rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on these proposed rules. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by November 29, 1999.

ADDRESSES: Comments should be addressed to: Andy Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Environmental Protection Agency, Air Docket (6102) 401 ''M'' Street, SW, Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

Kern County Air Pollution Control District 2700 ''M'' Street, Suite 302, Bakersfield, CA 93301–2370.

Yolo-Solano Air Quality Management District 1947 Galileo Court, Suite 103 Davis, CA 95616–4882.

FOR FURTHER INFORMATION CONTACT: Sam Agpawa, Air planning Office [Air-2], Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1228.

SUPPLEMENTARY INFORMATION: This document concerns (1); Kern County Air Pollution Control District, Rule 424, Natural Gas-Fired Residential Water Heaters and (2)Yolo-Solano Air Quality Management District, Rule 2.37, Natural Gas-Fired Residential Water Heaters. The rules were submitted to EPA on November 18, 1993; and February 24 1995 respectively by the California Air Resources Board. For further information, please see the information provided in the direct final action that is located in the rules section of this **Federal Register**.

Dated: September 14, 1999.

Keith Takata,

Acting, Regional Administrator, Region IX.

[FR Doc. 99–27200 Filed 10–27–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 217–148; FRL–6465–9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of a revision to the California State Implementation Plan (SIP) for the San Joaquin Valley Unified Air Pollution Control District (''SJVUAPCD''). This revision concerns SJVUAPCD Rule 4354, which controls oxides of nitrogen (NO_X) emissions from glass melting furnaces.

The intended effect of proposing limited approval and limited disapproval of this rule is to regulate emissions of NO_X in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this proposed rule will incorporate this rule into the federally approved SIP. EPA has evaluated the rule and is proposing a simultaneous limited approval and limited disapproval under provisions of the CAA regarding EPA action on SIP submittals and general rulemaking authority because the revision, while strengthening the SIP, does not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas.

DATES: Comments must be received on or before November 29, 1999.

ADDRESSES: Comments may be mailed to: Andrew Steckel, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule and EPA's evaluation report of the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102) 401 ''M'' Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

San Joaquin Valley Unified Air Pollution Control District, 1990 E. Gettysburg Ave., Fresno, CA 93726.

FOR FURTHER INFORMATION CONTACT: Ed Addison, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1160.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being proposed for approval into the California SIP is San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Rule 4354, Glass Melting Furnaces. Rule 4354 was submitted by the State of California to EPA on September 29, 1998.

II. Background

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The air quality planning requirements for the reduction of NO_X emissions through reasonably available control technology (RACT) are set out in section 182(f) of the Clean Air Act.

On November 25, 1992, EPA published a proposed rule entitled, ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement) which describes and provides preliminary guidance on the requirements of section 182(f). The November 25, 1992, action should be referred to for further information on the NO_X requirements and is incorporated into this document by reference.

Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_X (''major'' as defined in section 302 and sections 182(c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs), in moderate or above ozone nonattainment areas. SJVUAPCD is classified as severe [1]; therefore this area is subject to the RACT requirements of

[1] SJVUAPCD retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

section 182(b)(2) and the November 15, 1992 deadline cited below.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC (and NO_X) emissions (not covered by a pre-enactment control technologies guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO_X CTGs issued before enactment and EPA has not issued a CTG document for any NO_X sources since enactment of the CAA. The RACT rules covering NO_X sources and submitted as SIP revisions require final installation of the actual NO_X controls as expeditiously as practicable, but no later than May 31, 1995.

This document addresses EPA's proposed action for San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Rule 4354, Glass Melting Furnaces, adopted by the SJVUAPCD on April 16, 1998. The State of California submitted this amended version of Rule 4354 to EPA on September 29, 1998. The rule was found to be complete on January 26, 1999, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V [2].

NO_X emissions contribute to the production of ground level ozone and smog. SJVUAPCD Rule 4354 specifies exhaust emission standards for NO_X, carbon monoxide (CO), and VOCs, and was originally adopted as part of SJVUAPCD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone, and in response to the CAA requirements cited above. The following is EPA's evaluation and proposed action for this rule.

III. EPA Evaluation and Proposed Action

In determining the approvability of a NO_X rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the NO_X Supplement (57 FR 55620) and various other EPA policy guidance documents [3]. Among those provisions is the requirement that a NO_X rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO_X emissions.

For the purpose of assisting State and local agencies in developing NO_X RACT rules, EPA prepared the NO_X Supplement to the General Preamble. In the NO_X Supplement, EPA provides preliminary guidance on how RACT will be determined for stationary sources of NO_X emissions. While most of the guidance issued by EPA on what constitutes RACT for stationary sources has been directed towards application for VOC sources, much of the guidance is also applicable to RACT for stationary sources of NO_X (see section 4.5 of the NO_X Supplement). In addition, pursuant to section 183(c), EPA is issuing alternative control technique documents (ACTs), that identify alternative controls for all categories of stationary sources of NO_X. The ACT documents will provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or more of NO_X. However, the ACTs will not establish a presumptive norm for what is considered RACT for stationary sources of NO_X. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted NO_X RACT rules meet Federal RACT requirements and are fully enforceable and strengthen or maintain the SIP.

The California Air Resources Board (CARB) has developed a guidance document entitled, ''Suggested Control Measure for the control of Nitrogen Emissions from Glass Melting Furnaces.'' EPA has used CARB's RACT Determination, dated September 5, 1980, in evaluating Rule 4354 for consistency with the CAA's RACT requirements.

There is currently a September 14, 1994 version of San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Rule 4354, Glass Melting Furnaces in the SIP. The 1994 rule includes the following provisions:

- General provisions including applicability, exemptions, and definitions.
- Exhaust emissions standards for oxides of nitrogen (NO_X), volatile organic compounds (VOCs) and carbon monoxide (CO).
- Compliance and monitoring requirements including compliance schedule, reporting requirements, monitoring and record keeping, and test methods.

The version of the rule submitted in 1998 contains the following significant modifications from the 1994 version:

- A new Tier 2 emissions limit reduces NO_X emission levels for flat glass, container glass, and fiberglass furnaces and adds controls for CO and VOCs.
- A Bubbling option, CEMS (or alternate emissions monitoring with daily recordkeeping), and five year record retention requirements.
- Exemptions from emission control requirements on start-up have been increased for all furnaces with innovative controls to allow 180 days from first glass pull, or 30 days after achieving 60% of capacity, whichever is later.
- Exemptions from emission control requirements have also been added for unlimited periods of time from the ''start of a change to initiate'' a start-up, shutdown, or idling.
- New ''Tier 2 controls'' compliance deadline at the first furnace rebuild after January 1, 1999.
- Source testing for each furnace, or furnace battery, shall occur each calender year, not more than every 18 months, but not sooner than every 6 months.

Rules submitted to EPA for approval as revisions to the SIP must be fully enforceable, must maintain or strengthen the SIP and must conform with EPA policy in order to be approved by EPA. When reviewing rules for SIP approvability, EPA evaluates enforceability elements such as test methods, record keeping, and compliance testing in addition to RACT guidance regarding emission limits. Rule 4354 strengthens the SIP through the addition of enforceable measures such as record keeping, test methods, definitions, and more stringent compliance testing. The SJVUAPCD has projected that incorporation of Rule 4354 into the SIP would decrease the NO_X emissions allowed by the SIP.

EPA has evaluated San Joaquin Valley Unified Air Pollution Control District Rule 4354 for consistency with the CAA, EPA regulations, and EPA policy and has found that although SJVUAPCD Rule 4354 will strengthen the SIP, this rule contains deficiencies which must be corrected pursuant to the section 182(a)(2)(A) requirement of part D of the CAA.

- *Section 3.17.3: Start-up definition:* states: ''180 days following initial glass pull, or 30 days after the glass pull rate reaches 60 percent of the furnace's glass production capacity, whichever occurs later, for any furnace that uses a NO_X control technique * * * '' Coupled with section 4.2, this would seem to allow for

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[3] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); ''Issues Relating to VOC regulation Cutpoints, Deficiencies, and Deviation, Clarification to appendix D of November 24, 1987 **Federal Register** Notice'' (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988).

an unlimited period of time for operations up to 60% glass production while exempt from compliance tests and possibly controls while at production temperatures. EPA policy generally does not allow automatic exemption from excess emissions during such periods. The District needs to demonstrate that RACT limits are to be in place at all possible times. Control systems need to be in operation and limits established as temperatures are increased to levels where NO_X is made and *before* the furnace is at production levels. The time allowed to operate with exemption, at less than 60% of rated capacity, must be limited. 180 days start-up exemption seems excessive. The district should remove this exemption or demonstrate that it complies with CAA Sections 110(l) and 182 regarding rule relaxations and RACT.

- *Section 4.2: Exemptions:* states: (new text in italic) ''The requirements of Section 5.0 shall not apply during periods of start-up, shutdown or idling. *The period of exemption shall apply from the beginning of operational changes required to initiate idling, shutdown, or start-up. The owner shall comply with the requirements of Section 6.7 when performing such operations.''*

Initiation of operational changes allow the ''beginning of startup, idling and cool down'' exemptions, which could last forever. The requirements of section 6.7 do nothing to limit these periods. The duration of these periods must have finite limits. Clarifying statements are required on two issues: (1) that control systems must be in operation during these periods of exemption, and (2) that the exemption periods indicate the period of time allowed *before a compliance test* is required. Burner controls operate from the start, a SCR unit can start at 650 F., and a SNCR can begin operation at 1800 F. There should be stated limits for emission levels considered acceptable during the startup, idling and cool down periods. The first glass draw, when temperatures approach 2900 degrees F., should be allowed only if the system is in compliance with these limits. (See TSD referenced Guidance Document: *State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown,* U.S. EPA, Office of Air Quality Planning and Standards, September 20, 1999).

- *Section 5.3: Tier 1 NO_X emission limit Compliance Determination:* The first equation should be reformatted to clarify that ''CF'' is in the numerator.
- *Section 7.1: Compliance schedule:* A final date for major NO_X sources to adopt CEMS or alternate continuous monitoring methods should be specified to prevent avoidance of continuous monitoring by running forever without an official ''rebuild.''
- *Section 7.2.3: Full compliance schedule:* A final date for facilities to achieve the full Tier 2 compliance should be specified to prevent avoidance of controls by running forever without an official ''rebuild.''
- *Sections 9.0, 9.4, and 9.7: Aggregated NO_X emissions:* This is an Alternate Emission Control Plan (AECP). Provisions must be consistent with the EPA Emissions Trading Policy Statement (ETPS) published on December 4, 1986 (51 FR 43814), the Economic Incentive Program Rules (EIP) promulgated April 7, 1994 (59 FR 16690), and EPA policies regarding equivalency provisions, AECPs, cross-line averaging, and other bubbles as described in the document entitled, ''Issues Relating to VOC Regulation Cutpoints, deficiencies, and deviations: Clarification to Appendix D of November 24, 1987 **Federal Register**.'' The EIP and EPA policies required AECP provisions to meet, among other things, a 10 percent (%) or greater reduction in emissions beyond the established baseline.

A detailed discussion of these deficiencies can be found in the Technical Support Document for Rule 4354, dated October 1, 1999, which is available from the U.S. EPA, Region IX office. Because of these deficiencies, EPA cannot grant full approval of this rule under section 110(k)(3) and part D. Also, because the submitted rule is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule under section 110(k)(3). However, EPA may grant a limited approval of the submitted rule under section 110(k)(3), in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of SJVUAPCD's submitted Rule 4354 under sections 110(k)(3) and 301(a) of the CAA. At the same time, EPA is also proposing a limited disapproval of this rule because it contains deficiencies which must be corrected in order to fully meet the requirements of sections 182(a)(2), 182(b)(2), 182(f), of part D of the CAA. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18 month period referred to in section 179(a) will begin on the effective date of EPA's final limited disapproval. Moreover, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c). It should be noted that the rule covered by this document has been adopted by the San Joaquin Valley Unified Air Pollution Control District and is currently in effect in the San Joaquin Valley Unified Air Pollution Control District. EPA's final limited disapproval action will not prevent the San Joaquin Valley Unified Air Pollution Control District or EPA from enforcing this rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

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 E.O. 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 rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. 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 final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval 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).

F. Unfunded Mandates

Under section 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 annual costs to State, local, or tribal governments in the aggregate; or to 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 approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: October 18, 1999.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

[FR Doc. 99–28216 Filed 10–27–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–102–1–7395; FRL–6465–2]

Approval and Promulgation of Implementation Plans; Texas; Reasonably Available Control Technology for Major Stationary Sources of Nitrogen Oxides for the Houston/Galveston and Beaumont/Port Arthur Ozone Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed conditional approval.

SUMMARY: The EPA is proposing conditional approval of rules into the Texas State Implementation Plan (SIP). These rules require Reasonably Available Control Technology (RACT) at stationary sources of nitrogen oxides (NO_X) in the Houston/Galveston (H/G), and the Beaumont/Port Arthur (B/PA) ozone nonattainment areas. Texas originally submitted these rules on June 15, 1993. Texas has made nine revisions to the rules since the original Submittal. In this document we propose conditional approval of Texas' SIP submittals concerning control of NO_X emissions dating from June 15, 1993 to May 20, 1998, as meeting the NO_X RACT requirements of the Federal Clean Air Act (the Act).

DATES: Comments must be received on or before November 29, 1999.

ADDRESSES: Your comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Copies of the documents about this action including the Technical Support Document, are available for public inspection during normal business hours at the above and following location. Persons interested in examining these documents should