



# Federal Register

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## **Part II**

# **Environmental Protection Agency**

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**40 CFR Part 2**

**Proposed Confidentiality Determinations  
for Data Required Under the Mandatory  
Greenhouse Gas Reporting Rule and  
Proposed Amendment to Special Rules  
Governing Certain Information Obtained  
Under the Clean Air Act; Proposed Rule**

**ENVIRONMENTAL PROTECTION  
AGENCY**

**40 CFR Part 2**

[EPA-HQ-OAR-2009-0924; FRL-9171-2]

RIN 2060-AQ04

**Proposed Confidentiality  
Determinations for Data Required  
Under the Mandatory Greenhouse Gas  
Reporting Rule and Proposed  
Amendment to Special Rules  
Governing Certain Information  
Obtained Under the Clean Air Act**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to determine in this action the confidentiality status of data required to be reported under the Mandatory Greenhouse Gas Reporting Rule. This action describes the data categories EPA has developed for the Mandatory Greenhouse Gas Reporting Rule data elements and EPA's proposed confidentiality determination for each category. In addition, this action includes EPA's proposed amendment to *Special rules governing certain information obtained under the Clean Air Act*. The proposed amendment would authorize EPA to release or withhold as confidential reporting elements in the Mandatory Greenhouse Gas Reporting Rule according to the determinations made in a final action without taking certain additional procedural steps currently required. This action also solicits comments on several key issues related to the proposed confidentiality determinations and amendment.

**DATES:** *Comments.* Comments must be received on or before September 7, 2010.

*Public Hearing.* EPA does not plan to conduct a public hearing unless requested. To request a hearing, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section by July 14, 2010. The hearing will be held on July 22, 2010 in the Washington, DC area starting at 9 a.m., local time. EPA will provide further information about the hearing on its Web page if a hearing is requested.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2009-0924, by one of the following methods:

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

- *E-mail:* [GHGReportingCBI@epa.gov](mailto:GHGReportingCBI@epa.gov).

- *Fax:* (202) 566-1741.

- *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 6102T, Attention Docket ID No. EPA-HQ-OAR-2009-0924, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OAR-2009-0924. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although

listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:**

Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC-6207), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343-9263; fax number: (202) 343-2342; e-mail address: [GHGMRR@epa.gov](mailto:GHGMRR@epa.gov). For technical information, contact the Greenhouse Gas Reporting Rule Hotline at: [http://www.epa.gov/climatechange/emissions/ghgrule\\_contactus.htm](http://www.epa.gov/climatechange/emissions/ghgrule_contactus.htm). Alternatively, contact Carole Cook at 202-343-9263.

**SUPPLEMENTARY INFORMATION:**

*Additional Information on Submitting Comments:* To expedite review of your comments by Agency staff, you are encouraged to send a separate copy of your comments, in addition to the copy you submit to the official docket, to Carole Cook, U.S. EPA, Office of Atmospheric Programs, Climate Change Division, Mail Code 6207-J, Washington, DC, 20460, telephone (202) 343-9263, e-mail [GHGReportingCBI@epa.gov](mailto:GHGReportingCBI@epa.gov).

*Regulated Entities.* This proposed determination and amendment to 40 CFR 2.301 would affect entities that must submit annual greenhouse gas (GHG) reports under 40 CFR Part 98. The Administrator determined that Part 98 is subject to the provisions of Clean Air Act (CAA) section 307(d). See CAA section 307(d)(1)(V) (the provisions of CAA section 307(d) apply to "such other actions as the Administrator may determine"). The Mandatory Greenhouse Gas Reporting Rule and this action affect fuel and chemicals suppliers, and direct emitters of GHGs. Affected categories and entities include those listed in Table 1 of this preamble:

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY

Category	NAICS	Examples of affected facilities
General Stationary Fuel Combustion Sources.	.....	Facilities operating boilers, process heaters, incinerators, turbines, and internal combustion engines:
	211	Extractors of crude petroleum and natural gas.
	321	Manufacturers of lumber and wood products.
	322	Pulp and paper mills.
	325	Chemical manufacturers.
	324	Petroleum refineries, and manufacturers of coal products.
	316, 326, 339	Manufacturers of rubber and miscellaneous plastic products.
	331	Steel works, blast furnaces.
	332	Electroplating, plating, polishing, anodizing, and coloring.
	336	Manufacturers of motor vehicle parts and accessories.
	221	Electric, gas, and sanitary services.
	622	Health services.
	611	Educational services.
Electricity Generation .....	221112	Fossil-fuel fired electric generating units, including units owned by Federal and municipal governments and units located in Indian Country.
Adipic Acid Production .....	325199	Adipic acid manufacturing facilities.
Aluminum Production .....	331312	Primary Aluminum production facilities.
Ammonia Manufacturing .....	325311	Anhydrous and aqueous ammonia manufacturing facilities.
Cement Production .....	327310	Portland Cement manufacturing plants.
Electronics Manufacturing .....	334111	Microcomputers manufacturing facilities.
	334413	Semiconductor, photovoltaic (solid-state) device manufacturing facilities.
	334419	LCD unit screens manufacturing facilities.
		MEMS manufacturing facilities.
Ethanol Production .....	325193	Ethyl alcohol manufacturing facilities.
Ferroalloy Production .....	331112	Ferroalloys manufacturing facilities.
Fluorinated GHG Production .....	325120	Industrial gases manufacturing facilities.
Food Processing .....	311611	Meat processing facilities.
	311411	Frozen fruit, juice, and vegetable manufacturing facilities.
	311421	Fruit and vegetable canning facilities.
Glass Production .....	327211	Flat glass manufacturing facilities.
	327213	Glass container manufacturing facilities.
	327212	Other pressed and blown glass and glassware manufacturing facilities.
HCFC-22 Production and HFC-23 Destruction.	325120	Chlorodifluoromethane manufacturing facilities.
Hydrogen Production .....	325120	Hydrogen manufacturing facilities.
Iron and Steel Production .....	331111	Integrated iron and steel mills, steel companies, sinter plants, blast furnaces, basic oxygen process furnace shops.
Lead Production .....	331419	Primary lead smelting and refining facilities.
	331492	Secondary lead smelting and refining facilities.
Lime Production .....	327410	Calcium oxide, calcium hydroxide, dolomitic hydrates manufacturing facilities.
Magnesium Production .....	331419	Primary refiners of nonferrous metals by electrolytic methods.
	331492	Secondary magnesium processing plants.
Municipal Solid Waste Landfills .....	562212	Solid waste landfills.
	221320	Sewage treatment facilities.
Nitric Acid Production .....	325311	Nitric acid manufacturing 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.
Petrochemical Production .....	32511	Ethylene dichloride manufacturing facilities.
	325199	Acrylonitrile, ethylene oxide, methanol manufacturing facilities.
	325110	Ethylene manufacturing facilities.
	325182	Carbon black manufacturing facilities.
Petroleum Refineries .....	324110	Petroleum refineries.
Phosphoric Acid Production .....	325312	Phosphoric acid manufacturing facilities.
Pulp and Paper Manufacturing .....	322110	Pulp mills.
	322121	Paper mills.
	322130	Paperboard mills.
Silicon Carbide Production .....	327910	Silicon carbide abrasives manufacturing facilities.
Soda Ash Manufacturing .....	325181	Alkalies and chlorine manufacturing facilities.
	212391	Soda ash, natural, mining and/or beneficiation.
Sulfur Hexafluoride (SF <sub>6</sub> ) from Electrical Equipment.	221121	Electric bulk power transmission and control facilities.
Titanium Dioxide Production .....	325188	Titanium dioxide manufacturing facilities.
Underground Coal Mines .....	212113	Underground anthracite coal mining operations.
	212112	Underground bituminous coal mining operations.
Zinc Production .....	331419	Primary zinc refining facilities.
	331492	Zinc dust reclaiming facilities, recovering from scrap and/or alloying purchased metals.
Industrial Landfills .....	562212	Solid waste landfills.
	221320	Sewage treatment facilities.

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY—Continued

Category	NAICS	Examples of affected facilities
Wastewater Treatment .....	322110	Pulp mills.
	322121	Paper mills.
	322122	Newsprint mills.
	322130	Paperboard mills.
	311611	Meat processing facilities.
	311411	Frozen fruit, juice, and vegetable manufacturing facilities.
	311421	Fruit and vegetable canning facilities.
	322110	Pulp mills.
	322121	Paper mills.
	322122	Newsprint mills.
	322130	Paperboard mills.
Suppliers of Coal Based Liquids Fuels ....	311611	Meat processing facilities.
	311411	Frozen fruit, juice, and vegetable manufacturing facilities.
Suppliers of Petroleum Products .....	311421	Fruit and vegetable canning facilities.
	325193	Ethanol manufacturing facilities.
Suppliers of Natural Gas and NGLs .....	211111	Coal liquefaction at mine sites.
	324110	Petroleum refineries.
Suppliers of Industrial GHGs .....	221210	Natural gas distribution facilities.
	211112	Natural gas liquid extraction facilities.
Suppliers of Carbon Dioxide (CO <sub>2</sub> ) .....	325120	Industrial gas manufacturing facilities.
	325120	Industrial gas manufacturing facilities.
CO <sub>2</sub> ER Projects .....	211	Oil and Gas Extraction Projects using CO <sub>2</sub> ER.
GS Sites .....	N/A	CO <sub>2</sub> geologic sequestration projects.

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. This table lists the types of facilities that EPA is now aware could be potentially affected by the reporting requirements under 40 CFR part 98. Other types of facilities and suppliers not listed in the table could also be subject to reporting requirements. To determine whether you are affected by this action, you should carefully examine the applicability criteria found in 40 CFR part 98, subpart A. 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.

Many facilities that are affected by Part 98 have GHG emissions from multiple source categories listed in Table 1 of this preamble.

*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
- CEMS continuous emission monitoring system(s)
- CFR Code of Federal Regulations
- DoE Department of Energy
- EPCRA Emergency Planning and Community Right to Know Act
- EIA Energy Information Administration
- EO Executive Order
- EOR enhanced oil recovery
- EPA U.S. Environmental Protection Agency
- GHG greenhouse gas
- FOIA Freedom of Information Act
- HHV higher heating value

- LDC local distribution company
- MRV Monitoring, Reporting, and Verification
- Mscf thousand standard cubic feet
- NEI National Emissions Inventory
- NAICS North American Classification System
- RFA Regulatory Flexibility Act
- SCC Source Classification Code
- SIC Standard Industrial Classification Code
- TRI Toxics Release Inventory
- UMRA Unfunded Mandates Reform Act
- U.S. United States

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**I. Executive Summary, Background, and General Rationale**

*A. Executive Summary*

Under Part 98 of the final Mandatory Greenhouse Gas Reporting Rule (74 FR 56259, October 30, 2009, and subsequent amendments), hereinafter referred to as Part 98, EPA will collect data from facilities that directly emit GHGs from their processes or stationary fuel combustion sources (“direct emitters”) as well as upstream suppliers of fuels and industrial GHGs. EPA recognizes the importance of this data and is committed to transparency and access to this data. Specific data elements to be reported in the annual reports vary by source category, and considering the combination of all source categories, there are over 1,500 individual data elements that are required to be reported in annual reports. In addition to the data elements required in annual reports, facilities may also submit other data elements as part of Best Available Monitoring

Method (BAMM) extension requests, requests for approval of alternative methods for adipic acid or nitric acid production facilities, or Monitoring, Reporting and Verification (MRV) Plans for Geological Sequestration facilities (see proposed 40 CFR part 98, subpart RR, 75 FR 18576, April 12, 2010).

This action proposes to determine the confidentiality status of the data elements required to be reported under Part 98 pursuant to CAA section 114(c).<sup>1</sup> To make the proposed determinations, EPA has grouped the Part 98 data elements into 22 data categories (11 for

direct emitters and 11 for suppliers), each containing similar data elements. The proposed determinations regarding confidential treatment of each data category are summarized in Table 2 of this preamble for direct emitters and Table 3 of this preamble for suppliers. Further background, information on EPA's decision process, and detailed rationales for the proposed determinations for each data category are presented in the remainder of this preamble. Public release of the information collected under Part 98 that are emission data or non-CBI is

important because it ensures transparency and promotes public confidence in the data. In an effort to promote transparency, EPA intends to publish on EPA's Web site much of the Part 98 data that we determine to be emission data or not otherwise entitled to confidential treatment pursuant to CAA section 114(c). Those data elements that we determine to be entitled to confidential treatment would not be published on the Web site or made available to the public through Freedom of Information Act (FOIA) requests.

TABLE 2—SUMMARY OF PROPOSED DETERMINATIONS FOR DIRECT EMITTER DATA CATEGORIES

Data category	Proposed confidentiality determination for data elements in each category		
	Emission Data <sup>a</sup>	Data that are not emission data and not CBI	Data that are not emission data but are CBI <sup>b</sup>
Facility and Unit Identifier Information .....	X	.....	.....
Emissions .....	X	.....	.....
Inputs to Emission Equations .....	X	.....	.....
Calculation Methodology and Methodological Tier .....	X	.....	.....
Data Elements Reported for Periods of Missing Data that are Not Inputs to Emission Equations .....	X	.....	.....
Unit/Process "Static" Characteristics that are Not Inputs to Emission Equations .....	.....	X	.....
Unit/Process Operating Characteristics that are Not Inputs to Emission Equations .....	.....	X	.....
Test and Calibration Methods .....	.....	X	.....
Production/Throughput Data that are Not Inputs to Emission Equations .....	.....	.....	X
Raw Materials Consumed that are Not Inputs to Emission Equations .....	.....	.....	X
Process-specific and Vendor Data Submitted in BAMM Extension Requests .....	.....	.....	X

<sup>a</sup> Under CAA section 114, "emission data" is not entitled to confidential treatment. See Section I.C of this preamble for further discussion.

<sup>b</sup> As explained in more detail in Section I.C of the preamble, CAA section 114(c) affords confidential treatment to data (except emission data) that are considered trade secret or confidential business information (collectively referred to as "CBI").

TABLE 3—SUMMARY OF PROPOSED DETERMINATIONS FOR SUPPLIER DATA CATEGORIES

Data category	Proposed confidentiality determinations for data elements in each category		
	Emission data <sup>a</sup>	Data that are not emission data and not CBI	Data that are not emission data but are CBI <sup>b</sup>
GHGs reported .....	.....	°X	°X
Production/throughput quantities and composition .....	.....	°X	°X
Identification information .....	.....	X	.....
Unit/process operating characteristics .....	.....	°X	.....
Calculation, test, and calibration methods .....	.....	X	.....
Data Elements Reported for Periods of Missing data that are not related to production/throughput or materials received .....	.....	X	.....
Emission factors .....	.....	.....	X
Amount and composition of materials received .....	.....	.....	X
Data Elements Reported for Periods of Missing data that are related to production/throughput or materials received .....	.....	.....	X
Supplier customer and vendor information .....	.....	.....	X
Process-Specific and Vendor Data Submitted in BAMM Extension Requests .....	.....	.....	X

<sup>a</sup> Under CAA section 114, "emission data" is not entitled to confidential treatment. See Section I.C of this preamble for further discussion.

<sup>b</sup> As explained in more detail in Section I.C of the preamble, CAA section 114(c) affords confidential treatment to data (except emission data) that are considered trade secret or confidential business information (collectively referred to as "CBI").

<sup>1</sup> The only exception would be supporting documentation provided by applicants for approval of alternative methods for adipic acid and nitric acid facilities. EPA recognizes that supporting documentation included in these applications may include information that is sensitive or proprietary,

such as detailed process designs or site plans. Because the exact nature of this documentation cannot be predicted with certainty, EPA proposes to make case-by-case confidentiality determinations under CAA section 114(c) for any supporting documentation for approval of alternative methods

for adipic acid and nitric acid facilities claimed confidential by applicants either upon receipt of such information or upon a request for such information after receipt.

<sup>c</sup>EPA proposes to determine that some facility-level and product-specific data elements in this data category are entitled to confidential treatment while others are not entitled to confidential treatment. Such data elements would be released only in aggregated form. See Table 4 and 5 in Section II.D of this preamble for summaries of the proposed confidential determinations and levels of aggregation (for disclosure purposes) for these data categories.

<sup>d</sup>Reported data will be released except for one reported data element for suppliers of industrial GHGs (40 CFR part 98, subpart OO) that will be held confidential. See Section II.D.5 of this preamble.

In this action, EPA is also proposing a regulatory amendment to 40 CFR 2.301 (Special rules governing certain information obtained under the Clean Air Act) that sets forth specific procedures for handling Part 98 data. The amendment would allow EPA to release Part 98 data that are determined to be emission data or not otherwise entitled to confidential treatment upon finalizing the confidentiality status of these data. The proposed amendment also sets forth procedures for treatment of Part 98 data determined to be CBI. The proposed amendment pertains only to Part 98.

Lastly, EPA is soliciting comment on several key issues related to the confidentiality determinations and proposed amendments, such as whether the proposed data categories are appropriate and reasonable, whether there are unique circumstances that would warrant a limited process for a facility to seek reconsideration of a final determination of non-confidential status when it submits its information, whether alternative interpretations of emission data would be appropriate, and whether there are any approaches for delaying publication of data elements that would ease potential concerns by industry while enabling EPA to meet our obligations under FOIA and CAA.

#### B. 40 CFR Part 98

Part 98 requires reporting of numerous data elements to characterize, quantify, and verify GHG emissions and related information. Following proposal of Part 98, EPA received comments addressing the issue of whether certain data could be entitled to confidential treatment. Industry commenters generally expressed concern that they consider much of the information reported under the rule to be confidential (*e.g.*, production and process data). Some commenters also presented arguments regarding why certain information would not be "emission data" under the CAA. Other commenters favored the wide dissemination of information, and some argued that all of the information gathered under Part 98 should be "emission data" and hence not entitled to confidential treatment. In response to these comments, EPA stated in the preamble to the final rule (74 FR 56287, October 30, 2009), that through a notice

and comment process, it would establish those data elements that are entitled to confidential treatment.

The Mandatory GHG Reporting Rule was promulgated under the authority of CAA sections 114(a) (for stationary sources) and 208 (for motor vehicle and engine manufacturers).<sup>2</sup> Today's proposed action addresses the confidentiality of the data elements codified in 40 CFR part 98.

Several subparts of Part 98 were published on October 30, 2009 (74 FR 56374). EPA intends to finalize additional source category subparts during calendar year 2010. Today's action covers data elements that will be reported under the subparts that were finalized in 2009, data elements in subparts that are expected to be finalized in 2010, and data elements in proposed amendments to Part 98 that are expected to be finalized in 2010. Specifically, the action covers the following data elements:

(1) Data required by 40 CFR part 98, subpart A and other subparts promulgated in 2009. Today's action includes the data elements required by 40 CFR part 98, subpart A and other subparts that were published on October 30, 2009. This includes the data elements required to be reported in annual reports under the following subparts of Part 98:

- Subpart A, General Provisions;
- Subpart C, General Stationary Fuel Combustion Sources;
- Subpart D, Electricity Generation;
- Subpart E, Adipic Acid Production;
- Subpart F, Aluminum Production;
- Subpart G, Ammonia Manufacturing;
- Subpart H, Cement Production;
- Subpart K, Ferroalloy Production;
- Subpart N, Glass Production;
- Subpart O, HCFC-22 Production and HFC-23 Destruction;
- Subpart P, Hydrogen Production;
- Subpart Q, Iron and Steel Production;
- Subpart R, Lead Production;
- Subpart S, Lime Manufacturing;
- Subpart U, Miscellaneous Uses of Carbonate;
- Subpart V, Nitric Acid Production;

<sup>2</sup>The vehicle manufacturing requirements are found in 40 CFR parts 86, 87, 89, 90, 94, 1033, 1039, 1042, 1045, 1048, 1051, 1054, and 1065. The data collected under those parts are not included in this notice. This proposed CBI determination applies only to the data collected under 40 CFR part 98.

- Subpart X, Petrochemical Production;
- Subpart Y, Petrochemical Production;
- Subpart Z, Phosphoric Acid Production;
- Subpart AA, Pulp and Paper Manufacturing;
- Subpart BB, Silicon Carbide Production;
- Subpart CC, Soda Ash Manufacturing;
- Subpart EE, Titanium Dioxide Production;
- Subpart GG, Zinc Production;
- Subpart HH, Municipal Solid Waste Landfills;
- Subpart JJ, Manure Management;<sup>3</sup>
- Subpart LL, Suppliers of Coal-based Liquid Fuels;
- Subpart MM, Suppliers of Petroleum Products;
- Subpart NN, Suppliers of Natural Gas and Natural Gas Liquids;
- Subpart OO, Suppliers of Industrial Greenhouse Gases; and
- Subpart PP, Suppliers of Carbon Dioxide.

In addition, the action covers data required to be submitted in BMM extension requests and requests from adipic acid and nitric acid facilities for approval of alternative monitoring methods. Although amendments may be made during 2010 to further clarify some of these data elements, we expect that any amended data element would still logically fall into the same or another data category that is addressed in this action and is therefore covered by the confidentiality determination for that data category. In the final confidentiality determination, EPA will address any revised data elements within these subparts that have been amended prior to the publication of the final confidentiality determination.

(2) Data required by subparts that are being finalized in a separate action published today. These subparts include the following subparts from Part 98:

- Subpart FF, Underground Coal Mines;
- Subpart T, Magnesium Production;
- Subpart TT, Industrial Landfills; and
- Subpart II, Wastewater Treatment.

<sup>3</sup>EPA will not be implementing 40 CFR part 98, subpart JJ due to a Congressional restriction prohibiting the expenditure of funds for this purpose. As a result, 40 CFR part 98, subpart JJ is not included in the scope of this notice.

(3) Data required by subparts that have recently been proposed or re-proposed but not yet finalized. Earlier this year, EPA proposed or re-proposed several source category subparts that were not included in the October 30, 2009 final rule. These include data elements to be reported in the annual reports and data elements to be included in other documents required to be submitted to EPA (e.g., data elements included in MRV Plans for geological sequestration facilities (proposed 40 CFR part 98, subpart RR, 75 FR 18576, April 12, 2010). These subparts are as follows:

- Subpart I, Electronics Manufacturing (75 FR 18652, April 12, 2010);
- Subpart L, Fluorinated Gas Production (75 FR 18652, April 12, 2010);
- Subpart W, Petroleum and Natural Gas Systems (75 FR 18608, April 12, 2010);
- Subpart DD, Sulfur Hexafluoride (SF<sub>6</sub>) and Perfluorocarbons (PFCs) from Electrical Equipment at an Electric Power System (75 FR 18652, April 12, 2010);
- Subpart RR, Injection and Geologic Sequestration of Carbon Dioxide (75 FR 18576, April 12, 2010);
- Subpart SS, Sulfur Hexafluoride and PFCs from Electrical Equipment Manufacture or Refurbishment (75 FR 18652, April 12, 2010);
- Subpart QQ, Importers and Exporters of Fluorinated Greenhouse Gases Contained in Pre-charged Equipment or Closed-cell Foams (75 FR 18652, April 12, 2010).

EPA expects to finalize these subparts in 2010. Today's proposed confidentiality determination covers these data elements based on the proposed (and re-proposed) subparts. Although the data elements in these subparts, when finalized, may not be exactly the same as those in the proposed subparts, we expect that any revised or refined data element in the relevant final subpart would still logically fall into the same or another data category that is addressed in this action and would therefore be covered by the confidentiality determination for that data category. EPA will address such data elements in the final confidentiality determination.

(4) Data required by the proposed amendment to 40 CFR part 98, subpart A (75 FR 18455, April 12, 2010). The proposed amendment to 40 CFR part 98, subpart A would require reporting of parent company and other ownership information, North American Classification System (NAICS) codes, and operation of cogeneration units.

Today's proposed confidentiality determination covers the data elements as proposed on April 12, 2010.

Although the data elements in the final amendment to 40 CFR part 98, subpart A may not be exactly the same as they were in the proposed amendment, we expect that any revised or refined data element in the final amendment would still logically fall into the same or another data category that is already addressed in this action and would therefore be covered by the final confidentiality determination for that category. EPA will address such data elements in the final confidentiality determination.

(5) Data required by the proposed Technical Corrections, Clarifying and Other Amendments to Certain Provisions of the Greenhouse Gas Reporting Rule (signed May 27, 2010). The proposed amendments would correct technical and editorial errors, and would correct data reporting requirements so that they more closely conform to the information used to perform emission calculations. The reporting requirements from the following Part 98 subparts are affected by these proposed amendments:

- Subpart E, Adipic Acid Production;
- Subpart H, Cement Production;
- Subpart K, Ferroalloy Production;
- Subpart N, Glass Production;
- Subpart O, HCFC-22 Production and HFC-23 Destruction;
- Subpart P, Hydrogen Production;
- Subpart Q, Iron and Steel Production;
- Subpart S, Lime Manufacturing;
- Subpart V, Nitric Acid Production;
- Subpart Z, Phosphoric Acid Production;
- Subpart CC, Soda Ash Manufacturing;
- Subpart EE, Titanium Dioxide Production;
- Subpart GG, Zinc Production;
- Subpart HH, Municipal Solid Waste Landfills;
- Subpart LL, Suppliers of Coal-based Liquid Fuels;
- Subpart MM, Suppliers of Petroleum Products; and
- Subpart NN, Suppliers of Natural Gas and Natural Gas Liquids.

EPA expects to publish the proposed amendments after receiving and addressing public comments. Although the data elements in the final amendments may not be exactly the same as they were in the proposed amendments, we expect that any revised or refined data element in the final amendments would still logically fall into the same or another data category that is already addressed in this action and would therefore be covered by the

final confidentiality determination for that category. EPA will address such data elements in the final confidentiality determination.

*Publication of Data.* As previously mentioned, EPA is committed to transparency and intends to publish on EPA's Web site much of the Part 98 data that is submitted; however, we are not publishing data elements that are CBI.

Public release of the information collected under Part 98 that are emission data or non-CBI is important because it ensures transparency and promotes public confidence in the data. For example, facility identification data (e.g., name and physical address of a direct emitter) allows the public to identify which facilities are emitting GHGs and how much they are emitting. This information is useful for comparing the GHG emissions of different facilities and for evaluating changes in a facility's GHG emissions over time. Comparisons of facility-specific data will improve our understanding of the factors that influence GHG emission rates and actions facilities could in the future or already take to reduce emissions. By tracking changes in facility-specific data, EPA and other stakeholders will be able to track trends in GHG emissions from industries and facilities over time and assess responses to policies and potential regulations. Information on unit characteristics and operations are valuable to policy makers, the public, and industry because they improve our understanding of the sources of emissions and the relationship between process operating characteristics and emissions. The number of times substitute data are used in place of measured parameters, methods used to calculate emissions, methods used to determine the composition of materials, and the frequency of calibrating measurement devices are all valuable for evaluating the quality of the reported data. These data are also important to the GHG verification checks.

Data submitted by suppliers are needed by EPA and other users of the reported data to help develop policies that could affect sources under a variety of CAA provisions. For example, the geographic distribution of suppliers of various fuel types and industrial GHGs may prove useful in evaluating the impact of transportation distances and transportation emissions on the feasibility and effectiveness of different GHG control strategies. These may include regulatory and nonregulatory strategies and technologies for preventing or reducing air pollutants, such as energy conservation, end-use efficiency, and fuel- or raw-material switching.

This is not a comprehensive listing of all the ways the information collected under Part 98 is valuable to EPA and others, but it illustrates the importance of making available to the public data that are not entitled to confidential treatment under CAA section 114(c). Such disclosure is required under CAA section 114(c).

Given the importance of this data, we are publishing data elements that are emission data or are determined to be not CBI. For those limited data that are CBI, EPA intends to publish the data only where they can be aggregated in a manner to protect the confidentiality of these data elements. There are a number of different formats in which both CBI and non-CBI data could be published using tables, graphs, charts, and other graphical methods. For example, EPA could publish tables or bar charts showing the emission data for individual facilities to allow comparison of data between facilities within a source category. Alternatively, EPA could publish pie charts of emission data by source category or by geographical region to allow easy comparison of data between different industry sectors or locations. EPA is interested in receiving suggestions on formats for presenting both CBI and non-CBI data that would be most useful to the public. We are specifically soliciting suggestions on approaches to aggregating CBI data that would provide useful information to the public without disclosing data determined to be CBI. We are also soliciting comment on the value of publishing facility-level CBI data elements within numerical ranges that maintain the confidentiality of the actual reported values. Specifically, we are soliciting comment on whether publishing ranges of values at the facility-level would provide valuable information that aggregated data may not convey.

### C. Section 114 of CAA, "Emission Data," and Confidentiality

Section 114(c) of CAA requires that "[a]ny records, reports, or information obtained under [CAA section 114(a)] shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof, (other than emission data) \* \* \* if made public, would divulge methods or processes entitled to protection as trade secrets \* \* \*, the Administrator shall consider such record, report, or information or particular portion thereof confidential \* \* \*." EPA has interpreted CAA section 114(c) to afford confidential treatment to both trade secrets and

confidential business information (hereinafter collectively referred to as "CBI") (40 FR 21987, 21990 (May 20, 1975)). Section 114(c) of CAA precludes "emission data" from being considered confidential and requires that such data be available to the public.

Pursuant to CAA section 114(c), EPA proposes to determine the confidentiality status of data that are required to be reported under Part 98. As described in more detail in Section II.A of this preamble, EPA has grouped Part 98 data into 22 separate data categories and proposes to determine the confidentiality status of Part 98 data on a category basis. There are 11 categories of direct emitter data and 11 categories of supplier data. For the list of all 22 data categories and brief descriptions of the data elements within each category, please see Section II.C of this preamble for direct emitter data categories and Section II.D of this preamble for supplier data categories.

In making the confidentiality determination, EPA first examined, on a data category basis, whether the data elements constituted "emission data" under CAA section 114(c). Specifically, EPA examined whether the data elements in a given category met the definition of "emission data" at 40 CFR 2.301(a)(2)(i), which is as follows:

Emission data means, with reference to any source of emission of any substance into the air—

(A) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any emission which has been emitted by the source (or of any pollutant resulting from any emission by the source), or any combination of the foregoing;

(B) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of the emissions which, under an applicable standard or limitation, the source was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source); and

(C) A general description of the location and/or nature of the source to the extent necessary to identify the source and to distinguish it from other sources (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source).

With respect to the 11 categories of direct emitter data, because there are no established GHG emission limits for the facilities subject to Part 98, EPA finds

that 2.301(a)(2)(i)(B), which addresses emissions that sources are *authorized* to emit, does not apply. EPA focused its analysis on whether the data elements in a given direct emitter category met the emission data definitions at 2.301(a)(2)(i)(A) or (C). EPA proposes to determine that the data in a direct emitter data category qualify as "emission data" if they are necessary to determine the identity, amount, frequency, or concentration of the emission emitted by the reporting facilities. See 40 CFR 2.301(a)(2)(i)(A). As discussed in more detail in Sections II.C.2 through II.C.6 of this preamble, EPA proposes to determine that the GHG emissions to be reported by direct emitters, as well as those data that are required to perform the emissions calculations specified in the direct emitter subparts (*i.e.*, inputs to equations/calculations as well as information otherwise needed to calculate or determine emissions), meet the definition of "emission data" at 40 CFR 2.301(a)(2)(i)(A). In addition, EPA proposes to determine that locational and other identifying information regarding the emitting sources (*i.e.*, the data elements in the direct emitter facility and unit identifier information category) are emission data because these data describe a reporting emitting source's location and other identifying information that help distinguish the source from other sources. See 40 CFR 2.301(a)(2)(i)(C).

With respect to the data elements in the remaining direct emitter data categories, EPA proposes to determine that they are not "emission data" under 40 CFR 2.301(a)(2)(i) for purposes of determining the GHG emissions required to be reported by direct emitters under Part 98. These data elements are in the following direct emitter data categories:

- Unit/process "static" characteristics that are not inputs to equations.
- Unit/process operating characteristics that are not inputs to equations.
- Test and calibration methods.
- Production/throughput data that are not inputs to emission equations.
- Raw materials consumed that are not inputs to emission equations.
- Process-Specific and Vendor Data Submitted in BAMB Extension Requests.

Part 98 sets forth in relevant subparts the specific methods and equations for calculating direct emitters' GHG emissions. Direct emitters' GHG emissions can be (and must be) calculated by inputting the necessary data elements into the relevant equations (or other specified calculation



methodologies) as prescribed in Part 98. None of the data elements in the data categories listed immediately above are inputs to equations/calculations or information otherwise needed to calculate or determine emissions and are therefore not necessary to calculate direct emitters' GHG emissions under Part 98. We therefore propose to determine that these data elements are not "emission data" under 40 CFR 2.301(a)(2)(i) for purposes of determining the direct emitters' GHG emissions that are required to be reported under Part 98. However, EPA notes that these data elements may nonetheless meet the criteria of "emission data" at 40 CFR 2.301(a)(2)(i) if they are "necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality)" of a reporting facility's emission in the context of another (or future) regulatory program or future legislation. Therefore, the proposed determination described above is made strictly in the context of determining the direct emitters' GHG emissions required to be reported under Part 98, considering the specific equations and methodologies prescribed in the relevant Part 98 subparts for calculating such emissions. The proposed determination does not speak to whether any of these data elements may qualify as "emission data" in any other contexts described above.

With respect to the 11 categories of supplier data, EPA proposes to determine that *none* of these data qualify as emission data. EPA interprets 2.301(a)(2)(i) to define "emission data" as information relative to emissions emitted, or authorized to be emitted, by the reporting sources. The data to be reported by suppliers under Part 98 pertain to potential future GHG emissions from the eventual use of the suppliers' products, not emissions from these suppliers' facilities. Therefore, these data do not meet the definition of emission data at 40 CFR 2.301(a)(2)(i).

For Part 98 data that are not considered "emission data" in today's proposal, EPA proposes to determine, by category, whether such data qualify as CBI under CAA section 114(c). In making the CBI determination, EPA considered the confidentiality determination criteria at 40 CFR 2.208, which are as follows:

Determinations issued under §§ 2.204 through 2.207 shall hold that business information is entitled to confidential treatment for the benefit of a particular business if:

(a) The business has asserted a business confidentiality claim which

has not expired by its terms, nor been waived nor withdrawn;

(b) The business has satisfactorily shown that it has taken reasonable measures to protect the confidentiality of the information, and that it intends to continue to take such measures;

(c) The information is not, and has not been, reasonably obtainable without the business's consent by other persons (other than governmental bodies) by use of legitimate means (other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding);

(d) No statute specifically requires disclosure of the information; and

(e) Either:

(1) The business has satisfactorily shown that disclosure of the information is likely to cause substantial harm to the business's competitive position; or

(2) The information is voluntarily submitted information (*see* § 2.201(i)), and its disclosure would be likely to impair the Government's ability to obtain necessary information in the future.

Because EPA proposes to determine the CBI status of Part 98 data in advance of their submission, EPA assumes in this proposal that the data meet the criteria at 40 CFR 2.208(a) and (b). Specifically, EPA assumes that the reporting facilities have asserted confidentiality claims. EPA further assumes that the reporting facilities are taking and will continue to take reasonable measures to protect the data. The data elements at issue also meet the criterion at 40 CFR 2.208(d). As discussed above, EPA proposes to determine that these data elements are not "emission data" (which must be disclosed under CAA section 114(c)), and EPA is not aware of any other statute requiring their disclosure. With the assumptions/findings described above, EPA evaluated whether the remaining criteria at 40 CFR 2.208 are met. Specifically, EPA focused on whether release of the data is likely to cause substantial harm to the business's competitive position. *See* 40 CFR 2.208(e)(1). EPA also considered whether the data are already publicly available or reasonably obtainable by a non-governmental entity. *See* 40 CFR 2.208(c). EPA proposes to determine that the data in a given category are not CBI (or are "non-CBI") under CAA section 114(c) if the data fail to satisfy either of the remaining criteria (*i.e.*, 40 CFR 2.208(c) and (e)). If EPA finds that the data in a given category meet the remaining criteria at 40 CFR 2.208, EPA proposes to determine that such data are CBI under CAA section 114(c).

Data that are determined to be non-CBI must be disclosed to the public under CAA section 114(c). Data that are determined to be CBI will be entitled to confidential treatment as long as the data continue to meet all of the criteria at 40 CFR 2.208.

EPA is seeking comment generally on its proposed interpretation of the term "emission data", to include data that are required to perform emission calculations specified in the direct emitter subparts, as used in the statute and as defined in EPA's regulations at 40 CFR 2.301. For example, would a narrower interpretation of the regulatory definition of "emission data", that does not include all inputs to equations, be appropriate as a legal and policy matter? When commenting on this issue, please (i) provide a description of what the narrower interpretation should be, (ii) explain why the narrower interpretation would be reasonable as well as why it would be sufficient for purposes of Part 98 and/or any other CAA programs, (iii) describe how it would fit within the regulatory definition, and (iv) discuss how it would be consistent with prior interpretations or implementation of that term<sup>4</sup> as well as the statutory goal behind the CAA section 114(c) language. More specifically, please suggest exactly what Part 98 data you think should be considered emission data, describe what Part 98 data you think should not be emission data and why (and whether such non-emission data are CBI and why), and clearly explain how a narrower definition of "emission data" would be consistent with the "necessary to determine" clause in 40 CFR 2.301, as well as with the purpose behind the statutory language.

EPA is also seeking comment on whether a broader interpretation of "emission data" would be appropriate for Part 98 and asks that the same information discussed above be provided in any such comments (*e.g.*, clear description of broader interpretation, explanation of what additional data should be considered to be "emission data", discussion of how the revised interpretation is consistent with the regulations and statute, *etc.*).

#### *D. Rationale for Making Confidentiality Determinations Through This Action*

In accordance with 40 CFR part 2, subpart B, EPA generally makes case-by-case confidentiality determinations on submitted data when an entity submitting data makes a claim of

<sup>4</sup> For example, in a 1991 **Federal Register** notice, EPA described certain information that it would consider emission data under CAA section 114 (56 FR 7042, February 21, 1991).

confidentiality. Under CAA section 114(c), reporters can make confidentiality claims only for data that does not meet the definition of "emission data" in 40 CFR 2.301(a)(2)(i).

EPA considered case-by-case determinations for Part 98 data and concluded that case-by-case confidentiality determinations would likely result in significant delays in making Part 98 data available for use by the public and policy makers. With over 1,500 individual data elements and more than 10,000 individual reporters, the amount of data to be reported under Part 98 is considerable. The data elements reported under the rule are detailed in nature, and many of them are likely to be considered sensitive by reporting industries. For each case-by-case determination, reporters would have to identify and claim specific reported data elements as confidential and provide written justification supporting their confidentiality claim. EPA would then need to evaluate each confidentiality claim individually to determine first whether the information is "emission data" under CAA section 114(c) and thus required to be made available. If the data element is not emission data, EPA would next evaluate the data based on the criteria at 40 CFR 2.208, including whether the information is already publicly available or obtainable without the business's consent, whether the submitter has taken steps to protect the data, and whether releasing the data is likely to cause substantial harm to the business's competitive position. This procedure would need to be done for each data element that each reporter claims is confidential. This would be extremely time consuming for the reporter who has to prepare the confidentiality claim. Further, considering the number of reporters and the amount of data to be reported under Part 98, EPA would likely receive a very large number of individual confidentiality claims for a wide variety of data elements. In light of the large volume of confidentiality claims EPA expects to receive and the time it would take to evaluate each confidentiality claim, EPA would not be able to make Part 98 data available to the public in a timely manner, which would impact the usefulness of the data to the public, State and local governments, and other stakeholders who need the data to assess and formulate GHG policies and programs.

EPA also believes case-by-case determinations on an entity-specific basis would be unnecessarily burdensome for reporters. As mentioned above, reporters would have to identify and claim as confidential each data

element, even if similar data (or same data from a previous year) have been previously submitted and claimed as confidential. The confidentiality claims for data submitted as part of the annual report would have to be reevaluated each year. As explained in greater detail in Section I.C of this preamble, EPA has grouped similar data elements into data categories and evaluated the data elements within each data category using the same criteria used to evaluate case-by-case confidentiality claims. We are proposing on category basis which data elements would or would not be entitled to confidential treatment. By making confidentiality determinations prior to data reporting through this proposal and rulemaking process, potential reporters are able to submit comments identifying data they consider sensitive and provide the rationales and supporting documentation they would otherwise submit for case-by-case confidentiality determinations. EPA will consider all comments received on this proposal and will evaluate claims of confidentiality before finalizing the proposed confidentiality determinations.

In the development of this proposal, EPA evaluated the process that the Toxics Release Inventory (TRI) program uses to determine whether data elements are entitled to confidential treatment. Per Emergency Planning and Community Right to Know Act (EPCRA) regulations codified at 40 CFR part 350, only one data element, the specific chemical name, can be claimed as a trade secret. TRI reporters claiming the chemical name as a trade secret must check a box on the reporting form and also complete a justification form, which is evaluated on a case-by-case basis by EPA. Typically, less than 20 TRI reporters in a year submit claims that the chemical name is a trade secret. Although the number of reporters in the TRI program (approximately 22,000) is on the same order of magnitude as the number of reporters under Part 98, EPA expects that the number of reporters requesting data be considered CBI, as well as the number of data elements reporters would request be considered CBI would be much higher under Part 98. For the reasons stated above, EPA proposes to determine upfront the confidentiality status of Part 98 data.

Although EPA has concluded that case-by-case determinations would result in a delay in the release of data, we are soliciting comment on whether (and if so, what) unique circumstances may arise for a reporting facility, after finalization of the confidentiality status of the Part 98 data, that would warrant the need for EPA to reconsider a final

non-CBI determination applicable to certain Part 98 data from that facility. In providing your comments, please explain the types of unique circumstances that may arise, the types of Part 98 data elements that may be affected, and how such circumstances would qualify the affected Part 98 data as CBI. We further solicit comments on whether there should be a limited, less cumbersome process for reconsidering any of our final non-CBI determinations under those unique circumstances, what kind of process would facilitate such reconsideration, and how we limit such a process to only those cases that warrant such reconsideration. If respondents believe that such a process is necessary, please describe specifics of the proposed process as well as the appropriate criteria (*e.g.*, the type of facility, the type of data, and the specific technical reason for release of the data, *etc.*) that would have to be met in order to enable the use of such a process.

#### *E. Proposed Rule Amendment Addressing Treatment of Part 98 Data Elements*

As previously discussed, pursuant to CAA section 114(c), EPA must make available to the public data submitted under Part 98, except for data (other than emission data) that are considered confidential under CAA section 114(c). Accordingly, EPA intends to release Part 98 data after their submission to EPA in accordance with EPA's determinations of their confidentiality status in a final rule. Specifically, EPA intends to release Part 98 data that are determined in the final rule to be emission data or not otherwise entitled to confidential treatment under CAA section 114(c) (*i.e.*, "non-CBI"). EPA intends to make much of such data available to the public through an EPA Web site. Data elements that we determine to be CBI under CAA section 114(c) would be published on the Web site only if they can be aggregated in a manner that would protect the confidentiality of these data elements (*e.g.*, production data determined to be CBI that is aggregated by source category).

40 CFR part 2, subpart B sets forth procedural steps that EPA must follow before releasing any information either on the Agency's own initiative or in response to requests made pursuant to FOIA. In particular, EPA is generally required to make case-by-case confidentiality determinations and to notify individual reporting businesses before disclosing information that businesses have submitted with a confidentiality claim. As discussed in Section I.D of this preamble, in light of

the voluminous data EPA will receive under Part 98 and the multiple procedural steps required under 40 CFR part 2, subpart B, EPA would not be able to make Part 98 data (determined to be emission data or non-CBI) publicly available in a timely fashion, *i.e.*, in order to make such data informative to the public and/or useful to the State regulators and local governments in formulating their own GHG policies, if it were required to make separate CBI determinations based on each submitter's individual claim of confidentiality.

To facilitate timely release of GHG data collected under Part 98 that are emission data or non-CBI, EPA proposes to amend 40 CFR 2.301, *Special rules governing certain information obtained under the Clean Air Act*. The proposed amendments pertain only to Part 98. Under the proposed amendment, EPA may release Part 98 data that are determined to be emission data or non-CBI upon finalizing the confidentiality status of these data. Consistent with the 40 CFR part 2 procedures, this rulemaking provides the reporting businesses an opportunity to justify any confidentiality claim they may have for the data they are required to submit (except for emission data which are not entitled to confidential treatment). In addition, businesses have the benefit of seeing EPA's rationales and analyses prior to submitting any justification, information that they would not otherwise have under the current 40 CFR part 2 procedures. EPA will consider comments received on this proposal before finalizing the confidentiality determinations.

The proposed amendment also sets forth procedures for treatment of information in Part 98 determined to be CBI. The proposed procedures are similar to or consistent with the existing 40 CFR part 2 procedures.

EPA solicits comment on the proposed amendments to 40 CFR 2.301, *Special rules governing certain information obtained under the CAA*.

#### F. Other Relevant Background

This section briefly describes existing policies and practices regarding "emission data" and the release of data obtained under CAA section 114.

*February 21, 1991 notice of policy on public release of certain data elements submitted under CAA sections 110 and 114.* In a 1991 EPA notice of policy (35 FR 7042, February 21, 1991), EPA stated that certain data fields constitute "emission data" and therefore cannot be withheld as confidential. The 1991 notice indicated that while confidentiality determinations are

typically made on a case-by-case basis, some kinds of data will always constitute emission data within the meaning of CAA section 114(c). The notice listed several data fields that are to be considered emission data including facility identification data (*e.g.*, facility name; address; ownership; Standard Industrial Classification (SIC); emission point, device or operation description information) and emission parameters (*e.g.*, compounds emitted; origin of emissions; emission rate, concentration, release parameters, boiler or process design capacity, emission estimation method). The notice clarified that the list in the notice was not exhaustive and that other data might be found, in a proper case, to constitute emission data.

The National Emissions Inventory (NEI) is EPA's compilation of estimates of air pollutants discharged on an annual basis and their sources. The compilation includes emissions estimates submitted by State, Local and Tribal air pollution control agencies, estimates calculated by EPA, and emissions obtained from other sources. NEI does not collect data directly from facilities; rather it gets facility-level data from the States. Based on the 1991 notice, NEI considers everything they receive to be emission data, and therefore publishes all of the information that it receives.

Many of the data elements under Part 98 are the same as or similar to the data fields listed in the 1991 notice as "emission data". However, there are many data elements under Part 98 that are not addressed in EPA's 1991 notice. As described above, today's action addresses all data elements reported under Part 98.<sup>5</sup>

*Acid Rain Program.* The Acid Rain program releases to the public data similar to the data collected under Part 98. Under the Acid Rain program, facilities are required to submit quarterly reports that contain data on CO<sub>2</sub> emissions, as well as the data used to identify emission units and calculate the CO<sub>2</sub> emissions. For the Acid Rain program, the CO<sub>2</sub> emissions are determined using either Continuous

Emissions Monitoring Systems (CEMS) or alternative methods specified in the rule (*e.g.*, 40 CFR part 75, appendix G methods and the method used to calculate CO<sub>2</sub> emissions by facilities with low mass emissions).

Data submitted to the Acid Rain program include facility identification information, CO<sub>2</sub> mass emission data, data elements used to calculate annual CO<sub>2</sub> emissions, combustion unit characteristics, and measurement methodologies (*e.g.*, hourly load, operating time, hourly heat input rate, unit output or steam load, fuel type, fuel quantity, fuel heating value, control status of the unit, methods used to measure or calculate CO<sub>2</sub> emissions or other parameters such as fuel flow and heat input). These are posted for the public on EPA's Acid Rain Web site (<http://www.epa.gov/acidrain>).

The Acid Rain program allows facilities to make confidentiality claims for data that are not "emission data" (*see* 40 CFR 75.60(c)). Although facilities subject to the Acid Rain program are allowed to assert claims of data confidentiality for data that are not emission data, to date no such representations have been received and all of the data submitted to EPA are made available to the public.

In the Acid Rain program, public release of these data ensures transparency and public confidence in the program. Since many of the data fields required by the Acid Rain program are the same or similar to the data elements to be reported by direct-emitting facilities subject to Part 98, EPA finds that public release of Part 98 data that are emission data or non-CBI would likewise ensure transparency and promote public confidence in the accuracy and completeness of the data reported under Part 98. However, EPA recognizes that Part 98 differs from the Acid Rain Program in the scope of industries required to report. For example, EPA recognizes that electricity producers may be inherently less concerned about the disclosure of reported data than other industries reporting under Part 98 because they are publicly regulated utilities and detailed data on their process, production, and pricing structure are already in the public domain. Therefore, EPA is proposing to determine that some data elements reported under Part 98 remain CBI (*e.g.*, production data reported by industrial facilities in cases where production data is not needed to calculate GHG emissions) even though similar data elements for the utility industry are publicly available.

<sup>5</sup>The only exception is supporting documentation provided by applicants for approval of alternative methods for adipic acid and nitric acid facilities. EPA recognizes that supporting documentation included in these applications may include information that is sensitive or proprietary, such as detailed process designs or site plans. Because the exact nature of this documentation cannot be predicted with certainty, EPA proposes to make case-by-case confidentiality determinations under CAA section 114(c) for any supporting documentation claimed confidential by applicants either upon receipt of such information or upon a request for such information after receipt.

### *G. Public Comments on the Proposed Mandatory GHG Reporting Rule*

In response to the April 10, 2009 proposed rule (74 FR 16448), EPA received a number of comments on whether data collected under Part 98 should be afforded confidential treatment. Comments on this topic were received from a wide range of interested parties, including industry, State and local governments, private citizens, environmental organizations, and other nongovernment organizations. The comments received can be classified into two broad categories: those supporting the release of as much data as possible; and those opposed to releasing one or more of the reported data elements. A summary of the comments is provided in this section of the preamble. For additional information, see the memorandum "Summary of Comments on the Release of Reported Data Submitted in Response to EPA's Request for Comments on the Proposed Mandatory Greenhouse Gas Reporting Rule" Published April 10, 2009 in Docket EPA-HQ-OAR-2009-0924.

EPA is not responding further to public comments related to the confidentiality of data elements received on the proposed GHG reporting rule. Today's action proposes confidentiality determinations and solicits additional public comments. Public comments received will be addressed in the final action and associated response to comments documents.

*Comments Supporting Release of Reported Data.* States, local government, environmental groups, and private citizens generally supported the release of reported data. Many commenters stated that reported data should be made broadly available to the public and other government agencies (including State and local government). Some argued that all of the information gathered under Part 98 should be "emission data" and hence not entitled to confidential treatment. Many commenters cited strong public interest in both the emissions and verification data as their reason for recommending the broad dissemination of data. Some commenters also stated that making the data broadly available would be consistent with the President's and EPA Administrator's commitment to transparency and public access to government information. Several commenters stated that release of detailed emission data would be useful to State regulators and local governments because the data would inform future policies and assist with

the implementation GHG emission reduction plans. Some commenters also noted that the release of emission data would be consistent with other programs, such as the Acid Rain program and the European Union Emissions Trading System.

*Comments Opposing the Release of Reported Data.* Many businesses and industry organizations opposed making the reported data broadly available to the public. Several expressed concern that Part 98 did not address the confidentiality of the reported data. Many commenters submitted general statements that confidential data should not be made public but did not specify which data elements should be afforded confidential treatment. Some commenters identified specific data elements that they considered confidential but did not explain why such data elements should be considered confidential. Some commenters explained in more detail their confidentiality claims. These comments are summarized below.

Some commenters argued that detailed process-related information, such as production throughputs, product characteristics, operating hours, raw material consumption, fuel usage, and unit descriptions, should be protected as confidential because its release would reveal information on energy usage, raw materials, product chemistry, production efficiency, and other information that would infringe on business confidentiality. These commenters argued that disclosing annual production and raw material quantities could reveal operational strengths and weaknesses, and could be used to deduce pricing structures. Several commenters also recommended that unit or process level emission data should be afforded confidential treatment because this data may be used in certain instances to determine other proprietary information about a facility, such as production or output rates, capacity, utilization rates, process efficiency, and the information on the type or design of a process. Other commenters argued that only facility-level emission data should be released and that all other data was entitled to confidential treatment because they did not view it as "emission data" as defined in 40 CFR part 2.

Several commenters were in favor of classifying supplier data, in particular product quantities and characteristics, as confidential. One commenter noted that public disclosure of production quantities and product characteristics would divulge sensitive information related to marketing and distribution of products, as well as competitive

strategies of a company. Another commenter claimed that public disclosure of supplier data may prevent off-shore suppliers and customers from doing business with U.S.-based companies if sensitive information were not held to be confidential.

As mentioned above, EPA stated in the preamble to the final rule that it would determine the confidentiality status of the data elements to be collected under Part 98 through a notice and comment process. Today's action proposes for public comment confidentiality determinations to be made for data elements that are codified in Part 98. Today's action also includes an amendment to 40 CFR 2.301 to clarify the procedures for the treatment of Part 98 data in accordance with the final confidentiality determination of such data.

## **II. Proposed Emission Data and Confidentiality Determinations for Data Required by the Mandatory GHG Reporting Rule in Part 98**

### *A. Overview*

This action describes the 22 data categories EPA has developed for all of the data to be reported under Part 98 and EPA's proposed determination by category. As mentioned in previous sections of this preamble, because Part 98 has over 1,500 data elements and has several different subparts with similar types of data elements, EPA grouped similar data elements together into data categories, with 11 distinct data categories for the direct emitter source categories and 11 for supplier source categories. The data elements within a given data category are similar from a technical standpoint, with some exceptions explained in the descriptions of each data category in Sections II.C and II.D of this preamble. A list of all the data elements assigned to each category is provided in a memorandum (see Memorandum "Data Category Assignments for Reporting Elements" in Docket EPA-HQ-OAR-2009-0924 and the Web site (<http://www.epa.gov/climatechange/emissions/ghgrulemaking.html>)). For the explanation of the approach taken by EPA to determine which data elements within each data category are entitled to confidential treatment, see Section I.C of this preamble.

In addition to reporting facility GHG emissions (or supplier GHG quantities that would or could potentially be emitted when the products they supply are used), Part 98 requires reporting of a wide range of other facility and process-specific data. Most of this data are required primarily to enable

emissions verification. The information is also needed to support analysis of GHG emissions for future CAA policy and program development, including programs that could affect direct emitters or suppliers. For example, the required information would be helpful to policy makers in understanding the specific sources of emissions and the amounts emitted by each unit/process. The information is also important for understanding the effect of different processes, fuels, and feedstocks on emissions.

#### B. Request for Comments

Today's action provides affected businesses subject to Part 98, other stakeholders, and the general public an opportunity to provide comment on the proposed confidentiality determination of Part 98 data and the proposed amendment to 40 CFR 2.301. In addition to soliciting comment on our proposed amendments to 40 CFR 2.301 and proposed confidentiality designations, we are also soliciting comment on the following specific issues relevant to the proposed confidentiality determinations:

*Data Categories.* As discussed above, EPA has categorized individual data elements into 22 data categories (*i.e.*, 11 for direct emitters and 11 for suppliers) and has made confidentiality determinations for each data category. While we consider this approach to be reasonable given the number of data elements and the technical similarity among data elements across subparts, EPA is interested in stakeholder views on this approach. In particular, EPA is soliciting comment on whether grouping data elements into data categories, and making a confidentiality determination by data category is a reasonable approach and whether the proposed data categories are sufficient for this purpose. Specifically, we request comments on whether the 22 data categories described in this action are appropriately delineated and whether the data elements within each category are sufficiently similar to allow confidentiality determinations to be made on a data category basis, or whether some data categories should be combined or broadened. In commenting on these topics, please identify the specific data categories that should be narrowed or broadened, provide suggestions for how this might be done, and provide specific reasons and examples of why such an approach is necessary.

Recognizing that transparency is a key priority, we are also requesting comments on whether it may be necessary to make source category-

specific confidentiality determinations within any of the proposed data categories. This would allow either a narrower or broader release of the data depending on the source category in order to enable the release of as much data as possible. Each of the data categories discussed in this action contains data elements from multiple source categories (subparts). For most data categories, a single confidentiality determination is proposed for the entire data category. However, for some of the supplier data categories (*i.e.*, the GHGs Reported Category, the Production Throughput Quantities and Composition Data Category, and the Unit/Process Operating Characteristics Category), we are proposing to determine that some data elements within a data category are entitled to confidential treatment and others within the same category are not. For example, in the supplier data category for Production and Throughput Data, EPA is proposing that throughput data reported by NGL fractionators would be entitled to confidential treatment, but throughput data reported by Local Distribution Companies (LDCs) would not be entitled to confidential treatment because this data is already publicly available. We are soliciting comments on whether, for any other data categories, there are unique circumstances within particular source categories (rule subparts) that would warrant making subpart-specific confidentiality determinations within categories beyond what is proposed in this action. If so, please explain what specific technical, economic, or market considerations within a particular source category (*e.g.*, within a particular industry) warrant a source category (rule subpart) specific decision on confidentiality.

As discussed in Section I.D of this preamble, we are also soliciting comment on whether (and if so, what) unique circumstances may arise for a reporting facility, after finalization of the confidentiality status of the Part 98 data, that would warrant the need for EPA to reconsider a final non-CBI determination applicable to certain Part 98 data from that facility. In providing your comments, please explain the types of unique circumstances that may arise, the types of Part 98 data elements that may be affected, and how such circumstances would qualify the affected Part 98 data as CBI. We further solicit comments on whether there should be a limited, less cumbersome process for reconsidering any of our final non-CBI determinations under those unique circumstances, what kind

of process would facilitate such reconsideration, and how we limit such a process to only those cases that warrant such reconsideration. If respondents believe that such a process is necessary, please describe specifics of the proposed process as well as the appropriate criteria (*e.g.*, the type of facility, the type of data, and the specific technical reason for release of the data, *etc.*) that would have to be met in order to enable the use of such a process.

*"Emission Data" Determination.* As previously discussed in Section I.C of this preamble, EPA proposes to determine as "emission data" data required to perform the emissions calculations for direct emitters specified in Part 98 because these inputs to GHG emission equations are "necessary to determine the identity, amount \* \* \*" of emissions and are therefore "emission data" under the meaning of 40 CFR 2.301(a)(2)(i). The Inputs to Emission Equations Category for direct emitters includes all data elements that are inputs to equations; and for some source categories this includes data such as production and raw material quantities and compositions that may be considered sensitive by businesses. (*See* Section II.C of this preamble for a description of the Inputs to Emission Equations data category.) As previously discussed, "emission data" cannot be kept confidential per CAA section 114.

EPA is seeking comment generally on its proposed interpretation of the term "emission data", to include data that are required to perform emission calculations specified in the direct emitter subparts, as used in the statute and as defined in EPA's regulations at 40 CFR 2.301. For example, would a narrower interpretation of the regulatory definition of "emission data", that does not include all inputs to equations, be appropriate as a legal and policy matter? When commenting on this issue, please (i) provide a description of what the narrower interpretation should be, (ii) explain why the narrower interpretation would be reasonable as well as why it would be sufficient for purposes of Part 98 and/or any other CAA programs, (iii) describe how it would fit within the regulatory definition, and (iv) discuss how it would be consistent with prior interpretations or implementation of that term<sup>6</sup> as well as the statutory goal behind the CAA section 114(c) language. More specifically, please specify exactly what Part 98 data you

<sup>6</sup> For example, in a 1991 *Federal Register* notice, EPA described certain information that it would consider emission data under CAA section 114 (56 FR 7042, February 21, 1991).

think should be considered emission data, describe what Part 98 data you think should not be emission data and why (and whether such non-emission data are CBI and why), and clearly explain how a narrower definition of “emission data” would be consistent with the “necessary to determine” clause in 40 CFR 2.301, as well as with the purpose behind the statutory language.

EPA is also seeking comment on whether a *broader* interpretation of “emission data” would be appropriate for Part 98 and asks that the same information discussed above be provided in any such comments (*e.g.*, clear description of broader interpretation, explanation of what additional data should be considered to be “emission data”, discussion of how the revised interpretation is consistent with the regulations and statute, *etc.*).

*Delay Release of Emission Data and Data Not Entitled To Confidential Treatment.* Under Part 98, reports are due by March 31st for the previous year’s data. The Agency considered options of delaying release of some data for a given period of time (*e.g.*, one to three years rather than releasing immediately after verification) as a means to address potential industry concerns over release of data. One option EPA considered is delaying the publication (*i.e.*, posting on the Web site) of some data elements that are proposed in this action to be released. Recognizing that the Inputs to Emission Equations Data Category may contain data elements that are considered sensitive by many businesses (*see* Section II.C of this preamble for a description of the data elements included in this data category), EPA considered whether delaying publication of the data in this and possibly other data categories by a given time period would ease businesses’ concerns regarding the release of this data. (The data might be less sensitive and less likely to cause harm if it were to be released at a later date, when it would be less current). However, even if EPA does not automatically release Part 98 data that are determined to be emission data or non-CBI but are nonetheless considered by the businesses to be sensitive data, that data would still be subject to FOIA request. Therefore, per FOIA regulations and consistent with EPA’s final confidentiality determination, emission data and non-CBI would be released. For the reason stated above, EPA believes that this option does not resolve the industry’s concern and only unnecessarily delays release of information that must be made public pursuant to CAA section 114(c).

EPA also considered delaying the final confidentiality determination by one year. However, as in the previous scenario, EPA would still be subject to FOIA requests during the one year period before issuing the final confidentiality determination. Once the case-by-case decisions are made through the FOIA process, data that are determined to be not entitled to confidential treatment would be released pursuant to EPA’s CBI regulations. Given the number of data elements and reporters covered by Part 98, the intent of this proposed action is to avoid these case-by-base decisions. In addition, this approach would have no effect on data submitted in the years subsequent to the first year of reporting.

For these reasons, EPA concluded that delaying publication of potentially sensitive data or delaying our final confidentiality determination would not ease businesses’ concerns regarding the release of reported data. While we believe that neither of these approaches is a viable option, EPA solicits comment on whether delaying publication of certain data elements would ease business concerns and whether there are any alternative approaches that would allay such concerns while enabling us to meet our obligations under FOIA and CAA.

*Duration of Confidentiality Treatment.* In the interest of transparency and consistency with the practice of other EPA programs’ release of all data (*e.g.*, Acid Rain Program), EPA solicits comment on whether, for data reporting elements that are proposed today to be entitled to confidential treatment, the confidential treatment of such data should be time limited (*i.e.*, whether these items could be released without causing substantial harm to business after a certain period of time). If stakeholders believe that data elements that are proposed to be entitled to confidential treatment could eventually be released without causing substantial harm to business, please specify which data elements fall into this group, the amount of time delay that would be required prior to release, and the reason for the change in the proprietary nature of the data element.

### C. Direct Emitting Facilities

Direct emitting facilities are those facilities subject to Part 98 that directly emit GHGs to the atmosphere. They include stationary fuel combustion sources that meet the criteria in 40 CFR 98.2(a)(3) and facilities containing any of the source categories listed in 40 CFR 98.2(a)(1) and (a)(2) (including source categories proposed on April 12, 2010). This section of the preamble covers all

of the data elements required to be reported for these source categories (subparts) and certain data elements in proposed amendments to Part 98. This section also covers certain data elements from proposed 40 CFR part 98, subpart RR (Injection and Geological Sequestration of CO<sub>2</sub>) that are related to emissions to the atmosphere from reporting facilities (*i.e.*, emissions from surface equipment and from the leakage of CO<sub>2</sub> from geologic sequestration<sup>7</sup>). All remaining data elements for 40 CFR part 98, subpart RR are covered in Section II.D of this preamble because they are not related to direct emissions.

In addition to data elements reported in the annual GHG reports, this section includes data elements in applications from adipic acid and nitric acid producers for approval of alternative methods (excluding supporting documentation<sup>8</sup>) and BMM extension requests. EPA has categorized each data element into one of 11 data categories. This section describes the data elements within each of the 11 data categories and proposes whether the data in each category will be treated as confidential.

#### 1. Data Categories

The data categories for “direct emitting” facilities are as follows and are further described in Sections II.C.2 through II.C.12 of this preamble:

- Facility and unit identifier information.
- Emissions.
- Inputs to emission equations.
- Calculation methodology and methodological tier.
- Data elements reported for periods of missing data that are not inputs to emission equations.
- Unit/process “static” characteristics that are not inputs to emission equations.
- Unit/process operating characteristics that are not inputs to emission equations.
- Test and calibration methods.
- Production/throughput data that are not inputs to emission equations.
- Raw materials consumed that are not inputs to emission equations.

<sup>7</sup> Leakage is defined in proposed subpart RR as the movement of CO<sub>2</sub> from the injection zone to the surface (for example to the atmosphere, indoor air, oceans or surface water) (*see* 75 FR 18576, April 12, 2010).

<sup>8</sup> EPA recognizes that supporting documentation included in applications for approval of alternative methods from adipic acid and nitric acid producers may include information that is sensitive or proprietary, such as detailed process designs or site plans. Because the exact nature of this documentation cannot be predicted with certainty, EPA proposes to make case-by-case confidentiality determinations under CAA section 114(c) for any supporting documentation claimed confidential by applicants either upon receipt of such information or upon a request for such information after receipt.

- Process-Specific and Vendor Data Submitted in BAMB Extension Requests.

Sections II.C.2 through II.C.12 of this preamble describe the proposed determination for each of the 11 data categories for direct emitting facilities and provide the rationale for EPA's proposed determination. A list of all the data elements assigned to each category is provided in a memorandum (*see* Memorandum "Data Category Assignments for Reporting Elements to be Reported under 40 CFR Part 98 and its Amendments" in Docket EPA-HQ-OAR-2009-0924 and the Web site (<http://www.epa.gov/climatechange/emissions/CBI.html>).

## 2. The Facility and Unit Identifier Information Category

EPA proposes to determine that facility and unit identifiers are "emission data" under 40 CFR 2.301(a)(2)(i).

*Description of data elements.* Part 98 requires sources to report information needed to identify each facility and emission unit subject to reporting. Facility identifying information must be reported by all facilities as specified in 40 CFR part 98, subpart A. Unit-specific identifying information is reported if required by an applicable source category subpart. Unit-specific identifying information is required in those subparts that require emissions to be calculated on a unit-by-unit basis. For these source categories, unit-specific data are needed to calculate emissions using the procedures in Part 98, so the unit associated with the emissions must be identified.

Data elements in this category include the following data elements required under 40 CFR part 98, subpart A to be included in each annual report: Facility name and physical street address, including the city, State, and zip code; the year and months covered by the report; the date of submittal of the report; and a signed and dated certification statement of the accuracy and completeness of the report, which is provided by the designated representative of the owner or operator. Also included are data elements from the proposed amendments to the reporting requirements in 40 CFR part 98, subpart A (75 FR 18455, April 12, 2010). These data elements include: U.S. parent company(s), percentage ownership of each parent company, and all applicable NAICS codes.

The data elements in this category also include the information required by individual subparts of Part 98 for identifying each emission unit for which emissions must be reported,

including, an emission unit or group identification number and the type of unit (*e.g.*, cement kiln, electric arc furnace, glass production furnace, lead smelting furnace, engine, turbine, boiler, process heater).

This data category also includes facility and unit identification information submitted to EPA in applications from adipic acid and nitric acid facilities for approval of alternative methods (applicable to 40 CFR part 98, subparts E and V only) and BAMB extension requests. These data elements include: The facility name and physical address; identification numbers for emission units, common exhaust stacks, and common pipelines; number and type of units; and descriptions of monitoring equipment.

*Rationale for Proposed Determination.* As discussed in Section I.C of this preamble, emission data must be available to the public and is not entitled to confidential treatment under CAA section 114(c). "Emission data" is defined in 40 CFR 2.301(a)(2)(i)(A) to include, among other things, "information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any emission which has been emitted by the source \* \* \*" EPA considers the term "identity \* \* \* of any emission" as not simply referring only to the names of the pollutants being emitted, but to also include other identifying information, such as from what and where (*e.g.*, the identity of the emission unit) the pollutants are being emitted. Further, 40 CFR 2.301(a)(2)(i)(C) specifies that emission data includes "[a] general description of the location and/or nature of the source to the extent necessary to identify the source and to distinguish it from other sources\* \* \*". Consistent with the definition of emission data described above, EPA considers facility and emission unit identifiers to be source information or "information necessary to determine the identity \* \* \* of any emission which has been emitted by the source," and therefore emission data under 40 CFR 2.301(a)(2)(i).

The 1991 EPA notice of policy (discussed in Section I.F of this preamble) provided a list of data fields that EPA considered to be emission data. For example, in the 1991 notice, EPA considered that plant name, address, city, State, zip code, emission point or device description, SIC code, and Source Classification Code (SCC) are emission data. Therefore, the public has been on notice that EPA considers many of the data elements in this data category to be emission data and thus

not entitled to confidential treatment. The 1991 notice also makes clear that the list of data is not comprehensive and that other data might be found to constitute emission data.

*Summary.* EPA is proposing to determine that data elements in the Facility and Unit Identifier Information Category are "emission data" as defined in 40 CFR 2.301(a)(2)(i). Under CAA section 114(c), emission data cannot be held confidential and must be available to the public. EPA solicits comments on this proposed determination, including whether the data category determination is appropriate as well as whether the appropriate data elements were assigned to this category.

## 3. The Emissions Category

EPA proposes to determine that the GHG emissions to be reported by direct emitters are "emission data" under 40 CFR 2.301(a)(2)(i).

*Description of data elements.* Data elements included in this data category are the GHG emissions to be reported by direct emitters under Part 98. Under 40 CFR part 98, subpart A, all direct emitters must report annual CO<sub>2</sub>e emissions and must also report emissions by GHG and source category. In addition, certain direct emitters are required to report GHG emissions in more detail as specified in the applicable source categories subparts in Part 98. Each of these subparts lists the specific GHGs to be reported for a particular source category and whether facility emissions are reported only at the source-category level or separately for each process, manufacturing line, or emission unit within a source category. In general, emissions are reported at the same level of detail in which they are calculated or measured. If emissions are calculated or measured for individual emission units, they are also reported for individual units. In some cases, emissions are calculated or measured, and reported, for a group of units that share a common fuel supply line or a common stack. For some source categories, facilities calculate and report only their total emissions from the source category based on an overall mass balance, rather than calculating and reporting emissions by process line or unit.

Provided below are some examples of the data elements in the Emissions Category:

- CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O emissions from each stationary combustion unit (40 CFR part 98, subpart C).
- Process N<sub>2</sub>O emissions from adipic acid production (40 CFR part 98, subpart E).

- Process CO<sub>2</sub> and N<sub>2</sub>O emissions from each electric arc furnace at a ferroalloy production facility (40 CFR part 98, subpart K).
- Process CO<sub>2</sub> emissions from each glass furnace and all furnaces combined at a glass manufacturing facility (40 CFR part 98, subpart N).
- Process CO<sub>2</sub> emissions from each soda ash manufacturing line at soda ash manufacturing plants (40 CFR part 98, subpart CC).

For each facility, GHG emissions are reported at the facility level, the subpart level, and, in many cases, the emission unit or process level. For example, petroleum refineries will report GHG emissions under 40 CFR part 98, subpart A and under 40 CFR part 98, subpart Y at the following separate levels:

- Annual CO<sub>2</sub>e emissions (excluding biogenic CO<sub>2</sub>) aggregated for all GHG from all applicable source categories (*i.e.*, one value for the whole facility).
- Annual emissions of biogenic CO<sub>2</sub> aggregated for all applicable source categories (*i.e.*, one value for the whole facility).
- CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O coke burn-off emissions from each catalytic cracking unit, fluid coking unit, and catalytic reforming unit.
- CO<sub>2</sub> emissions from sour gas sent off site for sulfur recovery operations.
- CO<sub>2</sub> process emissions from each on-site sulfur recovery plant.
- CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O emissions from each coke calcining unit.
- CO<sub>2</sub> and CH<sub>4</sub> emissions from asphalt blowing operations.
- CH<sub>4</sub> emissions from equipment leaks, storage tanks, loading operations, delayed coking units, and uncontrolled blowdown systems.
- CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O emissions from each process vent not specifically covered above.
- CO<sub>2</sub> and CH<sub>4</sub> emissions from non-merchant hydrogen production.

**Rationale for Proposed Determination.** EPA proposes to determine that the emissions at each reporting level constitute “emission data.” “Emission data” is defined in 40 CFR 2.301(a)(2) as “information necessary to determine the identity, amount, frequency, concentration, \* \* \* of any emission which has been emitted by the source \* \* \*”. As described above, the data elements in this category consist of all emissions to be reported under Part 98. These data elements are clearly information regarding the identity, amount, and frequency of any emission emitted by the reporting direct emitters and, therefore, they are “emission data.”

As described above, EPA proposes that all emissions reported by direct

emitters under Part 98, including emissions of each GHG at the levels required by the applicable rule subparts (*e.g.*, facility-level; by source category; and by process, process line, or unit), are “emission data.” Facilities are also required to report GHG emissions in terms of CO<sub>2</sub>e, which is also part of this data category, and is considered to be emission data. For those source categories where the methodology requires emissions to be calculated at a process line or unit level, the calculated emissions for each process line or unit are the identity and quantity emitted by the source and are “emission data” within the meaning of 40 CFR 2.301(a)(2). Likewise, emissions broken out by GHG are needed to determine the “identity” of the emissions and to calculate CO<sub>2</sub>e. In summary, all reported emissions are “emission data.”

As discussed in Section I.F of this preamble, in the 1991 EPA notice of policy (35 FR 7042, February 21, 1991), EPA identified, without attempting to be comprehensive, data elements that EPA considered to constitute emission data. The 1991 notice lists the “Emission type (*e.g.*, the nature of emissions, such as CO<sub>2</sub>, particulate or a specific toxic compound, and origin of emissions such as process vents, storage tanks or equipment leaks)” and “Emission rate (*e.g.*, the amount released to the atmosphere over time such as kg/yr or lbs/yr)” as data that are not entitled to confidential treatment and are, therefore, releasable to the public. Our proposed determination for this data category is consistent with the 1991 notice, which considers that identity (*e.g.*, CO<sub>2</sub>, N<sub>2</sub>O, SF<sub>6</sub>) and emission rate (*i.e.*, the amount emitted during a specified time period) are emission data and not entitled to confidential treatment.

**Summary.** EPA proposes to determine that the data elements in the Emissions Category are “emission data” as that term is defined at 40 CFR 2.301(a)(2)(i). EPA solicits comments on this proposed determination, including whether the data category determination is appropriate as well as whether the appropriate data elements were assigned to this category.

#### 4. The Inputs to Emission Equations Category

EPA proposes to determine that data elements in the Inputs to Emission Equations Category are “emission data” under 40 CFR 2.301(a)(2)(i).

**Description of data elements.** The data elements in this category consist of inputs to the equations specified in Part 98 for calculating emissions to be reported by direct emitters. Part 98

requires direct emitters to calculate annual mass emissions (metric tons per year) for each GHG. Specific calculation methods are contained in each direct emitting source category subpart.

Data elements included in this category are inputs to the emission equations used by the reporting direct emitting sources to calculate their annual GHG emissions under Part 98. Each subpart specifies the equations that must be used to calculate GHG emissions and the inputs to the equations that must be reported for a particular source category. Many of these subparts provide more than one calculation method for a process or unit and allow reporting facilities to select their preferred method from those provided. Therefore, the specific data elements to be reported depend on the source category and on the calculation method chosen.

All reported data elements that are inputs to a GHG emission calculation equation used by the reporting facilities are assigned to this category. Accordingly, this data category includes data elements such as raw materials consumed, unit/process characteristics, and production/throughput data that are used by a reporting facility as inputs to an emission equation. As discussed in Section II.C.1 of this preamble, there are separate data categories for raw materials consumed, unit/process characteristics, and production/throughput data that are not inputs to equations (either because they are not part of any emission calculation equations provided in Part 98 or the reporting facility chooses to use another calculation method that does not use these data as inputs).

Examples of data elements in the Input to Emissions Equations Category include the following:

- Fuel information used by reporting facilities as inputs to emissions equations, such as mass or volume of fuel combusted (per year), fuel type, molecular weight of gaseous fuels, high heat value, and quantity of biomass consumed (40 CFR part 98, subpart C).
- Control device information used by reporting facilities as inputs to emissions equations, such as the destruction efficiency (40 CFR part 98, subparts E and V), sorbent used in the reporting year (40 CFR part 98, subpart C), and abatement utilization factor (40 CFR part 98, subparts E and V).
- Production/throughput and raw material consumption information used by reporting facilities as inputs to emissions equations, including volume or mass of feedstock for source categories such as ammonia manufacturing (40 CFR part 98, subpart



G), hydrogen production (40 CFR part 98, subpart P), and petrochemical production (40 CFR part 98, subpart X); and volume or mass of product produced for source categories such as ferroalloy (40 CFR part 98, subpart K), lead (40 CFR part 98, subpart R), and zinc production (40 CFR part 98, subpart GG).

- Characteristics of raw materials, products, and by-products used by reporting facilities as inputs to emissions equations, such as the carbon content of petroleum coke used in silicon carbide production (40 CFR part 98, subpart BB), inorganic carbon content of trona or soda ash for soda ash manufacturing (40 CFR part 98, subpart CC), molecular weight of sorbent (40 CFR part 98, subpart C), molecular weight of raw materials (40 CFR part 98, subparts G and X), Calcium oxide and magnesium oxide content of clinker used in cement product (40 CFR part 98, subpart H), carbonate content of raw materials used in glass production (40 CFR part 98, subpart N), and hourly CO<sub>2</sub> concentration in liquid alkaline feedstock for soda ash manufacturing (40 CFR part 98, subpart CC).

- Operating information that are used by reporting facilities as inputs to emissions equations, such as hourly average CO<sub>2</sub> concentration in exhaust gases, hourly average stack gas volumetric flow rate, hourly moisture percentage in the stack gas, mass of steam generated by fuel combustion, and operating time (40 CFR part 98, subpart Y).

- Site-specific emission factors, used by reporting facilities as inputs to emissions equations, for source categories such as adipic acid production (40 CFR part 98, subpart E), nitric acid production (40 CFR part 98, subpart V), and iron and steel production (40 CFR part 98, subpart Q).

- Equipment or system specifications that are used by reporting facilities as inputs to emissions equations to calculate GHG emissions, such as the collection efficiency of landfill gas systems (40 CFR part 98, subpart HH).

#### *Rationale for Proposed*

*Determination.* As discussed in Section I.C of this preamble, emission data must be available to the public and is not entitled to confidential treatment. "Emission data" is defined in 40 CFR 2.301(a)(2) as "information necessary to determine the identity, amount, frequency, concentration, \* \* \* of any emission which has been emitted by the source \* \* \*". Consistent with this definition of emission data, EPA considers inputs to emission equations to be "information necessary to

determine \* \* \* the amount" of any emission emitted by the source.

As explained above, many subparts allow the facility to select from two or more calculation methods. For example, many source category subparts allow companies to choose to calculate emissions by either (1) measuring gas flow rates and emissions concentrations with CEMS and using those data to calculate annual mass emissions, or (2) using emission calculation equations provided in the rule and site-specific input data needed to perform the calculation. However, once a facility selects a calculation method, then the equation becomes the only way for determining such emissions for the time period the selected calculation method is used.<sup>9</sup> Since the data inputs required by the selected equation are needed to perform the emission calculation, these inputs to the equation are information "necessary to determine" the calculated emissions.

Our proposed determination for this data category is consistent with the 1991 EPA notice of policy on emission data. Some of the data fields listed in the 1991 notice are the same as some of the data elements in this data category. For example, in the 1991 notice, EPA considered the emission rate, emission concentration, and emission density or molecular weight to be emission data and therefore releasable to the public.

*Summary.* EPA proposes to determine that the data elements in the Inputs to Emission Equations Category are "necessary to determine" the sources' emissions and are therefore "emission data" as defined in 40 CFR 2.301(a)(2)(i). EPA solicits comments on this proposed determination, including whether the data category determination is appropriate as well as whether the appropriate data elements were assigned to this category.

*Use of Continuous Monitoring Systems (CEMS).* EPA notes that in many cases the use of CEMS reduces the number of data parameters required to be reported. Many subparts allow facilities to choose between using CEMS and using source-category specific GHG calculation procedures. This action proposes that for direct emitting facilities, inputs to emission calculation equations are "emission data" and would be released. However, if a facility chooses to use CEMS to determine CO<sub>2</sub> emissions from a particular process, then emissions are directly measured, and the facility would have no reported

data elements that are inputs to CO<sub>2</sub> emission equations. For example, all ammonia production facilities must report the amount of feedstock used; however, under the proposed determinations, this data would be treated as confidential only for facilities using CEMS. For facilities that do not use CEMS, the feedstock data would not be eligible for confidential treatment since it is used as inputs to the mass balance equations provided in 40 CFR part 98, subpart G and would be considered "emission data".

In addition, facilities that use CEMS generally have to report fewer data elements than those using emission equations. For example, ammonia production facilities that do not use CEMS must report the carbon content, as well as the amount, of each feedstock used. Therefore, by using CEMS, a reporting facility would be required to submit a more limited range of data elements, thereby potentially alleviating any concern for other data not required.

EPA recognizes that there are some situations where use of a CEMS for one GHG will not avoid release of data elements used to calculate emissions of other GHGs. For example, many facilities that use CEMS to determine CO<sub>2</sub> emissions from stationary combustion sources will use calculation procedures to determine CH<sub>4</sub> and N<sub>2</sub>O emissions from the same combustion sources. In this case, reported data elements such as fuel use and higher heating value (HHV) for these combustion units would be inputs to emission equations for CH<sub>4</sub> and N<sub>2</sub>O emission calculations and would therefore be released, regardless of the fact that CEMS are used to determine CO<sub>2</sub> emissions.

EPA solicits comments on whether and to what extent the use of CEMS would relieve industry concerns regarding making data available to the public. We specifically solicit comment on the extent to which industry would take advantage of the option if EPA added CEMS methodologies for CH<sub>4</sub> and N<sub>2</sub>O to the Mandatory Reporting Rule where appropriate.

#### 5. The Calculation Methodology and Methodological Tier Category

EPA proposes to determine that the reported calculation methodology and the methodological tier used by a reporting facility to calculate its GHG emissions are "emission data" under 40 CFR 2.301(a)(2)(i).

*Description of data elements.* Data elements included in this category are the methodology used by a reporting facility to calculate its annual GHG emissions under Part 98, including the

<sup>9</sup>40 CFR 98.3(e) allows a reporter to switch methods during the reporting year as long as they document the date and reason for the change in their annual report.

methodological tiers used to calculate CO<sub>2</sub> emissions from fuel combustion under 40 CFR part 98, subpart C. This category also includes data elements that are used to determine the correct calculation method or to select the correct input for a GHG emission calculation.

Each subpart of Part 98 specifies the method(s) that must be used to calculate GHG emissions. Some subparts allow a choice of two or more specified alternative methods. When this occurs, the rule requires that the method chosen be reported. The methods vary by subpart but may include, for example, the following:

- Using a “mass balance” approach to calculate GHG emissions based on the amount and carbon content of the raw materials fed to the manufacturing process and the amount of carbon that is removed from the process in the final product and waste streams.

- Using a mass balance approach to calculate GHG emissions based on the amount of GHGs used in a manufacturing process, the utilization rate of GHG in the process, and the fraction of excess GHG destroyed by an abatement device.

- Using a site-specific GHG emission factor determined from stack testing and measurements of process parameters during the test.

- Calculating GHG emissions from default emission factors provided in Part 98 and the amount of material consumed as either a fuel or raw material in a manufacturing process.

- Monitoring GHG emissions directly from a stack or vent using a CEMS.

40 CFR part 98, Subpart C (General Stationary Fuel Combustion Sources) specifies four different methodological “tiers” for calculating CO<sub>2</sub> emissions. The lowest tier (Tier 1) uses default heating values and default CO<sub>2</sub> emission factors listed in Part 98 (by fuel) to calculate CO<sub>2</sub> emissions. The highest tier (Tier 4) uses CEMS to measure CO<sub>2</sub> emissions directly. Tiers 2 and 3 use data from measurements of heating value and/or carbon contents of the fuels combusted at a facility to calculate CO<sub>2</sub> emissions. Reporters are required to report which tier was used to calculate emissions.

In addition to which method or tier was used, this category also contains data elements that are used to determine which calculation methodology must be used. For example, in 40 CFR part 98, subpart C, the tier(s) that a facility is allowed to use depends on the size of the combustion unit, the type of fuel(s) combusted, and whether there is existing fuel and emissions monitoring at the reporting facility. In 40 CFR part

98, subpart Y (Petroleum Refineries), the maximum rated throughput is used to determine which calculation method is used for catalytic cracking units and fluid coking units. Therefore, these data elements are included in this data category.

This data category also includes the calculation methods submitted in applications for approval of alternative methods from adipic acid and nitric acid facilities and BAMB extension requests, and the methods and other information included in or required to be reported by a Geologic Sequestration MRV Plan.

Examples of data elements in this category include the following:

- The tier used to determine CO<sub>2</sub> emissions from each stationary combustion unit under 40 CFR part 98, subpart C.

- Criteria needed to decide which tier is allowed to be used to determine CO<sub>2</sub> emissions from each stationary combustion unit under 40 CFR part 98, subpart C (e.g., size of the combustion unit, and the type of fuel(s) combusted).

- Whether process emissions were determined using the carbon mass balance method or whether the site-specific emission factor method was used to determine CO<sub>2</sub> emissions (e.g., 40 CFR part 98, subpart Q Iron and Steel Production).

- Whether the facility used a measured value, default emission factor, or unit-specific emission factor to determine CH<sub>4</sub> and N<sub>2</sub>O emissions (e.g., 40 CFR part 98, subpart Y Petroleum Refineries).

- Whether CO<sub>2</sub> emissions were calculated using the trona input method, the soda ash output method, or a site-specific emission factor method (e.g., 40 CFR part 98, subpart CC Soda Ash Manufacturing).

- Method used for estimating waste disposal quantity and reason for its selection (e.g., 40 CFR part 98, subpart HH Municipal Solid Waste Landfills).

- Proposed alternative method for determining emissions from adipic acid or nitric acid production facilities, including the calculation method, test methods (as applicable), monitoring, QA/QC, and missing data procedures) submitted in applications for approval of alternative methods (40 CFR part 98, subparts E and V).

- Identification of the parameter, subpart, and rule citation for which a BAMB extension is requested (40 CFR part 98, subpart A).

- Methods and other data submitted in MRV Plans (including methods for detecting and quantifying any CO<sub>2</sub> leakage to the surface, methods assessing the risk of leakage of CO<sub>2</sub> to

the surface from geologic sequestration, methods for establishing pre-injection environmental baselines, and any other information included in the MRV Plan (e.g., location and depth of all potential leakage pathways, qualitative descriptions of each potential leakage pathway; methods used to characterize the site)), and any data required by an approved MRV plan to be submitted to EPA in the annual report (proposed 40 CFR part 98, subpart RR, 75 FR 18576, April 12, 2010).

#### *Rationale for Proposed*

*Determination.* EPA proposes to determine that the data elements in the Calculation Methodology and Methodological Tier Category are “emission data” under 2.301(a)(2) because they are “information necessary to determine \* \* \* the amount” of any emission emitted by the source.

The method (including the methodological tiers in 40 CFR part 98, subpart C) used by a direct emitter to calculate emissions is “emission data” under 40 CFR 2.301(a)(2) because it is information necessary for the reporter to actually calculate the emissions and for EPA and the public to verify that an appropriate method was used. The method used by a facility is important for determining whether the facility selected the appropriate equations and used appropriate inputs to the calculations. For example, if a facility chooses to use a default emission factor method, they must select the appropriate factor provided in the rule, whereas if they select a site-specific emission factor method, they must collect additional data to support their own factor. Therefore, data elements that are used to determine what methodology is required (or allowed) to be used are also necessary to determine emissions because these data are also needed to determine whether the reporter selected the appropriate equations and inputs.

As discussed in Section I.C of this preamble, the 1991 EPA notice of policy provided a list of information that EPA considered to constitute “emission data” under 40 CFR 2.301(a)(1)(2)(i). That list includes “emission estimation method (e.g., the method by which an emission estimate has been calculated such as material balance, source test, use of AP-42 emission factors, etc.),” which are the same type of data elements as those in this data category and would include methods already provided in Part 98, as well as alternative methods included in applications submitted by adipic acid and nitric acid facilities (40 CFR part 98, subparts E and V) and the methods included in MRV Plans submitted by geologic sequestration facilities

(proposed 40 CFR part 98, subpart RR, 75 FR 18576, April 12, 2010). In addition to the methods included in the MRV Plans, EPA has concluded that the supporting documentation (e.g., location and description of potential leakage pathways, frequency of monitoring, and the strategy for detecting leaks) are integral to the “emission estimation method” selected and are therefore also considered to be “emission data”.

*Summary.* EPA is proposing to determine that the data elements in the Calculation Methodology and Methodological Tier Category are “emission data” as defined in 40 CFR 2.301(a)(2)(i). EPA solicits comments on this proposed determination, including whether the data category determination is appropriate as well as whether the appropriate data elements were assigned to this category. In particular, EPA seeks comment on whether any specific elements, methods, or supportive material that could be part of an MRV plan should not be determined to be “emission data”, and if so which specific elements, methods, or supportive material. If commenters believe that specific MRV plan elements, methods, or supportive material should not be determined to be “emission data”, please comment on why the data element does not fall within the regulatory definition of emission data as well as whether you think the data elements are CBI, and if so why.

#### 6. The Data Elements Reported for Periods of Missing Data That Are Not Inputs to Emission Equations

EPA proposes to determine that the data elements that must be reported during missing data periods that are not inputs to emission equations are “emission data” under 40 CFR 2.301(a)(2)(i).

*Description of data elements.* Data elements in this category include information that is reported when data specified in Part 98 for calculating annual GHG emissions are missing. This category does not include the numeric values used as substitutes for missing data.<sup>10</sup> Rather, this category includes data elements that indicate the overall quality and reliability of the reported GHG emissions, such as the number of times substitute values are used and the

method used to determine a substitute value.

Each subpart of Part 98 has a section that specifies how values are to be generated as substitutes for missing data. For example, if the high heating value or carbon content of a fuel is missing, a substitute value is generated by using the arithmetic average of the quality assured value of that parameter immediately preceding and following the missing data incident. If a source is using a CEMS to measure GHG emissions, then the subpart will specify that the missing data procedures in 40 CFR part 75 should be followed. In other cases, a subpart may specify that the reporter can substitute for missing data an estimate derived from the best available process information from the source.

The Missing Data Category contains the following data elements that all facilities are required to report under 40 CFR part 98, subpart A:

- Identification of each data element used as an input for estimating annual GHG emissions for which a missing data procedure was used.
- The total number of hours in the year that a missing data procedure was used for each data element.

The source category subparts specify any other information that must be included in annual GHG reports when substitute values are used as inputs for estimating emissions in place of missing values. Provided below are some additional examples of the data elements in the Missing Data Category:

- Number of times missing data procedures were used to estimate missing data, such as carbon content and molecular weight of fuels (40 CFR part 98, subpart C), carbon content of raw materials (40 CFR part 98, subparts BB and EE), phosphate rock consumption (40 CFR part 98, subpart Z), and hourly CO<sub>2</sub> concentration (40 CFR part 98, subpart CC).
- The time period during which missing data procedures were used, such as the percentage of operating hours in which substitute values are used for CO<sub>2</sub> concentrations (40 CFR part 98, subpart C).

*Rationale for Proposed Determination.* EPA proposes to determine that the data elements in the Missing Data Category are “emission data”, as defined in 40 CFR 2.301(a)(2)(i) because the identification of data elements for which substitute values were used and the methods used to estimate substitute values are needed to determine whether a reasonable methodology was used to determine substitute values and whether the annual GHG emissions are correctly

calculated. Part 98 requires sources to calculate annual mass emissions (metric tons per year) for each GHG. Therefore, every period of emissions must be considered, even if the monitors needed to measure or calculate emissions are temporarily not operating correctly. Each subpart specifies the frequency with which certain data elements used to calculate GHG emissions need to be collected, and specifies procedures (or allows a choice of methods) to be followed if data are missing because they were not collected at the required frequency or the monitor is not operating properly.

Identification of all periods of missing data and use of substitute data during such periods are necessary for determining the annual GHG emissions. In order to determine if the reported annual emission data are complete and the correct methods were used to determine substitute values, EPA needs to know when reported data values are substitutes for missing data and what method was used to calculate substitute data (for subparts that provide a choice or allow the reporter to develop and describe their own method). For the reasons stated above, the data elements in this data category are necessary to determine the amount of reported emissions and therefore qualify as “emission data” under 40 CFR 2.301(a)(i).

*Summary.* EPA proposes to determine that the data elements in the Missing Data Category are “emission data”, as defined in 40 CFR 2.301(a)(2)(i). EPA solicits comments on this proposed determination, including whether the data category determination is appropriate as well as whether the appropriate data elements were assigned to this category.

#### 7. The Unit/Process “Static” Characteristics That Are Not Inputs to Emission Equations Category

As explained in Section I.C of this preamble, EPA is proposing to determine that the data elements in this category (none of which are inputs to equations/calculation methods or information otherwise needed to calculate or determine emissions) are not “emission data” under 40 CFR 2.301(a)(2)(i) for purposes of determining the direct emitters’ GHG emissions to be reported under Part 98. For the reasons stated below, EPA also proposes to determine that the data elements in this category are not CBI under CAA section 114(c).

*Description of data elements.* Data elements in this category include basic characteristics of units, process units, general equipment, abatement devices,

<sup>10</sup> Numeric values used as substitutes for missing data are included in the Inputs to Equations Data Category, since these values are used to calculate GHG emissions during periods when data was not collected in accordance with the monitoring methods specified in the applicable subpart (e.g., during periods of equipment failure or malfunction).

and other facility-specific characteristics. Data elements in this category are “static” because they do not vary with time or with the operation of the process. The data elements assigned to this category are required to be reported under one or more direct emitter source category subparts of Part 98, but are not used as inputs to GHG emission equations provided in the rule.<sup>11</sup> Static characteristics that are inputs to GHG emission equations are assigned to the Input to Equations Data Category.

The data elements that must be reported differ for each source category. Examples of data elements in this category include the following:

- Identification of the type of unit or process associated with the emissions (e.g., type of nitric acid process, type of smelter technology used, type of control device, type of abatement technology).
- The annual product production capacity of the unit or production process that is not used to determine a calculation method (e.g., maximum annual production capacity for each soda ash manufacturing line).
- The number of units (e.g., kilns, furnaces, boilers, etc.) at a facility.
- The type of emission control technology used.
- Description of each abatement system through which fluorinated GHGs or N<sub>2</sub>O flows at the facility, including associated tools and/or process for which the device treats exhaust, model number of each abatement device, and the manufacturers guaranteed destruction or removal efficiency (DRE) (proposed 40 CFR part 98, subpart I, 75 FR 18652, April 12, 2010).
- Description of the gas collection system, including capacity and number of wells in each gas collection system (40 CFR part 98, subparts HH and TT).

#### *Rationale for Proposed*

*Determination.* EPA proposes to determine that the data elements in this category are not CBI under CAA section 114(c). EPA finds that the disclosure of the information is not likely to cause substantial harm to the competitive position of the businesses required to report these data elements under Part 98. The data elements in this category consist of general descriptions of the number and type of GHG emission units and emission control devices and do not

reveal any proprietary information or any other information that could provide insight for competitors to gain an advantage. For example,

- The requirement in several subparts to report the type of process unit, equipment, or emission control technology used requires only reporting of the general equipment without disclosure of specific design details. For example, the requirement in 40 CFR part 98, subpart Y to report type of unit is satisfied by identifying that a unit is a fluidized catalytic cracking unit, thermal catalytic cracking unit, catalytic reforming unit, etc. These types of units are commonly used in the industry and no detailed specifications are required to be reported.

- The requirement to report information on the number, and characteristics of control and abatement devices is not likely to disclose information that is sensitive. The number and type of control devices located at a facility and the process units to which they are connected is information that is included in construction and operating permits and therefore already publicly available. The destruction efficiency of control devices is also publicly available from marketing materials published by the manufacturer. While the name of the manufacturer and the model number of the control device installed at a particular facility may not be publicly available, the disclosure of this information is not likely to reveal sensitive information regarding the production, manufacturing process design, or raw materials consumed. For example, the proposed 40 CFR part 98, subpart I, Electronics Manufacturing (75 FR 18652, April 12, 2010), requires reporters to describe the abatement systems used at each facility and provide the model number for each abatement system. This information does not disclose sensitive production information, such as the quantity and compositions of specific products produced of materials consumed at an electronics manufacturing facility, nor could it be used by competitors to devise competitive strategies to harm reporting parties.

- Descriptions of GHG collection systems and design capacities of landfills do not reveal information that is proprietary or sensitive in nature. For example, 40 CFR part 98, subpart HH, Municipal Landfills and 40 CFR part 98, subpart TT, Industrial Landfills require reporters to disclose the landfill design capacity and the number of wells in the gas collection system. These data are not likely to harm the reporters' competitive position. The number of wells in a gas

collection system is not proprietary or sensitive information. It does not reveal any information about manufacturing processes or products and is unlikely to reveal any proprietary information on the design or operation of a landfill gas collection system. The landfill design capacity is routinely included in State solid waste permits and Part 70 operating permits so is often already publicly available.

- The number of units and the capacities of manufacturing process units (which are reported under various subparts) are routinely included in permits, such as Part 70 operating permits.

As shown above, the information required by the data elements in this category is not the type of information that could provide competitors with business insights and/or a competitive advantage over the reporting facility. Further, the information to be reported is general and would not contain details regarding product characteristics, actual production data (e.g., raw material consumption and the quantity of product produced), or operating efficiency (e.g., amount of product produced per unit of raw material consumed). It does not provide data that could allow competitors to infer market share, production costs, or pricing structures. For the reasons stated above, EPA finds that releasing the data in this category would not be likely to cause substantial harm to the reporting business's competitive position.

Further, certain data elements in this category are already being made publicly available. Facility and unit-level production capacity data for many industries subject to Part 98 are already available in the public domain as part of data released by other reporting programs or through reference materials available for purchase or through the Internet. Several publications contain production capacity for facilities. For example, production capacity for the iron and steel industry is available through the Association for Iron & Steel Technology (<http://steellibrary.com>). SRI's Chemical Economics Handbook publishes plant-level capacity data for both commodity and specialty chemicals (<http://www.sriconsulting.com>). The Energy Information Administration (EIA) publishes facility level capacity data for petroleum refineries, which is released annually in EIA's "Refinery Capacity Report" and on the Internet (<http://www.eia.doe.gov>). In addition, some State permits, such as Part 70 operating permits, contain maximum capacities of combustion units or manufacturing process units.

<sup>11</sup> Note that unit characteristics needed to determine what calculation or tier methodologies are allowed to be used (e.g., maximum rated heat input of a combustion unit used to determine the correct tier for 40 CFR part 98, subpart C) are assigned to the Calculation Methodology and Methodological Tier Category described in Section I.C.5. of this preamble and are not assigned to this category.

*Summary.* For the reasons stated above, EPA is proposing to determine that the data elements in this category are not CBI under CAA section 114(c). EPA solicits comments on this proposed determination, including whether the data category determination is appropriate as well as whether the appropriate data elements were assigned to this category.

#### 8. The Unit/Process Operating Characteristics That Are Not Inputs to Emission Equations Category

As explained in Section I.C of this preamble, EPA is proposing to determine that the data elements in this category (none of which are inputs to equations/calculation methods or information otherwise needed to calculate or determine emissions) are not "emission data" under 40 CFR 2.301(a)(2)(i) for purposes of determining the direct emitters' GHG emissions to be reported under Part 98. For the reasons stated below, EPA proposes to determine that the data elements in this category are not CBI under CAA section 114(c).

*Description of data elements.* Data elements in this category include the operating characteristics related to process and combustion units. Data elements in this category are "operational" because they change over time with changes in operations or processes. This category does not include unit/process operating characteristics that are inputs to the GHG emissions equations provided in Part 98.<sup>12</sup> The data elements in this category that must be reported differ for each source category. Examples of types of data elements in this category include the following:

- Total number of source operating hours in the reporting year.
- Number of operating kilns.
- Description of the flare service, *e.g.*, general, unit, emergency, or back-up for refineries (40 CFR part 98, subpart Y).
- Type of vessel into which material that has an equilibrium vapor-phase concentration of CH<sub>4</sub> of 0.5 volume percent or greater is loaded (40 CFR part 98, subpart Y).
- Sampling analysis results for carbon content of consumed petroleum coke as determined for QA/QC of supplier data (40 CFR part 98, subparts G, BB, and EE).

<sup>12</sup>Note also that unit characteristics that are needed to determine what calculation or tier methodologies are allowed to be used (*e.g.*, fuel type used to determine the appropriate tier for 40 CFR part 98, subpart C) are assigned to the Calculation Methodology or Methodological Tier Category described in Section II.C.5 of this preamble, and are not assigned to the unit/process operating characteristics category.

- Surface area of the landfill containing waste (40 CFR part 98, subpart HH).
- Identification of combustion units that burned both process off-gas and supplemental fuel (40 CFR part 98, subpart X).
- Statement indicating whether any of the reported GHG emissions are from cogeneration units (proposed amendments to 75 FR 18455, April 12, 2010).
- Reasons for applying for a BAMM extension request, anticipated date of installation of monitoring equipment, descriptions of actions the facility will take to obtain and install the monitoring equipment) (40 CFR part 98, subpart A).

*Rationale for Proposed Determination.* EPA proposes to determine that the data elements in this category are not CBI under CAA section 114(c). EPA finds that the disclosure of the information is not likely to cause substantial harm to the competitive position of the businesses required to report these data elements under Part 98. Most of the data elements in this category consist of general information on number of operating units, operating hours, vessel type and for four subparts the results of QA/QC sample analysis and do not reveal any proprietary information or any other information that would likely provide insight for competitors to gain an advantage. For example,

- The requirement in 40 CFR part 98, subpart Y to describe the flare service (how the flare is utilized) is satisfied by describing whether the flare was used as a general facility flare, a unit flare, or an emergency/back-up flare during the reporting year. Flares are commonly used in the industry for these purposes and no detailed specifications are required to be reported.
- Similarly, the disclosure of general information reported in 40 CFR part 98, subpart HH, such as the surface areas of the landfill containing waste does not disclose proprietary information. Surface area containing waste can be readily observed, *e.g.*, from touring the landfill or aerial photos, so is already available and not entitled to confidential treatment.
- Releasing information, such as the number of operating kilns (40 CFR part 98, subpart H) or the total number of operating hours in the reporting year for combustion units (40 CFR part 98, subpart C), does not disclose actual production rates of various products nor could it be used to determine production rate or production capacity. It also does not reveal details about the production processes used, or other information (*e.g.*, production efficiency,

production costs, or pricing structure) that a competitor could use to develop marketing strategies to undermine the reporter's competitive position.

- Identifying the combustion units that burned both process off-gas and supplemental fuel under 40 CFR part 98, subpart X provides no specific details on equipment design or confidential manufacturing processes. Combustion of process off-gas is a common practice for petrochemical production facilities, where destruction of waste gases exhausted from process units is frequency used to comply with other regulations (*e.g.*, 40 CFR part 60 and part 63) and therefore, is information that is generally included in Part 70 operating permits.

- Stating whether cogeneration units were used during the reporting units as proposed in the amendments to 40 CFR part 98, subpart A (75 FR 18652, April 12, 2010) does not reveal information about the type, number, or operating hours of the cogeneration units located at a facility, or reveal sensitive information about a production process.

As explained above, the information required by the elements in this category is not the type of information that could provide competitors with business insights and/or a competitive advantage over the reporting facility. Further, the information to be reported is general and could not contain details regarding product characteristics, actual production data (*e.g.*, raw material consumption or quantity of product produced), or operating efficiency (*e.g.*, amount of product produced per amount of raw material consumed). It does not provide information that could allow competitors to infer market share, production costs, or pricing structures and thus gain a competitive advantage.

There is one type of data element in this category, the results of QA/QC sampling for 40 CFR part 98, subparts G, N, BB, and EE that are specific numerical values dealing with material composition that could be considered sensitive or proprietary information. These carbon contents are not used as inputs in emission equations. Rather they are measured only once a year for the purposes of QA/QC of the composition data provided to the facility by the suppliers of their raw material and used as inputs to the emission calculations. The numerical values obtained from the annual QA/QC sampling should be consistent with the carbon content data provided by suppliers. As discussed in Section II.C.4 of this preamble, the carbon content data provided by suppliers is included as a data element in Inputs to Equations Category, which EPA proposes to

determine is “emission data” as defined in 40 CFR 301(a)(2)(i) and make publicly available. Therefore, release of the annual QA/QC sampling results data element could not reveal any substantive additional information regarding the composition of materials because the carbon content data provided by the raw material supplier would be publicly available.

For these reasons stated above, EPA finds that releasing the data in the category is not likely to cause substantial harm to the reporting business’s competitive position.

Further, the same data are already being submitted and made available to the public under other Federal programs. For example, for electricity generating units, the Acid Rain program already releases unit operating characteristics such as operating hours and fuel type for combustion units, which are the same data to be reported under 40 CFR part 98, subparts C and D.

*Summary.* For the reasons stated above, EPA proposes to determine that the data elements in this category are not CBI under CAA section 114(c). EPA solicits comments on this proposed determination, including whether the data category determination is appropriate as well as whether the appropriate data elements were assigned to this category.

#### 9. The Test and Calibration Methods Category

As explained in Section I.C of this preamble, EPA is proposing to determine that the data elements in this category (none of which are inputs to emission equations or information otherwise needed to calculate or determine emissions) are not “emission data” under 40 CFR 2.301(a)(2)(i) for purposes of determining the direct emitters’ GHG emissions to be reported under Part 98. For the reasons stated below, EPA also proposes to determine that the data elements in this category are not CBI under CAA section 114(c).

*Description of data elements.* Data elements in this category include information about the site-specific calibration methods used to calibrate monitoring instruments required by Part 98, frequency of sampling and analysis, test methods used for performance tests, and methods for analyzing compositions of materials. Each of the data elements in this category is required to be reported under one or more source category subparts in Part 98. Examples of data elements in this category include the following:

- Frequency at which sampling and analysis is performed. For example, the

frequency with which samples of fuel are collected and analyzed for HHV, carbon content, and molecular weight (40 CFR part 98, subpart C).

- Method used for:
  - Determining quantity of feedstock.
  - Determining carbon content.
  - Tracking startups, shutdowns, and malfunctions.
  - Determining quantity of lime and lime byproduct/waste sold (*e.g.*, 40 CFR part 98, subpart S Lime Manufacturing).
  - Estimating municipal waste composition from other or more refined waste categories (*e.g.*, 40 CFR part 98, subpart HH Municipal Solid Waste Landfills).
  - Determining the average carbon content of coke (*e.g.*, for catalytic cracking units and coking units under 40 CFR part 98, subpart Y Petroleum Refineries).
  - Test method used for performance tests (stack emission tests) (*e.g.*, 40 CFR part 98, subpart V Nitric Acid Production).

- Indication of whether the fraction of CH<sub>4</sub> in landfill gas was determined based on measured values or the default value (*e.g.*, 40 CFR part 98, subpart HH Municipal Solid Waste Landfills).

*Rationale for Proposed Determination.* EPA proposes to determine that the data elements in this category are not CBI under CAA section 114(c). EPA finds that the disclosure of the information is not likely to cause substantial harm to the competitive position of the businesses required to report these data elements under Part 98. The data elements in this category consist of general descriptions of methods and the frequency of conducting performance tests or sample analysis for the purposes of determining values used as inputs to equations. The data elements in this category do not reveal the numerical results of such tests. The data elements do not reveal any proprietary information or any other information that would likely provide insight for competitors to gain an advantage. For example,

- Data elements such as methods and frequencies used to determine the carbon content and HHV of various materials do not reveal proprietary information and are not likely to provide insight into the composition of materials used or other sensitive information related to raw materials consumption. The analytical method and frequency of analysis does not reveal any numerical data on material composition and the limited information on material type that is revealed is either already common

knowledge or is reported information that is necessary to determine the GHG emissions. For example, the method used by a titanium dioxide production facility (40 CFR part 98, subpart EE) to determine the carbon content of their petroleum coke could not reveal any proprietary information on the raw materials used since it is common knowledge that petroleum coke is a raw material for the production of titanium dioxide. Similarly, the method used to determine the carbonate content of raw materials used at a glass production facility (40 CFR part 98, subpart N) could not reveal any additional substantive information because detailed data on each raw material must be reported and is used as inputs to the equations. As discussed in the “Inputs to Equations” in Section II.C.4 of this preamble, EPA proposes that inputs to equations are “emission data” and would be publicly released.

- Similarly, the disclosure of measurement dates, locations and methods used for performance tests, locations of flow measurements, or types of meters used does not provide specific operational details about production processes. It also does not provide any numerical information about amounts or composition of products or raw materials consumption.

- The requirement in 40 CFR part 98, subpart Y to provide the basis for the average carbon content of coke is satisfied by identifying the means by which the value was determined. Details regarding the actual measured carbon content will not be disclosed.

As explained above, the information required by the data elements in this category is not the type of information that could provide competitors with business insights and/or competitive advantage over the reporting facility. Further, the information to be reported are general and would not contain details regarding product characteristics, production data (*e.g.*, raw material consumed or quantity of product produced), or operating efficiency (*e.g.*, amount of product produced per unit of raw material consumed). It also does not provide data that could allow competitors to infer market share, production costs, and pricing structures and thus gain a competitive advantage.

Further, information on the test methods and frequency of measurement are already being submitted and made available to the public under other Federal programs. For example, the Acid Rain program requires reporters to report the method used for determining fuel flow over a given period. This is the same type of information as the

requirement in 40 CFR 98.76, which requires ammonia manufacturers to report the method used to determine the quantity of liquid feedstock consumed using a flow meter. The Acid Rain program also requires reporting of the method used to determine fuel gross calorific value, which is identical to the requirement to report the method used to determine HHV required under various subparts of Part 98. As discussed in Section I.F of this preamble, the Acid Rain program currently makes all of the reported data available to the public.

*Summary.* For the reasons stated above, EPA proposes to determine that the data elements in this data category are not CBI under CAA section 114(c). EPA solicits comments on this proposed determination, including whether the data category determination is appropriate as well as whether the appropriate data elements were assigned to this category.

#### 10. The Production/Throughput Data That Are Not Inputs to Emission Equations Category

As explained in Section I.C of this preamble, EPA is proposing to determine that the data elements in this category (none of which are inputs to equations/calculation methods or information otherwise needed to calculate or determine emissions) are not “emission data” under 40 CFR 2.301(a)(2)(i) for purposes of determining the direct emitters’ GHG emissions to be reported under Part 98. For the reasons stated below, EPA proposes to determine that the data elements in this data category are CBI under CAA section 114(c).

*Description of data elements.* Data elements included in this category are production and throughput data that are not used as inputs to calculate annual GHG emissions under Part 98. Each of these data elements is required to be reported under one or more of the direct emitting source category subparts of Part 98. The data elements that must be reported differ for each source category. Provided below are some examples of the data elements in this Category:

- Monthly or annual production quantity of products and byproducts, such as annual quantities of petrochemicals produced (40 CFR part 98, subpart X), annual urea production (40 CFR part 98, subpart G), monthly cement production (40 CFR part 98, subpart H), annual production of ferroalloy products (40 CFR part 98, subpart K), annual glass production (40 CFR part 98, subpart N), synthetic fertilizer production (40 CFR part 98, subparts G and V), and annual amount

of byproducts produced (40 CFR part 98, subpart S).

- Beginning and end of year inventories for byproducts and wastes (40 CFR part 98, subpart S).
- Annual quantity of products sold and not sold (40 CFR part 98, subpart S).
- Product and byproduct characteristics, such as the type of petrochemical and other products produced (40 CFR part 98, subpart X), carbon content of wastes (40 CFR part 98, subpart EE), and the monthly results of chemical composition analysis of lime products and sold (40 CFR part 98, subpart S).

*Rationale for Proposed Determination.* EPA proposes to determine that the data elements in this data category are entitled to confidential treatment because disclosure of these production and throughput data is likely to cause substantial harm to the competitive position of businesses required to report these data elements under Part 98. Disclosing a facility’s production/throughput data could be detrimental to a firm’s competitiveness by revealing confidential process information and operational and marketing strategies. For example:

- The disclosure of annual production quantities of products, used in conjunction with other publicly available data related to capacity, provides insight to a firm’s operational strengths and weaknesses. Competitors could determine at what percent capacity a firm is operating, which can reveal information on the financial and competitive strength of the firm. For example, it could reveal that a manufacturer is operating well below capacity and likely experiencing financial difficulties. Having such information could allow competitors to narrow the competition by adjusting their prices to the further detriment of the reporting company, or to formulate other competitive strategies or corporate acquisition strategies to the detriment of the reporting company. Having information on the percent of capacity at which a firm is operating could also reveal whether a manufacturer has existing capacity available to take on new customers in a growing market or is already at their maximum production and would need to invest capital to expand capacity in order to produce more. Having such information could give competitors insights to make competitive decisions on expanding their own production rates or altering their pricing strategies to the detriment of the reporting company.

- The disclosure of annual production quantities—in particular,

products sold and not sold—provide insight to a firm’s market strength and position. Competitors could use production data to gain a competitive advantage over a firm by better approximating a firm’s market share. For example, annual production data may reveal confidential information related to rapid growth or decline in market share, customer base, and marketing strategies. It might enable firms to tell which of their competitors won a contract/new customer they competed for. This could substantially harm the firm’s competitive position because the information could enable competitors to devise strategies to steal specific customers or even key employees. Changes in the mix of products produced could reveal marketing strategies. In many cases, an accurate estimate of the market position of a firm is difficult to procure, and the disclosure of such information through Part 98 could lead to distortions in the market and could expose reporting parties to disadvantageous market conditions.

- Disclosure of facility-level production/throughput quantities and product compositions could give competitors insight into a firm’s local and regional market conditions and expansion plans, enabling competitors to devise strategies to prevent expansion and to steal market share in specific locations. In general, competitors do not currently have access to actual facility production rates or other information that could allow them to assess competition and market conditions in regional detail, because publicly available financial and economic information is released at the corporate level rather than the facility level.

- Information about production quantities of each product and the product mix of a firm may enable competitors to determine the type of production process used (since different processes can have different characteristic product mixes). Such information is proprietary and public disclosure could substantially harm a firm’s competitive position by revealing sensitive information. This information may also allow competitors to reasonably infer the types and approximate amounts of feedstocks consumed, which may enable competitors to devise strategies to compete for raw material resources. If in addition to production quantities, feedstock consumption data are also released under Part 98, competitors could use the combination of production and feedstock consumption data to expose sensitive information such as operating efficiencies (amount

of product produced per unit of raw material consumed) and allow competitors to infer production costs and pricing structures. Competitors could use such information to steal market share by undercutting a firm's pricing structure.

- Information about the chemical composition of products may allow competitors to reasonably infer the types of feedstocks or raw materials consumed. This may enable competitors to devise strategies to compete for resources and harm the competitive position of reporting entities by otherwise driving up the costs of materials used for production.

*Summary.* For the reasons stated above, EPA proposes to determine that data elements in this category are CBI under CAA section 114. EPA solicits comments on this proposed determination, including whether the data category determination is appropriate as well as whether the appropriate data elements were assigned to this category.

*Release of Aggregated Production Data.* For data elements in this category, EPA could release the data in an aggregated format that would maintain the confidentiality of the data. For example, EPA could release production data aggregated at the national level for all sources in each source category. EPA solicits comments on whether and in what ways aggregated data would be useful to the public, and suggestions for ways in which the data could be aggregated without affecting the confidentiality of the underlying data.

#### 11. The Raw Materials Consumed That Are Not Inputs to Emission Equations Category

As explained in Section I.C of this preamble, EPA is proposing to determine that the data elements in this category (none of which are inputs to equations/calculation methods or information otherwise needed to calculate or determine emissions) are not "emission data" under 40 CFR 2.301(a)(2)(i) for purposes of determining the direct emitters' GHG emissions to be reported under Part 98. For the reasons stated below, EPA also proposes to determine that the data elements in this data category are CBI under CAA section 114(c).

*Description of data elements.* Data elements included in this category are the amount and composition of raw materials (excluding fuel) consumed as inputs to the production process or received for other uses on site. This category does not include raw materials consumed that are inputs to the equations provided in Part 98 for

calculating annual GHG emissions. Each of the data elements in this category is required to be reported under one or more subparts of Part 98. Provided below are some examples of the data elements in this category:

- Annual quantity of feedstock consumed (40 CFR part 98, subpart G).
- Annual quantity of carbonate based-raw material charged (40 CFR part 98, subpart N).
- Annual mass of reactants fed into a process (40 CFR part 98, subpart O).
- Names of carbon-containing feedstocks (40 CFR part 98, subpart X).
- Annual arithmetic average percent inorganic carbon in phosphate rock from monthly records (40 CFR part 98, subpart Z).
- Annual steam purchases (40 CFR part 98, subpart AA).

#### *Rationale for Proposed*

*Determination.* EPA proposes to determine that the data elements in this data category are CBI under CAA section 114(c) because the disclosure of these data could cause substantial harm to the competitive position of businesses reporting these data. Releasing these data would likely be detrimental to the operational and marketing strategies of the reporting facilities. For example:

- The disclosure of the amount of feedstocks consumed and reactants fed into particular processes at a facility could provide insight into a facility's operational strengths and weaknesses. Competitors could determine at what percent capacity a facility is operating sensitive details such as detailed manufacturing processes and product chemistries.
- Information about feedstock quantities and composition could expose a firm's competitive and marketing strategies. For example, a record showing significant consumption of a particular raw material resource may indicate to competitors that a firm is seeking entry into a new market, enabling the competitors to devise disruptive strategies.

- Information about feedstock quantities and composition could reveal a firm's suppliers and sourcing strategies. Among other things, competitors could use this information to create new strategies to compete for raw material resources and to obtain similar production cost structures.

- Disclosure of facility-level (and in some cases the unit or process level) raw material consumption and composition data could give competitors insight into a firm's local and regional market conditions, enabling competitors to devise strategies to steal market share in specific

locations. In general, competitors do not currently have access to actual facility or unit-level raw material information that could allow them to assess competition and market conditions in regional detail, because publicly available financial and economic information is released at the corporate level rather than the facility level.

- Information about feedstock consumption may enable competitors to determine the type of manufacturing processes used since processes vary by raw material consumption characteristics. This information may also allow competitors to reasonably infer production quantities of each product and the product mix of a facility. If in addition to raw materials consumption, production quantities data are also released under Part 98, competitors could use the combination of production and feedstock consumption data to expose sensitive information such as operating efficiencies (amount of product produced per unit of raw material consumed) and allow competitors to infer production costs and pricing structures. For example, disclosing the annual amount of steam purchases reported under 40 CFR part 98, subpart AA, in combination with other production data, may reveal a facility's operating efficiency. Competitors could use such information to steal market share by undercutting a firm's pricing structure.

*Summary.* For the reasons stated above, EPA proposes to determine that data elements in this category are CBI under CAA section 114. EPA solicits comments on this proposed determination, including whether the data category determination is appropriate as well as whether the appropriate data elements were assigned to this category.

#### 12. The Process-Specific and Vendor Data Submitted in BMM Extension Requests Category

As explained in Section I.C of this preamble, EPA is proposing to determine that the data elements in this category (none of which are inputs to equations/calculation methods or information otherwise needed to calculate or determine emissions) are not "emission data" under 40 CFR 2.301(a)(2)(i) for purposes of determining the direct emitters' GHG emissions to be reported under Part 98. For the reasons stated below, EPA also proposes to determine that the data elements in this data category are CBI under CAA section 114(c).

*Description of data elements.* The data elements in this category include



certain information submitted by reporters in petitions to extend the use of BAMB. These data elements are submitted once, as part of the petition, and are not submitted on a recurring basis in the annual GHG reports. Part 98 allowed use of BAMB for the first three months of 2010. A petition process was established in 40 CFR 98.3(d)(2) allowing facilities to submit, for EPA approval, requests to extend the use of BAMB beyond March 31, 2010. Similar allowances to submit BAMB requests are included in proposed rule amendments (see 75 FR 18652, April 12, 2010 and 75 FR 18576, April 12, 2010). Much of the information submitted in BAMB requests, such as facility identification and location information and planned dates by which full monitoring equipment will be installed are classified in other data categories. However, some of the petitions received contain detailed process design information, vendor and cost information that are not technically similar to other data collected through Part 98. Provided below are some examples of the data elements in this Category:

- Location where each monitor will be installed. Process diagrams may be included to show specific locations.
- Information on alternative monitoring equipment suppliers and delivery dates investigated.
- Supporting documentation demonstrating that it is not possible to isolate the equipment and install monitoring instruments without a full process unit shutdown.
- Information on process unit shutdowns including frequency and dates of previous and planned shutdowns.

*Rationale for Proposed Determination.* EPA proposes to determine that the data elements in this data category are CBI under CAA section 114(c) because the disclosure of these process-specific and vendor data submitted with BAMB extension requests is likely to cause substantial harm to the competitive position of businesses submitting these requests under Part 98. Disclosure could allow competitors to gain insight into the specific processes used by the facility that they could use to gain a competitive advantage. For example:

- The disclosure of process design diagrams submitted to show monitor location or to show that it is not possible to install monitoring equipment without a process unit shutdown could allow competitors to determine the type of process, specific equipment, and sequence of process steps used in the reporter's

manufacturing process. Such information is often proprietary, and public disclosure could reveal trade secret or sensitive information and substantially harm a firm's competitive position. The process configuration diagrams could also be used by a competitor to gain insight into whether the facility has multiple or interconnected lines to produce products, likely bottlenecks, potential spare capacity, and flexibility to produce alternative products. This could provide competitors with insight into a petitioner's operational strengths and weaknesses. Such process-specific information could be used to infer information on production costs, pricing structures, and the ability of a firm to respond to changing market conditions. Having such information could give competitors insights to make competitive decisions on expanding their own production rates or altering their pricing strategies to the detriment of the reporting company.

- Information provided in the petition about their communications with alternative suppliers, delivery dates, and backorder notices could reveal a variety of information that the facility submitting the BAMB requests and their suppliers consider sensitive. For example, documentation could include information on the exact equipment being ordered and/or price quotes. This information could be used by competitors of the reporter submitting the petition to infer the costs the reporter is paying to comply with mandatory reporting rule, which is sensitive information. It could also be used by competitors of the firms supplying monitoring equipment quotes to undercut prices or offer better delivery schedules and gain a competitive advantage. Documentation pertaining to the investigation and ordering of monitoring equipment could also include specific information about the process stream characteristics in the process lines being monitored. Such information might be provided to a supplier to be sure the monitoring equipment could withstand the process conditions (e.g., corrosive chemicals, temperatures) that the monitoring equipment will encounter. This information could allow competitors to gain insight into the production processes used by a facility and assist them in formulating competitive strategies as described in the preceding paragraph.

- Information and frequency and schedule for process unit shutdowns could give competitors an understanding of the amount of process downtime and insight into process

efficiency. It could also be used to infer if process modifications are being made (e.g., if there is a long shutdown). Knowledge about periods when a process unit will be shutdown and potentially have trouble supplying demand for a product could allow competitors to develop strategies to steal customers during such periods.

*Summary.* For the reasons stated above, EPA proposes to determine that data elements in this category are CBI under CAA section 114. EPA solicits comments on this proposed determination, including whether the data category determination is appropriate as well as whether the appropriate data elements were assigned to this category.

#### *D. Suppliers*

Part 98 also requires reporting from suppliers of products the use of which would or could release GHG emissions. Specifically, suppliers of fossil fuel products or industrial gases listed in 40 CFR 98.2(a)(4) are required to report. The data reported under the supplier source categories differ from those required to be reported under the direct emitting source categories discussed in section II.C. of this preamble. Instead of reporting direct emissions to the atmosphere from their facilities and related information, suppliers report the quantities of fuel products or industrial gases they supply into the economy or export to another country, and the estimated GHG emissions that would or could ultimately be released when the fuels they supply are combusted or the industrial gases they supply are released.

This section of the preamble covers all of the data elements required to be reported by the supplier source categories (subparts). Some facilities that are producers of fuels or industrial gases must report under both the direct emitter source categories and supplier source categories. For example, petroleum refineries must report the data elements required by 40 CFR part 98, subpart Y (Petroleum Refineries) and 40 CFR part 98, subpart MM (Suppliers of Petroleum Products). The data elements reported under direct emitter subparts (e.g., 40 CFR part 98, subpart Y) are discussed in Section II.C of this preamble. In general, the data reported under the direct emitter and supplier categories are different. For example, 40 CFR part 98, subpart Y does not require reporting of product-specific production quantities and compositions that are reported under 40 CFR part 98, subpart MM. In a few cases, facilities that are subject to both a direct emitter subpart and a supplier subpart are required to

submit the same information under both subparts. For example, the proposed direct emitter 40 CFR part 98, subpart L (Fluorinated Gas Production) (75 FR 18652, April 12, 2010) and the supplier 40 CFR part 98, subpart OO (Suppliers of Industrial GHGs) both require facilities subject to these subparts to report the mass of each fluorinated gas produced by each process. In these cases, we assigned each data element reported under 40 CFR part 98, subpart L to the appropriate direct emitter data category and each data element reported under 40 CFR part 98, subpart OO to the appropriate supplier data category. However, the proposed determination that the data element is CBI is the same for the data element reported under the proposed direct emitter subpart L and the supplier 40 CFR part 98, subpart OO. In all instances where the same information is reported under both a direct emitter and a supplier source category, the proposed confidentiality determination is the same for both elements.

This section also covers certain data elements from proposed 40 CFR part 98, subpart RR (Injection and Geological Sequestration of CO<sub>2</sub>) that are related to the injection and sequestration of CO<sub>2</sub>. All other data elements for proposed 40 CFR part 98, subpart RR are covered in Section II.C of this preamble because they relate to direct emissions from surface equipment and emissions from the leakage of CO<sub>2</sub> from geologic sequestration.

As previously mentioned, EPA has grouped the supplier data elements in Part 98 into 11 data categories and proposes to determine, by category, whether the data elements are entitled to confidential treatment. As discussed in Section II.C of this preamble, EPA proposes to determine that none of the categories qualify as emission data. This section describes the data elements within each of the 11 supplier data categories and EPA's proposed determination as to whether the data elements in each supplier category are CBI under CAA section 114(c).

#### 1. Data Categories and Confidentiality Analysis

The 11 data categories for suppliers are as follows and are further described in Sections II.D.2 through II.D.12 of this preamble:

- GHGs reported.
- Production/throughput quantities and composition.
- Identification information.
- Unit/process operating characteristics.

- Calculation, test, and calibration methods.

- Data elements reported for periods of missing data that are not related to production/throughput or materials received.

- Emission factors.
- Amount and composition of materials received.
- Data elements reported for periods of missing data that are related to production/throughput or materials received.
- Supplier customer and vendor information.
- Process-specific and vendor data submitted in BAMB extension requests.

Sections II.D.2 through II.D.12 of this preamble describe EPA's proposed CBI determination and rationale for each of the 11 supplier data categories. A list of all the data elements in each category, by subpart, is provided in a memorandum (*see* Memorandum "Data Category Assignments for Reporting Elements" in Docket EPA-HQ-OAR-2009-0924 and the Web site (<http://www.epa.gov/climatechange/emissions/ghgrulemaking.html>).

#### 2. The Greenhouse Gases Reported Category

EPA proposes to determine that certain supplier GHG quantity data elements at the facility level (or importer/exporter level or LDC level for the subparts that require those entities to report) are not CBI under CAA section 114(c), but that most of the product-specific GHG quantity data are CBI. Some data elements in this category do not qualify as CBI because they are already publicly available. For reported GHG quantity data that are determined to be CBI, EPA intends to release such data only at aggregated levels.

*Description of the Data Elements.* Under Part 98, suppliers of fuel products, industrial GHGs, and CO<sub>2</sub> are required to report the annual quantity of each GHG that would or could be emitted from the complete combustion, oxidation, or use (*i.e.*, 100 percent release) of the products they supply to the economy in a calendar year. These data elements are required under 40 CFR part 98, subpart A and the subparts of Part 98 that are applicable to suppliers. This data category also includes CO<sub>2</sub> data reported under proposed 40 CFR part 98, subpart RR (Injection and Sequestration of CO<sub>2</sub>) (75 FR 18576, April 12, 2010), including the quantities of CO<sub>2</sub> received, produced, and injected for geologic sequestration

facilities. Examples of the data elements in this category include the following:

- Total quantity of CO<sub>2</sub>e (metric tons) aggregated for all GHGs from all applicable supply categories for the calendar year. This is the CO<sub>2</sub>e that would or could result from complete combustion or use of fuel products or industrial GHGs supplied in a calendar year (40 CFR part 98, subpart A).

- Quantity of each GHG from each applicable supply category (40 CFR part 98, subpart A).

- CO<sub>2</sub> quantities that would be emitted from the complete combustion of each coal-based liquid fuel, each petroleum product, or each natural gas liquid supplied (40 CFR part 98, subparts LL, MM, NN) in a calendar year. Examples of individual products would be the different types and grades of gasoline, distillate fuel oils, petrochemical feedstocks, and other products supplied by a refinery as listed in Table MM-1 of 40 CFR part 98, subpart MM.

- CO<sub>2</sub> quantities that would be emitted from complete combustion of each coal-based liquid fuel or petroleum product imported and exported (40 CFR part 98, subparts LL and MM) in a calendar year.

- CO<sub>2</sub> quantities associated with annual volumes of natural gas received by LDCs, put into storage, withdrawn from the storage system, and delivered to transmission pipelines or end users (40 CFR part 98, subpart NN).

- Mass of each fluorinated gas and N<sub>2</sub>O produced and destroyed by industrial GHG producers; mass of each industrial GHG imported or exported (40 CFR part 98, subpart OO).

- Mass of each fluorinated gas imported or exported in pre-charged equipment or closed-cell foams (proposed 40 CFR part 98, subpart QQ, 75 FR 18652, April 12, 2010).

- Mass of CO<sub>2</sub> imported, exported, or supplied by a producer (40 CFR part 98, subpart PP).

- Mass of CO<sub>2</sub> received, produced and injected for geologic sequestration (proposed 40 CFR part 98, subpart RR, 75 FR 18576, April 12, 2010).

*Rationale for the Proposed Determination.* Table 4 of this preamble describes the data elements in the supplier category subparts in Part 98 that fall in the Greenhouse Gas Reported Category. Table 4 also indicates EPA's proposed determination of the confidential status of such data.

TABLE 4—PROPOSED CBI DETERMINATION AND LEVEL OF RELEASE FOR GREENHOUSE GASES REPORTED

Source category (part 98 subpart)	Data elements	Are these data CBI?	If CBI, intended aggregated level of release <sup>a</sup>
Suppliers of Coal-Based Liquid Fuels and Petroleum Products (subparts LL and MM): Producers.	Total facility-level CO <sub>2</sub> e from subparts LL–PP <sup>b</sup> ; Facility-level CO <sub>2</sub> from each subpart <sup>c</sup> .	No.	Release national aggregation of CO <sub>2</sub> by product <sup>d</sup> (e.g., national CO <sub>2</sub> from No. 6 fuel oil aggregated for all facilities in subpart MM that supply No. 6 fuel oil).
	Product-specific CO <sub>2</sub> .....	Yes .....	
Suppliers of Coal-Based Liquids and Petroleum Products (subparts LL and MM): Importers.	Total importer level CO <sub>2</sub> e from subparts LL–PP <sup>b</sup> ; Importer level CO <sub>2</sub> from each subpart <sup>c</sup> ; Product-specific CO <sub>2</sub> .	No.	
Suppliers of Coal-Based Liquids and Petroleum Products (subparts LL and MM): Exporters.	Total exporter level CO <sub>2</sub> e from subparts LL–PP; Exporter level CO <sub>2</sub> from each subpart <sup>c</sup> .	No.	Release national aggregation of CO <sub>2</sub> by product (e.g., national CO <sub>2</sub> from No. 6 fuel oil aggregated for all companies that export No. 6 fuel oil).
	Product-specific CO <sub>2</sub> .....	Yes .....	
Suppliers of Natural Gas and NGLs (subpart NN): LDCs.	Total LDC-level CO <sub>2</sub> e from subparts LL through PP; LDC-level CO <sub>2</sub> from subpart NN <sup>c</sup> ; Product-specific CO <sub>2</sub> .	No.	
Suppliers of Natural Gas and NGLs (subpart NN): Fractionators.	Total Facility-level CO <sub>2</sub> e from subparts LL through PP; Facility-level CO <sub>2</sub> from subpart NN <sup>c</sup> .	No.	Release national aggregation of CO <sub>2</sub> by product (e.g., national CO <sub>2</sub> from propane aggregated for all facilities that supply propane).
	Product-specific CO <sub>2</sub> .....	Yes .....	
Suppliers of Industrial GHGs (subpart OO): Producers.	Total facility-level CO <sub>2</sub> e from subparts LL through PP <sup>b</sup> .	No. <sup>e</sup>	Release national aggregation, by GHG and product aggregated for all facilities covered by subpart <sup>f</sup> (e.g., national N <sub>2</sub> O quantity from all facilities producing N <sub>2</sub> O).
	Facility-level GHG quantities, by gas, from subpart OO; Product-specific GHG quantities.	Yes .....	
Suppliers of Industrial GHGs (subpart OO): Importers and Exporters.	Total importer/exporter level CO <sub>2</sub> e from subparts LL through PP.	No.	Release national aggregation, by GHG and product aggregated, for all facilities covered by subpart OO (e.g., national N <sub>2</sub> O quantity from all facilities importing or exporting N <sub>2</sub> O).
	Importer/exporter level GHG quantities, by gas, from subpart OO; Product-specific GHG quantities.	Yes .....	
Suppliers of CO <sub>2</sub> (subpart PP): Producers	Annual mass or volume of CO <sub>2</sub> by each flow meter.	No.	
	Total facility-level CO <sub>2</sub> e from subparts LL through PP <sup>b</sup> .	No.	
Suppliers of CO <sub>2</sub> (subpart PP): Importers and Exporters.	Total importer/exporter level CO <sub>2</sub> e from subparts LL through PP; Facility-level CO <sub>2</sub> from subpart PP.	No.	
	Annual mass or volume of CO <sub>2</sub> injected measured by each flow meter.	No.	
Injection and Sequestration of CO <sub>2</sub> (proposed subpart RR, 75 FR 18576, April 12, 2010).	Annual mass or volume of CO <sub>2</sub> transferred onsite or produced measured by flow meter.	Yes .....	Aggregated data released at the facility-level.
	Facility-level data on CO <sub>2</sub> received, produced, and injected.	No.	
	Total importer/exporter level CO <sub>2</sub> e from subparts LL through PP.	No.	
Importers and Exporters of Fluorinated Greenhouse Gases Contained in Pre-charged Equipment or Closed-cell Foams (proposed subpart QQ) (75 FR 18652, April 12, 2010).	Total importer/exporter level GHG quantities, by gas, from subpart QQ.	Yes .....	Release national aggregation, by GHG for all facilities covered by subpart QQ.

<sup>a</sup> EPA could release supplier data aggregated in a number of different ways without revealing confidential data for individual suppliers. EPA solicits suggestions on alternative approaches to aggregating data elements in this category and comments on the extent to which aggregated data are useful to the public.

<sup>b</sup> This data element, reported under 40 CFR part 98, subpart A, represents the aggregation of CO<sub>2</sub>e from all supplier source categories at the facility. For example, if a refinery supplies petrochemical products (40 CFR part 98, subpart MM) and is also a CO<sub>2</sub> supplier (40 CFR part 98, subpart PP) the facility-level CO<sub>2</sub>e would represent the CO<sub>2</sub>e for both activities combined.

<sup>c</sup> This data element, reported under 40 CFR part 98, subpart A, represents an aggregation of CO<sub>2</sub> (by source category) from multiple individual products the reporter supplies.

<sup>d</sup>National aggregation would be released only if there are three or more reporters.

<sup>e</sup>In cases where a facility produces a single product, this data element will be held as CBI.

<sup>f</sup>For 40 CFR part 98, subpart 00, national aggregation would be released only for products where there are three or more reporters.

As shown in Table 4 of this preamble, EPA proposes to determine that the reported facility-level or importer/exporter-level CO<sub>2</sub>e quantities, and the facility-level or importer/exporter-level CO<sub>2</sub> quantity by supply category are not CBI because the release of these data elements is unlikely to cause substantial harm to suppliers reporting these data elements. These data elements represent the aggregated emissions from a mixture of products supplied to the economy by each supplier. With the exception of some industrial GHGs suppliers described below, fuel and industrial GHG suppliers produce, import, or export a number of different products for sale or delivery. The disclosure of these suppliers' facility-level CO<sub>2</sub>e and CO<sub>2</sub> could not be used to back-calculate and reveal annual production rates of particular products or industrial gases or other sensitive information. Therefore, release of these data is not likely to harm the competitive positions and market strategies of reporting entities.

As noted in the footnote in Table 4 of this preamble, in cases where suppliers of industrial GHGs produce a single product, GHG quantities would be considered CBI because they could be used to back-calculate production rates of particular products or other sensitive information.

For suppliers (other than importers of coal-based liquid fuels and petroleum products, LDCs, and suppliers of CO<sub>2</sub>), EPA proposes to determine as CBI reported facility and importer/exporter-level product-specific GHG data. Facility-level GHG quantities associated with each individual fuel product a petroleum refiner supplied (*e.g.*, each type or grade of gasoline, fuel oil, or other products supplied by a refinery) would be considered CBI. Similarly, we would consider as CBI the GHG quantities for each individual gas supplied by a supplier of industrial GHGs. For CO<sub>2</sub> injection and sequestration facilities, facility and flow meter-specific data on the amount of CO<sub>2</sub> received by or produced at a facility would be considered CBI. EPA finds that disclosure of these product-specific GHG data described above could likely cause substantial harm to the competitive position of the suppliers required to report these data elements under Part 98. For example, facility GHG information at the product level could be used to back-calculate a facility's or company's production rates,

which EPA has determined are entitled to confidential treatment. See the supplier "Production/Throughput Quantity and Composition" category discussion in Section II.D.3 of this preamble for the complete explanation of why production data are CBI and the types of harm likely to be caused by releasing data that reveal the amount of product a facility or company produces and supplies.

For fuels (40 CFR part 98, subparts LL, MM and NN), GHG emissions are closely related to the carbon content of the fuel and are generally calculated as an emission factor times the amount of a fuel product produced. 40 CFR part 98, subparts MM and NN provide default emission factors, so if the GHG associated with a particular fuel product is released, competitors could calculate the amount of fuel product a facility supplies. For industrial GHG producers, each GHG is a product, so release of GHG data by product equates to direct release of the quantity of each product supplied.

As mentioned earlier in this section, there are four product-specific GHG data, disclosed at the reported level, that are not considered CBI. The reasons for these exceptions are as follows:

1. EPA does not consider CO<sub>2</sub> quantities that importers of petroleum products and coal-based liquids must report by product at the importer-level to be CBI. The EIA already releases the quantity of each petroleum product and coal-based liquids imported. Therefore, these product quantities are already in the public domain.

2. EPA does not consider the CO<sub>2</sub> quantities to be reported by product at the individual LDC level to be CBI. The EIA already releases the quantities of products distributed by LDCs. LDCs are defined in 40 CFR part 98, subpart NN as entities that are regulated as separate operating companies by State public utility commissions or operated as independent municipally-owned distribution systems. As such, LDC data related to rates and distribution quantities are already in the public domain.

3. EPA does not consider facility-level CO<sub>2</sub> quantity by product for suppliers of CO<sub>2</sub> to be CBI because much of this data is already available in the public domain. For this category, the CO<sub>2</sub> quantity reported by each supplier is the same as their CO<sub>2</sub> production (or import or export). See the supplier "Production/Throughput Quantities and Composition" category in Section II.D.3 of this preamble for the explanation of why release of CO<sub>2</sub> supplier product quantities is not likely to cause competitive harm and is not entitled to confidential treatment.

4. EPA does not consider facility-level CO<sub>2</sub> injection data by CO<sub>2</sub> injection and geologic sequestration facilities to be CBI because

much of this data is already available in the public domain. For this category, the CO<sub>2</sub> quantity injected by each facility is the same as their CO<sub>2</sub> throughput data. See the supplier "Production/Throughput Quantities and Composition" category in Section II.D.3 of this preamble for the explanation of why release of CO<sub>2</sub> injection quantities is not likely to cause competitive harm and is not entitled to confidential treatment.

While EPA proposes to determine product-specific GHG data at the facility and importer/exporter level to be CBI (other than the four exceptions described above), EPA proposes to aggregate these GHG data, by gas, for each product and release the aggregated data by source category as shown in Table 4 of this preamble. For example, EPA would release the CO<sub>2</sub> associated with the total amount of each grade of gasoline, fuel oil, *etc.* supplied by all producers of petroleum products combined. As another example, EPA would also release the total amount of each GHG supplied in the U.S. by all suppliers of industrial gases in cases where the gas is produced at three or more facilities. Release of the aggregated data, which disclose the GHG associated with total national supply of a product, is not likely to cause substantial harm to the competitive position of businesses because competitors could not determine the products or quantities produced by an individual facility or corporation from this national level of data.

EPA solicits comments on the extent to which aggregated data are useful to the public. EPA also solicits comments on the aggregation approach described above or suggestions on alternative approaches to aggregating data for this data category.

*Summary.* EPA proposes to determine that CO<sub>2</sub>e quantities reported by suppliers of petroleum products, coal-based liquids, natural gas, natural gas liquids, industrial GHGs, and CO<sub>2</sub> are not CBI under CAA section 114(c). EPA proposes to determine that the CO<sub>2</sub> quantities reported at the facility or importer/exporter-level are CBI, with four exceptions described above (which are determined to be non-CBI). EPA proposes to determine that CO<sub>2</sub> quantities reported by importers of petroleum products and coal-based liquids, CO<sub>2</sub> quantities reported by LDCs, and CO<sub>2</sub> quantities reported by suppliers CO<sub>2</sub> are not CBI. EPA solicits comments on the proposed determinations, including whether the data category determinations are

appropriate as well as whether the appropriate data elements were assigned to this category.

3. The Production/Throughput Quantities and Composition Category

EPA proposes to determine to be CBI under CAA section 114(c) facility-level production/throughput quantity and composition data for most suppliers except for the following: (1) Facility-level or importer/exporter-level data for suppliers of CO<sub>2</sub>, (2) natural gas LDCs, (3) and importers of petroleum products. Some data elements in this category do not qualify as CBI because they are already publicly available. EPA proposes to determine that the data elements listed above are not CBI.

*Description of data elements.* The GHG Reporting Rule requires suppliers to report production and throughput quantities and product compositions (including products produced, imported, or exported). Suppliers are required to report production/throughput data at the product-specific level (e.g., suppliers of petroleum products report the annual quantity of each petroleum product imported, exported, or leaving the refinery). Importers and exporters report the amount of each product imported and exported. Producers report the amount produced, sold, or delivered. Composition refers to information about the product make-up such as the fraction of the product that is derived from fossil fuels or the molecular components of a product, such as carbon share (the percent of total mass that carbon represents in a product). The data elements included in this category vary by supplier source category. The following list provides examples of the types of data included in this category.

Under 40 CFR part 98, subpart LL, suppliers of coal-to-liquids (CTLs) products must report:

- Annual quantity of each product listed in Table MM-1 of 40 CFR part 98, subpart MM that leaves the CTL facility.

- Percent of the volume of each product that is petroleum-based. Under 40 CFR part 98, subpart MM, suppliers of petroleum products must report:

- Annual quantity of each petroleum product and natural gas liquid (NGL) that leaves the refinery.
- Annual quantity of each product and NGL imported or exported.
- Percent of the volume of each petroleum product or NGL that is petroleum-based (when petroleum-based products are blended with biomass based products).
- Carbon share and density of products produced, imported, or exported.

Under 40 CFR part 98, subpart NN, suppliers of natural gas and NGLs (NGL fractionators and LDCs) must report:

- Annual quantity of ethane, propane, normal butane, isobutane, and “pentanes plus” products they supply.
- Annual quantity of propane that the NGL fractionator odorizes at the facility and delivers to others.

Under 40 CFR part 98, subpart OO, suppliers of industrial GHGs must report:

- Annual quantity of nitrous oxide or each fluorinated GHG that was produced.
- Throughput information including the total mass of the reactants, by-products, and wastes permanently removed from each fluorinated GHG or nitrous oxide production process.
- Annual quantity of nitrous oxide or each fluorinated GHG that was sold or transferred for transformation and destruction.
- Annual mass of nitrous oxide or each fluorinated GHG that was imported or exported in bulk.
- Commodity code of the fluorinated GHGs or nitrous oxide shipped.

Under proposed 40 CFR part 98, subpart QQ (75 FR 18652, April 12, 2010), suppliers, importers and exporters of pre-charged equipment and closed cell-foam products must report:

- Quantity of the fluorinated GHG contained in the foam in each appliance imported or exported.
- Number of each type of appliance containing closed-cell foam imported or exported.
- Density of the fluorinated GHG contained in closed cell-foams that are not inside of appliances.
- Quantity of foam imported or exported for each type of closed-cell foam.

Under 40 CFR part 98, subpart PP, suppliers of CO<sub>2</sub> must report:

- Annual mass of CO<sub>2</sub> imported or exported.
- Aggregated annual quantity of CO<sub>2</sub> that is transferred off site for various end use applications (e.g., greenhouse uses for plant growth, research and development).

Under proposed 40 CFR part 98, subpart RR, facilities must report:

- Annual mass of CO<sub>2</sub> received.
- Annual mass of CO<sub>2</sub> produced onsite.
- Annual CO<sub>2</sub> injected.
- Annual CO<sub>2</sub> sequestered in subsurface geologic formations.
- Cumulative mass of CO<sub>2</sub> reported as sequestered in the subsurface geologic formation in all years since the reporter began reporting.

*Rationale for Proposed Determination.* EPA proposes to determine that the data elements in the supplier production/throughput quantity and composition data category, with the exception of certain data elements that are already publicly available, are CBI under CAA section 114(c). Table 5 of this preamble shows the levels at which supplier production/throughput data are reported under each subpart, which data would be considered CBI, and which data are already publicly available and therefore not considered CBI. For data that EPA proposes to consider CBI, the table indicates the level of aggregation at which EPA would release the data.

TABLE 5—PROPOSED CONFIDENTIALITY DETERMINATION AND LEVEL OF RELEASE FOR SUPPLIER PRODUCTION AND THROUGHPUT DATA

Source category (part 98 subpart)	Level reported	Are these data CBI <sup>a</sup> (Y/N)?	If CBI, proposed aggregated level of release <sup>b</sup>
Suppliers of Coal-Based Liquid Fuels and Petroleum Products (Subparts LL and MM): Producers.	Facility level, by product .....	Yes .....	Release national aggregation, by product. <sup>c,d</sup>
Suppliers of Coal-Based Liquids and Petroleum Products (Subparts LL and MM): Importers.	Importer level, by product .....	No.	
Suppliers of Coal-Based Liquids and Petroleum Products (Subparts LL and MM): Exporters.	Exporter level, by product .....	Yes .....	Release national aggregation, by product.

TABLE 5—PROPOSED CONFIDENTIALITY DETERMINATION AND LEVEL OF RELEASE FOR SUPPLIER PRODUCTION AND THROUGHPUT DATA—Continued

Source category (part 98 subpart)	Level reported	Are these data CBI <sup>a</sup> (Y/N)?	If CBI, proposed aggregated level of release <sup>b</sup>
Suppliers of Natural Gas and NGLs (Subpart NN): LDCs.	LDC level .....	No.	
Suppliers of Natural Gas and NGLs (Subpart NN): Fractionators.	NGL Fractionator level .....	Yes .....	Release national aggregation, by product.
Suppliers of Industrial GHGs (Subpart OO): Producers.	Facility level, by fluorinated GHG .....	Yes .....	Release national aggregation, by fluorinated GHG. <sup>e</sup>
	Facility level throughput <sup>f</sup> information, by process.	Yes .....	N/A. <sup>g</sup>
Suppliers of Industrial GHGs (Subpart OO): Importers and Exporters.	Importer and Exporter level, by fluorinated GHG.	Yes .....	Release national aggregation, by fluorinated GHG.
Suppliers of CO <sub>2</sub> (Subpart PP): Producers	Facility level total CO <sub>2</sub> production .....	No.	
	CO <sub>2</sub> mass or volume measured by flow meter.	No.	
	Facility level annually aggregated production information, by end use application.	No.	
Suppliers of CO <sub>2</sub> (PP): Importers and Exporters.	Importer and Exporter level total CO <sub>2</sub> imported/exported.	No.	
	CO <sub>2</sub> mass or volume measured by flow meter, scales and weigh bills.	Yes .....	Release Importer/exporter level aggregation.
	Importer and Exporter level annually aggregated production information, by end use application.	No.	
Importers and Exporters of Fluorinated Greenhouse Gases Contained in Pre-charged Equipment or Closed-cell Foams (proposed subpart QQ, 75 FR 18652, April 10, 2010).	Importer and Exporter level production information, by pre-charged equipment, closed-cell foam, and appliance containing closed-cell foam.	Yes .....	Release national aggregation, by pre-charged equipment, closed-cell foam, and appliance containing closed-cell foam.
Injection and Geological Sequestration of CO <sub>2</sub> (Proposed Subpart RR, 75 FR 18576, April 12, 2010).	Annual mass or volume of CO <sub>2</sub> injected measured by each flow meter.	No.	
	Annual mass or volume of CO <sub>2</sub> transferred onsite and produced measured by each flow meter.	Yes .....	Aggregated data released at the facility-level.
	Facility-level data on CO <sub>2</sub> received, produced, and injected.	No.	

<sup>a</sup> Production/throughput data are reported by product.

<sup>b</sup> EPA could release supplier data aggregated in a number of different ways without revealing confidential data. EPA solicits suggestions on alternative approaches to aggregating data for this data category and comments on the extent to which aggregated data are useful to the public.

<sup>c</sup> Product-specific data submitted by individual reporters is entitled to confidential treatment. The data will be aggregated and released only at the national level, by source category and product (e.g., national production of No. 6 fuel oil aggregated for all facilities in 40 CFR part 98, subpart MM that supply No. 6 fuel oil).

<sup>d</sup> For 40 CFR part 98, subpart LL, national aggregation will be released only if there are three or more reporters.

<sup>e</sup> For 40 CFR part 98, subpart OO, national aggregation would be released only for products where there are three or more reporters.

<sup>f</sup> Throughput information includes the total mass of the reactants, by-products, and wastes permanently removed from each fluorinated GHG or nitrous oxide production process.

<sup>g</sup> Not applicable. Given the diversity of by-products, wastes, and reactants removed from different processes and facilities, it is not feasible to provide a national aggregation by product.

As shown in Table 5 of this preamble, EPA proposes to determine to be CBI reported facility level and importer/exporter level production and throughput quantity and composition data, and release it only in aggregated form, for the following reporters:

- Producers of CTLs and petroleum products (40 CFR part 98, subparts LL and MM).
- Exporters of CTLs and petroleum products (40 CFR part 98, subparts LL and MM).
- NGL fractionators (40 CFR part 98, subpart NN).
- Producers of industrial GHGs (40 CFR part 98, subpart OO).

- Importers and exporters of industrial GHGs (40 CFR part 98, subpart OO).

- Importers and exporters of fluorinated greenhouse gases contained in pre-charged equipment or closed-cell foams (proposed 40 CFR part 98, subpart QQ, 75 FR 18652, April 12, 2010).

Disclosure of these data would likely cause substantial harm to the competitive positions of businesses reporting these data. Releasing these data could be detrimental to the operational and marketing strategies of the reporting parties. For example:

- The disclosure of annual production quantities of products (i.e., quantities sold and/or delivered), used in conjunction with other publicly available data related to capacity (e.g., EIA publishes facility-level capacity data for refineries), could provide insight to a firm's operational strengths and weaknesses. Competitors could determine at what percent capacity a firm is operating, which can reveal information on the financial and competitive strength of the firm. For example, it could reveal that a manufacturer is operating well below capacity and likely experiencing financial difficulties. Having such information could allow competitors to narrow the competition by adjusting their prices to the further detriment of the reporting company, or to formulate other competitive strategies or

corporate acquisition strategies to the detriment of the reporting company. Having information on the percent of capacity at which a firm is operating could also reveal whether a manufacturer has existing capacity available to take on new customers in a growing market or is already at their maximum production and would need to invest capital to expand capacity in order to produce more. Having such information could give competitors insights to make competitive decisions on expanding their own production rates or altering their pricing strategies to the detriment of the reporting company.

- The disclosure of annual production quantities and compositions—in particular, products sold or delivered—provides insight into a firm's market strength and position. Competitors could use production quantity data (*i.e.*, quantities sold and/or delivered) to gain a competitive advantage over a firm by better approximating a firm's market share. For example, annual production data may reveal whether a firm is experiencing rapid growth or decline in market share. The data may also reveal the reporting supplier's customer base and marketing strategies. It might enable firms to determine which of their competitors won a contract/new customer for which they competed. This could substantially harm the firm's competitive position because the information could enable competitors to devise strategies to steal specific customers or even key employees. Changes in the mix of products produced could reveal marketing strategies. In many cases, an accurate estimate of the market position of a firm is difficult to procure, and the disclosure of such information through the GHG Reporting Rule could harm the competitive position of reporting parties.

- Disclosure of facility-level production/throughput quantities and product compositions could give competitors insight into a firm's local and regional market conditions and expansion plans, enabling competitors to devise strategies to prevent expansion and to steal market share in specific locations. In general, competitors do not currently have access to actual facility production rates or other information (*i.e.*, financial information) that could allow them to assess competition and market conditions in regional detail, because publicly available financial and economic information is released at the corporate level rather than the facility level.

- Information about production quantities and product composition may allow competitors to reasonably infer the types and approximate amounts of feedstocks or raw materials consumed. This may enable competitors to devise strategies to compete for resources. If in addition to production quantities, raw materials consumption data reported under the GHG Reporting Rule were also released, competitors could use the combination to expose sensitive information such as operating efficiencies (amount of product produced per unit of raw material consumed) and allow competitors to infer production costs and pricing structures.

As shown in Table 5 of this preamble, EPA proposes that the following data elements are not CBI:

- LDC-level production/throughput quantity and composition data reported by natural gas LDCs (40 CFR part 98, subpart NN).

- Importer-level data on quantities and compositions of products imported by CTL and petroleum product importers (40 CFR part 98, subparts LL and MM).

- CO<sub>2</sub> production/throughput data reported by CO<sub>2</sub> producers and at the importer or exporter level by importers, and exporters of CO<sub>2</sub> (40 CFR part 98, subpart PP).

- CO<sub>2</sub> injection data reported by CO<sub>2</sub> injection and geologic sequestration facilities (proposed 40 CFR part 98, subpart RR, 75 FR 18576, April 12, 2010).

EPA is proposing that the LDC-level production/throughput data collected under 40 CFR part 98, subpart NN and the importer-level data for petroleum products collected from importers under 40 CFR part 98, subparts LL and MM are not CBI because many of the same data elements from the same LDCs and importers are already collected and released annually by EIA in documents and databases posted on the Internet each year. For example, EIA collects and publicly releases, at the LDC and importer level, the quantities of natural gas supplied by LDCs and the quantities and relative densities of each product imported by importers of petroleum products and CTLs. Because the public already has access to these data elements, they are not CBI.

While the GHG Reporting Rule collects some production/throughput data elements under 40 CFR part 98, subparts LL and MM that are not collected (and therefore not released) by the EIA, these data elements could be estimated from data released by EIA or from data already publicly available. For example, 40 CFR part 98, subparts LL and MM require reporting of carbon share if the importer chooses to use a particular GHG calculation method (the rule provides different calculation options). Carbon share is a product composition data element that is not collected and released by EIA. However, the EIA releases information on the type of category of product imported (*e.g.*, residual fuel oil, reformulated motor gasoline), which could be used to determine the range within which the carbon share would fall. In addition, EIA collects and releases other importer-level product composition data for imported petroleum products (*e.g.*, sulfur content and API gravity). Carbon share data for imported products is unlikely to be any more sensitive than the sulfur content and API gravity data already released by EIA. EIA's release of

sulfur content and API gravity data, suggests that product composition data, including carbon share, is not considered to be sensitive information by importers of petroleum products.

40 CFR part 98, subpart MM also requires importers to report the percent volume of each biomass-blended product that is petroleum-based. Although EIA does not publish this data element at the importer-level, the percent volume of petroleum in some biomass-blended products is already publicly available. For example, the percent of ethanol, and subsequently petroleum, in blended fuels is disclosed because Federal standards allow producers to blend only a certain percentage of ethanol in most gasoline products. Given the amount and type of importer-level product quantity and composition data already available, the release of these data elements, which are generally less sensitive in nature, is unlikely to cause substantial harm to the competitive position of importers of CTLs and petroleum products.

While the GHG Reporting Rule collects one production/throughput data element from LDCs that is not collected and released by EIA (reporter-specific HHV if reporters elect not to use the default factor provided for calculating emissions), EPA has determined that it is not CBI for the following reason: LDCs as defined in 40 CFR part 98, subpart NN are entities that are regulated as separate operating companies by State public utility commissions or operated as independent municipally-owned distribution systems. As such, LDC data related to rates and distribution quantities are already public knowledge. Moreover, LDCs are not subject to the same competitive marketplace experienced by other supplier categories. They generally serve one area and rarely overlap their distribution networks with those of their competitors.

Also already publicly available are facility-level production and throughput data from producers of CO<sub>2</sub> and exporter/importer level data from importers and exporters of CO<sub>2</sub>. Only three States have facilities producing CO<sub>2</sub> from natural wells and all three States currently release the data. Therefore, facility and flow meter-specific data from these facilities is already publicly available from State oil and gas commissions. In addition, facility-specific information is published in other Federal or State publications such as the Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2007, which is updated each year. For example, this inventory

publishes the annual amount of CO<sub>2</sub> produced and the percentage of total production used for enhanced oil recovery (EOR) and non-EOR applications for two facilities currently producing CO<sub>2</sub> from naturally-occurring CO<sub>2</sub> reservoirs (Jackson Dome, Mississippi, and Bravo Dome, New Mexico). The amount of CO<sub>2</sub> produced annually by the two facilities mentioned above is the same data, when aggregated at the facility and annual level, reported by suppliers of CO<sub>2</sub> under 40 CFR part 98, subpart PP. Since CO<sub>2</sub> production data aggregated at the facility-level is already publicly available for producers of CO<sub>2</sub>, the flow meter-specific data reported by producers is unlikely to disclose additional process-specific data that is not already discernable from data that is publicly available.

The GHG Reporting Rule requires suppliers of CO<sub>2</sub> to report the amount of CO<sub>2</sub> transferred to each end-use application. Some of this data is already publicly available. For example, the percentage of total CO<sub>2</sub> production used for EOR and non-EOR applications is reported in the Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2007. Additionally, the estimated CO<sub>2</sub> extraction (*i.e.*, production) data from power and industrial facilities engaged in RD&D efforts are routinely published and made publicly available. The International Energy Agency (IEA) provides facility-specific information through its online RD&D projects database (*see* the project details for the Great Plains Synfuels Plant (GPSP) CO<sub>2</sub> Capture and Compression facility). IEA documents include data that is the same or can be used to calculate data reported under the GHG Reporting Rule. For example, the daily amount of CO<sub>2</sub> captured (*i.e.*, produced) by three commercial U.S. facilities and the end-use application of the captured CO<sub>2</sub> is included in the IEA project descriptions. The GHG Reporting Rule requires reporting of the annual, rather than daily, CO<sub>2</sub> production and the end uses. However, the annual data can be inferred from the daily data that is publicly documented by IEA. Therefore disclosure of the annual data collected under the GHG Reporting Rule would not reveal additional information that is likely to cause harm to the competitive positions of reporters. Therefore, EPA proposes to determine that facility- or importer/exporter-level production data for CO<sub>2</sub> suppliers reported under Part 98 are not CBI because much of the data are already publicly available, and the disclosure of end use application of the CO<sub>2</sub> is not likely to cause harm to the competitive position of CO<sub>2</sub> suppliers

since it does not reveal detailed customer information.

For proposed 40 CFR part 98, subpart RR (75 FR 18576, April 12, 2010), CO<sub>2</sub> injection data is general in nature and not likely to be correlated with any confidential commercial operations. Detailed data on CO<sub>2</sub> injection flow rates are already reported either to EPA or to a State agency under EPA's Underground Injection Control Program. Two States currently publish on their Web sites the data for the 48 CO<sub>2</sub> injection facilities in their jurisdictions. Such publication suggests that CO<sub>2</sub> injection data at the facility and flow meter-level is unlikely to be considered sensitive commercial information. We are also not aware of any competitive harm that has resulted from the disclosure of such information. We therefore find that the disclosure of these data elements is unlikely to cause substantial harm to a reporting company's competitive position. EPA solicits comment on whether detailed CO<sub>2</sub> injection data or any other data to be reported under proposed 40 CFR part 98, subpart RR are held confidential by other regulatory programs.

*Summary.* EPA proposes to determine to be CBI, under CAA section 114(c), facility-level production/throughput data for most suppliers (as listed in Table 5 of this preamble) because their disclosure is likely to cause substantial harm to the competitive position of the reporting suppliers. Data determined to be CBI would be released only at an aggregated national level (by subpart and by product) that would not compromise the confidentiality of these data elements, as listed in Table 5 of this preamble. EPA proposes that the following three types of production/throughput data are not CBI because they are already publicly available: Facility-level and importer/exporter-level data reported by suppliers of CO<sub>2</sub>, LDC-level data reported by for natural gas LDCs, and importer-level data reported by importers of petroleum products. EPA solicits comments on the proposed determinations, including whether the data category determinations are appropriate as well as whether the appropriate data elements were assigned to this category. EPA also solicits suggestions on alternative approaches to aggregating data for this data category and comments on the extent to which aggregated data are useful to the public.

#### 4. The Identification Information Category

EPA proposes to determine that the supplier identification information is not CBI under CAA section 114(c).

*Description of the Data Elements.* 40 CFR part 98, subpart A requires all suppliers subject to the rule to report information needed to identify themselves. The data elements in this category consist of the supplier identifying information specified in 40 CFR part 98, subpart A, the proposed amendments to 40 CFR part 98, subpart A (75 FR 18455, April 12, 2010), and individual supplier subparts. These data elements include: The supplier name and physical street address, including the city, State, and zip code; the year and months covered by the report; the date of submittal of the annual report; importer number for the shipment (40 CFR part 98, subpart OO); the signed and dated certification statement of the accuracy and completeness of the annual report, provided by the designated representative of the owner or operator; the well identification number (proposed 40 CFR part 98, subpart RR, 75 FR 18576, April 12, 2010); name and address of U.S. parent company(s) and their percentage ownership interest in the supplier (proposed amendments to 40 CFR part 98, subpart A); and NAICS codes (proposed amendments to 40 CFR part 98, subpart A).

This data category also includes facility and unit identification information submitted to EPA in BMM extension requests. These data elements include: The facility or supplier name and physical address; unit identification numbers; number and type of units; and descriptions of units and monitoring equipment.

*Rationale for the Proposed Determination.* EPA proposes to determine that the data elements in this category do not qualify as CBI under CAA section 114(c). This information is not currently protected by suppliers. Businesses that are suppliers of fossil fuels and industrial GHGs make their identities known to potential customers as a part of normal business practices and do not take steps to prevent the release of this information. The information does not pertain to any sensitive business information, such as information on specific processes used at the facility or production information. Therefore, its disclosure is not likely to cause substantial harm to the reporting suppliers' competitive position. Furthermore, identifying information for suppliers of various fossil fuels and industrial GHGs, including those subject to Part 98, is already collected and released to the public under various EPA and Department of Energy (DoE) programs. Examples include EPA's TRI and DoE's EIA periodic energy reporting programs. We are not aware of any



competitive harm that resulted from the disclosure of such information and conclude that this is the case as well for the data elements in this category.

*Summary.* For the reasons described above, EPA proposes to determine that the data elements in the Supplier Identification Information Category are not CBI under CAA section 114(c). EPA solicits comments on this proposed determination, including whether the data category determination is appropriate as well as whether the appropriate data elements were assigned to this category.

#### 5. The Unit/Process Operating Characteristics Category

This data category includes data elements from 40 CFR part 98, subpart OO (Suppliers of Industrial GHGs), subpart PP (Suppliers of Carbon Dioxide), proposed subpart QQ (Importers and Exporters of Fluorinated-Greenhouse Gases in Pre-Charged Equipment or Closed-cell Foams) (75 FR 18652, April 12, 2010), and proposed subpart RR (Injection and Geological Sequestration of Carbon Dioxide) (75 FR 18576, April 12, 2010). EPA proposes to determine that one of the data elements under 40 CFR part 98, subpart OO is CBI under CAA section 114(c) and the remaining data elements under 40 CFR part 98, subparts OO and PP, and proposed 40 CFR part 98, subparts QQ and RR are not CBI.

*Description of Data Elements.* The following data elements are included in this category:

- The estimated percent transformation efficiency of each production process for the fluorinated GHG produced (40 CFR part 98, subpart OO).<sup>13</sup>
- The destruction efficiency (DE) of each fluorinated GHG destruction unit (40 CFR part 98, subpart OO).<sup>13</sup>
- The chemical identity of the fluorinated GHG(s) used in the performance test conducted to determine DE (40 CFR part 98, subpart OO).<sup>13</sup>
- Dates on which the fluorinated GHGs or nitrous oxide were imported (40 CFR part 98, subpart OO and proposed subpart QQ, 75 FR 18652, April 12, 2010).
- Port of entry through which the fluorinated GHGs or nitrous oxide were imported (40 CFR part 98, subpart OO and proposed subpart QQ, 75 FR 18652, April 12, 2010).

- Date on which the fluorinated GHGs and nitrous oxide were exported from the U.S. or its territories (40 CFR part 98, subpart OO and proposed subpart QQ, 75 FR 18652, April 12, 2010).

- Port from which the fluorinated GHGs and nitrous oxide were exported from the U.S. or its territories (40 CFR part 98, subpart OO and proposed subpart QQ, 75 FR 18652, April 12, 2010).

- Percent of a captured CO<sub>2</sub> stream that is biomass-based (40 CFR part 98, subpart PP).

- Source of the CO<sub>2</sub> received (*e.g.*, CO<sub>2</sub> production wells, electric generating unit, ethanol plant, pulp and paper mill, natural gas processing, other anthropogenic source) (proposed 40 CFR part 98, subpart RR, 75 FR 18576, April 12, 2010).

- Underground injection control permit class (proposed 40 CFR part 98, subpart RR, 75 FR 18576, April 12, 2010).

*Rationale for the Proposed Determination.* EPA proposes to determine that the estimated percent transformation efficiency of each production process for the fluorinated GHG produced, as required under 40 CFR part 98, subpart OO, are CBI under CAA section 114(c). Disclosing this data element, which pertains to a facility's operating efficiency (amount of product produced per unit of raw material consumed), could allow a facility's competitors to infer production costs and pricing structures, and develop more competitive pricing and marketing strategies. It may also reveal proprietary information about the actual transformation process that a facility is using. Therefore, disclosure of this data element is likely to cause substantial harm to the reporting business's competitive position.

EPA proposes to determine that the destruction efficiency of each fluorinated GHG destruction unit, as well as the chemical identity of the fluorinated GHG(s) used in the performance test conducted to determine the destruction efficiency under 40 CFR part 98, subpart OO, are not CBI. The destruction efficiency is determined by performance test and is used in Equation OO-4 of 40 CFR part 98, subpart OO to calculate the mass of fluorinated GHGs destroyed. The fluorinated GHG(s) used in the performance test to determine the destruction efficiency are usually stable compounds that are used as surrogates for a broad class of other fluorinated compounds. Disclosing the chemical identity of the fluorinated GHGs used in the performance test and the destruction

efficiency determined by the performance test do not reveal sensitive business information about the process, such as the amount of a specific product that is destroyed or supplied by a facility. Nor do they reveal the actual technology used for fluorinated GHG destruction, or the operating conditions for a particular technology. Therefore, disclosing this information would not likely cause substantial harm to a supplier reporter's competitive position.

The remaining data elements in this category are the dates and ports of shipments of industrial GHGs (40 CFR part 98, subpart OO and proposed subpart QQ (75 FR 18652, April 12, 2010)), the percentage of a captured CO<sub>2</sub> stream that is derived from biomass (40 CFR part 98, subpart PP), and the source of CO<sub>2</sub> received by injection and geologic sequestration facilities (proposed 40 CFR part 98, subpart RR, 75 FR 18576, April 12, 2010). The dates of import and export shipments, and the ports of entry or exit under 40 CFR part 98, subpart OO and proposed subpart QQ are simply the dates and ports through which shipments occur; they do not contain information regarding the contents of the shipment. The source of CO<sub>2</sub> received by injection and geologic sequestration facilities identifies the type of source (*e.g.*, ethanol plant), but does not provide specific information that would identify the specific facilities or company that supplies the CO<sub>2</sub> to the facility or on the amount of CO<sub>2</sub> provided to an individual facility or company. Such information does not reveal sensitive information related to operational strengths or weaknesses, operational capacity, customer base, production amounts, or market share. Therefore, EPA proposes to determine that the date of the import or export, the port of entry or exit, and the source of CO<sub>2</sub> received are not CBI.

For the reporting of percent of captured CO<sub>2</sub> that is biomass-based under 40 CFR part 98, subpart PP, this data element is already publicly available and therefore not CBI. As discussed in the section Production/Throughput Quantities and Composition Category (*see* Section II.D.3 of this preamble), facility specific information on CO<sub>2</sub> production is already publicly available. Biomass-based CO<sub>2</sub> is generally produced as a by-product of other production processes, such as ethanol plants, where use of biomass is already commonly known.

*Summary.* EPA proposes to determine that the estimated percent transformation efficiency of each production process for the fluorinated GHG produced under 40 CFR part 98, subpart OO is CBI under CAA section

<sup>13</sup> Under 40 CFR part 98, subpart OO, suppliers must submit a one-time report that includes each of the data elements described above. However, if the efficiency of the destruction device is re-tested, the supplier must include that information in its next annual report.

114(c). EPA proposes to determine that the destruction efficiency of each fluorinated GHG destruction unit and the chemical identity of the fluorinated GHG(s) used in the performance test conducted to determine the destruction efficiency are not CBI under CAA section 114(c). In addition, EPA proposes to determine that the date of import/export, port of entry/exit, and the percent of captured CO<sub>2</sub> that is biomass-based are not CBI under CAA section 114(c). EPA solicits comments on these proposed determinations, including whether the data category determinations are appropriate as well as whether the appropriate data elements were assigned to this category.

#### 6. The Calculation, Test, and Calibration Methods for Suppliers Category

EPA proposes to determine that the emission calculation methodology and the testing and calibration methods specified in Part 98 applicable to the suppliers of fuels and industrial GHGs are not CBI under CAA section 114(c).

*Description of the Data Elements.* Part 98 requires suppliers to calculate potential annual mass emissions (metric tons per year) of each GHG that would be emitted if supplied fuels were completely combusted or oxidized, or supplied industrial GHGs are used (*i.e.*, 100 percent released to the atmosphere). Specific calculation and measurement methods are contained in each supplier category subpart. Data elements included in this category are the methods provided in Part 98 for use by suppliers to calculate the GHG quantities to be reported. These methods are used to sample and analyze the raw materials received and products supplied. They are also used to measure the quantity of raw materials and products. The data collected from the samples and analyses (which are not part of this data category) are used by the reporter to calculate the GHG quantities.

This data category also includes data elements submitted to EPA in BMM extension requests. Examples of data elements in this category include the following:

- The methods used by the reporter to measure the quantity of each product or raw material used in calculating potential emissions.
- The methods used by the reporter to collect and analyze samples of raw material or product for density and carbon share.
- The methods used by the reporter to develop reporter-specific values for HHV and GHG emission factors.

- The methods used by the reporter to determine the efficiency of units used for fluorinated GHG destruction.

- The methods used by the reporter to record the mass of fluorinated GHG destroyed.

- The methods used by the reporter to measure the mass of fluorinated GHGs produced or fed into a transformation process, including the type of instrumentation used and the precision.

- The methods used by the reporter to estimate the fraction of fluorinated GHGs fed into a transformation process that is actually transformed.

- The methods used by the reporter to estimate the mass of fluorinated GHGs fed into a destruction device, to estimate the concentration of the fluorinated GHGs in the destroyed material, and the precision and accuracy of the methods.

- Identification of the parameter, subpart, and rule citation for which a BMM extension is requested (40 CFR part 98, subpart A).

#### *Rationale for the Proposed Determination.*

EPA proposes to determine that the data elements in this category are not CBI under CAA section 114(c). EPA finds that disclosure of the information is not likely to cause substantial harm to the competitive positions of suppliers reporting this information under Part 98.

These methods, many of which are specified in Part 98, are standardized methods applicable to suppliers in a given source category. These methods do not contain facility specific or sensitive business information, nor does disclosing the use of these methods by a reporting supplier facility reveal sensitive business information regarding the facility. For example, disclosing the methods used to measure material inputs to a manufacturing process or to measure the efficiencies of transformation or destruction processes would not reveal information regarding the actual production rates or efficiencies of those processes of the reporting facility. Also, some of the methods are already public information (*e.g.*, the methods for sampling and measuring carbon content of various materials are published by the American Society for Testing and Material (ASTM), International Standards Organization (ISO), and Gas Processors Association (GPA)).

*Summary.* For the reasons stated above, EPA proposes to determine that the data elements in this category are not CBI under CAA section 114(c). EPA solicits comments on this proposed determination, including whether the data category determination is appropriate as well as whether the

appropriate data elements were assigned to this category.

#### 7. The Data Elements Reported for Periods of Missing Data That Are Not Related to Production/Throughput or Materials Received Category

EPA proposes to determine that the data elements in this category are not CBI under CAA section 114(c).

*Description of the Data Elements.* The data elements in this category include data to be reported when there is missing data (other than missing production/throughput and materials received data, the required reporting for which is addressed in Section II.D.10 of this preamble). The data elements in this category are as follows:

Under 40 CFR part 98, subpart A (general provisions), all suppliers must report the following:

- The data elements for which a substitute value was determined for missing data.
- The total number of hours in the year that a missing data procedure was used.

Under 40 CFR part 98, subpart NN, suppliers of natural gas and natural gas liquids (NGLs) must also report the number of days in the reporting year for which substitute data procedures were used to perform each of the following:

- Measure quantity of natural gas and NGLs supplied to downstream facilities.
- Develop HHVs.
- Develop emission factors.

Under 40 CFR part 98, subpart PP suppliers of carbon dioxide must also report the number of days in the reporting year for which substitute data procedures were used to perform each of the following:

- Measure the quantity of CO<sub>2</sub>.
- Measure the concentration of CO<sub>2</sub> in a stream.
- Measure the density of a CO<sub>2</sub> stream.

Under proposed 40 CFR part 98, subpart RR (75 FR 18576, April 12, 2010), facilities report the number of times missing data procedures were used. For 40 CFR part 98, subparts LL, MM, and OO, suppliers report only the data elements listed for the Missing Data Category under 40 CFR part 98, subpart A.

*Rationale for the Proposed Determination.* These data elements provide information to identify those data elements for which missing data procedures were used and the duration of the period for which missing data procedures were used. They are important because from these reported data elements, EPA and others using the reported data can judge the quality of the GHG data collected and reported by a supplier.

EPA proposes that the data elements in this category are not CBI because their disclosure would not likely cause substantial harm to the competitive positions of reporting businesses. The data elements in this category do not include the actual values that would be used as substitutes for missing data. Rather, these missing data elements relate only to the purpose (*i.e.*, which data is missing) and duration of the use of the substitute data procedures listed in Part 98. Such information cannot be used to determine the amount or composition of a specific product being supplied or a specific material received, details about the specific production processes used, or any other information that would be considered sensitive by businesses. For example, the total number of hours during which substitute data was used instead of the measured CO<sub>2</sub> concentration values required by Part 98, subpart PP, does not disclose the CO<sub>2</sub> concentration of stream, the flow rate, or any other data that could be used to reveal sensitive information about a production process.

*Summary.* For the reasons stated above, EPA proposes to determine that the data elements in this category are not CBI under CAA section 114(c). EPA solicits comments on this proposed determination, including whether the data category determination is appropriate as well as whether the appropriate data elements were assigned to this category.

#### 8. The Emission Factors Category

EPA proposes to determine that the data elements in this category are CBI under CAA section 114(c) because their release is likely to cause substantial harm to the competitive positions of the suppliers reporting these data.

*Description of Data Elements.* Part 98 requires suppliers subject to 40 CFR part 98, subparts LL, MM, and NN to use emission factors to calculate the CO<sub>2</sub>e emissions that would result from the complete combustion or oxidation of the products they supply. These suppliers have the option to develop product- or feedstock-specific emission factors. This category contains the calculated emissions factors that suppliers choose to develop. The data elements in this category are the following:

- Calculated CO<sub>2</sub> emission factors for each feedstock received and product produced, imported, or exported (40 CFR part 98, subparts LL and MM).
- Calculated CO<sub>2</sub> emission factors for natural gas and each NGL product (40 CFR part 98, subpart NN).

These emission factor data are used to calculate the GHG quantities that are reported by suppliers under 40 CFR part

98, subparts LL, MM, and NN. Suppliers report the GHG quantities (in CO<sub>2</sub>) that would ultimately be emitted (throughout the economy) from complete combustion or oxidation of each fuel product supplied. Therefore, these emission factors are critical for calculating the CO<sub>2</sub> and CO<sub>2</sub>e quantities reported by suppliers.

*Rationale for the Proposed Determination.* EPA proposes to determine that the data elements in this category are CBI because their release is likely to cause substantial harm to the competitive positions of supplier businesses reporting under Part 98. Disclosing emission factors could harm the competitive advantage of firms because the emission factors can be used to back-calculate the carbon share of the supplier's products and raw materials. Revealing carbon share information on products or raw materials could give competitors insights concerning product make-up, production processes used, the markets and types of customers a facility supplies, who they obtain raw materials from, and other process-specific information. Such information could allow a competitor to devise strategies to capture market share from specific firms, compete for raw material resources, and otherwise put the reporting suppliers at a disadvantage. See the "Production/Throughput Quantities and Composition" and the "Amount and Composition of Materials Received" categories for suppliers in Sections II.D.3 and II.D.9 of this preamble for further rationale as to why EPA has concluded that information that could reveal production and raw materials information is entitled to confidential treatment.

The following is an example of how release of emission factors could allow calculation of carbon share for suppliers subject to 40 CFR part 98, subparts LL, MM, and NN. The 40 CFR part 98, subpart MM site-specific emission factors are calculated as the carbon share of the product (percent carbon in the material) multiplied by the density. The density of many products is known (particularly for solid products, which are given a default value of "1") or can be inferred given that many products have densities that fall within a limited range. Therefore, if site-specific emission factors were released, and density is known or can be inferred, competitors could closely estimate the carbon share of a product or feedstock. Public disclosure of emission factors could therefore enable competitors to back-calculate carbon share and gain insight into the composition of products and feedstocks.

*Summary.* For the reasons stated above, EPA is proposing to determine that the data elements in this category are CBI under CAA section 114(c). EPA solicits comments on this proposed determination, including whether the data category determination is appropriate as well as whether the appropriate data elements were assigned to this category.

#### 9. The Amount and Composition of Materials Received Category

EPA proposes to determine that the data elements in this category are CBI under CAA section 114(c) because release of such data is likely to cause substantial harm to the competitive position of suppliers reporting these data under Part 98.

*Description of Data Elements.* Data elements included in this category are the quantities and compositions of raw materials and other materials received by suppliers who are subject to reporting under 40 CFR part 98, subparts LL, MM, NN, and OO. Some of the materials received are raw materials that the reporter uses to produce the fuel products or industrial gases they supply into the economy (*e.g.*, sell or distribute). Others are materials that are received and not used as raw materials but are instead distributed by the reporting supplier to other facilities that either use them as raw materials or fuels (*e.g.*, a LDC receives natural gas and NGLs and blends and distributes them to customers rather than using them as a raw material to produce other products). This category also includes 40 CFR part 98, subpart OO data elements for quantities of materials that are produced on site in one production process, and then consumed on site by another production process.

The data elements in this data category vary by supplier source category. The following list provides examples of the types of data included in this category:

- Annual quantity of each product in Table MM-1 of 40 CFR part 98, subpart MM entering the coal-to-liquid facility for further processing or other uses onsite (40 CFR part 98, subpart LL).
- Annual quantity of each type of biomass that is to be co-processed with fossil fuel-based feedstock (40 CFR part 98, subpart LL).
- Carbon share and density of feedstocks consumed (40 CFR part 98, subpart LL).
- Annual quantity of petroleum products or natural gas liquids (NGL) entering the refinery for further refining or for other uses onsite (40 CFR part 98, subpart MM).

- Annual quantity of each type of biomass that is to be co-processed with petroleum feedstocks to produce a petroleum product (40 CFR part 98, subpart MM).
- Quantity of bulk NGLs received for processing during the reporting year (40 CFR part 98, subpart MM).
- Carbon share and density of feedstocks consumed (40 CFR part 98, subpart MM).
- Annual quantities of ethane, propane, normal butane, isobutane, and “pentanes plus” products received from other NGL fractionators (40 CFR part 98, subpart NN).
- Annual volume of natural gas received by the LDC at its city gate stations for redelivery on the LDC’s distribution system, including for use by the LDC (40 CFR part 98, subpart NN).
- Total mass of each reactant fed into the fluorinated GHG or nitrous oxide production process, by process (Reactants include raw materials received) (40 CFR part 98, subpart OO).
- Mass of N<sub>2</sub>O and each fluorinated GHG fed into a transformation process transformed at the facility, by process. This includes quantities of N<sub>2</sub>O and fluorinated GHGs that were produced at the facility and then consumed by a separate transformation process (*i.e.*, a separate process that uses and entirely consumes these gases to manufacture other chemicals for commercial purposes) (40 CFR part 98, subpart OO).

*Rationale for the Proposed Determination.* EPA proposes to determine that the data elements in this data category are CBI because their disclosure is likely to cause substantial harm to the reporting suppliers’ competitive positions. Disclosing information about a facility’s annual amount and composition of materials received could harm the competitive advantage of firms in the following ways:

- The disclosure of the amount and composition of materials received and fed into production processes at a facility could provide insight into sensitive details like the compositional characteristics of a product. Competitors could use this information to determine the chemical ratios and the material quantities incorporated in a product. Public disclosure may also reveal when a reporting supplier switches to a different material resource, potentially indicating to competitors that the reporting supplier has discovered a way to produce the same product at a lower cost. Competitors could harm the competitive position of the reporting party by applying the same strategy and/or attempt to drive up the costs of the material resource.
- Information about the quantities and composition of materials received could expose a firm’s competitive and growth

strategies. For example, a record showing a significant increase in consumption of a particular material resource may indicate to competitors that a firm is seeking entry into a new market.

- Information about raw material quantities and composition could reveal information related to a firm’s suppliers. For example, Firm A depends heavily on one supplier for a particular resource. A competing firm, Firm B, could deduce this relationship knowing that no other major suppliers can provide that particular resource at the quantity demanded by Firm A. Firm B could use this information to create new strategies to compete for that resource. If Firm B is also more efficient and able to absorb higher costs than Firm A, Firm B could intentionally drive up resource costs and push Firm A out of business.
- Disclosure of facility-level data on the quantity and composition of raw materials received could give competitors insight into a business’s local and regional market conditions and expansion plans, enabling competitors to devise strategies to prevent expansion and to steel market share in specific locations. In general, competitors do not currently have access to actual facility-level data on the quantity and composition of raw materials or other data (*e.g.*, financial statements) that could allow them to assess competitive market conditions in regional detail, because publicly available financial and economic information is released at the corporate level, rather than the facility-level.
- Information about the quantities and composition of materials received for processing may enable competitors to determine the type of manufacturing processes used since processes vary by the quantity and composition of materials used. This information may also allow competitors to reasonably infer production quantities of each product and the product mix of a facility. If in addition to raw materials received, production quantities data reported under Part 98 are also released, competitors could use the combination of production and feedstock consumption data to expose sensitive information such as operating efficiencies (amount of product produced per unit of raw material consumed) and allow competitors to infer production costs and pricing structures.

*Summary.* For the reasons stated above, EPA proposes to determine that the data elements in this category are CBI under CAA section 114(c). EPA solicits comments on this proposed determination, including whether the data category determination is appropriate as well as whether the appropriate data elements were assigned to this category.

#### 10. The Data Elements Reported for Periods of Missing Data That Are Related to Production/Throughput or Materials Received Category

40 CFR part 98, subpart OO requires suppliers of industrial GHGs (N<sub>2</sub>O and fluorinated GHGs) who are subject to 40 CFR part 98, subpart OO to report

numerical substitute values for production/throughput and materials received quantities and composition during missing data periods as well as other background information related to missing data. EPA is proposing to determine that the substitute values used to estimate such information during missing data periods and the related background information are CBI under CAA section 114(c).

*Description of Data Elements.* Data elements in this category, which are required only in 40 CFR part 98, subpart OO, include the substitute values (*i.e.*, the actual numerical values used in the calculation), the methods used to generate the substitute values, and other related information, for estimating production/throughput and materials received quantities and compositions. A complete list of the data elements in this category is as follows:

- Reason the data were missing.
- Length of time the data were missing.
- Method used to estimate the missing data.
- Estimates of the missing production/throughput or materials received data (*i.e.*, the mass of each fluorinated GHG that is produced at the facility by process, fed into the production process, fed into the transformation process, fed into destruction devices, and sent to another facility for transformation or destruction).

*Rationale for the Proposed Determination.* EPA proposes to determine that the data elements in this category are CBI under CAA section 114(c) because their disclosure is likely to cause substantial harm to suppliers reporting these data under Part 98. The data elements in this category are data needed to generate substitute values for missing production/throughput data (*e.g.*, the amount of a fluorinated gas produced at a facility during a specified missing data time period) or raw materials consumed data (*e.g.*, the amount of a gas fed into the production process during a specified missing data time period). Accordingly, these data elements are themselves production data and materials received data for the missing data period and their disclosure could divulge sensitive details about operational capabilities, marketing strategies, market share, and product chemistries. For a detailed explanation, see the “Production/Throughput Quantities and Composition” and the “Amount and Composition of Materials Received” categories for suppliers in Sections II.D.3 and II.D.9 of this preamble.

*Summary.* For the reasons stated above, EPA proposes to determine that the data elements in this category are CBI under CAA section 114(c). EPA solicits comments on this proposed determination, including whether the data category determination is appropriate as well as whether the appropriate data elements were assigned to this category.

#### 11. The Supplier Customer and Vendor Information Category

EPA proposes to determine that information on customers and vendors associated with fuel and industrial GHG suppliers are CBI under CAA section 114(c).

*Description of the Data Elements.* Data elements included in this category are information on individual customers that receive fossil fuels or industrial GHGs from the reporting suppliers, and the facilities to which industrial GHGs are sold or transferred for transformation or destruction. Examples of data elements in this category include the following:

- 40 CFR part 98, subpart NN (Suppliers of Natural Gas and Natural Gas Liquids) requires LDCs to report the annual volume of natural gas supplied to each meter registering an annual supply equal to or greater than 460,000 Mscf per calendar year. 40 CFR part 98, Subpart NN also requires reporting the customer name, address, and meter number of each meter registering an annual supply equal to or greater than 460,000 Mscf.
- 40 CFR part 98, subpart NN also requires reporting (if known) the EIA identification number of each LDC customer.
- 40 CFR part 98, subpart OO (Suppliers of Industrial Greenhouse Gases) requires production facilities and bulk importers to report the names and addresses of facilities to which any N<sub>2</sub>O or fluorinated GHGs were sent for transformation or destruction.
- 40 CFR part 98, subpart OO and proposed subpart QQ (75 FR 18652, April 12, 2010) require importers to report the country from which products are imported and exporters to report the country to which products were exported.

*Rationale for the Proposed Determination.* For the following reasons, EPA proposes to determine that information on the identities of the customers and vendors associated with fuel and industrial GHG suppliers is CBI under CAA section 114(c).

Suppliers of fuels and industrial GHGs do not release the identity of their customers to protect information on their customer base, market share, and similar data that could be utilized to deduce competitive strategies. The information is not reasonably available without the businesses consent, and businesses take steps to protect this information.

In addition, release of this information is likely to cause substantial harm to the competitive position of the supplier reporters. For example, if all suppliers of fuels and industrial GHGs under a particular subpart were required to report their associated customers and vendors, and the information were widely available, then competitors could use that information to determine the approximate market share of each reporter, based on the number and estimated size of customers. This information could be used to develop strategies to take customers from a competitor.

Likewise, if all suppliers of industrial GHGs under a particular subpart were required to report to whom they were sending GHGs for destruction, competitors could possibly determine information about the manufacturing process of the suppliers of industrial GHGs based on the nature of the services provided by the facility performing the destruction.

In addition, requiring suppliers of industrial GHGs to identify facilities that destroy GHGs could reveal proprietary information about the destruction facilities' customer base and market share, which could be used by competitors to harm the GHG destruction facilities competitive position.

*Summary.* For the reasons stated above, EPA proposes to determine that information on the identities of the customers and vendors associated with fuel and industrial GHG suppliers are CBI under CAA section 114(c). EPA solicits comments on this proposed determination, including whether the data category determination is appropriate as well as whether the appropriate data elements were assigned to this category.

#### 12. The Process-Specific and Vendor Data Submitted in the Bamm Extension Request Category

EPA proposes to determine that the data elements in this category are CBI under CAA section 114(c) because the release of process-specific and vendor data submitted with the Bamm extension request is likely to cause substantial harm to competitive position of suppliers reporting these data under Part 98.

*Description of data elements.* The data elements in this category include certain information submitted by reporters in petitions to extend the use of Bamm. These data elements are submitted once, as part of the petition, and are not submitted on a recurring basis in the annual GHG reports. The October 2009 final rule allowed use of

Bamm for the first three months of 2010. A petition process is established in 40 CFR 98.3(d)(2) allowing facilities to submit, for EPA approval, requests to extend the use of Bamm beyond March 31, 2010. Similar allowances to submit Bamm requests are included in proposed rule amendments (*see* 75 FR 18652, April 12, 2010 and 75 FR 18576, April 12, 2010). Much of the information required for Bamm requests, such as location information and planned dates by which full monitoring equipment will be installed are classified in other data categories. However, some of the petitions received contain detailed process design information, vendor and cost information that are not technically similar to other data collected through Part 98. Provided below are some examples of the data elements in this Category:

- Location where each monitor will be installed. Process diagrams may be included to show specific locations.
- Information on alternative monitoring equipment suppliers and delivery dates investigated.
- Supporting documentation demonstrating that it is not possible to isolate the equipment and install monitoring instruments without a process unit shutdown.
- Information on process unit shutdowns including frequency and dates of previous and planned shutdowns.

*Rationale for Proposed Determination.* EPA proposes to determine that the data elements in this data category are CBI under CAA section 114(c). We find that disclosure of these process-specific and vendor data submitted with Bamm extension requests is likely to cause substantial harm to the competitive position of businesses submitting these requests under Part 98. Disclosure could allow competitors to gain insight into the specific processes used by the facility that they could use to gain a competitive advantage. For example:

- The disclosure of process design diagrams submitted to show monitor location or to show that it is not possible to install monitoring equipment without a process unit shutdown could allow competitors to determine the type of process, specific equipment, and sequence of process steps used in the reporter's manufacturing process. Such information is often proprietary, and public disclosure could reveal trade secret or sensitive information and substantially harm a firm's competitive position. The process configuration diagrams could also be used by a competitor to gain insight into whether the facility has multiple or interconnected lines to produce products, likely bottlenecks, potential spare capacity, and flexibility to

produce alternative products. This could provide competitors with insight into a petitioner's operational strengths and weaknesses. Such process-specific information could be used to infer information on production costs, pricing structures, and the ability of a firm to respond to changing market conditions. Having such information could give competitors insights to make competitive decisions on expanding their own production rates or altering their pricing strategies to the detriment of the reporting company.

- Information provided in the petition about their communications with alternative suppliers, delivery dates, and backorder notices could reveal a variety of information that the facility submitting the BMM requests and their suppliers consider sensitive. For example, documentation could include information on the exact equipment being ordered and/or price quotes. This information could be used by competitors of the reporter submitting the petition to infer the costs the reporter is paying to comply with mandatory reporting rule, which is sensitive information. It could also be used by competitors of the firms supplying monitoring equipment quotes to undercut prices or offer better delivery schedules and gain a competitive advantage. Documentation pertaining to the investigation and ordering of monitoring equipment could also include specific information about the process stream characteristics in the process lines being monitored. Such information might be provided to a supplier to be sure the monitoring equipment could withstand the process conditions (*e.g.*, corrosive chemicals, temperatures) that the monitoring equipment will encounter. This information could allow competitors to gain insight into the production processes used by a facility and assist them in formulating competitive strategies as described in the preceding paragraph.

- Information and frequency and schedule for process unit shutdowns could give competitors an understanding of the amount of process downtime and insight into process efficiency. It could also be used to infer if process modifications are being made (*e.g.*, if there is a long shutdown). Knowledge about periods when a process unit will be shutdown and potentially have trouble supplying demand for a product could allow competitors to develop strategies to steal customers during such periods.

**Summary.** For the reasons stated above, EPA proposes to determine that data elements in this category are CBI under CAA section 114. EPA solicits comments on this proposed determination, including whether the data category determination is appropriate as well as whether the appropriate data elements were assigned to this category.

### III. Statutory and Executive Order Reviews

#### A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), the proposed amendments to 40 CFR part 2 are a "significant regulatory action" because they raise novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

#### B. Paperwork Reduction Act

The proposed amendments to 40 CFR part 2 do not impose any new information collection burden. The amendments are administrative and do not increase the recordkeeping and reporting burden associated with Part 98. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing Part 98 regulations under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060-0629. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

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

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

For purposes of assessing the impacts of the proposed amendments 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. This definition of small entity is consistent with the definition of small entity used for Part 98.

After considering the economic impacts of today's proposed

amendments 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 Part 98 and affected by the proposed amendments to 40 CFR part 2 include small businesses across all sectors of the economy encompassed by Part 98, small governmental jurisdictions, and small non-profits. An analysis of impacts on small entities was conducted at promulgation of Part 98 and the results are presented in the Section VIII.C of the preamble to the final rule (74 FR 56369, October 30, 2009). That analysis found that there was not a significant impact on a substantial number of small entities. The proposed amendments to 40 CFR part 2 are administrative in nature and do not increase the costs for small entities to comply with Part 98. Therefore, the proposed amendments do not have an impact on small entities. For discussion of EPA's outreach/consultation efforts with small entities on Part 98, see Section VIII of the preamble to the final rule (74 FR 56369).

EPA continues to be interested in the potential impacts of the proposed rule amendments on small entities and welcomes comments on issues related to such impacts.

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

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

The proposed amendments to 40 CFR part 2 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. The proposed amendments are administrative in nature and do not increase the costs for facilities to comply with Part 98. Thus, the proposed amendments are not subject to the requirements of sections 202 or 205 of UMRA.

In developing Part 98, EPA consulted with small governments pursuant to a plan established under section 203 of UMRA to address impacts of regulatory requirements in the rule that might significantly or uniquely affect small governments. For a summary of EPA's consultations with State and/or local officials or other representatives of State and/or local governments in developing Part 98, see Section VIII of the preamble to the final rule (74 FR 56370).

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

The proposed amendments to 40 CFR part 2 do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in EO 13132. However, for a more detailed discussion about how Part 98 relates to existing State programs, please see Section II of the preamble to the final rule (74 FR 56266).

The proposed amendments to 40 CFR part 2 are administrative in nature and apply to data reported under Part 98. The entities affected by Part 98 are facilities that supply fuel or chemicals that when used emit GHGs or facilities that directly emit greenhouses gases. Part 98 does not apply to governmental entities unless the government entity owns a facility that directly emits GHGs above threshold levels such as a landfill or large stationary combustion source, so relatively few government facilities would be affected. The proposed amendments to 40 CFR part 2 also do not limit the power of States or localities to collect GHG data and/or regulate GHG emissions. Thus, EO 13132 does not apply to this rule.

In the spirit of EO 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comments on proposed amendments from State and local officials. For a summary of EPA's consultations with State and local organizations and representatives in developing Part 98, see Section VIII of the preamble to the final rule (74 FR 56370).

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

The proposed amendments to 40 CFR part 2 are not expected to have Tribal implications, as specified in EO 13175 (65 FR 67249, November 9, 2000), because they are administrative in nature. Thus, EO 13175 does not apply

to the proposed amendments. For a summary of EPA's consultations with Tribal governments and representatives in developing Part 98, see Section VIII.F of the preamble to the final rule (74 FR 56371).

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

EPA interprets EO 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 EO has the potential to influence the regulation. This action is not subject to EO 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 a "significant energy action" as defined in EO 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The proposed amendments to 40 CFR part 2 are administrative in nature and therefore do not affect energy supply, distribution, or use.

#### *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 proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

EO 12898 (59 FR 7629 (Feb. 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 U.S.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The proposed amendments to 40 CFR part 2 are administrative in nature and therefore do not affect the level of protection provided to human health or the environment.

#### **IV. Next Steps**

EPA will summarize and respond to public comments on this action. EPA will issue a final action that will outline which categories of data submitted under Part 98 are considered to be emission data and must be available to the public pursuant to CAA section 114(c). In addition, for categories of data that are not determined to be "emission data," the final action will outline which data categories will be released to the public because they do not meet the criteria for confidential treatment and which data categories will be treated as confidential.

#### **List of Subjects in 40 CFR Part 2**

Environmental protection, Administrative practice and procedure, Reporting and recordkeeping requirements.

Dated: June 28, 2010.

**Lisa P. Jackson,**  
*Administrator.*

For the reasons stated in the preamble, title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

#### **PART 2—[AMENDED]**

1. The authority citation for part 2 continues to read as follows:

**Authority:** 5 U.S.C. 301, 552 (as amended), 553; secs. 114, 301 and 307, Clean Air Act (as amended) (42 U.S.C. 7414, 7601, 7607).

#### **Subpart B—[Amended]**

2. Section 2.301 is amended by revising paragraph (c) and adding paragraph (d) to read as follows:

**§ 2.301 Special rules governing certain information obtained under the Clean Air Act.**

\* \* \* \* \*

(c) *Basic rules that apply without change.* Except as otherwise provided in paragraph (d) of this section, §§ 2.201 through 2.207, § 2.209, and §§ 2.211 through 2.215 apply without change to information to which this section applies.

(d) *Data submitted under 40 CFR part 98.* (1) Sections 2.201 through 2.215 do not apply to data submitted under 40 CFR part 98 that EPA has determined, pursuant to section 114(c) of the Clean Air Act and 5 U.S.C. 553(c), to be either of the following:

(i) Emission data.  
(ii) Data not otherwise entitled to confidential treatment pursuant to section 114(c) of the Clean Air Act.

(2) Except as otherwise provided in paragraphs (d)(2) and (d)(4) of this section, §§ 2.201 through 2.215 do not apply to data submitted under 40 CFR part 98 data that EPA has determined, pursuant to section 114(c) of the Clean Air Act and 5 U.S.C. 553(c), to be entitled to confidential treatment. EPA

shall treat that information as confidential in accordance with the provisions of § 2.211, subject to paragraph (d)(4) of this section and § 2.209.

(3) Upon receiving a request under 5 U.S.C. 552 for data submitted under 40 CFR part 98 that EPA has determined, pursuant to section 114(c) of the Clean Air Act and 5 U.S.C. 553(c), to be entitled to confidential treatment, the EPA office shall furnish the requestor a notice that the information has been determined to be entitled to confidential treatment and that the request is therefore denied. The notice shall include or cite to the appropriate EPA determination.

(4) Modification of prior confidentiality determination. A determination made pursuant to section 114(c) of the Clean Air Act and 5 U.S.C. 553(c) that information submitted under 40 CFR part 98 is entitled to confidential treatment shall continue in effect unless, subsequent to the confidentiality determination, EPA takes one of the following actions:

(i) EPA determines, pursuant to section 114(c) of the Clean Air Act and

5 U.S.C. 553(c), that the information is emission data or data not otherwise entitled to confidential treatment under section 114(c) of the Clean Air Act.

(ii) The Office of General Counsel issues a final determination, based on the criteria in § 2.208, stating that the information is no longer entitled to confidential treatment because of change in the applicable law or newly-discovered or changed facts. Prior to making such final determination, EPA shall afford the business an opportunity to submit comments on pertinent issues in the manner described by §§ 2.204(e) and 2.205(b). If, after consideration of any timely comments submitted by the business, the Office of General Counsel makes a revised final determination that the information is not entitled to confidential treatment under section 114(c) of the Clean Air Act, EPA will notify the business in accordance with the procedures described in § 2.205(f)(2).

\* \* \* \* \*

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