

December 17, 1992, SJVUAPCD adopted Rule 4101 to consolidate and supercede these individual county VE and related rules.

EPA has received two prior versions of Rule 4101. SJVUAPCD adopted the first version on December 17, 1992, and CARB submitted the rule to EPA on September 28, 1994. SJVUAPCD adopted the second version on June 21, 2001, and CARB submitted the rule to EPA on October 30, 2001. However, EPA has not acted on these versions of Rule 4101. While we can act on only the most recently submitted version listed in Table 1, we have reviewed material provided with these previous submittals.

C. What Is the Purpose of the Submitted Rule Revision?

Visible emission rules with opacity standards are basic components of air quality regulatory programs. Rule 4101 prohibits air pollution that results in greater than 20% opacity. The TSD associated with our prior proposal has more information about Rule 4101 and the county-level rules it replaces.

II. Our Previous Proposed Action, Public Comments, & EPA Responses

On June 10, 2002 (67 FR 39659), EPA proposed to approve Rule 4101 based on an initial assessment that the Rule improved the SIP and was consistent with relevant CAA requirements. For the reasons discussed below, EPA does not intend to take final action on this proposal.

During the comment period for this proposed approval, we received comments from Brent Newell, Center on Race, Poverty, and the Environment, on behalf of El Comité para el Bienestar de Earlimart and the Association of Irrigated Residents. We have summarized these comments and provided our responses below.

Comment #1: EPA did not determine whether Rule 4101 implements Best Available Control Measures (BACM), as required by CAA section 189(b) for serious PM-10 nonattainment areas such as SJVUAPCD. The proposed full approval determines that the rule provides Reasonably Available Control Measures (RACM), but neither mentions BACM, nor determines that a 20% opacity threshold fulfills BACM.

Response #1: EPA concurs that BACM under CAA section 189(b) as well as RACM under CAA section 189(a) must be implemented in the San Joaquin Valley PM-10 nonattainment area. EPA has approved general 20% opacity rules in other serious PM-10 nonattainment areas, and does not believe a more stringent general limit is required in

Rule 4101 to meet the Act's BACM requirement. See, for example, South Coast Air Quality Management District Rule 401, Great Basin Air Pollution Control District Rule 400, Clark County Air Quality Management Board Rule 26 and Washoe County District Health Department Air Quality Management Division Rule 040.005.

Comment #2: Section 4.4 of Rule 4101 exempts agricultural sources from the 20% opacity requirement. On-field farming operations accounted for 111 tons per day of PM-10 emissions in 2000, 23% of the air basin's total inventory. By exempting such significant emissions, Rule 4101 meets neither RACM, nor BACM requirements.

Response #2: Twenty percent opacity is reasonably available for most or all common industrial sources, as shown by the many Districts in California and many states across the country (e.g., Michigan (see Michigan Administrative Code Rule 336.1301), New Mexico (see New Mexico Administrative Code at Title 20-2-61), Texas (see Texas Administrative Code at Title 30, Part 1-111.111), and Washington (see Washington Administrative Code at Title 173-400-040) that apply a general 20% opacity requirement. It may be possible to demonstrate that higher, lower, or different forms of opacity standards are appropriate RACM and BACM for a specific source. Nonetheless, we concur with the comment that it is inappropriate to exempt broadly the entire agricultural industry from opacity requirements without an analysis of what types of sources are affected and why a 20% opacity requirement is inappropriate. For example, internal combustion engines used by public utilities and excavation industries in San Joaquin are subject to the 20% opacity requirement, while internal combustion engines used for agricultural irrigation are not.

Comment #3: Section 4.11 exempts sources subject to or specifically exempted by Regulation VIII from Rule 4101. The comment references concerns provided previously about agricultural exemptions in Regulation VIII.

Response #3: We believe Rule 4101 would be improved by providing an itemized list of exempt activities in the rule instead of the current general reference to Regulation VIII. However, we do not object to the overall concept of applying BACM-level opacity requirements to some sources via Rule 4101, and other sources via Regulation VIII. A similar structure exists for SJVUAPCD Rule 4661, which establishes general requirements for organic solvents, but exempts those

sources regulated by industry-specific rules.

III. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must meet appropriate requirements for nonattainment areas (see section 189), and must not relax existing requirements (see sections 110(l) and 193). The SJVUAPCD regulates a serious PM-10 nonattainment area (see 40 CFR part 81), so Rule 4101 must meet both CAA RACM and BACM requirements.

Guidance and policy documents that we used to define these requirements 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; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice," (Blue Book), notice of availability published in the May 25, 1988, **Federal Register**.

3. "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," at 57 FR 13540-13541, April 16, 1992.

4. "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," at 59 FR 42008-42015, August 16, 1994.

B. Does the Rule Meet the Evaluation Criteria?

Consolidation of county-specific requirements into Rule 4101 clarifies VE and related requirements within the San Joaquin nonattainment area. However, while the Rule is consistent, in part, with the relevant federal policy and requirements, there are rule provisions which do not meet the evaluation criteria.

C. What Are the Rule's Deficiencies?

Certain provisions of Rule 4101 conflict with section 110 and part D of the Act and prevent full approval of the SIP revision. These deficiencies are discussed below.

1. Section 4.4 is inconsistent with the CAA section 189 RACM and BACM requirements. Its general exemption for agricultural sources should be either deleted altogether, or significantly narrowed in scope and justified.

2. Section 4.10 references California Health and Safety Code (HSC) section 41701. This reference has not been submitted to EPA for incorporation into the applicable SIP, thus it undermines