

the rule is revised to require that any seller of real property assure that each wood burning heater is EPA Phase II certified or rendered permanently inoperable. Appropriate documentation must be provided by the seller to the buyer and the APCO. Third, the rule is revised to (a) prohibit the installation of a wood burning fireplace in a new residential development with a density greater than two dwelling units per acre, (b) to prohibit the installation of more than one wood burning fireplace or wood burning heater per dwelling unit in any new residential development with a density equal to or less than two dwelling units per acre, and (c) to prohibit the installation of more than two EPA Phase II certified wood burning heaters per acre in new residential development with a density equal to or greater than three dwelling units per acre.

In addition, SJVUAPCD has performed a BACM demonstration for residential wood combustion as part of the *San Joaquin Valley Plan to Attain Federal Standards for Particulate Matter 10 Microns and Smaller* (2003 PM-10 Plan), which was adopted locally on June 19, 2003, and submitted by CARB to EPA by letter dated August 19, 2003. In appendix G of the 2003 PM-10 Plan, SJVUAPCD evaluated the list of potential BACM measures contained in EPA's 1992 national policy document for residential wood combustion and also considered measures that have been implemented in other parts of the country to determine what provisions in the previous version of Rule 4901 needed to be revised to comply with the BACM requirement. We have determined that this demonstration provides adequate support for our conclusion that the rule, as revised, complies with the BACM requirement for residential wood combustion in San Joaquin Valley and thereby corrects the deficiencies identified in our 2002 final rulemaking on the previous version of Rule 4901.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by October 30, 2003, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not

take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on December 1, 2003. This will incorporate SJVUAPCD Rule 4901 into the federally-enforceable SIP superceding the version of Rule 4901 currently part of the applicable SIP and will terminate all sanction and FIP clocks associated with our previous action on this rule.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, 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 by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action 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. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. 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.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 1, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)