

# **Regulatory Flexibility Analysis and Impact Statement Form**

## **For Proposed New and Amended Regulations Affecting Small Businesses or Individuals**

### **Introduction**

Beginning January 1, 2016, agencies submitting proposed new or amended regulations that affect small businesses or individuals are required, under the new Regulatory Transparency and Accountability Acts of 2015 (see 80 Del. Laws, c. 112 and 113), to submit a Regulatory Flexibility Analysis (RFA) and a Regulatory Impact Statement (RIS) with the proposed regulation to the Registrar of Regulations (see **29 Del.C. Ch. 104**).

This RFA and RIS form is intended to benefit the small businesses and individuals impacted by proposed regulations by ensuring a reasonable level of consistency in the formatting of RFAs and RISs across different agencies and regulations.

State agencies proposing new or amended regulations that are substantially likely to impose additional costs or burdens on small businesses<sup>1</sup> or individuals<sup>2</sup> must submit a Regulatory Flexibility Analysis (RFA) **and** a Regulatory Impact Statement (RIS) to the Registrar of Regulations, with the proposed regulation. For agencies proposing amendments to existing regulations, the promulgating agency shall only be required to complete the RFA and RIS for the proposed amended portion of the existing regulation, and not for the entire existing regulation.

### **What is a Regulatory Flexibility Analysis (RFA)?**

In each RFA, an agency must consider, where applicable, lawful, feasible and desirable, specific methods of reducing the burdens of the regulation on individuals and/or small businesses, including: (1) establishing less stringent requirements and deadlines; (2) establishing performance standards to replace design standards; (3) exempting individuals and small businesses from all or part of the regulation; and (4) examining other ways to accomplish the regulation's purpose, while minimizing the impact upon individuals and/or small businesses.

### **What is a Regulatory Impact Statement (RIS)?**

Among other things, each RIS must (1) describe the purpose of the regulation; (2) identify the individuals and/or small businesses subject to it; (3) provide an estimate of the potential costs of compliance; and (4) describe any less intrusive or less costly alternative methods of achieving the purpose of the regulation. In addition, the Act further enhances transparency by requiring the Registrar of Regulations to transmit regulatory impact statements to the appropriate standing committee of the General Assembly.

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<sup>1</sup>"Small business" means any not-for-profit enterprise, sheltered workshop or business enterprise which is engaged in any phase of manufacturing, agricultural production or personal service, regardless of the form of its organization, when such enterprise or workshop employs fewer than 50 persons, has gross receipts of less than \$10,000,000 and is not owned, operated or controlled by another business enterprise.

<sup>2</sup>"Individual" means any natural person, including any sole proprietorship. The term "individual" does not include any natural person affected by a regulation in his/her capacity as an officer, director, or employee of an organization that is not a "small business"; e.g. the CEO of a large business.

*Agencies, Boards, and Commissions: please fill out this form when proposing new or amended regulations for the purpose of informing the public and business community. All proposed regulations, even if an exemption applies, must have this form attached when submitting to the Registrar of Regulations.*

Date \_\_\_\_\_ Agency \_\_\_\_\_ Division/Office \_\_\_\_\_

Contact Name \_\_\_\_\_

Contact Email (or mailing address for comments) \_\_\_\_\_

Regulation # \_\_\_\_\_ Title \_\_\_\_\_

## Exemptions

*Exemption A:* This proposed regulation is **not subject to Chapter 104, Title 29 of the Delaware Code**, because it will not apply to small businesses or individuals at all.

*Exemption B:* The agency, board, or commission is exempt from completing the RFA and Impact Statement due to the nature of the proposed regulation.

Choose the reason for exemption:

*B1.* This proposed regulation is not substantially likely to impose additional costs or burdens upon individuals and/or small businesses. Explain this conclusion:

*B2.* This is an emergency regulation pursuant to **29 Del.C. §10119**.

*B3.* This proposed regulation is exempt from the procedural requirements of the Administrative Procedures Act, **29 Del.C. §10113(b)**. Choose which reason:

*B3a.* Descriptions of agency organization, operations and procedures for obtaining information

*B3b.* Rules of practice and procedure used by the agency

*B3c.* Delegations of authority to subordinates

*B3d.* Nonsubstantive changes in existing regulations to alter style or form or to correct technical errors

*B3e.* Amendments to existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations

*B3f.* Codifications of existing agency or judicial principles of decision derived from previous decisions and rulings

B4. This proposed regulation defines standard of conduct or qualifications of individuals applying for licensure or as licensed professionals. Identify which professional license or professional qualification this would apply to:

B5. Regulations that are required by federal law and/or have already complied with the federal Regulatory Flexibility Act, 5 U.S.C. § 601 et seq. *(If this is checked, the agency, board, or commission shall cite the federal law, regulation, directive, or guidance strictly mandating such state regulation and shall attach any applicable Federal RFA related to the regulation, if available. Attach the Federal RFA statement to this form, or provide the URL):*

*End of Exemption Section*

# Regulatory Flexibility Analysis

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State agencies, boards, and commissions proposing to adopt or amend a regulation that is substantially likely to impose additional costs or burdens upon individuals and/or small businesses shall consider, where **applicable, lawful, feasible and desirable**, the following methods of reducing the additional costs and burdens of proposed regulations **on individuals and small businesses**:

1. The establishment of less stringent compliance or reporting requirements;
2. The establishment of less stringent schedules or deadlines for compliance or reporting requirements;
3. The consolidation or simplification of compliance or reporting requirements;
4. The establishment of performance standards to replace design or operational standards required in the proposed regulation;
5. The exemption of certain individuals or small businesses from all or part of the requirements contained in the proposed regulation; and
6. Such other alternative regulatory methods that will accomplish the objectives of the proposed regulation while minimizing the adverse impact upon individuals and small businesses.

Explain whether each of the above methods would be applicable, lawful, feasible, and desirable to reduce the costs or burdens of the proposed regulation:

1.

2.

3.

4.

5.

6.

If the above RFA section does not address each of the six methods and there is not an exemption that applies, explain why the agency, board, or commission decided it was not applicable, lawful, feasible, and desirable to complete the RFA section above:

*End of Regulatory Flexibility Analysis Section*

# Regulatory Impact Statement

Any agency, board, or commission that proposes to adopt or amend a regulation that is substantially likely to impose additional costs or burdens upon individuals and/or small businesses must submit the below Regulatory Impact Statement (RIS).

- Reference the statutory provision that allows for the adoption or amendment of the regulation and the statutory provisions that address the subject matter of the regulation. In addition, provide the URL to the specific section of the Delaware Code to allow the public easy access to view the provision.
  - Statutory Citation: \_\_\_\_\_
  - URL: \_\_\_\_\_
  - Subject Matter Statutory Citation: \_\_\_\_\_
  - URL: \_\_\_\_\_
- Describe the purpose of the proposed regulation (what is the need for the proposed regulation?):
- What are the anticipated benefits of the proposed regulation? (Describe the benefits that are expected to accrue as a result of the implemented regulation). Please quantify such benefits, as feasible:
- Identify the types of individuals and/or small businesses that would be subject to compliance under the regulation:

- Provide a **good-faith estimate** of the potential cost of compliance for individuals and/or small businesses, which at minimum shall include the projected reporting, recordkeeping, and other administrative costs required to comply with the proposed regulation. Use the below space for a free-text response (*Cost Estimate Option 1*) or, use the questionnaire below to guide the response (*Cost Estimate Option 2*):

***Cost Estimate Option 1:***

	<b><i>Cost Estimate Option 2</i></b>	<b>Yes</b>	<b>No</b>	<b>Unknown</b>
1	Is this regulation being proposed to implement a state or federal program that provides funds to Delaware?			
2	If this regulation is not implemented, will individuals, businesses, or programs lose federal funding?			
3	Does this regulation implement a plan that has already been approved by the federal government, after an opportunity for public comment?			
4	Does this regulation follow industry standards and best practices?			
5	Are there potential costs in not establishing these standards?			
6	Does the regulation require capital costs (building costs, material costs, upgrades to property or structures, retrofitting of systems, etc.)?			
7	Does the regulation require additional recurring costs on small businesses or individuals?			
8	Does the regulation impose additional administrative burden for a small business or individual?			
8a	If answering yes to #8, is it ongoing reporting or one time? (Choose answer)  <div> <input type="radio"/> Ongoing           <input type="radio"/> One Time           <input type="radio"/> Unknown         </div>			
8b	If answering yes to #8, generally, how much administrative effort will be required to comply with the regulation?  <div> <input type="radio"/> Large Amount           <input type="radio"/> Small Amount           <input type="radio"/> Unknown         </div>			
9	Does the regulation require new or changed record keeping that will create new processes or change processes already in place for small businesses or individuals?			



	<b><i>Cost Estimate Option 2 (continued)</i></b>	<b>Yes</b>	<b>No</b>	<b>Unknown</b>
10	Would a small businesses or individual be required to hire an outside professional to comply with the proposed regulation (such as an attorney, accountant, tax advisor, environmental consultant, engineering firm, etc.)?			
10a	If answering yes to #10, estimate how many hours an outside professional may be needed to assist			
10b	If answering yes to #10, will a small business or individual be required to retain the services of the outside professional on an ongoing basis?			
11	Does the regulation require small businesses to purchase goods or services that are unusual or not commercially reasonable?			
12	Does the regulation require that small businesses exceed commercially reasonable data storage and transmission standards?			
13	Will small businesses have to hire additional employees in order to comply with the proposed regulation?			
14	Does the regulation require small businesses to cooperate with audits, inspections, or other regulatory enforcement activities?			
15	Does the regulation have the effect of creating additional licenses, taxes and/or fees for small businesses?			
16	Does the regulation require small businesses to obtain additional education to keep up to date with regulatory requirements?			
17	Please further explain any additional costs or burdens, which at a minimum shall include the projected reporting, recordkeeping, and other administrative costs required to comply with the proposed regulation.			

- Provide a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation, and why these methods were not preferred to a regulation:
- *(Optional)* Estimate the amount of agency, board, or commission staff hours it took to prepare this RFA and RIS statement:
- *(Optional)* Agencies are encouraged to list trade or industry groups, small businesses, or other stakeholders such as currently regulated parties that were consulted by the agency, board, or commission in preparing this RFA and RIS. The agency, board, or commission is further encouraged to send them a copy of the RFA and RIS upon completion:

*End of Regulatory Impact Statement Section*

## Attachment

### *Response to #B5*

The purpose of this action is to amend 7 **DE Admin. Code** 1130 in the following aspects:

- 1) Amendment of 7 **DE Admin. Code** 1130, Section 7.0 “Permit Issuance, Renewal, Reopenings, and Revisions”, subsection 7.10.2 regarding public notice publication requirements. The Environmental Protection Agency (EPA) issued a final rule in 2016 which updated the list of contents to be identified in the public notice for Title V permits. The proposed amendments are to revise the public notice requirements in 1130, to ensure consistency with the specific wording of EPA’s final rule.
- 2) Amendment of 7 **DE Admin. Code** 1130, Section 6.0 “Permit Contents”, to update affirmative defense requirements. 7 **DE Admin. Code** 1130 is based on 40 CFR Part 70, which outlines requirements for state operating permit programs. Subsection 6.7 of 1130 includes guidance on claiming affirmative defenses for emission exceedances for emergencies and malfunctions. The Division is proposing to remove the term “malfunction” from 7 **DE Admin. Code** 1130, to maintain consistency with the current federal requirements.
- 3) Amendment of 7 **DE Admin. Code** 1130, Section 2.0 “Definitions”, Table 2-1 to update the list of greenhouse gases (GHG) and their global warming potential (GWP) values. EPA issued a final rule in 2013 that revised the GWP values of 23 of the 32 compounds listed in Table 2-1. EPA issued an additional final rule in 2014 that added 30 new compounds to the list of GHG. Accordingly, this action will revise 7 **DE Admin. Code** 1130 Table 2-1 to update the GWP values and to include the new GHG compounds as provided in the above two EPA final rules.

EPA evaluated the impact of the proposed amendments to 40 CFR Part 70 and Part 98 and found that the amendments would not have a significant economic impact on a substantial number of small entities (see references below and attachments).

- 1) 40 CFR Part 70, Section 7(h)(2):

The Federal RFA can be found on page 71628 of 81 FR 71613 (10/18/16) to be found at <https://www.govinfo.gov/content/pkg/FR-2016-10-18/pdf/2016-24911.pdf>.

- 2) 40 CFR Part 70, Section 6(g):

The Federal RFA can be found on page 32294 of 57 FR 32248 (07/21/92) to be found at [https://archives.federalregister.gov/issue\\_slice/1992/7/21/32247-32312.pdf#page=49](https://archives.federalregister.gov/issue_slice/1992/7/21/32247-32312.pdf#page=49).

- 3) 40 CFR Part 98, Table A-1:

- a. The Federal RFA can be found on page 71945 of 78 FR 71903 (11/29/13) to be found at <https://www.govinfo.gov/content/pkg/FR-2013-11-29/pdf/2013-27996.pdf>.

- b. The Federal RFA can be found on page 73775 of 79 FR 73749 (12/11/14) to be found at <https://www.govinfo.gov/content/pkg/FR-2014-12-11/pdf/2014-28444.pdf>.

This action has no burden on industry sources since permitting authorities are responsible for the noticing of permits. Therefore, the final rule revisions do not contain any information collection activities.

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

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements directly on small entities. This final rule revises regulations to address public noticing method requirements for draft permits for certain sources of air pollution.

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

This action does not contain any unfunded federal mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly affect small governments. This final action imposes no enforceable duty on any state, local or tribal governments, or the private sector.

#### *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.

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

This final action does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effect on tribal governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045

because it does not concern an environmental health risk or safety risk.

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

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

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

The final rulemaking does not involve technical standards.

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

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. The results of this evaluation are contained in Section VI of this document titled “Environmental Justice Considerations.”

#### *K. Congressional Review Act (CRA)*

This action is subject to the CRA, and the EPA will submit a rule report to each House of Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

#### *L. Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of any nationally applicable regulation, or any action the Administrator “finds and publishes” as based on a determination of nationwide scope or effect must be filed in the United States Court of Appeals for the District of Columbia Circuit within 60 days of the date the promulgation, approval, or action appears in the **Federal Register**. This final rule is nationally applicable, as it revises the rules for public notice under the minor NSR, PSD, NNSR, title V and OCS permitting programs in 40 CFR 51.161, 40 CFR 51.166, 40 CFR 51.165, 40 CFR 52.21, 40 CFR part 124, 40 CFR part 70, 40 CFR part 71 and 40 CFR part 55. As a result, petitions for review of this rule must be filed in the United States Court of Appeals for the District of Columbia Circuit within December 19, 2016. CAA section 307(d)(7)(B) further provides that “[o]nly an objection to a rule or procedure that was raised with reasonable specificity during the period for public comment (including any public hearing) may be

raised during judicial review.” This section also provides a mechanism for the EPA to reconsider the rule “[i]f the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.” Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, EPA WJC, 1200 Pennsylvania Ave. NW., Washington, DC 20460, with a copy to all person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this final rule, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Filing a petition for reconsideration by the Administrator of this final action does not affect the finality of this action for the purposes of judicial review, nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of this action.

#### **VIII. Statutory Authority**

The statutory authority for this action is provided by 23 U.S.C. 101; 42 U.S.C. 6901, *et seq.*; 42 U.S.C. 300f, *et seq.* 33 U.S.C. 1251, *et seq.*; 42 U.S.C. 7401, *et seq.*

#### **List of Subjects**

##### *40 CFR Part 51*

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

##### *40 CFR Part 52*

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements.

##### *40 CFR Part 55*

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements.

##### *40 CFR Part 70*

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.



the extent that the EPA has underestimated the cost of obtaining specific permits, and to the extent that States require permitting for nonmajor air toxic sources using specific permits (rather than general permits), the direct costs could be increased as much as a billion dollars annually. The EPA encourages States to consider cost differences between specific and general type permits. The EPA recommends that States allow sources to use the type of permit that achieves the requirements of title V at lowest cost. The EPA believes the general permit would normally be appropriate for the nonmajor air toxic sources that are not granted exemptions.

The EPA will soon promulgate a Final Initial List of Categories of Sources under section 112(c)(1) of the Act Amendments. This Final Initial List is expected to reduce the number of nonmajor air toxic sources that must comply with permitting requirements to below 350,000.

The benefits of this rule include more efficient enforcement and greater compliance with emission standards. Greater compliance may result in an improvement in air quality. This rule is not otherwise expected to yield gains in air quality since the rule does not affect ambient air standards or emission standards.

### C. Regulatory Flexibility Act Compliance

Under the Regulatory Flexibility Act, whenever an Agency publishes any proposed or final rule in the *Federal Register*, it must prepare a Regulatory Flexibility Analysis (RFA) that describes the impact of the rule on small entities (i.e., small businesses, organizations, and governmental jurisdictions). That analysis is not necessary, however, if an Agency's Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Applicable EPA guidelines for determining whether an RFA is required to accompany a rulemaking package state the criteria for determining when the number of affected small entities is "substantial" and whether there is a significant impact. The determination of significant impact for small businesses essentially depends upon compliance costs, production costs, and predicted closures. For small governments, the determination of significant impact depends upon compliance costs, operating costs, and record keeping costs.

A regulatory flexibility screening analysis was prepared to examine the

potential for significant adverse impacts on small entities associated with specific permitting provisions. This analysis has revealed that without specific mitigation provisions, substantial numbers of small entities may be adversely impacted. Since potential adverse impacts could exist, EPA will use and expects States to use, general permits and deferred applicability of non-major sources to mitigate any such potential impacts. To the extent any remaining significant adverse impacts are probable, the small business assistance program provisions of title V could provide further relief. Consequently, EPA does not believe large numbers of small entities will be adversely affected or will experience disproportionate significant impacts. I hereby certify that this rule as promulgated will not have a significant economic impact on a substantial number of small business entities and thereby does not require an RFA.

### D. Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.), Federal agencies must obtain OMB clearance for collection of information from ten (10) or more non-federal respondents. Each source subject to the requirements for obtaining a title V operating permit will have to submit a permit application and will make periodic compliance reports. These requirements parallel what many sources are already reporting to State and local permitting authorities and what States report to EPA. The effect of these regulations will be to subject more sources to such requirements, primarily those required to obtain a permit due to classification as a major source under the title III air toxics requirements or title I nonattainment requirements. The Act specifies that major sources cannot be exempted from the requirement to obtain a part 70 permit. Their inclusion in the Act is due to the necessity for more effective air quality management throughout the country.

Comments on the proposed Information Collection Request (ICR) were received from two Federal agencies, an industry group, and a research organization. All commenters felt that the cost and burden hour estimates in the proposed ICR were understated. Two commenters specifically identified major activities required of sources and permitting authorities in the permitting process which should be accounted for in the estimates. The need for guidance on general permits was also mentioned by two commenters. The final ICR has been updated to include estimates for two time periods: (1) The first three years

(years 1-3) after EPA promulgates the part 70 regulations, as required by the Paperwork Reduction Act; and (2) the following five years (years 4-8), during which initial title V permits will be issued. Estimates for years 4-8 have been provided for informational purposes. EPA will be able to make better estimates of permit issuance costs for years 4-8 after State and local title V programs are reviewed and approved. It should be noted that the proposed ICR only addressed years 4-8, not the first three years after promulgation. Since the Act allows State and local agencies two years after promulgation of EPA regulations to submit programs to EPA, and it allows EPA a year to review and approve such programs, it was assumed in the final ICR that only permitting authorities will experience administration burden during years 1-3.

The analysis of years 4-8 in the final ICR has been updated to respond to comments received. The revised ICR incorporates several additional activities, including activities related to requirements for public notices, public hearings, permit revisions, and permit reopenings. The addition of these new activities, along with additional analysis of burden hour estimates by a group of permitting experts from the private and government sectors, have resulted in increased burden hour and cost estimates for permitting authorities and sources. For years 4-8, total annual cost estimates for permitting authorities have increased from \$15 to \$160 million, and for sources these estimates have increased from \$115 million to \$352 million annually. In regard to guidance for general permits, EPA has projects underway to develop model general permits for specific source categories.

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. These requirements are not effective until OMB approves them and a technical amendment to that effect is published in the *Federal Register*. The burden to all 112 State and local permitting authorities for this collection of information during the first three years after EPA promulgates the part 70 regulations, is estimated to total 1,944,880 hours equalling an annual average of 5,788 hours per permitting agency. This includes time for rule interpretation, analysis and/or revision to legislative authority, analysis and/or development of regulations, and development of a fee demonstration, standard application form, and a transition plan.



reported) data elements contained in the final amendments. These final amendments and confidentiality determinations do not make any substantive changes to the reporting requirements in any of the subparts for which amendments are being finalized. The final amendments to subpart A include revision of existing GWP in Table A-1 of subpart A. As discussed in Section V of this preamble, the final amendments could affect the total number of facilities reporting under Part 98 and increase the collective annual emissions or supply reported. The EPA prepared an analysis of the compliance costs associated with the final amendments to Table A-1 in the Impacts Analysis (see Docket Id. No. EPA-HQ-OAR-2012-0934).

Other amendments to subpart A include adding requirements that provide reporters instruction regarding reporting of location, ownership, and facility identification (i.e., reporting of plant codes). The remaining changes also include revising and adding definitions. The revisions are clarifications or require reporting of information that facilities are expected to have readily available (e.g., latitude and longitude of the facility, unit-level and configuration-level “plant code”), and are not expected to result in significant burden for reporters.

The amendments to the reporting requirements in the source category-specific subparts generally do not change the nature of the data reported and are not anticipated to result in significant burden for reporters. For example, several of the amendments are clarifications or corrections to existing reporting requirements. For example, for subpart H, the EPA is requiring reporting of annual, facility-wide cement production instead of monthly, kiln-specific cement production for facilities that use a CEMS to measure CO<sub>2</sub> emissions. Because facilities are already expected to track facility-wide cement production for budgeting purposes, we do not expect this revision to result in any additional burden for cement production facilities. In some cases we are including reporting requirements for data that are already collected by reporters. For instance, for subpart RR, the EPA is adding a reporting requirement for facilities to report the standard or method used to calculate the mass or volume of contents in containers that is redelivered to another facility without being injected into the well. The new data element does not require additional data collection or monitoring from reporters, and is not a significant change.

The EPA is also finalizing changes that would reduce the reporting burden. For example, for subpart BB (Silicon Carbide Production), the EPA is removing the requirement for facilities to report CH<sub>4</sub> emissions from silicon carbide process units or furnaces. Additionally, the EPA is amending subpart BB such that facilities would calculate and report CO<sub>2</sub> emissions for all process units and furnaces combined, instead of each process unit or production furnace. We expect that both of these major changes will reduce the reporting burden for facilities subject to subpart BB.

Additional changes to the reporting requirements in each subpart are detailed in the Impacts Analysis (see Docket Id. No. EPA-HQ-OAR-2012-0934).

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

The Regulatory Flexibility Act (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 impact of this final 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 final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this final rule are small businesses. We have determined that up to 80 small municipal solid waste landfills, representing up to a 1 percent increase in regulated businesses in this industry, will experience an impact of 0.02 to 0.6 percent of revenues; up to 3 suppliers of industrial GHGs, representing up to a 0.85 percent increase in regulated businesses in this industry, will experience an impact of 0.02 to 0.14 percent of revenues; and that up to 27 industrial waste landfills (primarily co-

located with food processing facilities), representing up to a 7.3 percent increase in regulated businesses in this industry, will experience an impact of 0.01 to 0.48 percent of revenues.

Although this final rule will not have a significant economic impact on a substantial number of small entities, the EPA nonetheless has tried to reduce the impact of Part 98 on small entities. For example, the EPA conducted several meetings with industry associations to discuss regulatory options and the corresponding burden on industry, such as recordkeeping and reporting. The EPA continues to conduct significant outreach on Part 98 and maintains an “open door” policy for stakeholders to help inform the EPA’s understanding of key issues for the industries.

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

The final rule amendments and confidentiality determinations 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 final rule amendments and confidentiality determinations are not subject to the requirements of section 202 and 205 of the UMRA.

This final 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 final rule amends specific provisions in subpart A, General Provisions, to reflect global warming potentials that have been published by the IPCC. Also in this action, the EPA is revising specific provisions to provide clarity on what is to be reported. In some cases, the EPA has increased flexibility in the selection of methods used for calculating and monitoring GHGs. 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.

The final amendments and confidentiality determinations apply directly to facilities that directly emit greenhouses gases or that are suppliers of greenhouse gases. They do not apply to governmental entities unless the government entity owns a facility that

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). This action (1) amends certain provisions of the Fluorinated Gas Production source category, including finalizing an alternative verification approach for this source category in lieu of collecting certain data elements for which the EPA has identified disclosure concerns and for which the reporting deadline was deferred until March 31, 2015, (2) adds chemical-specific and default GWPs for a number of fluorinated greenhouse gases and fluorinated heat transfer fluids to the general provisions of the Greenhouse Gas Reporting Rule, and (3) finalizes confidentiality determinations for certain reporting requirements of the Fluorinated Gas Production source category.

#### *B. Paperwork Reduction Act*

The Office of Management and Budget (OMB) has approved the information collection requirements for 40 CFR part 98 under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control numbers 2060–0629 and 2060–0650, respectively, and ICR 2300.10. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. The revisions in this final action result in a small increase in burden, and the ICR will be modified to reflect this burden change. Further information on the EPA's assessment on the impact on burden can be found in the analyses "Assessment of Cost Impacts of 2015 Inputs Proposal—Revisions to Reporting, Recordkeeping, and Verification Requirements Under the Greenhouse Gas Reporting Program," August 2013, available in the EPA's Docket ID No. EPA–HQ–OAR–2010–0929, in the "2013 Amendments to the Greenhouse Gas Reporting Rule for the Fluorinated Gas Production Source Category Cost Memo" and "Economic Analysis of Adding Chemical-Specific and Default GWPs to Table A–1", both in docket number EPA–HQ–OAR–2009–0927.

This action (1) amends certain provisions of the Fluorinated Gas Production source category, including finalizing an alternative verification approach for this source category in lieu of collecting certain data elements for which the EPA has identified disclosure concerns and for which the reporting deadline was deferred until March 31, 2015, (2) adds chemical-specific and default GWPs for a number of fluorinated greenhouse gases and fluorinated heat transfer fluids to the

general provisions of the Greenhouse Gas Reporting Rule, and (3) finalizes confidentiality determinations for certain reporting requirements of the Fluorinated Gas Production source category.

#### *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 impact of this final 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 that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The addition of chemical-specific and default GWPs to subpart A is not expected to affect the applicability of the rule to small entities. The amendments to subpart L (including the requirement to enter inputs to subpart L emission equations into IVT) affect fluorinated gas producers, none of which are small entities.

Although this final rule will not have a significant economic impact on a substantial number of small entities, the EPA nonetheless has tried to reduce the impact of Part 98 on small entities. For example, the EPA conducted several meetings with industry associations to discuss regulatory options and the corresponding burden on industry, such as recordkeeping and reporting. The EPA continues to conduct significant outreach on Part 98 and maintains an "open door" policy for stakeholders to help inform the EPA's understanding of key issues for the industries.

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

The final rule amendments and confidentiality determinations 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 final rule amendments and confidentiality determinations are not subject to the requirements of Sections 202 and 205 of the UMRA.

This final 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. Facilities and suppliers subject to the rule include fluorinated gas producers, electronics manufacturers, magnesium producers and processors, manufacturers and users of electrical equipment, importers and exporters of fluorinated GHGs in bulk, and importers and exporters of pre-charged equipment and closed-cell foams that contain fluorinated GHGs. None of the facilities currently known to undertake these activities is owned by a small government. 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. For a more detailed discussion about how Part 98 relates to existing state programs, please see Section II of the preamble to the final Greenhouse Gas reporting rule (74 FR 56266, October 30, 2009).

The final amendments and confidentiality determinations apply directly to fluorinated gas producers, electronics manufacturers, magnesium producers and processors, manufacturers and users of electrical equipment, importers and exporters of fluorinated GHGs in bulk, and importers and exporters of pre-charged equipment and closed-cell foams that contain fluorinated GHGs. They do not apply to governmental entities unless the government entity owns a facility that falls into one of these categories and that emits or supplies fluorinated GHGs above threshold levels. We are not aware of any governmental entities that 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