Office of the Clerk
United States Court of Appeals for the Ninth Circuit
Post Office Box 193939
San Francisco, California 94119-3939
415-355-8000

Molly C. Dwyer
Clerk of Court

August 24, 2020

No.:	20-72513
EPA No.:	EPA-R09-OAR-2018-0146
Short Title:	Center for Biological Diversit, et al v. USEPA, et al

Dear Petitioners/Counsel

Your Petition for Review has been received in the Clerk's office of the United States Court of Appeals for the Ninth Circuit. The U.S. Court of Appeals docket number shown above has been assigned to this case. You must indicate this Court of Appeals docket number whenever you communicate with this court regarding this case.

The due dates for filing the parties' briefs and otherwise perfecting the petition have been set by the enclosed "Time Schedule Order," pursuant to applicable FRAP rules. These dates can be extended only by court order. Failure of the petitioner to comply with the time schedule order will result in automatic dismissal of the petition. 9th Cir. R. 42-1.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 24 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

CENTER FOR BIOLOGICAL DIVERSITY, an Arizona non-profit corporation; CLIMATE FIRST: REPLACING OIL AND GAS, a California non-profit corporation; CENTER FOR ENVIRONMENTAL HEALTH, a California non-profit corporation,

Petitioners,

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY; ANDREW WHEELER, in his official capacity as Administrator of the U.S. Environmental Protection Agency,

Respondents.

No. 20-72513

EPA No. EPA-R09-OAR-2018-0146
Environmental Protection Agency

TIME SCHEDULE ORDER

The parties shall meet the following time schedule.

Mon., August 31, 2020	Petitioners' Mediation Questionnaire due. If your registration for Appellate CM/ECF is confirmed after this date, the Mediation Questionnaire is due within one day of receiving the email from PACER confirming your registration.
Thu., November 12, 2020	Agency petitioner brief due

Mon., December 14, 2020	Respondents' answering brief and excerpts of record shall be served and filed pursuant to FRAP 31 and 9th Cir. R. 31-2.1.

The optional petitioners' reply brief shall be filed and served within 21 days of service of the respondents' brief, pursuant to FRAP 31 and 9th Cir. R. 31-2.1.

Failure of the petitioners to comply with the Time Schedule Order will result in automatic dismissal of the appeal. See 9th Cir. R. 42-1.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Janne Nicole Millare Rivera
Deputy Clerk
Ninth Circuit Rule 27-7

Office of the Clerk
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Clerk of Court

ATTENTION ALL PARTIES AND COUNSEL
PLEASE REVIEW PARTIES AND COUNSEL LISTING

We have opened this appeal/petition based on the information provided to us by the appellant/petitioner and/or the lower court or agency. EVERY attorney and unrepresented litigant receiving this notice MUST immediately review the caption and service list for this case and notify the Court of any corrections.

Failure to ensure that all parties and counsel are accurately listed on our docket, and that counsel are registered and admitted, may result in your inability to participate in and/or receive notice of filings in this case, and may also result in the waiver of claims or defenses.

PARTY LISTING:
Notify the Clerk immediately if you (as an unrepresented litigant) or your client(s) are not properly and accurately listed or identified as a party to the appeal/petition. To report an inaccurate identification of a party (including company names, substitution of government officials appearing only in their official capacity, or spelling errors), or to request that a party who is listed only by their lower court role (such as plaintiff/defendant/movant) be listed as a party to the appeal/petition as an appellee or respondent so that the party can appear in this Court and submit filings, contact the Help Desk at http://www.ca9.uscourts.gov/cmecf/feedback/ or send a letter to the Clerk. If you or your client were identified as a party to the appeal/petition in the notice of appeal/petition for review or representation statement and you believe this is in error, file a motion to dismiss as to those parties.

COUNSEL LISTING:
In addition to reviewing the caption with respect to your client(s) as discussed above, all counsel receiving this notice must also review the electronic notice of docket activity or the service list for the case to ensure that the correct counsel are

listed for your clients. If appellate counsel are not on the service list, they must file a notice of appearance or substitution immediately or contact the Clerk's office.

NOTE that in criminal and habeas corpus appeals, trial counsel WILL remain as counsel of record on appeal until or unless they are relieved or replaced by Court order. *See* Ninth Circuit Rule 4-1.

REGISTRATION AND ADMISSION TO PRACTICE:
Every counsel listed on the docket must be admitted to practice before the Ninth Circuit AND registered for electronic filing in the Ninth Circuit in order to remain or appear on the docket as counsel of record. *See* Ninth Circuit Rules 25-5(a) and 46-1.2. These are two separate and independent requirements and doing one does not satisfy the other. If you are not registered and/or admitted, you MUST, within 7 days from receipt of this notice, register for electronic filing AND apply for admission, or be replaced by substitute counsel or otherwise withdraw from the case.

If you are not registered for electronic filing, you will not receive further notices of filings from the Court in this case, including important scheduling orders and orders requiring a response. Failure to respond to a Court order or otherwise meet an established deadline can result in the dismissal of the appeal/petition for failure to prosecute by the Clerk pursuant to Ninth Circuit Rule 42-1, or other action adverse to your client.

If you will be replaced by substitute counsel, new counsel should file a notice of appearance/substitution (no form or other attachment is required) and should note that they are replacing existing counsel. To withdraw without replacement, you must electronically file a notice or motion to withdraw as counsel from this appeal/petition and include your client's contact information.

To register for electronic filing, and for more information about Ninth Circuit CM/ECF, visit our website at http://www.ca9.uscourts.gov/cmecf/#section-registration.

To apply for admission, see the instructions and form application available on our website at https://www.ca9.uscourts.gov/attorneys/.

United States Court of Appeals
for the Ninth Circuit

P.O. Box 31478
Billings, Montana 59107-1478

CHAMBERS OF
SIDNEY R. THOMAS
CHIEF JUDGE

TEL: (406) 373-3200
FAX: (406) 373-3250

Dear Counsel:

I write to introduce you to the court's mediation program. The court offers you and your clients professional mediation services, at no cost, to help resolve disputes quickly and efficiently and to explore the development of more satisfactory results than can be achieved from continued litigation. Each year the mediators facilitate the resolution of hundreds of cases, from the most basic contract and tort actions to the most complex cases involving multiple parties, numerous pieces of litigation and important issues of public policy.

The eight circuit mediators, all of whom work exclusively for the court, are highly experienced attorneys from a variety of practices; all have extensive training and experience in negotiation, appellate mediation, and Ninth Circuit practice and procedure. Although the mediators are court employees, the court has adopted strict confidentiality rules and practices to ensure that what goes on in mediation stays in mediation. See Circuit Rule 33-1.

The first step in the mediation process is case selection. To assist the mediators in the case selection process, appellants/petitioners must file a completed Mediation Questionnaire within 7 days of the docketing of the case. See Circuit Rules 3-4, and 15-2. Appellees may also fill out and file a questionnaire. The questionnaire with filing instructions is available here. Once the Mediation Questionnaire is submitted, the parties will receive via NDA a link to a separate form that will allow them to submit **confidential** information directly to the Circuit Mediators. Counsel may also submit confidential information at any time to ca09_mediation@ca9.uscourts.gov.

In most cases, the mediator will schedule a settlement assessment conference, with counsel only, to determine whether the case is suitable for mediation. Be assured that participation in the mediation program will not slow down disposition of your appeal. Mediation discussions are not limited to the issues on appeal. The discussions can involve other cases and may include individuals who are not parties to the litigation, if doing so enables the parties to reach a global settlement.

Further information about the mediation program may be found on the court's website: www.ca9.uscourts.gov/mediation/. Please address questions directly to the Mediation Program at 415-355-7900 or ca09mediation@ca9.uscourts.gov.

Sincerely,

Sidney Thomas

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 7. Mediation Questionnaire

Instructions for this form: http://www.ca9.uscourts.gov/forms/form07instructions.pdf

9th Cir. Case Number(s)	
Case Name	
Counsel submitting this form	
Represented party/ parties	

Briefly describe the dispute that gave rise to this lawsuit.

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

Briefly describe the result below and the main issues on appeal.

Describe any proceedings remaining below or any related proceedings in other tribunals.

Signature **Date**

*(use "*s/[typed name]*" to sign electronically-filed documents)*

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CENTER FOR BIOLOGICAL DIVERSITY, an Arizona non-profit corporation; CLIMATE FIRST: REPLACING OIL AND GAS, a California non-profit corporation; and CENTER FOR ENVIRONMENTAL HEALTH, a California non-profit corporation, Petitioners, vs. U.S. ENVIRONMENTAL PROTECTION AGENCY, and ANDREW WHEELER in his official capacity as Administrator of the U.S. Environmental Protection Agency, Respondents.	No.

PETITION FOR REVIEW

Pursuant to section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1), and Rule 15(a) of the Federal Rules of Appellate Procedure, Center for Biological Diversity, Climate First: Replacing Oil and Gas, and Center for Environmental Health petition this Court for review of the final action entitled "Approval of Air

Quality Implementation Plans; California; Ventura County; 8-Hour Ozone Nonattainment Area Requirements." Respondents U.S. Environmental Protection Agency and Andrew Wheeler published the final action in the Federal Register on June 25, 2020 at 85 Fed. Reg. 38,081 (Jun. 25, 2020), attached as Exhibit 1.

Respectfully submitted this 23rd day of August, 2020.

s/ Alexa Carreno
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s/ Steven M Odendahl (with permission)
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Attorneys for Petitioners Center for Biological Diversity, Climate First: Replacing Oil and Gas, and Center for Environmental Health

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CENTER FOR BIOLOGICAL DIVERSITY, an Arizona non-profit corporation; CLIMATE FIRST: REPLACING OIL AND GAS, a California non-profit corporation; and CENTER FOR ENVIRONMENTAL HEALTH, a California non-profit corporation, Petitioners, vs. U.S. ENVIRONMENTAL PROTECTION AGENCY, and ANDREW WHEELER in his official capacity as Administrator of the U.S. Environmental Protection Agency, Respondents.	No.

CORPORATE DISLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Petitioner Center for Biological Diversity ("the Center") states as follows: 1) the Center has no parent companies, and 2) there are no publicly held companies that have a 10% or greater ownership in the Center.

Pursuant to Federal Rule of Appellate Procedure 26.1, Petitioner Climate First: Replacing Oil and Gas ("CFROG") states as follows: 1) CFROG has no

parent companies, and 2) there are no publicly held companies that have a 10% or greater ownership in CFROG.

Pursuant to Federal Rule of Appellate Procedure 26.1, Petitioner Center for Environmental Health ("CEH") states as follows: 1) CEH has no parent companies, and 2) there are no publicly held companies that have a 10% or greater ownership in CEH.

Respectfully submitted this 23rd day of August, 2020.

s/ Alexa Carreno
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s/ Steven M Odendahl (with permission
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Attorneys for Petitioners Center for Biological Diversity, Climate First: Replacing Oil and Gas, and Center for Environmental Health

PROOF OF SERVICE

I hereby certify that I served a copy of the foregoing PETITION FOR REVIEW and CORPORATE DISCLOSURE STATEMENT on the following *via* First Class Mail in the regular course of business on August 23, 2020:

Andrew Wheeler
1101A - US EPA Headquarters
Ariel Rios Building
1200 Pennsylvania Ave, NW
Washington, D.C. 20460

William P. Barr Attorney General
U.S. Department of Justice 950
Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Correspondence Control Unit
Office of General Counsel (2311)
U.S. Environmental Protection
Agency 1200 Pennsylvania Avenue,
N.W. Washington, D.C. 20460

Matthew Z. Leopold
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W. (2310A)
Washington, D.C. 20460

s/ Alexa Carreno

Alexa Carreno

EXHIBIT 1

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 24, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: May 29, 2020.

Gregory Sopkin,

Regional Administrator, Region 8.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for Part 52 continues to read as follows:

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

Subpart JJ—North Dakota

■ 2. In § 52.1820, amend paragraph (c) by:

■ a. Revising, under the center heading ''33.1–15–14. Designated Air Contaminant Sources Permit to Construct Minor Source Permit to Operate Title V Permit to Operate,'' the table entry for: 33.1–15–14–02. Permit to construct;

■ b. Revising, under the center heading ''33.1–15–15. Prevention of Significant Deterioration of Air Quality,'' the table entry for 33.1–15–15–01.2. Scope.

The revisions read as follows:

§ 52.1820 Identification of plan.

* * * * *

(c) * * *

Rule No.	Rule title	State effective date	EPA effective date	Final rule citation/date	Comments
*	*	*	*	*	*
33.1–15–14. Designated Air Contaminant Sources Permit to Construct Minor Source Permit to Operate Title V Permit to Operate					
*	*	*	*	*	*
33.1–15–14–02	Permit to Construct	7/1/16	7/27/20	[Insert **Federal Register** citation], 6/25/20.	
*	*	*	*	*	*
33.1–15–15. Prevention of Significant Deterioration of Air Quality					
*	*	*	*	*	*
33.1–15–15–01.2.	Scope	7/1/16	7/27/20	[Insert **Federal Register** citation], 6/25/20.	
*	*	*	*	*	*

* * * * *

[FR Doc. 2020–12059 Filed 6–24–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2018–0146; FRL–10009–22–Region 9]

Approval of Air Quality Implementation Plans; California; Ventura County; 8-Hour Ozone Nonattainment Area Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to conditionally approve portions of two state implementation plan (SIP) submissions from the State of California to meet Clean Air Act (CAA or ''the Act'') requirements for the 2008 8-hour ozone national ambient air quality standards (NAAQS or ''standards'') in the Ventura County, California (''Ventura County'') ozone nonattainment area. The two SIP submissions include the ''Final 2016 Ventura County Air Quality Management Plan,'' and the Ventura County portion of the ''2018 Updates to

the California State Implementation Plan.'' In this action, the EPA refers to these submittals collectively as the ''2016 Ventura County Ozone SIP.'' The 2016 Ventura County Ozone SIP addresses the nonattainment area requirements for the 2008 ozone NAAQS, including the requirements for an emissions inventory, attainment demonstration, reasonable further progress, reasonably available control measures, contingency measures, among others; and establishes motor vehicle emissions budgets. In a separate final rule, the EPA took final action to approve the 2016 Ventura County Ozone SIP as meeting all the applicable ozone nonattainment area requirements except for the contingency measures requirement. In this action, the EPA is taking final action to conditionally approve the contingency measures element of the 2016 Ventura County Ozone SIP.

DATES: This rule will be effective on July 27, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2018–0146. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: John Kelly, Air Planning Office (AIR–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 947–4151, or by email at *kelly.johnj@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Summary of the Proposed Action

On December 20, 2019, the EPA proposed to approve, under CAA section 110(k)(3), or to conditionally approve, under CAA section 110(k)(4), all or portions of submittals from the California Air Resources Board (CARB) of revisions to the California SIP for the Ventura County ozone nonattainment area for the 2008 ozone NAAQS.[1] The relevant SIP revisions include Ventura County Air Pollution Control District's (VCAPCD's or ''District's'') Final 2016 Ventura County Air Quality Management Plan (''2016 Ventura County AQMP''), and the Ventura County portion of CARB's 2018 Updates to the California State Implementation Plan (''2018 SIP Update''). Collectively, we refer to these revisions as the 2016 Ventura County Ozone SIP, and we refer to our December 20, 2019 proposed rule as the ''proposed rule.''

Our proposed conditional approval of the contingency measures element of the 2016 Ventura County AQMP relied on specific commitments: (1) From the District to modify an existing rule or rules that would provide for additional emissions reductions in the event that Ventura County fails to meet a reasonable further progress (RFP) milestone or fails to attain the 2008 ozone NAAQS by the applicable attainment date, and (2) from CARB to submit the revised District rule(s) to the EPA as a SIP revision within 12 months of our final action.[2] For more information on the SIP revision submittals and related commitments, please see our proposed rule.

In our proposed rule, we provided background information on the ozone standards,[3] area designations, related SIP revision requirements under the CAA, and the EPA's implementing regulations for the 2008 ozone NAAQS, referred to as the 2008 Ozone SIP Requirements Rule (''2008 Ozone SRR''). To summarize, the Ventura County ozone nonattainment area is classified as Serious for the 2008 ozone NAAQS, and the 2016 Ventura County Ozone SIP was developed to address all the SIP requirements that apply to a Serious nonattainment area for the 2008 ozone NAAQS other than the SIP requirements for new source review and reasonably available control technology previously addressed in separate submittals and EPA actions.

For our proposed rule, we reviewed the various SIP elements contained in the 2016 Ventura County Ozone SIP, evaluated them for compliance with statutory and regulatory requirements, and proposed to conclude that they meet all applicable requirements with the exception of the contingency measures element. On February 27, 2020, the EPA took final action to approve all the elements of the 2016 Ventura County Ozone SIP except for the contingency measures element.[4] In our February 27, 2020 final rule, we indicated that we would be taking final action on the contingency measures element in a separate final rule. This action is our final action on the contingency measures element.

With respect to the contingency measures element of the 2016 Ventura County Ozone SIP, in our proposed rule, we evaluated the element for compliance with the CAA sections 172(c)(9) and 182(c)(9). We explained that the key is that the statute requires that contingency measures provide for additional emissions reductions that are not relied on for RFP or attainment and that the purpose of contingency measures is to provide continued emissions reductions while the plan is being revised to meet the missed milestone or attainment date. We further explained that neither the CAA nor the EPA's implementing regulations for the 2008 Ozone NAAQS require that contingency measures achieve a specific amount of emissions reductions, but that the EPA will evaluate that on a case-by-case basis depending on the facts and circumstances.

In our proposed rule, in light of the *Bahr* decision,[5] we determined that the contingency measures element of the 2016 Ventura County Ozone SIP could not be fully approved without supplementation by the District and CARB. However, we also determined that the element could be conditionally approved as meeting the requirements of CAA sections 172(c)(9) and 182(c)(9) for the 2008 ozone NAAQS, based upon commitments from the District and CARB to adopt and submit a revised rule or rules with provisions designed to

[1] 84 FR 70109. Ventura County lies within California's South Central Coast Air Basin, which includes the counties of Santa Barbara and San Luis Obispo in addition to Ventura County. The Ventura County ozone nonattainment area for the 2008 ozone NAAQS includes the entire county except for the Channel Islands of Anacapa and San Nicolas Islands. See 40 CFR 81.305.

[2] Letter dated August 16, 2019, from Michael Villegas, Air Pollution Control Officer, VCAPCD, to Richard Corey, Executive Officer, CARB; and letter dated August 30, 2019, from Richard W. Corey, Executive Officer, CARB to Mike Stoker, Regional Administrator, Region IX.

[3] Ground-level ozone pollution is formed from the reaction of volatile organic compounds (VOC) and oxides of nitrogen (NO_X) in the presence of sunlight. The 2008 ozone NAAQS is 0.075 parts per million (eight-hour average). CARB refers to reactive organic gases (ROG) in some of its ozone-related submittals. The CAA and the EPA's regulations refer to VOC, rather than ROG, but both terms cover essentially the same set of gases. In this final rule, we use the Federal term (VOC) to refer to this set of gases.

[4] 85 FR 11814.

[5] *Bahr* v. *EPA,* 836 F.3d 1218 (9th Cir. 2016) (''*Bahr*'') (rejecting early-implementation of contingency measures and concluding that a contingency measure under CAA section 172(c)(9) must take effect at the time the area fails to make RFP or attain by the applicable attainment date, not before).

take effect if the area fails to meet an RFP milestone or fails to attain by the applicable attainment date.[6]

Please see our proposed rule for more information concerning the background for this action and for a more detailed discussion of the rationale for conditional approval of the contingency measures element of the 2016 Ventura County Ozone SIP.

II. Public Comments and EPA Responses

The public comment period on the proposed rule opened on December 20, 2019, the date of its publication in the **Federal Register**, and closed on January 21, 2020. During this period, the EPA received five anonymous comments and one comment letter submitted by Air Law for All on behalf of the Center for Biological Diversity, the Center for Environmental Health, and Citizens for Responsible Oil and Gas (collectively referred to herein as ''CBD'').

In our February 27, 2020 final action on the 2016 Ventura County Ozone SIP other than the contingency measures element, we explained that the EPA was not responding to the five anonymous commenters because their comments are either not adverse or not pertinent to the proposed action. We also indicated that the comment letter from CBD relates solely to our proposed conditional approval of the contingency measures element, and that we would be addressing CBD's comments in a separate final rule on the contingency measures element. We address CBD's comments in the following paragraphs of this final rule.

Comment #1: CBD recounts the background leading to the *Bahr* decision and provides a discussion of policy implications of that decision. CBD also provides its negative critique of the *LEAN* decision [7] and asserts that EPA must interpret the contingency measures requirement consistent with the *Bahr* decision on a nationwide basis and not just within the Ninth Circuit's jurisdiction.

Response #1: In our proposed rule, we explain that we have reviewed the contingency measures element of the 2016 Ventura County Ozone SIP in light of the *Bahr* decision. In other words, for the purposes of our review and action on the 2016 Ventura County Ozone SIP, we accept the *Bahr* decision as governing our review of the contingency measures element. The issue of extending the *Bahr* decision with respect to the contingency measures requirement outside of the jurisdiction of the Ninth Circuit is beyond the scope of this rulemaking.

Comment #2: Because the District did not quantify the potential additional emissions reductions from any of the three prospective contingency measures, CBD asserts that the reductions must be assumed to be de minimis.

Response #2: In our proposed rule, we acknowledged that the potential contingency measures that were identified by the District would not achieve one year's worth of RFP, given the types of measures under consideration and the magnitude of emissions reductions constituting one year's worth of RFP in this nonattainment area. We disagree that it is necessary to have an estimate of the emissions reductions for purposes of proposing a conditional approval. However, in response to this comment, the District and CARB developed preliminary estimates of the reductions that would likely be achieved by the contingency measures under consideration, if triggered by a failure to achieve an RFP milestone or failure to attain the 2008 ozone NAAQS by the applicable attainment date.[8] In developing the preliminary estimates, the District narrowed the list of prospective contingency measures to a single one, *i.e.,* amendments to Rule 74.2 (''Architectural Coatings'').[9] We have reviewed the preliminary estimates for the amendments to Rule 74.2, and find that they are based on reasonable assumptions and factors. Based on the preliminary estimates, emissions reductions from amendments to Rule 74.2 would likely be in the range of 0.02 to 0.06 tons per day (tpd) of volatile organic compounds (VOC), which amount to approximately 2 to 5 percent of one year's worth of RFP.[10] As we anticipated in our proposed rule, the reductions would not amount to one year's worth of RFP.

CBD asserts that, if the EPA or the District develop preliminary emissions estimates for the prospective contingency measures, then the EPA must necessarily re-propose action on the contingency measures element. We disagree and find that the development of the estimates and presentation herein is a logical outgrowth of the proposed rule and CBD's comments. The quantification of emissions reductions does not affect our rationale for our proposed conditional approval of the contingency measures element because we assumed that the reductions, whatever they would ultimately be, would not be equivalent to one year's worth of RFP.

Comment #3: CBD asserts that consideration of surplus emissions reductions from already-implemented measures in evaluating the adequacy of contingency measures is functionally no different than simply approving the already-implemented measures as contingency measures, which is inconsistent with the *Bahr* decision. CBD also asserts that the EPA's approach in this action would allow states to meet the contingency measures requirement through submittal of token de minimis contingency measures so long as already-implemented measures provide for surplus emissions reductions equivalent to one year's worth of RFP. CBD views the EPA's consideration of surplus reductions from already-implemented measures as relying on a factor Congress has not intended the Agency to consider in evaluating the adequacy of contingency measures under CAA section 172(c)(9).

Response #3: First, the EPA does not interpret CAA section 172(c)(9) or 182(c)(9) as allowing states to meet the requirements through submittal merely of token or de minimis contingency measures. States must include contingency measures in nonattainment plans that will be triggered in the event of a failure to meet RFP or failure to attain. However, the number of such contingency measures, or the amount of emissions reductions that such measures need to achieve, may vary. As explained in the proposal, the EPA considers it appropriate to take into account the full facts and circumstances at issue in a given nonattainment area when evaluating the adequacy of contingency measures, and this may include approving contingency measures that achieve less than the one year's worth of RFP in that area. The EPA emphasizes that it does not interpret the CAA to require states to adopt only token or de minimis contingency measures; it interprets the CAA to require contingency measures appropriate for the area.

Second, we disagree that, if the EPA takes into account the total facts and circumstances in a given nonattainment area when assessing the adequacy of contingency measures, and in particular the amount of emissions reductions that such measures will achieve, that this

[6] See 84 FR 70109, 70123–70125 from the proposed rule.

[7] *LEAN* v. *EPA,* 382 F.3d 575 (5th Cir. 2004) (''*LEAN*'') (upholding contingency measures that were previously required and implemented where they were in excess of the attainment demonstration and RFP SIP).

[8] See email dated February 26, 2020 and attachment from Sylvia Vanderspek, CARB, to Ali Ghasemi, VCAPCD, et al.

[9] See email dated May 8, 2020, from Ali Ghasemi, VCAPCD, to Anita Lee, EPA Region IX.

[10] As noted in the proposed rule at 70125, one year's worth of RFP is 1.1 tpd of VOC or 0.8 tpd of NO_X.

contradicts Congressional intent. The specific explicit factors Congress intended the Agency to use in evaluating contingency measures are set forth in CAA sections 172(c)(9) and 182(c)(9) and include specificity (''implementation of specific measures''), timing (''measures to be undertaken'' and ''to take effect''), triggers (if the area fails to attain the NAAQS by the applicable [NAAQS] or if the area fails to meet any applicable milestone), federal enforceability (''included in the [SIP]''), and readiness (measures must be designed to take effect without further action by the state or the EPA). We will review the contingency measure that is the subject of the conditional approval with those factors in mind when we receive the submittal of the revised District rule as a SIP revision from CARB.

Neither CAA section 172(c)(9) nor 182(c)(9) contain language implying that the factors discussed above are the only factors for the Agency to consider. Neither section specifies the magnitude of emissions reductions that contingency measures must achieve as an explicit factor for the EPA to consider, although consideration of the magnitude is appropriate in determining whether the contingency measure or measures submitted by the state meet the requirements of CAA sections 172(c)(9) and 182(c)(9). Consideration of the magnitude of emissions reductions is appropriate because contingency measures serve a remedial function where an area fails to achieve an RFP milestone or fails to attain the NAAQS by the applicable attainment date, and RFP and attainment are achieved through emissions reductions.[11]

Just as the CAA does not include the magnitude of emissions reductions as a specific explicit consideration, the CAA also does not prescribe how the EPA is to evaluate that question. As such, the EPA is not relying on a factor that Congress did not intend the EPA to consider when the Agency considers the emissions reductions from already-implemented measures that are surplus to those needed for RFP or attainment within a given nonattainment area when evaluating whether the state's contingency measure submittal meets CAA sections 172(c)(9) and 182(c)(9).

Comment #4: CBD asserts that contingency measures should at a minimum equal one year's worth of RFP and asserts that CAA section 182(g) provides statutory support for the interpretation that contingency measures should provide for one year's worth of RFP.

Response #4: Neither the CAA nor the EPA's implementing regulations for the ozone NAAQS establish a specific amount of emissions reductions that implementation of contingency measures must achieve. However, consistent with our long-standing guidance, we agree that contingency measures should generally provide for emissions reductions approximately equivalent to one year's worth of progress, which, for Serious ozone nonattainment areas such as Ventura County, amounts to reductions of 3 percent of the RFP baseline emissions inventory for the nonattainment area.

CBD finds statutory support in CAA section 182(g) for the EPA's recommendation that contingency measures should generally provide for one year's worth of progress. We do not disagree that our recommendation concerning emissions reductions from contingency measures comports generally with the statutory scheme for attainment planning. However, like sections 172(c)(9) and 182(c)(9), section 182(g) does not explicitly identify the magnitude of reductions that contingency measures must achieve nor does not it address how to evaluate the reductions from contingency measures in light of the facts and circumstances of a given nonattainment area.

In making the recommendation that contingency measures typically achieve one year's worth of RFP, the EPA has considered the overarching purpose of such measures in the context of attainment planning. The purpose of emissions reductions from implementation of contingency measures is to ensure that, in the event of a failure to meet an RFP milestone or a failure to attain the NAAQS by the applicable attainment date, the state will continue to make progress toward attainment though additional emissions reductions at a rate similar to that specified under the RFP requirements. The intent is that the state will achieve the emissions reductions from the contingency measures while conducting additional control measure development and implementation as necessary to correct the RFP shortfall or as part of a new attainment demonstration plan.[12] The facts and circumstances of a given nonattainment area may justify larger or smaller amounts of emissions reductions for contingency measure purposes.

In reviewing a SIP revision for compliance with CAA sections 172(c)(9) and 182(c)(9), the EPA evaluates whether the contingency measure or measures would provide emissions reductions that, when considered with surplus emissions reductions from other measures, ensure sufficient continued progress in the event of a failure to achieve an RFP milestone or to attain the ozone NAAQS by the applicable attainment date. We continue to evaluate the sufficiency of continued progress that will result from contingency measures in light of our guidance, but in appropriate circumstances do not believe that the contingency measures themselves must provide for one year's worth of RFP. Such appropriate circumstances include situations in which sufficient progress would be maintained by the contingency measures and surplus emissions reductions from other sources while the state proceeds to develop and implement additional control measures as necessary to correct the RFP shortfall or as part of a new attainment demonstration plan. In other words, if there are additional emissions reductions projected to occur after the RFP milestone years or the attainment year that a state has not relied upon for purposes of RFP or attainment or to meet other nonattainment plan requirements, and that result from measures the state has not adopted as contingency measures, then those reductions may support EPA approval of contingency measures identified by the state even if the contingency measures would result in less than one year's worth of RFP in appropriate circumstances.

As to whether the contingency measure, once adopted, would provide for sufficient continued progress in the event of a failure to achieve an RFP milestone or a failure to attain the NAAQS, we reviewed the documentation provided in the 2018 SIP Update of ''surplus'' reductions, as clarified by CARB in August 2019 from CARB's already-adopted mobile source control program in the two RFP milestone years and in the year following the attainment year. For the Ventura County nonattainment area, CARB's estimates of ''surplus'' reductions in the RFP milestone years (5.1 tpd of oxides of nitrogen (NO_X) in 2020 and 7.1 tpd of NO_X in 2017) are 6 to 9 times greater than one year's worth of progress (0.8 tpd of NO_X).[13]

[11] See, *e.g.,* CAA sections 107(d)(3)(E)(iii), 171(1), 182(c)(1).

[12] 57 FR 13498, at 13512 (April 16, 1992).

[13] Based on the emissions estimates and projections shown in table 4 of the proposed rule. More specifically, the estimate of the RFP milestone surplus as ranging from 5.1 tpd to 7.1 tpd of NO_X is based on the surplus in terms of percentages (range of 19.6% (in 2000) to 27.4% (in 2017)) times the 2011 baseline NO_X emissions level of 26.0 tpd. The proposed rule cited a range of 6.5 tpd to 7.1

With respect to the year after the attainment year, CARB estimates that NO_X emissions in Ventura County will be approximately 0.9 tpd lower in 2021 than in the 2020 attainment year due to mobile source controls and vehicle turnover, and thus continued emissions reductions are assured in the year after the attainment year even before accounting for the emissions reductions from the to-be-adopted local contingency measure.[14] As such, we conclude that the to-be-adopted District contingency measure need not in itself achieve one year's worth of RFP.

In conclusion, we anticipate that the emissions reductions from the contingency measure ultimately adopted by the District will be sufficient, although we expect that it will achieve less than 1.1 tpd of VOC or 0.8 tpd of NO_X reductions (*i.e.,* one year's worth of RFP), because other surplus emission reductions measures (not relied upon directly to meet the statutory contingency measure requirement or any other nonattainment plan requirement including RFP or attainment) will ensure sufficient continued progress in the event of a failure to achieve an RFP milestone or a failure to attain the NAAQS by the applicable attainment date. Therefore, we expect the contingency measure, once adopted and submitted, to be sufficient to remedy the deficiency in the contingency measures element of the 2016 Ventura County Ozone SIP, and the commitment to submit such a contingency measure as an appropriate basis for a conditional approval.

III. Final Action

For the reasons discussed above, under CAA section 110(k)(4), the EPA is taking final action to conditionally approve as a revision to the California SIP the contingency measures element of the 2016 Ventura County Ozone SIP, submitted by CARB on April 11, 2017 and December 5, 2018, as meeting the requirements of CAA sections 172(c)(9) and 182(c)(9) for RFP and attainment contingency measures.[15] Our conditional approval is based on commitments by the District and CARB to supplement the contingency measures element of the 2016 Ventura County Ozone SIP through submission, as a SIP revision (within one year of the effective date of our final conditional approval action), of a revised District rule that would add new limits or other requirements if an RFP milestone is not met or if Ventura County fails to attain the 2008 ozone NAAQS by the applicable attainment date.[16]

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely conditionally approves state plans as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 24, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by

tpd for the RPF surplus, but those estimates were based on the 2018 SIP Update and not the updated RFP demonstration summarized in table 4 of the proposed rule.

[14] See pages A–9 and A–10 of the 2018 SIP Update. As shown on pages A–7 and A–8 of the 2018 SIP Update, VOC emissions are also expected to decrease between 2020 and 2021 (by 0.3 tpd).

[15] More specifically, we are conditionally approving chapter 7 (''Contingency Measures'') of the Final 2016 Ventura County Air Quality Management Plan, as submitted on April 11, 2017, and chapter III.C (''Contingency Measures'') of the 2018 Updates to the California State Implementation Plan, as submitted on December 5, 2018.

[16] Letter dated August 16, 2019, from Michael Villegas, Air Pollution Control Officer, VCAPCD, to Richard Corey, Executive Officer, CARB; letter dated August 30, 2019, from Richard W. Corey, Executive Officer, CARB, to Mike Stoker, Regional Administrator, EPA Region IX.

reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: May 27, 2020.

John Busterud,

Regional Administrator, Region IX.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(514)(ii)(A)(*6*) and (c)(532)(ii)(A)(*2*) to read as follows:

§ 52.220 Identification of plan—in part.

* * * * *

(c) * * *

(514) * * *

(ii) * * *

(A) * * *

(*6*) 2018 Updates to the California State Implementation Plan, adopted on October 25, 2018, chapter III (''SIP Elements for Ventura County''), section III.C (''Contingency Measures''); only.

* * * * *

(532) * * *

(ii) * * *

(A) * * *

(*2*) Final 2016 Ventura County Air Quality Management Plan, adopted February 14, 2017, chapter 7 (''Contingency Measures''), only.

* * * * *

■ 3. Section 52.248 is amended by adding paragraph (j) to read as follows:

§ 52.248 Identification of plan—conditional approval.

* * * * *

(j) The EPA is conditionally approving the California State Implementation Plan (SIP) for Ventura County for the 2008 ozone NAAQS with respect to the contingency measures requirements of CAA sections 172(c)(9) and 182(c)(9). The conditional approval is based on a commitment from the Ventura County Air Pollution Control District (District) in a letter dated August 16, 2019, to adopt a specific rule revision, and a commitment from the California Air Resources Board (CARB) dated August 30, 2019, to submit the amended District rule to the EPA within 12 months of the effective date of the final conditional approval. If the District or CARB fail to meet their commitments within one year of the effective date of the final conditional approval, the conditional approval is treated as a disapproval.

[FR Doc. 2020–11931 Filed 6–24–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Part 530

[Docket No. 20–02]

RIN 3072–AC80

Service Contracts

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission (FMC or Commission) amends its regulations governing service contracts to eliminate the requirement that ocean carriers publish a concise statement of essential terms with each service contract. The rule will reduce regulatory burden.

DATES: Effective June 25, 2020.

FOR FURTHER INFORMATION CONTACT: For technical questions, contact Florence A. Carr, Director, Bureau of Trade Analysis, Federal Maritime Commission, 800 North Capitol Street NW, Washington, DC 20573–0001. *Phone:* (202) 523–5796. *Email: TradeAnalysis@fmc.gov.* For legal questions, contact William Shakely, Acting General Counsel, Federal Maritime Commission, 800 North Capitol Street NW, Washington, DC 20573–0001. *Phone:* (202) 523–5740. *Email: GeneralCounsel@fmc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

This rulemaking was initiated pursuant to the Commission's December 20, 2019 Order in FMC Docket No. P3–18, which granted in part and denied in part, a petition by the World Shipping Council (WSC) for regulatory relief. *Pet'n of the World Shipping Council for an Exemption from Certain Provisions of the Shipping Act of 1984, as amended, and for a Rulemaking Proceeding,* Pet. No. P3–18, 1 F.M.C.2d 504 (FMC Dec. 20, 2019). Specifically, the Commission granted WSC's request for an exemption from the requirement in 46 U.S.C. 40502(d) that carriers publish a concise Statement of Essential Terms (ETs) with each service contract, determining that an exemption from section 40502(d) would not result in a substantial reduction in competition or be detrimental to commerce, and further determined to initiate a rulemaking to implement the ET publication exemption.

On February 14, 2020, the Commission issued a Notice of Proposed Rulemaking (NPRM) to obtain public comments regarding its proposal to implement the exemption by removing the ET publication requirements in 46 CFR part 530. 85 FR 8527 (Feb. 14, 2020). The Commission calculated that the proposed rule would reduce the regulatory burden associated with these requirements. The comment period for the NPRM expired April 14, 2020. Two comments were received, from the National Industrial Transportation League (NITL) and the World Shipping Council.

II. Discussion

As described in more detail below, the final rule adopts much of the proposed regulatory text without substantive change. The final rule eliminates the requirement in § 530.12 that carriers publish ETs for individual service contracts. Although the NPRM proposed replacing this requirement with a requirement that carriers publish general service contract rules and notices as a separate part of the individual carrier's automated tariff system, the Commission has determined to make this provision optional rather than mandatory. The final rule also adopts the following regulatory changes proposed in the NPRM: (1) Changes to other sections in Part 530 to reflect the elimination of the ET publication requirements; (2) the correction of outdated references to FMC bureaus and offices in Part 530; and (3) the correction of an outdated reference to a Department of Defense Command.

A. Removal of ET Publication Requirements

Commenters in the subject rulemaking did not identify a use for the publication of ETs corresponding to individual service contracts, and therefore, supported their elimination. NITL strongly supports the Commission's NPRM. Agreeing with the Commission's assessment that ''the publication of Statements of Essential Terms corresponding to individual service contracts is of questionable value,'' NITL believes that the current ET publication requirements ''impose significant regulatory costs and burdens on ocean carriers, without providing any meaningful benefits to shippers that outweigh the costs.'' WSC supports the NPRM to the extent it would eliminate the requirement to publish service contract essential terms.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Office of the Clerk

After Opening an Immigration Case: An Introduction for Attorneys

You have received this guide because you filed a petition for review in the U.S. Court of Appeals for the Ninth Circuit. It provides information you need to know to represent an immigration petitioner before the court.

Read this guide carefully. If you don't follow instructions, the court may dismiss your case.

This Guide Is Not Legal Advice

Court employees are legally required to remain neutral; that means they can't give you advice about how to win your case. However, if you have a question about procedure—for example, which forms to send to the court or when a form is due—this packet should provide the answer. If it doesn't, you may contact the clerk's office for more information.

WHAT'S IN THIS GUIDE?

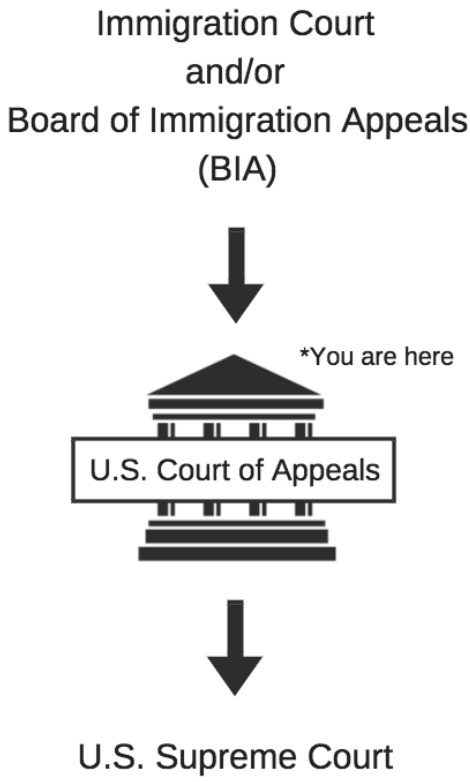
HOW AN IMMIGRATION PETITION WORKS

The chart below shows the path of an immigration petition from the lowest court to the highest. Review these steps to make sure you understand where you are in the process.

Immigration Court/Board of Immigration Appeals (BIA). Most cases pass through the BIA before coming to the U.S. Court of Appeals. The BIA is the federal administrative panel that reviews orders of removal and other decisions made by immigration judges. Occasionally, a case can come to the court of appeals directly from an immigration court or from a Department of Homeland Security officer.

U.S. Court of Appeals. Among many other types of cases, the U.S. Court of Appeals reviews final removal decisions of the BIA. When reviewing your case, the court of appeals (usually a panel of three judges) will carefully consider what has happened so far. The court will also read all the papers that you and opposing counsel file during your case. The court will look to see whether any agency, officer, or lower court has made a legal or factual mistake. You are not allowed to present new evidence or testimony in the court of appeals.

U.S. Supreme Court. If you do not agree with the decision of the court of appeals, you can ask the United States Supreme Court to review your case. The Supreme Court chooses which cases it wants to hear. It reviews only a small number of cases each year.



Your case may not go through all of the stages shown above. For example, if the U.S. Court of Appeals resolves your case the way that you want, you won't need to file a petition in the U.S. Supreme Court.

PRACTICE RULES AND RESOURCES

This guide highlights rules that you **absolutely must follow** after filing a case. You are also responsible for reviewing and following the Federal Rules of Appellate Procedure (Fed. R. App. P.), the Ninth Circuit Rules (9th Cir. R.), and the general orders. The Federal Rules and the Ninth Circuit Rules are available at www.ca9.uscourts.gov/rules.

Practice Guides

In addition to the rules above, the following resources can support your practice before this court. You can find them on the court's website under *Legal Guides*:

- **Ninth Circuit Immigration Outline.** A comprehensive discussion of applicable law.
- **Immigration training materials**. PowerPoint presentations from court-sponsored immigration CLE trainings.
- **Appellate Practice Guide.** A thorough manual of appellate practice prepared by the Appellate Lawyer Representatives.
- **Perfecting Your Appeal.** You can view this video for free at www.ca9.uscourts.gov or purchase it from the clerk's office for $15.00.

Appellate Mentoring Program

The appellate mentoring program provides guidance to attorneys who are new to federal appellate practice or who would benefit from mentoring at the appellate level. Mentors are volunteers who have experience in immigration, habeas corpus, or appellate practice in general. If you are interested, a program coordinator will match you with a mentor, taking into account your needs and the mentor's particular strengths.

To learn more, email the court at mentoring@ca.9.uscourts.gov or go to www.ca9.uscourts.gov. On the website, select the "Attorneys" tab, look for "Appellate Mentoring Program," then choose "Information.

Mediation Program

Petitioners in immigration cases are not required to file a mediation questionnaire, the document used for an initial assessment for mediation. Occasionally, however, the court may direct the parties to confer with a court mediator.

To request a conference with a mediator, call the Mediation Unit at (415) 355-7900, email ca09_mediation@ca9.uscourts.gov, or make a written request to the Chief Circuit Mediator. You may request conferences confidentially. For more information about the court's mediation program, go to www.ca9.uscourts.gov/mediation.

IMPORTANT RULES FOR ALL CASES

The rules in this section apply to all attorneys who file a case in the court of appeals. You must understand and follow each one.

Ninth Circuit Bar Admission

To practice before the court of appeals, you must be admitted to the Bar of the Ninth Circuit. For instructions on how to apply, go to www.ca9.uscourts.gov. Select the "Attorneys" tab, look for "Attorney Admissions," then choose "Instructions."

Register for Electronic Filing

Unless the court gives you an exemption, you must use the Ninth Circuit's electronic filing system, called CM/ECF (Case Management/Electronic Case Files). To learn more and to register, go to www.ca9.uscourts.gov then click "Filing a Document – CM/ECF."

For additional guidance on filing documents and making payments electronically, read the Ninth Circuit Rules, especially Rule 25-5. For a complete list of the available types of filing events, see the CM/ECF User Guide. To find the guide, go to "Filing a Document" as described just above, look for "Documentation & Training," then select "CM/ECF User Guide."

Meet Your Deadlines

Read all documents you get from the court. They will contain important instructions and deadlines for filing your court papers. **If you miss a deadline or fail to respond to the court as directed, the court may dismiss your case.**

Complete Your Forms Properly

Everything you send to the court must be clear and easy to read. If we can't read your papers, we may send them back to you. To make the clerk's job easier, please:

- ✓ Include your case number on all papers you send to the court or to opposing counsel.
- ✓ Number your pages and put them in order.

- ✓ If you are exempt from filing electronically, use only one paper clip or a single staple to keep your documents organized. The clerk's office must scan your documents and extra binding makes that job difficult.

Deliver Papers the Right Way

When you deliver paper copies to the court or to opposing counsel, you must take certain steps to show you sent them to the right place on time.

- ✓ **Use the correct address.** Before you put anything in the mail, make sure the address is current and correct.
    - To find current addresses for the court, see "How to Contact the Court," at the end of this guide. You may deliver a document to the court in person, but you must hand it to someone designated to receive documents in the clerk's office.
    - To find the correct address for opposing counsel, see opposing counsel's notice of appearance. Opposing counsel should have sent a copy of this notice to you after you filed the petition for review. The notice states the name and address of the attorney who represents the government in your case.
- ✓ **Attach a certificate of service.** You must attach a signed certificate of service to each document you send to the court or to opposing counsel if that filing will not be served on all parties via CM/ECF (such as the petition for review, or sealed filings).

Keep Copies of Your Documents

Make copies of all documents you send to the court or to opposing counsel and keep all papers sent to you.

Pay the Filing Fee or Request a Waiver

The filing fee for your case is $500.00. The fee is due when you file a petition for review. If you don't pay the fee, you will receive a notice informing you that you have **21 days** to either pay the fee or request a waiver because the petitioner can't afford to pay.

- **If the petitioner can afford the fee.** Submit your payment through the electronic filing system, or send a check or money order to the court. Make the check out to "Clerk, U.S. Courts." Don't forget to include the case number. Please note that after you pay the fee, we cannot refund it, no matter how the case turns out.
- **If the petitioner can't afford to pay.** You may ask the court to waive the fee by filing a motion to proceed in forma pauperis. See "Stage One: Opening Your Case," below.

If you do not pay the fee or submit a waiver request by the deadline, the court will dismiss your case. (9th Cir. R. 42-1).

If You Move, Tell the Court

If your mailing address changes, you must immediately notify the court in writing. (9th Cir. R. 46-3.)

- **CM/ECF.** If you are registered for CM/ECF, update your information online at https://pacer.psc.uscourts.gov/pscof/login.jsf.

- **Exempt Filers.** If you are exempt from CM/ECF, file a change of address form with the court. You can find the form on the court's website at www.ca9.uscourts.gov/forms.

If you don't promptly change your address, including your email address, you could miss important court notices and deadlines. As noted above, missing a deadline may cause the court to dismiss your case.

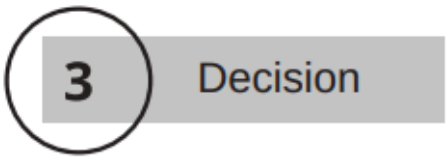
HANDLING AN IMMIGRATION CASE: THREE STAGES

This section will help you understand and manage the different parts of your case. We describe the basic documents you must file with the court and the timing of each step.

To begin, review the chart below. It introduces the three stages of a case.

- You file a petition for review.
- The court sends you a case schedule.
- You pay filing fees or get a waiver.
- You and opposing counsel may file motions.
- You respond to any court orders or motions from opposing counsel.

- You submit an opening brief.
- Opposing counsel submits an answering brief.
- You may submit a reply to opposing counsel's brief.



- The court decides your case.
- If you don't like the result, you decide whether to take further action.

Stage One: Opening a Case

By the time you receive this guide, you have already opened a case by filing a petition for review. In response, the clerk's office created the case record and gave you a case number and a briefing schedule.

If you haven't already paid the filing fee, you must do so now. See "Pay the Filing Fee or Request a Waiver," above.

The court may dismiss your case at any time. Even if you pay the fees and get a briefing schedule, the court may decide not to keep your case for a variety of legal reasons. If the court dismisses your case and you think the court was wrong, see "If You Don't Agree with a Court Decision," below.

Now is also the time for you and opposing counsel to file opening motions with the court, if you have any. Here are two common motions that you might make at the beginning of your case.

Motion to Proceed in Forma Pauperis

File this motion to ask the court to waive the petitioner's filing fee. To file your motion, you must complete and include Form 4: Motion and Affidavit for Permission to Appeal in Forma Pauperis. The form is available on the court's website at www.ca9.uscourts.gov/forms. In addition, please follow the instructions in "How to Write and File Motions," below.

Motion to Stay Removal

When you submitted the petition for review, you may have included a motion to stay removal, asking the court to stop immigration officers from removing the petitioner from the United States while his or her case is in progress.

When you file a motion to stay removal, the petitioner gets a temporary "automatic stay," meaning he or she can't be removed from the country until the court decides the motion. (*See De Leon v. INS*, 115 F.3d 643 (9th Cir. 1997); Ninth Circuit General Order 6.4(c)(1).) The petitioner will receive an automatic stay only once—the first time you file a motion to stay removal in this case.

After you file a motion to stay removal, opposing counsel has 12 weeks to file a response with the court. If opposing counsel responds, you may file a reply telling the court why you think opposing counsel's view is incorrect. You will have **seven days** in which to do so, starting on the day opposing counsel serves you with their response.

It may take several months for the court to decide a motion to stay removal.

- **If the court grants the motion to stay removal**, immigration officials may not legally remove the petitioner from the country during this case.

- **If the court does not grant the motion to stay removal**, the immigration case will continue but immigration officials are no longer legally barred from removing the petitioner from the country. This does not mean the petitioner *will* be removed. What happens depends on the specifics of the situation.

If you did not submit a motion to stay removal with the petition for review, you may do so now. Your motion must state why you believe the court should grant the stay and the specific hardships the petitioner would face if immigration officials were to remove him or her from the country. (*See Nken v. Holder*, 556 U.S. 418 (2009).) Please follow the additional instructions in "How to Write and File Motions," below.

Stage Two: Preparing and Filing Briefs

During the second stage of your case, you and opposing counsel will prepare and file written briefs. The required components of a brief are set out in Fed. R. App. P. 28 and 32, and 9th Cir. R. 28-2, 32-1, and 32-2. You should familiarize yourself with those rules and follow them carefully. In this section, we cover some key points of briefing practice.

Opening Brief

You will write and file the first brief in your case. In the opening brief, you must:

- state the facts of the case
- describe the relief you are seeking for the petitioner
- provide legal arguments to support the petition
- include an addendum (bound with the brief) containing all orders of the immigration court and BIA that you are challenging (9th Cir. R. 28-2.7).

In addition, if the petition challenges a decision of the BIA, you must state both of the following:

- Whether the petitioner is detained in the custody of the Department of Homeland Security or at liberty.
- Whether the petitioner has moved the BIA to reopen or applied to the district director for an adjustment of status.

(9th Cir. R. 28-2.4(b).) Your opening brief does not have to include excerpts of record. (9th Cir. R. 17-1.2(b).)

Deadline for filing. You must file your opening brief and excerpts of record by the deadline stated in the briefing schedule. The briefing schedule depends on your opponent's timely filing of the certified administrative record. If the record is late, you may ask the court to revise the briefing schedule.

If you do not file your brief on time or request an extension, the court will dismiss your case.

Tips for Writing Your Briefs

Keep these points in mind to write a better brief:

Avoid unnecessary words. Don't use 20 words to say something you can say in ten.

Think things through. Make logical arguments and back them up with legal rules.

Be respectful. You can disagree without being disagreeable. Focus on the strengths of your case, not the character of others.

Tell the truth. Don't misstate or exaggerate the facts or the law.

Proofread. Before you file, carefully check for misspellings, grammatical mistakes, and other errors.

Answering Brief

In response to your opening brief, opposing counsel may file an answering brief. If opposing counsel files an answer, they must send a copy to you.

The time scheduling order sets the deadline for the answering brief. Please note that the opening and answering brief due dates are not subject to the rules for additional time described in Fed. R. App. P. 26(c). In particular, if you file your opening brief early, it does not advance the due date for your opponent's answering brief. (*See* 9th Cir. R. 31-2.1.)

Reply Brief

You are invited to reply to opposing counsel's answering brief, but you are not required to do so. If you write a reply brief, do not simply restate the arguments in your opening brief. Use the reply brief to directly address the arguments in opposing counsel's answering brief.

You must file your reply brief within **21 days** of the date the government serves you with its answering brief.

How to File a Brief

Rules for filing briefs depend on whether or not you are required to file electronically.

CM/ECF. After we review your electronic submission, we will request paper copies of the brief and addendum that are identical to the electronic version. Do not submit paper copies until we direct you to do so. (*See* 9th Cir. R. 31-1.) You must also send **two copies** of the brief to any exempt or unregistered opposing counsel.

Exempt Filers Only. Please follow these steps:

- ✓ Send the original document and **six copies** of your brief to the court.
- ✓ Send **two copies** to opposing counsel.
- ✓ Attach a signed certificate of service to the original and to each copy for opposing counsel.
- ✓ Keep a copy for your records.

If You Need More Time to File

Usually, you may ask for one streamlined extension of up to 30 days from the brief's existing due date. (*See* 9th Cir. R. 31-2.2(a) for conditions.)

- **CM/ECF.** Electronic filers do not need to use a written motion; you may submit your request using the "File Streamlined Request to Extend Time to File Brief" event on CM/ECF on or before your brief's existing due date.

- **Exempt Filers.** Make your request by filing Form 13 on or before your brief's existing due date. You can find Form 13 on the court's website at www.ca9.uscourts.gov/forms.

If you need more than 30 days, or if the court has already given you a streamlined extension, you must submit a written motion asking for more time. Your motion must show both diligence and substantial need. You must file your request at least **seven days** before your brief is due. The motion must meet the requirements of 9th Cir. R. 31-2.2(b). You may use Form 14 or write your own motion.

Usually, in response to an initial motion for more time, the court will adjust the schedule. (*See* Circuit Advisory Committee Note to Ninth Circuit Rule 31-2.2.) If you followed the correct procedures to ask for more time but the court doesn't respond by the date your brief is due, act as though the court has granted your request and take the time you asked for.

What Happens After You File

After you and opposing counsel have filed your briefs, a panel of three judges will evaluate the case. Sometimes the court decides a case before briefing is complete (9th Cir. R. 3-6); if that happens, we will let you know.

Judges conduct oral hearings in all cases unless all members of the panel agree that oral argument would not significantly aid the decision-making process. (Fed. R. App. P. 34(a)(2).)

Notification of oral hearings. We will notify you of the potential dates and location of an oral hearing approximately 14 weeks in advance. After you receive notice, you have **three calendar days** to inform the court of any conflicts. We distribute calendars about ten weeks before the hearing date.

Changes to oral hearing dates or location. The court will change the date or location of an oral hearing only if you show good cause for the change. If you wish to submit a request to continue a hearing, you must do so within 14 days of the hearing. Note, however, that the court grants such requests only if you can show exceptional circumstances. (9th Cir. R. 34-2.)

Oral arguments are live streamed to YouTube. Viewers can access them through the court's website. Go to www.ca9.uscourts.gov and choose "Live Video Streaming of Oral Arguments and Events."

Stage Three: The Court's Final Decision

After the judges decide your case, you will receive a memorandum disposition, opinion, or court order stating the result. If you are happy with the outcome, congratulations.

If you or opposing counsel didn't get the final results you want, either of you may take the case further. We explain your options in the next section; see "After Your Case," below.

HOW TO WRITE AND FILE MOTIONS

This section provides general guidelines for writing and filing motions, including motions discussed elsewhere in this guide. The motion you want to make may have special rules—for example, a different page limit or deadline—so be sure that you also read its description, as noted below.

How to Write a Motion

If you want to file a motion with the court, follow these guidelines:

- ✓ Clearly state **what** you want the court to do.
- ✓ Give the legal reasons **why** the court should do what you are asking.
- ✓ Tell the court **when** you would like it done.
- ✓ Tell the court what the opposing party's position is. (Circuit Advisory Committee Note to Ninth Circuit Rule 27-1(5); 9th Cir. R. 31-2.2(b)(6).)
- ✓ State whether the petitioner is in the custody of the Department of Homeland Security or at liberty. (9th Cir. R. 27-8.2.)
- ✓ If you are filing a response requesting affirmative relief, include your request in the caption. (Fed. R. App. P. 27(a)(3)(B).)
- ✓ Don't write a motion that is more than 20 pages long unless you get permission from the court.

If you like, you may support your motion with an affidavit or declaration. (28 U.S.C. § 1746.)

Cases Scheduled for Argument or Submitted to a Panel

If your case has been (1) scheduled for oral argument, (2) argued, or (3) submitted to or decided by a panel, then the first page or cover of your motion must include the date of argument, submission, or decision and, if known, the names of the judges on the panel. (9th Cir. R. 25-4.)

How to File a Motion

To file your motion, you must follow the rules described in "Deliver Papers the Right Way," at the beginning of this guide. Keep the following points in mind.

- **CM/ECF.** For electronic filing, follow instructions on CM/ECF. If there are any non-registered parties, you must send a hard copy to that party.

- **Exempt Filers.** Send the original document to the court and send a copy to opposing counsel. Remember to attach a signed certificate of service to the original and to any copies. Always keep a copy for your own records.

Note that you should not include a notice of motion or a proposed order with your motion. (Fed. R. App. P. 27(a)(2)(C)(ii) and (iii).)

What Happens After You File

The path of a motion depends on the details of your case. Certain motions—for example, a motion to dismiss the case—may automatically stay the briefing schedule. (*See* 9th Cir. R. 27-11.) The following steps are common after filing a motion.

Opposing counsel may respond. After you file a motion, opposing counsel has ten days to file a response. (*See* Fed. R. App. P. 27(a)(3)(A); Fed. R. App. P. 26(c).) In the response, opposing counsel will tell the court why it disagrees with the arguments in your motion.

You may reply to opposing counsel's response. If opposing counsel responds, you may tell the court why you think opposing counsel's view is incorrect. If you file a reply, don't just repeat the arguments in your original motion. Instead, directly address the arguments in opposing counsel's response. You usually have **seven days** to file a reply with the court, starting on the day opposing counsel serves you with their response. (*See* Fed. R. App. P. 27(a)(3)(B).) Normally, a reply may not be longer than ten pages.

The court decides your motion. After you and opposing counsel file all papers related to the motion, a panel of two or three judges will decide the issue.

How to Respond to a Motion from Opposing Counsel

Your opponent may also submit motions to the court. For example, opposing counsel may file a motion to dismiss the case or to ask the court to review the case more quickly than usual. If opposing counsel files a motion, you are allowed to respond with your arguments against it. Your response may not be longer than 20 pages.

Usually, you must file your response with the court no more than **ten days** from the day opposing counsel delivers a copy of its motion to you.

Read More About These Motions

If you are making one of the following motions, read the section noted here:

Motion to proceed in forma pauperis in "Filing Opening Motions," above.

Motion to stay removal in "Filing a Motion to Stay Removal," above.

Motion for extension of time to file a brief in "If You Need More Time to File," above.

Motion for reconsideration in "If You Don't Agree With a Court Decision," below.

Emergency Motions

An emergency motion asks the court to act within 21 days to avoid irreparable harm. Your motion must meet the requirements of 9th Cir. R. 27-3.

If you need emergency relief, you must notify the Emergency Motions department in San Francisco before you file the motion. Call them at 415-355-8020 or e-mail emergency@ca9.uscourts.gov. Please note that a request for more time to file a document with the court or any other type of procedural relief does *not* qualify as an emergency motion. (*See* Circuit Court Advisory Committee Note to 27-3(3).)

Finally, if you absolutely must notify the court of an emergency outside of standard office hours, call 415-355-8000. This line is for true emergencies that cannot wait until the next business day—for example, imminent removal from the United States.

IF YOU DON'T AGREE WITH A COURT DECISION

If you think the court of appeals made an incorrect decision about important issues in your case, you can ask the court to take a second look. You may do this during your case—for example, if you disagree with the court's ruling on a motion. Or you may ask the court to review its final decision at the end of your case.

During Your Case: Motion for Reconsideration

If you disagree with a court order or ruling during your case, you may file a motion for reconsideration stating the reasons why you think the court's ruling was wrong. Your motion may not be longer than 15 pages.

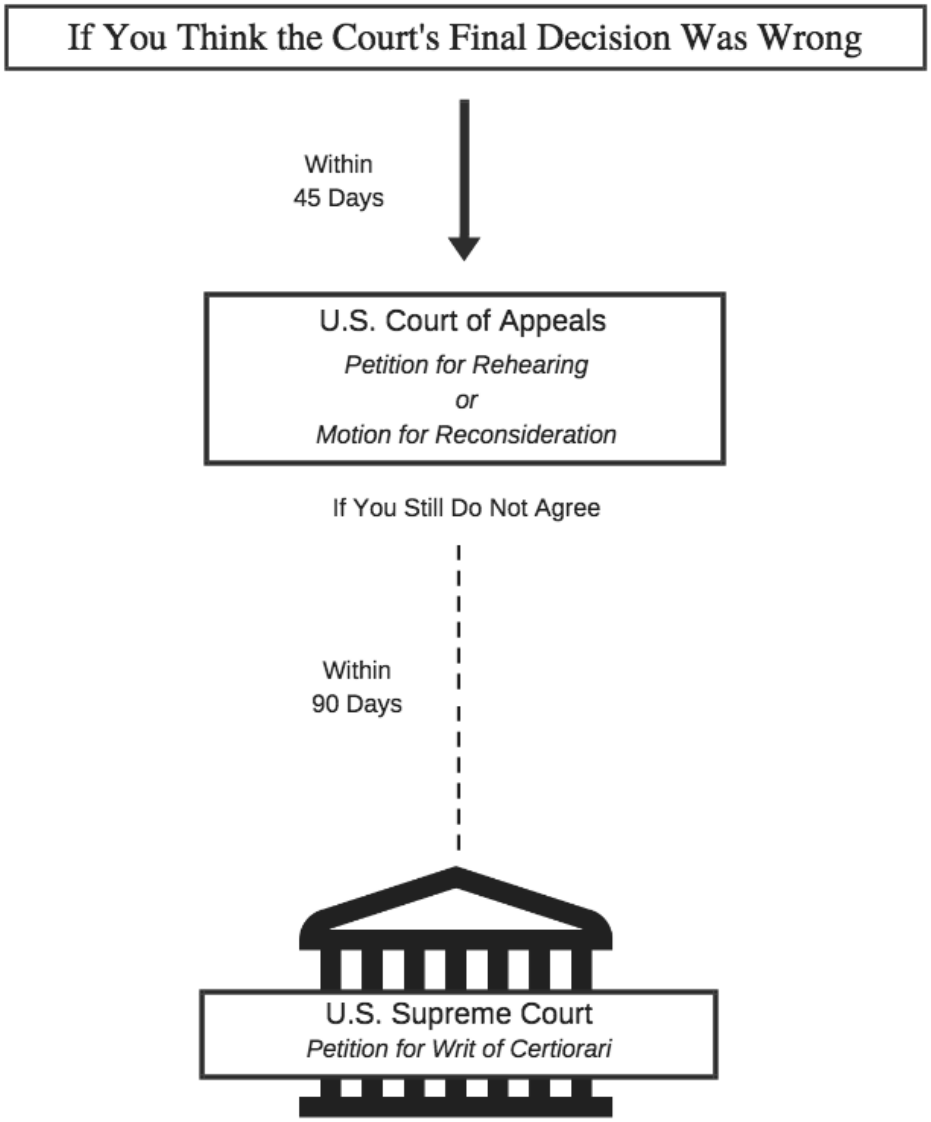
A motion for reconsideration of an order that does not end the case—that is, a non-dispositive order—is due **within 14 days** of the date stamped on the court order. (9th Cir. R. 27-10(a).) In addition to these rules, please follow the general guidelines in "How to Write and File Motions," above.

After Your Case: Motions and Petitions

If you think the court's final decision in your case was wrong and you want to take further action, you have two options:

- File a motion for reconsideration or petition for rehearing in this court.
  - If the court decided your case in an order, then you would file a motion for reconsideration, as discussed just above. You have **45 days** (instead of 14 days for non-dispositive orders) to file a motion for reconsideration of a court order that ends your case. (9th Cir. R. 27-10(a).)
  - If the court decided your case in a memorandum disposition or opinion, then you would file a petition for rehearing, discussed below.
- File a petition for writ of certiorari with the U.S. Supreme Court.

It is most common to do these things one after the other—that is, to file a petition for rehearing or motion for reconsideration in this court and then, if that doesn't succeed, petition the Supreme Court. It is technically possible to file both petitions at the same time but that is not the typical approach. Our discussion focuses on the common path.



Court of Appeals: Petition for Rehearing

To ask the court of appeals to review its final decision in your case, you must file a petition for rehearing. Before starting a petition, remember that you must have a legal reason for believing that this court's decision was incorrect; it is not enough to simply dislike the outcome. You will not be allowed to present any new facts or legal arguments in the petition for rehearing. Your document should focus on how you think the court overlooked existing arguments or misunderstood the facts of your case.

A petition for rehearing may not be longer than 15 pages. The petition is due **within 45 days** of the date stamped on the court's opinion or memorandum disposition. To learn more about petitions for rehearing, see Fed. R. App. P. 40 and 40-1.

Most petitions for rehearing go to the same three judges who heard and decided your case. It is also possible to file a petition for rehearing en banc. This type of petition asks 11 judges to review your case instead of three. The court grants petitions for rehearing en banc only in rare, exceptional cases. To learn more about petitions for rehearing en banc, see Fed. R. App. P. 35.

U.S. Supreme Court: Petition for Writ of Certiorari

If the court of appeals denies the petition for rehearing—or if it rehears your case and issues a new judgment you don't agree with—you have 90 days from the denial order or new decision to petition the U.S. Supreme Court to hear your case. You do this by asking the Supreme Court to grant a writ of certiorari. You must file your petition directly with the Supreme Court. A writ of certiorari directs the appellate court to send the record of your case to the Supreme Court for review.

The Supreme Court is under no obligation to hear your case. It usually reviews only cases that have clear legal or national significance—a tiny fraction of the cases people ask it to hear each year. Learn the Supreme Court's Rules before starting a petition for writ of certiorari. (You can find the rules and more information about the Supreme Court at www.supremecourt.gov.)

HOW TO CONTACT THE COURT

Court Addresses: San Francisco Headquarters

Mailing Address for U.S. Postal Service	*Mailing Address for Overnight Delivery (FedEx, UPS, etc.)*	*Street Address*
Office of the Clerk James R. Browning Courthouse U.S. Court of Appeals P.O. Box 193939 San Francisco, CA 94119-3939	Office of the Clerk James R. Browning Courthouse U.S. Court of Appeals 95 Seventh Street San Francisco, CA 94103-1526	95 Seventh Street San Francisco, CA 94103

Court Addresses: Divisional Courthouses

Pasadena	*Portland*	*Seattle*
Richard H. Chambers Courthouse 125 South Grand Avenue Pasadena, CA 91105	The Pioneer Courthouse 700 SW 6th Ave, Ste 110 Portland, OR 97204	William K. Nakamura Courthouse 1010 Fifth Avenue Seattle, WA 98104

Court Website

www.ca9.uscourts.gov

The court's website contains the court's rules, forms, and general orders, public phone directory, information about electronic filing, answers to frequently asked questions, directions to the courthouses, bar admission forms, opinions and memoranda, live streaming of oral arguments, links to practice manuals, an invitation to join our pro bono program, and more.