Dated: April 28, 2010.

L. Barndt,

Captain, U.S. Coast Guard, Captain of the Port, Sector Lake Michigan.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0344; FRL–9112–7]

Approval and Promulgation of Air Quality Implementation Plans; Reformulated Gasoline and Diesel Fuels; California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule approves state implementation plan (SIP) revisions submitted by the State of California on June 15, 2004 and February 3, 2009, relating to reformulated gasoline (RFG) and diesel fuel sold or supplied as motor vehicle fuels in California. The revisions relating to RFG include California Phase 3 RFG (CaRFG3) regulations, correction of errors and streamlined requirements for compliance with and enforcement of the CaRFG3 standards, and an update to the State's predictive model to mitigate permeation emissions associated with the use of ethanol as a fuel additive. The revisions relating to diesel fuel include test methods for determining the aromatic hydrocarbon content in diesel fuel and reductions in the maximum allowable sulfur content for motor vehicle diesel fuel. The effect of today's action is to make these revisions federally enforceable as part of the California SIP.

DATES: This final rule is effective June 11, 2010.

ADDRESSES: EPA has established a docket for this action under EPA–R09–OAR–2009–0344. The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information the disclosure of which 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.

FOR FURTHER INFORMATION CONTACT: Jeffrey Buss, EPA Region IX, (415) 947–4152, *buss.jeffrey@epa.gov.*

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

I. Summary of Proposed Actions

On July 10, 2009 (74 FR 33196), EPA proposed to approve revisions to the California regulations for reformulated gasoline (RFG) sold or supplied in California, as submitted on June 15, 2004 and February 3, 2009, and revisions to the regulations for diesel fuel sold or supplied in California, as submitted on February 3, 2009, as revisions to the California SIP. On July 21, 2009 (74 FR 35838), EPA issued a correction to the proposed approval and on August 11, 2009 (74 FR 40123), EPA extended the comment period on the proposed approval to August 31, 2009. For a detailed discussion of the rule revisions that California submitted, please refer to EPA's proposed rule and Technical Support Document which can be found in the docket for this rulemaking.

II. EPA's Response to Comments

We received one comment letter on August 31, 2009 from the Center on Race, Poverty & the Environment (CRPE or "the commenter") on behalf of the Association of Irritated Residents, Comité West Goshen, Comité Unido de Plainview, Comité Residentes Organizados al Servicio del Ambiente, Committee for a Better Arvin, La Nueva Esperanza deAlpaugh, El Quinto Sol de America, South Shafter Project Committee, Shafter Chapter League of United Latin American Citizens, United for a Change in Tooleville, and La Voz de Tonyville.

We have summarized the comments and provided responses below.

Comment 1: CRPE stated that EPA must determine that CaRFG3 is enforceable before approving the SIP revision. Specifically, the commenter asserted that EPA is inappropriately relying on a federal RFG enforcement exemption granted in 2005 to support its conclusion that the CaRFG3 amendments to the SIP satisfy the requirements of CAA section 110(a).

The commenter summarized portions of the rationale EPA provided in our proposed approval (74 FR 33198), and stated that "EPA must evaluate the final rule to determine whether the rule is enforceable under § 110(a), not whether the rule is equivalent in practice to federal requirements." The commenter asserted that EPA has neither "made the requisite finding that the provisions are enforceable," nor "made the case that equivalence in practice to federal requirements constitutes enforceability for the purposes of § 110(a)."

Response 1: Section 110(a)(2)(A) of the CAA requires that each SIP include "enforceable emission limitations and other control measures, means, or techniques * * * as may be necessary or appropriate to meet the applicable requirements of this chapter." *See also* CAA section 172(c)(6) (requiring enforceable measures in nonattainment area plans). EPA has stated in interpretive guidance that to be enforceable in practice, a measure must "specify clear, unambiguous, and measurable requirements" and must include a legal means to ensure that sources are in compliance.[1] For example, an enforceable SIP regulation must clearly spell out the requirements, the regulated sources or activities, the recordkeeping and monitoring requirements, and test procedures to determine whether sources are in compliance.[2] We continue to believe that the revisions to the California RFG regulations that we are approving today satisfy these enforceability requirements of CAA section 110(a).

First, as the commenter notes, in 2005 EPA exempted refiners, blenders and importers of CaRFG3 sold for use within California from certain enforcement provisions in the Federal RFG regulations found at 40 CFR 80.81 (CaRFG3 enforcement exemption).[3] EPA granted this enforcement exemption following a determination that the CaRFG3 regulations and associated enforcement mechanisms were sufficient to ensure that producers of California gasoline would in fact meet the CaRFG3 standards, which in turn, would ensure compliance with the Federal Phase II RFG standards.[4] EPA's

[1] "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 at 13568 (April 16, 1992) (General Preamble).

[2] *Id.* at 13502.

[3] 70 FR 75914 (December 21, 2005).

[4] EPA made three determinations to support the enforcement exemption: (1) That emission reductions from CaRFG3 would be equal to or greater than the emission reductions from Federal Phase II RFG standards; (2) that the content standard for benzene in CaRFG3 would be equivalent in practice to the Federal Phase II RFG standard and that the oxygen content standard of

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rationale for the exemption was consistent with the analyses we used when we previously granted enforcement exemptions to refiners, importers, and blenders of California Phase 2 gasoline (CaRFG2) under both the Federal Phase I and Phase II RFG programs.[5]

Specifically, EPA determined in those prior actions that it was appropriate to exempt producers of California gasoline from certain sampling and testing, recordkeeping, and reporting provisions in the Federal RFG regulations that deal solely with demonstrating compliance with the Federal RFG standards.[6] EPA found that these Federal enforcement provisions were duplicative and unnecessary, because the California RFG program was sufficiently stringent and enforceable to ensure compliance with the Federal standards.[7] Thus, following a determination that the CaRFG3 regulations would provide emission benefits equivalent to the Federal Phase II RFG program, EPA extended the enforcement exemptions at 40 CFR 80.81 to refiners, importers, and blenders of CaRFG3.[8]

As noted in our proposal for this action, CARB's compliance and enforcement program has not changed significantly since we made our 2005 finding regarding its adequacy.[9] Thus, we believe that the analyses underlying the CaRFG3 enforcement exemption support our conclusion that the CaRFG3 regulations are enforceable, consistent with the requirements of CAA section 110(a).

Moreover, many of the regulatory revisions that we are approving today improve the enforceability of California's RFG program. For example, CARB amended the Predictive Model Procedures[10] to, among other things, update the motor vehicle emissions inventory vehicle mix, update the reactivity adjustment factors, and add new motor vehicle exhaust emissions test data.[11] These revised modeling procedures, which become effective December 31, 2009,[12] improve the reliability of emission predictions for alternative gasoline specifications subject to CaRFG3 standards.

Additionally, the CaRFG3 standards in 13 CCR section 2262 lower the sulfur content cap limit from 30 parts per million (ppm) to 20 ppm starting December 31, 2011.[13] Cap limits[14] provide an upper limit for fuel properties for all compliance options and allow for enforcement of the requirements throughout the gasoline distribution system.[15] According to CARB's staff report for the 2007 revisions to the CaRFG3 program (CARB Staff Report), refiners will generally not be able to produce complying gasoline with sulfur limits higher than 20 ppm—that is, any gasoline found as having a sulfur content of greater than 20 ppm will most likely be non-complying gasoline.[16] The sulfur content cap limit of 20 ppm enables CARB to enforce against producers or importers of any gasoline exceeding this level of sulfur, which will cover most non-complying gasoline formulations.[17]

Finally, several test method requirements have been updated. For example, the new test method for measuring olefins in fuel using supercritical fluid chromatography (SFC) is significantly more precise than the previous method, which was based on manual measurements of olefin content in fuel.[18] The new test method for measuring the distillation temperature of RFG adopts the updated American Society of Testing and Materials (ASTM) standard, which corrects errors in the test method's precision statements and requires a temperature sensor centering device. These updates improve the accuracy of the temperature readings.[19]

In sum, we believe that the analyses underlying the CaRFG3 enforcement exemption and our review of updates to the compliance provisions and test methods in the CaRFG3 program demonstrate that the CaRFG3 regulations are practically enforceable, consistent with the requirements of CAA section 110(a).

Comment 2: The commenter asserted that CaRFG3 is not enforceable because the Predictive Model is neither in the SIP nor part of this SIP revision. Specifically, the commenter asserted that "CARB produced the CaRFG3 Predictive Model as a way to predict whether various RFG compositions, or recipes, will result in acceptable emissions when used in motor vehicles," and that "[t]he CaRFG3 program and resulting emission reductions depend entirely on the Predictive Model." The commenter stated that in order for CaRFG3 to be enforceable, its requirements must be clearly spelled out, and that these requirements are contained within the Predictive Model. The commenter also asserted that in order for the CaRFG3 emissions reductions to be creditable to

2.0 weight percent would be met in Federal RFG areas; and (3) that the California Air Resources Board (CARB) compliance and enforcement program is sufficiently rigorous to ensure that Federal Phase II RFG requirements would be met in practice. 74 FR 33196 at 33198 (July 10, 2009); 70 FR 75914 at 75918 (December 21, 2005). *See also* 69 FR 48827 at 48832 (August 11, 2004).

[5] 69 FR 48827 at 48829 (August 11, 2004) (proposed rule to extend California enforcement exemptions to CaRFG3). EPA had previously exempted gasoline subject to California's Phase 2 RFG regulations (CaRFG2) from certain enforcement requirements under the Federal Phase I RFG program. *See* 59 FR 7813 (February 16, 1994); 63 FR 34818 (June 26, 1998). These enforcement exemptions expired on December 31, 1999, but EPA continued the exemptions beyond that date following a determination that the CaRFG2 regulations would provide emission benefits equivalent to the Federal Phase II RFG program. 64 FR 49992 (September 15, 1999). The 2005 action extended these California enforcement exemptions to CaRFG3.

[6] 58 FR 11745 at 11749 (February 26, 1993).

[7] 58 FR 11745 at 11746, 11749 (February 26, 1993).

[8] 69 FR 48827 at 48832 (August 11, 2004); 70 FR 75914 at 75918 (December 21, 2005). Note that the CaRFG3 enforcement exemptions do not excuse producers of California gasoline from Federal RFG standards, but rather exempt them only from certain enforcement requirements designed to demonstrate compliance with the Federal RFG standards. EPA retains its authority to sample and test California gasoline to make sure that it meets all applicable Federal standards. 58 FR at 11746 (February 26, 1993); 69 FR 48827 at 48832 (August 11, 2004).

[9] 74 FR at 33198 (July 10, 2009). We also reviewed CARB's most recent annual enforcement report, which indicates that fuels inspection and enforcement cases have slightly increased in recent years. *Id.* at fn. 12.

[10] The California "Predictive Model Procedures" are used to determine whether the emissions of a gasoline meeting alternative specifications will be equivalent to the emissions of a gasoline that meets CaRFG3 specifications. CARB most recently amended the Predictive Model Procedures on August 7, 2008. *See* "California Procedures for Evaluating Alternative Specifications for Phase 3 Reformulated Gasoline Using the California Predictive Model," CARB, Amended August 7, 2008, at pg. 4; 13 CCR section 2265.

[11] *See* "Staff Report: Initial Statement of Reasons, Proposed Amendments to California Phase 3 Gasoline Regulations," CARB, Stationary Source Division, April 27, 2007 (CARB Staff Report), at pp. 15–20.

[12] 13 CCR section 2265.

[13] The declining sulfur content cap and associated compliance requirements are described more specifically in section 2261(b)(1)(A).

[14] A "cap limit" is "a limit that applies to all California gasoline throughout the gasoline distribution system, in accordance with 13 CCR sections 2262.3(a), 2262.4(a), and 2262.5(a) and (b)." *California Procedures for Evaluating Alternative Specifications for Phase 3 Reformulated Gasoline Using the California Predictive Model,* last amended April 25, 2008, at pg. 8 (definitions).

[15] *See* CARB Staff Report, Executive Summary, at pg. ix.

[16] According to CARB, sulfur levels in CaRFG3 currently average about 10 ppmw, with 95 percent of production being below 18 ppmw. *See* "Final Statement of Reasons for Rulemaking Including Summary of Comments and Agency Responses," CARB, June 14, 2007 (CARB FSOR) at pg. 17.

[17] *See* "Updated Information Digest: 2007 Amendments to the Phase 3 California Reformulated Gasoline Regulations," CARB [undated]; *see also* CARB Staff Report, at pp. ix, 35.

[18] *See* "Staff Report: Initial Statement of Reasons, Public Hearing to Consider Amending the Test Methods Designated for Determining Olefin Content and Distillation Temperatures of Gasoline," CARB, September 29, 2000, at pg. 2.

[19] *Id.* at 4.

attainment or Reasonable Further Progress (RFP) demonstrations, the Predictive Model must be included in the SIP.

Finally, the commenter asserted that this argument is "not merely a symbolic procedural argument" and that SIP approval of the Predictive Model "ensures that CARB does not change the model, perhaps unwittingly or even underhandedly weakening it, without first subjecting any such change to EPA scrutiny under § 110(l)." The commenter reiterated its assertion that EPA has not made the necessary determination that the submitted SIP revisions are enforceable.

Response 2: We are approving the Predictive Model Procedures into the California SIP as part of this action. CARB initially submitted the Predictive Model Procedures to EPA on June 15, 2004, and submitted revisions on February 3, 2009. The Predictive Model Procedures are incorporated by reference into the CaRFG3 regulations,[20] which require that producers or importers of gasoline comply with the Predictive Model Procedures in evaluating whether gasoline meeting alternative specifications in lieu of CaRFG3 specifications will achieve equivalent emission reductions.[21] *See also* Response 1 and footnote 10, above (describing CARB's updates to the Predictive Model Procedures). We believe that our approval of the Predictive Model Procedures into the SIP addresses the commenter's concerns about the enforceability of the CaRFG3 program, in addition to the crediting of CaRFG3 emissions reductions to attainment or Reasonable Further Progress (RFP) demonstrations.

Comment 3: The commenter stated that EPA had failed to adequately evaluate whether the proposed SIP revisions satisfy the requirements of CAA section 110(l). Specifically, the commenter asserted that EPA's analysis did not adequately support the Agency's conclusion that the proposed revisions do not interfere with applicable requirements concerning attainment and RFP, or other applicable requirements. The commenter asserted that EPA's proposal contained "the same conclusory statement for both the CaRFG3 and diesel fuel rules that, 'because the submitted SIP revisions strengthen the requirements of the approved SIP, EPA has determined that approval of these regulations is consistent with CAA section 110(l).' 74 FR 33198–33199." The commenter noted that EPA had provided more detailed analyses in its Technical Support Document (TSD) but stated that in several cases, EPA had not provided the requisite section 110(l) analysis.

For example, the commenter stated, EPA's proposed approval of section 2261(b)(7) of title 13, California Code of Regulations (CCR) was not addressed in EPA's TSD or supported by an adequate section 110(l) analysis. The commenter stated that "EPA proposes to approve § 2261(b)(4), (5), and (6) because they do not affect emission reductions, but does not provide the same conclusion for § 2261(b)(7)."

As a second example, the commenter stated that EPA's TSD did not address the increase of the maximum denaturant content from 4.76% to 5.00% as set forth in 13 CCR section 2262.9. The commenter stated that EPA had identified changes to this provision as "non-substantive clarifying changes," but that increasing the allowable denaturant content is a "substantive non-clarifying change." The commenter asserted that EPA's failure to consider the potential interference of these changes with applicable requirements is arbitrary and capricious.

Response 3: Section 110(l) of the CAA states that EPA "shall not approve a revision of a [SIP] if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress * * * or any other applicable requirement of [the Act]." 42 U.S.C. 7410(l). As explained in the TSD for our proposal, most of the CaRFG3 program revisions are either improvements or minor clarifications that will not affect emissions. To the extent that some substantive changes may result in increased emissions, as explained further below, we believe these potential emissions increases are offset by other substantial program improvements that reduce emissions and therefore, considered together, will not interfere with any applicable requirement concerning attainment of the National Ambient Air Quality Standards (NAAQS), RFP, or any other applicable requirement of the Act.[22]

First, as to the commenter's assertion that EPA did not adequately evaluate 13 CCR section 2261(b)(7) in the CaRFG3 regulations, we have evaluated this provision and concluded that our approval of it satisfies section 110(l) requirements. Section 2261(b)(7) contains a temporary measure that allows gasoline producers and importers that comply with the revised Predictive Model Procedures prior to their effective date[23] to blend higher volumes of denatured ethanol into California Reformulated Blendstock for Oxygenate Blending (CARBOB) than the amount specified by the common carrier pipeline specifications.[24] CARB adopted this provision as an early compliance measure, to temporarily allow for some flexibility to increase denatured ethanol blending provided the resulting gasoline meets all emission reduction requirements calculated in accordance with the revised Predictive Model Procedures.[25] As such, even during the early compliance period, section 2261(b)(7) does not allow for exceedances of existing emission standards and, therefore, does not interfere with any applicable requirement concerning attainment, RFP, or any other applicable requirement of the Act.[26]

Moreover, this temporary measure expires on December 31, 2009, after which the rule requires compliance with the revised Predictive Model Procedures and prohibits blending any higher volume of denatured ethanol into CARBOB than the amount specified by the common carrier pipeline specification.[27] Because our approval of these revised regulations will not become effective until after this early compliance measure has expired, our approval of this provision has no effect on emissions and will not interfere with applicable requirements under CAA section 110(l).

Second, as to the commenter's assertion that EPA did not adequately evaluate the increase in maximum allowed denaturant[28] content from

[20] *See* 13 CCR sections 2260(a)(8.5), 2260(a)(19.7), and 2265(a)(2).

[21] 13 CCR section 2265(a)(2).

[22] We note also that California Health & Safety Code § 43013.1 requires that the CaRFG3 regulations preserve the emissions and air quality benefits of the CaRFG2 program.

[23] The updates to the Predictive Model Procedures, which become effective December 31, 2009, were the most significant of the recent revisions to the CaRFG3 program. 13 CCR section 2265; CARB Staff Report at 1. *See also* fn. 10, *supra.*

[24] A producer or importer may elect to blend higher volumes of ethanol into CARBOB under section 2261(b)(7) only if the producer or importer satisfies numerous notification, recordkeeping, and reporting requirements to ensure that all emission reduction requirements are met. 13 CCR section 2261(b)(7); *see also* CARB FSOR at pg. 4.

[25] *See* 13 CCR section 2261(b)(7)(B)(1); CARB FSOR at pg. 4.

[26] We note also that the SIP-approved California RFG regulations do not regulate the composition of denatured ethanol that can be blended with CARBOB to produce CaRFG. *See* 13 CCR §§ 2260–2262.1 (adopted September 18, 1992); 60 FR 43383 (August 21, 1995). Use of denatured ethanol as an oxygenate in California gasoline became more widespread following California's prohibition of MTBE in California gasoline starting December 31, 2003. 13 CCR section 2262.6.

[27] 13 CCR sections 2261(b)(7)(A), 2265.

[28] A denaturant is added to ethanol to ensure that it cannot be ingested, and to allow for ethanol to be transported and handled as an industrial fluid

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4.76% to 5.00% under 13 CCR section 2262.9, we have evaluated this provision also and concluded that it satisfies section 110(l) requirements. California's SIP-approved RFG program does not contain any limit on the volume of denaturant that may be blended with gasoline.[29] As such, the addition of this limit to the SIP program does not interfere with any applicable requirement concerning attainment of the NAAQS or any other applicable requirement of the Act. Additionally, we note that this change was designed to align the CaRFG3 program with the current ASTM standards and does not alter any emission reduction requirements.[30]

Finally, the CaRFG3 regulations were specifically designed to mitigate the increases in evaporative emissions (referred to as "permeation"[31]) from on-road vehicles resulting from the addition of ethanol to gasoline.[32] The CARB Staff Report states that the revised CaRFG3 program would "eliminate or offset all ethanol permeation effects from motor vehicles and a significant portion of the permeation effect from off-road applications."[33] Although the proposed revisions were not expected to fully mitigate the emissions impact of the increase in permeation emissions from off-road sources, these relatively small emission increases are outweighed by the significant reductions in emissions from on-road sources, together with the updated compliance provisions that improve the enforceability of the program, as discussed above in Response 1. As such, the CaRFG3 rule revisions do not interfere with any applicable requirement concerning attainment or RFP, or any other applicable requirement of the Act, consistent with CAA section 110(l).

Comment 4: The commenter asserted that EPA's approval of the "offsetting emissions associated with higher sulfur levels" compliance option would violate CAA section 110(l). The commenter stated that the "averaging option" in section 2265.1 allows for fuel that does not comply with CaRFG3 to be averaged with cleaner batches of gasoline—i.e., that it allows for noncompliant fuel to be sold and the excess pollution from use of such noncompliant fuel to be offset with credits from cleaner batches from that facility. The commenter asserted that "EPA proposes to approve this provision with one sentence of analysis," despite a relatively complex compliance scheme. Specifically, the commenter raised three concerns about this provision:

First, the commenter stated that attainment and RFP demonstrations rely on transportation emission inventories based on CaRFG3 compliant fuel, and that the "averaging option" may interfere with these demonstrations by allowing producers or importers to produce noncompliant fuel during the ozone season (May–October) and "offset the deficit" up to three months later.

Second, the commenter stated that attainment and RFP demonstrations relying on CaRFG3 emission reductions could be compromised because there is no geographic requirement for the "credit" fuel to be used in the same airshed as the noncompliant fuel.

Third, the commenter stated that the rule allows for tripling the allowable sulfur content of certain fuels, from 10 ppm up to the Federal 30 ppm sulfur standard, which could result in substantial increases in emissions.

Response 4: We disagree and believe that our approval of the "offsetting" compliance option referenced by the commenter, and in particular section 2265.1, is consistent with the requirements of CAA section 110(l).

Section 2265.1 contains detailed requirements for the offsets that must be achieved by a producer or importer who elects to comply with the "[Predictive Model] emissions offsetting compliance option" under section 2264.2(d) ("PM offset option"). The PM offset option is available only to producers and importers that meet specified criteria[34] and essentially allows for the production or importation of higher-sulfur batches of gasoline provided the emission impacts of the higher-sulfur batch are fully mitigated through subsequent cleaner batches of gasoline at the same facility.[35] The PM offset option provides gasoline producers and importers some flexibility in meeting the 20 parts per million by weight (ppmw) sulfur content flat limit in the CaRFG3 regulations,[36] which is lower than the Federal sulfur content limit of 30 ppm[37] and became effective on December 31, 2003.[38]

Specifically, section 2265.1(a) contains detailed notification, reporting, and recordkeeping requirements that enable CARB to ensure that the increased emissions from higher-sulfur batches permitted under the PM offset option are in fact fully mitigated. For example, subsection (a)(2)(A) requires that a producer or importer electing to use the PM offset option provide to the Executive Officer in writing, before the start of physical transfer of the gasoline from the production or import facility, specific information about, among other things: the percent change in emissions values for NO_X, total ozone forming potential, and potency-weighted toxics for the targeted alternative fuel specifications; the production facility or import facility name, batch name, blend identity, grade of California gasoline, and location (with sufficient specificity to allow CARB inspectors to locate and sample the gasoline); the designated emissions offsetting limit for Reid vapor pressure, sulfur content, benzene content, aromatics content, olefins content, and other fuel characteristics; and within 24 hours after the start of the physical transfer, the date and time of the start of physical transfer from the production or import facility. This information enables CARB to identify who is blending fuels with elevated sulfur levels, how much is being blended, the potential air pollution impacts of the elevated sulfur level, and the specific time that the physical transfer of the gasoline from the production or import facility is completed.[39]

Then, within 90 days after the start of physical transfer of such higher-sulfur gasoline, the producer or importer who has elected to comply with the PM

rather than a controlled substance subject to regulation by the Bureau of Alcohol Tobacco and Firearms. *See* CARB Staff Report at pg. 40.

[29] *See* 13 CCR section 2262 (adopted September 18, 1992); 60 FR 43383 (August 21, 1995). *See also* fn. 26, *supra.*

[30] The 4.76% denaturant limit in the pre-2007 CaRFG3 regulations was based on earlier versions of the ASTM standard specification for denatured fuel ethanol for blending with gasoline (ASTM 04806–99). *See* CARB Staff Report at pg. 40.

[31] The Federal Complex Model at 40 CFR 80.45 does not take permeation emissions from ethanol use into account.

[32] *See* 13 CCR section 2262.6; CARB Staff Report, Executive Summary, pp. i, xviii. Starting December 31, 2003, the CaRFG3 regulations prohibited California gasoline produced with MTBE and placed a conditional ban on the use of any oxygenate other than ethanol as a replacement for MTBE in California gasoline. *Id.* at ii.

[33] *Id.* at xvii, xviii.

[34] For example, the producer or importer must not be subject to any outstanding requirements to provide offsets at the same production facility or import facility under section 2264(c). 13 CCR section 2264.2(d)(1)(E).

[35] 13 CCR section 2265.1.

[36] 13 CCR section 2262. A "flat limit" is "a single limit for a fuel property that applies to all California gasoline sold or supplied from a California production facility or import facility." CARB, *California Procedures for Evaluating Alternative Specifications for Phase 3 Reformulated Gasoline Using the California Predictive Model,* last amended April 25, 2008, at pg. 8 (definitions).

[37] 40 CFR 80.195(a)(1).

[38] CARB, Final Regulation Order, "Amendments to the California Reformulated Gasoline Regulations to Postpone Imposition of the CaRFG3 Standards and the Prohibition of MTBE and Oxygenates Other Than Ethanol in California Gasoline from December 31, 2002 to December 31, 2003," Adopted November 8, 2002, at 13 CCR section 2261(b)(1)(B).

[39] 13 CCR section 2265.1(a)(2)(A). *See also* CARB FSOR at pg. 25.

offset option must complete physical transfer, from the same facility, of California gasoline with a "final blend credit"[40] in sufficient quantity and for the same emissions parameter (NO_X, total ozone forming potential, or potency-weighted toxics) to fully offset the "final blend deficit."[41] This 90-day limit and the requirement to produce the "credit fuel" from the same facility provide a reasonable connection between the emissions from the non-compliant fuel and the offsetting emission reductions.

Finally, the testing and recordkeeping requirements of 13 CCR section 2270 have been revised to apply to any producer or importer that has elected to be subject to the PM offset option pursuant to section 2264.2(d). As such, each producer or importer who elects to be subject to the PM offset option is required to, among other things: Sample and test for numerous characteristics of the final blend produced or imported, including the sulfur, aromatic hydrocarbon, olefin, oxygen, and benzene content; maintain, for two years from the date of each sampling, records showing the sample date, identity of blend sampled, container or other vessel sampled, final blend volume, and fuel characteristics; and provide to the Executive Officer any such records within 20 days of a written request.[42]

To the extent that the emissions from noncompliant fuel may occur during the ozone season and the deficit offset three months later, or that "credit" fuel may be used in an airshed that has better air quality than the airshed where the noncompliant fuel is used, as the commenter notes may occur, these possibilities do not alter our section 110(l) analysis. The likelihood of adverse air pollution impacts[43] from such events is counterbalanced by a similar likelihood of air quality improvements, *i.e.,* that emission reductions from credit fuel may occur during the ozone season or within a more polluted airshed, to offset emissions from noncompliant fuel produced outside of the ozone season or in a less polluted airshed. In any event, we believe the rigorous monitoring, recordkeeping and reporting requirements in section 2265.1, together with the detailed requirements for calculating offsets, as discussed above, will ensure that any emissions increases resulting from noncompliant fuel permitted under the PM offset option will be offset by an equivalent or greater amount of emission reductions.

It is important to note that, even taking into account the PM offset option, the CaRFG3 sulfur content limits that we are approving today are substantially more stringent than the sulfur content limits in California's SIP-approved RFG program, which establishes a flat limit of 40 ppm and an option to establish a higher sulfur limit accompanied by offset requirements.[44] Furthermore, we note that section 2265.1 provides an alternative compliance option only for purposes of meeting California's more stringent sulfur content flat limit of 20 ppmw and does not alter the applicability of the federal sulfur content limit of 30 ppm.[45] As such, in no event may a higher-sulfur batch of gasoline that qualifies for the PM offset option under section 2264.2(d) exceed the Federal sulfur content limit of 30 ppmw.

In sum, given the detailed recordkeeping, reporting, and testing requirements associated with the PM offset option, the detailed criteria for calculation of the required offsetting emission reductions, the substantial strengthening of the sulfur content limits in comparison to the SIP-approved limits, and the upper bound of 30 ppmw in the Federal regulations, we believe that our approval of the PM offset option does not interfere with any applicable requirement concerning attainment, RFP, or any other applicable requirement of the Act.

Finally, as to the commenter's assertion that the rule allows for tripling the allowable sulfur content of certain fuels, we disagree. As explained above, the current CaRFG3 standards establish a 20 ppmw sulfur content flat limit for producers and refiners of California gasoline.[46] The offsetting compliance option in section 2265.1 allows a producer to mitigate the excess emissions of a gasoline batch that exceeds the 20 ppmw sulfur content flat limit, but it does not allow any exceedance of the Federal 30 ppm sulfur content limit.

Comment 5: The commenter asserted that the "Alternative Emission Reduction Plan (AERP) creates a loophole which compromises enforceability of the rule," and that the CARB Executive Officer has discretion to approve an AERP without verifying the required emission reductions. Specifically, the commenter stated that the AERP does not contain adequate reporting, monitoring or verification provisions to ensure that the emission reductions are being carried out as proposed, and that the AERP "only requires the producer, importer, or third party to submit to the Executive Officer 'information that establishes * * * the offsets accrued.' 13 CCR 2265.5(i)(1). Furthermore, the commenter stated, "the types of emissions offsets allowed [by the AERP] are particularly prone to be speculative, and may in many instances not actually produce the emissions reductions used to offset increased emissions from permeation."

For example, the commenter stated, the "incentive grants" option in section 2265.5(i)(3) allows for speculative and difficult-to-enforce offsets because it allows entities to claim offsets "associated with incentive grants for cleaner-than-required engines, equipment and other sources of pollution * * *." The commenter asserted that standards for the Executive Officer in determining whether these emission reductions are real, additional, and enforceable are "wholly absent from the AERP and the rule."

Response 5: We disagree. The Alternative Emission Reduction Plan (AERP) provision in 13 CCR section 2265.5 is a temporary flexibility option to ensure that emission increases caused by the addition of ethanol to gasoline are fully mitigated consistent with State law requirements.[47] We believe the rule contains adequate compliance provisions, enforcement mechanisms, and limitations on the Executive Officer's discretion to meet the enforceability requirements of CAA section 110(a).

Specifically, section 2265.5 provides gasoline producers an alternative option

[40] "Final blend credit" is defined as "the credit from a final blend of gasoline that may be used to offset a producer's or importer's final blend deficit" and must be calculated in accordance with a specified formula provided in the definition. 13 CCR section 2260(a)(10.5).

[41] "Final blend deficit" is defined as "the deficit from a final blend of gasoline that a producer or importer must offset" and must be calculated in accordance with a specific formula provided in the definition. 13 CCR section 2260(a)(10.7). For purposes of complying with the PM offset option, section 2265.1(c) also requires that the "final blend deficit" be multiplied by a specific factor that increases the amount of required offsets from the "credit" blend.

[42] 13 CCR section 2270(a).

[43] We note that these emissions effects are not likely to occur. According to CARB, unlike most other fuel properties governed by the CaRFG3 rules, increases in sulfur levels in individual batches do not result in immediate emission increases in vehicles using the batch, and although sulfur degrades catalyst performance the effect is reversible. *See* CARB FSOR at pg. 24; CARB Staff Report at pg. 36.

[44] *See* 13 CCR section 2262.2 (adopted September 18, 1992); 60 FR 43383 (August 21, 1995).

[45] 40 CFR 80.195(a)(1). *See also* "Technical Support Document for EPA's Proposed Approval of Rule Revisions for Reformulated Gasoline and Diesel Fuel Sold or Supplied as Motor Vehicle Fuels in California," June 30, 2009 (TSD), at pg. 2.

[46] 13 CCR section 2262. CARB has stated that sulfur levels in CaRFG3 currently average about 10 ppmw but has not established a sulfur cap limit at this level. *See* FSOR at pg. 17.

[47] *See* CARB FSOR at pg. 12 (citing California Health and Safety Code section 43013.1(b)(1)).

to offset emissions from ethanol permeation while refinery modifications are being made to allow the production of fuel formulations that fully comply with CaRFG3 standards.[48] An AERP is available only to a producer or importer who, among other things, would satisfy all of the criteria for approval in the applicable Predictive Model Procedures "but for the elevated emissions associated with permeation."[49] All AERPs sunset on December 31, 2011, with the possibility of an extension of up to one year.[50]

Contrary to the commenter's assertion, section 2265.5 contains rigorous monitoring, reporting, and verification provisions to ensure that the proposed emission reductions under an AERP will be achieved, in addition to specific procedures for Executive Officer action on an AERP application.

First, section 2265.5 establishes detailed testing, recordkeeping and reporting requirements. An application for an AERP must contain, among other things: Calculations of the total emissions of oxides of nitrogen (NO_X), total ozone forming potential, and potency-weighted toxics that would be associated with the use of California gasoline were the producer or importer to eliminate the emissions associated with permeation from its gasoline; documentation of the amounts of these pollutants associated with the producer's or importer's gasoline; a demonstration that the emission reduction strategy(ies) in the AERP will result in equivalent or better emission benefits for these pollutants than would be achieved through elimination of permeation emissions from the gasoline for the same affected region and for the period the AERP will be in effect; the date(s) that the offsets will accrue and expire for each emission reduction strategy; and the proposed recordkeeping, reporting, monitoring, and testing procedures that the producer or importer plans to use to demonstrate continued compliance with the AERP.[51]

Following approval of an AERP, section 2265.5(h)(1) requires the producer or importer to provide the Executive Officer with detailed information, before the start of physical transfer, about the estimated volume of the gasoline blend; the identity of the approved AERP and the NO_X, total ozone forming potential, and potency-weighted toxics emission limits stated in that plan; supporting documentation, calculations, and emissions test data; and within 24 hours after the start of the physical transfer, the date and time of the start of physical transfer from the production or import facility. Section 2265.5(i) also requires the producer or importer to notify the Executive Officer in writing of the date that the offsets actually accrued, together with all documentation, calculations, emissions test data, and other information that establishes the amounts of emission reductions. Together, these provisions provide clear information upon which the Executive Officer can base a determination whether the proposed emission reductions (*i.e.,* the offsets) are real, additional, and enforceable, and to actually verify the emission reductions following physical transfer of the gasoline blend.

Second, section 2265.5(c) establishes specific procedures for the Executive Officer's action on an AERP application. Among other things, the Executive Officer is required to make available for public review all documents pertaining to an AERP, provide notice of each application to specified parties in addition to public notice, and provide a 30-day public comment period, after which the Executive Officer may take final action to "either approve or deny" the AERP application. These procedures provide the public an opportunity to participate in the decisionmaking process on an AERP and limit the Executive Officer's discretion to either approving the application, if it satisfies the requirements specified in section 2265.5(b), or denying it if it does not.

Finally, section 2265.5(e) establishes specific enforceable prohibitions on, among other things, selling or producing gasoline that creates emissions associated with permeation except in compliance with an approved AERP; failure to meet any requirement of section 2265.5 or any condition of an approved AERP; false reporting of any information contained in an AERP or supporting documentation; and any net exceedance of NO_X, total ozone forming potential, or potency-weighted toxics during the period of the AERP. Violations of these provisions are subject to civil penalties under section 43027 of the California Health and Safety Code.[52] These clear prohibitions, together with the specific information and compliance provisions required in each AERP application, provide adequate means for CARB to take enforcement action where the proposed emission reductions are not achieved, as well as for other violations of AERP conditions.

Taken together, these detailed compliance mechanisms ensure that only those AERPs that satisfy the detailed requirements specified in section 2265.5(b) will be approved, and the procedural regulations provide an additional assurance of transparent decisionmaking processes.

The commenter's assertion that the "incentive grants" option in section 2265.5(i)(3) "allows for speculative and difficult-to-enforce offsets" is not entirely clear. Section 2265.5(i) requires that the producer or importer subject to an AERP notify the Executive Officer in writing and provide all supporting documentation of the amount of NO_X, total ozone forming potential, and potency-weighted toxics associated with the proposed offsets or other reduction strategies, as provided in the approved AERP, and the date(s) the offsets accrued. Section 2265.5(i)(3) lists "incentive grants for cleaner-than-required engines, equipment and other sources of pollution providing early or extra emission reductions" among the emission reduction strategies for which a producer or importer must provide the requisite notifications to the Executive Officer. To the extent the commenter intended to argue that this provision allows for unenforceable offsets, we disagree for the reasons stated above.[53]

Comment 6: The commenter asserted that several elements of the proposed SIP revisions contain unenforceable "director's discretion" provisions and that EPA approval of these provisions would violate CAA section 110(a)(2)(A). Specifically, the commenter stated that the new alternative compliance plan provisions in sections 2265.1 and 2265.5, the addition of these provisions in section 2271 as circumstances in which a variance may be requested, and the amended CARBOB regulations in section 2266.5 all provide for director's discretion without adequate limits on such discretion.

The commenter referenced a "notation 1" in EPA's TSD for the proposed rule, which states that "Director's discretion is limited by explicit and replicable procedures within the rule that define how discretion is to be exercised and that assures equivalent emission

[48] *See* CARB FSOR at pg. 37.

[49] 13 CCR section 2265.5(a)(3).

[50] 13 CCR section 2265.5(a)(6).

[51] 13 CCR § 2265.5(b).

[52] Health and Safety Code section 43027 states that "[a]ny person who violates any provision of this part, or any rule, regulation, permit, variance, or order of the state board, pertaining to fuel requirements and standards * * * is strictly liable for a civil penalty of not more than thirty-five thousand dollars ($35,000)." H&SC section 43027(c). Negligent violations can result in civil penalties of up to $50,000 and willful and intentional violations can result in civil penalties of up to $250,000. H&SC section 43027(a), (b).

[53] We note, as a practical matter, that CARB has not received any applications for an AERP or a third-party AERP and does not expect any. *See* e-mail from Renee Littaua, Manager, Fuels Section, CARB, October 20, 2009.

reductions." As applied to 13 CCR sections 2265.5 and 2266.5, the commenter asserted that this notation "appears * * * to be an attempt by EPA to preemptively address concerns regarding director's discretion." The commenter cited several EPA policy statements regarding director's discretion provisions and appropriate limitations on such discretion, and stated that the "notation 1" in EPA's TSD "appear[s] to water down the requirement" that director's discretion provisions "tightly define how the discretion will be exercised to assure equivalent emission reductions."

In sum, the commenter asserted that EPA has not shown that the director's discretion provisions in sections 2265.1, 2265.5, 2271, and the amended CARBOB regulations in section 2266.5 satisfy the requirements to "include explicit and replicable procedures which tightly define how the discretion will be exercised, much less how the discretion will be exercised to *assure equivalent emission reductions*." Absent more specific limitations on director's discretion or a requirement that each exercise of such discretion be approved by EPA, the commenter stated, these provisions are unenforceable and violate CAA section 110(a)(2)(A).

Response 6: We disagree. As to sections 2265.1 (PM offset option) and 2265.5 (AERPs), we believe these provisions are enforceable for the reasons discussed above in responses 4 and 5, respectively. Accordingly, the addition of sections 2265.1 and 2265.5 to the provisions in section 2271 for which a person may seek a variance, consistent with the criteria outlined in section 2271, is permissible. Moreover, since our approval of section 2271 into the SIP in 1995,[54] CARB has revised it to add further criteria governing the Executive Officer's evaluation of a variance request. These rule revisions define even more specifically how the Executive Officer is to exercise discretion in acting on a variance request and strengthen the enforceability of the rule.

The SIP-approved version of section 2271 requires that the Executive Officer's decision to grant or deny a variance be based "solely upon substantial evidence in the record of the variance proceeding,"[55] and states that a variance may not be granted unless the Executive Officer makes all of the following findings: (1) That, because of reasons beyond the reasonable control of the applicant, requiring compliance with the applicable section(s) would result in an extraordinary economic hardship; (2) that the public interest in mitigating the extraordinary hardship by issuing the variance outweighs the public interest in avoiding any increased emissions of air contaminants which would result from issuing the variance; and (3) that the compliance plan proposed by the applicant can reasonably be implemented and will achieve compliance as expeditiously as possible.[56]

These requirements remain unchanged. CARB has, however, revised section 2271 to require that each of these three findings be made in accordance with detailed factors listed in section 2271(e). For example, in determining whether the public interest in mitigating the extraordinary hardship by issuing the variance outweighs the public interest in avoiding increased air emissions, the Executive Officer must "consider the potential effects of issuing or denying the variance on the applicant's customers, the producers of complying fuel, the general public, and upon air quality," and must also consider whether granting the variance will place the applicant at a cost advantage over other persons, including those persons who produce complying gasoline.[57] Importantly, in evaluating the potential effect of the variance upon air quality, the Executive Officer must estimate both the excess exhaust emissions and the excess evaporative hydrocarbon emissions that will result from granting the variance in accordance with specific calculations, including use of the California Predictive Model Procedures with specified inputs.[58] These new provisions tightly define how the Executive Officer's discretion will be exercised to assure equivalent emission reductions.

As to section 2266.5 (amended CARBOB regulations), the commenter has not identified any discretionary provisions that are of particular concern. In the absence of a more specific explanation, we have construed the comment to refer to several provisions in section 2266.5 that allow the Executive Officer to enter into protocols for determining compliance.

For example, section 2266.5(a)(2)(E) authorizes the Executive Officer to enter into a written protocol with an individual producer or importer for the purpose of specifying an alternative method for determining whether a final blend of CARBOB complies with the standards for California gasoline, "as long as the executive officer reasonably determines that application of the protocol is not less stringent or enforceable than application of the express terms of [the applicable standards]." Section 2266.5(b)(4) imposes identical conditions on the Executive Officer's authority to enter into a written protocol with an individual producer or importer for the purpose of specifying how the requirements for certain notifications to CARB should be applied to the producer's or importer's particular operations. We believe that section 2266.5 adequately defines how the Executive Officer's discretion is to be exercised for these limited purposes.

Comment 7: The commenter asserted that EPA must make another equivalency determination to maintain the RFG enforcement exemption for California. Specifically, the commenter stated that EPA "relies heavily on an earlier equivalency determination made in December 2005 in the context of an RFG enforcement exemption request approval," that the relevance of the 2005 enforcement exemption is unclear, and that "because significant changes are being proposed to the California RFG regulations, EPA must make another equivalency determination to continue exempting California gasoline from RFG regulation."

Response 7: We disagree. The CAA does not require that EPA revisit an equivalency determination for the RFG enforcement exemption each time we revise a SIP, and the commenter does not identify any such requirement. As explained in our response to comment 1, above, we have concluded that the rationale supporting the CaRFG3 enforcement exemption in 2005 continues to support our action today.

To the extent the commenter intended to argue that the facts underlying EPA's 2005 determination have significantly changed, such that that prior determination is no longer valid, we also disagree. Neither the CaRFG3 nor federal RFG compliance and enforcement programs have been significantly revised since our 2005 equivalency determination.[59] In the

[54] 16 CCR section 2271 (adopted September 18, 1992); 60 FR 43383 (August 21, 1995).

[55] The Executive Officer is required to hold a public hearing on each application containing the required information, to make the application available to the public at least 20 days prior to the hearing, to provide a reasonable opportunity to submit written and oral testimony at the hearing and to consider such testimony. 13 CCR section 2271(b), (c) (adopted September 18, 1992); 60 FR 43383 (August 21, 1995).

[56] 16 CCR section 2271 (adopted September 18, 1992); 60 FR 43383 (August 21, 1995).

[57] 13 CCR section 2271(e)(2) (2007).

[58] 13 CCR section 2271(e)(2)(B) (2007).

[59] 74 FR at 33198.

proposed rule we also stated that the revisions to the CaRFG3 regulations strengthen the requirements in the existing SIP. The commenter has not identified any factual changes that call into question our previous findings.

Finally, we note that the commenter incorrectly suggests that the CaRFG3 enforcement exemption allows EPA to "exempt[ ] California gasoline from RFG regulation." The CaRFG3 enforcement exemption applies only to certain federal RFG enforcement requirements and does not exempt California gasoline from any federal RFG standards.[60]

III. Final Action

Under section 110(k)(3) of the Clean Air Act, EPA is approving revisions to the California regulations for reformulated gasoline (RFG) sold or supplied in California, as submitted on June 15, 2004 and February 3, 2009, and revisions to the regulations for diesel fuel sold or supplied in California, as submitted on February 3, 2009, as revisions to the California SIP.

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, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law 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 Order 12866 (58 FR 51735, October 4, 1993);
- 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 EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 July 12, 2010. 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 reference, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Oxides of Nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 11, 2009.

Laura Yoshii,

Acting Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

■ 2. Section 52.220 is amended by adding paragraphs (c)(204)(i)(A)(*7*), (c)(374), (c)(375) and (c)(376) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(204) * * *

(i) * * *

(A) * * *

(*7*) Previously approved on August 21, 1995, in paragraph (c)(204)(i)(A)(*3*) of this section, and now deleted without replacement: Title 13, California Code of Regulations, Reformulated Gasoline Regulations, sections 2262.1, 2262.2, and 2262.7.

* * * * *

(374) The following revisions to the California Reformulated Gasoline Regulations were submitted on June 15, 2004 (2004 RFG Revision), by the Governor's Designee.

(i) *Incorporation by reference.*

(A) California Air Resources Board.

(*1*) Title 13, California Code of Regulations, Division 3 (Air Resources Board), Chapter 5 (Standards for Motor Vehicle Fuels), Article 1 (Standards for Gasoline), Subarticle 1 (Gasoline Standards That Became Applicable Before 1996), sections 2253.4, "Lead in Gasoline" (operative August 12, 1991); 2254, "Manganese Additive Content" (operative August 12, 1991); 2257, "Required Additives in Gasoline" (operative July 16, 1999); 2259, "Exemptions for Motor Vehicle Fuels Used in Test Programs" (operative February 15, 1995); Subarticle 2 (Standards for Gasoline Sold Beginning March 1, 1996), sections 2260, "Definitions" (operative May 1, 2003); 2261, "Applicability of Standards; Additional Standards" (operative May 1,

[60] *See* fn. 8, *supra.*

2003); 2262, "The California Reformulated Gasoline Phase 2 and Phase 3 Standards" (operative December 24, 2002); 2262.3, "Compliance With the CaRFG Phase 2 and CaRFG Phase 3 Standards for Sulfur, Benzene, Aromatic Hydrocarbons, Olefins, T50 and T90" (operative August 20, 2001); 2262.4, "Compliance With the CaRFG Phase 2 and CaRFG Phase 3 Standards for Reid Vapor Pressure" (operative December 24, 2002); 2262.5, "Compliance With the Standards for Oxygen Content" (operative December 24, 2002); 2262.6, "Prohibition of MTBE and Oxygenates Other Than Ethanol in California Gasoline Starting December 31, 2003" (operative May 1, 2003); 2262.9, "Requirements Regarding Denatured Ethanol Intended For Use as a Blend Component in California Gasoline" (operative December 24, 2002); 2263, "Sampling Procedures and Test Methods" (operative May 1, 2003); 2263.7, "Multiple Notification Requirements" (operative September 2, 2000); 2264, "Designated Alternative Limits" (operative August 20, 2001); 2264.2, "Election of Applicable Limit for Gasoline Supplied From a Production or Import Facility" (operative September 2, 2000); 2265, "Gasoline Subject to PM Alternative Specifications Based on the California Predictive Model" (operative December 24, 2002); 2266, "Certified Gasoline Formulations Resulting in Equivalent Emission Reductions Based on Motor Vehicle Emissions Testing" (operative August 20, 2001); 2266.5, "Requirements Pertaining to California Reformulated Gasoline Blendstock for Oxygen Blending (CARBOB) and Downstream Blending" (operative May 1, 2003); 2267, "Exemptions for Gasoline Used in Test Programs" (operative September 2, 2000); 2268, "Liability of Persons Who Commit Violations Involving Gasoline That Has Not Yet Been Sold or Supplied to a Motor Vehicle" (operative September 2, 2000); 2269, "Submittal of Compliance Plans" (operative December 24, 2002); 2270, "Testing and Recordkeeping" (operative December 24, 2002); 2271, "Variances" (operative December 24, 2002); 2272, "CaRFG Phase 3 Standards for Qualifying Small Refiners" (operative May 1, 2003); 2273, "Labeling of Equipment Dispensing Gasoline Containing MTBE" (operative May 1, 2003); 2273.5, "Documentation Provided with Delivery of Gasoline to Retail Outlets" (operative May 1, 2003).

(*2*) "California Procedures for Evaluating Alternative Specifications for Phase 2 Reformulated Gasoline Using the California Predictive Model," as last amended December 11, 1998.

(*3*) "California Procedures for Evaluating Alternative Specifications for Phase 3 Reformulated Gasoline Using the California Predictive Model," as last amended April 25, 2001.

(*4*) "California Procedures for Evaluating Alternative Specifications for Gasoline Using Vehicle Emissions Testing," as last amended April 25, 2001.

(*5*) "Procedures for Using the California Model for California Reformulated Gasoline Blendstocks for Oxygenate Blending (CARBOB)," as adopted April 25, 2001.

(ii) Additional material.

(A) California Air Resources Board.

(*1*) Executive Order G–125–320, dated June 15, 2004, adopting the 2004 RFG Revision.

(*2*) The following additional material is available for inspection at EPA Region 9. To inspect this material, please contact EPA Region 9, 75 Hawthorne Street, San Francisco, California, 94105, Chief of Air Planning, (415) 947–8021.

(*i*) Standard Test Method for Determination of Ethanol Content of Denatured Fuel Ethanol by Gas Chromatography, Designation: D 5501–94 (1998); Standard Test Method for Gum Content in Fuels by Jet Evaporation, Designation: D 381–00; Standard Test Method for Water Using Volumetric Karl Fischer Titration, Designation: E 203–96; Standard Test Method for Water in Organic Liquids by Coulometric Karl Fischer Titration, Designation: E 1064–00; Standard Test Methods for Chloride Ion In Water, Designation: D 512–89 (1999); Standard Test Methods for Copper in Water, Designation: D 1688–95; Standard Test Method for Acidity in Volatile Solvents and Chemical Intermediates Used in Paint, Varnish, Lacquer, and Related Products, Designation: D 1613–96 (1999); Standard Test Method for Determination of pHe of Ethanol, Denatured Fuel Ethanol, and Fuel Ethanol (Ed75–Ed85), Designation: D 6423–99.

(*ii*) Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor Fuels and Oils by Ultraviolet Fluorescence, Designation: D 5453–93.

(*iii*) Standard Test Method for Determination of MTBE, ETBE, TAME, DIPE, *tertiary*-Amyl Alcohol and C1 to C4 Alcohols in Gasoline by Gas Chromatography, Designation: D 4815–99; Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure, Designation: D 86–99a; Standard Test Method for Determination of Olefin Content of Gasolines by Supercritical-Fluid Chromatography, Designation: D 6550–00.

(375) The following revisions to the California Reformulated Gasoline Regulations were submitted on February 3, 2009 (2009 RFG Revision), by the Governor's Designee.

(i) *Incorporation by reference.*

(A) California Air Resources Board.

(*1*) Title 13, California Code of Regulations, Division 3 (Air Resources Board), Chapter 5 (Standards for Motor Vehicle Fuels), Article 1 (Standards for Gasoline), Subarticle 2 (Standards for Gasoline Sold Beginning March 1, 1996), sections 2260, "Definitions" (operative August 29, 2008); 2261, "Applicability of Standards; Additional Standards" (operative August 29, 2008); 2262, "The California Reformulated Gasoline Phase 2 and Phase 3 Standards" (operative August 29, 2008); 2262.3, "Compliance With the CaRFG Phase 2 and CaRFG Phase 3 Standards for Sulfur, Benzene, Aromatic Hydrocarbons, Olefins, T50 and T90" (operative August 29, 2008); 2262.4, "Compliance With the CaRFG Phase 2 and CaRFG Phase 3 Standards for Reid Vapor Pressure" (operative August 29, 2008); 2262.5, "Compliance With the Standards for Oxygen Content" (operative August 29, 2008); 2262.6, "Prohibition of MTBE and Oxygenates Other Than Ethanol in California Gasoline Starting December 31, 2003" (operative April 9, 2005); 2262.9, "Requirements Regarding Denatured Ethanol Intended For Use as a Blend Component in California Gasoline" (operative August 29, 2008); 2263, "Sampling Procedures and Test Methods" (operative August 29, 2008); 2263.7, "Multiple Notification Requirements" (operative August 29, 2008); 2264, "Designated Alternative Limits" (operative August 20, 2001); 2264.2, "Election of Applicable Limit for Gasoline Supplied From a Production or Import Facility" (operative August 29, 2008); 2265, "Gasoline Subject to PM Alternative Specifications Based on the California Predictive Model" (operative August 29, 2008); 2265.1, "Offsetting Emissions Associated with Higher Sulfur Levels" (operative August 29, 2008); 2265.5, "Alternative Emission Reduction Plan (AERP)" (operative August 29, 2008); 2266, "Certified Gasoline Formulations Resulting in Equivalent Emission Reductions Based on Motor Vehicle Emissions Testing" (operative August 29, 2008); 2266.5, "Requirements Pertaining to California Reformulated Gasoline Blendstock for Oxygen Blending (CARBOB) and Downstream Blending" (operative August 29, 2008); 2270, "Testing and Recordkeeping" (operative August 29,

2008); 2271, "Variances" (operative August 29, 2008); 2273, "Labeling of Equipment Dispensing Gasoline Containing MTBE" (operative August 29, 2008).

(*2*) "California Procedures for Evaluating Alternative Specifications for Phase 3 Reformulated Gasoline Using the California Predictive Model," as last amended August 7, 2008.

(*3*) "Procedures for Using the California Model for California Reformulated Gasoline Blendstocks for Oxygenate Blending (CARBOB)," as last amended August 7, 2008.

(ii) Additional material.

(A) California Air Resources Board.

(*1*) Executive Order S–09–001, dated February 3, 2009, adopting the 2009 RFG Revision.

(376) The following revisions to the California Diesel Fuel Regulations were submitted on February 3, 2009 (2009 Diesel Fuels Revision), by the Governor's Designee.

(i) *Incorporation by reference.*

(A) California Air Resources Board.

(*1*) Title 13, California Code of Regulations, Division 3 (Air Resources Board), Chapter 1 (Motor Vehicle Pollution Control Devices), Article 1 (General Provisions), sections 1956.8, "Exhaust Emissions Standards and Test Procedures—1985 and Subsequent Model Heavy-Duty Engines and Vehicles" (operative December 31, 2008); 1960.1, "Exhaust Emissions Standards and Test Procedures—1981 through 2006 Model Passenger Cars, Light-Duty and Medium-Duty Vehicles" (operative March 26, 2004); 1961, "Exhaust Emissions Standards and Test Procedures—2004 and Subsequent Model Passenger Cars, Light-Duty and Medium-Duty Vehicles" (operative June 16, 2008); Chapter 5 (Standards for Motor Vehicle Fuels), Article 2 (Standards for Diesel Fuel), sections 2281, "Sulfur Content of Diesel Fuel" (operative August 4, 2005); 2282, "Aromatic Hydrocarbon Content of Diesel Fuel" (operative August 4, 2005); 2284, "Lubricity of Diesel Fuel" (operative August 4, 2005); 2285, "Exemption from Diesel Fuel Requirements for Military-Specification Fuels Used in Qualifying Military Vehicles" (operative August 14, 2004); Chapter 14 (Verification Procedure, Warranty and In-Use Compliance Requirements for In-Use Strategies to Control Emissions from Diesel Engines), section 2701, "Definitions" (operative January 1, 2005).

(*2*) Title 17, California Code of Regulations, Division 3 (Air Resources), Chapter 1 (Air Resources Board), Subchapter 7.5 (Airborne Toxic Control Measures), section 93114, "Airborne Toxic Control Measure To Reduce Particulate Emissions from Diesel-Fueled Engines—Standards for Nonvehicular Diesel Fuel" (operative August 14, 2004).

(ii) Additional material.

(A) California Air Resources Board.

(*1*) Executive Order S–09–001, dated February 3, 2009, adopting the 2009 Diesel Fuels Revision.

* * * * *

[FR Doc. 2010–11005 Filed 5–11–10; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0032; FRL–8824–5]

Fluazinam; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fluazinam in or on bushberry subgroup 13-07B; onion, bulb, subgroup 3-07A; lettuce, head; and lettuce, leaf. This regulation additionally removes several established individual commodities and bushberry subgroup 13B, as they will be superseded by inclusion in bushberry subgroup 13-07B. Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective May 12, 2010. Objections and requests for hearings must be received on or before July 12, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0032. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. 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 in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Laura Nollen, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7390; e-mail address: *nollen.laura@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Electronic Access to Other Related Information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR cite at *http://www.gpoaccess.gov/ecfr*. To access the harmonized test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select "Test Methods and Guidelines."

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those