

except for claims over which the Board has original jurisdiction.

(c) *Remand for a Statement of the Case.* In cases before the Board in which a claimant has timely filed a Notice of Disagreement with a determination of the agency of original jurisdiction on a claim, but the record does not reflect that the agency of original jurisdiction subsequently granted the claim in full or furnished the claimant with a Statement of the Case, the Board shall remand the claim to the agency of original jurisdiction with instructions to prepare and issue a Statement of the Case in accordance with the provisions of subpart B of this part. A remand for a Statement of the Case is not required if the claimant, consistent with the withdrawal requirements of § 20.204 of this chapter, withdraws the Notice of Disagreement.

(d) *Exceptions.* A remand or referral to the agency of original jurisdiction is not necessary for any of the following purposes:

(1) Clarifying a procedural matter before the Board, including the appellant's choice of representative before the Board, the issues on appeal, or requests for a hearing before the Board;

(2) Considering law not already considered by the agency of original jurisdiction, including, but not limited to, statutes, regulations, and court decisions;

(3) Reviewing additional evidence received by the Board, if, pursuant to § 20.1304(c) of this chapter, the appellant or the appellant's representative waives the right to initial consideration by the agency of original jurisdiction, or if the Board determines that the benefit or benefits to which the evidence relates may be fully allowed on appeal;

(4) Requesting an opinion under § 20.901 of this chapter;

(5) Supplementing the record with a recognized medical treatise; or

(6) Considering a matter over which the Board has original jurisdiction.

(Authority: 38 U.S.C. 7102, 7103(c), 7104(a), 7105).

**PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE**

3. The authority citation for part 20 continues to read as follows:

**Authority:** 38 U.S.C. 501(a) and as noted in specific sections.

**Subpart J—Action by the Board**

4. Amend § 20.903 by:

- a. Revising the section heading.
- b. Revising paragraph (b).

The revisions read as follows:

**§ 20.903 Rule 903. Notification of evidence to be considered by the Board and opportunity for response.**

\* \* \* \* \*

(b) *If the Board supplements the record with a recognized medical treatise.* (1) *General.* If, pursuant to § 19.9(d)(5) of this chapter, the Board supplements the record with a recognized medical treatise, the Board will notify the appellant and his or her representative, if any, that the Board will consider such recognized medical treatise in the adjudication of the appeal. The notice from the Board will contain a copy of the relevant portions of the recognized medical treatise. The appellant will be given 60 days after the date of the notice described in this section to file a response, which may include the submission of relevant evidence or argument. The date the Board gives the notice will be presumed to be the same as the date of the notice letter for purposes of determining whether a response was timely filed.

(2) *Exception.* The notice described in paragraph (b)(1) of this section is not required if the Board uses a recognized medical treatise or medical dictionary for the limited purpose of defining a medical term and that definition is not material to the Board's disposition of the appeal.

5. Revise paragraph (b)(2) of § 20.1304 to read as follows:

**§ 20.1304 Rule 1304. Request for change in representation, request for personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans' Appeals.**

\* \* \* \* \*

(b) \* \* \*

(2) *Exception.* The motion described in paragraph (b)(1) of this section is not required to submit evidence in response to a notice described in § 20.903 of this chapter.

\* \* \* \* \*

[FR Doc. E9-30094 Filed 12-17-09; 8:45 am]

**BILLING CODE P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R09-OAR-2009-0859, FRL-9093-7]**

**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 to approve revisions to the San Joaquin Valley Air Pollution Control District (SJVAPCD) portion of the California State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are proposing to approve local rules that address reduction of animal matter and volatile organic compound (VOC) emissions from crude oil production, cutback asphalt, and petroleum solvent dry cleaning.

**DATES:** Any comments must arrive by January 19, 2010.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2009-0859, 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:**

Joanne Wells, EPA Region IX, (415) 947-4118, wells.joanne@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, amended, or revised by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES PROPOSED FOR FULL APPROVAL

District	Rule No.	Rule title	Amended	Submitted
SJVUAPCD .....	4104	Reduction of Animal Matter .....	12/17/92	08/24/07
SJVUAPCD .....	4404	Heavy Oil Test Station—Kern County .....	12/17/92	08/24/07
SJVUAPCD .....	4641	Cutback, Slow Cure, and Emulsified Asphalt, Paving and Maintenance Operations .....	12/17/92	08/24/07
SJVUAPCD .....	4672	Petroleum Solvent Dry Cleaning Operations .....	12/17/92	08/24/07

On September 17, 2007, the submittal of August 24, 2007 was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

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

Some SIP versions of submitted SJVAPCD rules are old rules from the eight counties that now comprise SJVAPCD; other SIP versions are SJVAPCD rules that have been renumbered. These SIP-approved rules are described below.

Precursor SIP rule for submitted SJVAPCD Rule 4104:

- Fresno County Rule 414, Reduction of Animal Matter (approved on September 22, 1972, 37 FR 19812).
- Kern County Rule 415, Reduction of Animal Matter (approved on September 22, 1972, 37 FR 19812).
- Kings County Rule 415, Reduction of Animal Matter (approved on September 22, 1972, 37 FR 19812).
- Madera County Rule 421, Reduction of Animal Matter (approved on November 18, 1983, 48 FR 52450).
- Merced County Rule 414, Reduction of Animal Matter (approved on September 22, 1972, 37 FR 19812).
- San Joaquin County Rule 414, Reduction of Animal Matter (approved on August 22, 1977, 42 FR 42219).
- Stanislaus County Rule 414, Reduction of Animal Matter (approved on September 22, 1972, 37 FR 19812).
- Tulare County Rule 415, Reduction of Animal Matter (approved on September 22, 1972, 37 FR 19812).

Precursor SIP rule for submitted SJVAPCD Rule 4641:

- SJVAPCD Rule 463.1, Cutback, Slow Cure, and Emulsified Asphalt, Paving and Maintenance Operations (amended on September 19, 1991,

approved on June 24, 1992, 57 FR 28089).

Precursor SIP rule for submitted SJVAPCD Rule 4672:

- SJVAPCD Rule 467.2, Petroleum Solvent Dry Cleaning Operations (adopted on April 11, 1991, approved on April 24, 1992, 57 FR 15026).

There is no SIP rule for submitted SJVAPCD Rule 4404.

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

Section 110(a) of the CAA requires states to submit regulations that control volatile organic compounds, oxides of nitrogen, particulate matter, and other air pollutants which harm human health and the environment. These rules were developed as part of the local agency’s program to control these pollutants.

The purpose of new SJVAPCD Rule 4404 is as follows:

- **4404:** The new rule requires reducing uncontrolled VOC emissions from a heavy oil test station by 99%.
- The purposes of amendments to Rules 4104, 4641, and 4672 are as follows:
- **4104:** The requirement for reducing air contaminants during the reduction of animal matter by setting a minimum exposure time of 0.3 seconds at 1200 degrees Fahrenheit is unchanged. The format is improved, the rule is renumbered, and the rule applicability is added.
  - **4641:** The rule requires reducing VOC emissions by prohibiting the application and manufacturing of certain types of asphalt used for paving and maintenance operations. The format is improved, the rule is renumbered, and the definition of VOC is deleted.
  - **4672:** The rule requires reducing VOC emissions from petroleum solvent dry cleaning operations through implementation of various good

operating practices and with the use of emission control equipment. The format is improved, the rule is renumbered, and the rule purpose is added.

The TSD has 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 CAA), 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 must not relax existing requirements (see sections 110(l) and 193). The SJVAPCD regulates an ozone nonattainment area (see 40 CFR part 81) and must fulfill the requirements of RACT.

Guidance and policy documents that we used to help evaluate rules 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. *Requirements for Preparation, Adoption, and Submittal of Implementation Plans*, U.S. EPA, 40 CFR part 51.

3. *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations*, EPA (May 25, 1988). [The Bluebook]

4. Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, 59 FR 41998 (August 16, 1994).

5. *Guidance Document for Correcting Common VOC & Other Rule Deficiencies*, EPA Region 9 (August 21, 2001). [The Little Bluebook]

6. *Control of Volatile Organic Compound Emissions from Large Petroleum Dry Cleaners*, U.S. EPA-450/3-82-009 (September 1982).

7. *Control of Volatile Organic Emissions from Use of Cutback Asphalt*, U.S. EPA-450/2-77-037 (December 1977).

8. *2007 Ozone Plan*, San Joaquin Valley Air Pollution Control District (April 30, 2007). <http://www.arb.ca.gov/planning/sip/2007sip/sjv8hr/sjvozone.htm>.

9. *RACT Demonstration for Ozone SIP*, San Joaquin Valley Air Pollution Control District (April 16, 2009). [http://www.valleyair.org/Workshops/public\\_workshops\\_idx.htm#8hrOzoneRactSIP%2004-16-10](http://www.valleyair.org/Workshops/public_workshops_idx.htm#8hrOzoneRactSIP%2004-16-10).

10. *RACT Analysis for Rules 4104, 4402, 4404, 4453, 4454, 4625, 4641, and 4672*, San Joaquin Valley Air Pollution Control District (June 12, 2008).

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

We believe that SJVAPCD Rules 4104, 4404, 4641, and 4672 are consistent with the relevant policy and guidance regarding enforceability, RACT and SIP relaxations.

The TSD has more information on our evaluation.

#### C. EPA Recommendations To Further Improve the Rules

The TSD describes additional rule revisions that we recommend for the next time the local agency modifies the rules.

#### D. Public Comment and Final Action

Because EPA believes the submitted rules fulfill all relevant requirements, we are proposing to fully approve them as described in section 110(k)(3) of the CAA. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate these rules into the federally enforceable SIP.

### III. 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.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: December 2, 2009.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

[FR Doc. E9-30169 Filed 12-17-09; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 595

[Docket No. NHTSA-2009-0065]

RIN 2127-AK22

#### Make Inoperative Exemptions; Head Restraints

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Response to petition; Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice of proposed rulemaking is being issued in response to a petition from Bruno Independent Living Aids to expand and update existing exemptions to the "make inoperative" prohibition with respect to the Federal motor vehicle safety standard on head restraints. These exemptions are included in a regulation that provides exemptions for the "make inoperative" provision for, among other things, vehicle modifications to accommodate people with disabilities. NHTSA is proposing two substantive changes to the regulation. The first is to expand the exemption from the minimum height requirements listed in the head restraint standard to include the right front passenger position in addition to the driver position. The second is to update the exemption to include relevant provisions of a new version of the head restraint standard. Additionally, this document proposes to update an existing reference in the exemption to reflect the current numbering in the Code of Federal Regulations. Finally, we are denying other requests to expand the exemption to certain other requirements of the head restraint standard.

**DATES:** You should submit our comments early enough to ensure that Docket Management receives them not later than February 16, 2010.

**ADDRESSES:** You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.