

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF STATE

### 22 CFR Part 22

[Public Notice 10522]

RIN 1400-AE12

### Schedule of Fees for Consular Services—Documentary Services Fee

AGENCY: Department of State.

ACTION: Proposed rule.

**SUMMARY:** The Department of State (the Department) proposes an adjustment to the Schedule of Fees for Consular Services (Schedule of Fees) for authentication of a document in the United States. The Department is incorporating the domestic authentications fee into the Schedule of Fees and increasing it from \$8 to \$20, in light of the findings of its Cost of Service Model (CoSM), to ensure that the fee for this consular service better aligns with the costs of providing this service. The proposed fee was calculated and set to recover the full cost of providing the document authentication service, in line with OMB Circular A-25. The collected fees are remitted to the Department of Treasury. The Department of State lacks statutory authority to retain this fee revenue.

**DATES:** Written comments must be received on or before December 15, 2020.

**ADDRESSES:** Interested parties may submit comments to the Department by any of the following methods:

- Visit the *Regulations.gov* website at: <http://www.regulations.gov> and search for the Regulatory Information Number (RIN) 1400-AE12 or docket number DOS-2018-0037.

- Mail (paper, disk, or CD-ROM): U.S. Department of State, Office of the Comptroller, Bureau of Consular Affairs (CA/C), SA-17 8th Floor, Washington, DC 20522-1707.

- Email: [fees@state.gov](mailto:fees@state.gov). You must include the RIN (1400-AE12) in the subject line of your message.

All comments should include the commenter's name, the organization the commenter represents, if applicable, and the commenter's address. If the Department is unable to read your comment for any reason, and cannot contact you for clarification, the Department may not be able to consider your comment. After the conclusion of the comment period, the Department will publish a Final Rule (in which it will address relevant comments) as expeditiously as possible.

During the comment period, the public may request an appointment to review Cost of Service Model (CoSM) data on site if certain conditions are met. To request an appointment, please call 202-485-8915 and leave a message with your contact information.

**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](mailto:fees@state.gov).

### Background

The proposed rule makes a change to the Schedule of Fees in 22 CFR 22.1. The Department generally sets and collects its fees based on the concept of full cost recovery. The Department completed a review of current consular fees and will implement a change to the Schedule of Fees based on the cost of services calculated by updates to the Cost of Service Model. This specific rule proposes to adjust the fee associated with document authentications in the United States.

### *What is the authority for this action?*

Authority for the Department's authentications service is contained in 22 CFR part 131. The Department derives the general authority to set fees based on the cost of 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."). The funds collected for many consular fees must be deposited into the general fund of the Treasury pursuant to 31 U.S.C. 3302(b). Various statutes permit the Department of State to retain some of the fee revenue it

collects (e.g. passport security surcharge, immigrant visa security surcharge, affidavit of support, etc.), but the Department of State lacks statutory authority to retain the fees collected for document authentication. As a result, all fees associated with this service are remitted to the Department of Treasury.

### *What are document authentication services?*

The Office of Authentications provides authentication services for public documents that will be used overseas. These services support individuals, commercial organizations, institutions, federal, and state government agencies seeking to use certain documents abroad. In order to be recognized overseas, U.S. public documents may require authentication. Authentication is the process whereby the signature and/or seal of a public official on a document is certified as authentic. There are two kinds of authentication depending upon the country where the document is to be used. The first is with an Apostille for countries that are parties to the Hague Apostille Convention. The Department only issues Apostilles for federal public documents; U.S. states issue Apostilles for their documents such as vital records and notaries. The second form of authentication is part of the chain legalization process. Under this process, the Department issues an authentication certificate for federal documents and for U.S. state authentication certificates certifying underlying state public documents. These are then further authenticated by the foreign Embassy of the country where the document is to be used.

When the office receives a request, it is given a unique service number (for tracking purposes). The documents are examined for originality, original signatures, seals, notaries' annotations, and chronological date order. If a document is approved for processing, a certificate of authentication under the Seal of the Department of State for and in the name of the Secretary of State is printed, signed, and eyeletted to the document. If the document is not approved to be processed, a correspondence letter is sent to the customer informing them of additional documentation that is needed to process their document. If it is determined after review that the document is being

requested for an unlawful or improper purpose, the office sends the customer a refusal letter.

The most common documents authenticated are:

- FBI- federal background check and police records
- Certificates of Birth, Marriage, Death, and Divorce
- Diplomas and Transcripts
- Police Records and Certified Court Records
- Name Change Decrees
- Power of Attorney
- HHS- Company Bylaws, Articles of Incorporation, and Authorization of Agent
- Declarations and Incumbency
- Dossier and Home Study
- Courier Letters, Extraditions, Warrants, and Secretarial Assignments
- Naturalization Certificates

For more information, including application instructions, please visit: <https://travel.state.gov/content/travel/en/records-and-authentications/authenticate-your-document/office-of-authentications.html>.

*Why is the department adjusting the documentary services fee at this time?*

With certain exceptions—such as the reciprocal nonimmigrant visa issuance fee—the Department of State generally sets consular fees at an amount calculated to achieve recovery of the costs to the U.S. Government of providing the consular service, in a manner consistent with general user charges principles. As set forth in Office of Management and Budget (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 OMB guidance covers all Federal Executive Branch activities that convey special benefits to recipients beyond those that accrue to the general public. See *id.*, sections 4(a), 6(a)(1).

The Department reviews consular fees periodically, including through an annual update to its Cost of Service Model, to determine each fee's appropriateness in light of the OMB guidance. The Department proposes the change set forth in the Schedule of Fees accordingly. The Cost of Service Model is an activity-based costing model that determines the current direct and indirect costs to the U.S. Government associated with each consular good and service the Department provides. The

model update identifies the cost of the various discrete consular goods and services, both direct and indirect, and the update's results formed the basis of the change proposed to the Schedule of Fees.

#### *Activity-Based Costing*

To set fees in accordance with the general user charges principles, the Department must determine the true cost of providing consular services. Following guidance provided in “Managerial Cost Accounting Concepts and Standards for the Federal Government,” OMB’s Statement #4 of Federal Accounting Standards (SFFAS #4), available at [http://files.fasab.gov/pdf/files/handbook\\_sffas\\_4.pdf](http://files.fasab.gov/pdf/files/handbook_sffas_4.pdf), the Department chose to develop and use an activity-based costing (ABC) model to determine the true cost of each of its consular services.

The Government Accountability Office (GAO) defines activity-based costing as a “set of accounting methods used to identify and describe costs and required resources for activities within processes.” Because an organization can use the same staff and resources (computer equipment, production facilities, etc.) to produce multiple products or services, ABC models seek to identify and assign costs to processes and activities and then to individual products and services through the identification of key cost drivers referred to as “resource drivers” and “activity drivers.”

ABC models also seek to identify the amount of time an organization’s personnel spend on each service and how much overhead cost (rent, utilities, facilities maintenance, etc.) is associated with delivering each service. ABC models require financial and accounting analysis and modeling skills combined with a detailed understanding of an organization’s business processes. ABC models require an organization to identify all activities required to produce a particular product or service (“activities”) and all resources consumed (costs) in the course of producing that product or service. An organization must also measure the quantity of resources consumed (“resource driver”); and the frequency and intensity of demand placed on activities to produce services (“activity driver”). SFFAS Statement #4 provides a detailed discussion of the use of cost accounting by the U.S. Government.

#### *The Department’s Cost of Service Model*

The Department conducted periodic Cost of Service Studies using ABC methods to determine the costs of its consular services through 2009. In 2010,

the Department moved to adopt an annually updated Cost of Service Model (CoSM) that measures all of its consular operations and costs, including all activities needed to provide consular services, whether fee-based or not. This provides a comprehensive and detailed look at all consular services as well as all services the Department performs for other agencies in connection with its consular operations. The CoSM now includes approximately 118 distinct activities and enables the Department to model its consular-related costs with a high degree of precision.

The Department uses three methods outlined in SFFAS Statement #4 (paragraph 149(2)) to assign resource costs to activities: (a) Direct tracing; (b) estimation based on surveys, interviews, or statistical sampling; and (c) allocations. The Department uses direct tracing to assign the cost of, for example, a physical passport book or the visa foil placed in a visa applicant’s passport. Assigning costs to activities such as adjudicating a passport or visa application requires estimation based on surveys, interviews, or statistical sampling to determine who performs an activity and how long it takes. Indirect costs (overhead) in the CoSM are allocated according to the level of effort needed for a particular activity. Where possible, the model uses overhead cost pools to assign indirect costs only to related activities. For instance, the cost of rent for domestic passport agencies is assigned only to passport costs, not to visas or other services the Department provides only overseas. The Department allocates indirect support costs to each consular service by the portion of each cost attributable to consular activities. For example, the model allocates a portion of the cost of the Department’s Bureau of Human Resources to consular services. The total amount of this allocation is based on the number of Bureau of Human Resources staff members who support Bureau of Consular Affairs personnel. In turn, this amount is proportionally allocated between the different consular services.

For consular activities that take place in the United States, the Department collects workload and level of effort data from periodic workload reports including Passport Agency Task Reports pulled from management databases that include Passport’s Management Information System. Financial information is gathered from reports provided by the Bureau of Consular Affairs Office of the Comptroller. The Department converts the cost and workload data it collects into resource drivers and activity drivers for each resource and activity.

Because roughly 70 percent of the workforce involved in providing consular services are full-time Federal employees, if demand for a service falls precipitously, the Department cannot shed employees as quickly as the private sector. Likewise, should demand rise precipitously, the Department cannot add employees quickly, because delivering the majority of consular services requires specially trained employees who cannot begin their training until they have completed the federal hiring process and obtained a security clearance. Additionally, given government procurement rules and security requirements, the Department must commit to many of its facilities and infrastructure costs years before a facility becomes available. Despite changes in demand, the Department is obligated to cover these costs. Given these and other constraints on altering the Department's cost structure in the short term, changes in service volumes can have dramatic effects on whether a fee is self-sustaining. Predictive workloads are based on projections by the Office of Visa Services, the Office of Passport Services, and other parts of the Bureau of Consular Affairs that are consistent with Department budget documents prepared for Congress.

The costs the Department enters into CoSM include every line item of costs, including items such as physical material for making passports and visas, salaries, rent, supplies, and IT hardware and software. The Department then determines a resource driver for each of these costs as discussed above and enters the resource drivers and assignments into the model. The Department then selects an activity driver, such as the volume data discussed above for each activity, in order to assign these costs to each service type. This process allows the model to calculate a total cost for each of the Schedule of Fees line items for visa services, passport services, and overseas citizens services as well as

services for other government agencies and “no fee” services. The model then divides the total weighted cost by the total weighted volume of the service or product in question in order to determine a final unit cost for the service or product. Projected costs for predictive years are used to take account of changes in the size of consular staff, workload, and similar factors. The resulting database constitutes the Cost of Service Model.

The Department continues to refine and update the Cost of Service Model in order to set fees commensurate with the cost of providing consular services. Because the Cost of Service Model is a complex series of iterative computer processes incorporating more than a million calculations, it is not reducible to a tangible form such as a document. Inputs are formatted in spreadsheets for entry into the ABC software package. The ABC software package itself is an industry standard commercial off-the-shelf product, SAP Business Objects. The software's output includes spreadsheets with raw unit costs, validation reports, and management reports.

*Using the Cost of Service Model To Assess Costs Associated With Document Authentication Services*

For analyzing document authentication services, the cost object is Basic Domestic Authentication Service. It has six activities, denoted in the model by the shorthand AUTH.#, and they are Provide Information, Data Intake, Payment and Cashiering, Perform Authentication Review, Personalize, and Issue. Further down, each activity is described in detail. The resource driver is based on a time and motion study that identified the percentage of time the Office of Authentications staff spend on each activity. The overhead pools are the Passport General Management Overhead Pool and the General Management Overhead Pool.

**AUTH.1 Provide Information**

Costs are allocated according to a time and motion study, with tasks measured in the time and motion study mapped to CoSM activities with the assistance of the Authentications staff. Tasks include Retrieve messages from appointment/status line, Return calls/answer live calls from appointment line, and Return status calls. The cost of this activity is directly assigned to the Basic Authentication cost object.

**AUTH.2 Data Intake**

Tasks mapped to AUTH.2 Data Intake include Collect mail-in documents, walk-in documents, Greet customers in lobby, and Answer customer questions in lobby area during case drop off/pick-up. The cost of this activity is directly assigned to the Basic Authentication cost object.

**AUTH.3 Payment and Cashiering**

Tasks mapped to AUTH.3 Payment and Cashiering include Conduct follow-up calls for cases received without payment. The cost of this activity is directly assigned to the Basic Authentication cost object.

**AUTH.4 Perform Authentication Review**

Tasks mapped to AUTH.4 Perform Authentication Review include Perform authentication review for appointment documents, Perform initial review of case, Perform authentication review for counter documents, and Perform authentication review for mail documents. The cost of this activity is directly assigned to the Basic Authentication cost object.

**AUTH.5 Personalize**

Tasks mapped to AUTH.5 Personalize include print, sign, and bind certificate to the documents. The cost of this activity is directly assigned to the Basic Authentication cost object.

**AUTH.6 Issue**

Tasks mapped to AUTH.6 Issue include Return document to appointment customer in lobby and by mail back. The cost of this activity is directly assigned to the Basic Authentication cost object.

*Domestic Authentications Driver*

The table below details the resources, driver used, and corresponding activities performed.

TABLE 1—DOMESTIC AUTHENTICATIONS RESOURCE DRIVER

Resources	Driver used	Activities
CA Consolidation—DA, CA Headquarters Rent—DA, 281201 PPT/S/TO/AUT Office of Authentications positions and costs.	Time and motion study .....	AUTH.1 Provide Information, AUTH.2 Data Intake, AUTH.3 Payment and Cashiering, AUTH.4 Perform Authentication Review, AUTH.5 Personalize, AUTH.6 Issue.

Costs are assigned according to a time and motion study, with tasks measured in the time and motion study mapped to CoSM activities with the assistance of the Authentications staff.

*Domestic Authentications Fee*

The Department is incorporating the domestic authentications fee into the Schedule of Fees and increasing it from

\$8 to \$20. The Office of Authentications, which provides signed authentication certificates for U.S. documents destined for use in foreign

countries, moved from the Bureau of Administration (A Bureau) to the Bureau of Consular Affairs (CA) in October 2012. Before the move, the

Office of Authentications charged \$8 per authentication. At that time, there were five direct-hire full-time employees (FTE), no contractors, and a large backlog of authentications. In 2014, the Office of Authentications moved to the new Washington Passport Agency to increase space for operations, and in 2016 hired four contractors to perform functions like mail opening, cashiering, and data entry, among other clerical tasks.

Following the move to CA, the Department began to measure the cost of Office of Authentications operations and services in the Cost of Service Model. Costs for this service have gone up the past several years to meet customer service expectations and workload requirements. The Office of Authentications aims to maintain a five business day turn-around time for all mail-in applications, and a three day turn-around time for all walk-in requests. In 2016/2017, the office added five additional contractors to meet demand of the existing workload and to manage the walk-ins to the facility and to provide information and manage the queue of customers needing authentication services. CA's Office of Authentications now has nine FTEs and nine contractors. Only FTEs have the authority to adjudicate authentications, and the additional contractor resources allowed FTEs to reduce administrative tasks to focus on adjudication. The scope of work for the Office of Authentications also widened. Once CA inherited this service from the A Bureau, all IT systems had to be updated and a tracking system was created to manage workload. CA also had to increase its capacity to manage calls to support customer service in addition to workflow management systems to manage customers as they come into the facility. A presence was added to the *travel.state.gov* site to provide the public with information on the existence of the office. Lastly, two additional printers, which are rented and bear an annual expense, were acquired to meet demands for current technology.

Based on the findings of the most recent update to the Cost of Service Model, the Department determined that a fee of \$20 would fully recover the cost of Office of Authentications operations and services. This includes the salaries for the staff of the Office of Authentications, rent for the physical location at 600 19th Street NW, Washington, DC, and overhead costs that include information technology, human resources, facilities maintenance, legal review, and security.

There are over 100 specific line item costs that flow into the Department's cost for the domestic authentications service. A summary level breakdown broken down into three general cost categories is provided in the below table:

Table 2: Line Item Total (Authentications) .....	\$4,431,980
Compensation .....	1,589,237
Non-Compensation .....	1,604,126
Partner Bureaus .....	1,238,617

The Office of Authentications currently consists of nine civil-service employees, which includes an increase of two full-time employees (FTE) over the past five years, and several contract support staff. As discussed below, the Department notes that authentication services have remained roughly constant in recent years at approximately 235,000 authentications annually and expects that trend to continue. The FTE time-per-service (cycle time) has remained relatively constant. As such, CA is not planning to increase either FTE or contract staff at this time as the current staff is meeting demand within the established cycle times. Compensation costs include FTE staff salaries and benefits and domestic overhead costs directly related to the domestic authentication service, and total \$1,589,237. The FTE average compensation cost (with benefits) is more than \$138,000 per position. Additional costs in the Compensation category, totaling approximately \$38,582 per FTE, include general management overhead costs, and domestic Passport staff costs included in Passport general management overhead. The Non-Compensation costs total \$1,604,126, and include operating costs like domestic awards, contractor support costs, personnel travel and transportation, utilities, supplies, equipment, and CA IT costs which increase as FTE numbers increase.

The support from other State Department Partner Bureaus (or Partner Bureaus) cost category includes compensation, overhead, and operating costs associated with CA's Partner Bureaus that support the domestic authentication service. Partner Bureau functions that support the domestic authentication service include human resources support, facilities maintenance, legal review, and security. This cost category also includes rent CA pays for Office of Authentications space. The directly applicable portion of the Partner Bureau's costs, in line with the support they provide to perform this service, totals \$1,238,617. These three cost categories comprise the total overall

costs of providing the domestic authentication service, which totals \$4,431,980. The Cost of Service Model indicates that the cost-per-service is \$18.83. The Department has determined that it is most efficient to round up to the nearest five dollars, which is why it has set the fee at \$20. The Department notes that because all fee revenue associated with document authentication must be remitted to the Treasury, the Department uses alternative sources of retained fee revenue with broad spending authorities to fund the costs the Department incurs to provide the documentary authentication services.

## 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 has reviewed this proposed 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 proposed 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.

### *Small Business Regulatory Enforcement Fairness Act of 1996*

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

### *Executive Order 12866 and 13563*

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

This proposed rule is necessary in light of the need to incorporate the 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 proposed rule sets the fee for domestic authentications

at the amount required to recover the costs associated with providing this service.

Details of the proposed fee change are as follows:

TABLE 3—FEE CHANGE IMPACT

Item No.	Proposed fee	Current fee	Change in fee	Percentage increase	Estimated annual number of services requested <sup>1</sup>	Estimated change in annual fees collected <sup>2</sup>
<b>Schedule of Fees for Consular Services</b>						
*	*	*	*	*	*	*
<b>Documentary Services</b>						
46. Authentications (by the Office of Authentications domestically):						
(a) Each basic authentication service	\$20	\$8	\$12	150	234,197	\$2,810,364
Total	20	8	12	150	234,197	2,810,364
*	*	*	*	*	*	*

<sup>1</sup> Based on FY 2018 workload. Workload has remained consistent over five years, averaging approximately 235,000 authentications each year—we expect that trend to continue. Respondents may ask for more than one service on a form and a fee is assessed per document authenticated.

<sup>2</sup> The Department of State does not retain this fee. All fee revenue associated with this service is remitted to Treasury.

Based on the foregoing information, and the fact that the CoSM has demonstrated that the increase in fees will allow the U.S. government to recover the full cost of providing this service, the Department finds that the benefit to the public outweighs the cost of this rule as outlined above.

#### *Executive Order 13771*

This regulation is not an E.O. 13771 regulatory action because it is a transfer rule that changes only the fee for a service without imposing any new costs. The increase of this current collection accurately reflects the cost to the U.S. government of providing this service.

#### *Executive Orders 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 proposed to be amended as follows:

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

■ 1. The authority citation for part 22 continues to read 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.**

\* \* \* \* \*

### **SCHEDULE OF FEES FOR CONSULAR SERVICES**

Item No.	Fee
*	*
<b>Documentary Services</b>	
*	*
46. Authentications (by the Office of Authentications domestically):	

## SCHEDULE OF FEES FOR CONSULAR SERVICES—Continued

Item No.	Fee
(a) Each basic authentication service .....	\$20
(Items 47–50 vacant.) .....	

\* \* \* \* \*

**Carl C. Risch,**

*Assistant Secretary for Consular Affairs,  
Department of State.*

[FR Doc. 2020–19926 Filed 10–15–20; 8:45 am]

**BILLING CODE 4710–06–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R09–OAR–2020–0096; FRL–10014–93–Region 9]

### Partial Approval and Partial Disapproval of Air Quality State Implementation Plans; California; Infrastructure Requirements for Ozone

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to partially approve and partially disapprove the state implementation plan (SIP) revision submitted by the State of California pursuant to the requirements of the Clean Air Act (CAA or “Act”) for the implementation, maintenance, and enforcement of the 2015 national ambient air quality standards (NAAQS or “standards”) for ozone. As part of this action, we are proposing to reclassify certain regions of the State for emergency episode planning purposes with respect to ozone. We are also proposing to approve into the SIP an updated state provision addressing CAA conflict of interest requirements, and emergency episode planning rules for Amador County Air Pollution Control District (APCD), Calaveras County APCD, Mariposa County APCD, Northern Sierra Air Quality Management District (AQMD), and Tuolumne County APCD. Finally, we are proposing to approve an exemption from emergency episode planning requirements for ozone for Lake County AQMD. We are taking comments on this proposal and, after considering any comments submitted, plan to take final action.

**DATES:** Written comments must be received on or before November 16, 2020.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R09–OAR–2020–0096 at <https://www.regulations.gov>. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, or if you need assistance in a language other than English, or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Panah Stauffer, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3247 or by email at [stauffer.panah@epa.gov](mailto:stauffer.panah@epa.gov)

**SUPPLEMENTARY INFORMATION:** Throughout this document, the terms “we,” “us,” and “our” refer to EPA.

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### I. The EPA’s Approach to the Review of Infrastructure SIP Submittals

The EPA is acting upon two SIP submittals from California that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2015 ozone NAAQS. Whenever the EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. This type of SIP submission is commonly referred to as an “infrastructure SIP.” These submissions must meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), the EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. The EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions<sup>1</sup> and through regional actions on infrastructure submissions. Unless otherwise noted below, we are following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, the EPA evaluates the submitting state’s SIP for facial compliance with statutory and regulatory requirements, not for the

<sup>1</sup> The EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013 Infrastructure SIP Guidance (available at <https://www3.epa.gov/airquality/urbanair/sipstatus/docs/>)

Guidance on Infrastructure SIP Elements Multipollutant FINAL Sept 2013.pdf), as well as in numerous EPA actions, including the EPA’s prior action on California’s infrastructure SIP to address the 1997 and 2008 ozone NAAQS (79 FR 63350 (October 23, 2014)).