



United States Government Accountability Office
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May 10, 2012

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

The Honorable Ileana Ros-Lehtinen
Chairman
The Honorable Howard L. Berman
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, entitled “Schedule of Fees for Consular Services, Department of State and Overseas Embassies and Consulates” (RIN: 1400-AD06). We received the rule on April 25, 2012. It was published in the *Federal Register* as an interim final rule on March 29, 2012, with an effective date of April 13, 2012. 77 Fed. Reg. 18,907.

The interim final rule amends the Schedule of Fees for consular services (Schedule) for nonimmigrant visa application processing fees, border crossing card application processing fees, and immigrant visa application processing fees. The rule increases from \$140 to \$160 the fee charged for the processing of an application for most non-petition-based nonimmigrant visas (Machine-Readable Visas or MRVs) and Border Crossing Cards (BCCs) for Mexican citizens age 15 and over. The rule also provides amended application processing fees for certain categories of petition-based nonimmigrant visas and treaty trader and investor visas (all of which are also MRVs), as well as amended tiered application processing fees for immigrant visas. Finally, the rule increases from \$14 to \$15 the 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, based on a congressionally mandated surcharge that took effect since the last adjustment to the Schedule of Fees.

Enclosed is our assessment of State'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 State complied with the applicable requirements.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). This final rule with request for public comment was published on March 29, 2012. It was received by the Senate on April 3, 2012, and by the House of Representatives on April 11, 2012. 158 Cong. Rec. S2390 (April 17, 2012); 158 Cong. Rec. H2063 (April 24, 2012). The rule has a stated effective date of April 13, 2012. Therefore, this rule does not have the required 60-day delay in effective date. However, notwithstanding the 60-day delay requirement, any rule that an agency for good cause finds that notice and comment are impractical, unnecessary, or contrary to the public interest is to take effect when the promulgating agency so determines. 5 U.S.C. §§ 553(d)(3), 808(2). For this rule the agency evoked this exception and made the rule effective 15 days after publication.

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 Kottmyer
Attorney-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-AD06)

(i) Cost-benefit analysis

The Department of State estimates that the change in annual fees collected for consular services will be \$948,139,701. The Department anticipates that the fees amended in this rule will cover the costs associated with processing the estimated 10.5 million nonimmigrant visas and one million immigrant visas projected for fiscal year 2012. With regard to the economic impact as a whole, the more than 93 percent of nonimmigrant visa applications that are not petition-based are sought by and paid for entirely by foreign national applicants. Therefore the Department determined that the revenue increases resulting from those fees should not be considered to have a direct cost impact on the domestic economy.

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

The Department of State determined 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 of State determined 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 \$100 million or more in any one 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, 5 U.S.C. §§ 551 et seq.

The Department of State issued this rule as an interim final rule with a 60-day comment period. This rule has an effective date of April 13, 2012. The agency claimed good cause under sections 553(b)(3)(B) and 553(d)(3) of title 5, United

States Code. The Department of State determined that delaying implementation of this rule would be contrary to the public interest because the fees in this rule fund consular services that are critical to national security, including screening visa applicants. In addition, the Department stated that it would not be able to sustain the anticipated growth in consular overseas operations if these fees are not effective within 15 days of publication.

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

The Department of State determined that this interim final rule does not contain any information collection requirements under the Act.

Statutory authorization for the rule

The Department of State promulgated this interim final rule under the authority of section 9701 of title 31, United States Code.

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

The Department of State determined that this interim final rule is economically significant under the Order, and it was reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

The Department of State determined 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 among the various levels of government.

Executive Order No. 13,175 (Tribal Implications)

The Department of State determined that this interim final rule will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law.