

**Modifications to Subpart A of 40 CFR 98¹, As Effected by Proposed
20.2.300 NMAC – Reporting of Greenhouse Gas Emissions**

plain text = unchanged EPA rule language

underline = added by 20.2.300 NMAC (as proposed July 30, 2010)

~~strikeout~~ = deleted by 20.2.300 NMAC (as proposed July 30, 2010)

Subpart A—General Provisions

§ 98.1 Purpose and scope.

(a) This part establishes mandatory greenhouse gas (GHG) reporting requirements for owners and operators of certain facilities that directly emit GHG ~~as well as for certain fossil fuel suppliers and industrial GHG suppliers. For suppliers, the GHGs reported are the quantity that would be emitted from combustion or use of the products supplied.~~

(b) Owners and operators of facilities ~~and suppliers~~ that are subject to this part must follow the requirements of 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.

(c) Except as otherwise specifically provided²:

(1) Wherever the term “Administrator” is used in the rules incorporated by reference in this rule, the term "secretary", meaning secretary of the New Mexico environment department, shall be substituted.

(2) Wherever the term “EPA” is used in the rules incorporated by reference in this rule, the term "department", meaning the New Mexico environment department, shall be substituted, except in section 98.7, subsection 98.33(5), and subpart D of 40 CFR 98, and in reference to EPA publications and EPA methods published elsewhere than in 40 CFR 98.

¹ This version of 40 CFR 98 Subpart A includes format and other conforming amendments made in the EPA final rule entitled 'Mandatory Reporting of Greenhouse Gases from Magnesium Production, Underground Coal Mines, Industrial Wastewater Treatment, and Industrial Waste Landfills' on July 12, 2010 (75 FR 39736). Also included are Technical Corrections as proposed June 15, 2010 (75 FR 33950). These EPA amendments are incorporated as plain text, not underline/strikeout.

² These changes implemented in Definitions, 20.2.300.7 NMAC.

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(d) The following emissions data shall be submitted for information only and may not be subject to cap-and-trade requirements³:

(1) Emissions data calculated with a methodology identified as “reporting only.”

(2) Data submitted by a facility not subject to verification under 20.2.301 NMAC.

(e) On approval by the secretary, reports that conform to this part and that are submitted to the EPA GHG reporting system shall be deemed to satisfy, in whole or in part, the requirement to submit a report under this part.⁴

§ 98.2 Who must report?

(a) The GHG reporting requirements and related monitoring, recordkeeping, and reporting requirements of this part apply to the owners and operators of any facility that is located in the United States geographic area within the jurisdiction of the environmental improvement board and that meets the requirements of either paragraph (a)(1), (a)(2), or (a)(3) of this section; and any supplier that meets the requirements of paragraph (a)(4) of this section:

(1) A facility that contains, in any calendar year starting in 2011, 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); ~~miscellaneous use of carbonates (subpart U)~~, and all applicable source categories listed in ~~Table A-3 and Table A-4 of this subpart~~ 20.2.300.100 NMAC and 20.2.300.107 NMAC.

(2) A facility ~~that contains~~ containing any source category ~~that is listed in 20.2.300.107 NMAC, or in both Table A-4 of this subpart and 20.2.300.100 NMAC, that emits, in any calendar year starting in 2011, 10,000 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~~ in Table A-3 and Table A-4 of this subpart 20.2.300.100 NMAC and 20.2.300.107 NMAC. For these facilities, the annual GHG report ~~must cover stationary fuel combustion sources (subpart C), miscellaneous use of carbonates (subpart U), and all applicable source categories listed in Table A-3 and Table A-4~~~~

³ See Definitions, 20.2.300.7 NMAC, for listing of specific emissions data designated as "reporting only". Exclusion from verification threshold determination and verification scope is implemented in Subsections A, E, and F of 20.2.301.100 NMAC.

⁴ Implemented in 20.2.300.13 NMAC.

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of this subpart shall cover all source categories and GHGs for which calculation methodologies are provided in 20.2.300 NMAC.

(3) *A facility that in any calendar year starting in ~~2010~~2011 meets all three of the conditions listed in this paragraph (a)(3).* For these facilities, the annual GHG report must cover emissions from stationary fuel combustion sources only.

(i) The facility does not meet the requirements of either paragraph (a)(1) or (a)(2) of this section.

(ii) The aggregate maximum rated heat input capacity of the stationary fuel combustion units at the facility is ~~30~~12 mmBtu/hr or greater.⁵

(iii) The facility emits ~~25,000~~10,000 metric tons CO₂e or more per year in combined emissions from all stationary fuel combustion sources.

~~(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.~~

(5) Research and development activities are not considered to be part of any source category defined in this part.

(b) To calculate GHG emissions for comparison to the ~~25,000~~10,000⁶ metric ton CO₂e per year emission threshold in paragraph (a)(2) of this section, the owner or operator shall calculate annual CO₂e emissions, as described in paragraphs (b)(1) through (b)(4) of this section.

(1) Calculate the annual emissions of CO₂, CH₄, N₂O, and each fluorinated GHG in metric tons from all applicable source categories listed in paragraph (a)(2) of this section. The GHG emissions shall be calculated using the calculation methodologies specified in each applicable subpart and available company records. Include emissions from only those gases listed in Table A-1 of this subpart.

(2) For each general stationary fuel combustion unit, calculate the annual CO₂ emissions in metric tons using any of the four calculation methodologies specified in § 98.33(a). Calculate the annual CH₄ and N₂O emissions from the stationary fuel combustion sources in metric tons using the appropriate equation in § 98.33(c). ~~Exclude carbon dioxide emissions~~

⁵ This threshold is scaled down proportionally to the lower reporting threshold of 10,000 metric tons CO₂e: 12 mmBtu/hr = 30 mmBtu/hr * 10,000/25,000.

⁶ Implemented in Subsection A of 20.2.300.101 NMAC.

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~~from the combustion of biomass, but include emissions of CH₄ and N₂O from biomass combustion.~~

(i) For stationary combustion units, carbon dioxide emissions from the combustion of biomass fuels shall be included in determining whether a facility is subject to the reporting requirements of 20.2.300 NMAC with the following exceptions:

(1) Until such time as the department has made a determination regarding the carbon neutrality of any biomass fuels, a maximum of 15,000 metric tons of carbon dioxide emissions from the combustion of pure solid biomass fuel may be excluded from calculation of GHG emissions for comparison to the 10,000 metric ton CO₂e per year emission threshold in paragraph (a)(2) of this section, provided that total GHG emissions including emissions from solid biomass fuel are less than 25,000 metric tons CO₂e.

(2) After such time as the department has made a determination regarding the carbon neutrality of any biomass fuels, the carbon dioxide emissions from the combustion of those fuels may be excluded from calculation of GHG emissions for determining whether the 10,000 metric tons CO₂e per year emission threshold in paragraph (a)(1) of this section has been met.

(ii) The exceptions in paragraphs (b)(2)(i) of this section shall not apply in determining whether a facility is subject to the reporting requirements of 40 CFR Part 98.

(3) For miscellaneous uses of carbonate, calculate the annual CO₂ emissions in metric tons using the procedures specified in subpart U of this part.

(4) Sum the emissions estimates from paragraphs (b)(1), (b)(2), and (b)(3) of this section for each GHG and calculate metric tons of CO₂e using Equation A- 1 of this section.

$$CO_2e = \sum_{i=1}^n GHG_i \times GWP_i \quad (\text{Eq. A-1})$$

Where:

CO₂e = Carbon dioxide equivalent, metric tons/year.

GHG_i = Mass emissions of each greenhouse gas listed in Table A-1 of this subpart, metric tons/year.

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GWP_i = Global warming potential for each greenhouse gas from Table A–1 of this subpart.

n = The number of greenhouse gases emitted.

(5) For purpose of determining if an emission threshold has been exceeded, include in the emissions calculation any CO₂ that is captured for transfer off site.

(c) To calculate GHG emissions for comparison to the ~~25,000~~⁷10,000 metric ton CO₂e/year emission threshold for stationary fuel combustion under paragraph (a)(3) of this section, calculate CO₂, CH₄, and N₂O emissions from each stationary fuel combustion unit by following the methods specified in paragraph (b)(2) of this section. Then, convert the emissions of each GHG to metric tons CO₂e per year using Equation A–1 of this section, and sum the emissions for all units at the facility.

~~(d) To calculate GHG quantities for comparison to the 25,000 metric ton CO₂ per year threshold for importers and exporters of coal to liquid products under paragraph (a)(4)(i) of this section, calculate the mass in metric tons per year of CO₂ that would result from the complete combustion or oxidation of the quantity of coal to liquid products that are imported during the reporting year and that are exported during the reporting year. Calculate the emissions using the methodology specified in subpart LL of this part.~~

~~(e) To calculate GHG quantities for comparison to the 25,000 metric ton CO₂e per year threshold for importers and exporters of petroleum products under paragraph (a)(4)(ii) of this section, calculate the mass in metric tons per year of CO₂ that would result from the complete combustion or oxidation of the volume of petroleum products and natural gas liquids that are imported during the reporting year and that are exported during the reporting year. Calculate the emissions using the methodology specified in subpart MM of this part.~~

~~(f) To calculate GHG quantities for comparison to the 25,000 metric ton CO₂e per year threshold under paragraph (a)(4) of this section for importers and exporters of industrial greenhouse gases and for importers and exporters of CO₂, the owner or operator shall calculate the mass in metric tons per year of CO₂e imports and exports as described in paragraphs (f)(1) through (f)(3) of this section.~~

⁷ Implemented in Subsection A of 20.2.300.101 NMAC.

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~~(1) Calculate the mass in metric tons per year of CO₂, N₂O, and each fluorinated GHG that is imported and the mass in metric tons per year of CO₂, N₂O, and each fluorinated GHG that is exported during the year. Include only those gases listed in Table A-1 of this subpart.~~

~~(2) Convert the mass of each imported and each GHG exported from paragraph (f)(1) of this section to metric tons of CO₂e using Equation A-1 of this section.~~

~~(3) Sum the total annual metric tons of CO₂e in paragraph (f)(2) of this section for all imported GHGs. Sum the total annual metric tons of CO₂e in paragraph (f)(2) of this section for all exported GHGs.~~

(g) If a capacity or generation reporting threshold in paragraph (a)(1) of this section applies, the owner or operator shall review the appropriate records and perform any necessary calculations to determine whether the threshold has been exceeded.

(h) An owner or operator of a facility or supplier that does not meet the applicability requirements of paragraph (a) of this section is not subject to this rule. Such owner or operator would become subject to the rule and reporting requirements § 98.3(b)(3), if a facility or supplier exceeds the applicability requirements of paragraph (a) of this section at a later time. Thus, the owner or operator should reevaluate the applicability to this part (including the revising of any relevant emissions calculations or other calculations) whenever there is any change that could cause a facility or supplier to meet the applicability requirements of paragraph (a) of this section. Such changes include but are not limited to process modifications, increases in operating hours, increases in production, changes in fuel or raw material use, addition of equipment, and facility expansion.

(i) Except as provided in this paragraph, once a facility or supplier is subject to the requirements of this part, the owner or operator must continue for each year thereafter to comply with all requirements of this part, including the requirement to submit annual GHG reports, even if the facility or supplier does not meet the applicability requirements in paragraph (a) of this section in a future year.⁸

~~(1) If reported emissions are less than 25,000 metric tons CO₂e per year for five consecutive years, then the owner or operator may discontinue complying with this part~~

⁸ As modified, section 98.2(i) covers only the circumstances under which a facility may cease reporting to the department under 20.2.300 NMAC. There are circumstances under which a facility might be eligible to cease reporting to EPA but must continue to report to the department. To determine whether these circumstances apply, the owner or operator should consult 40 CFR § 98.2(i).

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~~provided that the owner or operator submits a notification to the Administrator that announces the cessation of reporting and explains the reasons for the reduction in emissions. The notification shall be submitted no later than March 31 of the year immediately following the fifth consecutive year of emissions less than 25,000 tons CO₂e per year. The owner or operator must maintain the corresponding records required under § 98.3(g) for each of the five consecutive years and retain such records for three years following the year that reporting was discontinued. The owner or operator must resume reporting if annual emissions in any future calendar year increase to 25,000 metric tons CO₂e per year or more.~~

(2) If the operations of a facility change such that emissions fall below reported emissions are less than 15,000 10,000 metric tons CO₂e per year for three consecutive years, then the following reporting requirements shall apply:

(i) If, prior to the emission reduction, the facility was required to report under 20.2.300 NMAC and to verify emissions under 20.2.301 NMAC, then the owner or operator shall continue to submit emission reports until reported emissions are below 10,000 metric tons CO₂e per year for a minimum of three consecutive years. If reported emissions are less than 10,000 metric tons CO₂ per year for three consecutive years then the owner or operator may discontinue ~~complying with submissions of annual emissions reports required by this part~~ provided that the owner or operator submits a notification to the ~~Administrator department~~ that announces the cessation of reporting and explains the reasons for the reduction in emissions. The notification shall be submitted no later than March 31 of the year immediately following the third consecutive year of emissions less than ~~15,000~~10,000 tons CO₂e per year. The owner or operator must maintain the corresponding records required under § 98.3(g) for each of the three consecutive years and retain such records for three years following the year that reporting was discontinued. The owner or operator ~~must~~ shall resume reporting if annual emissions in any future calendar year increase to ~~25,000~~10,000 metric tons CO₂e per year or more.

(ii) If prior to the emission reduction, the facility was required to report under ~~this Article~~20.2.300 NMAC but was not required to verify emissions under 20.2.301 NMAC, then in lieu of submitting a report under this part, the owner or operator shall submit to the department a signed statement certifying that emissions were less than 10,000 metric tons CO₂e during the prior year. After certifying that emissions are below 10,000 metric tons

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CO₂e per year for three consecutive years under this paragraph, the owner or operator shall be exempted from further reporting until CO₂e emissions again exceed 10,000 metric tons in any future calendar year.

(3) If the operations of a facility ~~or supplier~~ are changed such that all applicable GHG-emitting processes and operations listed in paragraphs (a)(1) through (a)(4) of this section cease to operate, then the owner or operator is exempt from reporting in the years following the year in which cessation of such operations occurs, provided that the owner or operator submits a notification to the ~~Administrator~~ secretary that announces the cessation of reporting and certifies to the closure of all GHG emitting processes and operations. This paragraph (i)(3) does not apply to seasonal or other temporary cessation of operations. This paragraph (i)(3) does not apply to facilities with municipal solid waste landfills or industrial waste landfills, or to underground coal mines. The owner or operator must resume reporting for any future calendar year during which any of the GHG-emitting processes or operations resume operation.

(j) Table A-2 of this subpart provides a conversion table for some of the common units of measure used in part 98.

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

The owner or operator of a facility ~~or supplier~~ that is subject to the requirements of this part must submit GHG reports to the ~~Administrator~~ department, as specified in this section.

(a) General. Except as provided in paragraph (d) of this section, follow the procedures for emission calculation, monitoring, quality assurance, missing data, recordkeeping, and reporting that are specified in each relevant subpart 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~~ 2011, the first report must be submitted on March 31, ~~2011~~ 2012.

(1) [Reserved]

(2) For a new facility ~~or supplier~~ that begins operation on or after January 1, ~~2010~~ 2011, report emissions beginning with the first operating month and ending on December 31 of that

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year. Each subsequent annual report must cover emissions for the calendar year, beginning on January 1 and ending on December 31.

(3) For any facility ~~or supplier~~ that becomes subject to this rule because of a physical or operational change that is made after January 1, ~~2010~~2011, report emissions for the first calendar year in which the change occurs, beginning with the first month of the change and ending on December 31 of that year. For a facility ~~or supplier~~ that becomes subject to this rule solely because of an increase in hours of operation or level of production, the first month of the change is the month in which the increased hours of operation or level of production, if maintained for the remainder of the year, would cause the facility ~~or supplier~~ to exceed the applicable threshold. Each subsequent annual report must cover emissions for the calendar year, beginning on January 1 and ending on December 31.

(c) Content of the annual report. Except as provided in paragraph (d) of this section, each annual GHG report shall contain the following information:

(1) Facility name ~~or supplier name (as appropriate)~~ and physical street address including the city, state, and zip code.

(2) Year and months covered by the report.

(3) Date of submittal.

(4) For facilities, report annual emissions of CO₂, CH₄, N₂O, and each fluorinated GHG (as defined in § 98.6) as follows:

(i) Annual emissions (excluding biogenic CO₂) aggregated for all GHG from all applicable source categories in the 40 CFR 98 subparts listed in Tables A-3 and Table A-4 of this subpart Subsections B through K of 20.2.300.100 NMAC, and in 20.2.300.107 NMAC 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~~ Subsections B through K of 20.2.300.100 NMAC, and in 20.2.300.107 NMAC.

(iii) Annual emissions from each applicable source category listed in ~~Tables A-3 and Table A-4 of this subpart~~ Subsections B through K of 20.2.300.100 NMAC, and in 20.2.300.107 NMAC, expressed in metric tons of each GHG listed in paragraphs

(c)(4)(iii)(A) through (c)(4)(iii)(E) of this section.

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(A) Biogenic CO₂.

(B) CO₂ (excluding biogenic CO₂).

(C) CH₄.

(D) N₂O.

(E) Each fluorinated GHG (including those not listed in Table A-1 of this subpart).

(iv) 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.

~~(5) For suppliers, report annual quantities of CO₂, CH₄, N₂O, and each fluorinated GHG (as defined in § 98.6) that would be emitted from combustion or use of the products supplied, imported, and exported during the year. Calculate and report quantities at the following levels:~~

~~(i) Total quantity of GHG aggregated for all GHG from all applicable supply categories in subparts KK through PP of this part and expressed in metric tons of CO₂e calculated using Equation A-1 of this subpart.~~

~~(ii) Quantity of each GHG from each applicable supply category in subparts KK through PP of this part, expressed in metric tons of each GHG. For fluorinated GHG, report emissions of all fluorinated GHG, including those not listed in Table A-1 of this subpart.~~

~~(iii) Any other data specified in the “Data reporting requirements” section of each applicable subpart of this part.~~

(6) A written explanation, as required under § 98.3(e), if you change emission calculation methodologies during the reporting period.

(7) A brief description of each “best available monitoring method” used according to paragraph (d) of this section, the parameter measured using the method, and the time period during which the “best available monitoring method” was used, if applicable.

(8) Each data element for which a missing data procedure was used according to the procedures of an applicable subpart and the total number of hours in the year that a missing data procedure was used for each data element.

~~(9) A signed and dated certification statement provided by the designated representative of the owner or operator, according to the requirements of § 98.4(e)(1).~~

(i) For facilities required to report to EPA under 40 CFR 98, the certification statement shall be signed and provided by the designated representative of the owner or operator,

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who shall be the same individual recognized as the designated representative or alternate designated representative by EPA. The certification statement submitted to the the department shall follow the requirements of 40 CFR 98.4(e)(1).

(ii) For facilities not required to report to EPA under 40 CFR 98, the certification statement shall be signed by the owner, operator or authorized representative and shall certify, to the best of his or her knowledge, the truth of all information in the report.

(10) For a facility that will receive allowance allocations under 20.2.350 NMAC, additional information as requested by the department to determine the allocation production pursuant to Subsection B of Section 20.2.350.201 NMAC and production pursuant to Subsection B of Section 20.2.350.202 NMAC.

~~(d) Special provisions for reporting year 2010.~~

~~(1) Best available monitoring methods. During January 1, 2010 through March 31, 2010, owners or operators may use best available monitoring methods for any parameter (e.g., fuel use, daily carbon content of feedstock by process line) that cannot reasonably be measured according to the monitoring and QA/QC requirements of a relevant subpart. The owner or operator must use the calculation methodologies and equations in the “Calculating GHG Emissions” sections of each relevant subpart, but may use the best available monitoring method for any parameter for which it is not reasonably feasible to acquire, install, and operate a required piece of monitoring equipment by January 1, 2010. Starting no later than April 1, 2010, the owner or operator must discontinue using best available methods and begin following all applicable monitoring and QA/QC requirements of this part, except as provided in paragraphs (d)(2) and (d)(3) of this section. Best available monitoring methods means any of the following methods specified in this paragraph:~~

~~(i) Monitoring methods currently used by the facility that do not meet the specifications of an relevant subpart.~~

~~(ii) Supplier data.~~

~~(iii) Engineering calculations.~~

~~(iv) Other company records.~~

~~(2) Requests for extension of the use of best available monitoring methods. The owner or operator may submit a request to the Administrator to use one or more best available monitoring methods beyond March 31, 2010.~~

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~~(i) Timing of request. The extension request must be submitted to EPA no later than 30 days after the effective date of the GHG reporting rule.~~

~~(ii) Content of request. Requests must contain the following information:~~

~~(A) A list of specific item of monitoring instrumentation for which the request is being made and the locations where each piece of monitoring instrumentation will be installed.~~

~~(B) Identification of the specific rule requirements (by rule subpart, section, and paragraph numbers) for which the instrumentation is needed.~~

~~(C) A description of the reasons why the needed equipment could not be obtained and installed before April 1, 2010.~~

~~(D) If the reason for the extension is that the equipment cannot be purchased and delivered by April 1, 2010, include supporting documentation such as the date the monitoring equipment was ordered, investigation of alternative suppliers and the dates by which alternative vendors promised delivery, backorder notices or unexpected delays, descriptions of actions taken to expedite delivery, and the current expected date of delivery.~~

~~(E) If the reason for the extension is that the equipment cannot be installed without a process unit shutdown, include supporting documentation demonstrating that it is not practicable to isolate the equipment and install the monitoring instrument without a full process unit shutdown. Include the date of the most recent process unit shutdown, the frequency of shutdowns for this process unit, and the date of the next planned shutdown during which the monitoring equipment can be installed. If there has been a shutdown or if there is a planned process unit shutdown between promulgation of this part and April 1, 2010, include a justification of why the equipment could not be obtained and installed during that shutdown.~~

~~(F) A description of the specific actions the facility will take to obtain and install the equipment as soon as reasonably feasible and the expected date by which the equipment will be installed and operating.~~

~~(iii) Approval criteria. To obtain approval, the owner or operator must demonstrate to the Administrator's satisfaction that it is not reasonably feasible to acquire, install, and~~

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~~operate a required piece of monitoring equipment by April 1, 2010. The use of best available methods will not be approved beyond December 31, 2010.~~

~~(3) Abbreviated emissions report for facilities containing only general stationary fuel combustion sources. In lieu of the report required by paragraph (c) of this section, the owner or operator of an existing facility that is in operation on January 1, 2010 and that meets the conditions of § 98.2 (a)(3) may submit an abbreviated GHG report for the facility for GHGs emitted in 2010. The abbreviated report must be submitted by March 31, 2011. An owner or operator that submits an abbreviated report must submit a full GHG report according to the requirements of paragraph (c) of this section beginning in calendar year 2011. The abbreviated facility report must include the following information:~~

~~(i) Facility name and physical street address including the city, state and zip code.~~

~~(ii) The year and months covered by the report.~~

~~(iii) Date of submittal.~~

~~(iv) Total facility GHG emissions aggregated for all stationary fuel combustion units calculated according to any method specified in § 98.33(a) and expressed in metric tons of CO₂, CH₄, N₂O, and CO₂e.~~

~~(v) Any facility operating data or process information used for the GHG emission calculations.~~

~~(vi) A signed and dated certification statement provided by the designated representative of the owner or operator, according to the requirements of paragraph (e)(1) of this section.~~

(d) Abbreviated emissions report for facilities containing only general stationary fuel combustion sources and emitting less than 25,000 metric tons CO₂e per year, exclusive of reporting-only emissions.

(1) An owner or operator that is otherwise subject to the requirements of this part may submit an abbreviated emissions report in lieu of the report required by 40 CFR 98.3(c) if all of the following apply:

(a) total emissions exclusive of reporting-only emissions are less than 25,000 metric tons CO₂e;

(b) no emissions are required to be reported by this part other than those required to be reported by 40 CFR 98 Subpart C-General Stationary Fuel Combustion, as incorporated in

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this part with modifications in 20.2.300.103 NMAC, including CO2 from combustion of biomass-derived fuels;

_____ (c).the facility is not required to report greenhouse gas emissions to the US EPA under 40 CFR 98; and

_____ (d) the facility emissions report is not subject to verification requirements under 20.2.301 NMAC

_____ (2).The abbreviated report shall contain the following information:

_____ (a) facility, operating or construction permit number or notice of intent number, and physical street address including the city, state and zip code, or geographical location if not at a street address;

_____ (b) the year and months covered by the report;

_____ (c) date of submittal;

_____ (d) total facility GHG emissions aggregated for all stationary fuel combustion units calculated according to any method specified in 40 CFR 98.33(a) and expressed in metric tons of total CO2, CO2 from biomass fuels, CH4, N2O, and CO2e;

_____ (e) identification of the methods used to determine emissions;

_____ (f) any facility operating data or process information used for the GHG emission calculations;

_____ (g) a signed and dated certification statement provided by the designated representative of the owner or operator, according to the requirements of paragraph (e)(1) of 40 CFR 98.2;

_____ (h) for facilities with on-site electricity generation or cogeneration, the information specified in Paragraphs 1 and 2 of Subsection D of 20.2.300.103 NMAC; and

_____ (i) a signed and dated certification statement provided by the designated representative of the owner or operator, according to the requirements of paragraph (e)(1) of 40 CFR 98.4^[bm3].

(e) Emission calculations. In preparing the GHG report, you must use the calculation methodologies specified in the relevant subparts, except as specified in paragraph (d) of this section. For each source category, you must use the same calculation methodology throughout a reporting period unless you provide a written explanation of why a change in methodology was required.

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(f) Verification. Owner or operators subject to the verification requirements of 20.2.301 NMAC shall obtain verification services and submit a verification statement meeting the requirements of 20.2.301 NMAC, if applicable.~~To verify the completeness and accuracy of reported GHG emissions, the Administrator may review the certification statements described in paragraphs (c)(8) and (d)(3)(vi) of this section and any other credible evidence, in conjunction with a comprehensive review of the GHG reports and periodic audits of selected reporting facilities. Nothing in this section prohibits the Administrator from using additional information to verify the completeness and accuracy of the reports.~~

(g) Recordkeeping. An owner or operator that is required to report GHGs under this part must keep records as specified in this paragraph. Retain all required records for at least ~~3~~7 years. The records shall be kept in an electronic or hard-copy format (as appropriate) and recorded in a form that is suitable for expeditious inspection and review. Upon request by the ~~Administrator~~secretary, the records required under this section must be made available to ~~EPA~~the department within 20 days after the request. Records may be retained off site if the records are readily available for expeditious inspection and review. For records that are electronically generated or maintained, the equipment or software necessary to read the records shall be made available, or, if requested by ~~EPA~~the department, electronic records shall be converted to paper documents. You must retain the following records, in addition to those records prescribed in each applicable subpart of this part:

(1) A list of all units, operations, processes, and activities for which GHG emission were calculated.

(2) The data used to calculate the GHG emissions for each unit, operation, process, and activity, categorized by fuel or material type. These data include but are not limited to the following information in this paragraph (g)(2):

(i) The GHG emissions calculations and methods used.

(ii) Analytical results for the development of site-specific emissions factors.

(iii) The results of all required analyses for high heat value, carbon content, and other required fuel or feedstock parameters.

(iv) Any facility operating data or process information used for the GHG emission calculations.

(3) The annual GHG reports.

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(4) Missing data computations. For each missing data event, also retain a record of the duration of the event, actions taken to restore malfunctioning monitoring equipment, the cause of the event, and the actions taken to prevent or minimize occurrence in the future.

(5) For sources subject to reporting under 40 CFR Part 98, Aa written GHG Monitoring Plan.

(i) At a minimum, the GHG Monitoring Plan shall include the elements listed in this paragraph (g)(5)(i).

(A) Identification of positions of responsibility (i.e., job titles) for collection of the emissions data.

(B) Explanation of the processes and methods used to collect the necessary data for the GHG calculations.

(C) Description of the procedures and methods that are used for quality assurance, maintenance, and repair of all continuous monitoring systems, flow meters, and other instrumentation used to provide data for the GHGs reported under this part.

(ii) The GHG Monitoring Plan may rely on references to existing corporate documents (e.g., standard operating procedures, quality assurance programs under appendix F to 40 CFR part 60 or appendix B to 40 CFR part 75, and other documents) provided that the elements required by paragraph (g)(5)(i) of this section are easily recognizable.

(iii) The owner or operator shall revise the GHG Monitoring Plan as needed to reflect changes in production processes, monitoring instrumentation, and quality assurance procedures; or to improve procedures for the maintenance and repair of monitoring systems to reduce the frequency of monitoring equipment downtime.

(iv) Upon request by the ~~Administrator~~secretary, the owner or operator shall make all information that is collected in conformance with the GHG Monitoring Plan available for review during an audit within 20 days after the request. Electronic storage of the information in the plan is permissible, provided that the information can be made available in hard copy upon request during an audit.

(6) The results of all required certification and quality assurance tests of continuous monitoring systems, fuel flow meters, and other instrumentation used to provide data for the GHGs reported under this part.

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(7) Maintenance records for all continuous monitoring systems, flow meters, and other instrumentation used to provide data for the GHGs reported under this part.

(h) Annual GHG report revisions.

(1) The owner or operator of a facility subject to reporting under both 20.2.300 NMAC and 40 CFR Part 98 shall submit a revised report within 45 days of discovering or being notified by EPA of errors in an annual GHG report. The revised report must correct all identified errors. The owner or operator shall retain documentation for ~~3~~7 years to support any revisions made to an annual GHG report.

(2) The owner or operator of a facility subject to reporting under 20.2.300 NMAC but not 40 CFR Part 98 shall submit a revised report within 30 days of finding that a report contains an error, or accumulation of errors, greater than 5 percent of the total CO₂e emissions reported. To the extent possible, the revised report must correct all identified errors. A revised report will be accepted only if approved by the department. The owner or operator shall retain documentation for 7 years to support any revisions made to an annual GHG report.

(i) Calibration accuracy requirements. The owner or operator of a facility ~~or supplier~~ that is subject to the requirements of this part must meet the calibration accuracy requirements of this paragraph (i).

(1) Except as provided in paragraphs (i)(4) through (i)(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~~2011, the initial calibration shall be conducted by April 1, ~~2010~~2011. For facilities ~~and suppliers~~ that become subject to this part after April 1, ~~2010~~2011, 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.

(2) For flow meters, perform all calibrations at measurement points that are representative of normal operation of the meter. Except for the orifice, nozzle, and venturi flow meters

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described in paragraph (i)(3) of this section, calculate the calibration error at each measurement point using Equation A-2 of this section. The terms “R” and “A” in Equation A-2 must be expressed in consistent units of measure (e.g., gallons/minute, ft³/min). The calibration error at each measurement point shall not exceed 5.0 percent of the reference value.

$$CE = \frac{R - A}{R} \times 100 \quad (\text{Eq. A-2})$$

Where:

CE = Calibration error (%)

R = Reference value

A = Flow meter response to the reference value

(3) For orifice, nozzle, and venturi flow meters, the initial quality assurance consists of in-situ calibration of the differential pressure (delta-P), total pressure, and temperature transmitters. Calibrate each transmitter at a zero point and at least one upscale point. Fixed reference points, such as the freezing point of water, may be used for temperature transmitter calibrations. Calculate the calibration error of each transmitter at each measurement point, using Equation A-3 of this subpart. The terms “R”, “A”, and “FS” in Equation A-3 of this subpart must be in consistent units of measure (e.g., milliamperes, inches of water, psi, degrees). For each transmitter, the CE value at each measurement point shall not exceed 2.0 percent of full-scale. Alternatively, the results are acceptable if the sum of the calculated CE values for the three transmitters at each calibration level (i.e., at the zero level and at each upscale level) does not exceed 5.0 percent.

$$CE = \frac{R - A}{FS} \times 100 \quad (\text{Eq. A-3})$$

Where:

CE = Calibration error (%)

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R = Reference value

A = Transmitter response to the reference value

FS = Full-scale value of the transmitter

(4) Fuel billing meters are exempted from the calibration requirements of this section, provided that the fuel supplier and any unit combusting the fuel do not have any common owners and are not owned by subsidiaries or affiliates of the same company.

(5) For a flow meter or other measurement device that has been previously calibrated in accordance with this part, an initial calibration is not required by the date specified in paragraph (i)(1) of this section if, as of the date required for the initial calibration, the previous calibration is still active (i.e., the device is not yet due for recalibration because the time interval between successive calibrations, as required by this part, has not elapsed).

(6) For units and processes that operate continuously with infrequent outages, it may not be possible to meet the April 1, ~~2010~~2011 deadline for the initial calibration of a flow meter or other measurement device without removing the device from service and shipping it to a remote location, thereby disrupting normal process operation. In such cases, the owner or operator may postpone the initial calibration until the next scheduled maintenance outage, and may similarly postpone the subsequent recalibrations. Such postponements shall be documented in the monitoring plan that is required under § 98.3(g)(5) and submitted before December 31, 2011 to the department for approval.

(j). Where 20.2.300 NMAC requires sampling of a parameter on a more frequent basis than the corresponding rule in 40 CFR Part 98, the following shall apply:

(1) The samples must be spaced apart as evenly as possible over time, taking into account the operating schedule of the relevant unit or facility.

(2) The owner or operator shall calculate and report a weighted average of the values derived from the samples by using the following formula:

$$V_E = \frac{\sum_{j=1}^n (V_j \times M_j)}{\sum_{j=1}^n M_j}$$

Where:

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- V_E = The value of the parameter to be reported under 40 CFR Part 98 for period E.
- j = Each period during period E for which a sample is required by this part.
- n = The number of periods j in period E.
- V_j = The value of the sample for period j .
- M_j = The mass of the sampled material processed or otherwise used by the relevant unit or facility in period j .

(3) You must keep records of the date and result for each sample and mass measurement used in the equation in subsection (2) and of the calculation of each weighted average included in your report.

(k) Where 20.2.300 NMAC specifies a choice between use of a fuel-based or mass balance-based calculation or use of a continuous emissions monitoring system (CEMS) to calculate GHG emissions, the operator shall make this choice and continue to use the method chosen for all future emissions data reports, unless the use of the alternative calculation method is approved in advance by the department.

(l) The owner or operator may elect to designate as de minimis one or more sources or pollutants that collectively emit no more than 3 percent of the facility's total CO₂e emissions, but not to exceed 20,000 metric tons CO₂e. Where this 20.2.300 NMAC otherwise requires the use of a more stringent method for monitoring and reporting emissions than the method required by 40 CFR Part 98, the owner or operator may elect to use any other method allowed under 40 CFR Part 98 for the sources or pollutants designated as de minimis.

(m) Notwithstanding the missing data procedures specified in 20.2.300 NMAC, the failure to conduct monitoring in accordance with 20.2.300 NMAC shall constitute a violation.

§ 98.4 Authorization and responsibilities of the designated representative.

~~(a) General. Except as provided under paragraph (f) of this section, each facility, and each supplier, that is subject to this part, shall have one and only one designated representative, who shall be responsible for certifying, signing, and submitting GHG emissions reports and any other submissions for such facility and supplier respectively to the Administrator under this part. If the facility is required under any other part of title 40 of the Code of Federal Regulations to submit to the Administrator any other emission report that is subject to any requirement in 40 CFR part~~

Subpart A-General Provisions

~~75, the same individual shall be the designated representative responsible for certifying, signing, and submitting the GHG emissions reports and all such other emissions reports under this part.~~

~~(b) Authorization of a designated representative. The designated representative of the facility or supplier shall be an individual selected by an agreement binding on the owners and operators of such facility or supplier and shall act in accordance with the certification statement in paragraph (i)(4)(iv) of this section.~~

~~(c) Responsibility of the designated representative. Upon receipt by the Administrator of a complete certificate of representation under this section for a facility or supplier, the designated representative identified in such certificate of representation shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of such facility or supplier in all matters pertaining to this part, notwithstanding any agreement between the designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the designated representative by the Administrator or a court.~~

~~(d) Timing. No GHG emissions report or other submissions under this part for a facility or supplier will be accepted until the Administrator has received a complete certificate of representation under this section for a designated representative of the facility or supplier. Such certificate of representation shall be submitted at least 60 days before the deadline for submission of the facility's or supplier's initial emission report under this part.~~

~~(e) Certification of the GHG emissions report. Each GHG emission report and any other submission under this part for a facility or supplier shall be certified, signed, and submitted by the designated representative or any alternate designated representative of the facility or supplier in accordance with this section and § 3.10 of this chapter.~~

~~(1) Each such submission shall include the following certification statement signed by the designated representative or any alternate designated representative: "I am authorized to make this submission on behalf of the owners and operators of the facility or supplier, as applicable, for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are~~

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~~significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.”~~

~~(2) The Administrator will accept a GHG emission report or other submission for a facility or supplier under this part only if the submission is certified, signed, and submitted in accordance with this section.~~

~~(f) Alternate designated representative. A certificate of representation under this section for a facility or supplier may designate one alternate designated representative, who shall be an individual selected by an agreement binding on the owners and operators, and may act on behalf of the designated representative, of such facility or supplier. The agreement by which the alternate designated representative is selected shall include a procedure for authorizing the alternate designated representative to act in lieu of the designated representative.~~

~~(1) Upon receipt by the Administrator of a complete certificate of representation under this section for a facility or supplier identifying an alternate designated representative.~~

~~(i) The alternate designated representative may act on behalf of the designated representative for such facility or supplier.~~

~~(ii) Any representation, action, inaction, or submission by the alternate designated representative shall be deemed to be a representation, action, inaction, or submission by the designated representative.~~

~~(2) Except in this section, whenever the term “designated representative” is used in this part, the term shall be construed to include the designated representative or any alternate designated representative.~~

~~(g) Changing a designated representative or alternate designated representative. The designated representative or alternate designated representative identified in a complete certificate of representation under this section for a facility or supplier received by the Administrator may be changed at any time upon receipt by the Administrator of another later signed, complete certificate of representation under this section for the facility or supplier. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous designated representative or the previous alternate designated representative of the facility or supplier before the time and date when the Administrator receives such later signed certificate of representation shall be binding on the new designated representative and the owners and operators of the facility or supplier.~~

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~~(h) Changes in owners and operators. In the event an owner or operator of the facility or supplier is not included in the list of owners and operators in the certificate of representation under this section for the facility or supplier, such owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the designated representative and any alternate designated representative of the facility or supplier, as if the owner or operator were included in such list. Within 90 days after any change in the owners and operators of the facility or supplier (including the addition of a new owner or operator), the designated representative or any alternate designated representative shall submit a certificate of representation that is complete under this section except that such list shall be amended to reflect the change. If the designated representative or alternate designated representative determines at any time that an owner or operator of the facility or supplier is not included in such list and such exclusion is not the result of a change in the owners and operators, the designated representative or any alternate designated representative shall submit, within 90 days of making such determination, a certificate of representation that is complete under this section except that such list shall be amended to include such owner or operator.~~

~~(i) Certificate of representation. A certificate of representation shall be complete if it includes the following elements in a format prescribed by the Administrator in accordance with this section:~~

~~(1) Identification of the facility or supplier for which the certificate of representation is submitted.~~

~~(2) The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the designated representative and any alternate designated representative.~~

~~(3) A list of the owners and operators of the facility or supplier identified in paragraph (i)(1) of this section, provided that, if the list includes the operators of the facility or supplier and the owners with control of the facility or supplier, the failure to include any other owners shall not make the certificate of representation incomplete.~~

~~(4) The following certification statements by the designated representative and any alternate designated representative:~~

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~~(i) “I certify that I was selected as the designated representative or alternate designated representative, as applicable, by an agreement binding on the owners and operators of the facility or supplier, as applicable.”~~

~~(ii) “I certify that I have all the necessary authority to carry out my duties and responsibilities under 40 CFR part 98 on behalf of the owners and operators of the facility or supplier, as applicable, and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions.”~~

~~(iii) “I certify that the owners and operators of the facility or supplier, as applicable, shall be bound by any order issued to me by the Administrator or a court regarding the facility or supplier.”~~

~~(iv) “If there are multiple owners and operators of the facility or supplier, as applicable, I certify that I have given a written notice of my selection as the ‘designated representative’ or ‘alternate designated representative’, as applicable, and of the agreement by which I was selected to each owner and operator of the facility or supplier.”~~

~~(5) The signature of the designated representative and any alternate designated representative and the dates signed.~~

~~(j) Documents of agreement. Unless otherwise required by the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the Administrator. The Administrator shall not be under any obligation to review or evaluate the sufficiency of such documents, if submitted.~~

~~(k) Binding nature of the certificate of representation. Once a complete certificate of representation under this section for a facility or supplier has been received, the Administrator will rely on the certificate of representation unless and until a later signed, complete certificate of representation under this section for the facility or supplier is received by the Administrator.~~

~~(4) Objections Concerning a Designated Representative~~

~~(1) Except as provided in paragraph (g) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission, of the designated representative or alternate designated representative shall affect any representation, action, inaction, or submission of the designated representative or alternate designated representative, or the finality of any decision or order by the Administrator under this part.~~

Subpart A-General Provisions

~~(2) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any designated representative or alternate designated representative.~~

~~(m) Delegation by designated representative and alternate designated representative.~~

~~(1) A designated representative or an alternate designated representative may delegate his or her own authority, to one or more individuals, to submit an electronic submission to the Administrator provided for or required under this part, except for a submission under this paragraph.~~

~~(2) In order to delegate his or her own authority, to one or more individuals, to submit an electronic submission to the Administrator in accordance with paragraph (m)(1) of this section, the designated representative or alternate designated representative must submit electronically to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:~~

~~(i) The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of such designated representative or alternate designated representative.~~

~~(ii) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of each such individual (referred to as an “agent”).~~

~~(iii) For each such individual, a list of the type or types of electronic submissions under paragraph (m)(1) of this section for which authority is delegated to him or her.~~

~~(iv) For each type of electronic submission listed in accordance with paragraph (m)(2)(iii) of this section, the facility or supplier for which the electronic submission may be made.~~

~~(v) The following certification statements by such designated representative or alternate designated representative:~~

~~(A) “I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed, and for a facility or supplier designated, for such agent in this notice of delegation and that is made when I am a designated representative or alternate designated representative, as applicable, and before this notice of delegation is superseded by another notice of delegation under §~~

Subpart A-General Provisions

~~98.4(m)(3) shall be deemed to be an electronic submission certified, signed, and submitted by me.”~~

~~(B) “Until this notice of delegation is superseded by a later signed notice of delegation under § 98.4(m)(3), I agree to maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address unless all delegation of authority by me under § 98.4(m) is terminated.”~~

~~(vi) The signature of such designated representative or alternate designated representative and the date signed.~~

~~(3) A notice of delegation submitted in accordance with paragraph (m)(2) of this section shall be effective, with regard to the designated representative or alternate designated representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of another such notice that was signed later by such designated representative or alternate designated representative, as applicable. The later signed notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.~~

~~(4) Any electronic submission covered by the certification in paragraph (m)(2)(iv)(A) of this section and made in accordance with a notice of delegation effective under paragraph (m)(3) of this section shall be deemed to be an electronic submission certified, signed, and submitted by the designated representative or alternate designated representative submitting such notice of delegation.~~

§ 98.5 How is the report submitted?

Each GHG report and certificate of representation for a facility or supplier must be submitted electronically in accordance with the requirements of § 98.4 and in a format specified by the Administrator secretary.

98.6 Definitions.

[No change, other than definitions added in 20.2.300.7 NMAC.]

98.7 What standardized methods are incorporated by reference into this part?

[No change.]

Subpart A-General Provisions

98.8 What are the compliance and enforcement provisions of this part?

[No change.]

98.9 Addresses.

[No change.]

Tables A-1 through A-5

[No change to Tables A-1 and A-2. Tables A-3 and A-4 are modified by Sections F and G of 20.2.300.102 NMAC. Table A-5 is deleted.]

Subpart A-General Provisions

Table A-3 of Subpart A—Source Category List for §98.2(a)(1) Source Categories^a Applicable in 2010 and Future Years
Electricity generation units that report CO ₂ 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)
HFC 23 destruction processes that are not collocated 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 CH₄ in amounts equivalent to 25,000 metric tons CO₂e or more per year, as determined according to subpart HH of this part
Manure management systems with combined CH₄ and N₂O emissions in amounts equivalent to 25,000 metric tons CO₂e or more per year, as determined according to subpart JJ of this part.
Additional Source Categories^a Applicable in 2011 and Future Years
Underground coal mines that are subject to quarterly or more frequent sampling by Mine Safety and Health Administration (MSHA) of ventilation systems (subpart FF)
<u>Any other source category added after November 1, 2009</u>

Subpart A-General Provisions

Table A-4 of Subpart A—Source Category List for §98.2(a)(2)

Source Categories^a 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^a Applicable in 2011 and Future Years
Magnesium production (subpart T)
Industrial wastewater treatment (subpart II)
Industrial waste landfills (subpart TT)
Any other source category added after November 1, 2009