

Review agenda.  
Committee considers consensus on proposed rule language and plain language.

Rewrites, as necessary:

- Geographic Boundaries
- Section 1130
- Adequate Yearly Progress
- Preambles—Tribally Controlled

School Act and Adequate Yearly Progress

3:30 pm

Work Group meetings.

#### October 15

8:30 am

Roll Call and set agenda for day.

Work Group meetings, if necessary.

Committee considers consensus on proposed rule language and plain language.

Rewrites, as necessary:

- Funding
- Preambles

#### October 16

8:30 am

Roll Call and set agenda for day.

Public comment (30 minutes).

Committee considers consensus on proposed rule language and plain language.

Rewrites, as necessary.

#### October 17

8:30 am

Roll Call and set agenda for day.

Public comment (30 minutes).

Committee considers consensus on proposed rule language and plain language.

#### October 18

8:30 am

Roll Call and set agenda for day.

Committee considers consensus on proposed rule language and plain language.

Rewrites, as necessary.

Clarification of next steps.

Evaluations.

Closing remarks.

Brief celebration.

5:30 pm

Adjourn.

Dated: September 24, 2003.

**Woodrow W. Hopper, Jr.,**

*Acting Principal Deputy Assistant Secretary—Indian Affairs.*

[FR Doc. 03-24569 Filed 9-24-03; 3:13 pm]

**BILLING CODE 4310-6W-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[CA255-0413; FRL-7564-7]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to disapprove revisions to the San Joaquin Valley Unified Air Pollution Control District's (SJVUAPCD) portion of the California State Implementation Plan (SIP). These revisions concern visible emissions (VE) from many different sources of air pollution. We are proposing to disapprove SJVUAPCD Rule 4101, a local rule regulating VE, 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. Previously, EPA proposed to approve Rule 4101.

**DATES:** Any comments must arrive by October 29, 2003.

**ADDRESSES:** Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901 or e-mail to [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).

You can inspect copies of the submitted SIP revisions and the

administrative record for EPA's previous proposal at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814; and, San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

A copy of the rule may also be available via the Internet at <http://www.arb.ca.gov/drdb/drdbtxt.htm>. Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

#### FOR FURTHER INFORMATION CONTACT:

Jerald S. Wamsley, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX, (415) 744-1226, or via e-mail at [wamsley.jerry@epa.gov](mailto:wamsley.jerry@epa.gov).

#### SUPPLEMENTARY INFORMATION:

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

#### Table of Contents.

- I. The State's Submittal.
  - A. What rule did the State submit?
  - B. Are there other versions of this rule?
  - C. What is the purpose of the submitted rule revision?
- II. Our Prior Proposed Action, Public Comments, and EPA Response.
- III. EPA's Evaluation and Action.
  - A. How is EPA evaluating the rule?
  - B. Does the rule meet the evaluation criteria?
  - C. What are the rule's deficiencies?
  - D. EPA recommendations to further improve the rule.
  - E. Proposed action and public comment.
- IV. Statutory and Executive Order Reviews.

#### I. The State's Submittal

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

Table 1 lists the rule addressed by this proposal with the dates that it was adopted by the SJVUAPCD and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVUAPCD .....	4101	Visible Emissions .....	11/15/01	12/06/01

On January 22, 2002, EPA found this rule submittal met the completeness criteria in 40 CFR part 51 appendix V.

#### B. Are There Other Versions of the Rule?

Prior to the SJVUAPCD's formation, eight county-wide air pollution control

districts (APCDs) in San Joaquin, Stanislaus, Merced, Madera, Fresno, Kings, Tulare, and Kern counties regulated air pollution in California's San Joaquin Valley. In almost all cases, EPA approved and incorporated into the Federal SIP versions of these individual

county rules: Rule 401—Visible Emission, Rule 402—Exemptions, and Rule 403—Wet Plumes. Please see the Technical Support Document (TSD) for our previous rulemaking proposal on Rule 4101 for a table of these local rule adoptions and SIP approval dates. On

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

the clarity and enforceability of the rule and is inconsistent with CAA section 110(a), (i) and (l). SJVUAPCD should do one of three things, remove the exemption, submit the referenced HSC section, or insert specific text from the HSC into Rule 4101. Note that EPA has not reviewed the substance of the HSC.

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

We have no recommended rule revisions that do not affect EPA's current action.

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

For the reasons described in section III above and as authorized in section 110(k)(3) of the Act, we are proposing to disapprove SJVUAPCD Rule 4101. If finalized, this action would retain the existing individual county rules within the SIP. Unless EPA approves subsequent SIP revisions correcting the rule's deficiencies within 18 months, sanctions would be imposed according to CAA section 179 and 40 CFR 52.30–32. Our final disapproval would also trigger the FIP requirement under section 110(c).

We will accept comments from the public on this proposed disapproval for the next 30 days.

### **IV. 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 rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

#### *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 proposed rule will not have a significant impact on a substantial number of small entities because SIP disapprovals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements.

Therefore, because the Federal SIP disapproval 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 disapproval 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 disapprove 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 proposed 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 disapproves 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*

*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.

This proposed rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

*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, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: September 8, 2003.

**Wayne Nastri,**

*Regional Administrator, Region IX.*

[FR Doc. 03–24558 Filed 9–26–03; 8:45 am]

**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[AZ–082–0065; FRL–7564–8]**

**Approval and Promulgation of Implementation Plans; Arizona—Maricopa County Ozone, PM–10 and CO Nonattainment Areas; Approval of Revisions to Maricopa County Area Cleaner Burning Gasoline Program**

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** We propose to approve revisions to the Arizona Cleaner Burning Gasoline (CBG) program currently approved in the State implementation plan (SIP). Specifically, we propose to approve revisions that, among other changes, replace Arizona’s interim CBG program with a permanent program, amend the wintertime CBG program to limit the types of gasoline that may be supplied, and remove the minimum oxygen content requirement for summertime gasoline.

**DATES:** Written comments on this proposal must be submitted to EPA at the address below by October 29, 2003.

**ADDRESSES:** Comments on this proposal should be mailed or e-mailed to: Wienke Tax, Office of Air Planning (AIR–2), EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901. Telephone (520) 622–1622, or [tax.wienke@epa.gov](mailto:tax.wienke@epa.gov). Comments may also be submitted via <http://www.regulations.gov>. We prefer to receive comments electronically if possible.

A copy of this document, the EPA technical support document (TSD),<sup>1</sup> and other material relevant to this proposed action are available for public inspection at EPA’s Region 9 office during normal business hours. Due to increased security, please call 24 hours ahead of your visit so that we can arrange to have someone meet you.

Environmental Protection Agency, Region 9, Air Division, Air Planning Office (AIR–2), 75 Hawthorne Street, San Francisco, CA 94105–3901.

<sup>1</sup> See “Technical Support Document, Notice of Proposed Rulemaking on Arizona State Implementation Plan, Arizona Cleaner Burning Gasoline SIP Revisions”, August 2003.

A copy of the docket is also available for inspection at the address listed below:

Arizona Department of Environmental Quality Library, 1110 West Washington Street, First Floor, Phoenix, Arizona 85007, (602) 771–4335.

**Electronic Availability**

This document and the TSD are also available as electronic files on EPA’s Region 9 Web Page at <http://www.epa.gov/region09/air>.

**FOR FURTHER INFORMATION CONTACT:**

Wienke Tax, Office of Air Planning, (AIR–2), EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901. (520) 622–1622, e-mail: [tax.wienke@epa.gov](mailto:tax.wienke@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document, “we”, “us” and “our” refer to U.S. EPA.

**Table of Contents**

- I. Summary of Today’s Proposal
- II. Background to Today’s Proposal
  - A. Air Quality in the Maricopa County Area
  - B. What Is “Cleaner Burning Gasoline”?
  - C. Description of Arizona’s Changes to the CBG Program
- III. CAA Requirements for SIP Approval of State Fuel Measures
- IV. The CBG Program’s Compliance with CAA SIP Approval Requirements
  - A. General SIP Requirements
  - B. Section 110(l): Interference with Attainment or Reasonable Further Progress
  - C. Findings under Section 211(c)(4)
- V. Summary Statement About Proposed Approval
- VI. Statutory and Executive Order Review

**I. Summary of Today’s Proposal**

We propose to approve revisions to the Arizona CBG program that the Arizona Department of Environmental Quality (ADEQ) and the State legislature have adopted since EPA approval of the interim CBG program in 1998. ADEQ has submitted these changes to EPA for approval into the SIP in four separate SIP submittals: SIP Revision, Arizona Cleaner Burning Gasoline Permanent Rules—Maricopa County Ozone Nonattainment Area, February 1999 (“CBG Permanent Rules”), State Implementation Plan Revision for the Cleaner Burning Gasoline Program in the Maricopa County Ozone Nonattainment Area, March 2001 (“Summertime Minimum Oxygen Content Removal”), Arizona Cleaner Burning Gasoline Rule to Revise the State Implementation Plan for the Maricopa County Carbon Monoxide, Ozone, and PM10 Nonattainment Areas, August 2001 (“CBG Wintertime Rules”),