

TABLE 1 OF T01-0533—Continued

	42°19.4' N, 071°02.9' W.
8.2 Celebrate the Clean Harbor Swim .....	<ul style="list-style-type: none"> <li>• Date: August 13, 2011.</li> <li>• Rain Date: following day.</li> <li>• Time: 9 a.m. to 12 p.m.</li> <li>• Location: All waters of Gloucester Harbor within the following points (NAD 83):                             <ul style="list-style-type: none"> <li>42°35.3' N, 070°39.8' W.</li> <li>42°35.9' N, 070°39.2' W.</li> <li>42°35.9' N, 070°39.8' W.</li> <li>42°35.3' N, 070°40.2' W.</li> </ul> </li> </ul>
8.3 Boston Light Swim .....	<ul style="list-style-type: none"> <li>• Date: August 13, 2011.</li> <li>• Time: 6 a.m. to 12 p.m.</li> <li>• Location: All waters of Boston Harbor between the L Street Bath House and Little Brewster Island within the following points (NAD 83):                             <ul style="list-style-type: none"> <li>42°19.7' N, 071°02.2' W.</li> <li>42°19.9' N, 071°10.7' W.</li> <li>42°19.8' N, 070°53.6' W.</li> <li>42°19.6' N, 070°53.4' W.</li> </ul> </li> </ul>
9	September
9.1 Mayflower Triathlon .....	<ul style="list-style-type: none"> <li>• Date: September 3, 2011.</li> <li>• Time: 7:30 a.m. to 8:30 a.m.</li> <li>• Location: All waters of Plymouth Inner Harbor within the following points (NAD 83):                             <ul style="list-style-type: none"> <li>41°58.3' N, 070°40.6' W</li> <li>41°58.7' N, 070°39.1' W.</li> <li>41°56.8' N, 070°37.8' W.</li> <li>41°57.1' N, 070°39.2' W.</li> </ul> </li> </ul>
9.2 Duxbury Beach Triathlon .....	<ul style="list-style-type: none"> <li>• Date: September 24, 2011.</li> <li>• Time: 9 a.m. to 10 a.m.</li> <li>• Location: All waters of Duxbury Bay on the south side of the Powder Point Bridge within the following points (NAD 83):                             <ul style="list-style-type: none"> <li>42°02.8' N, 070°39.1' W.</li> <li>42°03.0' N, 070°38.7' W.</li> <li>42°02.8' N, 070°38.6' W.</li> <li>42°02.7' N, 070°39.0' W.</li> </ul> </li> </ul>

Dated: July 7, 2011.

**J.N. Healey**,  
*Captain, U.S. Coast Guard, Captain of the Port Sector Boston.*

[FR Doc. 2011-17983 Filed 7-15-11; 8:45 am]

**BILLING CODE 9110-04-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 9 and 63**

[EPA-HQ-OAR-2003-0146; FRL-9439-2]

RIN 2060-AO55

**National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries**

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

**ACTION:** Final rule; partial withdrawal.

**SUMMARY:** On October 28, 2009, the EPA proposed to withdraw the residual risk and technology review portions of the final rule amending the National

Emission Standards for Hazardous Air Pollutants From Petroleum Refineries. EPA is now providing final notice of the partial withdrawal.

**DATES:** As of August 17, 2011, EPA withdraws portions of the final rule signed by then Administrator Stephen Johnson on January 16, 2009.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2003-0146. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the EPA Docket Center, Environmental Protection Agency, EPA West Building, Room 3334, 1301 Constitution Ave.,

NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** Ms. Brenda Shine, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Refining and Chemicals Group (E143-01), Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number: (919) 541-3608; fax number: (919) 541-0246; e-mail address: [shine.brenda@epa.gov](mailto:shine.brenda@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background Information**

Section 112 of the Clean Air Act (CAA) establishes a two-stage regulatory process to address emissions of hazardous air pollutants (HAP) from stationary sources. In the first stage, after the EPA has identified categories of

sources emitting one or more of the HAP listed in section 112(b) of the CAA, section 112(d) calls for the Administrator to promulgate national emission standards for hazardous air pollutants for those sources. The EPA is then required to review these technology-based standards, and to revise them “as necessary (taking into account developments in practices, processes, and control technologies)” no less frequently than every 8 years, under CAA section 112(d)(6). The second stage in standard-setting focuses on reducing any remaining “residual” risk according to CAA section 112(f).

On January 16, 2009, then Administrator Stephen Johnson signed a final rule amending the National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries, and the signed rule was made publicly available on the EPA’s website. The signed rule included several different actions. First, it promulgated maximum achievable control technology (MACT) standards under CAA sections 112(d)(2) and (3) for heat exchange systems, which the EPA had not addressed in the original Refinery MACT 1 rule (40 CFR part 63, subpart CC). Second, pursuant to CAA section 112(f)(2), the rule addressed residual risk for all Refinery MACT 1 sources, including heat exchange systems. Third, it addressed the technology review pursuant to CAA section 112(d)(6) for all sources addressed in the original Refinery MACT 1 rule. Finally, the rule updated the table in the Refinery MACT 1 standards (Table 6) that cross-references the General Provisions in 40 CFR part 63, subpart A, and made a few additional clarifications to dates and cross-references in the Refinery MACT 1 standards.

The signed rule was submitted to the Office of the Federal Register for publication. Rahm Emanuel, Assistant to the President and Chief of Staff, issued a memorandum on January 20, 2009, directing Agencies to withdraw from the Office of the Federal Register “all proposed or final regulations that have not been published in the **Federal Register** so that they can be reviewed and approved by a department or agency head.” Although there was an exception for “regulations subject to statutory or judicial deadlines,” the Agency chose not to apply the exception in this case. One portion of the final rule, the CAA section 112(d)(6) review, was performed pursuant to the terms of a Consent Decree, which, as modified, required that by January 16, 2009, the EPA “shall sign and promptly forward to the **Federal Register** for publication either final revisions to the standards for

petroleum refineries in 40 CFR part 63, subpart CC pursuant to 42 U.S.C. 7412(d)(6) or a final determination that no revisions are necessary.” Then Administrator Stephen Johnson signed the rule on January 16, 2009, and promptly forwarded it to the Office of the Federal Register, thus, fulfilling this obligation.<sup>1</sup>

Upon further review, the EPA determined that the residual risk and technology reviews may not accurately characterize the risk posed by this source category. Shortly after the rule was signed, the EPA responded to a *Request for Correction* under the EPA’s *Information Quality Guidelines* from the city of Houston.<sup>2</sup> In that response, we recognized that we were currently taking action (and planned to take additional action) to gather better emissions information from the refining industry. Additionally, we noted that, during the comment period on the proposed rule, similar issues were raised concerning the representativeness of the emissions data and whether they provided an accurate basis for characterizing the risks posed.

After consideration of the public comments on the proposal to withdraw portions of the final rule, we are providing final notice of the Agency’s decision to partially withdraw the final rule. As stated in the preamble to the proposed withdrawal, the EPA will provide the public with an opportunity to comment on any new proposed rule that may be issued addressing the residual risk and technology review requirements of the CAA for this source category.

## II. Summary of Comments and Responses

The EPA received a total of six comment letters concerning the proposed partial withdrawal. Comment letters were received from industry trade associations, local environmental organizations, environmental groups, and members of the public. Summaries of the comments and our complete responses are included in the following section.

<sup>1</sup> We note that on January 30, 2009, the litigants notified EPA by letter that they believed the Agency had discharged its obligation under the Consent Decree, and that “further review of the rule pursuant to the Emanuel memo will not violate the Consent Decree.” (See Docket Item No. EPA-HQ-OAR-2003-0146-0209.)

<sup>2</sup> Letter to U.S. EPA Information Quality Guidelines staff from the Honorable Bill White, Mayor of Houston, July 9, 2008, Docket Item No. EPA-HQ-OAR-2003-0146-0166.3; EPA’s response is Letter to Mayor Bill White, Houston, Texas, from Elizabeth Craig, Acting Assistant Administrator, Office of Air and Radiation, U.S. EPA, April 7, 2009. (See Docket Item No. EPA-HQ-OAR-2003-0146-0210.)

*Comment:* Four commenters supported the EPA’s proposed partial withdrawal of the Refinery MACT 1 standards signed on January 16, 2009, and supported further analysis leading to a revised set of proposed standards. Several of these commenters asserted that the withdrawal is necessary because the EPA failed to adequately address their comments on the standards that were proposed on September 4, 2007 (72 FR 50716), and November 10, 2008 (73 FR 66694). Some of the comments submitted on those previous proposals and reiterated by the commenters included: (1) Objections to the EPA’s interpretation of the CAA requirement that the standards provide an “ample margin of safety”; (2) assertions that the maximum individual lifetime cancer risk allowed by the CAA is 1 in 1 million; (3) objections to the length of time allowed for compliance with standards for storage vessels with floating roofs; (4) identification of multiple deficiencies in the risk assessment methodology, including use of actual emissions rather than allowable emissions and the estimation of emissions at census block centroids rather than property lines; and (5) assertions that the emissions data used in the risk assessment were underestimated and unrepresentative. The commenters requested that the EPA collect more accurate emissions data and re-analyze the residual risk for Refinery MACT 1 using a methodology without the identified deficiencies.

*Response:* We appreciate the four commenters’ support for the withdrawal of the residual risk and technology review portions of the revisions to the Refinery MACT 1 standards. In this notice, the EPA is not making any decisions regarding the scope of residual risk and technology review standards under the CAA or on the specific data that would form the basis for a particular decision. Substantive comments on those issues should be raised in the context of future proposed rules addressing the CAA residual risk and technology review for one or more specific source categories.

*Comment:* Two commenters objected to the proposed withdrawal of the residual risk and technology review portions of the Refinery MACT 1 standards that were signed on January 16, 2009. These commenters noted that the EPA spent several years collecting data and considering stakeholder comments, finally reaching the conclusion that the Refinery MACT 1 standards provide an ample margin of safety based on data that the EPA judged to be representative of the source category. The commenters asserted that

the docket for the Refinery MACT 1 rulemaking (Docket ID EPA-HQ-OAR-2003-0146) does not include any specific support for the EPA's decision to reject that previous conclusion. According to the commenters, the only support for withdrawing the rule and redoing the analyses is provided in public comments submitted for the proposed rules, and the EPA considered those comments prior to finalizing the rule signed on January 16, 2009. The commenters requested that the EPA present any additional data received or analyses performed since January 16, 2009, to support withdrawal of the standards, and clearly explain any differences in assumptions or methodologies used in the analyses.

One commenter asserted that residual risk and technology review for Refinery MACT 1 has been a time- and resource-consuming process, and due to the EPA's other obligations under the CAA, it is not in the best interest of the public for the EPA to repeat the entire process without good cause. The commenter detailed a number of analyses in the docket showing that the EPA believed its emissions estimates and risk assessment methodologies were appropriate for the rulemaking. The commenter also noted that, if the EPA always postponed regulatory action because data may become available in the future, no regulatory actions would ever be completed. According to the commenter, refiners continue to make improvements in emissions reductions, and the heat exchange system standards will reduce emissions from cooling towers, so further data collection would only serve to support the conclusion that the current standards provide an ample margin of safety.

Two commenters addressed the EPA's responsibilities under the Data Quality Act (DQA) related to the *Request for Correction* filed by Mayor White of Houston (RFC 02003). The commenters stated that the EPA fulfilled its DQA obligations through its response to Mayor White on April 7, 2009 (Docket Item No. EPA-HQ-OAR-2003-0146-0210), which describes the steps that the EPA plans to take to improve annual emissions estimates. Since the EPA has addressed the DQA concerns raised by Mayor White, the commenters asserted that it is not necessary for the Agency to take action on the proposed withdrawal of the Refinery MACT 1 standards to further address those concerns.

*Response:* As the commenters noted, we did reach the conclusions presented in the rule that was signed on January 16, 2009, through analysis of the data we had at the time. The commenters are

correct that, as of the time of the proposed withdrawal, we had not yet received any specific, additional data to support changing the conclusions reached in the final rule. However, our proposal was not based on the receipt of such information. Our decision to withdraw the residual risk and technology review portions of the January 16, 2009, rule does not mean that we have made a decision to change our conclusions regarding what requirements are necessary and appropriate for the Refinery MACT 1 standards. Instead, as we noted when we proposed the withdrawal, we believe it is necessary to develop a more robust analysis based on the improved information we are in the process of gathering and developing.

With respect to duplicating the "time- and resource-consuming process" associated with the risk and technology review, we note that the EPA is now initiating the risk and technology review for the Refinery MACT 2 standards (40 CFR part 63, subpart UUU) and plans to conduct the Refinery MACT 1 and 2 reviews at the same time. Thus, our data collection efforts for purposes of the Refinery MACT 2 risk and technology review will also provide a significant portion of the information we will need for purposes of our new residual risk and technology review of the Refinery MACT 1 standards. Moreover, we believe that by more closely aligning our risk and technology review for Refinery MACT 1 and 2 sources, we will be able to develop a significantly improved analysis of the risks associated with petroleum refineries, and, therefore, can better determine the most effective way to address any residual risk posed by emissions from petroleum refineries. We see significant benefits in combining these efforts, both in terms of a more transparent risk evaluation of these co-located sources for the neighboring public and in terms of more consolidated standards for the regulated community. The EPA has already taken action to gather better emissions information from the refining industry, and to follow through on the commitments made in the response letter to Mayor White of Houston (Docket Item No. EPA-HQ-OAR-2003-0146-0210). For these reasons, we have concluded that the benefits of a consolidated risk and technology review outweigh the incremental analytical effort required to perform a new risk assessment for Refinery MACT 1 sources after collecting this more robust data.

One commenter suggested that the additional data may lead to the conclusion that the existing standards

provide an ample margin of safety. We agree that is a possible outcome; however, any conclusions regarding the residual risk review for the Refinery MACT 1 standards will need to await our consideration of the more robust data we are now gathering. Those data will provide greater certainty for the final conclusions, and help to ensure the final standards are technically and legally defensible.

Finally, the EPA agrees that it has responded to the DQA request from Mayor White of Houston through the April 7, 2009, letter identified by the two commenters (Docket Item No. EPA-HQ-OAR-2003-0146-0210). In that letter, we outlined several initiatives that were either ongoing or planned for the near future in order to improve the quality of data we have concerning emissions from petroleum refineries, and we are continuing to move forward with all of those initiatives. We plan to use this improved information as we move forward to address emissions from petroleum refineries, including performing the residual risk and technology review for Refinery MACT 1 and 2 sources.

*Comment:* Two commenters noted that, if the EPA proceeds with the proposed partial withdrawal of Refinery MACT 1 standards, the Agency should make clear that the withdrawal completes the action related to the September 4, 2007, proposal. In other words, the commenters stated that the date for determining compliance with any new standards would be the proposal date of those new standards rather than September 4, 2007.

*Response:* We agree with the commenters. The appropriate dates for determining compliance with future standards would be the dates those standards are proposed and finalized.

#### Statutory and Executive Order Reviews

Under the CAA, the Administrator is withdrawing a final action that was signed by the Administrator and made publicly available on the the EPA website, but that never took effect through publication in the **Federal Register**. This action:

- Is 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 CAA;

- Does not provide the 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); and

- This notice does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### List of Subjects

##### 40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

##### 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: July 8, 2011.

**Lisa P. Jackson,**  
Administrator.

[FR Doc. 2011-17901 Filed 7-15-11; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 97

[FRL-9435-6]

#### Data Availability Concerning Transport Rule Allowance Allocations to Existing Units

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

**ACTION:** Notification of data availability (NODA).

**SUMMARY:** In the Transport Rule Federal Implementation Plans (FIPs), EPA finalized allowance allocations for 2012 and thereafter to existing units subject to the Transport Rule FIP trading programs in Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Wisconsin. As required in the Transport Rule, this NODA notifies the public of the availability of data on these allowance allocations for existing units. Through this NODA, EPA is also making available to the public the data upon which the allocations were based.

**FOR FURTHER INFORMATION CONTACT:** Questions concerning this action should be addressed to Brian Fisher, telephone (202) 343-9633, and e-mail [fisher.brian@epa.gov](mailto:fisher.brian@epa.gov), Michael Cohen, telephone (202) 343-9497 and e-mail [cohen.michael@epa.gov](mailto:cohen.michael@epa.gov), or Robert Miller, telephone (202) 343.9077, and e-mail [miller.robertl@epa.gov](mailto:miller.robertl@epa.gov). The mailing address for the aforementioned contacts is U.S. Environmental Protection Agency, CAMD (6204J), 1200 Pennsylvania Ave., NW., Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:** The detailed unit-by-unit data, calculations, and allowance allocation determinations are set forth in a technical support document in an Excel spreadsheet format titled "Unit Level Allocations Under the Transport Rule FIP" and available on EPA's Web site at <http://www.epa.gov/airtransport/actions.html>.

EPA is not requesting responses to the data made available through this NODA, which makes available data on allowance allocations finalized in the Transport Rule. Providing an allocation to an existing unit does not constitute a determination that the unit is a covered unit, and not providing an existing-unit allocation to a unit does not constitute a determination that the unit is not a covered unit. See §§ 97.411(a)(1), 97.511(a)(1), 97.611(a)(1), and 97.711(a)(1) of the Transport Rule.

Under the Transport Rule FIPs, EPA must record allowance allocations by certain deadlines. In particular, allowance allocations addressed by this NODA for existing units for 2012 must be recorded, within 90 days of the publication of the Transport Rule in the **Federal Register**, in the compliance accounts of existing units. See

§§ 97.421(a), 97.521(a), 97.621(a), and 97.721(a) of the Transport Rule.

For 2013 and beyond, the Administrator must record, by certain specified deadlines, allowance allocations for existing units. See §§ 97.421(b) through (f), 97.521(b) through (f), 97.621(b) through (f), and 97.721(b) through (f) of the Transport Rule.

Under certain circumstances, the allowance allocations addressed in this NODA to existing units are subject to termination or correction, and the provisions establishing these allocations may be replaced by a SIP revision. See §§ 97.411(a)(2), 97.511(a)(2), 97.611(a)(2), and 97.711(a)(2) (concerning termination of allocations of non-operating units) and 97.411(c), 97.511(c), 97.611(c), and 97.711(c) (concerning incorrect allocations) of the Transport Rule and §§ 52.38(a)(3) through (5) and (b)(3) through (5) and 52.39(d) through (i) of the Transport Rule (concerning SIP revisions).

Dated: July 6, 2011.

**Jackie Krieger,**  
Chief of Staff, Office of Atmospheric Programs.

[FR Doc. 2011-17903 Filed 7-15-11; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[EPA-HQ-SFUND-1983-0002; FRL-9440-4]

#### National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Withdrawal of direct final rule.

**SUMMARY:** On May 24, 2011, EPA published a Notice of Intent for Partial Deletion (76 FR 30081) and a direct final rule of Partial Deletion (76 FR 30027) for the remaining portions of Operable Unit 9 (OU9), the Residential Populated Areas, of the California Gulch Superfund Site (Site), located in Lake County, Colorado, from the National Priorities List. The EPA is withdrawing the Final Rule of Partial Deletion due to adverse comments that were received during the public comment period. After consideration of the comments received, if appropriate, EPA will publish a Notice of Partial Deletion in the **Federal Register** based on the parallel Notice of Intent for Partial Deletion and place a copy of the final partial deletion package, including a