



# Federal Register

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**Monday,  
December 27, 2010**

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**Part II**

## **Environmental Protection Agency**

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**40 CFR Part 98**

**Interim Final Regulation Deferring the  
Reporting Date for Certain Data Elements  
Required Under the Mandatory Reporting  
of Greenhouse Gases Rule; Interim Final  
Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 98**

[EPA-HQ-OAR-2010-0929 FRL-9242-7]

**Interim Final Regulation Deferring the Reporting Date for Certain Data Elements Required Under the Mandatory Reporting of Greenhouse Gases Rule**

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

**ACTION:** Interim final rule.

**SUMMARY:** EPA is promulgating this interim final rule to defer until August 31, 2011 the reporting deadline for year 2010 data elements that are inputs to emission equations under the Mandatory Greenhouse Gas Reporting Rule. In response to EPA's July 7, 2010 proposed confidentiality determinations for data required under the reporting rule, EPA received several comments raising concerns that warrant further consideration before EPA issues final confidentiality determinations for data elements that are inputs to emission equations for direct emitters. To allow time for EPA to consider these comments and other information concerning these data elements before they are reported to EPA, EPA is deferring direct emitter reporting of the data elements in the inputs to emission equations data category until August 31, 2011, while concurrently publishing both a proposed notice and comment rulemaking to defer the reporting date for these inputs and a call for information to assist EPA in its deliberations on this matter.

**DATES:** This interim final rule is effective on December 27, 2010.

**ADDRESSES:** *Docket:* 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 (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Docket, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility 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 Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC-6207), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* (202) 343-9263; *fax number:* (202) 343-2342; *e-mail address:* [GHGReportingCBI@epa.gov](mailto:GHGReportingCBI@epa.gov).

*Worldwide Web (WWW).* In addition to being available in the docket, an electronic pre-publication copy of this interim final rule will also be available through the WWW. Following the Administrator's signature, a copy of this action will be posted on EPA's greenhouse gas reporting rule Web site at <http://www.epa.gov/climatechange/emissions/ghgrulemaking.html>.

**SUPPLEMENTARY INFORMATION:** *Acronyms and Abbreviations.* The following acronyms and abbreviations are used in this document.

- APA Administrative Procedure Act
- CAA Clean Air Act
- CBI confidential business information
- CEMS continuous emission monitoring system(s)
- CFR Code of Federal Regulations
- EPA U.S. Environmental Protection Agency
- FR **Federal Register**
- GHG greenhouse gas

- RFA Regulatory Flexibility Act
- UMRA Unfunded Mandates Reform Act
- U.S. United States
- WWW Worldwide Web

*Organization of This Document.* The following outline is provided to aid in locating information in this preamble.

- I. Background
- II. Summary of the Interim Final Rule
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  - D. Unfunded Mandates Reform Act (UMRA)
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  - G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
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  - I. National Technology Transfer and Advancement Act
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*Does this action apply to me?* The Administrator determined that this action is subject to the provisions of Clean Air Act (CAA) section 307(d). See CAA section 307(d)(1)(V) (the provisions of CAA section 307(d) apply to "such other actions as the Administrator may determine"). This action amends existing regulations. Entities affected by this action are owners or operators of facilities that are direct emitters of greenhouse gases (GHGs) and are required to report these emissions under 40 CFR part 98, which include those listed in Table 1 of this preamble:

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY

Category	NAICS	Examples of affected facilities
General Stationary Fuel Combustion Sources.	.....	Facilities operating boilers, process heaters, incinerators, turbines, and internal combustion engines:
	321	Manufacturers of lumber and wood products.
	322	Pulp and paper mills.
	325	Chemical manufacturers.
	324	Petroleum refineries, and manufacturers of coal products.
	316, 326, 339	Manufacturers of rubber and miscellaneous plastic products.
	331	Steel works, blast furnaces.
	332	Electroplating, plating, polishing, anodizing, and coloring.
	336	Manufacturers of motor vehicle parts and accessories.
	221	Electric, gas, and sanitary services.
	622	Health services.
	611	Educational services.
	325193	Ethyl alcohol manufacturing facilities.

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY—Continued

Category	NAICS	Examples of affected facilities
Electricity Generation .....	311611	Meat processing facilities.
	311411	Frozen fruit, juice, and vegetable manufacturing facilities.
	311421	Fruit and vegetable canning facilities.
	221112	Fossil-fuel fired electric generating units, including units owned by Federal and municipal governments and units located in Indian Country.
Adipic Acid Production .....	325199	Adipic acid manufacturing facilities.
Aluminum Production .....	331312	Primary Aluminum production facilities.
Ammonia Manufacturing .....	325311	Anhydrous and aqueous ammonia manufacturing facilities.
Cement Production .....	327310	Portland Cement manufacturing plants.
Ferroalloy Production .....	331112	Ferroalloys manufacturing facilities.
Glass Production .....	327211	Flat glass manufacturing facilities.
	327213	Glass container manufacturing facilities.
	327212	Other pressed and blown glass and glassware manufacturing facilities.
	325120	Chlorodifluoromethane manufacturing facilities.
HCFC-22 Production and HFC-23 Destruction.		
Hydrogen Production .....	325120	Hydrogen manufacturing facilities.
Iron and Steel Production .....	331111	Integrated iron and steel mills, steel companies, sinter plants, blast furnaces, basic oxygen process furnace shops.
Lead Production .....	331419	Primary lead smelting and refining facilities.
	331492	Secondary lead smelting and refining facilities.
Lime Production .....	327410	Calcium oxide, calcium hydroxide, dolomitic hydrates manufacturing facilities.
Nitric Acid Production .....	325311	Nitric acid manufacturing facilities.
Petrochemical Production .....	32511	Ethylene dichloride manufacturing facilities.
	325199	Acrylonitrile, ethylene oxide, methanol manufacturing facilities.
	325110	Ethylene manufacturing facilities.
	325182	Carbon black manufacturing facilities.
	324110	Petroleum refineries.
Petroleum Refineries .....		
Phosphoric Acid Production .....	325312	Phosphoric acid manufacturing facilities.
Pulp and Paper Manufacturing .....	322110	Pulp mills.
	322121	Paper mills.
	322130	Paperboard mills.
Silicon Carbide Production .....	327910	Silicon carbide abrasives manufacturing facilities.
Soda Ash Manufacturing .....	325181	Alkalies and chlorine manufacturing facilities.
	212391	Soda ash, natural, mining and/or beneficiation.
Titanium Dioxide Production .....	325188	Titanium dioxide manufacturing facilities.
Zinc Production .....	331419	Primary zinc refining facilities.
	331492	Zinc dust reclaiming facilities, recovering from scrap and/or alloying purchased metals.
Municipal Solid Waste Landfills .....	562212	Solid waste landfills.
	221320	Sewage treatment facilities.

Table 1 of this preamble is not intended to be exhaustive, but rather provides a guide for readers regarding facilities likely to be affected by this action. Types of facilities other than those listed in the table could also be subject to reporting requirements. To determine whether you are affected by this action, you should carefully examine the applicability criteria found in 40 CFR part 98, subpart A or the relevant criteria in subparts C through HH, excluding subparts I, L, T, W, DD, and FF. If you have questions regarding the applicability of this action to a particular facility, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** Section.

**Judicial Review.** Under CAA section 307(b)(1), judicial review of this interim final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by February 25, 2011. Filing a petition for reconsideration by the Administrator of this interim final rule

does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which petitions for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Any person seeking to make such a demonstration to EPA should submit a Petition for Reconsideration to the Office of the Administrator, Environmental Protection Agency, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20004, with a copy to the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20004. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2)).

## I. Background

On October 30, 2009, EPA published the Mandatory GHG Reporting Rule for collecting information regarding GHGs from a broad range of industry sectors (74 FR 56260). Under 40 CFR part 98 of the GHG Reporting Rule (hereinafter referred to as "Part 98") and its subsequent amendments, EPA will collect data from certain facilities and suppliers above specified thresholds. The data to be reported consists of GHG emissions information as well as other data, including information necessary to characterize, quantify, and verify the reported emissions. In the preamble to Part 98, we stated, "Through a notice and comment process, we will establish those data elements that are 'emissions data' and therefore [under CAA section 114(c)] will not be afforded the protections of CBI. As part of that exercise, in response to requests provided in comments, we may identify classes of information that are not

emissions data, and are CBI” (74 FR 56287, October 30, 2009).

On July 7, 2010, EPA proposed confidentiality determinations for Part 98 data elements and proposed amending EPA’s regulation for handling confidential business information to add specific procedures for the treatment of Part 98 data (75 FR 39094; hereinafter referred to as the “July 7, 2010 CBI proposal”). The July 7, 2010 CBI proposal proposed confidentiality statuses for the data elements for subparts included in the 2009 final Part 98 rule (see 74 FR 56260, October 30, 2009), four subparts finalized in July 2010 (see 75 FR 39736, July 12, 2010), and seven new subparts that had been proposed but not yet finalized as of July 2010 (see 75 FR 18576, 75 FR 18608, and 75 FR 18652, April 12, 2010). The July 7, 2010 CBI proposal also covered proposed changes to the reporting requirements for some of the 2009 final Part 98 subparts. These changes were proposed in two separate rulemakings (see 75 FR 18455, April, 12, 2010; and 75 FR 33950, June 15, 2010).

On August 11, 2010, EPA published a proposed amendment to Part 98 to change the description of some reported data elements and require reporting of some new data elements (75 FR 48744; hereinafter referred to as the “August 11, 2010 revisions proposal”). EPA concurrently issued a supplemental CBI proposal that proposed confidentiality determinations for the new and revised data elements included in the August 11, 2010 revisions proposal (75 FR 43889, July 27, 2010; hereinafter referred to as the “July 27, 2010 supplemental CBI proposal”).

As described in detail in the CBI proposals identified above, EPA grouped Part 98 data into 22 data categories (11 direct emitter data categories and 11 supplier data categories), with each of the categories containing data elements that are similar in type or characteristics. EPA then proposed confidentiality determinations for each category, with a few exceptions that are not relevant to today’s action. Consistent with EPA’s long-standing interpretation, EPA proposed that data elements in the inputs to emission equations data category meet the definition of emission data under 40 CFR 2.301(a)(2)(i) and therefore, under CAA section 114(c), cannot be held as confidential once they are reported to EPA.

EPA received numerous public comments on the July 7, 2010 CBI proposal and the July 27, 2010 supplemental CBI proposal. Though we are still in the process of considering these comments, we plan to complete our consideration of these comments and issue final confidentiality determinations for the Part 98 data elements that are not inputs to emission equations, approximately 75 percent of the data elements, in a separate action. However, as explained in more detail in Section III of this preamble, EPA received comments that raise concerns regarding the possible public availability of the data in the inputs to emission equations category. EPA has determined that these concerns warrant in-depth evaluation of the potential impact from the release of inputs to emission equations, as well as collection

and review of additional information, that cannot be completed before the March 31, 2011 reporting deadline.

In the concurrent proposed rule, EPA is proposing to defer the reporting of inputs to equations until March 31, 2014,<sup>1</sup> affording EPA additional time to complete the evaluation described above and take appropriate final actions regarding inputs to equations before these data elements are reported to EPA and potentially subject to release. EPA is also concurrently publishing a call for information, entitled “Information on Inputs to Emission Equations under the Mandatory Reporting of Greenhouse Gases Rule,” to collect additional information that will assist EPA with our deliberations. EPA is issuing this interim final rule to afford EPA the time needed to implement the notice and comment requirements for the longer deferral.

**II. Summary of the Interim Final Rule**

*A. Facilities Affected*

This action affects only facilities that are subject to the source category-specific reporting requirements in 40 CFR part 98, subparts C through HH, excluding subparts I, L, T, W, DD, and FF. This includes only direct-emitting facilities covered by the Part 98 subparts published on October 30, 2009, which require these facilities to begin monitoring emissions on January 1, 2010 and to submit their first annual GHG report (covering calendar year 2010 emissions) by March 31, 2011. The list of affected source categories is provided in Table 2 of this preamble.<sup>2</sup>

TABLE 2—SOURCE CATEGORIES COVERED BY THIS ACTION

Source category	40 CFR Part 98 Subpart	Federal Register Notice
General Stationary Fuel Combustion Sources .....	C .....	74 FR 56260, Revised 11–24–2010.
Electricity Generation .....	D .....	74 FR 56260, Revised 11–24–2010.
Adipic Acid Production .....	E .....	74 FR 56260, 75 FR 66434.
Aluminum Production .....	F .....	74 FR 56260, Revised 11–24–2010.
Ammonia Manufacturing .....	G .....	74 FR 56260, Revised 11–24–2010.
Cement Production .....	H .....	74 FR 56260, 75 FR 66434.
Ferroalloy Production .....	K .....	74 FR 56260, 75 FR 66434.
Glass Production .....	N .....	74 FR 56260, 75 FR 66434.
HCFC–22 Production and HFC–23 Destruction .....	O .....	74 FR 56260, 75 FR 66434.
Hydrogen Production .....	P .....	74 FR 56260, 75 FR 66434, Revised 11–24–2010.
Iron and Steel Production .....	Q .....	74 FR 56260, 75 FR 66434.
Lead Production .....	R .....	74 FR 56260.
Lime Manufacturing .....	S .....	74 FR 56260, 75 FR 66434.
Miscellaneous Uses of Carbonate .....	U .....	74 FR 56260.
Nitric Acid Production .....	V .....	74 FR 56260, 75 FR 66434, Revised 11–24–2010.
Petrochemical Production .....	X .....	74 FR 56260, Revised 11–24–2010.
Petroleum Refineries .....	Y .....	74 FR 56260, Revised 11–24–2010.

<sup>1</sup> The record-keeping requirements of Part 98 remain in place.

<sup>2</sup> Certain source categories were revised in an action signed on November 24, 2010, which is available on our Web site, <http://www.epa.gov/climatechange/emissions/technical-corrections.html#revisions>.

[climatechange/emissions/technical-corrections.html#revisions](http://www.epa.gov/climatechange/emissions/technical-corrections.html#revisions).

TABLE 2—SOURCE CATEGORIES COVERED BY THIS ACTION—Continued

Source category	40 CFR Part 98 Subpart	Federal Register Notice
Phosphoric Acid Production .....	Z .....	74 FR 56260, 75 FR 66434.
Pulp and Paper Manufacturing .....	AA .....	74 FR 56260, Revised 11–24–2010.
Silicon Carbide Production .....	BB .....	74 FR 56260.
Soda Ash Manufacturing .....	CC .....	74 FR 56260, 75 FR 66434.
Titanium Dioxide Production .....	EE .....	74 FR 56260, 75 FR 66434.
Zinc Production .....	GG .....	74 FR 56260, 75 FR 66434.
Municipal Solid Waste Landfills .....	HH .....	74 FR 56260, 75 FR 66434.

### B. Amendment

EPA is adding a table (Table A–6) to 40 CFR part 98, subpart A, specifying the individual data elements that are affected by this action. The table, which includes Part 98 data elements that EPA has assigned to the inputs to equations data category with an initial reporting year of 2010 and original initial reporting date of March 31, 2011, is organized by subpart and shows the regulatory citations for each of the data elements.<sup>3</sup> In addition, under the annual reporting requirement at 40 CFR 98.3(c), EPA is adding 40 CFR 98.3(c)(4)(vii), stating that reporting of the data elements listed in Table A–6 for calendar year 2010 is not required until August 31, 2011.

This interim final rule does not change any other requirements of Part 98, including the requirement that inputs to equations be retained as records in a form that is suitable for expeditious inspection and review (required for all Part 98 records by 40 CFR 98.3(g)).

### III. Rationale for the Interim Final Rule

In the July 7, 2010, CBI proposal, EPA proposed that data elements in the inputs to emission equations data category meet the definition of emission data under 40 CFR 2.301(a)(2)(i), consistent with our long-standing interpretation, and therefore, under CAA section 114(c), could not be held as confidential once they were reported to EPA. In response, EPA received comments that release of such information could cause serious business harms, and EPA considers some of these comments to warrant more extensive evaluation of potential impacts from the public availability of inputs to equations. To avoid the risk of having to make this data publicly available before EPA can fully consider the potential impact from such release, we are proposing the concurrent longer-

term deferral to give EPA time to conduct this evaluation and take appropriate actions regarding inputs to equations (see Section III of the preamble to that proposed rule, “Change to the Reporting Date for Certain Data Elements Required Under the Mandatory Reporting of Greenhouse Gases Rule,” for further rationale). This interim final rule defers reporting of these inputs to the agency for a brief period while EPA promulgates the longer-term deferral through notice and comment.

This interim final rule defers reporting of inputs to equations until August 31, 2011, because EPA needs this time to complete the rulemaking for the longer-term deferral. To assist in this rulemaking, EPA is concurrently issuing a call for information and providing a 60-day comment period. EPA expects to receive a large number of comments, many of which may be technically complex. EPA must conduct an overview of the information and comment received before finalizing the proposed deferral to ensure that deferral of the inputs reporting deadline until March 31, 2014 is appropriate, and EPA must finalize any longer-term deferral before the interim final deferral date.

### IV. Need for an Interim Final Rule

EPA is issuing this final rule under section 307(d)(1) of the Clean Air Act, which states: “The provisions of section 553 through 557 \* \* \* of Title 5 shall not, except as expressly provided in this section, apply to actions to which this subsection applies. This subsection shall not apply in the case of any rule or circumstance referred to in subparagraphs (A) or (B) of subsection 553(b) of Title 5.” Consistent with this language, EPA is using the good cause exemption under the Administrative Procedure Act (APA) to take the actions set forth in this interim final rule without prior notice and comment. See 5 U.S.C. 553(b)(3)(B). Section 553(b) of the APA generally requires that any rule to which it applies be issued only after the public has received notice of, and had an opportunity to comment on, the

proposed rule. However, APA section 553(b)(3)(B) exempts from those requirements any rule for which the issuing agency for good cause finds that providing prior notice and comment would be impracticable, unnecessary, or contrary to the public interest. Thus, any rule for which EPA makes such a finding is exempt from the notice and comment requirements of APA section 553(b).

EPA considers the present circumstances to provide good cause to take the actions set forth in this interim final rule without prior notice and comment because providing prior notice and comment would be impracticable, unnecessary, and contrary to the public interest. Notice and comment on this short deferral are impracticable, as EPA may not be able to complete a notice and comment rulemaking for a deferral before the March 31, 2011 reporting deadline, thus defeating the purpose of undertaking such a rulemaking. Further, even if EPA could complete a notice and comment deferral before March 31, 2011, EPA would not then be able to complete the electronic data reporting tool that we are developing for reporting of all data elements under Part 98 with sufficient lead time before the March 31, 2011 reporting deadline. To enable the development and release of this tool for timely reporting, EPA must know well in advance of the March 31, 2011 reporting deadline which data elements will be reported on that date. Even if EPA were able to promulgate a deferral with notice and comment by March 31, 2011, EPA still would not have sufficient time after the rule’s finalization to make necessary adjustments and complete the reporting tool before it must be made available to reporters. This includes time for reporters to learn to use this new reporting system.

Further, given the short period of time that this interim final rule will be in effect and EPA’s promulgation of a concurrent notice and comment rulemaking to defer the reporting deadline for inputs to equations for a longer period of time, EPA considers

<sup>3</sup> The list of inputs to equations is slightly different than what was proposed in the July 7, 2010 CBI proposal. Reporting elements included in this category are values used by reporters to calculate equation outputs.

soliciting public comment on this interim final rule to be unnecessary. This interim final rule simply provides the Agency with brief additional time to complete the concurrent rulemaking necessary to defer reporting of inputs to a later date that will give EPA time to fully address concerns about reporting of inputs to equations. The public will have an opportunity to comment on the concurrent proposed rule.

EPA also considers soliciting public comment on this interim final rule, which would prevent the rule from being finalized in time to defer reporting by March 31, 2011, to be contrary to the public interest. EPA is deferring reporting of certain data elements to avoid possibly causing unnecessary and unintentional, but irreparable, harm to reporters that they allege could occur if such information were reported to EPA and not treated as confidential. Because taking comment on this short-term deferral would defeat the purpose of this interim final rule, EPA finds good cause to defer for a short period of time the deadline for reporting inputs to equations under Part 98 without notice and comment.

EPA is also using the APA's good cause exemption to make this interim final rule effective on December 27, 2010. See 5 U.S.C. 553(d)(3). Section 553(d) of the APA, 5 U.S.C. Chapter 5, generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. EPA is issuing this interim final rule under CAA section 307(d)(1), which states: "The provisions of section 553 through 557 \* \* \* of Title 5 shall not, except as expressly provided in this section, apply to actions to which this subsection applies." Thus, section 553(d) of the APA does not apply to this rule. EPA is nevertheless acting consistently with the purposes underlying APA section 553(d) in making this rule effective on December 27, 2010.

Section 553(d)(3) of the APA allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." As explained below, EPA finds that there is good cause for this rule to become effective on December 27, 2010, even though this results in an effective date fewer than 30 days from date of publication in the **Federal Register**.

The purpose of the 30-day waiting period prescribed in APA section 553(d) is to give affected parties a reasonable time period to adjust their behavior and prepare before the final rule takes effect. This interim final rule defers a reporting date, requiring little preparation or

behavior adjustment. A shorter effective date in such circumstances is consistent with the purposes of APA section 553(d), which provides an exception for any action that grants or recognizes an exemption or relieves a restriction. Further, APA section 553(d)(3) provides that if the issuing agency has made a finding of good cause and published its reasoning with the rule, the rule may take effect sooner than 30 days. EPA has determined that good cause exists to defer the reporting date for inputs to emission equations until August 31, 2011 in this interim final rule without prior notice and comment, because prior notice and comment would be impracticable, unnecessary, and contrary to the public interest for the reasons stated above. Accordingly, we find that good cause exists to make this rule effective on December 27, 2010, consistent with the purposes of APA section 553(d)(3).

## V. Statutory and Executive Order Reviews

### A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order.

### B. Paperwork Reduction Act

This action does not impose any new information collection burden. This interim final rule defers the reporting deadline for certain 2010 data elements, so it does not increase the reporting burden. However, OMB has previously approved the information collection requirements contained in the regulations promulgated on October 30, 2009, under 40 CFR part 98 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060-0629. EPA has also submitted the Information Collection Request requirements for four additional Part 98 subparts promulgated on July 12, 2010 to OMB for approval (*see* 75 FR 39756). The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

### C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute 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 organizations, and small governmental jurisdictions.

For purposes of assessing the effects of this rule on small entities, "small entity" is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this interim final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The rule will not impose any new requirement on small entities that are not currently required by Part 98.

EPA took several steps to reduce the impact of Part 98 on small entities. For example, EPA determined appropriate thresholds that reduced the number of small businesses reporting. In addition, EPA did not require facilities to install continuous emission monitoring systems (CEMS) if they did not already have them. Facilities without CEMS can calculate emissions using readily available data or data that are less expensive to collect such as process data or material consumption data. For some source categories, EPA developed tiered methods that are simpler and less burdensome. Also, EPA required annual instead of more frequent reporting. Finally, EPA continues to conduct significant outreach on the mandatory GHG reporting rule and maintains an "open door" policy for stakeholders to help inform EPA's understanding of key issues for the industries and others.

We continue to be interested in the potential effects of this interim final rule on small entities and welcome comments on issues related to such effects.

### D. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538, requires Federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Federal agencies must also develop a plan to provide notice to small governments that might be significantly or uniquely affected by any regulatory requirements. The plan must enable

officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and must inform, educate, and advise small governments on compliance with the regulatory requirements.

The amendment to 40 CFR Part 98 does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. The amendment only postpones the reporting date for certain data elements under Part 98, so it does not increase the costs for facilities to comply with Part 98. Thus, the action is not subject to the requirements of sections 202 or 205 of UMRA.

In developing Part 98, EPA consulted with small governments pursuant to a plan established under section 203 of UMRA to address effects of regulatory requirements in the rule that might significantly or uniquely affect small governments. For a summary of EPA's consultations with State and/or local officials or other representatives of State and/or local governments in developing Part 98, see Section VIII.D of the preamble to the final rule (74 FR 56370, October 30, 2009).

#### *E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will 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. However, for a more detailed discussion about how Part 98 relates to existing State programs, please see Section II of the preamble to the final rule (74 FR 56266, October 30, 2009).

This amendment applies to facilities that directly emit greenhouse gases. It does not apply to government entities unless a government entity owns a facility that directly emits greenhouse gases above threshold levels (such as a landfill), so relatively few government facilities would be affected. This regulation also does not limit the power of States or localities to collect GHG data and/or regulate GHG emissions. Thus, Executive Order 13132 does not apply to this action. For a summary of EPA's consultation with State and local organizations and representatives in developing Part 98, see Section VIII.E of the preamble to the final rule (74 FR 56371, October 30, 2009).

#### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). The rule does not result in any changes to the requirements of Part 98 other than postponing the reporting date for certain data elements until August 31, 2011. Thus, Executive Order 13175 does not apply to this action. For a summary of EPA's consultations with Tribal governments and representatives, see Section VIII.F of the preamble to the final rule (74 FR 56371, October 30, 2009).

#### *G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

#### *H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

#### *I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113 (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

#### *J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this interim final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The amendment addresses only reporting and recordkeeping procedures.

#### *K. Congressional Review Act*

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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of December 27, 2010. 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**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

#### **List of Subjects in 40 CFR Part 98**

Environmental protection, Administrative practice and procedure, Greenhouse gases, Reporting and recordkeeping requirements.

Dated: December 17, 2010.

Lisa P. Jackson,  
Administrator.

■ For the reasons set out in the preamble, title 40, Chapter I, of the Code of Federal Regulations is amended as follows:

**PART 98—[AMENDED]**

■ 1. The authority citation for Part 98 continues to read as follows:

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

**Subpart A—[Amended]**

■ 2. Section 98.3 is amended by revising paragraph (c)(4)(iv) and adding paragraph (c)(4)(vii) to read as follows:

**§ 98.3 What are the general monitoring, reporting, recordkeeping, and verification requirements of this part?**

\* \* \* \* \*

(c) \* \* \*

(4) \* \* \*

(iv) Except as provided in paragraph (c)(4)(vii) of this section, emissions and other data for individual units,

processes, activities, and operations as specified in the “Data reporting requirements” section of each applicable subpart of this part.  
\* \* \* \* \*

(vii) The owner or operator of a facility is not required to report the data elements specified in Table A–6 of this subpart for calendar year 2010 until August 31, 2011.  
\* \* \* \* \*

■ 3. Add Table A–6 to subpart A to read as follows:

**TABLE A–6 TO SUBPART A—DATA ELEMENTS THAT ARE INPUTS TO EMISSION EQUATIONS AND FOR WHICH THE REPORTING DEADLINE IS CHANGED TO AUGUST 31, 2011**

Subpart	Rule Citation (40 CFR part 98)	Specific Data Elements for Which Reporting Date is Changed (“All” means that the date is changed for all data elements in the cited paragraph)
A	98.3(d)(3)(v)	All.
C	98.36(b)(9)(iii)	Only estimate of the heat input.
C	98.36(c)(2)(ix)	Only estimate of the heat input from each type of fuel listed in Table C–2.
C	98.36(d)(1)(iv)	All.
C	98.36(d)(2)(ii)(G)	All.
C	98.36(d)(2)(iii)(G)	All.
C	98.36(e)(2)(i)	All.
C	98.36(e)(2)(ii)(A)	All.
C	98.36(e)(2)(ii)(C)	Only HHV value for each calendar month in which HHV determination is required.
C	98.36(e)(2)(ii)(D)	All.
C	98.36(e)(2)(iv)(A)	All.
C	98.36(e)(2)(iv)(C)	All.
C	98.36(e)(2)(iv)(F)	All.
C	98.36(e)(2)(iv)(G)	All.
C	98.36(e)(2)(vi)(C)	Only stack gas flow rate and moisture content.
C	98.36(e)(2)(viii)(A)	All.
C	98.36(e)(2)(viii)(B)	All.
C	98.36(e)(2)(viii)(C)	All.
C	98.36(e)(2)(ix)(D)	All.
C	98.36(e)(2)(ix)(E)	All.
C	98.36(e)(2)(ix)(F)	All.
C	98.36(e)(2)(x)(A)	All.
C	98.36(e)(2)(xi)	All.
E	98.56(b)	All.
E	98.56(c)	All.
E	98.56(g)	All.
E	98.56(h)	All.
E	98.56(j)(1)	All.
E	98.56(j)(3)	All.
E	98.56(j)(4)	All.
E	98.56(j)(5)	All.
E	98.56(j)(6)	All.
E	98.56(l)	All.
F	98.66(a)	All.
F	98.66(c)(2)	All.
F	98.66(c)(3)	Only smelter-specific slope coefficients and overvoltage emission factors.
F	98.66(e)(1)	Only annual anode consumption (No CEMS).
F	98.66(f)(1)	Only annual paste consumption (No CEMS).
F	98.66(g)	All.
G	98.76(b)(2)	All.
G	98.76(b)(7)	All.
G	98.76(b)(8)	All.
G	98.76(b)(9)	All.
G	98.76(b)(10)	All.
G	98.76(b)(11)	All.
H	98.86(b)(2)	All.
H	98.86(b)(5)	All.
H	98.86(b)(6)	All.
H	98.86(b)(8)	All.
H	98.86(b)(10)	All.
H	98.86(b)(11)	All.
H	98.86(b)(12)	All.
H	98.86(b)(13)	All.

TABLE A-6 TO SUBPART A—DATA ELEMENTS THAT ARE INPUTS TO EMISSION EQUATIONS AND FOR WHICH THE REPORTING DEADLINE IS CHANGED TO AUGUST 31, 2011—Continued

Subpart	Rule Citation (40 CFR part 98)	Specific Data Elements for Which Reporting Date is Changed ("All" means that the date is changed for all data elements in the cited paragraph)
H	98.86(b)(15)	Only monthly kiln-specific clinker factors (if used) for each kiln.
K	98.116(b)	Only annual production by product from each EAF (No CEMS).
K	98.116(e)(4)	All.
K	98.116(e)(5)	All.
N	98.146(b)(2)	Only annual quantity of carbonate based-raw material charged to each continuous glass melting furnace.
N	98.146(b)(4)	All.
N	98.146(b)(6)	All.
O	98.156(a)(2)	All.
O	98.156(a)(7)	All.
O	98.156(a)(8)	All.
O	98.156(a)(9)	All.
O	98.156(a)(10)	All.
O	98.156(b)(1)	All.
O	98.156(b)(2)	All.
O	98.156(d)(1)	All.
O	98.156(d)(2)	All.
O	98.156(d)(3)	All.
O	98.156(d)(4)	All.
O	98.156(d)(5)	All.
O	98.156(e)(1)	All.
P	98.166(b)(2)	All.
P	98.166(b)(5)	All.
P	98.166(b)(6)	All.
Q	98.176(b)	Only annual quantity taconite pellets, coke, iron, and raw steel (No CEMS).
Q	98.176(e)(1)	All.
Q	98.176(e)(3)	All.
Q	98.176(e)(4)	All.
Q	98.176(f)(1)	All.
Q	98.176(f)(2)	All.
Q	98.176(f)(3)	All.
Q	98.176(f)(4)	All.
Q	98.176(g)	All.
R	98.186(b)(6)	All.
R	98.186(b)(7)	All.
S	98.196(b)(2)	All.
S	98.196(b)(3)	All.
S	98.196(b)(5)	All.
S	98.196(b)(6)	All.
S	98.196(b)(8)	All.
S	98.196(b)(10)	All.
S	98.196(b)(11)	All.
S	98.196(b)(12)	All.
U	98.216(b)	All.
U	98.216(e)(1)	All.
U	98.216(e)(2)	All.
U	98.216(f)(1)	All.
U	98.216(f)(2)	All.
V	98.226(c)	All.
V	98.226(d)	All.
V	98.226(i)	All.
V	98.226(j)	All.
V	98.226(m)(1)	All.
V	98.226(m)(3)	All.
V	98.226(m)(4)	All.
V	98.226(m)(5)	All.
V	98.226(m)(6)	All.
V	98.226(p)	All.
X	98.246(a)(4)	Only monthly volume values, monthly mass values, monthly carbon content values, molecular weights for gaseous feedstocks, molecular weights for gaseous products, and indication of whether the alternative method in § 98.243(c)(4) was used.
X	98.246(b)(5)(iii)	All.
X	98.246(b)(5)(iv)	All.
Y	98.256(e)(6)	Only molar volume conversion factor for each flare.
Y	98.256(e)(7)	Only molar volume conversion factor for each flare.
Y	98.256(e)(7)(ii)	All.
Y	98.256(e)(9)	Only annual volume of flare gas combusted, annual average higher heating value of the flare gas, volume of gas flared, average molecular weight, carbon content of the flare, and molar volume conversion factor if using Eq. Y-3.
Y	98.256(e)(10)	Only fraction of carbon in the flare gas contributed by methane.

TABLE A-6 TO SUBPART A—DATA ELEMENTS THAT ARE INPUTS TO EMISSION EQUATIONS AND FOR WHICH THE REPORTING DEADLINE IS CHANGED TO AUGUST 31, 2011—Continued

Subpart	Rule Citation (40 CFR part 98)	Specific Data Elements for Which Reporting Date is Changed ("All" means that the date is changed for all data elements in the cited paragraph)
Y	98.256(f)(7)	Only molar volume conversion factor.
Y	98.256(f)(10)	Only coke burn-off factor, annual throughput of unit, and average carbon content of coke.
Y	98.256(f)(11)	Only units of measure for the unit-specific CH <sub>4</sub> emission factor, activity data for calculating emissions, and unit-specific emission factor for CH <sub>4</sub> .
Y	98.256(f)(12)	Only unit-specific emission factor for N <sub>2</sub> O, units of measure for the unit-specific N <sub>2</sub> O emission factor, and activity data for calculating emissions.
Y	98.256(f)(13)	Only average coke burn-off quantity per cycle or measurement period, and average carbon content of coke.
Y	98.256(h)(4)	All.
Y	98.256(h)(5)	Only value of the correction, annual volume of recycled tail gas, and annual average mole fraction of carbon in the tail gas (if used to calculate recycling correction factor).
Y	98.256(i)(5)	Only annual mass of green coke fed, carbon content of green coke fed, annual mass of marketable coke produced, carbon content of marketable coke produced, and annual mass of coke dust removed from the process.
Y	98.256(i)(7)	Only the unit-specific CH <sub>4</sub> emission factor, units of measure for unit-specific CH <sub>4</sub> emission factor, and activity data for calculating emissions.
Y	98.256(i)(8)	Only units of measure for the unit-specific factor, activity data used for calculating emissions, and site-specific emissions factor.
Y	98.256(j)(2)	All.
Y	98.256(j)(5)	Only CO <sub>2</sub> emission factor.
Y	98.256(j)(6)	Only CH <sub>4</sub> emission factor.
Y	98.256(j)(7)	Only carbon emission factor.
Y	98.256(j)(8)	Only CO <sub>2</sub> emission factor and carbon emission factor.
Y	98.256(j)(9)	Only CH <sub>4</sub> emission factor.
Y	98.256(k)(3)	Only dimensions of coke drum or vessel, typical gauge pressure of the coking drum, typical void fraction of coke drum or vessel, annual number of coke-cutting cycles of coke drum or vessel, and molar volume conversion factor for each coke drum or vessel.
Y	98.256(k)(4)	Only height and diameter of the coke drums, cumulative number of vessel openings for all delayed coking drums, typical venting pressure, void fraction, mole fraction of methane in coking gas.
Y	98.256(l)(5)	Only molar volume conversion factor.
Y	98.256(m)(3)	Only total quantity of crude oil plus the quantity of intermediate products received from off-site, CH <sub>4</sub> emission factor used, and molar volume conversion factor.
Y	98.256(n)(3)	All (if used in Equation Y-21 to calculate emissions from equipment leaks).
Y	98.256(o)(2)(ii)	All.
Y	98.256(o)(4)(ii)	All.
Y	98.256(o)(4)(iii)	All.
Y	98.256(o)(4)(iv)	All.
Y	98.256(o)(4)(v)	All.
Y	98.256(o)(4)(vi)	Only tank-specific methane composition data and gas generation rate data.
Y	98.256(p)(2)	Only quantity of materials loaded that have an equilibrium vapor-phase concentration of CH <sub>4</sub> of 0.5 volume percent or greater.
Z	98.266(f)(5)	All.
Z	98.266(f)(6)	All.
AA	98.276(b)	All.
AA	98.276(c)	Only annual mass of the spent liquor solids combusted.
AA	98.276(d)	All.
AA	98.276(e)	All.
AA	98.276(f)	All.
AA	98.276(g)	All.
AA	98.276(h)	All.
AA	98.276(i)	All.
BB	98.286(b)(1)	All.
BB	98.286(b)(4)	All.
BB	98.286(b)(6)	All.
CC	98.296(b)(5)	Only monthly consumption of trona or liquid alkaline feedstock (for facilities using Equation CC-1).
CC	98.296(b)(6)	Only monthly production of soda ash for each manufacturing line (for facilities using Equation CC-2).
CC	98.296(b)(7)	All.
CC	98.296(b)(10)(i)	All.
CC	98.296(b)(10)(ii)	All.
CC	98.296(b)(10)(iii)	All.
CC	98.296(b)(10)(iv)	All.
CC	98.296(b)(10)(v)	All.
CC	98.296(b)(10)(vi)	All.
CC	98.296(b)(10)(vii)	All.

TABLE A-6 TO SUBPART A—DATA ELEMENTS THAT ARE INPUTS TO EMISSION EQUATIONS AND FOR WHICH THE REPORTING DEADLINE IS CHANGED TO AUGUST 31, 2011—Continued

Subpart	Rule Citation (40 CFR part 98)	Specific Data Elements for Which Reporting Date is Changed ("All" means that the date is changed for all data elements in the cited paragraph)
EE .....	98.316(b)(6) .....	All.
EE .....	98.316(b)(9) .....	All.
GG .....	98.336(b)(6) .....	All.
GG .....	98.336(b)(7) .....	All.
GG .....	98.336(b)(10) .....	All.
HH .....	98.346(a) .....	Only year in which landfill first accepted waste, last year the landfill accepted waste, capacity of the landfill, and waste disposal quantity for each year of landfilling.
HH .....	98.346(b) .....	Only quantity of waste determined using the methods in § 98.343(a)(3)(i), quantity of waste determined using the methods in § 98.343(a)(3)(ii), population served by the landfill for each year, and the value of landfill capacity (LFC) used in the calculation.
HH .....	98.346(c) .....	All.
HH .....	98.346(d)(1) .....	Only degradable organic carbon (DOC) value, methane correction factor (MCF) values, and fraction of DOC dissimilated (DOCF) values.
HH .....	98.346(d)(2) .....	All.
HH .....	98.346(e) .....	Only fraction of CH <sub>4</sub> in landfill gas.
HH .....	98.346(f) .....	Only surface area associated with each cover type.
HH .....	98.346(g) .....	All.
HH .....	98.346(i)(5) .....	Only annual operating hours for the primary destruction device, annual operating hours for the backup destruction device, destruction efficiency for the primary destruction device, and destruction efficiency for the backup destruction device.
HH .....	98.346(i)(6) .....	All.
HH .....	98.346(i)(7) .....	Only surface area specified in Table HH-3, estimated gas collection system efficiency, and annual operating hours of the gas collection system.
HH .....	98.346(i)(9) .....	Only CH <sub>4</sub> generation value.

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