

EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 11, 2009.

**Jane Diamond,**

*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)(363) to read as follows:

##### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(363) New and amended regulations were submitted on March 17, 2009 by the Governor's designee.

(i) Incorporation by Reference.

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

(1) Rule 1020, "Definitions," adopted on June 18, 1992 and amended on January 15, 2009.

(B) Santa Barbara County Air Pollution Control District.

(1) Rule 102, "Definitions," adopted on October 18, 1971 and amended on January 15, 2009.

\* \* \* \* \*

[FR Doc. E9-20804 Filed 8-27-09; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2009-0079; FRL-8945-1]

### Revisions to the California State Implementation Plan, Antelope Valley Air Quality Management District

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Antelope Valley Air Quality Management District (AVAQMD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from leaking components at facilities such as oil refineries and chemical manufacturing plants. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). At the same time, we are also approving an AVAQMD Negative Declaration and removing rules from the SIP.

**DATES:** This rule is effective on October 27, 2009 without further notice, unless EPA receives adverse comments by September 28, 2009. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2009-0079, by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions.

2. *E-mail:* [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

**Instructions:** All comments will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through <http://www.regulations.gov> or e-mail. <http://www.regulations.gov> is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** The index to the docket for this action is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Jerry Wamsley, EPA Region IX, (415) 947-4111, [wamsley.jerry@epa.gov](mailto:wamsley.jerry@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 rules did the State submit?

Table 1 lists the rule we are approving, Rule 1173, with the date that it was adopted by the local air agency and submitted by the California Air Resources Board along with the rules we are removing from the SIP, Rules 465, 466, 466.1, and 467.

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
AVAQMD .....	1173	Fugitive Emissions of VOCs .....	06/17/08	10/20/08

TABLE 1—SUBMITTED RULES—Continued

Local agency	Rule No.	Rule title	Adopted	Submitted
AVAQMD .....	465	Vacuum Producing Devices or Systems .....	11/01/91	10/20/08
AVAQMD .....	466	Pumps & Compressors .....	10/07/83	10/20/08
AVAQMD .....	466.1	Valves & Flanges .....	03/16/84	10/20/08
AVAQMD .....	467	Pressure Relief Devices .....	03/05/82	10/20/08

On November 18, 2008, EPA found this rule submittal met the completeness criteria in 40 CFR part 51, appendix V. These criteria must be met before formal EPA review can begin.

#### *B. Are there other versions of this rule?*

EPA has approved and incorporated into the SIP the May 13, 1994 version of Rule 1173 (see 59 **Federal Register** (FR) 43751, August 25, 1994). CARB has made no intervening submittals of this rule since 1994. The remaining rules, 465, 466, 466.1, and 467 are part of the SIP and were submitted for the purpose of rescinding them; please see the discussion below.

#### *C. What is the purpose of the submitted rule revisions?*

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control VOC emissions. Rule 1173 is a rule designed to reduce fugitive VOC emissions from leaking components at industrial sites handling and manufacturing VOC laden liquids and gases. The rule establishes inspection, component replacement, re-inspection requirements, maintenance, repair periods, and replacement or retrofit requirements for leaking components at these facilities. Finally, the rule has associated administrative and recordkeeping requirements, such as an inspection log, and test methods for determining compliance.

With its creation in 1997 the AVAQMD inherited the applicable South Coast Air Quality Management District Rule Book as of this date. As a result, the AVAQMD Rule Book included Rule 1173 as well as Rules 465, 466, 466.1, and Rule 467. The May 13, 1994 version of SCAQMD 1173 that AVAQMD inherited contained a sunset provision that sources subject to Rules 465, 466, 466.1, and 467 must comply with Rule 1173 by February 1, 1991. In its June 17, 2008 action, the AVAQMD board rescinded Rules 465, 466, 466.1, and 467 and adopted a Federal Negative Declaration stating that there are no major sources within the AVAQMD subject to Rule 465 and the non-leak provisions of the remaining rules. Rule 1173 was retained and amended to

ensure that any applicable leak requirements in Rules 466, 466.1, and 467 remained in the SIP within Rule 1173. For further discussion, see EPA's Technical Support Document and the AVAQMD Final Staff Report.

### **II. EPA's Evaluation and Action**

#### *A. How is EPA evaluating the rules?*

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source in nonattainment areas (see section 182(a)(2)), and must not relax existing requirements (see sections 110(l) and 193). The AVAQMD regulates an ozone nonattainment area (see 40 CFR part 81), so Rule 1173 must fulfill RACT.

Guidance and policy documents that we use to help evaluate specific enforceability and RACT requirements consistently 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," EPA, May 25, 1988 (the Bluebook).
3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
4. "Control of Volatile Organic Compound Equipment Leaks from Synthetic Organic Chemical and Polymer Manufacturing," EPA-450/3-83-006, USEPA, December 1983.
5. "Control of Volatile Organic Compound Equipment Leaks from Natural Gas/Gasoline Processing Plants," EPA-450/3-83-007, USEPA, December 1983.

#### *B. Does the rule meet the evaluation criteria?*

We believe that Rule 1173, the companion rescission of Rules 465, 466, 466.1, 467, and the AVAQMD Negative Declaration are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The TSD has more information on our evaluation.

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

We have no further recommendations for the next time the local agency modifies the rules.

#### *D. Public Comment and Final Action*

As authorized in section 110(k)(3) of the Act, EPA is fully approving Rule 1173, approving the AVAQMD Negative Declaration, and rescinding Rules 465, 466, 466.1, and 467 because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by September 28, 2009, 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 October 27, 2009. This will incorporate Rule 1173 into the Federally enforceable SIP and remove Rules 465, 466, 466.1, and 467 from the SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

### **III. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those

imposed by State law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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, 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 action 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. 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 October 27, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today’s **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 13, 2009.

**Laura Yoshii,**

*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)(361)(i)(B) to read as follows:

##### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(361) \* \* \*

(i) \* \* \*

(B) Antelope Valley Air Quality Management District

(1) Rule 1173, “Fugitive Emissions of Volatile Organic Compounds,” adopted July 7, 1989 and amended June 17, 2008.

\* \* \* \* \*

[FR Doc. E9–20827 Filed 8–27–09; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

RIN 0648–XQ90

#### Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; inseason retention limit adjustment and quota transfer.

**SUMMARY:** NMFS has determined that the Atlantic tunas General category daily Atlantic bluefin tuna (BFT) retention limit should be adjusted for the September, October–November, and December time periods of the 2009 fishing year, based on consideration of the determination criteria regarding inseason adjustments. This action applies to Atlantic Tunas General category permitted vessels and Highly Migratory Species Charter/Headboat category permitted vessels (when fishing commercially for BFT). NMFS has also determined that a quota transfer to allow continued fishing in the Harpoon category is appropriate, and therefore transfers 25 metric tons (mt) from the Reserve to the Harpoon category for the remainder of the 2009 fishing year. This action applies to Atlantic Tunas Harpoon category permitted vessels.

**DATES:** The effective dates for the adjusted BFT daily retention limits are September 1, 2009, through December 31, 2009. The quota transfer to the Harpoon category is effective August 28, 2009, through November 15, 2009.

**FOR FURTHER INFORMATION CONTACT:** Sarah McLaughlin or Brad McHale, 978–281–9260.

**SUPPLEMENTARY INFORMATION:** Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by