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The Office intends to organize individual sessions of the hearings around particular or related classes of works proposed for exemption. If a request to testify involves more than one proposed exemption or related exemption, please specify, in order of preference, the proposed exemptions on which you would prefer to testify.

Following receipt of the requests to testify, the Copyright Office will prepare an agenda of the hearings which will be posted on the Copyright Office Web site at: <http://www.copyright.gov/1201/> and sent to all persons who have submitted requests to testify. To facilitate this process, it is essential that all of the required information listed above be included in a request to testify.

Dated: March 17, 2003.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 03-6741 Filed 3-19-03; 8:45 am]

BILLING CODE 1410-31-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CA-282-0389; FRL-7470-5]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; 1-Hour Ozone Standard for San Diego, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to redesignate the San Diego County area to attainment for the 1-hour ozone National Ambient Air Quality Standard (NAAQS). EPA is also proposing to approve a 1-hour ozone maintenance plan and motor vehicle emissions budgets as revisions to the San Diego portion of the California State Implementation Plan (SIP).

DATES: Comments on this proposed action must be received by April 21, 2003.

ADDRESSES: Please address your comments to: John J. Kelly, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105-3901.

You can inspect copies of the docket for this action at EPA's Region 9 office during normal business hours. You can

also inspect copies of the submitted SIP revision at the following locations:

California Air Resources Board, 1001 I Street, Sacramento, CA 95814; San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123-1096.

FOR FURTHER INFORMATION CONTACT: John J. Kelly, EPA Region 9, (415) 947-4151, or kelly.johnj@epa.gov

SUPPLEMENTARY INFORMATION:

Throughout this document, "we," "us," and "our" refer to EPA.

I. Background

A. San Diego Designation, Classification, SIPs, and Attainment

When the Clean Air Act (CAA) was amended in 1990, each area of the country that was designated nonattainment for the 1-hour ozone NAAQS, including the San Diego area, was classified by operation of law as marginal, moderate, serious, severe, or extreme depending on the severity of the area's air quality problem. The San Diego County nonattainment area ("San Diego") was designated under CAA section 107 as nonattainment, and initially classified under CAA section 181 as severe for the 1-hour ozone NAAQS. See 40 CFR 81.305 and 56 FR 56694 (November 6, 1991). The area was reclassified as serious after we determined that the ozone design value used in the original classification was incorrect. 60 FR 3771 (January 19, 1995).

The San Diego County Air Pollution Control District (SDCAPCD) adopted a serious area plan, demonstrating attainment by the applicable deadline of November 15, 1999. The California Air Resources Board (CARB) timely submitted the plan in 1994, and we approved the plan on January 8, 1997 (62 FR 1150).

Although the San Diego area did not attain the standard by the November 15, 1999 deadline, the area did qualify to have that deadline extended, since the area had complied with all requirements and commitments in the SIP and recorded no more than 1 exceedance of the NAAQS in 1999. For areas meeting these provisions, CAA section 181(a)(5) allows us to grant up to two 1-year extensions. On October 11, 2000 (65 FR 65025), we granted the San Diego area a 1-year attainment date extension to November 15, 2000, and on August 6, 2001 (66 FR 40908), we granted the area a second 1-year extension to November 15, 2001, since the area again had no more than 1 exceedance in the previous year. On October 23, 2002 (67 FR 65043), we issued a finding under CAA section 181(b)(2)(A) that the San Diego

area had attained the 1-hour ozone NAAQS by the applicable attainment deadline of November 15, 2001.

On December 11, 2002, SDCAPCD adopted the "Ozone Redesignation Request and Maintenance Plan for San Diego County" ("San Diego Maintenance Plan"). On December 20, 2002, CARB submitted the San Diego Maintenance Plan, with a request that we approve the plan as meeting the CAA maintenance plan provisions and redesignate San Diego to attainment for the 1-hour ozone NAAQS (letter from Michael P. Kenny, CARB Executive Officer, to Wayne Nastri, Regional Administrator, EPA Region 9).

On December 20, 2002, CARB also transmitted for approval the State's latest update to the California-specific motor vehicle emissions model, known as EMFAC2002 (letter from Michael P. Kenny, CARB Executive Officer, to Jack Broadbent, Director, Air Division, EPA Region 9).¹ EMFAC2002 is used to prepare the onroad emissions inventories in the plan. In early 2003, we expect to issue our conclusions regarding whether or not the EMFAC2002 emission factor model is acceptable and would thus be required to be used in the future for purposes of SIP development and transportation conformity. CARB provided us with information about the EMFAC2002 revisions as they were being prepared and finalized, and we have preliminarily concluded for purposes of this proposed action that the emission factor element of EMFAC2002 is an improved and acceptable methodology for determining motor vehicle emissions. Assuming that we find in a separate action that the updated emission factor model is acceptable, we propose to approve fully the emissions inventory, maintenance demonstration, motor vehicle emissions budgets, and redesignation request, as discussed below. If we fail to find that the emission factor model is acceptable, we will not finalize these actions.

B. Clean Air Act Provisions for Maintenance Plans

CAA section 175A sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The maintenance plan must provide for

¹ The EMFAC model is the California equivalent to EPA's national motor vehicle emissions model, the most recent version of which is MOBILE6. EMFAC2002 reflects new vehicle test data and quantification techniques to update and enhance the information in the most recent prior versions. For example, EMFAC2002 accounts for heavy-duty vehicle emissions during extended idling and during off-cycle operation.

continued maintenance of the applicable NAAQS for at least 10 years after the area is redesignated to attainment (CAA section 175A(a)). To address the possibility of future NAAQS violations, the maintenance plan must contain contingency provisions that are adequate to assure prompt correction of a violation, and must include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned which were contained in the State implementation plan for the area before redesignation of the area as an attainment area (CAA section 175A(d)).

We have issued maintenance plan and redesignation guidance, primarily in the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" ("General Preamble," 57 FR 13498, April 16, 1992); a September 4, 1992 memo from John Calcagni titled "Procedures for Processing Requests to Redesignate Areas to Attainment" ("Calcagni memo"); a September 17, 1993 memo from Michael H. Shapiro titled "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992"; and a November 30, 1993 memo from D. Kent Berry titled "Use of Actual Emissions in the Maintenance Demonstrations for Ozone and Carbon Monoxide (CO) Nonattainment Areas."

The Calcagni memo provides that an ozone maintenance plan should address five elements: an attainment year emissions inventory (*i.e.*, an inventory reflecting actual emissions when the area recorded attainment, and thus a level of emissions sufficient to attain the 1-hour ozone NAAQS), a maintenance demonstration, provisions for continued operation of an appropriate air quality monitoring network, verification of continued attainment, and contingency measures.

C. Clean Air Act Provisions for Redesignation

CAA section 107(d)(3)(E) allows for redesignation providing that: (1) We determine, at the time of redesignation, that the area has attained the NAAQS; (2) we have fully approved the applicable implementation plan for the area under section 110(k); (3) we determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, applicable Federal regulations, and other permanent and enforceable

reductions; (4) we fully approve a maintenance plan for the area as meeting the requirements of section 175A; and, (5) the State containing such area has met all nonattainment area requirements applicable to the area under section 110 and part D. We have provided guidance on redesignation in the General Preamble and in the guidance memos cited above.

II. EPA Review of the San Diego Maintenance Plan and Redesignation Request

A. Maintenance Plan

CARB submitted the San Diego Maintenance Plan on December 20, 2002. On January 14, 2003, we found that this submittal met the completeness criteria in 40 CFR part 51, appendix V, including the requirement for proper public notice and adoption.

1. Attainment Emissions Inventory

The San Diego Maintenance Plan includes 2001 base year emission inventories for Volatile Organic Compounds (VOC) and Nitrogen Oxides (NO_x), which are used to backcast emissions for 1990, 1995, and 2000, and to forecast emissions for 2005, 2010, and 2014, taking into account growth and changes in control factors.

The inventories use current and accurate methodologies, emissions factors, and survey information. The inventories represent actual emissions, with certain exceptions that are documented in the maintenance plan. For example, the projected emissions inventories include emission reduction credits (ERCs) in the SDCAPCD's Source Register and a projected military growth conformity increment (Appendix A). Banked ERCs are 0.7 tpd VOC and 0.3 tpd NO_x in 2005, 2010, and 2014 (pages A-3 and A-5). The military growth conformity increment is 11.4 tpd NO_x in 2005, 2010, and 2014 (page A-5). The onroad emissions inventories employ the new CARB motor vehicle emissions factor model, EMFAC2002. The motor vehicle inventories use the latest planning activity levels, including travel activity forecasts updated by the San Diego Association of Governments (SANDAG).

As discussed above, we expect to issue our conclusions regarding whether or not the emission factor element of EMFAC2002 is acceptable in early 2003. Assuming that we find that the updated element is acceptable, we propose to approve fully the emissions inventories under CAA sections 172(c) and 175A, because the emissions inventories are complete, consistent with our most recent guidance, and reflect the latest

information available at the time of plan preparation. However, if we fail to find that the emission factor element of the model is acceptable, we will not finalize this proposed approval.

2. Maintenance Demonstration

Original maintenance plans must show how the NAAQS will be maintained for the next 10 years following redesignation to attainment. This is generally performed by assuming that the emissions levels at the time attainment is achieved constitute a limit on the emissions that can be accommodated without violating the NAAQS. In the case of this plan, projected VOC and NO_x emissions for 2005, 2010, and 2014 show continued attainment, since emissions levels of both of the ozone precursors are below 2001 levels. Table 1 below shows baseline and projected summer day emissions levels. The projected emissions levels assume no emissions reductions from New Source Review (NSR) or the Title V operating permit program.

TABLE 1.—SAN DIEGO COUNTY MAINTENANCE DEMONSTRATION SUMMER DAY EMISSIONS

[tons per day]		
Year	VOC	NO _x
2001	220.8	240.7
2005	189.7	218.4
2010	177.2	192.1
2014	170.7	167.4

Source: San Diego Maintenance Plan (Table 5-2)

Maintenance is demonstrated since emissions of both ozone precursors decline from the 2001 attainment year inventory: VOC emissions are reduced by 50.1 tpd (approximately 22.7 percent) from 2001 to 2014, and NO_x emissions are reduced by 73.3 tpd by 2014 (approximately 30.5 percent). Increasingly stringent California and Federal motor vehicle emissions standards and fleet turnover account for the bulk of the inventory reductions, and the remaining emissions reductions come from fully adopted, permanent, and enforceable State, local, and Federal regulations. Assuming that we find that the emission factor element of EMFAC2002 is acceptable, we propose to approve the maintenance demonstration under CAA section 175A(a), since the plan shows that emissions will decline below attainment levels due to the projected impact of fully adopted, permanent, and enforceable regulations. If we fail to find that the EMFAC2002 emission factor

element is acceptable, we will not finalize this proposed action.

3. Continued Ambient Monitoring

The maintenance plan needs to contain provisions for continued operation of an air quality monitoring network that meets the provisions of 40 CFR part 58 and will verify continued attainment. The maintenance plan includes a commitment by SDCAPCD to continue to operate its monitoring network in compliance with the criteria of 40 CFR part 58 (page 5–4). This SDCAPCD commitment meets the continued monitoring provision.

4. Verification of Continued Attainment

The maintenance plan needs to show how the responsible agencies will track progress, and the plan should specifically provide for periodic inventory updates. The San Diego Maintenance Plan includes a commitment by SDCAPCD to meet this obligation through annual review of monitoring data from the most recent three consecutive years to verify continued attainment (page 5–5). This commitment meets our provisions for verification of continued attainment.

5. Contingency Provisions

CAA section 175A(d) provides that maintenance plans include contingency provisions “necessary to assure that the State will promptly correct any violation of the standard * * *. Such provisions shall include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned which were contained in the State implementation plan for the area before redesignation of the area as an attainment area.”

The San Diego Maintenance Plan notes that future effective provisions in CARB’s standards for light- and medium-duty vehicles (LEV II), heavy-duty vehicles, and off-road engines will provide significant continuing emissions reductions through the maintenance period. If new violations were to occur during the maintenance period, these measures should achieve sufficient reductions to correct the violations quickly. SDCAPCD notes that all measures in the San Diego ozone nonattainment SIP, including the NSR offset requirement, are retained in the San Diego Maintenance Plan, and the District will continue to implement the measures, in compliance with CAA section 175A(d). Finally, SDCAPCD commits to work with CARB to ensure the adoption, submittal, and expeditious implementation of any additional feasible measure(s) needed to ensure maintenance of the 1-hour ozone

NAAQS (pages 5–5 and 5–6). We propose to approve these provisions and commitments as meeting the contingency requirements of CAA section 175A(d).

6. Motor Vehicle Emissions Budgets

Maintenance plan submittals must specify the maximum emissions of transportation-related precursors of ozone allowed in the last year of the maintenance period. The submittals must also demonstrate that these emissions levels, when considered with emissions from all other sources, are consistent with maintenance of the NAAQS. In order for us to find these emissions levels or “budgets” adequate and approvable, the submittal must meet the conformity adequacy provisions of 40 CFR 93.118(e)(4) and (5), and be approvable under all pertinent SIP requirements.

The budgets defined by this and other plans when they are approved into the SIP or, in some cases, when the budgets are found to be adequate, are then used to determine the conformity of transportation plans, programs, and projects to the SIP, as described by CAA section 176(c)(3)(A). For more detail on this part of the conformity requirements, see 40 CFR 93.118. For transportation conformity purposes, the cap on emissions of transportation-related ozone precursors is known as the motor vehicle emissions budget. The budget must reflect all of the motor vehicle control measures contained in the maintenance demonstration (40 CFR 93.118(e)(4)(v)).

The motor vehicle emissions budgets are presented in Table 2 below, entitled “San Diego Maintenance Plan Motor Vehicle Emissions Budgets.”

TABLE 2.—SAN DIEGO MAINTENANCE PLAN MOTOR VEHICLE EMISSIONS BUDGETS

[Emissions are shown in tons per day]

Year	NO _x	VOC
2010	88	46
2014 and Subsequent Years	66	36

Source: San Diego Maintenance Plan, Table 5–3.

As discussed above in section II.A.1., Attainment Emissions Inventory, the motor vehicle emissions portion of these budgets (*i.e.*, the evaporative and tailpipe emissions) was developed using the EMFAC2002 motor vehicle emissions factors and updated county-specific vehicle data, including the latest San Diego County planning assumptions on vehicle fleet and age

distribution and activity levels. The budgets represent motor vehicle emissions levels, rounded up to the next whole number and adding one tpd to account for imprecision in motor vehicle emissions and potential slight emission increases associated with recent state legislation (AB 2637, 2002) affecting the motor vehicle inspection and maintenance program.

Assuming that we find that the emission factor element of EMFAC2002 is acceptable, we propose to approve the motor vehicle emission budgets as consistent with the criteria of 40 CFR 93.118(e)(4) and (5), including consistency with the baseline emissions inventories and the motor vehicle emissions used in the maintenance demonstration. Specifically, we are proposing to approve the budgets in the San Diego Maintenance Plan, which are based on, and consistent with, the maintenance demonstration. In a separate action, we will make a finding as to whether the above motor vehicle emissions budgets are adequate for purposes of conformity of transportation plans with the San Diego Maintenance Plan. We are taking this action separately in order to make the adequacy determination on the motor vehicle emission budgets within approximately 90 days of receipt of the plan, consistent with EPA’s May 14, 1999 guidance on implementation of March 2, 1999 conformity court decision.

B. Redesignation Provisions

1. Attainment of the 1-Hour Ozone NAAQS

On October 23, 2002 (67 FR 65043), EPA issued a final determination that San Diego County had attained the 1-hour ozone NAAQS by the CAA deadline of November 15, 2001. This finding was based on our conclusion that the design value for each monitor in the County for the period 1999–2001 was equal to or less than 0.12 ppm, and the average number of expected exceedance days per year was 1.0 or less for each monitor during that period. We also concluded that the ozone monitoring network for the area continued to meet or exceed applicable requirements. See also the discussion in our direct final determination of attainment published on August 23, 2002 (67 FR 54580).²

We have now looked at exceedance days and design values for each monitor for the most recent 3-year period, 2000–2002. The data for 1999–2001 and 2000–

² This direct final determination was withdrawn on October 23, 2002 (67 FR 65045) because an adverse comment was received.

2002 are presented in Table 3, entitled "Average Number of Ozone Exceedance Days per Year and Design Values by Monitor in San Diego County, 1999–

2001 and 2000–2002." As noted, not all data for the 4th quarter of 2002 have yet been quality assured and entered into EPA's Aerometric Information Retrieval

System—Air Quality Subsystem (AIRS–AQS) database.

TABLE 3.—AVERAGE NUMBER OF OZONE EXCEEDANCE DAYS PER YEAR AND DESIGN VALUES BY MONITOR IN SAN DIEGO COUNTY, 1999–2001 AND 2000–2002 ¹

Site	1999–2001		2000–2002	
	Average number of exceedance days per year	Site design value (ppm)	Average number of exceedance days per year	Site design value (ppm)
Alpine (PAMS/SLAMS)	0.3	0.118	0.3	0.118
Camp Pendleton (PAMS/SLAMS)	0	0.098	0	0.096
Chula Vista (SLAMS)	0	0.099	0	0.092
Del Mar (SLAMS)	0	0.092	0	0.091
El Cajon (PAMS/SLAMS)	0	0.104	0	0.104
Escondido (SLAMS)	0.3	0.110	0.3	0.110
Oceanside (SLAMS) ²	0	0.091
Otay Mesa (SLAMS)	0	0.089	0	0.089
San Diego/Overland (PAMS/NAMS)	0.3	0.106	0.3	0.111
San Diego/12th St (SLAMS)	0	0.088	0	0.086

Note 1: EPA's monitoring network regulations are codified at 40 CFR 58. The regulations provide for National Air Monitoring Stations (NAMS), State or Local Air Monitoring Stations (SLAMS), and Photochemical Assessment Monitoring Stations (PAMS). All of the stations in the San Diego County monitoring network are operated by SDCAPCD or CARB. All data produced by these stations are submitted to the AIRS–AQS database.

Note 2: The Oceanside monitor (on Mission Avenue) was closed in March 2002 because it was determined to be less representative of air pollution levels in the Oceanside area than the monitor at Camp Pendleton, which is less than 2 miles away and which typically records higher concentrations. No exceedances have been recorded at the Oceanside monitor since 1993.

As shown in Table 3, the highest design value at any monitor for 1999–2001 and for 2000–2002, and thus the design value for the San Diego area for those periods, is below 0.12 ppm. No monitor in the San Diego area recorded an average of more than 1 exceedance of the 1-hour ozone standard per year during the 1999–2001 and 2000–2002 periods.

Because the area's design value is below the 1-hour ozone standard of 0.12 ppm and the area has averaged less than 1 exceedance per year at each monitor for the 1999–2001 and 2001–2002 periods, we propose to conclude that the San Diego area has met this prerequisite to redesignation because the area has attained and continues to attain the 1-hour ozone standard.

2. Fully Approved Implementation Plan Under CAA Section 110(k)

Following adoption of the CAA of 1970, California has adopted and submitted and we have fully approved at various times provisions addressing the various SIP elements applicable in San Diego County. No San Diego SIP provisions are currently disapproved, conditionally approved, or partially approved.

3. Improvement in Air Quality Due to Permanent and Enforceable Measures

Section 4 of the San Diego Maintenance Plan includes analyses demonstrating that the reductions in ozone concentrations cannot be

attributed to reduced activity levels or favorable meteorology, but are rather due to permanent and enforceable measures. The plan shows a steady increase in Gross Regional Product and vehicle miles traveled from 1993 through 2001, reflective of continued activity growth in the area. The plan also lists 3-year average surface and aloft temperatures during April to October for each period from 1993 through 2001, and compares these values with the average temperatures for 1993–2001 (Table 4–3). This analysis shows that temperatures during the period when the County attained the NAAQS were slightly higher than the norm, suggesting that anomalously cool weather did not account for attainment.

4. Fully Approved Maintenance Plan

In section II.A., above, we are proposing to approve fully the San Diego Maintenance Plan as meeting the CAA section 175A provisions for maintenance plans assuming that we find that the EMFAC2002 emission factor element is acceptable.

5. CAA Section 110 and Part D Provisions Satisfied

We approved San Diego's 1994 ozone SIP on January 8, 1997 (62 FR 1150) with respect to CAA section 110 and Part D provisions applicable to a serious nonattainment area. The CAA section 110 and Part D provisions continue to be satisfied.

III. EPA Action

We are proposing to approve the San Diego Maintenance Plan under CAA sections 175A and 110(k)(3). We are proposing to approve the 2010 and 2014 VOC and NO_x motor vehicle emissions budgets in Table 2 above, under CAA sections 176(c) as adequate for maintenance of the 1-hour ozone NAAQS and for transportation conformity purposes. Finally, we are proposing to redesignate San Diego County to attainment for the 1-hour ozone standard under CAA section 107(d)(3)(E). As discussed, we will not finalize any of these actions unless we find that the EMFAC2002 emission factor element is acceptable.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This proposed 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 proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule 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.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed 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

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

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

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

Dated: March 12, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.
[FR Doc. 03-6707 Filed 3-19-03; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF THE INTERIOR

Office of the Secretary of the Interior

43 CFR Part 4

Special Rules Applicable to Surface Coal Mining Hearings and Appeals

AGENCY: Office of the Secretary.

ACTION: Petition for rulemaking.

SUMMARY: The Office of Hearings and Appeals is publishing for comment a petition for rulemaking received from the National Mining Association. The petition requests amendment of several existing rules relating to the burden of proof in proceedings under the Surface Mining Control and Reclamation Act of 1977.

DATES: You should submit your comments by May 19, 2003.

ADDRESSES: Send comments to: Director, Office of Hearings and Appeals, Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, U.S. Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, Virginia 22203. Phone: (703) 235-3750. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877-8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION: In January 2003, the National Mining Association (NMA) re-submitted a petition for rulemaking to the Director, Office of Hearings and Appeals, that it had originally submitted in January 1996.

NMA summarized its January 1996 petition in an accompanying letter:

The NMA requests amendments and revisions to the allocation of the burden of proof for proceedings under SMCRA [the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*] governed by § 7(c) of the Administrative Procedure Act (APA), 5 U.S.C. § 556(d), in view of the decision of the United States Supreme Court in *Director, Office of Workers' Compensation Programs, Department of Labor v. Greenwich Collieries*, 114 S.Ct. 2251 (1994). In that decision, the Supreme Court clarified that under § 7(c) of the APA, the burden of proof placed upon the proponent of a rule or order means not merely the burden of production, but also the burden of persuasion. Accordingly, when the Office of Surface Mining is the proponent of an order, *e.g.*, notice of violation, cessation order, order to show cause, the burden of proof remains with the agency.

At the time the NMA originally filed its petition, it was the plaintiff in a challenge to several Departmental rules, including those allocating the burden of proof in 43 CFR 4.1374 and 4.1384. Although NMA did not include those rules in its petition, the then-Director of OHA replied that "it would be prudent to await the outcome of that litigation before considering whether to proceed with your suggested rulemaking."

That litigation was concluded in June 2001 with the decision of the U.S. Court of Appeals for the District of Columbia Circuit in *National Mining Association v. United States Department of the Interior*, 251 F.3d 1007 (D.C. Cir. 2001). In that decision the Court concluded that OHA "did not improperly shift the burden of proof" in §§ 4.1374 and 4.1384. *Id.* at 1013-14.

In its January 2003 re-submission, NMA states:

Unlike that case, the regulations at issue in NMA's petition for rulemaking are governed by different sections of SMCRA that do not expressly allocate the burden of proof to the operator, and in some cases expressly allocate it to whomever is challenging the permit.

NMA's petition argues OHA must amend its regulations to allocate the ultimate burden of persuasion to the Office of Surface Mining in proceedings to review assessment of civil penalties (§ 4.1155); proceedings to review notices of violation or orders of cessation (§ 4.1171); proceedings for suspension or revocation of permits (§ 4.1194; formerly § 4.1193, *see* 67 FR 61506, 61507, 61510, Oct. 1, 2002); proceedings to review individual civil penalty