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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 98

[EPA-HQ-OAR-2011-0417; FRL-9469-4]

RIN 2060-AP99

Mandatory Reporting of Greenhouse Gases: Petroleum and Natural Gas Systems: Revisions to Best Available Monitoring Method Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing amendments to certain provisions related to the use of best available monitoring methods for the Petroleum and Natural Gas Systems source category of the Greenhouse Gas Reporting Rule. Specifically, EPA is extending the time period during which owners and operators of facilities would be permitted to use best available monitoring methods in 2011, without submitting a request to the Administrator for approval. EPA is also expanding the list of types of emissions sources for which owners and operators are not required to submit a request to the Administrator to use best available

monitoring methods during 2011 and extending the deadline by which owners and operators of facilities can request use of best available monitoring methods for beyond 2011.

DATES: This final rule is effective on September 30, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2011-0417. All documents in the docket are listed in the <http://www.regulations.gov> index.

Although listed in the index, some information may not be publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and is publicly available in hard copy only. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the EPA's Docket Center, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC-

6207), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343-9263; fax number: (202) 343-2342; e-mail address: GHGReportingRule@epa.gov. For technical information and implementation materials, please go to the Web site <http://www.epa.gov/climatechange/emissions/subpart/w.html>. To submit a question, select Rule Help Center, followed by "Contact Us."

Worldwide Web (WWW). In addition to being available in Docket ID No. EPA-HQ-OAR-2011-0417, following the Administrator's signature, an electronic copy of this final rule will also be available through the WWW on EPA's Greenhouse Gas Reporting Program Web site at <http://www.epa.gov/climatechange/emissions/ghgrulemaking.html>.

SUPPLEMENTARY INFORMATION: *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"). This final rule affects owners or operators of petroleum and natural gas systems. Regulated categories and entities may include those listed in Table 1 of this preamble:

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY

Source category	NAICS	Examples of affected facilities
Petroleum and Natural Gas Systems	486210	Pipeline transportation of natural gas.
	221210	Natural gas distribution facilities.
	211	Extractors of crude petroleum and natural gas.
	211112	Natural gas liquid extraction facilities.

Table 1 of this preamble is not intended to be exhaustive, but rather provides a guide for readers regarding facilities likely to be affected by this action. Table 1 of this preamble lists the types of facilities of which EPA is aware could be potentially affected by the reporting requirements. 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 W or the relevant criteria in the sections related to petroleum and natural gas systems. If you have questions regarding the applicability of this action to a particular facility, consult the person

listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

What is the effective date? The final rule is effective on September 30, 2011. Section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. Chapter 5, generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. EPA is issuing this final rule under section CAA 307(d)(1), which states: "The provisions of section 553 through 557 * * * of Title 5 shall not, except as expressly provided in this section, apply to actions to which this subsection applies." Thus, section 553(d) of the APA does not apply to this rule. EPA is nevertheless acting consistently with the purposes underlying APA section 553(d) in

making this rule effective on September 30, 2011. Section 5 U.S.C. 553(d)(3) allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." As explained below, EPA finds that there is good cause for this rule to become effective on or before September 30, 2011, even though this will result in an effective date fewer than 30 days from the date of publication in the **Federal Register**.

The purpose of the 30-day waiting period prescribed in 5 U.S.C. 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. That purpose, to provide affected parties a reasonable time to adjust to the rule

before it comes into effect, is not necessary in this case, as this final rule avoids the need for affected parties to take action.

Currently, according to the provisions in 76 FR 22825 (April 25, 2011), owners and operators subject to 40 CFR part 98 may take advantage of automatic use of best available monitoring methods (BAMM) for parameters that cannot reasonably be measured according to the monitoring requirements in the rule through September 30, 2011. After September 30, 2011, owners and operators must follow all monitoring and quality assurance (QA) and quality control (QC) procedures in the rule unless the Administrator has approved using BAMM beyond that date. Finalizing this rule by September 30, 2011 enables owners and operators to automatically use BAMM through the end of 2011, without the need to request approval from the Administrator. If EPA were not to finalize this rule by September 30, 2011, owners and operators would have to comply with all monitoring and QA/QC requirements as of October 1, 2011, which is the precise situation that this final rule is trying to avoid. Accordingly, EPA finds good cause exists to make this rule effective on September 30, 2011, consistent with the purposes of 5 U.S.C. 553(d)(3).

Judicial Review. Under CAA section 307(b)(1), judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit (the Court) by November 28, 2011. Under CAA section 307(d)(7)(B), only an objection to this final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Section 307(d)(7)(B) of the CAA also provides a mechanism for EPA to convene a proceeding for reconsideration, “[i]f the person raising an objection can demonstrate to EPA 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 to us should submit a Petition for Reconsideration to the Office of the Administrator, Environmental Protection Agency, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and

Radiation Law Office, Office of General Counsel (Mail Code 2344A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20004. Note, under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

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.
ICR Information Collection Request.
ISO International Organization for Standardization.
INGAA Interstate Natural Gas Association of America (INGAA).
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.
WWW World Wide Web.

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I. Background

A. Organization of This Preamble

This preamble consists of four sections. The first section provides a brief history of 40 CFR part 98, subpart W (“subpart W”).

The second section of this preamble summarizes the revisions made to specific requirements for subpart W being incorporated into 40 CFR part 98 by this action. It also describes the major changes made to this source category since proposal and provides a brief summary of significant public comments and EPA’s responses. Additional responses to significant comments can be located in the document “Mandatory Reporting of Greenhouse Gases—Petroleum and Natural Gas Systems, Revisions to Best Available Monitoring Methods: EPA’s Response to Public Comments”.

The third section of this preamble provides a statement regarding the economic impacts of the final rule.

Finally, the last section discusses the various statutory and executive order requirements applicable to this rulemaking.

B. Background on the Final Rule

This action finalizes amendments to best available monitoring method (BAMM) provisions in 40 CFR part 98, subpart W. EPA published Subpart W—Petroleum and Natural Gas Systems of the Greenhouse Gas Reporting Rule on November 30, 2010, 40 CFR part 98, subpart W (75 FR 74458). Included in the final rule were new provisions that were added in response to comments on the proposal (75 FR 18608, April 12, 2010) allowing owners and operators the option of using BAMM for specified parameters in 40 CFR 98.233.

Calculating GHG emissions

Following the publication of subpart W in the **Federal Register**, several industry groups sought reconsideration of several provisions in the final rule, including the provisions allowing BAMM. In a follow up action, EPA granted reconsideration and extended specific BAMM deadlines for 90 days in a rule that was signed on April 20, 2011 (76 FR 22825).

EPA then published a notice of proposed rulemaking to propose extending the time period for which owners and operators of facilities could use BAMM during 2011 without submitting a request to the

Administrator for approval, as well as broadening the emissions sources for which BAMB could be used. EPA also proposed extending the deadline for requesting BAMB for beyond 2011. The proposal was published on June 27, 2011 (76 FR 37300). The public comment period for the proposed rule amendments ended on July 27, 2011. EPA did not receive any requests to hold a public hearing.

C. Legal Authority

EPA is promulgating 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, October 30, 2009), CAA section 114 provides EPA broad authority to require the information mandated by Part 98 because such data would inform and are relevant to EPA's obligation to carry out a wide variety of CAA provisions. As discussed in the preamble to the initial proposal (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 process or control equipment, and 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 proposed and final rule, and Response to Comments Documents.

II. Use of BAMB Under the Petroleum and Natural Gas Systems Source Category

A. Summary of BAMB Provisions Under the Petroleum and Natural Gas Systems Source Category

Subpart W of 40 CFR part 98 includes provisions allowing owners and operators of facilities to use BAMB in lieu of specified data input requirements for determining GHG emissions in certain circumstances for specified emissions sources. Methods that constitute BAMB are: supplier data; monitoring methods currently used by the facility that do not meet the specifications of a relevant subpart; engineering calculations; and/or other company records. When using BAMB, the owner or operator must use the equations and calculation methods set forth in 40 CFR 98.233, but may use BAMB to estimate the parameters in the equations as specified in the rule. Any obligation to report under 30 CFR

250.302 through 304 as applicable by owners or operators of facilities reporting under the offshore petroleum and natural gas production industry segment of subpart W is not affected if such owners or operators choose to use BAMB.

Well-related emissions (40 CFR 98.234(f)(2)). This group of emissions sources includes those well-related data that cannot reasonably be measured according to the monitoring and QA/QC requirements of subpart W, such as well testing, venting, and flaring. Sources that fall in this category may automatically use BAMB for calendar year 2011 without requesting approval from the Administrator.

Specified activity data (40 CFR 98.234(f)(3)). This group includes those activity data that cannot reasonably be obtained according to the monitoring and QA/QC requirements specified in subpart W, such as cumulative hours of venting, days, or times of operation. Sources that fall in this category may automatically use BAMB for calendar year 2011 without requesting approval from the Administrator.

Leak Detection and Measurement (40 CFR 98.234(f)(4)). This group includes those emissions sources that require leak detection and/or measurement such as the measurement of equipment leaks from valves and connectors that cannot reasonably be obtained. Sources that fall in this category may automatically use BAMB for calendar year 2011 without requesting approval from the Administrator.

Additional Sources under 40 CFR 98.234(f)(5)(iv). This category is applicable to emission sources not covered under the previous three categories and includes instances in which the facility owner or operator is facing unique or unusual circumstances, such as data collection methods that do not meet safety regulations, technical infeasibility such as a compressor that would not normally be shut down for maintenance during that calendar year rendering the installation of a port or meter difficult, or requirements that are counter to specific laws or regulations that render owners or operators of the facility unable to meet the requirements of subpart W. These examples are illustrative only; there could be additional circumstances which are unique or unusual under which the source could legitimately use BAMB. Sources that fall in this category may automatically use BAMB for calendar year 2011 without requesting approval from the Administrator.

Best available monitoring methods for use beyond December 31, 2011 for sources in 40 CFR 98.234(f)(2), (f)(3),

(f)(4), and (f)(5)(iv). Owners and operators of emission sources covered in 40 CFR 98.234(f)(2), (f)(3), (f)(4), and (f)(5)(iv) may submit a notice of intent to EPA by December 31, 2011 indicating an intent to request BAMB for beyond 2011. Owners and operators who submit a BAMB request consistent with 40 CFR 98.234(f)(8)(ii) by March 30, 2012 who have also submitted a notice of intent by December 31, 2011 will automatically be granted BAMB through June 30, 2012, during which time EPA will review the BAMB request. If the BAMB request is for use of BAMB beyond June 30, 2012 and is approved by the Administrator, owners and operators would be allowed to use BAMB for the time period indicated in the EPA approval letter, but not beyond December 31, 2012 without submitting and obtaining the Administrator's approval of a subsequent request for additional time.

Owners and operators who submit such a notice of intent but do not follow up with a BAMB request by March 30, 2012 are not allowed to use BAMB for 2012. They will have been expected to follow all monitoring and QA/QC requirements in the rule as of January 1, 2012. Although EPA expects that it will be unlikely to be necessary, these owners and operators could still request BAMB for 2013 and beyond according to the procedures outlined in this preamble and rule.

To use BAMB beyond December 31, 2012 (or such other shorter period as provided in an approval letter), or any year thereafter, owners and operators must submit a new request to use BAMB by September 30th of the preceding year or such other time as indicated by an approval letter. The request will be reviewed according to the criteria outlined in 40 CFR 98.234(f)(8), and if the information provided is to the Administrator's satisfaction, approved.

B. Summary of Major Changes and Clarifications Since Proposal

The major changes and clarifications in 40 CFR 98.234(f) since the June 2011 proposal are identified in the following list. For a full description of the rationale for these and any other significant changes to 40 CFR 98.234(f) of subpart W, please see below, as well as the "Mandatory Reporting of Greenhouse Gases—Petroleum and Natural Gas Systems, Revisions to Best Available Monitoring Method Provisions: EPA's Response to Public Comments". The changes are organized following the different sections of the subpart W regulatory text.

1. Emission Sources Covered by Best Available Monitoring Method Provisions

- EPA clarified the sources covered by BAMM for Leak Detection and Measurement in 40 CFR 98.234(f)(4) by including the statement that emission sources that can use BAMM are those for which leak detection/or measurement cannot reasonably be obtained.

- EPA clarified availability of BAMM for sources not listed in paragraph 40 CFR 92.234 (f)(2), (f)(3), and (f)(4) by including the statement in 40 CFR 98.234(f)(5)(iv) that such emission sources are those for which data cannot reasonably be obtained.

2. Best Available Monitoring Methods Beyond 2011 for Sources Listed in 40 CFR 98.234(f)(2), (f)(3), (f)(4), and (f)(5)(iv)

- EPA revised the provisions for the use of BAMM beyond 2011 by stating that EPA will approve BAMM for use for a maximum of one year. For subsequent years, owners and operators must again request to use BAMM.

- EPA clarified provisions for the use of BAMM beyond 2011 by replacing the term “facilities” with “owners and operators”.

- EPA clarified that the BAMM request must include a description of the associated unique or unusual circumstances (rather than extreme) for each emissions source for which the request has been submitted.

- EPA revised the approval criteria for the use of BAMM beyond December 31, 2011 to clarify that BAMM requests must clearly demonstrate why BAMM is needed, and must also include justifications for why the owner or operator cannot conform to requirements in subpart W.

3. Handling Best Available Monitoring Method Late Submissions Requests

- EPA revised the language in 40 CFR 98.234(f)(1) to clarify that owners and operators who submit a BAMM request after the deadlines finalized in this action must demonstrate unique or unusual circumstances unforeseen at the time of the associated BAMM deadline specified in the rule.

C. Summary of Comments and Responses

This section contains a brief summary of major comments and responses. EPA received seven sets of comments in response to the proposed revisions to the BAMM provisions. EPA's responses to additional comments can be found in the comment response document, “Mandatory Reporting of Greenhouse

Gases—Petroleum and Natural Gas Systems, Revisions to Best Available Monitoring Method Provisions: EPA's Response to Public Comment”.

1. Emission Sources Covered by BAMM

Comment: EPA received mixed comments on the expansion of the automatic BAMM coverage beyond the sources listed in 40 CFR 98.234(f)(2) and (f)(3), to sources listed in 40 CFR 98.234(f)(4) (Leak Detection and Measurement), as well as other sources under 40 CFR 98.234(f)(5)(iv). Most commenters supported the expansion, stating that the extension of automatic use of BAMM to sources for which leak detection and measurement are required as well as other sources subject to subpart W for 2011 would provide reporting entities time to fully implement the requirements of subpart W. A few commenters argued against expanding the use of automatic BAMM to all subpart W emissions sources in 2011 by stating that the extension was not appropriate for leak detection, because accurate information on leaking equipment lies at the core of subpart W and allowing BAMM for these measurements would undermine the utility of these data and obscure opportunities for facilities to both reduce emissions and save money. Further, commenters noted that the extension was not warranted because EPA did not provide a sufficient technical basis for such an extension.

Response: In this action, EPA is extending the automatic use of BAMM to the emission sources covered in 40 CFR 98.234(f)(2) through (4) and those covered in 98.234(f)(5)(iv) based on EPA's determination that this extension would assist reporters in the necessary preparations to come into full compliance with the rule. In a previous action (76 FR 22825, April 25, 2011), EPA amended the dates by which requests to use BAMM were to be submitted to the Agency. Based on the dates in that action, BAMM requests were to be submitted to the agency by July 31, 2011 for use of BAMM in calendar year 2011. To date, EPA has received over 200 submissions from owners and operators of facilities either notifying EPA of the intent to submit a BAMM request or providing EPA with the full BAMM request. Most of these 200 submissions contain information for more than one facility subject to the rule. In some cases, for example, a single submission of a notice of intent received by EPA covered over 75 facilities. All together, the submissions reflected either notifications of intent (NOIs) or requests for BAMM from over 1,900 facilities. This is over half of the

2,800 facilities that EPA originally expected to report under subpart W. The sheer number of requests received indicates that there is a significant need for BAMM for the 2011 reporting year.

Regarding commenters concern that there was no technical basis to allow use of BAMM for sources beyond 40 CFR 98(f)(2), (f)(3) and (f)(4), a memo to the docket entitled “Supplemental Data Submitted on BAMM” demonstrates by specific examples justification for the extension to additional emissions sources, at least for the 2011 reporting year.

Commenters also were concerned that by allowing the use of BAMM, EPA would “undermine the utility of these data and obscure opportunities for facilities to both reduce emissions and save money.” EPA recognizes that use of BAMM could result in some inconsistencies in how owners and operators calculate emissions for a specific facility. However, regulations for *facility* level monitoring for the petroleum and natural gas industry are a new and significant undertaking and will greatly improve the emissions estimates for this industry. For instance, although they are required to follow the calculation equations in the rule, owners and operators will have some flexibility in how they estimate the inputs to those equations. Nevertheless, although the input parameters are calculated using BAMM, the data obtained would be a significant improvement over current emissions estimation methods.

For example, current source-level emissions estimates for the petroleum and natural gas industry are primarily available through the Inventory of U.S. GHG Emissions. Although the national level GHG Inventory and the GHG Reporting Program are very different and the programs have different goals and different levels of coverage of industry emissions, an understanding of the quality and availability of source-specific data in the national GHG inventory is germane to the comments raised. The national GHG Inventory provides national level estimates and does not provide the level of granularity that will be available from the facility level GHG reports which will be available under the GHG Reporting Program. So, although facilities will be able to use BAMM, reporting facility-level data provides significant additional information on emissions in the industry above and beyond what is currently available.

Second, the methods used to estimate facility-level emissions are an improvement over the national-level methods. In the national GHG

Inventory, EPA relies on predominantly national level statistics and default emissions factors from a 1996 study titled “*Methane Emissions from the Natural Gas Industry*”¹. For example, in the national GHG Inventory, emissions from tanks are estimated using an emission factor per barrel of crude oil/condensate produced multiplied by the national volumes of crude oil/condensate produced. This emission factor was developed using outputs from 101 simulation runs of the API Tank model for certain types of crude/condensate input and separator pressure. However, this is not representative of the variation in crude oil/condensate qualities and separator pressure at oil and gas operations across the nation. Hence, although facilities may be able to use BAMM to estimate emissions from tanks, the emissions estimates reported using BAMM will nonetheless be an improvement over existing methods by providing additional information on the varying characteristics of oil and gas operations across the country, which is not available through the national inventory.

In summary, EPA has concluded that granting automatic use of BAMM without approval for 2011 will still provide EPA with improved data from the industry, while providing owners and operators sufficient time to perform the necessary steps to ensure full compliance with subpart W.

2. Use of BAMM Beyond 2011

Comment: Several commenters argued against EPA’s proposal to extend the deadline for requesting use of BAMM beyond December 31, 2011 stating that the proposed provisions would greatly undermine the data reported under subpart W. Further, commenters stated that the reporting community did not push for this revision and it is therefore unwarranted.

Response: In this action, EPA is finalizing, as proposed, the two-phase approach that results in an initial six-month extension of the date for requesting BAMM for 2012. The two-phase approach is similar to the process used under 40 CFR part 98 for subparts P, X, and Y. As indicated at proposal, this automatic extension would be necessary because under the rule, facilities are only granted automatic BAMM through December 31, 2011. For

facilities that are requesting BAMM for beyond 2011, BAMM must be extended automatically to provide EPA the time to review thoroughly the BAMM requests submitted for a period beyond 2011, while ensuring that the requesting facilities are not out of compliance with the rule during that review process.

First and foremost, EPA notes that the 2010 final rule for subpart W allows requests for BAMM beyond 2011. 40 CFR 98.234(f)(8) provides for BAMM post-2011 if those requests were submitted by September 30, 2011. The extension of the deadline for BAMM beyond 2011 was necessary for the same reasons that extension of automatic BAMM was necessary for 2011; the substantial number of owners and operators requesting BAMM would require significant resources by reporters that EPA has concluded would be better applied to concentration on coming into compliance with the rule.

In addition, it is not accurate to say that industry did not request use of BAMM past 2011. For example, in its Petition for Reconsideration, the Interstate Natural Gas Association of America (INGAA) stated, “[t]here is no reasonable basis for * * * denying BAMM to a facility already subject to reporting, that confronts an unpredictable facility or operational issue (e.g., low utilization) that precludes measurement, just because these events occur after September 30, 2011. These and other situations should be eligible for BAMM, and INGAA seeks reconsideration so EPA can offer BAMM to these otherwise stranded facilities and unaddressed future events.” Similarly, in its petition for reconsideration, the American Petroleum Institute (API) indicated that EPA should remove the September 30, 2011 deadline for requesting BAMM post-2011, relaying that BAMM should be considered for such time as there is a reasonable need for use of BAMM. Chesapeake Energy Corporation and the American Exploration and Production Council echoed similar needs to have BAMM beyond 2011 (and 2012). They indicated in their comments on this proposed rule that “EPA should anticipate that there may be some situations that are beyond companies’ control, which would require additional BAMM beyond June 2012. For example, if there is insufficient supply of necessary monitoring equipment or if there are unexpected equipment manufacturing delays that prevent a company from installing that necessary monitoring equipment until late 2012, EPA should allow that company to use BAMM until the equipment can be delivered and installed.”

EPA has concluded that an initial six month extension of the September 30, 2011 deadline is necessary. Further, commenters did not provide any specific examples of how such an extension could undermine data quality. In fact, EPA has concluded that the additional six months will provide owners and operators additional time to visit their facilities and determine whether or not they actually need BAMM. EPA does not believe that all of the 1,900 plus facilities that have currently requested BAMM or filed notices of intent to apply for BAMM actually need BAMM, but rather they have submitted a request (or notice of intent) because they have not had sufficient time to fully evaluate their BAMM needs. A six-month extension of the deadline provides sufficient time for facilities to fully evaluate their needs and only submit genuine BAMM requests based on that need. Therefore, EPA has determined that this extension of the deadline for BAMM beyond 2011 is appropriate and will only approve BAMM requests that fulfill the requirements outlined in the content of request section of 40 CFR 98.234(f)(8).

Comment: Some commenters argued against the removal of the term “extreme” from 40 CFR 98.234(f)(8) and replacing it with “unique or unusual,” as was proposed, stating that this change would result in a wide expansion of the number of facilities that would request use of BAMM that were unwarranted. In contrast, several commenters argued against the inclusion of the terms “unique or unusual” and requested that EPA remove the terms from 40 CFR 98.234(f)(8) altogether. One commenter suggested replacing terms like “extreme” and “unique” with “good cause” because the complexity of the rule and the breadth of its application justify broader discretion in allowing BAMM than this text would appear to provide.

Response: EPA carefully evaluated the introductory text in 40 CFR 98.234(f)(8) and in this action has removed the term “extreme,” as proposed, in order to more fully clarify its intent of the types of circumstances for which BAMM could be used beyond 2011. EPA intended that use of BAMM post 2011 should only be allowed in limited and exceptional circumstances. As described in the 2010 final preamble, inasmuch as approximately fourteen months will have passed between signature of the final rule and January 1, 2012 (75 FR 74471, November 30, 2010). However the examples provided, “safety, a requirement being technically infeasible, or counter to other local,

¹ EPA/GRI (1996) *Methane Emissions from the Natural Gas Industry*. Prepared by Harrison, M., T. Shires, J. Wessels, and R. Cowgill, eds., Radian International LLC for National Risk Management Research Laboratory, Air Pollution Prevention and Control Division, Research Triangle Park, NC. EPA-600/R-96-080a.

State or Federal regulations” are not “extreme” circumstances. Rather, we would consider BAMM for circumstances that were unexpected by EPA at the time of drafting the final rule, but which might not necessarily be “extreme” in practice. The Miriam Webster dictionary defines “extreme” as exceeding the ordinary, usual, or expected. Synonyms for extreme are “remotest”, “ultimate”, “outermost.” According to the Miriam Webster dictionary, the term “unique” can refer to distinctively characteristic, with synonyms such as individual, particular, and personalized. Unusual refers to circumstances that are “rare” or “uncommon.” The point of post-2011 BAMM was to target circumstances that are unique or unusual and something less than extreme.

EPA disagrees with the commenters who argued that we should remove the terms “unique or unusual”. EPA believes that the use of BAMM beyond December 31, 2011 should be limited to only unique or unusual circumstances because, as described above, by this time facilities will have had adequate time to take the necessary steps to bring their facilities into compliance with the rule, save for the few site-specific circumstances that are truly unique or unusual.

Comment: One commenter stated that EPA should only allow the use of BAMM beyond 2011 in one-year increments. The commenter was concerned that the proposed amendments relaxed the BAMM provisions and that if EPA were to amend the timelines for beyond 2011 BAMM, EPA should only permit alternative methods where facilities experience real, exigent circumstances. To this extent, they recommended that approval for BAMM be expressly time-limited.

Response: EPA agrees with the commenter that use of BAMM beyond December 31, 2011 should be for a limited period of time. As described above, EPA intends to approve the use of BAMM beyond 2011 only in cases that are unique or unusual. EPA agrees with the comments expressed by the commenter; a time limit for approving each BAMM ensures that the “unique or unusual” criteria continue to be met in subsequent years. Limiting approval to one year is consistent with the original purpose of BAMM, which was to provide a reasonable period of time during the period after subpart W came into effect to allow facilities to reasonably come into compliance with the rule. It is also important to be aware that EPA always had the right within

the 2010 final rule to approve BAMM for only one year.

At the same time, the time limitation on BAMM approvals adds minimal burden for facilities requesting BAMM. If a facility already has received an approval for a BAMM request post-2011, then that the facility successfully demonstrated “unique or unusual” circumstances. If those same circumstances do not change, for example, the monitoring requirements in subpart W continue to lead to safety concerns for facility operators, the facility can reasonably expect that their future submissions would also be approved. It is also possible that EPA could learn from the BAMM requests received that a particular rule provision results in safety concerns for multiple facilities. In these circumstances, EPA may choose to provide an additional method(s) to estimate emissions from that emissions source in order to avoid the safety issues. Any additional methods would only be finalized after notice and comment. Approving BAMM for a limited time provides sufficient certainty for owners and operators, while ensuring that only those BAMM requests that reflect unique or unusual circumstances are approved.

3. Use of BAMM for Special Circumstances

Comment: Several commenters requested that EPA include a provision by which owners and operators who acquire new operations would be given automatic approval to use BAMM for a specified period of time after acquiring the new operations.

Response: EPA generally agrees that some facilities that acquire new operations may, for a limited period of time, need to use BAMM in order to fully comply with the rule. However, EPA does not agree that this would apply to all facilities that acquire new operations. Thus, there are no specific provisions in this action that would allow for owners or operators of facilities acquiring new operations to automatically be approved to use BAMM. EPA has concluded that the provisions outlined in the 2010 final rule, as amended by this action, allow facilities sufficient flexibility to be applied for the use of BAMM should the need arise.

For example, in some cases, if a facility acquires new operations that were already subject to subpart W, there would be no need to allow for use of BAMM for any period of time as a result of that acquisition. All operations would have been subject to subpart W from the beginning of the calendar year.

If a facility acquires new operations that were not previously subject to the GHG Reporting Program, there are options within the 2010 final rule that facilities may use to meet the requirements of the rule. In some cases, the facility will be able to estimate emissions per the calculation equations in the rule, and therefore no other provisions are required. If the facility cannot estimate emissions, the missing data procedures in 40 CFR 98.235 might be applicable. This approach would be reasonable because the data from the acquired operations could be considered missing, in that they had not been retained by the plant not subject to the rule in the beginning of the year. In this case, if the calculations can be undertaken in the current reporting year, or in the following year, but before the March 31st deadline, then missing data procedures might be used. Finally, if none of these existing rule options are viable, facilities can request BAMM under 40 CFR 98.234(f)(1). Such an example could be “unique or unusual” and therefore meet the requirements of 40 CFR 98.234(f)(1).

Comment: Two commenters requested that EPA amend the approval criteria for BAMM beyond 2011 to allow the use of BAMM until the next scheduled shutdown for circumstances where compliance would require shutdown of facilities or units that operate continuously.

Response: EPA agrees that the final rule did not intend for owners and operators to have to shut down facilities in order to install the necessary equipment and we have clarified in this action that the need to shutdown to install necessary equipment would be a valid reason for BAMM. As described in the preamble to the 2010 final rule, “[i]f a reporter requests an extension because equipment cannot be installed without a process unit shutdown, EPA is likely to approve such a request if the documentation clearly demonstrates why it is not feasible to install the equipment without a process unit shutdown * * *” EPA also noted that “[t]here are many locations where monitors can be installed without a process unit shutdown, because there is often some redundancy in process or combustion equipment or in the piping that conveys fuels, raw materials and products. For example, many facilities have multiple combustion units and fuel feed lines such that when one combustion unit is not operating they can obtain the needed steam, heat, or emissions destruction by using other combustion devices. Some facilities have multiple process lines that can operate independently, so one line can

be temporarily shut down to install monitors while the facility continues to make the same product in other process lines to maintain production goals. If a monitor needs to be installed in a section of piping or ductwork, it can be possible in some cases to isolate a line without shutting down the process unit (depending on the process configuration, mode of operation, storage capacity, etc.). If the line or equipment location where a monitor needs to be installed can be temporarily isolated and the monitor can be installed without a full process unit shutdown, it is less likely EPA will approve an extension request." So, if owners and operators can sufficiently demonstrate that installation of required equipment would *require* a shutdown, that could also be a valid reason for BAMM post 2011.

III. Economic Impacts of the Rule

Under this provision, owners and operators are not required to use BAMM. Rather, this provision provides an alternative means of compliance in lieu of providing specified data input requirements for determining GHG emissions. Consequently, this provision is not expected to have a significant effect on the economy and an economic impact analysis is not required.

IV. 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 amendments affect provisions in the rule related to BAMM. The final amendments reduce the administrative burden on industry by extending the time period by which owners and operators of facilities subject to subpart W may use BAMM without having to submit an application to EPA for approval to use BAMM in 2011. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations, 40 CFR part 98 subpart W (75 FR 74458, November 30, 2010), under the provisions of the Paperwork Reduction

Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0651. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

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.

As part of the process for finalization of the subpart W rule (75 FR 74458), EPA undertook specific steps to evaluate the effect of that final rule on small entities. Under that final rule for subpart W (75 FR 74458) EPA conducted a screening assessment comparing compliance costs to onshore petroleum and natural gas industry specific receipts data for establishments owned by small businesses. The results of that screening analysis, as detailed in the preamble to the final rule for subpart

W (75 FR 74482), demonstrated that the cost-to-sales ratios were less than one percent for establishments owned by small businesses that EPA considered most likely to be covered by the reporting program. The results of that analysis can be found in the preamble to the final rule (75 FR 74485).

Based on this final action, owners and operators of certain facilities for which BAMM requests have been made according to the requirements in 40 CFR 98.234(f), are granted additional time to use BAMM during 2011 without being required to submit an application for approval to the Administrator. In addition, the final amendments in this action broaden the types of emission sources that owners and operators of affected facilities may use BAMM without being required to submit an application for approval from the Administrator. Finally, based on the amendments in this action, owners and operators who request use of BAMM for 2012 and beyond are granted additional time by which they would be required to submit their application to the Administrator for approval. We have therefore concluded that this action will relieve regulatory burden for all affected small entities.

D. Unfunded Mandates Reform Act

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 final 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 final 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.

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 to an optional provision in the final rule for subpart W, which applies to petroleum and natural gas facilities that emit greenhouse gases. Few, if any, State or local 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.

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 final rule amendments in this action do not result in any changes to the current requirements of 40 CFR part 98, subpart W. The amendments proposed in this rule only apply to optional provisions in 40 CFR part 98 subpart W. 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 rule for subpart W promulgated on November 30, 2010. 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 rule and Section IV.F of the preamble to the 2010 final rule for subpart W (75 FR 74485).

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

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

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

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment because it is a rule addressing information collection and reporting procedures.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA),

generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the U.S. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on September 30, 2011.

List of Subjects in 40 CFR Part 98

Environmental Protection, Administrative practice and procedures, Greenhouse gases, Air pollution control, Monitoring, Reporting and recordkeeping requirements.

Dated: September 16, 2011.

Lisa P. Jackson,
Administrator.

For the reasons discussed in the preamble, EPA proposes to amend 40 CFR part 98 as follows:

PART 98 [AMENDED]

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

Authority: 42 U.S.C. 7401-7671q.

Subpart W [Amended]

■ 2. Section 98.234 is amended as follows:

- a. By revising paragraph (f)(1) introductory text.
- b. By revising paragraph (f)(2) introductory text.
- c. By revising paragraph (f)(3) introductory text.
- d. By revising paragraph (f)(4) introductory text.
- e. By revising paragraph (f)(5).
- f. By removing and reserving paragraph (f)(6).
- g. By removing and reserving paragraph (f)(7).
- h. By revising paragraph (f)(8).

§ 98.234 Monitoring and QA/QC Requirements

* * * * *

(f) * * *

(1) Best available monitoring methods. EPA will allow owners or operators to use best available monitoring methods for parameters in § 98.233 Calculating GHG Emissions as specified in paragraphs (f)(2), (f)(3), and (f)(4) of this section. If the reporter anticipates the potential need for best available monitoring for sources for

which they need to petition EPA and the situation is unresolved at the time of the deadline, reporters should submit written notice of this potential situation to EPA by the specified deadline for requests to be considered. EPA reserves the right to review best available monitoring method requests submitted after the deadlines specified in this section, and will consider requests which demonstrate unique or unusual circumstances unforeseen at the time of the applicable best available monitoring method deadline. The Administrator reserves the right to request further information in regard to all petition requests. The owner or operator must use the calculation methodologies and equations in § 98.233 Calculating GHG Emissions. Best available monitoring methods means any of the following methods specified in paragraph (f)(1) of this section:

* * * * *

(2) *Best available monitoring methods for well-related emissions.* During January 1, 2011 through December 31, 2011, owners and operators may use best available monitoring methods for any well-related data that cannot reasonably be measured according to the monitoring and QA/QC requirements of this subpart. These well-related sources are:

* * * * *

(3) *Best available monitoring methods for specified activity data.* During January 1, 2011 through December 31, 2011, owners or operators may use best available monitoring methods for activity data as listed below that cannot reasonably be obtained according to the monitoring and QA/QC requirements of this subpart. These sources are:

* * * * *

(4) *Best available monitoring methods for leak detection and measurement.* During January 1, 2011 through December 31, 2011, owners or operators may use best available monitoring methods for sources requiring leak detection and/or measurement that cannot reasonably be obtained according to the monitoring and QA/QC requirements of this part. These sources include:

* * * * *

(5) *Requests for the use of best available monitoring methods.*

(i) No request or approval by the Administrator is necessary to use best available monitoring methods between January 1, 2011 and December 31, 2011 for the sources specified in paragraph (f)(2) of this section.

(ii) No request or approval by the Administrator is necessary to use best available monitoring methods between

January 1, 2011 and December 31, 2011 for sources specified in paragraph (f)(3) of this section.

(iii) No request or approval by the Administrator is necessary to use best available monitoring methods between January 1, 2011 and December 31, 2011 for sources specified in paragraph (f)(4) of this section.

(iv) No request or approval by the Administrator is necessary to use best available monitoring methods for data that cannot reasonably be obtained between January 1, 2011 and December 31, 2011 for sources not listed in paragraph (f)(2), (f)(3), and (f)(4) of this section.

(6) [Reserved]

(7) [Reserved]

(8) *Requests for extension of the use of best available monitoring methods beyond 2011 for sources listed in paragraphs (f)(2), (f)(3), (f)(4), and (f)(5)(iv) of this section.*

(i) *Timing of Request.* EPA does not anticipate a need for best available monitoring methods beyond 2011, but for all reporting years after 2011, best available monitoring methods will be considered for unique or unusual circumstances which include data collection methods that do not meet safety regulations, technical infeasibility, or counter to other local, State, or Federal regulations. For use of best available monitoring methods in 2012, an initial notice of intent to request best available monitoring methods must be submitted by December 31, 2011. Any notice of intent submitted prior to the effective date of this rule cannot be used to meet this December 31, 2011 deadline; a new notice of intent must be signed and submitted by the designated representative. In addition to the initial notification of intent, owners or operators must also submit an extension request containing the information specified in 98.234(f)(8)(ii) by March 30, 2012. Any best available monitoring methods request submitted prior to the effective date of this rule cannot be used to meet the March 30, 2012 deadline; a new best available monitoring methods request must be signed and submitted by the designated representative. Owners or operators that submit both a timely notice of intent and extension request consistent with 98.234(f)(8)(ii) can automatically use BMM through June 30, 2012, for the specific parameters identified in their notification of intent and best available monitoring methods request regardless of whether the best available monitoring methods request is ultimately approved. Owners or operators that submit a notice of intent but do not follow up

with a best available monitoring methods request by March 30, 2012 cannot use best available monitoring methods in 2012. For 2012, when an owner or operator has submitted a notice of intent and a subsequent best available monitoring method extension request, use of best available monitoring methods will be valid, upon approval by the Administrator, until the date indicated in the approval or until December 31, 2012, whichever is earlier. For reporting years after 2012 a new request to use best available monitoring methods must be submitted by September 30th of the year prior to the reporting year for which use of best available monitoring methods is sought.

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

(A) A list of specific source categories and parameters for which the owner or operator is seeking use of best available monitoring methods.

(B) For each specific source for which an owner or operator is requesting use of best available monitoring methods, a description of the unique or unusual circumstances, such as data collection methods that do not meet safety regulations, technical infeasibility, or specific laws or regulations that are counter to data collection methods that conflict with each specific source.

(C) A detailed explanation and supporting documentation of how and when the owner or operator will comply with all of the subpart W reporting requirements for which use of best available monitoring methods are sought.

(iii) *Approval criteria.* To obtain approval to use best available monitoring methods after December 31, 2011, the owner or operator must submit a request demonstrating to the Administrator's satisfaction that the owner or operator faces unique or unusual circumstances which include, by way of example and not in limitation, clearly demonstrated data collection methods that do not meet safety regulations, technical infeasibility, or counter to other local, State, or Federal regulations, along with the reasons the owner or operator cannot otherwise address the unique or unusual circumstances as required to be demonstrated in this paragraph.

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