

**Subpart I—Delaware**

■ 2. In § 52.420, the table in paragraph (c) is amended under Regulation No.

1146 by removing the entry for Table II and adding the entry for Table 5–1 to read as follows:

**§ 52.420 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

**EPA-APPROVED REGULATIONS IN THE DELAWARE SIP**

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
*	*	*	*	*
<b>Regulation No. 1146 Electric Generating Unit (EGU) Multi-Pollutant Regulation NO</b>				
*	*	*	*	*
Table 5–1 (Formerly Table II)	Annual SO <sub>2</sub> Mass Emissions Limit.	9/11/08 10/10/09	March 16, 2010 [Insert page number where the document begins].	Modified emissions limit for Conectiv Edge Moor Unit 5.
*	*	*	*	*

\* \* \* \* \*  
[FR Doc. 2010–5581 Filed 3–15–10; 8:45 am]  
**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 98**

[EPA–HQ–OAR–2008–0508; FRL–9127–6]

RIN 2060–AQ15

**Mandatory Reporting of Greenhouse Gases: Minor Harmonizing Changes to the General Provisions**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to amend the general provisions for the Mandatory Greenhouse Gas (GHG) Reporting Rule. The amendments do not change the requirements of the regulation for facilities and suppliers covered by the 2009 final rule. Rather, the amendments are minor changes to the format of several sections of the general provisions to accommodate the addition of new subparts in the future in a simple and clear manner. These changes include updating the language for the schedule for submitting reports and calibrating equipment to recognize that subparts that may be added in the future would have later deadlines. These revisions do not change the requirements for subparts included in the 2009 final rule.

**DATES:** This direct final rule is effective May 17, 2010 without further notice, unless EPA receives adverse comments by April 15, 2010, or by April 30, 2010 if a public hearing is held (see below).

If we receive adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule, or the relevant section of this rule, will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0508, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *E-mail:* [a-and-r-Docket@epa.gov](mailto:a-and-r-Docket@epa.gov).
- *Fax:* (202) 566–1741.
- *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 6102T, Attention Docket ID No. EPA–HQ–OAR–2008–0508, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket’s normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0508. EPA’s policy is that all comments received 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 information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is

an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. 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. For additional information about EPA’s public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*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., 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, Room B102, 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-6207J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; *telephone number:* (202) 343-9263; *fax number:* (202) 343-2342; *e-mail address:* [GHGReportingRule@epa.gov](mailto:GHGReportingRule@epa.gov).

**SUPPLEMENTARY INFORMATION:** EPA is publishing this rule without prior proposal because we view this as a noncontroversial action and anticipate no adverse comment. These amendments simply reformat parts of one section of subpart A and make other harmonizing changes to allow additional subparts to be added in the future in a clear manner. These revisions do not alter the requirements for sources covered by the final rule. Any additional subparts will be added in separate rulemakings and are not included in this rule. However, in the "Proposed Rules" section of this **Federal Register**, we are publishing a separate

document that will serve as the proposed rule for these amendments if adverse comments are received on this direct final rule. If EPA receives adverse comment on all or a distinct portion of this direct final rule, we will publish a timely withdrawal in the **Federal Register** to inform the public that the direct final rule or some portion of the direct final rule will not take effect. EPA will not consider a comment to be adverse if a comment pertains to an aspect of 40 CFR part 98 that is not addressed in this direct final rule.

The rule provisions that are not withdrawn will become effective on the date set out above, notwithstanding adverse comment on any other provision, unless we determine that it would not be appropriate to promulgate those provisions due to their being affected by the provision for which we receive adverse comments. We would address all public comments in any subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on the specific changes being made in this rule must do so at this time. For further information about commenting

on this rule, see the **ADDRESSES** section of this document.

**Submitting CBI.** Do not submit this information to EPA through [www.regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

**Regulated Entities.** The amendments to the Mandatory Greenhouse Gas Reporting Rule affect owners and operators of fuel and chemicals suppliers and direct emitters of GHGs who are already subject to the rule. Regulated categories and entities 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:
	211	Extractors of crude petroleum and natural gas.
	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.
Electricity Generation .....	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.
HCFC-22 Production and HFC-23 Destruction.	325120	Chlorodifluoromethane manufacturing facilities.
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.

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY—Continued

Category	NAICS	Examples of affected facilities
Petroleum Refineries .....	324110	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.
Manure Management <sup>1</sup> .....	112111	Beef cattle feedlots.
	112120	Dairy cattle and milk production facilities.
	112210	Hog and pig farms.
	112310	Chicken egg production facilities.
	112330	Turkey production.
	112320	Broilers and other meat type chicken production.
Suppliers of Coal Based Liquids Fuels ...	211111	Coal liquefaction at mine sites.
Suppliers of Petroleum Products .....	324110	Petroleum refineries.
Suppliers of Natural Gas and NGLs .....	221210	Natural gas distribution facilities.
	211112	Natural gas liquid extraction facilities.
Suppliers of Industrial GHGs .....	325120	Industrial gas manufacturing facilities.
Suppliers of Carbon Dioxide (CO2) .....	325120	Industrial gas manufacturing facilities.

<sup>1</sup> EPA will not be implementing subpart JJ of the Mandatory GHG Reporting Rule using funds provided in its FY2010 appropriations due to a Congressional restriction prohibiting the expenditure of funds for this purpose.

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. Table 1 of this preamble lists the types of facilities that EPA is now aware could be potentially affected by this action. Other types of facilities not listed in the table could also be affected. To determine whether your facility is affected by this action, you should carefully examine the applicability criteria found in 40 CFR part 98, subpart A, and other subparts as necessary. 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.

**Public Hearing.** EPA does not plan to conduct a public hearing unless requested. To request a hearing, please contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section by March 23, 2010. If requested, the public hearing will be conducted on March 31, 2010 at 1310 L St., NW., Washington, DC 20005 starting at 9 a.m., local time. EPA will provide further information about the hearing on its webpage if a hearing is requested.

**Outline.** The information presented in this preamble is organized as follows:

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#### I. Background of Final Rule

The Mandatory Greenhouse Gas Reporting Rule, published on October 30, 2009 (74 FR 56260), requires reporting by certain facilities that emit GHGs and by suppliers of fuels and industrial gases. Facilities and suppliers that meet the applicability criteria in the rule must comply with the general provisions (subpart A) and any other applicable subpart(s). Subpart A specifies rule applicability and the general monitoring, reporting, recordkeeping, verification, schedule, and calibration requirements that apply to all facilities and suppliers that are subject to the final rule. Some subparts of the final rule address direct emitters, who generally must report emissions from general stationary fuel combustion sources and any manufacturing processes that are specified in the rule. Other subparts address suppliers, who must report quantities of fuel products or industrial gases they supply into the economy and the GHG emissions that could ultimately be released when the fuels they supply are combusted or the industrial gases they supply are used and released.

As specified in subpart A of the 2009 final rule, facilities and suppliers covered by the 2009 rule must begin monitoring emissions data on January 1, 2010, and the first reports are due to

EPA on March 31, 2011. EPA is currently in the process of conducting additional rulemaking actions that would add subparts to the reporting rule. If adopted, the new subparts would require reporting of emissions by additional source and supply categories. Compliance with the requirements of any new subparts would begin in future calendar years (e.g., 2011) rather than 2010. Any comments about the actual reporting date (e.g., March 31) for those additional source categories should be directed to those separate rulemaking. We will not consider comments on the reporting date as adverse comments in this rulemaking. Today's minor revisions do not change the requirements of the final rule, but rather reformat the regulatory text to allow for the addition of subparts in the future in a simple and clear manner.

#### II. Overview of the Amendments

The direct final rule amendment converts into a tabular format the lists of source categories and supply categories that are affected by the rule. The lists, which currently are embedded in three paragraphs of subpart A (40 CFR 98.2(a)), are being moved to three new tables in subpart A. Each table also indicates the applicable first reporting year for each source and supply category. For source and supply categories included in the 2009 final rule, the first reporting year remains 2010.

As a concurrent harmonizing change, all references to applicable subparts (e.g., “subparts C through JJ”) are being replaced by references to the appropriate source or supply category table. EPA is neither adding any new source categories in this direct final rule nor making any changes to the applicability, schedule, or general requirements for sources covered by the 2009 final rule. Any comments about the applicability requirements reflected in the final rule will not be considered adverse comment in this rulemaking. This rule is merely reformatting those applicability requirements, not changing them; therefore, they are not subject to comment in this rule. For more information about applicability, please see the final GHG Mandatory Reporting Rule (74 FR 56260) and corresponding Response to Comment documents.

Finally, EPA is also amending 40 CFR 98.3 in order to recognize that the compliance year for any new subparts would be different than for subparts covered by the 2009 final rule. Again, these revisions would not change any requirements for sources covered by the 2009 final rule. As stated above, the actual schedule for complying with new subparts is not a subject for this rulemaking. Any comments about the schedule for any new source categories added should be directed to those rulemakings. For more information about the March 31, 2011 reporting date, please see the final GHG Mandatory Reporting Rule (74 FR 56260) and corresponding Response to Comment documents.

### III. Rationale for the Amendments

EPA is changing the framework of 40 CFR 98.2(a) to make it clear which source categories are to be considered for determining applicability and reporting requirements for calendar year 2010, and which are to be considered for future years if and when new subparts are added to the rule. In 40 CFR 98.3, EPA is modifying references to calendar year 2010 as being the sole initial compliance year for all rule requirements. The table format improves clarity and facilitates the addition of subparts that were not included in the 2009 final rule. Tables A–3 through A–5 replace the list of source categories in 40 CFR 98.2(a)(1), (a)(2), and (a)(4), respectively. Each table lists the source categories subject to the rule in calendar year 2010 and also includes a place to list applicable source categories in calendar year 2011 and future years.

If new source and supply source categories are added to the rule, this reformatting will simplify updates to the

applicability provisions of subpart A. If new subparts are adopted, a new row would simply be added to the appropriate table for the appropriate starting year. To carry these revisions through the rest of the regulatory text, the introductory text of 40 CFR 98.2(a)(2) and a few other paragraphs throughout 40 CFR part 98, subpart A that currently reference “subparts C through JJ” or “subparts KK through PP” are reworded to refer to the appropriate tables. References to tables are an easy way to clearly indicate which categories are to be considered for determining the applicability threshold and reporting requirements for calendar years 2010, 2011, and future years, without having to update the list citations throughout the regulatory text every time a new subpart is added to the rule.

We are also revising 40 CFR 98.3(b), which establishes the schedule for annual reporting. The text in 40 CFR 98.3(b)(1) and (b)(2) currently indicates that existing facilities subject to the rule must report emissions for calendar year 2010 by submitting an annual report no later than March 31, 2011. The revisions to 40 CFR 98.3(b) do not change the 2010 and 2011 dates for facilities and suppliers covered by the 2009 final rule, but provide that as new subparts are added, they will have later compliance years. Therefore, we are modifying the text of 40 CFR 98.3(b) to allow reporting to start in different years, as specified in the new source category tables. Any future rules adding subparts would indicate the exact starting year for reporting for that source category. This direct final rule merely removes the presumption that all categories, existing and future, would report starting with 2010 emissions. Any comments about the reporting schedule for any new source categories should be made in those separate rulemakings, rather than here. We will not consider them adverse comments for the purposes of this rulemaking.

We also are removing and reserving 40 CFR 98.3(b)(1). This section is not needed because the tables will indicate the first reporting year for source categories added to the rule and the requirement for facilities to report in each subsequent year is already contained in 40 CFR 98.2(i).

We are also modifying the text of 40 CFR 98.3(i)(1) to allow facilities that must report under any additional subparts to conduct any initial calibrations that are required by the newly published subparts during the first year that the subpart applies rather than in the year 2010.

As discussed throughout this rule, we are not changing any requirements for

facilities or suppliers covered by subparts included in the 2009 final rule. Rather, we are merely reformatting the presentation of certain requirements, and clarifying deadlines that may apply to future subparts added in later rulemakings. Thus, as indicated in the concurrent proposal, we are not requesting or entertaining comments on decisions made in the 2009 final rule. Comments received on issues resolved in the 2009 final rule will not be considered adverse comments on this direct final rule because they are outside the scope of the changes being made by this rule.

### IV. Economic Impacts of the Amendments

The amendments do not introduce any changes to the requirements of the rule. Therefore, there are no economic or cost impacts associated with this direct final rule.

### 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 (EO) 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. The amendments in this direct final rule simply reformat parts of subpart A and make other harmonizing changes to allow additional subparts to be added into the final rule in a clear manner. This direct final rule does not change any reporting requirements in the general provisions. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing subparts of 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. The OMB control numbers for EPA’s regulations in 40 CFR are listed in 40 CFR part 9. Subparts that will be added through separate rulemakings will document the respective information collection requirements in their own ICR documents.

#### 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 impacts 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 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 direct final rule simply reformats parts of one section of subpart A and makes other harmonizing changes to allow additional subparts to be added into the final rule in a clear manner. The direct final rule does not itself add any additional subparts or requirements. The direct final rule will not impose any new requirements on small entities.

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

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. The amendments in this final rule reformat parts of one section of Subpart A and make other harmonizing changes to allow additional subparts to be added into the final rule in a clear manner.

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

EO 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications." "Policies that have Federalism implications" is

defined in the EO to include regulations that 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."

This final rule 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 EO 13132. However, for a more detailed discussion about how the Mandatory GHG Reporting Rule relates to existing State programs, *please see* Section II of the preamble to the final Mandatory GHG Reporting Rule (74 FR 56266).

These amendments apply directly to facilities that supply fuel or chemicals that when used emit greenhouse gases or facilities that directly emit greenhouse gases. They do not apply to governmental entities unless the government entity owns a facility that directly emits greenhouse gases above threshold levels (such as a landfill or large stationary combustion source), 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, EO 13132 does not apply to this final rule.

#### *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 changes in this direct final rule do not result in any changes to the requirements of the 2009 rule. Thus, Executive Order 13175 does not apply to this action.

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

This direct final rule is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The changes in this direct final rule do not result in any changes to the requirements applicable to facilities and suppliers covered by the subparts included in the 2009 final rule.

#### *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, 12(d) (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.

This action does not involve technical standards. Therefore, EPA did not consider 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 the direct final amendments will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because the amendments do not affect the level of protection provided to human health or the environment. The amendments do not affect the level of protection provided to human health or the environment because they simply reformat parts of one section of subpart A and make other harmonizing changes to allow additional subparts to be added into the final rule in a clear manner.

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. 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 U.S. 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). This rule will be effective May 17, 2010.

List of Subjects in 40 CFR Part 98

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

Dated: March 10, 2010.

Lisa P. Jackson, Administrator.

For the reasons stated 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 98.1 is amended by revising paragraph (b) to read as follows:

§ 98.1 Purpose and scope.

\* \* \* \* \*

(b) Owners and operators of facilities and suppliers that are subject to this part must follow the requirements this subpart and all applicable subparts of this part. If a conflict exists between a provision in subpart A and any other applicable subpart, the requirements of the applicable subpart shall take precedence.

3. Section 98.2 is amended by revising paragraphs (a)(1), (2), and (4) to read as follows:

§ 98.2 Who must report?

(a) \* \* \*

(1) A facility that contains any source category that is listed in Table A-3 of this subpart in any calendar year starting in 2010. For these facilities, the annual GHG report must cover stationary fuel combustion sources (subpart C of this part), miscellaneous use of carbonates (subpart U of this part), and all applicable source categories listed in Table A-3 and Table A-4 of this subpart.

(2) A facility that contains any source category that is listed in Table A-4 of this subpart that emits 25,000 metric tons CO2e or more per year in combined emissions from stationary fuel combustion units, miscellaneous uses of carbonate, and all applicable source categories that are listed in Table A-3 and Table A-4 of this subpart. For these facilities, the annual GHG report must cover stationary fuel combustion sources (subpart C of this part), miscellaneous use of carbonates (subpart U of this part), and all applicable source categories listed in Table A-3 and Table A-4 of this subpart.

\* \* \* \* \*

(4) A supplier that is listed in Table A-5 of this subpart. For these suppliers, the annual GHG report must cover all applicable products for which calculation methodologies are provided in the subparts listed in Table A-5 of this subpart.

\* \* \* \* \*

4. Section 98.3 is amended as follows:

- a. By revising paragraph (b) introductory text.
b. By removing and reserving paragraph (b)(1).
c. By revising paragraph (b)(2).
d. By revising paragraph (c)(4)(i).
e. By revising paragraph (c)(4)(ii).
f. By revising paragraph (c)(4)(iii) introductory text.
g. By revising paragraph (i)(1).

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

\* \* \* \* \*

(b) Schedule. The annual GHG report must be submitted no later than March 31 of each calendar year for GHG emissions in the previous calendar year. As an example, for a facility that is subject to the rule in calendar year 2010, the first report must be submitted on March 31, 2011.

- (1) [Reserved]
(2) For a new facility or supplier that begins operation on or after January 1,

2010 and becomes subject to the rule in the year that it becomes operational, report emissions beginning with the first operating month and ending on December 31 of that year. Each subsequent annual report must cover emissions for the calendar year, beginning on January 1 and ending on December 31.

\* \* \* \* \*

(c) \* \* \*

(4) \* \* \*

(i) Annual emissions (excluding biogenic CO2) aggregated for all GHG from all applicable source categories listed in Tables A-3 and Table A-4 of this subpart and expressed in metric tons of CO2e calculated using Equation A-1 of this subpart.

(ii) Annual emissions of biogenic CO2 aggregated for all applicable source categories in listed in Tables A-3 and Table A-4 of this subpart.

(iii) Annual emissions from each applicable source category listed in Tables A-3 and Table A-4 of this subpart, expressed in metric tons of each GHG listed in paragraphs (c)(4)(iii)(A) through (E) of this section.

\* \* \* \* \*

(i) \* \* \*

(1) Except as provided paragraphs (i)(4) through (6) of this section, flow meters and other devices (e.g., belt scales) that measure data used to calculate GHG emissions shall be calibrated using the procedures specified in this paragraph and each relevant subpart of this part. All measurement devices must be calibrated according to the manufacturer's recommended procedures, an appropriate industry consensus standard, or a method specified in a relevant subpart of this part. All measurement devices shall be calibrated to an accuracy of 5 percent. For facilities and suppliers that are subject to this part on January 1, 2010, the initial calibration shall be conducted by April 1, 2010. For facilities and suppliers that become subject to this part after April 1, 2010, the initial calibration shall be conducted by the date that data collection is required to begin. Subsequent calibrations shall be performed at the frequency specified in each applicable subpart.

\* \* \* \* \*

5. Subpart A is amended by adding Tables A-3, A-4, and A-5 to read as follows:

TABLE A-3 OF SUBPART A—SOURCE CATEGORY LIST FOR § 98.2(a)(1)

**Source Categories<sup>1</sup> Applicable in 2010 and Future Years**

Electricity generation units that report CO<sub>2</sub> mass emissions year round through 40 CFR part 75 (subpart D).  
 Adipic acid production (subpart E).  
 Aluminum production (subpart F).  
 Ammonia manufacturing (subpart G).  
 Cement production (subpart H).  
 HCFC-22 production (subpart O).  
 HCFC-23 destruction processes that are not collected with a HCFC-22 production facility and that destroy more than 2.14 metric tons of HFC-23 per year (subpart O).  
 Lime manufacturing (subpart S).  
 Nitric acid production (subpart V).  
 Petrochemical production (subpart X).  
 Petroleum refineries (subpart Y).  
 Phosphoric acid production (subpart Z).  
 Silicon carbide production (subpart BB).  
 Soda ash production (subpart CC).  
 Titanium dioxide production (subpart EE).  
 Municipal solid waste landfills that generate CH<sub>4</sub> in amounts equivalent to 25,000 metric tons CO<sub>2</sub>e or more per year, as determined according to subpart HH of this part.  
 Manure management systems with combined CH<sub>4</sub> and N<sub>2</sub>O emissions in amounts equivalent to 25,000 metric tons CO<sub>2</sub>e or more per year, as determined according to subpart JJ of this part.

**Additional Source Categories<sup>1</sup> Applicable in 2011 and Future Years****Source Categories<sup>1</sup> Applicable in 2010 and Future Years (reserved)**

Source categories are defined in each applicable subpart.

TABLE A-4 OF SUBPART A—SOURCE CATEGORY LIST FOR § 98.2(a)(2)

**Source Categories<sup>1</sup> Applicable in 2010 and Future Years**

Ferroalloy production (subpart K).  
 Glass production (subpart N).  
 Hydrogen production (subpart P).  
 Iron and steel production (subpart Q).  
 Lead production (subpart R).  
 Pulp and paper manufacturing (subpart AA).  
 Zinc production (subpart GG).

**Additional Source Categories<sup>1</sup> Applicable in 2011 and Future Years (Reserved)**

Source categories are defined in each applicable subpart.

TABLE A-5 OF SUBPART A—SUPPLIER CATEGORY LIST FOR § 98.2(a)(4)

**Supplier Categories<sup>1</sup> Applicable in 2010 and Future Years**

Coal-to-liquids suppliers (subpart LL):  
 (A) All producers of coal-to-liquid products.  
 (B) Importers of an annual quantity of coal-to-liquid products that is equivalent to 25,000 metric tons CO<sub>2</sub>e or more.  
 (C) Exports of an annual quantity of coal-to-liquid products that is equivalent to 25,000 metric tons CO<sub>2</sub>e or more.  
 Petroleum product suppliers (subpart MM):  
 (A) All petroleum refineries that distill crude oil.  
 (B) Importers of an annual quantity of petroleum products that is equivalent to 25,000 metric tons CO<sub>2</sub>e or more.  
 (C) Exporters of an annual quantity of petroleum products that is equivalent to 25,000 metric tons CO<sub>2</sub>e or more.  
 Natural gas and natural gas liquids suppliers (subpart NN):  
 (A) All fractionators.  
 (B) All local natural gas distribution companies.

**Supplier Categories<sup>1</sup> Applicable in 2010 and Future Years**

Industrial greenhouse gas suppliers (subpart OO):  
 (A) All producers of industrial greenhouse gases.  
 (B) Importers of industrial greenhouse gases with annual bulk imports of N<sub>2</sub>O, fluorinated GHG, and CO<sub>2</sub> that in combination are equivalent to 25,000 metric tons CO<sub>2</sub>e or more.  
 (C) Exporters of industrial greenhouse gases with annual bulk exports of N<sub>2</sub>O, fluorinated GHG, and CO<sub>2</sub> that in combination are equivalent to 25,000 metric tons CO<sub>2</sub>e or more.  
 Carbon dioxide suppliers (subpart PP):  
 (A) All producers of CO<sub>2</sub>.  
 (B) Importers of CO<sub>2</sub> with annual bulk imports of N<sub>2</sub>O, fluorinated GHG, and CO<sub>2</sub> that in combination are equivalent to 25,000 metric tons CO<sub>2</sub>e or more.

TABLE A-5 OF SUBPART A—SUPPLIER CATEGORY LIST FOR § 98.2(a)(4)—Continued

(C) Exporters of CO<sub>2</sub> with annual bulk exports of N<sub>2</sub>O, fluorinated GHG, and CO<sub>2</sub> that in combination are equivalent to 25,000 metric tons CO<sub>2</sub>e or more.

**Additional Supplier Categories Applicable<sup>1</sup> in 2011 and Future Years (Reserved)**

<sup>1</sup> Suppliers are defined in each applicable subpart.

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 76**

[MB Docket No. 07-51; FCC 10-35]

**Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; policy statement.

**SUMMARY:** This document is the Commission's Second Report and Order concerning video services in multiple dwelling units ("MDUs"), which are apartment and condominium buildings and centrally managed residential real estate developments. The Second Report and Order resolves some issues the Commission left undecided in its First Report and Order, concerning two practices called "bulk billing" and "marketing exclusivity." The Second Report and Order concludes that bulk billing and marketing exclusivity, at present, create more benefits than harms for MDU residents. The Commission therefore allows both practices to continue.

**DATES:** Effective April 15, 2010.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** For additional information on this proceeding, please contact John W. Berresford, (202) 418-1886, or Holly Saurer, (202) 418-7283, both of the Policy Division, Media Bureau.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal Communications Commission's Second Report and Order in MB Docket No. 07-51, FCC 10-35, adopted March 1, 2010, and released March 2, 2010. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC

20554. This document will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (The document will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

**Summary of the Second Report and Order**

1. The Second Report and Order is an outgrowth of the Commission's first Report and Order in the same proceeding, which was released on October 31, 2007. Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units & Other Real Estate Developments, Report & Order & Further Notice of Proposed Rulemaking, 22 FCC Rcd 20235 (2007), affirmed, National Cable & Telecommun. Ass'n v. FCC, 567 F.3d 659 (DC Cir. 2009). The first Report and Order prohibited certain multichannel video programming distributors ("MVPDs," specifically cable operators and common carriers) from engaging in so-called "building exclusivity" with MDUs—arrangements whereby only one such MVPD was allowed to provide MVPD service in an MDU. The first Report and Order ended with a Further Notice of Proposed Rulemaking that raised issues about the similar practices of bulk billing and marketing exclusivity. The Second Report and Order resolves those issues.<sup>1</sup>

**I. Background**

2. Much of the history of this proceeding, definitions of key terms, factual descriptions of MDUs and their

<sup>1</sup> The Second Report and Order does not resolve another issue raised in the Further Notice of Proposed Rulemaking, which is whether the First Report and Order's ban of building exclusivity should be expanded to apply to MVPDs other than cable operators and common carriers, specifically DBS service providers and so-called "private cable operators." That issue will be resolved in a future decision.

residents, and descriptions of pertinent statutes (especially 47 U.S.C. 548(b)) are set forth in the **Federal Register** description of the first Report and Order, 73 FR 1080-01 (Jan. 7, 2008). Bulk billing is an arrangement in which one MVPD provides video service to every resident of an MDU, usually at a significant discount from the retail rate that each resident would pay if he or she contracted with the MVPD individually. Marketing exclusivity is a practice by which an MDU owner grants one MVPD certain specific marketing advantages on an exclusive basis (such as the exclusive right to have its brand on the MDU's Web page and to market its services in common areas). The issues resolved in the Second Report and Order were whether to allow any kind of MVPD to engage in bulk billing or marketing exclusivity.

3. In response to the Further Notice of Proposed Rulemaking, the Commission received filings from major cable operators, their trade association, and incumbent common carriers (also called local exchange carriers or "LECs"), the two major Direct Broadcast Satellite ("DBS") providers (DIRECTV and DISH Network), nine private cable operators ("PCOs"), PCOs' national trade association, their financiers, operators of new wire- or fiber-based systems that do not use public rights of way, approximately 20 real estate interests (MDU developers, builders, owners, and managers and their trade associations and consultants), several individual homeowners' associations and educational institutions that subscribe to PCOs' services, municipal governments, the National Governors Association, and hundreds of individual consumers.

**II. Discussion**

**A. Bulk Billing Arrangements**

**1. Use of Bulk Billing Arrangements**

4. In a typical bulk billing arrangement, the MDU building subscribes to the MVPD provider's service, agreeing to pay the MVPD a monthly fee. The MVPD provider then connects its service to every unit in the MDU. The MVPD typically bills its fee every month to the MDU building, which factors each unit's pro rata charge into the unit's rent, condominium fee,