

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2009-0475; FRL-8932-2]

#### Revisions to the California State Implementation Plan, San Joaquin Valley Air Pollution Control District

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing a limited approval and limited disapproval of revisions to the San Joaquin Valley Air Pollution Control District (SJVAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from steam-enhanced crude oil production well vents, aerospace coating operations, and polyester resin operations. We are proposing action on local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Any comments must arrive by August 17, 2009.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2009-0475, by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions.
2. *E-mail:* [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

*Instructions:* All comments will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through <http://www.regulations.gov> or e-mail. <http://www.regulations.gov> is an “anonymous access” system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

*Docket:* 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.

**FOR FURTHER INFORMATION CONTACT:** Sona Chilingaryan, EPA Region IX, (415) 972-3368, [chilingaryan.sona@epa.gov](mailto:chilingaryan.sona@epa.gov).

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

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#### I. The State’s Submittal

##### A. What Rules Did the State Submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVAPCD .....	4401	Steam-Enhanced Crude Oil Production Wells .....	12/14/06	5/8/07
SJVAPCD .....	4605	Aerospace Assembly and Component Coating Operations .....	9/20/07	3/7/08
SJVAPCD .....	4684	Polyester Resin Operations .....	9/20/07	3/7/08

On July 23, 2007, EPA determined that the submittal for Rule 4401 met the completeness criteria in 40 CFR Part 51, Appendix V, which must be met before formal EPA review. On April 17, 2008, EPA determined that the submittal for Rules 4605 and 4684 met the completeness criteria.

##### B. Are There Other Versions of These Rules?

We approved an earlier version of Rule 4401 into the SIP on June 22, 1998 (63 FR 33854). The SJVAPCD adopted revisions to the SIP-approved version on December 14, 2006. We approved an earlier version of Rule 4605 into the SIP on November 14, 2003 (68 FR 64537).

The SJVAPCD adopted revisions to the SIP-approved version on September 20, 2007. We approved an earlier version of Rule 4684 into the SIP on June 26, 2002 (67 FR 42999). The SJVAPCD adopted revisions to the SIP-approved version on September 20, 2007.

### *C. What Is the Purpose of the Submitted Rule Revisions?*

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(l) of the CAA requires States to submit regulations that control VOC emissions. The revisions to Rule 4401 narrow exemptions, add leak inspection and repair requirements, enhance monitoring and recordkeeping requirements and improve rule clarity. The revisions to Rule 4605 and Rule 4684 improve rule clarity and strengthen the solvent cleaning provisions. EPA's technical support documents (TSD) have more information about these rules.

## **II. EPA's Evaluation and Action**

### *A. How Is EPA Evaluating the Rules?*

Generally, SIP rules must be enforceable (*see* section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source in nonattainment areas (*see* section 182(a)(2) and (b)(2)), and must not relax existing requirements (*see* sections 110(l) and 193). The SJVAPCD regulates an extreme (for the 1-hour NAAQS) and serious (for the 8-hour NAAQS) ozone nonattainment area (*see* 40 CFR part 81), so Rules 4401, 4605, and 4684 must fulfill RACT.

Guidance and policy documents that we use to evaluate enforceability and RACT requirements consistently include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).

3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).

4. "Surface Coating Operations at Aerospace Manufacturing & Rework Operations," EPA-453/R-97-004, December 1997.

5. "Control Techniques Guidelines for Fiberglass Boat Manufacturing Materials," EPA-453/R-08-004, September 2008.

6. "State Implementation Plans, General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498, Apr. 16, 1992.

7. "Preamble, Final Rule to Implement the 8-hour Ozone National

Ambient Air Quality Standard," 70 FR 71612, Nov. 29, 2005.

8. Letter from William T. Harnett to Regional Air Division Directors, "RACT Qs & As—Reasonable Available Control Technology (RACT) Questions and Answers," May 18, 2006.

### *B. Do the Rules Meet the Evaluation Criteria?*

Rule 4401 improves the SIP by establishing more stringent work practice requirements and by enhancing monitoring and recordkeeping provisions. Rules 4605 and 4684 improve the SIP by clarifying monitoring and recordkeeping provisions and establishing more stringent emission limits for solvents. The rules are largely consistent with the relevant policy and guidance regarding enforceability, RACT and SIP relaxations. Rule provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSD.

### *C. What Are the Rule Deficiencies?*

These provisions do not satisfy the requirements of section 110 and part D of the Act and prevent full approval of the SIP revision.

1. Rule 4401 allows sources to request a waiver from an annual source test requirement if approval is granted by the District, CARB, and EPA. However, Rule 4401 states that a request for a waiver is deemed approved by EPA if we do not object within 45 days of receipt. The SJVAPCD cannot obligate EPA's decision making in this manner. Section 6.2.4 effectively provides executive officer discretion in conflict with CAA sections 110(a) and (i) and long-standing national policy.

2. Rule 4605 does not include seventeen of the specialty VOC coating limits provided in the 1997 CTG for coating operations at aerospace facilities and has limits for two other specialty coating categories that are higher than the applicable limits listed in the CTG. SJVAPCD has not demonstrated that the CTG limits are infeasible in San Joaquin Valley or otherwise adequately demonstrated that Rule 4605 implements RACT.

3. Rule 4684 contains limits that are not as stringent as requirements in several other California districts. Fiberglass boat manufacturing facilities subject to this rule are covered by EPA's 2008 CTG for Fiberglass Boat Manufacturing Materials. As such, the District is required to adopt and submit a SIP revision that satisfies RACT for these sources by September 2009. In addition, Rule 4684 appears also to apply to certain other sources that are

not covered by the CTG but that emit major amounts of VOCs. These sources are also subject to RACT because they are major sources of ozone precursors. The District has not demonstrated that the more stringent monomer content requirements and capture and control device requirements in other California rules are infeasible in San Joaquin Valley or otherwise adequately demonstrated that Rule 4684 meets RACT.

### *D. EPA Recommendations To Further Improve the Rules*

The TSDs describe additional rule revisions that we recommended for the next time the local agency modifies the rule.

### *E. Proposed Action and Public Comment*

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is proposing a limited approval of the submitted rules to improve the SIP. If finalized, this action would incorporate the submitted rules into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of the rules under section 110(k)(3). If this disapproval is finalized, sanctions will be imposed under section 179 of the Act unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months of the disapproval. These sanctions would be imposed according to 40 CFR 52.31. A final disapproval would also trigger the two year clock for the Federal implementation plan (FIP) requirement under section 110(c). Note that the submitted rules have been adopted by the SJVAPCD, and EPA's final limited disapproval would not prevent the local agency from enforcing it.

We will accept comments from the public on the proposed limited approval and limited disapproval for the next 30 days.

## **III. Statutory and Executive Order Reviews**

### *A. Executive Order 12866, Regulatory Planning and Review*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

### *B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements 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 not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

### D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (“Unfunded Mandates Act”), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or Tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or Tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under State or local law, and imposes no new requirements.

Accordingly, no additional costs to State, local, or Tribal governments, or to the private sector, result from this action.

### E. Executive Order 13132, Federalism

*Federalism* (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (*Federalism*) and 12875 (*Enhancing the Intergovernmental Partnership*). Executive Order 13132 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” is 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.” Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will 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, because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

### F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 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.” This proposed rule does not have Tribal implications, as specified in Executive Order 13175. 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. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed rule from Tribal officials.

### G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it approves a State rule implementing a Federal standard.

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

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

### I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use “voluntary consensus standards” (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today’s action does not require the public to perform activities conducive to the use of VCS.

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping

requirements, Volatile organic compounds.

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

Dated: June 30, 2009.

**Jane Diamond,**

*Acting Deputy Regional Administrator,  
Region IX.*

[FR Doc. E9-17045 Filed 7-16-09; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### 49 CFR Part 192

[Docket No. PHMSA-2009-0203]

#### Pipeline Safety: Notice of Technical Pipeline Safety Advisory Committee Meetings

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

**ACTION:** Notice of technical pipeline safety advisory committee meetings.

**SUMMARY:** This notice announces a public meeting of the Technical Pipeline Safety Standards Committee (TPSSC) and of the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC).

The PHMSA staff will brief the committee members on pipeline regulatory actions and policy concerns. The purpose of the meeting is to keep the members updated on current safety concerns, proposed rules, and future proposals.

**DATES:** The meeting will be on Thursday, August 6, 2009, from 1 p.m. to 5 p.m. EST. The TPSSC and the THLPSSC will take part in the meeting by telephone conference call. The public may attend the meeting at the U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, Room E27-302. Please contact the individual listed under “**FOR FURTHER INFORMATION CONTACT**” by July 27, 2009.

**FOR FURTHER INFORMATION CONTACT:** For information about the meetings, contact Cheryl Whetsel by phone at (202) 366-4431 or by e-mail at [cheryl.whetsel@dot.gov](mailto:cheryl.whetsel@dot.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Meeting Details

Members of the public may attend and make a statement during the advisory committee meetings. For a better chance to speak at the meetings, please contact the individual listed

under “**FOR FURTHER INFORMATION CONTACT**” by July 27, 2009.

#### Privacy Act Statement

Anyone may search the electronic form of comments received in response to any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). DOT’s complete Privacy Act Statement was published in the *Federal Register* on April 11, 2000 (65 FR 19477).

#### Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to seek special assistance at the meetings, please contact Cheryl Whetsel at (202) 366-4431 by July 27, 2009.

#### II. Committee Background

These two statutorily-mandated committees advise PHMSA on proposed safety standards, risks assessments, and safety policies for natural gas pipelines and for hazardous liquid pipelines. Both committees fall under the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. 1) and both are mandated by the pipeline safety law (49 U.S.C. Chap. 601). Each committee consists of 15 members—with membership evenly divided among the Federal and State government, the regulated industry, and the public. The committees advise PHMSA on technical feasibility, practicability, and cost-effectiveness of each proposed pipeline safety standard.

#### III. Preliminary Agenda

The PHMSA will discuss its pipeline safety regulatory program, and the following proposed rules or topics of interest. The committee will not be voting on any proposals at this meeting.

1. One-Rule and Changes to Incident and Accident Forms.
2. Periodic Updates of Regulatory References to Technical Standards.
3. Low Stress II—Survey Results.
4. Installing Excess Flow Valves (EFV)—(Application for Apartments and Commercial Properties)
5. Community Technical Assistance Grant Program.
6. Pipelines and Informed Planning Alliance (PIPA).

Issued in Washington, DC, on July 9, 2009.

**Jeffrey D. Wiese,**

*Associate Administrator for Pipeline Safety.*

[FR Doc. E9-16965 Filed 7-16-09; 8:45 am]

**BILLING CODE 4910-60-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 665

[Docket No. 090218199-91091-01]

RIN 0648-AX38

#### Fisheries in the Western Pacific; Pelagic Fisheries; Vessel Identification Requirements

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes to revise identification requirements for U.S. vessels that fish for pelagic management unit species on the high seas of the central and western Pacific. The new measures would require vessels to display their International Telecommunication Union Radio Call Sign (IRCS). If an IRCS has not been assigned to the vessel, the vessel would be required to display its official number, preceded by the characters “USA ”. The intent of this proposed rule is to make existing Federal vessel identification requirements conform with other regulations being proposed to implement international requirements.

**DATES:** Comments on the proposed rule must be received by August 3, 2009.

**ADDRESSES:** Comments on this proposed rule, identified by 0648-AX38, may be sent to either of the following addresses:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal [www.regulations.gov](http://www.regulations.gov); or
- Mail: William L. Robinson, Regional Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814-4700.

Instructions: All comments received are a part of the public record and will generally be posted to [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender may be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.