Finally, improvements to the CoSM made the cost of the renunciation service more apparent. For all these reasons, the Department decided to raise the fee to reflect the full cost of the service.

The Department has closely examined comments regarding the right of expatriation, which is addressed in the Immigration and Nationality Act and the Universal Declaration of Human Rights. The increased fee, however, does not impinge on the right of expatriation. Rather, the increased fee reflects the amount of 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 detail below, the process of 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, as described below, that allow consular officers and other Department employees to ensure these requirements are satisfied in every expatriation case.

A few commenters questioned the rationale for raising the renunciation fee, seeking more insight into how the fee is determined. Some commenters disputed that the higher fee actually represents the true cost of processing a renunciation. In particular, one commenter applied the Consular Time Charge of \$135 to the renunciation fee and asked whether the service actually takes 17 hours. Another commenter specifically requested more information about the CoSM.

As described in the interim final rule, the CoSM uses activity-based costing to identify, describe, assign costs to, and report on agency operations. Using a process view, the model assigns resource costs such as salaries, travel, and supplies to different activities such as adjudicating an application or printing a visa foil. These activity costs are then assigned to cost objects, or products and services (visas, passports, administrative processing of a renunciation), to determine how much each service costs.

The CoSM demonstrated that documenting a U.S. national's renunciation of nationality is extremely costly. The cost of the service is not limited to the time consular officers spend with the renunciant at the appointment. The application is reviewed both overseas and domestically, requiring a substantial amount of time to ensure full compliance with the law. Through the provision of substantial information and one or two in-person interviews, the consular officer must determine that the individual is indeed a U.S. national, advise the individual on the consequences of loss of nationality, and determine that the individual fully intends to relinquish all the rights and privileges attendant to U.S. nationality, including the ability to reside in the United States unless properly documented as an alien. The consular officer also must determine whether the individual is seeking loss of nationality voluntarily or is under duress, a process that can be demanding in the case of minors or individuals with a developmental disability or mental illness. At the oath-taking interview, the consular officer must document the renunciation service on several forms signed by the individual seeking loss of nationality. The consular officer also must document the service in consular systems as well as in memoranda from the consular officer to headquarters. All forms and memoranda are closely reviewed at headquarters by a country officer and a senior approving officer

within the Bureau of Consular Affairs, and may include consultation with legal advisers within the Bureau of Consular Affairs and the Office of the Legal Adviser. Some applications require multiple rounds of correspondence between post and headquarters.

Each individual issued a Certificate of Loss of Nationality also is advised of the possibility of seeking a future Administrative Review of the loss of nationality, a process that is conducted by the Office of Legal Affairs, Directorate of Overseas Citizens Service, Bureau of Consular Affairs. This review must consider whether the statute pursuant to which the initial finding of loss of nationality was made has been deemed to be unconstitutional. The review must also take notice of any significant change in the analysis of expatriation cases following a holding of the Supreme Court. Furthermore, the review must also take notice of any change in the interpretation of expatriation law that is adopted by the Department. Lastly, the review must evaluate evidence submitted by the expatriate that indicates that his or her commission of a statutory act of expatriation was either involuntary or done without intending to relinquish his/her U.S. nationality.

In addition to the time spent processing renunciations overseas and domestically, the full cost of processing renunciations includes a portion of overhead costs that support consular operations overseas per OMB Circular A-25, Revised. These costs include overseas rent and security, information technology equipment, and applicable headquarters support. The Consular Time Charge of \$135 per hour was not used in calculating the cost of a renunciation service. The Consular Time Charge is used in conjunction with other for-fee services listed on the Schedule of Fees for Consular Services that are provided outside of the office or outside of normal working hours.

Four comments asserted that the renunciation should be made more efficient rather than more costly. A few asked if there were ways to reduce bureaucracy and paperwork to lower the cost of the service. Specifically, one commenter pointed to the German renunciation process, which involves an online application, mailed certified copies of certain documents, and no in-person interviews. As described above, certain legal requirements exist in the U.S. system, unique to our laws and jurisprudence, to protect both the integrity of the process and the rights of those renouncing. The renunciation process involves significant safeguards to ensure that the renunciant is a U.S. national, fully understands the serious consequences of renunciation, and seeks to renounce voluntarily and intentionally. In short, the comprehensive process of expatriation under U.S. law does not impinge, but rather protects, the right of expatriation.

Finally, two comments raised questions about payment options and sought clarification on the effective date for the fee change. The new fee for processing renunciations took effect September 12, 2014. Payment by credit card (at most posts) or cash (in local or U.S. currency) is accepted at post at the time that the oath of renunciation is sworn.

In addition to the comments on the renunciation fee increase, the Department also received eight comments about the changes in immigrant and nonimmigrant visa fees. Most sought clarification on how the visa fees were changing, which payment options are available, and when the new fees will go into effect. One commenter asserted that the visa fees are set too low.

All tiered immigrant and nonimmigrant visa fees addressed in this rulemaking are set to reflect the costs of providing each service. The new visa fees went into effect on

September 12, 2014. Further details on particular fees, including payment options, can be found on the website of the embassy or consulate where the applicant would like to make a visa appointment.

### *Conclusion*

The Department adjusted the fees in light of the CoSM's findings that the U.S. government was not fully covering 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.

## **REGULATORY FINDINGS**

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 79 FR 51247, which are adopted herein. The rule became effective September 6, 2014. As noted above, the Department has considered the comments submitted in response to the interim final rule, and does not adopt them. Thus, the rule remains in effect.

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an

assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. OMB has not reviewed it under those Orders. The Department of State has also considered this rule in light of Executive Order 13563, dated January 18, 2011, and affirms that this regulation is consistent with the guidance therein.

**LIST OF SUBJECTS in 22 CFR Part 22**

Consular services, fees, passports, and visas.

Accordingly, the interim final rule amending 22 CFR part 22, which was published in the Federal Register, 79 FR 51247, on August 28, 2014 (Public Notice 8850), effective September 6, 2014, is adopted.

Dated: August 10, 2015.

Patrick F. Kennedy,  
Under Secretary of State for Management,  
U.S. Department of State.

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