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**Docket:** All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

**FOR FURTHER INFORMATION CONTACT:** Gregory Becoat, (215) 814-2036, or by e-mail at [becoat.gregory@epa.gov](mailto:becoat.gregory@epa.gov).

**SUPPLEMENTARY INFORMATION:**

For further information, please see the information provided in the direct final action, with the same title, "Approval and Promulgation of Air Quality Implementation Plans; Virginia; Adoption of the Revised Nitrogen Dioxide Standards and Update of Appendices," that is located in the Rules and Regulations section of this **Federal Register** publication.

Dated: June 6, 2011.

**W.C. Early,**

*Acting Regional Administrator, Region III.*

[FR Doc. 2011-15456 Filed 6-21-11; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 98**

[EPA-HQ-OAR-2009-0927; FRL-9322-2]

**RIN A2060**

**Mandatory Reporting of Greenhouse Gases; Changes to Provisions for Electronics Manufacturing (Subpart I) To Provide Flexibility**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing changes to the calculation and monitoring

provisions in the Electronics Manufacturing portion (Subpart I) of the Mandatory Greenhouse Gas Reporting Rule for the "largest" semiconductor manufacturing facilities (*i.e.*, those that fabricate devices on wafers measuring 300 millimeters or less in diameter and that have an annual manufacturing capacity of greater than 10,500 square meters). More specifically, for reporting years 2011 and 2012 this action proposes to allow the largest semiconductor facilities the option to calculate emissions using default emission factors already contained in Subpart I, instead of recipe-specific utilization and by-product formation rates (recipe-specific emission factors) for the plasma etching process type. These proposed changes are in response to a request for reconsideration of specific provisions submitted by the Semiconductor Industry Association. This action would only apply to the initial years of compliance while the Agency continues to better understand industry's concerns with Subpart I and considers longer-term alternative options.

**DATES:** *Comments.* Comments must be received on or before July 22, 2011.

*Public Hearing.* EPA does not plan to conduct a public hearing unless requested. To request a hearing, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section by June 29, 2011. If requested, the hearing will be conducted July 7, 2011, in the Washington, DC area. If a hearing is held, EPA will accept comments that rebut or supplement information presented at the hearing through August 8, 2011. EPA will provide further information about the hearing on its Web page if a hearing is requested.

**ADDRESSES:** You may submit your comments, identified by Docket ID No. EPA-HQ-OAR-2009-0927 by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *E-mail:* [GHGReportingFGHG@epa.gov](mailto:GHGReportingFGHG@epa.gov). Include docket ID No. EPA-HQ-OAR-2009-0927 [and/or RIN number 2060-XXXX] in the subject line of the message.

- *Fax:* (202) 566-9744.
- *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 28221T, Attention Docket ID No. EPA-HQ-OAR-2009-0927, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

- *Hand/Courier 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-2009-0927. 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 confidential business information (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.

*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 Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC-6207J), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number (202) 343-9263; fax (202) 343-2342; e-mail address: [GHGReportingRule@epa.gov](mailto:GHGReportingRule@epa.gov). For technical information, please go to the Greenhouse Gas Reporting Rule Program Web site <http://www.epa.gov/climatechange/emissions/ghgrulemaking.html>. To submit a question, select Rule Help Center, followed by Contact Us. To obtain information about the public hearing or to register to speak at the hearing, please go to <http://www.epa.gov/climatechange/emissions/>

[ghgrulemaking.html](#). Alternatively, contact Carole Cook at 202-343-9263. *Worldwide Web (WWW)*. In addition to being available in the docket, an electronic copy of this proposal will also be available through the WWW. Following the Administrator's signature, a copy of this action will be posted on EPA's Greenhouse Gas Reporting Program Web site at <http://www.epa.gov/climatechange/emissions/ghgrulemaking.html>.

**SUPPLEMENTARY INFORMATION:**  
*Additional Information on Submitting Comments:* To expedite review of your comments by Agency staff, you are encouraged to send a separate copy of your comments, in addition to the copy you submit to the official docket, to Carole Cook, U.S. EPA, Office of

Atmospheric Programs, Climate Change Division, Mail Code 6207-J, Washington, DC 20460, telephone (202) 343-9263, e-mail address: [GHGReportingRule@epa.gov](mailto:GHGReportingRule@epa.gov).

*Regulated Entities.* The Administrator determined that this action is subject to the provisions of Clean Air Act (CAA) section 307(d). See CAA section 307(d)(1)(V) (the provisions of section 307(d) apply to "such other actions as the Administrator may determine"). These are proposed changes to existing regulations. If finalized, these amended regulations would affect owners or operators of certain manufacturers of electronic devices. Regulated categories and examples of affected entities include those listed in Table 1 of this preamble:

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY

Category	NAICS	Examples of affected facilities
Electronics Manufacturing	334111 334413 334419 334419	Microcomputer manufacturing facilities. Semiconductor, photovoltaic (solid-state) device manufacturing facilities. Liquid Crystal Display (LCD) unit screens manufacturing facilities. Micro-electro-mechanical systems (MEMS) manufacturing facilities.

Although Table 1 of this preamble lists the types of facilities that could be potentially affected by this action, other types of facilities not listed in the table could also be affected. To determine whether you are affected by this action, you should carefully examine the applicability criteria found in 40 CFR part 98, subpart I or the relevant criteria in the sections related to electronics manufacturing. If you have questions regarding the applicability of this action to a particular facility or supplier, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** Section.

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

BAMM ..	best available monitoring methods
CAA .....	Clean Air Act
CBI .....	confidential business information
CFR .....	Code of Federal Regulations
EO .....	Executive Order
EPA .....	U.S. Environmental Protection Agency
FR .....	FEDERAL REGISTER
GHG .....	greenhouse gas
m <sup>2</sup> .....	square meters
mm .....	millimeter
OMB .....	Office of Management and Budget
RFA .....	Regulatory Flexibility Act
RIA .....	Regulatory Impact Analysis
SBA .....	Small Business Administration
SBREFA .....	Small Business Regulatory Enforcement and Fairness Act
U.S. ....	United States

UMRA ..	Unfunded Mandates Reform Act of 1995
USC .....	United States Code

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**I. Background**

*A. Organization of This Preamble*

The first section of this preamble contains the basic background information about the origin of these proposed rule amendments and request for public comment. This section also discusses EPA's use of our legal authority under the Clean Air Act to collect data under the Mandatory Reporting of Greenhouse Gases rule.

The second section of this preamble describes in detail the changes that are being proposed to Subpart I. In addition, this section presents EPA's rationale for the proposed changes, and also describes related actions affecting Subpart I that are published in a separate notice in today's **Federal Register**.

Finally, the last (third) section of the preamble discusses the various statutory and executive order requirements applicable to this proposed rulemaking.

*B. Background on This Action*

On October 30, 2009, EPA published a rule for the mandatory reporting of GHGs (also referred to as 40 CFR part 98 or part 98) from large GHG emission sources and suppliers in the United States (74 FR 56260). The rule requires annual reporting to EPA of GHG emissions and supply from certain sectors of the economy, and applies to certain downstream facilities that emit GHGs, as well as to certain upstream

suppliers of products that will result in GHG emissions when combusted, released or oxidized. Part 98 regulations require only that source categories subject to the rule monitor and report GHGs in accordance with the methods specified in the individual subparts.

EPA initially proposed reporting requirements for electronics manufacturing on April 12, 2009 (74 FR 16448) as part of a larger rulemaking effort to establish a GHG reporting program for all sectors of the economy. However, EPA did not include requirements for electronics manufacturing, along with several other source categories, in the final part 98 in October 2009 because EPA received a number of lengthy, detailed comments regarding the proposed requirements.

On April 12, 2010, EPA published a revised proposal (75 FR 18652) concerning the monitoring and reporting methods for electronics manufacturing facilities. After considering public comments on the revised proposal, EPA published Subpart I: Electronics Manufacturing of the Greenhouse Gas Reporting Rule on December 1, 2011 (40 CFR part 98, subpart I) (75 FR 74774) (Subpart I).

In that rule, among other provisions, EPA finalized two different methods for facilities that manufacture semiconductors wafers measuring 300 millimeters (mm) or less in diameter to calculate and report their fluorinated GHGs, depending on the facility's manufacturing capacity: (1) A method for facilities that have an annual manufacturing capacity that is less than or equal to 10,500 square meters (m<sup>2</sup>) of substrate (hereinafter referred to as "other semiconductor manufacturing facilities"), and (2) a method for those that have an annual manufacturing capacity greater than 10,500 m<sup>2</sup> of substrate (hereinafter referred to as the "largest semiconductor manufacturing facilities"). Pursuant to 40 CFR 98.93(a)(2)(i), semiconductor manufacturing facilities that fabricate devices on wafers measuring 300 mm or less in diameter and that have an annual manufacturing capacity of less than or equal to 10,500 m<sup>2</sup> of substrate must calculate and report their fluorinated GHG emissions using default emission factors for the following five process types and sub-types:

- Plasma etching process type.
- Chamber cleaning process type, which includes the following three process sub-types:

—In-situ plasma chamber cleaning process sub-type.  
 —Remote plasma chamber cleaning process sub-type.

—In-situ thermal chamber cleaning process sub-type.

- Wafer cleaning process type.

Pursuant to 40 CFR 98.93(a)(2)(ii), semiconductor manufacturing facilities that fabricate devices on wafers measuring 300 mm or less in diameter and that have an annual manufacturing capacity greater than 10,500 m<sup>2</sup> of substrate (*i.e.*, the largest semiconductor manufacturing facilities) must calculate and report their emissions using a combination of default emission factors and directly measured recipe-specific emission factors. For the following four process types and sub-types, the largest semiconductor manufacturing facilities must calculate emissions using only the default emission factors:

- Chamber cleaning process type which includes the following three process sub-types:

—In-situ plasma chamber cleaning process sub-type.  
 —Remote plasma chamber cleaning process sub-type.  
 —In-situ thermal chamber cleaning process sub-type.

- Wafer cleaning process type.

For the plasma etching process type, the largest semiconductor manufacturing facilities are required to calculate emissions using only directly measured recipe-specific emission factors.

EPA also included provisions for all electronics manufacturing facilities to use and/or request the use of best available monitoring methods (BAMM) in lieu of following specified parameters for calculating GHG emissions for a specific period of time. To estimate emissions from January 1, 2011 through June 30, 2011, owners or operators may use BAMM for any parameter that cannot reasonably be measured according to the monitoring and QA/QC requirements of Subpart I without submitting a request and receiving approval from the EPA Administrator (40 CFR 98.94(a)(1)). To extend the use of BAMM to estimate emissions that occur beyond June 30, 2011, owners and operators must submit a request and receive approval from the Administrator consistent with the following:

- Requests for extension of the use of BAMM to estimate emissions that occur from July 1, 2011 through December 31, 2011 for parameters other than recipe-specific utilization and by-product formation rates for the plasma etching process type must have been submitted to EPA no later than February 28, 2011 (40 CFR 98.94(a)(2)).

- Requests for extension of the use of BAMM to estimate emissions that occur from July 1, 2011 through December 31, 2011 for recipe-specific utilization and by-product formation rates for the plasma etching

process type must be submitted to EPA no later than June 30, 2011 (40 CFR 98.94(a)(3));

- Requests for extension of the use of BAMM to estimate emissions beyond December 31, 2011 for unique and extreme circumstances must be submitted to EPA no later than June 30, 2011 (40 CFR 98.94(a)(4)).

Following the publication of Subpart I in the **Federal Register**, the Semiconductor Industry Association (SIA) sought reconsideration of several provisions in the final rule. In particular, in their Petition (available in docket EPA-HQ-OAR-2009-0927), SIA raised concerns about the individual recipe measurement approach, that is, the requirement that the largest facilities develop and use recipe-specific emission factors for etch processes. More specifically, SIA stated that the individual recipe measurement approach is technically impractical, burdensome, threatens intellectual property, and would hamper innovation. SIA stated, " \* \* \* Final Subpart I suffers from serious flaws relating to the infeasibility of compliance with a recipe-based emission reporting requirement; the incompatibility of a recipe-based emission reporting requirement to the semiconductor manufacturing process; the serious confidentiality concerns relating to the sharing of intellectual property inherent to a recipe-based reporting requirement; and the grossly understated compliance costs contained in EPA's economic analysis."

SIA reported that a manufacturer may run hundreds to thousands of different recipes per year. They argued that determining the utilization and by-product formation rates for each recipe would present an unreasonable cost and technical burden on reporting facilities. They also argued that the burden is compounded by the fact that hundreds of recipes may be added every year, for which new factors would need to be determined. To support their arguments, SIA provided the results of a survey of industry members regarding the number of recipes for which factors would need to be determined, and a cost estimate of the final reporting requirements (for more information, please see SIA's Petition for Reconsideration available in docket EPA-HQ-OAR-2009-0927).

In addition to their concerns about the recipe-specific measurements, SIA also specifically cited the BAMM provisions and their timing as problematic. In particular, SIA stated that the BAMM provisions raise "substantive compliance issues." SIA stated that the substantive compliance issues relate to the following aspects of the BAMM provisions: The requirement to recalculate and resubmit estimated

emissions, the individual requirement-by-requirement BMM request process, the documentation requirement, the timeframe for assembling the documentation, and the unique and extreme circumstances provision. Further, SIA stated that the deadlines for submitting the request to use BMM were “unreasonable.”

### C. Legal Authority

EPA is proposing these rule amendments under its existing CAA authority, specifically authorities provided in CAA section 114.

As stated in the preamble to the 2009 final rule (74 FR 56260) and the Response to Comments on the Proposed Rule, Volume 9, Legal Issues, CAA section 114 provides EPA broad authority to require the information proposed to be gathered by this rule because such data would inform and are relevant to EPA’s carrying out a wide variety of CAA provisions. As discussed in the preamble to the initial proposed rule (74 FR 16448, April 10, 2009), CAA section 114(a)(1) authorizes the Administrator to require emissions sources, persons subject to the CAA, manufacturers of control or process equipment, or persons whom the Administrator believes may have necessary information to monitor and report emissions and provide such other information the Administrator requests for the purposes of carrying out any provision of the CAA. For further information about EPA’s legal authority, see the preambles to the 2009 proposed and final rules and EPA’s Response to Comments, Volume 9.<sup>1</sup>

## II. Proposed Revisions to Subpart I of 40 CFR part 98

### A. Proposed Changes to Subpart I Provisions for the Largest Semiconductor Manufacturing Facilities

In this action, EPA is proposing to amend Subpart I to allow the largest semiconductor manufacturing facilities<sup>2</sup> flexibility in the initial years of compliance to estimate fluorinated GHG emissions from the plasma etching process type. Specifically, EPA is proposing to amend 40 CFR 98.93(a)(2)(ii) so that the largest semiconductor manufacturing facilities may use the same methods for estimating emissions from clean and

etch processes as the other semiconductor manufacturing facilities for reporting years 2011 and 2012. EPA is proposing this action in response to a request for reconsideration of specific provisions, including the provisions requiring the largest facilities to use recipe-specific emission factors and the BMM provisions.

Under this proposal, for reporting years 2011 and 2012, the largest semiconductor manufacturing facilities would be able to use the default utilization and by-product formation rates already contained within Subpart I in Tables I–3 and I–4 to estimate fluorinated GHG emissions for the plasma etching process type, instead of using directly measured recipe-specific emission factors for each individual recipe or set of similar recipes.<sup>3</sup> This proposed modification to the calculation and monitoring requirements for the largest semiconductor manufacturing facilities would not change any of the other provisions in Subpart I that semiconductor manufacturing facilities are required to follow for calculating GHG emissions. Further, EPA is proposing to provide flexibility for a limited time while the Agency continues to explore and evaluate industry’s concerns with Subpart I and considers alternative methods that are being proposed by the industry as discussed in more detail in paragraphs below.

The proposed change in 40 CFR 98.93(a)(2)(ii) to the method used by the largest semiconductor manufacturing facilities would not affect the number of facilities that report, and would not affect the GHG emissions that are covered by the Subpart I reporting requirements. It would provide greater flexibility to the largest facilities in the initial two years of implementation of Subpart I. Under this proposal, beginning in the 2013 reporting year, the largest facilities would be required to use recipe-specific utilization and by-product formation rates as specified in 40 CFR 98.93(a)(2)(ii)(A).

Pursuant to provisions in Subpart I, any semiconductor manufacturing facility subject to Subpart I may use and/or request to use BMM (40 CFR 98.94(a)). Under the BMM provisions in Subpart I, any owner and operator that uses BMM must follow the calculation methodologies and equations in Subpart I (40 CFR 98.93), but may use BMM for specific

parameters and for a specific time period for which it is approved. EPA included this flexibility in the final rule for those facilities that are unable to meet the monitoring and/or QA/QC provisions in Subpart I by January 1, 2011.

EPA believes that the changes being proposed today to the calculation methodologies for the largest semiconductor manufacturing facilities are preferable to relying on the BMM process to address concerns with the recipe-specific emission factors for the plasma etching process type during 2011 and 2012. First, adopting these changes would reduce burden for such facilities and for EPA. In other words, rather than requiring each owner and operator to prepare and submit a BMM request to EPA to use BMM for the directly measured recipe-specific emission factors, EPA is proposing to allow those facilities to use default emission factors during the initial years of compliance. Second, it would make transparent the methodology that would apply to the largest facilities in 2011 and 2012, which would not necessarily occur if each facility were using their own facility-specific BMM.

This proposed change would apply only for 2011 and 2012. During this time, EPA will continue to better understand and evaluate industry’s concerns with Subpart I. In addition, EPA will also consider alternatives to the use of recipe-specific emission factors by the largest facilities that have been proposed by the industry.

In a letter dated May 26, 2011 (available in docket EPA–HQ–OAR–2009–0927), SIA identified the following three alternatives that they are proposing and for which they are currently collecting information to support their development: (1) Etch Process Subcategories and Default Emissions Factors; (2) Direct Estimation of Emissions Based on Use Allocation and Application of Abatement Unit Destruction Efficiency (DRE); and, (3) Stack Testing. For more information on the three options, please refer to SIA’s letter (available in docket EPA–HQ–OAR–2009–0927).

As stated in their letter, “SIA and its member companies, in collaboration with technical support from the International Sematech Manufacturing Initiative (ISMI), are implementing a workplan under a robust schedule to collect and analyze data on each proposed alternative.” SIA noted that they plan to submit information to EPA, including data and analyses, on the proposed alternatives beginning in June 2011, July 2011, and September 2011, depending on the alternative.

<sup>1</sup> 74 FR 16448 (April 10, 2009) and 74 FR 56260 (October 30, 2009). Response to Comments Documents can be found at <http://www.epa.gov/climatechange/emissions/responses.html>.

<sup>2</sup> The “largest” semiconductor manufacturing facilities are defined as those facilities that fabricate devices on wafers measuring 300 mm or less in diameter and that have an annual manufacturing capacity of greater than 10,500 m<sup>2</sup> of substrate.

<sup>3</sup> Pursuant to Subpart I, to be included in a set of similar recipes, a recipe must be similar to the recipe in the set for which recipe-specific utilization and by-product formation rates have been measured.

After SIA provides EPA with initial data to support the development of the three alternatives, EPA plans to undertake comprehensive analyses to evaluate whether the methodologies meet EPA's stated goals. One of those goals is to gather facility-level emissions estimates for the largest semiconductor manufacturing facilities that are more precise and accurate than the estimates developed using the method that is required for the other semiconductor facilities, thereby ensuring the level of rigor is commensurate with potential to emit. While EPA is open to evaluating the three options that SIA has proposed, at this time, EPA has not made any decisions about which alternatives may be included in a subsequent action.

EPA requests comment on whether to extend the use of the default emission factors for the plasma etching process type for the largest semiconductor facilities beyond December 31, 2012. More specifically, EPA is requesting comment on whether to allow the largest semiconductor manufacturing facilities to use the method required for the other semiconductor manufacturing facilities for an additional year until December 31, 2013. EPA is requesting comment on this extension in the event that the Agency determines that additional time would be necessary to develop and promulgate one or more alternative methodologies for the largest semiconductor manufacturing facilities that continue to have concerns with the recipe-specific measurement approach. While it is EPA's goal to finalize a revision to Subpart I that would allow the largest semiconductor manufacturing facilities to implement one or more alternative methodologies on January 1, 2013, EPA is considering whether additional time may be necessary given the technical complexities associated with the development of alternatives.

In a separate action also published in today's **Federal Register**, EPA is extending three of the deadlines contained in the Subpart I BMM provisions that relate to when owners and operators may use or request to use BMM from June 30, 2011 to September 30, 2011. As EPA explains in the preamble to that action, extending the dates by which owners and operators may use and/or request to use BMM will allow EPA additional time to consider comments and take final action on this proposal to allow the largest semiconductor manufacturing facilities to use default emission factors for the plasma etching process type during the initial years of implementation. In addition, the extension allows owners and operators of affected facilities

additional time to assess their facilities to determine if it will be necessary for them to apply for BMM for any other aspect of Subpart I beyond 2011 for unique and extreme circumstances. For more information, please refer to the preamble to the final rule, *Mandatory Reporting of Greenhouse Gases: Additional Sources of Fluorinated GHGs: Extension of Best Available Monitoring Provisions for Electronics Manufacturing*.

#### *B. Subpart I BMM Provisions*

In this notice, EPA is requesting comment on whether to extend until December 31, 2011 the period during which an owner or operator subject to Subpart I may, without submitting a petition, use BMM to estimate 2011 emissions. Pursuant to the final rule published today, to estimate emissions that occur from January 1, 2011 to September 30, 2011, owners and operators may use BMM without submitting a request for approval to the EPA Administrator. This means that starting October 1, 2011, owners and operators subject to Subpart I must discontinue using BMM and begin following all applicable monitoring and QA/QC requirements of Subpart I unless they have submitted a request and received an approval from the Administrator to use BMM to estimate emissions beyond September 30, 2011. EPA is requesting comment on whether to extend the date by which owners and operators may use BMM without submitting a request for approval by the Administrator to December 31, 2011. Under this approach, owners and operators could use BMM without submitting a request for approval by the Administrator to estimate emissions that occur from January 1, 2011 to December 31, 2011. Starting January 1, 2012, owners and operators subject to Subpart I would have to discontinue using BMM unless a request to use BMM beyond December 31, 2011 were approved by the Administrator. This extension would provide flexibility for any facility that was unable to meet the February 28, 2011 deadline for submitting a request for extension in the use of BMM in 2011 for parameters other than recipe-specific emission factors. We are considering this flexibility in light of the short period of time between publication of the rule and the February 28, 2011 deadline.

EPA is also requesting comment on whether to extend the other two relevant BMM deadlines by which an owner or operator may request the use of BMM for recipe-specific emission factors in 2011 and for estimating emissions beyond December 31, 2011.

In the final rule published today, EPA extended two deadlines by which an owner or operator must submit a petition to the Administrator to request the use of BMM. First, EPA extended the deadline by which an owner or operator may submit a BMM request for approval by the Administrator for recipe-specific utilization and by-product formation rates for the plasma etching process type in 2011 from June 30, 2011 to September 30, 2011. And second, EPA extended the date by which an owner or operator may submit a request for approval by the Administrator to extend the use of BMM beyond December 31, 2011 for unique and extreme circumstances from June 30, 2011 to September 30, 2011.

EPA believes that both of those deadlines are appropriate and that they should not be further delayed for the following reasons. First, with respect to the deadline to submit a BMM request for recipe-specific emission factors, if today's proposal is finalized, EPA does not anticipate receiving requests for the use of BMM for recipe-specific emission factors in 2011 because it will no longer be required for the largest facilities for 2011 and 2012. Second, for requests to use BMM to estimate emissions beyond December 31, 2011 for unique and extreme circumstances, EPA believes that a deadline of September 30, 2011 is appropriate because sufficient time is needed for EPA to review the request and respond to the owner or operator before the beginning of the next reporting period on January 1, 2012. If today's proposed action to allow flexibility for the largest semiconductor manufacturing facilities is finalized, EPA anticipates receiving only limited requests to use BMM to estimate emissions beyond December 31, 2011. Nevertheless, EPA requests comment on extending the deadlines by which an owner or operator may submit a request to use BMM for recipe-specific emission factors in 2011 and for estimating emissions beyond December 31, 2011.

#### *C. Apportioning Model Verification*

EPA is requesting comment on the issue raised in SIA's Petition for Reconsideration with regard to the verification requirement for facility-specific engineering models used to apportion gas consumption. Pursuant to 40 CFR 98.94(c)(2), a facility must demonstrate that the difference between the actual and modeled gas consumption for the gas used in the largest quantity on a mass basis for the plasma etching process type is less than or equal to 5 percent.

In the 2010 proposed rule (75 FR 18652), EPA proposed to require electronics manufacturing facilities to apportion consumption of each fluorinated GHG used at a facility across process categories in which that gas was used based on the quantifiable indicator of number of wafer passes. EPA also requested comment, including background information, on what quantifiable indicators other than wafer passes might be appropriately used to apportion consumption. In response to the proposed rule, commenters argued that using a facility-specific engineering model based on wafer passes was overly burdensome and not currently feasible. Some commenters suggested more flexible methods in which the apportioning was based on at least one quantifiable indicator and engineering knowledge. Commenters also asserted that EPA should not prescribe specific quantifiable indicators for apportioning gas consumption in the final rule.

In response to the comments on the proposed wafer pass-based apportioning model, EPA revised the requirements for gas apportioning models in the final 2010 rule (FR 74774) to provide flexibility to facilities. Unlike the proposal, the final rule does not specify the quantifiable metric that must be used in apportioning models; reporters are allowed to select the quantifiable metric(s) on which to base their facility-specific engineering model. Because EPA provided for flexibility in the final rule, EPA included a verification process to ensure consistency among reporting entities. This is because facilities will use different models and information to apportion gas consumption and calculate emissions, and because a minimum level of certainty and accuracy must be maintained across reporting facilities.

We view the verification requirement in the final rule (40 CFR 98.94(c)(2)) as a logical outgrowth of the proposal. In the final rule, EPA balanced the need for flexibility with the need for accuracy in the consumption estimate. Nonetheless, we would like Petitioners and others to have the opportunity to comment on the approach adopted in the final rule and to provide additional information they believe to be relevant. For these reasons, we request public comment on this approach. We will consider these comments and evaluate whether changes are warranted, including whether to propose an alternative approach in a subsequent action.

Specifically, we request comment on whether the requirement to meet the 5 percent verification standard is overly burdensome, and if so, why. To support this explanation, we request detailed

information and facility-specific examples. We also request comment on whether existing equipment or instruments (e.g., mass flow controllers already installed and used on every process tool) can be used to measure actual gas consumption for the purposes of model verification, and the associated costs of using that equipment or instrumentation. If these costs vary from facility to facility, we request comment on the range of costs across facilities and the approximate numbers of facilities that would incur the various costs. In addition, we request comment on the specific actions or modifications a facility would have to take to comply with the requirement and the associated costs (e.g., install new software for mass flow controllers, purchase and install flow meters or scales, etc.). Where these actions or modifications vary from facility to facility, we request comment on the range across facilities, and the approximate number of facilities that would have to take particular actions or modifications. Lastly, we request comment on other approaches that could be used to verify modeled gas consumption to a similar level of accuracy as the current requirement (i.e., whether verification could be accomplished through other means). Note that those approaches should not be based on subjective information (e.g., engineering judgment).

In today's notice, EPA is not taking any other action on other issues raised by SIA in their Petition for Reconsideration. EPA recognizes that the Petition raises other issues. Although EPA is aware of these concerns, we are not proposing changes relating to those concerns in this action, and we are not seeking comment on those issues at this time. EPA reserves the right to further consider those issues at a later time. EPA is also taking no action at this time on issues raised by 3M Company in their January 28, 2011 Petition for Reconsideration of Subpart I.

### III. Statutory and Executive Order Reviews

#### A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

#### B. Paperwork Reduction Act

This action does not impose any new information collection burden. These proposed amendments do not make any substantive changes to the reporting requirements in the subpart for which amendments are being proposed. The proposed amendments to the reporting requirements are expected to reduce the reporting burden by allowing reporters to use default values instead of recipe-specific values for the first two reporting years (2011 and 2012). However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations, 40 CFR 98 subpart I (75 FR 74774, December 1, 2010), under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060-0650. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

#### C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed 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 today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule

on small entities.” 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. The proposed rule amendments will reduce the burden for the largest semiconductor manufacturing facilities by providing flexibility during the initial years of compliance. The proposed action does not impose any new requirements on regulated entities.

We continue to be interested in the potential impacts of the proposed rule amendments on small entities and welcome comments on issues related to such impacts.

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

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, requires Federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Federal agencies must also develop a plan to provide notice to small governments that might be significantly or uniquely affected by any regulatory requirements. The plan must enable officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and must inform, educate, and advise small governments on compliance with the regulatory requirements.

The proposed rule amendments do not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Thus, the proposed rule amendments are not subject to the requirements of section 202 and 205 of the UMRA. This rule 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 proposed amendments will not impose any new requirements for 40 CFR part 98, and the rule amendments would not unfairly apply to small governments. Therefore, this action is not subject to the requirements of section 203 of the UMRA.

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

This action does not have federalism implications. It will not have substantial direct effects on the States, on the

relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

These amendments apply directly to facilities that use and emit fluorinated GHGs in the manufacture of certain electronic devices. They do not apply to governmental entities because no government facilities would be affected. This regulation also does not limit the power of States or localities to collect GHG data and/or regulate GHG emissions. Thus, Executive Order 13132 does not apply to this action.

Although section 6 of Executive Order 13132 does not apply to this action, EPA did consult with State and local officials or representatives of State and local governments during the development of the Mandatory Reporting Rule. A summary of EPA's consultations with State and local governments is provided in Section VIII.E of the preamble to the 2009 final rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials.

#### *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 proposed rule amendments would not result in any changes to the requirements that are not currently required for 40 CFR part 98. Thus, Executive Order 13175 does not apply to this action.

Although Executive Order 13175 does not apply to this action, EPA sought opportunities to provide information to Tribal governments and representatives during the development of the Mandatory Reporting Rule. A summary of the EPA's consultations with Tribal officials is provided in Sections VIII.D and VIII.F of the preamble to the 2009 final Mandatory Reporting Rule (74 FR 56260, October 30, 2009) and Section IV.F of the preamble to the 2010 final rule for Subpart I (75 FR 74774).

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required

under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

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

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

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113 (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Any technical standards that are required under Subpart I were already included in promulgation of the final Subpart I provisions on December 1, 2011 (75 FR 74774). Therefore, EPA is not considering the use of any voluntary consensus standards in this action.

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

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

EPA has determined that this proposed rule will not have disproportionately high and adverse

human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment because it is a rule addressing information collection and reporting procedures.

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

Environmental protection, Administrative practice and procedures, Air pollution control, Monitoring, Reporting and recordkeeping.

Dated: June 15, 2011.

**Lisa P. Jackson,**  
Administrator.

For the reasons stated in the preamble, title 40, chapter I, of the Code of Federal Regulations is proposed to be 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 I—[Amended]

2. Section 98.93 is amended by revising paragraph (a)(2)(ii) introductory text to read as follows:

#### § 98.93 Calculating GHG emissions.

(a) \* \* \*

(2) \* \* \*

(ii) If your facility has an annual manufacturing capacity of greater than 10,500 m<sup>2</sup> of substrate, as calculated using Equation I-5 of this subpart, you must adhere to the procedures in paragraphs (a)(2)(ii)(A) through (a)(2)(ii)(C) of this section, except that you may use the procedures specified in paragraph (a)(2)(i) of this section for the 2011 and 2012 reporting years.

\* \* \* \* \*

[FR Doc. 2011-15651 Filed 6-21-11; 8:45 am]

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Parts 174 and 180

[EPA-HQ-OPP-2010-0602; FRL-8878-1]

#### Receipt of a Pesticide Petition Filed for Residues of Pesticide Chemicals in or on Various Commodities

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

**ACTION:** Notice of filing of petition and request for comment.

**SUMMARY:** This document announces the Agency's receipt of an initial filing of a pesticide petition requesting the establishment or modification of

regulations for residues of pesticide chemicals in or on various commodities.

**DATES:** Comments must be received on or before July 22, 2011.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2010-0602 and the pesticide petition number (PP), by one of the following methods:

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

- **Mail:** Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- **Delivery:** OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

**Instructions:** Direct your comments to docket ID number EPA-HQ-OPP-2010-0602 and the pesticide petition number (PP). EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](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 [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the 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.

**Docket:** All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Julie Chao, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; *telephone number:* (703) 308-8735; *e-mail address:* [chao.julie@epa.gov](mailto:chao.julie@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

##### A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.