

as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. section 553(b)(3)). However, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date, and EPA will consider any comments received in determining whether to reverse such action.

We believe that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has corrected the deficiencies that started the sanctions clocks. Therefore, it is not in the public interest to initially impose sanctions or to keep applied sanctions in place when the State has most likely done all it can to correct the deficiencies that triggered the sanctions clocks. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiencies prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to stay and/or defer sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA, because the purpose of this notice is to relieve a restriction. See 5 U.S.C. 553(d)(1).

### III. Statutory and Executive Order Reviews

This action stays and/or defers federal sanctions and imposes no additional requirements.

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.

This action 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.

The administrator certifies that this action 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.*).

This rule 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 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 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 rule 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.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply to this rule because it imposes no standards.

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. 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 to Congress and the Comptroller General. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). EPA has made such a good cause finding, including the reasons therefor, and established an effective date of September 30, 2003. 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 rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, 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 purpose of judicial review nor does it extend the time within which 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)).

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental regulations, Particulate matter, Reporting and recordkeeping requirements.

Dated: September 18, 2003.

**Deborah Jordan,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 03-24771 Filed 9-29-03; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[CA 290-0419a; FRL-7563-6]

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

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). The revision concerns the emission of particulate matter (PM-10) from wood burning fireplaces and wood burning heaters. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** This rule is effective on December 1, 2003 without further notice, unless EPA receives adverse comments by October 30, 2003. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

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

submit comments at <http://www.regulations.gov>.

You can inspect a copy of the submitted rule revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see a copy of the submitted rule revisions and TSD at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

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:** Al Petersen, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX, (415) 947-4118, [petersen.alfred@epa.gov](mailto:petersen.alfred@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 Rule Did the State Submit?

Table 1 lists the rule we are approving with the date that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

Local agency	Rule #	Rule title	Amended	Submitted
SJVUAPCD .....	4901	Wood Burning Fireplaces and Wood Burning Heaters .....	07/17/03	08/19/03

On September 11, 2003, this submittal 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 This Rule?

We approved SJVUAPCD Rule 4901, originally adopted on July 15, 1993, into the SIP on February 7, 2002 (67 FR 5725).

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

PM-10 harms human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control PM-10 emissions.

The purpose of revisions to Rule 4901 is to correct the deficiencies cited in the limited approval/limited disapproval of February 7, 2002.

In our 2002 rulemaking, we concluded that the version of Rule 4901 under our review at that time did not fulfill the requirement under section 189(b) of the CAA that applies to serious PM-10 nonattainment areas to implement best available control measures (BACM), including Best Available Control Technology (BACT), with respect to significant sources and source categories, such as residential wood combustion. In our 2002 rulemaking, we referred SJVUAPCD to our reference document, *Technical Information Document for Residential Wood Combustion Best Available Control Measures*, EPA-450/2-92-002 (September 1992), for our national policy on determining BACM for

residential wood combustion and for a list of potential BACM measures that should be implemented unless the district demonstrates that they are not achievable given local conditions.

In our 2002 rulemaking, we also indicated that, since the list of measures in our 1992 reference document was then over nine years old, SJVUAPCD should implement all those measures that are achievable as well as any other measures achievable in San Joaquin that have been developed in other serious PM-10 nonattainment areas. Finally, although we did not intend to identify the only measures necessary to fulfill BACM, we noted three items from the national policy that seemed likely to be achievable: (1) Requirements for mandatory episodic curtailment; (2) requirements for upgrading wood stoves and fireplaces to meet EPA-certified phase II standards upon property sale or transfer; and (3) requirements for limiting the number of wood stoves and fireplaces per acre in new residential development and requirements for EPA-certified phase II standards on those being installed.

## II. EPA's Evaluation and Action

### A. How Is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (*see* section 110(a) of the CAA), must require BACM, including BACT, for significant source categories or major sources in serious PM-10 nonattainment areas (*see* section 189(b)), and must not relax existing requirements (*see* sections 110(l) and 193). SJVUAPCD is a serious PM-10

nonattainment area and must fulfill the requirements of BACM/BACT.

The following guidance documents were used for reference:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans*, U.S. EPA, 40 CFR part 51.
- *PM-10 Guideline Document*, EPA-452/R-93-008.
- *General Preamble Appendix C3—Available Residential Wood Combustion Control Measures*, 57 FR 18072 (April 28, 1992).
- *Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990*, 59 FR 41998, 42011 (August 16, 1994).
- *Technical Information Document for Residential Wood Combustion Best Available Control Measures*, EPA-450/2-92-002 (September 1992).

### B. Does The Rule Meet the Evaluation Criteria?

We believe that Rule 4901 is consistent with the relevant policy and guidance regarding enforceability and SIP relaxations, and fulfills the BACM/BACT requirement for this source category. The revised rule now contains the three specific types of requirements that we identified as likely to be achievable in our February 2002 final rule. Specifically, the rule is revised to require mandatory episodic curtailment for wood burning fireplaces and wood burning heaters when the Air Quality Index, as described in 40 CFR 58, exceeds 150. The Air Pollution Control Officer is required to notify the public of the mandatory curtailment. Second,

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).)

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

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: September 18, 2003.

**Deborah Jordon,**

*Acting Regional Administrator, Region IX.*

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—[AMENDED]**

■ 1. The authority citation for Part 52 continues to read as follows:

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

**Subpart F—California**

■ 2. Section 52.220 is amended by adding paragraph (c)(317) to read as follows:

**§ 52.220 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(317) Amended regulation for the following APCD was submitted on August 19, 2003, by the Governor's designee.

(i) Incorporation by reference.

(A) San Joaquin Valley Unified Air Pollution Control District.

(1) Rule 4901, adopted on July 15, 1993 and amended on July 17, 2003.

\* \* \* \* \*

[FR Doc. 03-24772 Filed 9-29-03; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 180**

[OPP-2003-0311; FRL-7327-6]

**Vinclozolin; Time-Limited Pesticide Tolerances**

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

**ACTION:** Final rule.

**SUMMARY:** This regulation extends time-limited tolerances for combined residues of vinclozolin, 3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione and its metabolites containing the 3,5-dichloroaniline moiety in or on succulent beans at 2.0 parts per million (ppm); canola at 1.0 ppm; eggs, milk, and the meat, fat and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.05 ppm; and in the meat, fat, and meat byproducts of

poultry at 0.1 ppm. BASF Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). The tolerance for succulent beans will expire on September 30, 2005 and the canola, eggs, milk, meat and meat-by-product tolerances will expire on November 30, 2008.

**DATES:** This regulation is effective September 30, 2003. Objections and requests for hearings, identified by docket ID number OPP-2003-0311, must be received on or before December 1, 2003.

**ADDRESSES:** Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Mary L. Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-9354; e-mail address: [waller.mary@epa.gov](mailto:waller.mary@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. General Information****A. Does this Action Apply to Me?**

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, pesticide manufacturer or formulator. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturer (NAICS 311)
- Pesticide manufacturer (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

**B. How Can I Get Copies of this Document and Other Related Information?**

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number

OPP-2003-0311. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available at [http://www.access.gpo.gov/nara/cfr/cfrhtml\\_00/Title\\_40/40cfr180\\_00.html](http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html), a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at <http://www.epa.gov/opptsfrs/home/guidelin.htm>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

**II. Background and Statutory Findings**

In the **Federal Register** of March 26, 2003 (68 FR 14628) (FRL-7289-2), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104-170), announcing the filing of a pesticide petition (PP 1F6278) by BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709-3528. This notice included a summary of the petition prepared by BASF Corporation, the registrant. The Agency received comments from North Williamette Research and Extension Center at Oregon State University, Norpac Foods,