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August 24, 2010

The Honorable John F. Kerry
Chairman
The Honorable Richard G. Lugar
Ranking Member
Committee on Foreign Relations
United States Senate

The Honorable Howard L. Berman
Chairman
The Honorable Ileana Ros-Lehtinen
Ranking Member
Committee on Foreign Affairs
House of Representatives

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

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of State (Department), entitled “Schedule of Fees for Consular Services, Department of State and Overseas Embassies and Consulates” (RIN: 1400-AC58). We received the rule on August 13, 2010. It was published in the *Federal Register* as an interim final rule on June 28, 2010. 75 Fed. Reg. 36,522.

The interim final rule adjusts the Schedule of Fees for Consular Services (Schedule of Fees). The adjustment is based on an independent cost of service study’s findings that the United States is not fully covering its costs for providing these services under the current fee structure. The Department’s primary objective of the adjustments to the Schedule of Fees is to ensure that fees for consular services reflect the costs to the United States of providing the services to the extent possible. The interim final rule is effective on July 13, 2010.

The Congressional Review Act requires major rules to have a 60-day delay in their effective date, following publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). Notwithstanding the 60-day requirement, the Congressional Review Act allows any rule—that an agency for good cause finds that the notice and public comment procedures are impractical,

unnecessary, or contrary to the public interest--to take effect when the promulgating agency so determines. 5 U.S.C. § 808(2). The Department found good cause that the effective date of this rule be 15 days after its publication as an interim final rule, "since an additional 60-day delay in the effective date is impracticable and contrary to the public interest." 75 Fed. Reg. 36,530.

Enclosed is our assessment of the Department's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that the Department complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Alice M. Kottmyer
Attorney-Adviser
Office of the Legal Adviser
Department of State

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF STATE
ENTITLED
"SCHEDULE OF FEES FOR CONSULAR SERVICES,
DEPARTMENT OF STATE AND
OVERSEAS EMBASSIES AND CONSULATES"
(RIN: 1400-AC58)

(i) Cost-benefit analysis

The Department conducted a cost-benefit analysis of this interim final rule. The Department noted that it generally sets consular fees at an amount calculated to achieve recovery of the costs to the United States of providing the consular service, in a manner consistent with general user charge principles. The increased fees include, for example, an increase in the application fee for a passport book for an adult from \$44 to \$70, and an increase in the passport book security surcharge from \$20 to \$40 to cover the costs of increased border security.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The Department certified that this interim final rule will not have a significant economic impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The Department concluded that this interim final 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.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act (APA), 5 U.S.C. §§ 551 et seq.

On February 9, 2010, the Department published a proposed rule in the *Federal Register* to change the Schedule of Fees and provided 30 days for public comment. 75 Fed. Reg. 6321. On March 24, 2010, in response to requests by the public for more information and a further opportunity to submit comments, the Department published a supplementary notice in the *Federal Register*. 75 Fed. Reg. 14,111. The supplementary notice provided a more detailed explanation of the cost of service

study, and reopened the comment period for an additional 15 days. During this and the previous 30-day comment period, the Department received approximately 1,797 comments. The interim final rule reflects these comments and reopens the comment period for an additional 60 days. In addition, the Department found good cause under 5 U.S.C. § 553(d)(3) that the effective date of this interim final rule be 15 days after its publication (an exception to the 30-day APA requirement).

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The Department noted that this interim final rule does not impose or alter any reporting or recordkeeping requirements.

Statutory authorization for the rule

The Department cites the following authorities for this interim final rule: 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.

Executive Order No. 12,866 (Regulatory Planning and Review)

The Office of Management and Budget (OMB) considers this interim final rule to be an economically significant regulatory action under the Order because it is likely to have an annual effect on the economy of \$100 million or more. Accordingly, this rule was submitted to OMB for review.

Executive Order No. 13,132 (Federalism)

The Department noted that this interim final 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.