

effects of this rule elsewhere in this preamble.

### Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Environment

The Coast Guard considered the environmental impact of this regulation and concluded that, under figure 2-1, paragraph (34)(g) of Commandant Instruction M16475.1C, it is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination"

is available in the docket for inspection or copying where indicated under ADDRESSES.

### List of Subject in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; 49 CFR 1.46.

2. Add § 165.917 to read as follows:

#### § 165.917 Safety Zone; M/V ROY A. JODREY, St. Lawrence River, Wellesley Island, New York.

(a) *Location.* The following area is safety zone: all waters and adjacent shoreline encompassed by the arc of a circle with a 150-yard radius of the wreck of the M/V ROY A. JODREY, with its center in approximate position 44°19.55 N, 075°56.00 W (NAD 83).

(b) *Regulations.*

(1) The regulations in § 165.23 apply to this section.

(2) Except as provided in this section, no vessel or person may enter or remain in this safety zone without the permission of the Captain of the Port.

(3) The Captain of the Port Buffalo has authorized all vessels to transit through the safety zone on the condition that they proceed directly through the zone without stopping.

(4) Any vessel wanting to stop, fish, anchor or discharge divers inside the zone, or any divers wanting to visit the wreckage of the M/V ROY A. JODREY, must request permission from the Captain of the Port Buffalo or his designated on-scene representative prior to entry into the zone.

Dated: October 10, 2002.

**P.M. Gugg,**

*Commander, U.S. Coast Guard, Captain of the Port Buffalo.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 81

[CA-082-FOAa; FRL-7397-5]

### Determination of Attainment of the 1-Hour Ozone Standard for San Diego County, CA

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

**ACTION:** Final rule.

**SUMMARY:** This rulemaking contains EPA's final determination that the San Diego area has attained the 1-hour ozone national ambient air quality standard (NAAQS) by the deadline required by the Clean Air Act (CAA). Elsewhere in this **Federal Register**, we are withdrawing our prior direct final determination, because an adverse comment was submitted on that action. In this rulemaking, we are responding to that comment and issuing our final determination of attainment.

**EFFECTIVE DATE:** This determination is effective on November 22, 2002.

**ADDRESSES:** You can inspect the docket for this action at EPA's Region 9 office during normal business hours, at the following location: Air Planning Office, USEPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105-3901.

**FOR FURTHER INFORMATION CONTACT:** Dave Jesson, U.S. EPA Region 9, at (415) 972-3957, or [jesson.david@epa.gov](mailto:jesson.david@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we," "us," and "our" refer to EPA.

### I. Background

For background on the San Diego 1-hour ozone classification, status, and air quality, please refer to our direct final determination of attainment, which was published on August 23, 2002 (67 FR 54580). In that same issue, we published an accompanying proposed determination of attainment, whose public comment period expired on September 23, 2002 (67 FR 54601). Because we received an adverse comment during the public comment period, we are withdrawing the direct final determination elsewhere in this **Federal Register**, responding to the comment, and finalizing our determination of attainment. As stated in our proposal, we will not institute a second comment period on this action.

### II. Response to Public Comment

We received one public comment from the Environmental Health Coalition of San Diego (EHC). We summarize the content of that comment and respond below.

*Comment 1:* EPA should clarify the definition of a 1-hour ozone exceedance. The 1-hour standard is 0.12 parts per million (ppm). It is EHC's position that any 1-hour ozone measurement greater than 0.120 ppm constitutes an exceedance.

*Response:* Although the 1-hour ozone NAAQS itself includes no discussion of specific data handling conventions, our publicly articulated position and the approach long since universally adopted by the air quality management community is that the interpretation of the 1-hour ozone standard requires rounding ambient air quality data consistent with the stated level of the standard, which is 0.12 parts per million (ppm). 40 CFR 50.9(a) states that: "The level of the national 1-hour primary and secondary ambient air quality standards for ozone . . . is 0.12 parts per million. . . . The standard is attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 parts per million . . . is equal to or less than 1, as determined by appendix H to this part." We have clearly communicated the data handling conventions for the 1-hour ozone NAAQS in regulation and guidance documents, as discussed below. In the 1990 CAA Amendments, Congress expressly recognized the continuing validity of EPA guidance.

As early as 1977, EPA issued guidance that the level of our NAAQS dictates the number of significant figures to be used in determining whether the standard was exceeded

(*Guidelines for the Interpretation of Air Quality Standards*, OAQPS No. 1.2-008, February 1977). In addition, the regulations governing the reporting of annual summary statistics from ambient monitoring stations for use by EPA in determining national air quality status clearly indicate the rounding convention to be used for 1-hour ozone data.<sup>1</sup>

In 1979, EPA issued additional guidance specific to ozone in which EPA provided that "the stated level of the standard is taken as defining the number of significant figures to be used in comparisons with the standard. For example, a standard level of .12 ppm means that measurements are to be rounded to two decimal places (.005 rounds up), and, therefore, .125 ppm is the smallest concentration value in excess of the level of the standard." *Guideline for the Interpretation of Ozone Air Quality Standards*, January 1979, EPA-450/4-79-003, p. 6. EPA's guidance on air quality modeling is consistent with the Guideline. See, for example, *Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS*, June 1996, EPA-454/G-95-007, pp. 1-3.

The level of the 1-hour ozone NAAQS is defined in 40 CFR 50.9 as 0.12 parts per million (ppm), not 120 parts per billion (ppb) as implied by the commenter. In other words, the 1-hour ozone NAAQS is specified as two significant digits and the data handling approach employed to compare ambient air quality data to the 1-hour ozone standard is to round to two decimal

places as per the regulations and guidance referenced above.

In the 1990 Amendments to the CAA, Congress expressly provided that "[e]ach regulation, standard, rule, notice, order and guidance promulgated or issued by the Administrator under this CAA, as in effect before the date of the enactment of the CAA Amendments of 1990 shall remain in effect according to its terms. . . ." Section 193. Thus, under the amended CAA, Congress expressly carried forward EPA interpretations set forth in guidance such as the guideline documents interpreting the NAAQS.

*Comment 2:* The commenter requests a complete list of all 1-hour ozone measurements that exceeded 0.120 ppm during 1999-2001 within San Diego County, and an explanation of why any of these events was not counted as an exceedance.

*Response:* As discussed in response to Comment 1, we do not consider values less than 0.125 ppm to be exceedances of the 1-hour ozone NAAQS, since the standard is 0.12 ppm and standard rounding conventions apply. Nevertheless, for informational purposes we present below in Table 1—"San Diego Peak 1-Hour Ozone Concentrations and Design Values, 1999-2001," a list of all concentrations greater than 0.120 ppm recorded at each ozone monitor within San Diego County for the period 1999-2001, and the design value rounded to the third decimal point for each monitor.

TABLE 1.—SAN DIEGO PEAK 1-HOUR OZONE CONCENTRATIONS AND DESIGN VALUES, 1999-2001

[Source: EPA's Aerometric Information Retrieval System]

Monitor	Concentrations > 0.120	Design value
Alpine (PAMS/SLAMS)	0.135 ppm (5/08/01) 0.124 ppm (6/13/99) 0.121 ppm (4/26/00)	0.118 ppm.
Camp Pendleton (PAMS/SLAMS)	None	0.098 ppm.
Chula Vista (SLAMS)	None	0.099 ppm.
Del Mar (SLAMS)	None	0.092 ppm.
El Cajon (PAMS/NAMS)	0.122 ppm (5/08/01)	0.104 ppm.
Escondido (SLAMS)	0.141 ppm (9/30/01) 0.124 ppm (9/16/00) 0.123 ppm (4/08/00)	0.110 ppm.
Oceanside (SLAMS)	None	0.091 ppm.
Otay Mesa (SLAMS)	None	0.089 ppm.
San Diego/Overland (PAMS/NAMS)	0.135 ppm (9/30/01)	0.106 ppm.
San Diego/12th St (SLAMS)	None	0.088 ppm.

According to our regulations and guidance, an area is in attainment if its

design value does not exceed the 0.12 ppm 1-hour ozone standard and the area

has averaged less than 1 exceedance per year at each monitor for the applicable

<sup>1</sup> "The air quality concentration should be rounded to the number of significant digits used in specifying the concentration intervals. The digit to the right of the last significant digit determines the

rounding process. If this digit is greater than or equal to 5, the last significant digit is rounded up. The insignificant digits are truncated. For example, 100.5 ug/m3 rounds to 101 ug/m3 and 0.1245 ppm

rounds to 0.12 ppm." 40 CFR part 58, appendix F, 2 Required Information.

3-year period. Table 1 shows that no San Diego monitor had a design value greater than 0.120 ppm for the period 1999–2001. Table 1 also shows that only 3 exceedances of the NAAQS occurred during this period: the 0.135 ppm concentration recorded at Alpine on May, 8, 2001; the 0.141 ppm concentration recorded at Escondido on September 30, 2001; and the 0.135 ppm concentration recorded at Overland/San Diego on September 30, 2001. Thus, even assuming (as the commenter mistakenly does) that all values above 0.120 ppm are exceedances of the NAAQS, the San Diego area would have attained the standard during this period.

*Comment 3:* Any emission source exceeding its permitted NO<sub>x</sub> emission limit by even 0.1 ppm would potentially be subject to a Notice of Violation. This same standard should be applied to the analysis of ambient ozone data.

*Response:* We determine an exceedance of the NAAQS according to our regulations and established policies, as summarized in response to Comment 1 above, not by analogy to a local air agency's application of its rules. Moreover, the San Diego County Air Pollution Control District (SDCAPCD) has indicated that the District applies to its compliance determinations the same significant digit interpretation and rounding conventions that we use for the NAAQS.<sup>2</sup>

*Comment 4:* The commenter expressed concern that the District is already acting to relax new source review (NSR) requirements to become effective when EPA redesignates the area to attainment. Given that the District does not yet have either an approved maintenance plan for the 1-hour ozone NAAQS or an approved attainment plan for the 8-hour ozone NAAQS, this relaxation is premature.

*Response:* The proposed relaxation is consistent with the Clean Air Act and EPA policy, which provide that the Prevention of Significant Deterioration permitting program may replace the NSR program when an area is redesignated to attainment.<sup>3</sup> EPA agrees with the commenter that a provision for continued offsets would be beneficial in positioning the area to attain expeditiously the 8-hour ozone NAAQS, and we believe that retention of the offset provisions could also contribute

toward attainment of the fine particulate matter (PM–2.5) NAAQS in San Diego County. Consequently, EPA supports the SDCAPCD's intention to retain an offset requirement for purposes of State law, although such retention is not federally mandated.

### III. Final Action

No comments were submitted that change our proposed finding. Under CAA section 181(b)(2)(A), we are therefore finalizing our finding that the San Diego area has attained the 1-hour ozone NAAQS by the applicable attainment deadline of November 15, 2001.

### IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely determines that the San Diego area has attained a previously-established national ambient air quality standard based on an objective review of measured air quality data. As such, the action imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule does not impose any additional enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely

makes a determination based on air quality data, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This action also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use voluntary consensus standards (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical. EPA believes that VCS are inapplicable to today's final action because the action does not require the public to perform activities conducive to the use of VCS. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: October 9, 2002.

**Alexis Strauss,**

*Acting Regional Administrator, Region IX.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 81

[CA 082–FOAb; FRL–7397–6]

### Withdrawal of Direct Final Determination of Attainment of the 1-Hour Ozone Standard for San Diego County, CA

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

**ACTION:** Withdrawal of direct final rule.

**SUMMARY:** On August 23, 2002 (67 FR 54580), EPA published a direct final determination that the San Diego area had attained the 1-hour ozone air quality standard by the deadline required by the Clean Air Act. The direct final action was published without prior proposal because EPA anticipated no adverse comment. The

<sup>2</sup> "San Diego APCD Staff Responses to EHC Comments on EPA's Finding of Attainment." This document is included in the docket for this action.

<sup>3</sup> "Generally, the requirements of the part D NSR permitting nonattainment program will be replaced by the PSD program once an area is redesignated to attainment \* \* \* General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, April 16, 1992 (57 FR 13564).