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Environmental Protection Agency

40 CFR Part 98

**Call for Information: Information on
Inputs to Emission Equations Under the
Mandatory Reporting of Greenhouse
Gases Rule; Proposed Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 98

[EPA-HQ-OAR-2010-0964; FRL-9242-8]

Call for Information: Information on Inputs to Emission Equations Under the Mandatory Reporting of Greenhouse Gases Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Call for Information.

SUMMARY: EPA is publishing this call for information and public comment to solicit certain additional information pertaining to reporting of inputs to emission equations under the Mandatory Greenhouse Gas Reporting Rule. In response to EPA's July 7, 2010 proposed confidentiality determinations for data required under the reporting rule, EPA received several comments that warrant in-depth evaluation of potential harm to businesses from possible public availability of some of this data. The information and comment solicited by this notice will assist EPA as we consider a long-term approach that will balance data quality and transparency with the reporting businesses' need to protect sensitive business information.

DATES: Information and comments must be received on or before February 25, 2011.

ADDRESSES: Submit your information and comments, identified by Docket ID No. EPA-HQ-OAR-2010-0964 by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *E-mail:* GHGReportingCBI@epa.gov. Include Docket ID No. EPA-HQ-OAR-2010-0964 (and/or RIN number) in the subject line of the message.
- *Fax:* (202) 566-1741.
- *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 2822T, Attention Docket ID No. OAR-2010-0964, 1200 Pennsylvania Avenue, NW., Washington, DC 20004.
- *Hand/Courier Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your information and comments to Docket ID No. EPA-HQ-OAR-2010-0964. EPA's policy is

that all information and 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. Send or deliver information identified as CBI to only the mail or hand/courier delivery address listed above, attention: Docket ID No. EPA-HQ-OAR-2010-0964. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Carole Cook, Climate Change Division,

Office of Atmospheric Programs (MC-6207J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (202) 343-9263; fax number: (202) 343-2342; e-mail address: GHGReportingCBI@epa.gov.

Worldwide Web (WWW). In addition to being available in the docket, an electronic pre-publication copy of this call for information will also be available through the WWW. Following the Administrator's signature, a copy of this action will be posted on EPA's greenhouse gas reporting rule Web site at <http://www.epa.gov/climatechange/emissions/ghgrulemaking.html>.

SUPPLEMENTARY INFORMATION:

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

CAA Clean Air Act
CBI confidential business information
CEMS continuous emission monitoring system(s)
CFR Code of Federal Regulations
EPA U.S. Environmental Protection Agency
FR **Federal Register**
GHG greenhouse gas
NGO nongovernmental organization
U.S. United States

Organization of this Document. The following outline is provided to aid in locating information in this preamble.

- I. Background
- II. What is this action?
- III. What specific information is EPA seeking?
 - A. Specific information identifying how public availability of any inputs to emission equations data elements would cause harm to any reporter
- IV. What should I consider as I prepare my information and comments to EPA?
 - A. Submitting CBI
 - B. Tips for Preparing Your Information and Comments

I. Background

On October 30, 2009, EPA published the Mandatory Greenhouse Gas (GHG) Reporting Rule for collecting information regarding GHGs from a broad range of industry sectors (74 FR 56260). Under 40 CFR part 98 of the GHG Reporting Rule (hereinafter referred to as "Part 98") and its subsequent amendments, EPA will collect data from certain facilities and suppliers above specified thresholds. The data to be reported consists of GHG emissions information as well as other data, including information necessary to characterize, quantify, and verify the reported emissions. In the preamble to Part 98, we stated, "Through a notice and comment process, we will establish those data elements that are 'emissions data' and therefore [under CAA section

114(c)] will not be afforded the protections of CBI. As part of that exercise, in response to requests provided in comments, we may identify classes of information that are not emissions data, and are CBI” (74 FR 56287, October 30, 2009).

On July 7, 2010, EPA proposed confidentiality determinations for Part 98 data elements and proposed amending EPA’s regulation for handling confidential business information to add specific procedures for the treatment of Part 98 data (75 FR 39094; hereinafter referred to as the “July 7, 2010 CBI proposal”). The July 7, 2010 CBI proposal proposed confidentiality statuses for the data elements for subparts included in the 2009 final Part 98 rule (*see* 74 FR 56260, October 30, 2009), four subparts finalized in July 2010 (*see* 75 FR 39736, July 12, 2010), and seven new subparts that had been proposed but not yet finalized as of July 2010 (*see* 75 FR 18576, 75 FR 18608, and 75 FR 18652, April 12, 2010). The July 7, 2010 CBI proposal also covered proposed changes to the reporting requirements for some of the 2009 final Part 98 subparts. These changes were proposed in two separate rulemakings (*see* 75 FR 18455, April, 12, 2010; and 75 FR 33950, June 15, 2010).

On August 11, 2010, EPA published a proposed amendment to Part 98 to change the description of some reported data elements and require reporting of some new data elements (75 FR 48744; hereinafter referred to as the “August 11, 2010 revisions proposal”). EPA concurrently issued a supplemental CBI proposal that proposed confidentiality determinations for the new and revised data elements included in the August 11, 2010 revisions notice (75 FR 43889, July 27, 2010; hereinafter referred to as the “July 27, 2010 supplemental CBI proposal.”)

As described in detail in the CBI proposals identified above, EPA grouped Part 98 data into 22 data categories (11 direct emitter data categories and 11 supplier data categories), with each of the categories containing data elements that are similar in type or characteristics. EPA then proposed confidentiality determinations for each category, with a few exceptions that are not relevant to today’s action. Consistent with EPA’s long-standing interpretation, EPA proposed that data elements in the inputs to emission equations data category meet the definition of emission data under 40 CFR 2.301(a)(2)(i) and therefore, under CAA section 114(c), could not be held as confidential once they were reported to EPA.

EPA received numerous public comments on the July 7, 2010 CBI proposal and the July 27, 2010 supplemental CBI proposal. Though we are still in the process of considering these comments, we plan to complete our consideration of these comments and issue final confidentiality determinations for the Part 98 data elements that are not inputs to emission equations, which constitute approximately 75 percent of the data elements, in a separate final action.

However, EPA received comments that raise concerns regarding the public availability of data in the inputs to emission equations category. Almost all commenters from industry wrote that some or all inputs to emission equations (which include product compositions, raw materials used, fuel types and quantities, production volumes, and other process-specific information) are considered trade secrets or otherwise sensitive business information, and that making that information publicly available would cause them serious competitive harm. Some commenters expressed concern that public disclosure of production volumes and process-specific information could give competitors insight into sensitive operational limits and process capabilities. The commenters explained that, combined with other publicly available information, this information could give competitors details concerning business positions or vulnerabilities that could be used to a reporter’s disadvantage. Some commenters stated that disclosure of the type, composition, and relative proportions of raw materials used would reveal the specific formula used to manufacture their products. Others expressed concern that product composition data reveal information about their products’ performance characteristics. Some stated that public availability of information about the types and quantities of fuels consumed would reveal sensitive details about individual production processes’ energy usage and could be used to estimate relative production costs.

Several Part 98 reporters commented that, had they known that EPA would later propose that inputs to emission equations qualify as emission data that must be made available to the public under CAA section 114(c), they would have commented more critically and more extensively on Part 98 equations when they were proposed in 2009 and might have suggested or agreed to alternatives such as third-party audits or installation of continuous emission monitoring systems (CEMS). Several reporters wrote that they would have

installed CEMS or otherwise changed their compliance approaches. Commenters further noted that, for some subparts, Part 98 allows monitoring emissions with CEMS as an alternative to calculation with emission equations but that, by the time EPA proposed CBI determinations in July 2010, reporters no longer could install CEMS for 2010. As a result, commenters stated, these reporters were locked into using the emission equations for 2010 reporting if that was the methodology they chose. They argued that public availability of potentially sensitive inputs for calculation of 2010 emissions should not be based on a reporter’s decision not to install CEMS for 2010 when this decision was made prior to and without knowledge of the July 7, 2010 CBI proposal.

EPA has reviewed these comments and has concluded that some of the concerns warrant more extensive evaluation of potential harm from the public availability of inputs to equations. To assist EPA in this evaluation, EPA is issuing this notice to call for certain additional information that the Agency has determined is necessary or helpful in order to evaluate and take action on the concerns described above.

To allow EPA time to complete our evaluation and take appropriate actions before collecting inputs to equations, EPA is proposing in a separate notice to defer to March 31, 2014 the deadline for reporting inputs to equations. EPA is also concurrently promulgating an interim final rule that defers the reporting deadline for inputs to equations to August 31, 2011. This short-term deferral allows EPA time to complete the notice and comment rulemaking for the longer deferral while avoiding possible public availability of inputs to equations before EPA can evaluate and take appropriate actions regarding inputs to equations.

II. What is this action?

EPA is soliciting information and viewpoints from interested parties on how, specifically, public availability of inputs to emission equations in Part 98 could cause competitive harm. We are also interested in information on additional approaches to calculating GHG emissions that do not use data elements that may be considered sensitive and on additional approaches to verifying reported GHG emission data if any inputs to emission equations are not reported to EPA. In addition, we are soliciting information on whether any of the inputs to emission equations data elements are already published or publicly available elsewhere,

discernable from publicly available information or otherwise not sensitive. The specific information requested is listed in Section III of this call for information.

This call for information is a critical part of EPA's consideration of treatment of inputs. If reporters have serious concerns about inputs to equations information becoming publicly available, it is crucial that they respond in a detailed fashion to this call for information. The specific information received will help EPA to develop a sound, long-term approach that balances data quality and transparency with the need to protect sensitive business information. When EPA receives the additional requested information, we will be able to fully evaluate which inputs to equations, if any, could result in serious business harms if made available to the public. For such cases, if any, EPA would evaluate whether emissions can be calculated or verified using additional methodologies, consistent with the transparency and accuracy goals of Part 98. Should EPA identify any such additional methodologies, EPA may propose to amend Part 98 to allow these additional emission measurement or calculation approaches. If additional approaches to calculate or verify emissions are viable, EPA may decide that it is not necessary to collect certain highly sensitive inputs and propose to amend Part 98 accordingly.

As stated in the July 7, 2010 CBI proposal preamble, EPA is committed to transparency in the GHG Reporting Program. We consider transparency important because it promotes public confidence in the data and enables the public, industry, NGOs, and other stakeholders to better understand the sources of GHG emissions and the factors that affect the quantities of GHGs emitted. Any approach we adopt will be based on a well-balanced consideration of both the importance of protecting certain highly sensitive data elements and our commitment to the GHG Reporting Program's transparency and accuracy. Should EPA decide that it is necessary to amend Part 98 as a result of this evaluation, we would promulgate any such amendment through a notice and comment process.

III. What specific information is EPA seeking?

Although a few commenters on the July 7, 2010 CBI proposal identified specific data elements and provided supporting rationale regarding how the public availability of individual data elements would cause harm to their competitive positions, many provided

only general statements that inputs to emission equations can be sensitive and should be held confidential. Other commenters noted that inputs to emission equations that reporters allege to be sensitive may already be publicly available, but did not identify specific data elements and where they are published. To enable us to better understand and evaluate stakeholder concerns and assertions, EPA requests from interested parties information and views on the following topics and questions:

- *Specific information identifying how public availability of any inputs to emission equations data elements would cause harm to any reporter.*
- The identity of specific data elements used as inputs to emission equations that you consider sensitive business information that would cause competitive harm if disclosed. To better assist us in identifying the data element, include the rule citation for each data element you identify.
- For each data element identified in the above bullet, you should provide a specific explanation of how disclosure of the data would cause competitive harm. Describe the measures currently taken to keep the data confidential. If your concern is that competitors could use a particular input to discern sensitive information, specifically describe the pathway by which this could occur and explain how the discerned information would negatively affect your competitive position. Discuss how this data element may differ from similar data that is already publicly available. Describe any unique process or aspect of your facility that would be revealed if the particular data element you consider sensitive were made publicly available. If the data element you identify would cause harm only when used in combination with other publicly available data, then describe the other data, identify the public source(s) of this data, and explain how the combination of data could be used to cause competitive harm. Please be as specific as possible in your responses and include all information necessary to evaluate your assertions.
- *Which, if any, data that are inputs to emission equations are already publicly available, discernable from other publicly available data, or otherwise not sensitive for any reporter.*
- In your response, please identify the manner and location in which each specific data element you identify is available or not sensitive, including a citation. If the data are physically published, such as in a book, industry trade publication, or Federal agency publication, provide the title, volume number (if applicable), author(s), publisher, publication date, and ISBN or other identifier. For data published on a Web site, provide the address of the Web site and identify the Web site publisher and content author.
- *Additional calculation or measurement approaches for a particular subpart that*

would comparably measure or calculate GHG emissions but would not use data elements that you consider to be sensitive as inputs to emission equations.

—Please provide full equations and describe your suggested calculation and/or measurement approach in detail. Describe the parameters used as inputs and explain how each input parameter could be measured. Indicate whether the measurement devices needed already exist or whether new measuring equipment would have to be installed and the time required for such installation. Compare the accuracy and cost of your proposed approach with those of the existing Part 98 approaches and describe any unique or unusual facility-specific situations in which your recommended approach would not provide accurate estimates of GHG emissions.

• *Verification approaches that could be used to verify emission figures and that would not require reporting to EPA the specific data elements you consider sensitive.*

—Under the existing Part 98 rule, EPA will use the inputs to emissions equations to verify reported GHG emissions. EPA solicits suggestions for additional approaches for verifying the GHG emissions for facilities that use the existing Part 98 emission equations. In addition, we seek suggestions for verifying, without reporting to EPA, sensitive inputs to emissions equations. Identify any additional parameters that could be used for verification and the particular subpart that would be affected and explain how they would be used. Describe any particular situations in which your suggested approach should or should not be used.

EPA strongly urges any parties concerned about the public availability of inputs to equations to submit in detail the information requested above. If EPA is to seriously consider potentially revising the requirements of Part 98, the agency must have robust data on which to base those revisions. Conclusory or unsubstantiated statements will not suffice.

Please note that we are not requesting additional comment on EPA's proposed determination in the CBI proposals described above that inputs to emission equations constitute emission data. EPA received comment on that proposed determination during the public comment period for the CBI proposals and will respond to those comments in a future action.

IV. What should I consider as I prepare my information and comments to EPA?

A. Submitting CBI

Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI

and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

B. Tips for Preparing Your Information and Comments

When submitting information and comments, remember to:

Identify the rulemaking by docket number and other identifying information (*e.g.*, subject heading, **Federal Register** date and page number).

Follow directions. EPA may ask you to respond to specific questions or organize comments by referencing a CFR part or section number.

Describe any assumptions and provide any technical information and/or data that you used.

If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

Provide specific examples to illustrate your concerns and suggest alternatives.

Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

Make sure to submit your information and comments by the comment period deadline identified in the preceding

section titled **DATES**. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

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

Dated: December 17, 2010.

Lisa P. Jackson,
Administrator.

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