PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA VA E5 Jonesville, VA (NEW)

Lee County Airport, Jonesville, VA
(Lat. 36°39′15″ N., long. 83°13′04″ W.)

That airspace extending upward from 700 feet above the surface within a 8-mile radius of Lee County Airport.

* * * * *

Issued in Jamaica, New York, on August 3, 2004.

John G. McCartney,

Staff Manager of Eastern Terminal Area Operations.

[FR Doc. 04–18401 Filed 8–10–04; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[OAR–2003–0217; FRL–7800–3]

RIN 2060–AK04

Regulation of Fuel and Fuel Additives: Extension of California Enforcement Exemptions for Reformulated Gasoline to California Phase 3 Gasoline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: We are proposing to exempt refiners, importers, and blenders of gasoline subject to the State of California's Phase 3 reformulated gasoline (CaRFG3) regulations from certain enforcement provisions in the Federal reformulated gasoline (RFG) regulations. We are proposing this action because we believe that gasoline complying with the CaRFG3 regulations will provide emissions benefits equivalent to Federal Phase II RFG and because California's compliance and enforcement program will in practice be sufficiently rigorous to assure that the standards are met. Since the Federal RFG program began in 1995, California refiners, importers and blenders have been continuously exempted from certain enforcement-related requirements such as recordkeeping and reporting, and certain sampling and testing requirements. This proposal would extend those exemptions, which are applicable to California Phase 2 gasoline, to CaRFG3. This proposal also restores the definition of ''California gasoline'' which was erroneously deleted.

DATES: Comments or a request for a public hearing must be received by October 12, 2004.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2003–0217, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/edocket*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-Docket@epa.gov*.
- Fax: (202) 566–1741.
- Mail: OAR–2003–0217, Environmental Protection Agency, Mailcode:6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- Hand Delivery: EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR–2003–0217. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov Web sites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or *see* the **Federal Register** of May 31, 2002 (67 FR 38102).

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, *i.e.*, 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 either electronically in EDOCKET or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Anne Pastorkovich, Attorney/Advisor, Transportation and Regional Programs Division, Office of Transportation and Air Quality (6406J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9623; fax number: (202) 343–2801; e-mail address: *pastorkovich.anne-marie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

Regulated categories and entities potentially affected by this proposed action include:

Category	NAICSs codes [a]	SIC codes [b]	Examples of potentially regulated parties
Industry	324110	2911	Petroleum refiners.
Industry	422710 422720	5171 5172	Gasoline Marketers and Distributors.

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this proposed action. This table lists the types of entities that EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether an entity is regulated by this proposed action, one should carefully examine the RFG provisions at 40 CFR part 80, particularly § 80.81 dealing specifically with California gasoline. If you have questions regarding the applicability of this proposed action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through EDOCKET, regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI). In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

i. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Current Status and Basis for California Enforcement Exemptions

Section 211(k) of the Federal Clean Air Act (the Act) directs the EPA to establish requirements for reformulated gasoline (RFG) to be used in specified ozone nonattainment areas, as well as ''anti-dumping'' requirements for conventional gasoline used in the rest of the country. The areas covered by the Federal RFG program in California are San Joaquin Valley, Los Angeles, San Diego, and Sacramento.[1] The RFG provisions of the Act require EPA to promulgate regulations to reduce the emissions of ozone forming volatile organic compounds (VOCs) and toxic air pollutants from gasoline-fueled motor vehicles. Such regulations must also require that there be no increase in the emission of oxides of nitrogen (NO_X) over baseline levels. Finally, gasoline subject to the RFG requirements must meet certain content standards for oxygen, benzene and heavy metals.

The RFG program was designed to be implemented in two phases. The Phase I program was in effect from January 1, 1995, through December 31, 1999. The Phase II program, which began on January 1, 2000, and is currently in effect, is similar to the Phase I program, but requires even greater reductions in emissions of VOC, toxics and NO_X. The regulations for RFG and conventional gasoline may be found at 40 CFR part 80, subparts D, E, and F.

On September 18, 1992, the California Air Resources Board (CARB) adopted regulations establishing California's state Phase 2 reformulated gasoline program (''California Phase 2 RFG''), which became effective March 1, 1996. These regulations established a comprehensive set of gasoline specifications designed to achieve reductions in emissions of VOCs, NO_X, carbon monoxide (CO), sulfur dioxide, and toxic air pollutants from gasoline-fueled motor vehicles.[2] The California Phase 2 RFG regulations set standards for eight gasoline parameters—sulfur, benzene, olefins, aromatic hydrocarbons, oxygen, Reid vapor pressure (RVP), and distillation temperatures for the 50 percent and 90 percent evaporation points (T–50 and T–90, respectively). These regulations also provide for the production and sale of alternative gasoline formulations, with certification under the CARB program based on a predictive model or on vehicle emission testing.

EPA previously adopted enforcement exemptions for California Phase 2 gasoline under the Federal Phase I RFG program.[3] In doing so, we concluded: (1) That the emission reductions resulting from the California Phase 2 standards would be equal to or greater than the Federal Phase I RFG standards (*i.e.*, the standards that were applicable from January 1, 1995, through December 31, 1999),

(2) That the content standard for benzene under California Phase 2 would be equivalent in practice to the Federal Phase I content standard and that the oxygen content standard of 2.0 weight percent would be achieved in Federal RFG areas, and

(3) That the CARB's compliance and enforcement program was designed to be sufficiently rigorous to ensure that Federal Phase I requirements would be met in practice.

Consequently, while the Federal Phase I RFG standards continued to apply in California, EPA exempted

[1] *See http://www.epa.gov/otaq/rfgmap.jpg* for a map and listing of RFG covered areas and 40 CFR 80.70 for a listing of covered areas by state. A copy of the map has been placed in the docket for this rulemaking.

[2] California's reformulated gasoline regulations, including California Phase 2 and Phase 3, are at Title 13, California Code of Regulations (CCR), section 2250 *et seq.* (May 1, 2003). A copy of these regulations have been placed in the docket.

[3] *See* 59 FR 7758 (February 16, 1994) and 63 FR 34818 (June 26, 1998).

refiners, importers, and blenders of gasoline sold in California from many of the enforcement-related provisions of the Federal Phase I RFG regulations.

The exemptions applied to the gasoline they sold for use in California and included the following provisions in 40 CFR part 80:

Requirement exempted	Citation at 40 CFR 80.xx
Compliance Surveys [4]	80.68
Independent Sampling & Testing	80.65(f)
Designation of Gasoline	80.65(d)
Marking of Conventional Gasoline	80.65(g) and 80.82
Downstream Oxygenate Blending	80.69
Recordkeeping	80.74 and 80.104
Reporting	80.75 and 80.105
Product Transfer Documents	80.77
Parameter Value Reconciliation Requirements	80.65(e)(2)
Reformulated Gasoline and Reformulated Gasoline Blendstock for Oygenate Blending (RBOB) Compliance Requirements	80.65(c)
Annual Compliance Audit Requirements	80.65(h)
Compliance Attest Engagement Requirements	Subpart F

[4] 40 CFR 80.81(e)(2) was amended to include a limited oxygen survey provision to ensure that the 2.0 weight percent standard would be achieved in Federal RFG areas. This is because some California Phase 2 gasoline sold outside of Federal RFG areas might not contain the 2.0 weight percent oxygen content. *See* 63 FR 34818, 34820–34822 (June 26, 1998). Under this NPRM, the oxygen survey provisions would remain appropriately applied to CaRFG3.

California refiners, importers, and blenders were not granted exemption from these Federal enforcement requirements with regard to gasoline delivered for use outside California, because the California Phase 2 standards and the CARB enforcement program do not apply to gasoline exported from California.

The original California enforcement exemptions expired on December 31, 1999 when the Federal Phase II RFG started. The exemptions expired because they were based on a comparison of California Phase 2 gasoline and Federal Phase I RFG. An appropriate equivalency determination comparing California Phase 2 and Federal Phase II gasolines would have been premature in 1994, when the final RFG regulations were issued. However, on September 15, 1999, we published a direct final rule continuing the California enforcement exemptions beyond December 31, 1999.[5] We took this action after comparing California Phase 2 gasoline and Federal Phase II RFG. In brief, we concluded:

(1) That the emissions reductions resulting from the California Phase 2 RFG standards would be equal to or greater than the reductions from the Federal Phase II RFG standards;

(2) That the content standards for benzene under California Phase 2 would be equivalent in practice to the Federal Phase II content standard and that the oxygen content standard of 2.0 weight percent would be achieved in Federal RFG areas, and

(3) That the CARB's compliance and enforcement program was designed to be sufficiently rigorous to ensure that Federal Phase II requirements would be met in practice.

III. Description of Today's Proposed Action

A. California's Phase 3 Gasoline Rulemaking Activities

On August 3, 2000, California first promulgated the new California Phase 3 RFG (''CaRFG3'') regulations, which included a prohibition on the use of methyl tertiary-butyl ether (MTBE) by December 31, 2002. On March 21, 2001, we received a written request from the California Air Resources Board (CARB) requesting extension of the California enforcement exemptions of 40 CFR 80.81 to CaRFG3. In that letter, CARB explains that its CaRFG3 regulations were adopted in response to Governor Gray Davis's issuance of Executive Order D–5–99, directing the phase-out of methyl tertiary-butyl ether (MTBE) as an additive in California gasoline by December 31, 2002.

Since March 21, 2001, CARB has completed a series of rulemakings that amended their CaRFG3 regulations. Many of these amendments were made necessary by a postponement of the MTBE phase-out and to accommodate the use of ethanol. The MTBE phase-out was delayed until December 31, 2003 by Governor Gray Davis's issuance of a second Executive Order D–52–02.[6] The CaRFG3 regulations and all standards discussed in this notice represent the May 1, 2003, version of the California Reformulated Gasoline Regulations, title 13, California Code of Regulations, section 2250 *et seq.*

B. EPA's Analysis and Conclusions Regarding California's Phase 3 Gasoline Regulations

In order to determine whether to apply the Federal enforcement exemptions of 40 CFR 80.81 should be applied to CaRFG3, we considered:

(1) Whether the emissions reductions resulting from CaRFG3 would be equal to or greater than the reductions from Federal Phase II RFG standards;

(2) Whether the content standard for benzene under CaRFG3 would be equivalent in practice to the Federal Phase II content standard and whether the oxygen content standard of 2.0 weight percent would be met in Federal RFG areas; and

(3) Whether CARB's compliance and enforcement program is designed to be sufficiently rigorous to ensure that the Federal Phase II requirements would be met in practice.

Considering these factors is appropriate and consistent with the analyses we used when we previously granted enforcement exemptions to refiners, importers, and blenders of California Phase 2 gasoline under both the Federal Phase I and Phase II RFG programs.[7]

To determine whether CaRFG3 emissions reductions that are equivalent to or greater than Federal Phase II RFG, we have evaluated the CaRFG3 standards and the Federal Phase II complex model standards and considered whether possible CaRFG3 formulations to the Federal Phase II RFG

[5] 64 FR 49992 (September 15, 1999).

[6] A copy of the Executive Order has been placed in the docket.

[7] *See* 59 FR 7813 (February 16, 1994) as amended at 59 FR 36965 (July 20, 1994), 59 FR 39289 (August 2, 1994), 59 FR 60715 (November 28, 1994), 63 FR 34825 (June 26, 1998), 64 FR 49997 (September 15, 1999), and 66 FR 17263 (March 29, 2001).

emissions reduction standards. Compliance with performance standards under the Federal RFG program is determined by using the Phase II Complex Model. The Complex Model predicts VOC, toxics and NO_X emissions reductions in gasoline relative to the emissions of 1990 baseline gasoline.[8] These reduction percentages are compared to RFG performance standards. The Federal performance standards applicable to VOC-controlled RFG designated for VOC control region 1 apply to California areas covered by the Federal RFG program.[9]

California's Phase 2 RFG regulations established specifications for eight gasoline parameters: sulfur, benzene, olefins, aromatic hydrocarbons, oxygen, RVP, T50 and T90. These parameters are expressed as flat limits and, for some parameters, as averaging limits and caps. The CaRFG3 regulations revised certain of these specifications and incorporated an updated version of the California predictive model.[10] Refiners may produce complying California gasoline using a ''recipe'' that meets these parameter specifications. Alternative specifications for complying gasoline can be established by using the California predictive model to demonstrate that emissions are equivalent to those of a gasoline meeting the established specifications. Six of the parameters are also input parameters for the EPA Complex Model. The remaining two, T50 and T90, are closely related to E200 and E300, the remaining two Complex Model inputs.[11]

If CaRFG3 provides emission benefits equivalent to Federal Phase II RFG, then a gasoline formulation meeting the CaRFG3 flat limit specifications should provide emission reductions, as calculated by the complex model, which meet Federal Phase II performance standards. The following table compares the emissions performance of the CaRFG3 ''recipe,'' evaluated using the Federal Complex Model, to the Federal Phase II RFG performance standards:[12]

TABLE 1.—COMPARISON OF CARFG3 FLAT LIMIT RECIPE COMPLEX MODEL PERFORMANCE WITH FEDERAL PHASE II RFG STANDARDS

	VOC (% reduction)	Toxics (% reduction)	NO_X (% reduction)
CaRFG3 Flat Limits with ethanol	27.7	30.0	14.5
CaRFG3 Flat Limits with MTBE	27.7	32.2	14.5
Federal per gallon standards	≥27.5	≥20.0	≥5.5
Federal averaged standards	≥29.0	≥21.5	≥6.8

Table 1 shows two sets of results; one where the oxygenate was assumed to be MTBE and the other where the oxygenate was assumed to be ethanol. The specific oxygenate affects the toxics performance estimate. Two sets of Federal standards are shown, the per gallon standards and the averaged standards. (These numerically more stringent averaged standards are applicable if a refiner chooses to comply on average, rather than on a per gallon basis.) The emissions performance of the flat limit recipe gasoline is better than the Federal RFG per gallon standards for VOC, toxics and NO_X reductions, and better than the Federal RFG averaged standards for toxics and NO_X reduction. Thus, gasoline produced in compliance with the CaRFG3 flat limits (which are somewhat analogous to Federal per-gallon standards) would achieve performance limits at least as stringent as the Federal Phase II RFG per-gallon standards for VOCs and at least as stringent as the averaged standards for toxics and NO_X. Thus, CaRFG3 would meet Federal standards if every gallon were produced according to this recipe.

However, we anticipate that most refiners will use the CaRFG3 predictive model to certify alternative specifications with emissions equivalent to or better than the flat limit recipe. While there are similarities between the California Phase 3 predictive model and the Federal Phase II Complex Model, there are also substantial differences. Consequently, two recipes found to have equal emissions with the California predictive model may not have equal emissions when evaluated by the Federal Complex Model. In other words, a finding that the Complex Model emissions performance of the flat limit recipe is equal to or better than the Federal standards does not guarantee that the Complex Model emissions performance of all gasoline blends that may be produced in compliance with CaRFG3 will meet or surpass the Federal standards.

For purposes of determining whether or not CaRFG3 produced and certified under the predictive model would be equivalent to Federal Phase II RFG, we considered several reasonably likely ''real world'' CaRFG3 formulations. These formulations were developed in connection with California's recent request for a waiver from the Federal oxygen content requirement for reformulated gasoline.[13] The CaRFG3 formulations depicted in Tables 2 and 3 do not represent each and every possible gasoline formulation under the California's regulations, but we believe that they provide a representative sample of that universe of gasoline formulations that are likely to be produced under the CaRFG3 program. This analysis is discussed in more detail in the following paragraphs.

In April of 1999, California applied for a waiver of the Federal oxygen content requirement for reformulated gasoline. In order to complete an evaluation of the technical basis for this waiver request, we determined that

[8] ''Baseline gasoline'' refers to a general set of properties representative of a refiner's fuel in 1990. The purpose of establishing a baseline is to prevent any degradation in the quality of gasoline in areas in which reformulated gasoline is not required. For a discussion of baselines, please refer to the RFG and anti-dumping final rule, 59 FR 7798 (February 16, 1994).

[9] *See* 40 CFR 80.41 and 80.71.

[10] The California predictive model, like the Complex Model, is used to predict emissions performance of gasoline.

[11] There is a strong correlation between T50 (the 50% distillation temperature) and E200 (the percent distilled at 200F). Likewise, there is a strong correlation between T90 (the 90% distillation temperature) and E300 (the percent distilled at 300F). For the analysis in table 1, E200 and E300 were estimated from the flat limit T50 and T90 specifications using conversions found in EPA's complex model spreadsheet.

[12] Oxygen was assumed to be 2.0 wt%, the midpoint of the 1.8–2.2 wt% specification and RVP was 6.90, the RVP used with the evaporative compliance option in the predictive model.

[13] The California waiver analysis considered the effect of changes in gasoline composition on the entire on-road and off-road gasoline-power fleet. The analysis for this proposed rule considers only Complex Model performance, which considers a portion of the on-road gasoline-powered fleet.

additional refinery modeling was needed to forecast the likely composition of CaRFG3, after California's phase-out of methyl-tertiary-butyl-ether (MTBE), with and without an oxygen waiver.[14] Consequently, EPA commissioned MathPro to conduct this modeling, which estimated the composition of ethanol-oxygenated and non-oxygenated CaRFG3 under various scenarios.[15] These scenarios varied in terms of the continued or reduced use of MTBE outside of California, whether or not refiners avoid the patent held by Unocal on certain reformulated blends, and whether ethanol is used at 2.0 or 2.7 weight percent oxygen. Although these modeling results were intended for use in the waiver evaluation, they are also helpful when considering the appropriateness of extending the existing enforcement exemptions to CaRFG3. EPA believes that these modeling results are likely to be the most accurate and comprehensive forecasts of the likely properties of the CaRFG3 that will be sold in Federal RFG areas in California. For the purpose of this proposal, we have considered both oxygenated and non-oxygenated CaRFG3 blends.

Table 2, below, shows that oxygenated CaRFG3 produced under each of the scenarios that EPA evaluated meets Federal RFG performance standards. All of these fuels had better performance than the Federal RFG per gallon standards. With one exception (underlined in Table 2), these fuels also met or surpassed the Federal RFG averaged standards. The one exception is a fuel that was estimated to provide a VOC reduction of 28.9%. Since the Federal per gallon standard is ≥27.5% and the averaged standard is ≥29.0%, this fuel would meet the Federal per gallon but not the averaged standard. However, we believe for purposes of today's analysis, that the Federal per gallon standard is a more appropriate reference point.

MathPro's modeling assumed that essentially all CaRFG3 is certified with the flat limit variant of the Predictive Model. Therefore, the formulations which they forecast have California predictive model emissions performance equivalent to, or better than, the flat limit recipe, but do not necessarily meet California predictive model averaged limit requirements. As previously noted, California's flat limit option requires refiners to meet parameter standards on an every-gallon, rather than averaged basis. The California flat limits are analogous to the Federal RFG per-gallon standards. In both cases, refiners elect to meet less stringent standards on an every-gallon basis, rather than more stringent standards, on average. Consequently, it is appropriate to expect the complex model performance of these CaRFG3 formulations to meet the Federal Phase II per-gallon performance standards, but not necessarily to meet the Federal Phase II averaged standards.

TABLE 2.—COMPLEX MODEL PERFORMANCE OF OXYGENATED CARFG3 USING MATHPRO GASOLINE PROPERTY ESTIMATES

Ethanol (wt%) oxygen	Sulfur (ppm)	RVP (psi)	E200 (%)	E300 (%)	Aromatics (vol%)	Olefins (vol%)	Benzene (vol%)	VOC (%)	Toxics (%)	NO_X (%)
2.0	15	6.66	47.20	87.60	24.10	4.40	0.64	30.2	32.9	14.8
2.0	10	6.74	46.40	88.70	23.30	3.90	0.57	29.6	34.1	15.4
2.7	10	6.85	46.90	88.10	23.20	3.80	0.70	29.0	32.8	15.4
2.7	9	6.84	46.60	88.00	23.30	3.80	0.68	29.0	32.9	15.4
2.0	17	6.60	46.80	88.30	26.50	3.40	0.62	30.1	32.0	14.3
2.0	17	6.60	45.20	90.60	19.10	4.60	0.77	30.8	33.8	16.4
2.0	13	6.62	46.20	87.70	24.30	3.70	0.60	30.1	33.2	15.0
2.0	12	6.60	46.10	88.20	28.60	2.90	0.51	29.6	32.1	14.2
2.7	10	6.76	46.20	88.60	25.70	2.80	0.66	29.1	32.1	14.9
2.7	12	6.60	44.90	87.70	22.40	2.80	0.71	30.2	32.9	15.7
2.7	8	6.73	45.40	89.00	26.30	1.90	0.63	*28.9*	32.1	15.0
2.7	10	6.69	45.40	88.30	25.30	2.80	0.65	29.4	32.3	15.1

Table 3 below, shows that non-oxygenated CaRFG3 produced under each of the scenarios that EPA evaluated meets Federal RFG performance standards. These fuels are not currently permissible, because they do not contain the equivalent of 2.0 weight % oxygen. All of the fuels shown in Table 3, which EPA believes to be reasonably representative of the fuel formulations that refiners would produce in California without an oxygen content requirement are predicted to perform better than the Federal RFG per gallon and averaged standards.

TABLE 3.—COMPLEX MODEL PERFORMANCE OF NON-OXYGENATED CARFG3 USING MATHPRO GASOLINE PROPERTY ESTIMATES

Ethanol (wt%) oxygen	Sulfur (ppm)	RVP (psi)	E200 (%)	E300 (%)	Aromatics (vol%)	Olefins (vol%)	Benzene (vol%)	VOC (%)	Toxics (%)	NO_X (%)
0.0	8	6.60	47.7	87.4	23.0	5.9	0.57	30.7	32.5	15.1
0.0	7	6.60	48.7	87.6	28.6	4.7	0.51	30.0	30.4	14.0
0.0	8	6.60	48.1	87.2	26.9	2.4	0.46	29.7	32.0	14.3
0.0	10	6.60	47.7	88.0	24.3	3.9	0.49	30.3	32.9	14.8

[14] One of the reasons for this determination was that earlier modeling was done before the CaRFG3 predictive model was finalized. This may have affected the estimates of CaRFG3 properties developed from these earlier studies. EPA's Technical Support Document for the waiver decision ''Analysis of California's Reformulated Gasoline Oxygen Content Requirement for California Covered Areas'' discusses this in greater depth. A copy of this document has been placed in the docket.

[15] *See* ''Analysis of the Production of California Phase 3 Reformulated Gasoline With and Without an Oxygen Waiver'', MathPro, Inc. (January 19, 2001). A copy of this document has been placed in the docket.

TABLE 3.—COMPLEX MODEL PERFORMANCE OF NON-OXYGENATED CARFG3 USING MATHPRO GASOLINE PROPERTY ESTIMATES—Continued

Ethanol (wt%) oxygen	Sulfur (ppm)	RVP (psi)	E200 (%)	E300 (%)	Aromatics (vol%)	Olefins (vol%)	Benzene (vol%)	VOC (%)	Toxics (%)	NO_X (%)
0.0	12	6.60	49.0	85.8	24.8	6.0	0.52	30.5	32.2	14.3
0.0	10	6.60	49.2	87.4	28.6	4.1	0.53	30.0	30.2	13.8
0.0	12	6.60	47.6	86.8	21.2	6.3	0.52	31.0	33.8	15.3
0.0	9	6.60	47.9	87.6	25.7	3.9	0.49	30.1	32.2	14.5

Based upon a comparison of the CaRFG3 flat limit ''recipe'' and Federal Phase II Complex model standards, as well as a consideration of possible California fuel formulations certified using the California Phase 3 predictive model, we have concluded that the NO_X, VOC and toxics emissions reductions resulting from the CaRFG3 standards would be equal to or greater than the Federal Phase II RFG standards.

The content standard for benzene for CaRFG3 is equivalent to the Federal Phase II standards. The California flat limit benzene standard is 0.80 volume percent and the averaged standard is 0.70 volume percent with a 1.10 volume percent cap. By comparison, the Federal per gallon benzene standard is 1.00 volume percent and the averaged standard is 0.95 volume percent with a 1.30 volume percent cap.

The enforcement exemptions do not excuse California refiners from meeting the 2.0 weight % oxygen requirement or any other Federal standard in RFG covered areas. The limited oxygen compliance surveys in § 80.81 would continue to apply to CaRFG3, since they are designed to ensure that gasoline in Federal RFG areas meets the Federal oxygen content standards. EPA retains its authority to sample and test California gasoline to make sure that it meets all applicable Federal standards, including the oxygen content standard.

We have also considered the design and implementation of CARB's enforcement program, which includes enforcement at refineries, import facilities, terminals, and service stations. CARB's enforcement program is generally outlined in its regulations and includes requirements that refiners submit annual compliance plans,[16] which outline how they will meet CaRFG3 requirements, and that refiners and importers conduct testing and maintain records of testing performed on batches of gasoline.[17] CARB staff summarized information on its actual enforcement activities in fiscal years 1999–2000 and 2000–2001, indicating that 6.6% and 6.5% of gasoline sold in California was inspected, during each respective period. In 1999–2000, the violation rate was 1.9% (based on volumes sampled) and 0.5% (based on the number of samples). In 2000–2001, the violation rate was 0.16% (based on volumes sampled) and 1.06% (based on the number of samples). We believe that, considering the presence of adequate enforcement provisions in its regulations and CARB's actual enforcement activities, that the CARB enforcement program is sufficiently stringent to ensure that the California standards will be met. For all these reasons, we believe it is appropriate to apply the enforcement exemptions at 40 CFR 80.81 to refiners, importers, and blenders of CaRFG3.

C. Definition of California Gasoline

This proposed rule also restores the definition of ''California gasoline,'' which was previously included in § 80.81, but which was erroneously removed from the Code of Federal Regulations. Today's proposed rule would restore this definition, which describes the gasoline to which the enforcement exemptions may apply.

IV. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, 58 FR 51735 (October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This proposed rule does not impose any new information collection burden. Today's proposed rule would extend enforcement exemptions to refiners of CaRFG3 and would reduce burdens associated with overlapping Federal and State requirements, including recordkeeping and reporting requirements. However, the Office of Management and Budget (OMB), under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* has previously approved the information collection requirements contained in the final reformulated gasoline (RFG) and anti-dumping rulemaking and gasoline sulfur control rulemaking, and has assigned OMB control number 2060–0277, EPA ICR number 1591.14. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and

[16] Title 13, CCR section 2269.

[17] Title 13, CCR section 2270.

requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business that has not more than 1,500 employees (13 CFR 121.201); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action would not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

We have therefore concluded that today's proposed rule will relieve regulatory burden for all small entities. Today's proposed rule would extend enforcement exemptions to refiners of CaRFG3 and would reduce burdens associated with overlapping Federal and State requirements, including recordkeeping and reporting requirements. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local or tribal governments or the private sector. The proposed rule would impose no enforceable duty on any State, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's proposed rule would extend enforcement exemptions to refiners of CaRFG3 and would reduce burdens associated with overlapping Federal and State requirements, including recordkeeping and reporting requirements. Thus, Executive Order 13132 does not apply to this proposed rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This proposed rule would apply to refiners, importers and blenders of

CaRFG3 and does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not an economically ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it does not have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. Today's rule does not affect technical standards and raises no issues under the NTTAA.

J. Statutory Provisions and Legal Authority

Statutory authority for today's proposed rule comes from sections 211(c), 211(i) and 211(k) of the CAA (42 U.S.C. 7545(c) and (k)). Section 211(c) and 211(i) allows EPA to regulate fuels that contribute to air pollution which endangers public health or welfare, or which impairs emission control equipment. Section 211(k) prescribes requirements for RFG and conventional gasoline and requires EPA to promulgate regulations establishing these requirements. Additional support for the fuels controls in today's proposed rule comes from sections 114(a) and 301(a) of the CAA.

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Imports, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: August 5, 2004.

Michael O. Leavitt,

Administrator.

For the reasons set forth in the preamble, part 80 of title 40 chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7545 and 7601(a).

2. Section 80.81 is amended as follows:

a. Revising paragraph (a).

b. Revising paragraph (c) introductory text.

c. Revising paragraph (e)(2) introductory text.

d. Revising paragraphs (h)(1) introductory text, (h)(1)(ii)(C) and (h)(2)(i).

§ 80.81 Enforcement exemptions for California gasoline.

(a)(1) The requirements of subparts D, E, F, and J of this part are modified in accordance with the provisions contained in this section in the case of California gasoline.

(2) For purposes of this section, ''California gasoline'' means any gasoline that is sold, intended for sale, or made available for sale as a motor vehicle fuel in the State of California and that:

(i) Is manufactured within the State of California;

(ii) Is imported in the State of California from outside the United States; or

(iii) Is imported into the State of California from inside the United States and that is manufactured at a refinery that does not produce reformulated gasoline for sale in any covered area outside the State of California.

* * * * *

(c) Any refiner, importer, or oxygenate blender of California gasoline that is manufactured or imported subsequent to March 1, 1996 and that meets the requirements of the California Phase 2 or Phase 3 reformulated gasoline regulations, as set forth in Title 13, California Code of Regulations, section 2250 *et seq.* (May 1, 2003), is with regard to such gasoline, exempt from the following requirements (in addition to the requirements specified in paragraph (b) of this section:

* * * * *

(e) * * *

(2) Such exemption provisions shall not apply to any refiner, importer, or oxygenate blender of California gasoline with regard to any gasoline formulation that it produces or imports and that is certified under Title 13, California Code of Regulations, section 2250 *et seq.* (May 1, 2003), unless:

* * * * *

(h)(1) For the purposes of the batch sampling and analysis requirements contained in § 80.65(e)(1) and § 80.101(i)(1)(i)(A), any refiner, importer, or oxygenate blender of California gasoline may use a sampling and/or analysis methodology prescribed in Title 13, California Code of Regulations, section 2250 *et seq.* (May 1, 2003), in lieu of any applicable methodology specified in § 80.46, with regard to:

* * * * *

(ii) * * *

(C) The refiner or importer must correlate the results from the applicable sampling and/or analysis methodology prescribed in Title 13, California Code of Regulations, section 2250 *et seq.* (May 1, 2003) with the method specified in § 80.46, and such correlation must be adequately demonstrated to EPA upon request.

(2) * * *

(i) The samples are properly collected under the terms of a current and valid

protocol agreement between the refiner and the California Air Resources Board with regard to sampling at the off site tankage and consistent with the requirements prescribed in Title 13, California Code of Regulations, section 2250 *et seq.* (May 1, 2003); and

* * * * *

[FR Doc. 04–18380 Filed 8–10–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[CA119–FFA; FRL–7800–4]

Finding of Failure To Attain; Imperial Valley Planning Area; California; Particulate Matter of 10 Microns or Less

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is today proposing to find under the Clean Air Act (CAA) that the Imperial Valley Planning Area (Imperial Valley) failed to attain the National Ambient Air Quality Standards (NAAQS) for particulate matter of 10 microns or less (PM–10) by the serious area statutory deadline of December 31, 2001.

Separately in today's **Federal Register**, EPA is publishing its final action in response to a recent Ninth Circuit Court order compelling EPA to reclassify the Imperial Valley PM–10 nonattainment area from moderate to serious because the area failed to meet the moderate area attainment date of December 31, 1994.

The proposed finding of failure to attain the serious area attainment date of December 31, 2001, is based on monitored air quality data for the PM–10 NAAQS from January 1999 through December 2001. If EPA takes final action finding that Imperial Valley failed to attain, the State of California must submit within one year of publication of the final action, a plan that provides for attainment of the PM–10 NAAQS and that achieves at least 5 percent annual reductions in PM–10 or PM–10 precursor emissions as required by CAA section 189(d).

DATES: Comments on this proposed action must be received by September 10, 2004.

ADDRESSES: Send comments to David Wampler, Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 or e-mail to *wampler.david@epa.gov,* or submit comments at *http://www.regulations.gov.*

You can inspect and copy the docket for this action at our Region IX office during normal business hours (*see* address below). Due to increased security, we suggest that you call at least 24 hours prior to visiting the Regional Office so that we can make arrangements to have someone meet you. The **Federal Register** notice is also available as an electronic file on EPA's Region 9 Web page at *http://www.epa.gov/region09/air.*

Planning Office (AIR–2), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: David Wampler, U.S. Environmental Protection Agency, Region 9, Air Division, Planning Office (AIR–2), 75 Hawthorne Street, San Francisco, CA 94105; (415) 972–3975; *wampler.david@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, the words ''we,'' ''us,'' or ''our'' mean U.S. EPA.

I. Background

Imperial County is located in the southeastern corner of California. It has borders with Mexico to the south, Arizona to the east, and San Diego County to the west. Most of Imperial County falls within the Imperial Valley Planning Area (Imperial Valley). 40 CFR part 81. The local jurisdiction that is responsible for air pollution control is the Imperial County Air Pollution Control District (ICAPCD).

Upon enactment of the Clean Air Act Amendments of 1990, Imperial Valley was classified as a moderate PM–10 nonattainment area. The CAA requires that moderate areas attain the PM–10 NAAQS by December 31, 1994. CAA section 188(c)(1). Moderate areas failing to attain the NAAQS by the prescribed attainment date must be reclassified as serious under CAA section 188(b)(2). However, CAA section 179(B)(d) provides that any area that establishes to the satisfaction of EPA that it would have attained the PM–10 NAAQS by the applicable attainment date but for emissions emanating from outside the United States, is not subject to the provisions of CAA section 182(b)(2), *i.e.,* reclassification to serious nonattainment.

In July 2001, ICAPCD and the California Air Resources Board (CARB) submitted evidence that the Imperial Valley would have attained the PM–10 NAAQS by the 1994 attainment date, but for transport from Mexico. On October 19, 2001, EPA made a final finding that Imperial Valley would have attained the PM–10 NAAQS by December 1994 but for PM–10 emissions emanating from Mexico. 66 FR 53106.

The Sierra Club petitioned for review of our October 2001 final action in the U.S. Court of Appeals for the Ninth Circuit. On October 9, 2003, the Court issued its opinion. *Sierra Club* v. *United States Environmental Protection Agency,* et al., 352 F.3d 1186. The Court rejected EPA's factual determination with respect to two days, January 19 and 25, 1993, on which PM–10 exceedances of the 24-Hour PM–10 NAAQS occurred, finding that ''[b]ased on the data and the reports in the record, there simply is no possibility that Mexican transport could have caused the observed PM–10 exceedances * * *.'' The effect of this conclusion is that Imperial Valley had exceedances of the PM–10 NAAQS that preclude a finding that the area would have attained the NAAQS by 1994. The Court, concluding that further administrative proceedings with respect to the 1994 exceedances would serve no useful purpose, instructed EPA to reclassify Imperial Valley as a serious PM–10 nonattainment area.

On December 18, 2003, the Ninth Circuit denied a petition for rehearing by ICAPCD, an intervener in the case, slightly revised its October 9, 2003, opinion, and granted ICAPCD's motion to stay the mandate until March 17, 2004, to permit ICAPCD to file a petition for a writ of certiorari in the U.S. Supreme Court. Imperial County did so on March 17, 2004. On June 21, 2004, the Supreme Court declined to hear the case. *Imperial County Air Pollution Control District* v. *Sierra Club,* et al., 72 U.S.L.W. 3757. Thereafter the stay was lifted and the mandate issued.

Accordingly, elsewhere in today's **Federal Register**, EPA is publishing its final action in response to the Ninth Circuit's October 9, 2003, opinion, finding that Imperial Valley failed to attain the PM–10 NAAQS by the moderate area statutory deadline of December 31, 1994, and reclassifying the area from moderate to serious. All serious PM–10 nonattainment areas were required to attain the standards by no later than December 31, 2001, unless granted a one-time extension of up to five years. CAA section 188(c)(2) and (e).