



# FEDERAL REGISTER

---

Vol. 76

Thursday,

No. 102

May 26, 2011

---

## Part III

### Environmental Protection Agency

---

40 CFR Part 2

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

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 2**

[EPA-HQ-OAR-2009-0924; FRL-9311-2]

RIN 2060-AQ04

**Confidentiality Determinations for Data Required Under the Mandatory Greenhouse Gas Reporting Rule and Amendments to Special Rules Governing Certain Information Obtained Under the Clean Air Act****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** This action finalizes the confidentiality determinations for certain data elements required to be reported under the Mandatory Greenhouse Gas Reporting Rule. This action also finalizes amendments to the special rules governing certain information obtained under the Clean Air Act, which authorizes EPA to release or withhold as confidential reported data under the Mandatory Greenhouse Gas Reporting Rule according to the final determinations for such data without taking further procedural steps. This action does not

include final confidentiality determinations for data elements that are in the "Inputs to Emission Equations" category.

**DATES:** This action is effective on July 25, 2011.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2009-0924. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted materials, are not placed on the Internet and are publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Air Docket, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. 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. For technical information and implementation materials, please go to the Web site <http://www.epa.gov/climatechange/emissions/ghgrulemaking.html>. To submit a question, select Rule Help Center, then select Contact Us.

*Regulated Entities.* The confidentiality determinations and amendment to 40 CFR 2.301 affect entities that must submit annual greenhouse gas (GHG) reports under 40 CFR part 98. The Administrator determined that this action is subject to the provisions of Clean Air Act (CAA) section 307(d). See CAA section 307(d)(1)(v) (the provisions of CAA section 307(d) apply to "such other actions as the Administrator may determine"). Part 98 and this action affects fuel and chemical suppliers and direct emitters of greenhouse gases. 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.                                      |
|                                            | 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 and blast furnaces.                                                                                                              |
|                                            | 32            | 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.                                                                                                                        |
|                                            | 325193        | Ethyl alcohol manufacturing facilities.                                                                                                      |
|                                            | 311611        | Meat processing facilities.                                                                                                                  |
|                                            | 311411        | Frozen fruit, juice, and vegetable manufacturing facilities.                                                                                 |
|                                            | 311421        | Fruit and vegetable canning facilities.                                                                                                      |
| 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.                                                                                                        |
| Ferroalloy Production                      | 331112        | Ferroalloys manufacturing facilities.                                                                                                        |
| Glass Production                           | 327211        | Flat glass manufacturing facilities.                                                                                                         |
|                                            | 327213        | Glass container manufacturing facilities.                                                                                                    |
|                                            | 327212        | Other pressed and blown glass and glassware manufacturing facilities.                                                                        |
|                                            | 325120        | Chlorodifluoromethane manufacturing facilities.                                                                                              |
| HCFC-22 Production and HFC-23 Destruction. |               |                                                                                                                                              |
| 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.                                                                                             |

TABLE 1. EXAMPLES OF AFFECTED ENTITIES BY CATEGORY—Continued

| Category                                             | NAICS  | Examples of affected facilities                                                          |
|------------------------------------------------------|--------|------------------------------------------------------------------------------------------|
| Lime Production .....                                | 327410 | Calcium oxide, calcium hydroxide, and 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.                                                    |
| Petrochemical Production .....                       | 32511  | Ethylene dichloride manufacturing facilities.                                            |
|                                                      | 325199 | Acrylonitrile, ethylene oxide, and 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.                                         |
| 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 Waste Landfills .....                     | 562212 | Solid waste landfills.                                                                   |
|                                                      | 221320 | Sewage treatment facilities.                                                             |
|                                                      | 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.                                                  |
| Industrial 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.                                                  |
|                                                      | 325193 | Ethanol manufacturing facilities.                                                        |
| Suppliers of Coal Based Liquids Fuels .....          | 211111 | Coal liquefaction at mine sites.                                                         |
| Suppliers of Petroleum Products .....                | 324110 | Petroleum refineries.                                                                    |
| Suppliers of Natural Gas and NGLs .....              | 221210 | Natural gas distribution facilities.                                                     |
|                                                      | 211112 | Natural gas liquid extraction facilities.                                                |
| Suppliers of Industrial GHGs .....                   | 325120 | Industrial gas manufacturing facilities.                                                 |
| Suppliers of Carbon Dioxide (CO <sub>2</sub> ) ..... | 325120 | Industrial gas manufacturing facilities.                                                 |

Table 1 of this preamble lists the types of entities that could be required to report data under Part 98. This list is not intended to be exhaustive, but rather to provide a guide for readers regarding facilities and suppliers likely to be affected by this action. Other types of facilities and suppliers not listed in the table may also be subject to reporting requirements. Many facilities and suppliers are subject to the reporting requirements in multiple subparts of Part 98. 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 of this preamble.

*Judicial Review.* Under section 307(b)(1) of the CAA, judicial review of any of the final confidentiality determinations and rule amendments made in this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by July 25, 2011. Under CAA section 307(d)(7)(B), only an objection to this final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. This section also provides a mechanism for us to convene a proceeding for reconsideration “[i]f the person raising

an objection can demonstrate to EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of this rule.” Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, Environmental Protection Agency, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20004, with a copy to the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and a copy to the

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

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

BAMM Best Available Monitoring Methods  
 CAA Clean Air Act  
 CBI confidential business information  
 CBP Customs and Border Protection  
 CEMS continuous emission monitoring system(s)  
 CFR Code of Federal Regulations  
 CH<sub>4</sub> methane  
 CO carbon monoxide  
 CO<sub>2</sub> carbon dioxide  
 CO<sub>2</sub>e carbon dioxide-equivalent  
 EIA Energy Information Administration  
 EPA U.S. Environmental Protection Agency  
 FR Federal Register  
 GHG greenhouse gas  
 GHGRP Greenhouse Gas Reporting Program  
 HCFC-22 chlorodifluoromethane  
 HFC-23 trifluoromethane (or CHF<sub>3</sub>)  
 LDC local distribution company  
 N<sub>2</sub>O nitrous oxide  
 NAICS North American Industry Classification System  
 NEI National Emissions Inventory  
 NGO non-governmental organization  
 OMB Office of Management and Budget  
 PFCs perfluorocarbons  
 PSD prevention of significant deterioration  
 QA/QC quality assurance/quality control  
 RFA Regulatory Flexibility Act  
 SF<sub>6</sub> sulfur Hexafluoride  
 SBREFA Small Business Regulatory Enforcement Fairness Act  
 TRI Toxic Release Inventory  
 USGS United States Geologic Survey  
 UMRA Unfunded Mandates Reform Act  
 U.S. United States

## Table of Contents

|                                                                                                                                                             |  |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| I. Background                                                                                                                                               |  |
| A. Background on the Final Rule                                                                                                                             |  |
| B. Approach To Making Confidentiality Determinations                                                                                                        |  |
| C. Subparts Covered by This Final Rule                                                                                                                      |  |
| II. Confidentiality Determinations for Data Required by the Mandatory Greenhouse Gas Reporting Rule, Responses to Public Comments, and Final Rule Amendment |  |
| A. Final Confidentiality Determinations                                                                                                                     |  |
| B. Direct Emitters                                                                                                                                          |  |
| C. Suppliers                                                                                                                                                |  |
| D. Amendment to 40 CFR Part 2 Addressing Treatment of Part 98 Data Elements                                                                                 |  |
| III. Statutory and Executive Order Reviews                                                                                                                  |  |
| A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review                              |  |

B. Paperwork Reduction Act  
 C. Regulatory Flexibility Act (RFA)  
 D. Unfunded Mandates Reform Act (UMRA)  
 E. Executive Order 131132: Federalism  
 G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks  
 H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use  
 I. National Technology Transfer and Advancement Act  
 J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations  
 K. Congressional Review Act

## I. Background

### A. Background on the Final Rule

On October 30, 2009, EPA published the Mandatory Greenhouse Gas Reporting Rule for collecting information regarding greenhouse gas (GHG) emissions from a broad range of industry sectors (74 FR 56260). Under 40 CFR part 98 of the rule and its subsequent amendments (hereinafter referred to as Part 98), EPA will collect data from certain facilities and suppliers above specified thresholds. The data to be reported includes information on GHG emissions and GHGs supplied, including information necessary to characterize, quantify, and verify the GHG emissions and GHGs supplied data. 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"). These proposed amendments to 40 CFR part 2 would allow EPA to release Part 98 data that are determined to be emission data or non-CBI upon finalizing the confidentiality status of these data. The amendments also set 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.

The July 7, 2010 CBI notice proposed confidentiality determinations for the

data elements in the subparts that were included in the 2009 final Part 98 rule (see 74 FR 56260, October 30, 2009), in four subparts that were finalized in July 2010 (see 75 FR 39736, July 12, 2010), and in seven new subparts that had been proposed but not yet finalized as of July 7, 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 had been proposed in two separate rulemakings (see 75 FR 18455, April, 12, 2010; and 75 FR 33950, June 15, 2010).

On July 20, 2010, EPA issued another proposed rulemaking that changed the description of some reported data elements and required reporting of some new data elements (75 FR 48744; hereinafter referred to as the "July 20, 2010 revisions proposal"). These changes were subsequently finalized on December 17, 2010 (75 FR 79092). Also on July 20, 2010, EPA issued a supplemental CBI proposal that proposed confidentiality determinations for the new and revised data elements that were proposed in the July 20, 2010 revisions notice (75 FR 43889; hereinafter referred to as the "July 20, 2010 supplemental CBI proposal.")

In this action, EPA is finalizing confidentiality determinations for Part 98 data elements with certain exceptions that are discussed in more detail below. The Part 98 data elements covered by this action are described in Section I.C of this preamble. EPA is also finalizing the amendments to EPA's regulation for handling confidential business information.

### B. Approach To Making Confidentiality Determinations

In the July 7, 2010 CBI proposal, we described the methodology and rationale used for making confidentiality determinations. This methodology consisted of a two-step process in which we first grouped Part 98 data elements into 22 data categories in all (11 direct emitter data categories and 11 supplier data categories) with each of the 22 data categories containing data elements that are similar in type or characteristics. EPA then proposed confidentiality status based on (1) whether the data qualify as emission data as defined in 40 CFR 2.301(a)(2)(i); and (2) for data that do not qualify as emission data, whether they qualify for confidential treatment under 40 CFR 2.208. In the July 7, 2010 CBI proposal, EPA proposed that only five of the data categories meet the definition of emission data (see Table 2 of the

preamble for the July 7, 2010 CBI proposal for the list of the data categories proposed as emission data).

We proposed that the remaining six direct emitter data categories and 11 supplier data categories did not meet the definition of emission data in 40 CFR 2.301(a)(2)(i). We then evaluated, on a category basis, whether the data elements in these 17 data categories qualify as trade secret or confidential business information under CAA section 114(c) (hereinafter referred to collectively as CBI).<sup>1</sup> In particular, we followed EPA's criteria under 40 CFR 2.208(e)(i) to determine whether data qualifies as CBI, focusing on whether disclosure of the data in each category would be likely to cause "substantial harm to the business's competitive position." We evaluated the data elements by category and proposed confidentiality determinations that applied to all data elements within each category, except for three supplier data categories,<sup>2</sup> where we proposed confidentiality determinations for individual data elements within the category.

Lists of the proposed data categories and EPA's proposed determinations are shown in Table 2 and Table 3 of the preamble to the July 7, 2010 CBI proposal. Further information on EPA's general approach and decision process is presented in Section I.C of the preamble to the July 7, 2010 CBI proposal. Descriptions of the data categories and detailed rationales for the proposed confidentiality determinations for each data category are presented in Section II.C (for direct emitters) and Section II.D (for suppliers) of the preamble for the July 7, 2010 CBI proposal and Section I.C. of the preamble for the July 20, 2010 supplemental CBI proposal.

### C. Subparts Covered By This Final Rule

This final rule addresses the confidentiality of data elements reported under the following subparts of 40 CFR part 98, promulgated on October 30, 2009 (74 FR 56260) (as amended in 2010), excluding those data elements in the Inputs to Emission Equation category identified in the "Interim Final Regulation Deferring the Reporting of Certain Data Elements Required Under the Mandatory Reporting of Greenhouse Gases Rule" (75 FR 81338, December 27, 2010).

- Subpart A, General Provisions (as amended by 75 FR 39736, July 12, 2010; 75 FR 66434, October 28, 2010; and 75 FR 79092, December 17, 2010);
- Subpart C, General Stationary Fuel Combustion Sources (as amended by 75 FR 79092, December 17, 2010);
- Subpart D, Electricity Generation (as amended by 75 FR 79092, December 17, 2010);
- Subpart E, Adipic Acid Production (as amended by 75 FR 66434, October 28, 2010);
- Subpart F, Aluminum Production (as amended by 75 FR 79092, December 17, 2010);
- Subpart G, Ammonia Manufacturing (as amended by 75 FR 79092, December 17, 2010);
- Subpart H, Cement Production (as amended by 75 FR 66434, October 28, 2010);
- Subpart K, Ferroalloy Production (as amended by 75 FR 66434, October 28, 2010);
- Subpart N, Glass Production (as amended by 75 FR 66434, October 28, 2010);
- Subpart O, HCFC-22 Production and HFC-23 Destruction (as amended by 75 FR 66434, October 28, 2010);
- Subpart P, Hydrogen Production (as amended by 75 FR 66434, October 28, 2010);
- Subpart Q, Iron and Steel Production (as amended by 75 FR 66434, October 28, 2010);
- Subpart R, Lead Production;
- Subpart S, Lime Manufacturing (as amended by 75 FR 66434, October 28, 2010);
- Subpart U, Miscellaneous Uses of Carbonate;
- Subpart V, Nitric Acid Production (as amended by 75 FR 66434, October 28, 2010 and 75 FR 79092, December 17, 2010);
- Subpart X, Petrochemical Production (as amended by 75 FR 79092, December 17, 2010);
- Subpart Y, Petrochemical Production (as amended by 75 FR 79092, December 17, 2010);
- Subpart Z, Phosphoric Acid Production (as amended by 75 FR 66434, October 28, 2010);
- Subpart AA, Pulp and Paper Manufacturing;
- Subpart BB, Silicon Carbide Production;
- Subpart CC, Soda Ash Manufacturing (as amended by 75 FR 66434, October 28, 2010);
- Subpart EE, Titanium Dioxide Production (as amended by 75 FR 66434, October 28, 2010);
- Subpart GG, Zinc Production (as amended by 75 FR 66434, October 28, 2010);

- Subpart HH, Municipal Solid Waste Landfills (as amended by 75 FR 66434, October 28, 2010);
- Subpart LL, Suppliers of Coal-based Liquid Fuels (as amended by 75 FR 79092, December 17, 2010);
- Subpart MM, Suppliers of Petroleum Products (as amended by 75 FR 66434, October 28, 2010);
- Subpart NN, Suppliers of Natural Gas and Natural Gas Liquids (as amended by 75 FR 66434, October 28, 2010);
- Subpart OO, Suppliers of Industrial Greenhouse Gases (as amended by 75 FR 79092, December 17, 2010); and
- Subpart PP, Suppliers of Carbon Dioxide (as amended by 75 FR 79092, December 17, 2010).

In addition, this final rule addresses the confidentiality of data elements reported under the following subparts promulgated on July 12, 2010 (75 FR 39736, July 12, 2010), excluding those data elements in the Inputs to Emission Equations category identified in the proposed "Change to the Reporting Date for Certain Data Elements Required Under the Mandatory Reporting of Greenhouse Gases Rule" (75 FR 81350, December 27, 2010).

- Subpart T, Magnesium Production (75 FR 39736, July 12, 2010);
- Subpart FF, Underground Coal Mines (75 FR 39736, July 12, 2010);
- Subpart II, Wastewater Treatment (75 FR 39736, July 12, 2010); and
- Subpart TT, Industrial Landfills (75 FR 39736, July 12, 2010).

## II. Confidentiality Determinations for Data Required by the Mandatory Greenhouse Gas Reporting Rule, Responses to Public Comments, and Final Rule Amendment

### A. Final Confidentiality Determinations

In this action, EPA is finalizing the confidentiality determinations for Part 98 data elements reported under the subparts specified in Section I.C. of this preamble. Specifically, EPA is finalizing the category assignments for data elements, the category-specific confidentiality determinations (which apply to all data elements assigned to such categories) and, for categories without category-specific confidentiality determinations, the determinations for the individual data elements within those data categories. The final confidentiality determinations for individual data categories are summarized in Table 2 of this preamble for direct emitters and Table 3 of this preamble for suppliers. As indicated in the tables, EPA made confidentiality determinations by data category for nine of the direct emitter data categories and

<sup>1</sup> EPA has interpreted CAA section 114(c) to afford confidential treatment to both trade secrets and confidential business information. See 40 FR 21987, 21990 (May 20, 1975).

<sup>2</sup> GHGs Reported, Production/Throughput Quantities and Composition, and Unit/Process Operating Characteristics.

eight of the supplier data categories. For the remaining two direct emitter data categories (Unit/Process Static Characteristics that are Not Inputs to Emission Equations and Unit/Process Operating Characteristics that are Not Inputs to Emission Equations) and three supplier data categories (GHGs Reported, Production/Throughput Quantities and Composition, and Unit/

Process Operating Characteristics), EPA made confidentiality determinations for each individual data element rather than a single determination for the data category as a whole. Because the confidentiality determinations were made for each individual data element, these categories contain both CBI and non-CBI data elements.

The data category assignments for the Part 98 data elements specified in

Section I.C of the preamble and their final confidentiality determinations are provided in the memorandum "Final Data Category Assignments and Confidentiality Determinations for Part 98 Reporting Elements" (see Docket EPA-HQ-OAR-2009-0924 and the Web site, <http://www.epa.gov/climatechange/emissions/ghgrulemaking.html>).

TABLE 2—SUMMARY OF FINAL CONFIDENTIALITY DETERMINATIONS FOR DIRECT EMITTER DATA CATEGORIES

| Data category                                                                                      | 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                                                                | .....                                       | .....                                                    |
| 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 <sup>c</sup>                              | X <sup>c</sup>                                           |
| Unit/Process Operating Characteristics that are Not Inputs to Emission Equations .....             | .....                                                            | X <sup>c</sup>                              | X <sup>c</sup>                                           |
| 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 BAMB Extension Requests .....                        | .....                                                            | .....                                       | X                                                        |

<sup>a</sup> Under CAA section 114, emission data is not entitled to confidential treatment. See Section I.C of the preamble for the July 7, 2010 CBI proposal (75 FR 39094, July 7, 2010) for further discussion of CAA section 114 requirements. The term emission data is defined at 40 CFR 2.301(a)(2)(i).

<sup>b</sup> Section 114(c) of the CAA affords confidential treatment to data (except emission data) that are considered CBI.

<sup>c</sup> EPA did not make a category-specific confidentiality determination for this category but instead made determination for individual data elements. The data category contains data elements determined to be CBI and data elements determined to be non-CBI.

TABLE 3—SUMMARY OF FINAL CONFIDENTIALITY DETERMINATIONS FOR SUPPLIER DATA CATEGORIES

| Data category                                                                                                                | 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 <sup>c</sup>                              | X <sup>c</sup>                                           |
| Production/Throughput Quantities and Composition .....                                                                       | .....                                                             | X <sup>c</sup>                              | X <sup>c</sup>                                           |
| Identification Information .....                                                                                             | .....                                                             | X                                           | .....                                                    |
| Unit/Process Operating Characteristics .....                                                                                 | .....                                                             | X <sup>c</sup>                              | X <sup>c</sup>                                           |
| 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 BAMB Extension Requests .....                                                  | .....                                                             | .....                                       | X                                                        |

<sup>a</sup> Under CAA section 114, emission data is not entitled to confidential treatment. See Section I.C of the preamble for the July 7, 2010 CBI proposal (75 FR 39094, July 7, 2010) for further discussion of CAA section 114 requirements. The term emission data is defined at 40 CFR 2.301(a)(2)(i).

<sup>b</sup> Section 114(c) of the CAA affords confidential treatment to data (except emission data) that are considered CBI.

<sup>c</sup> EPA did not make a category-specific confidentiality determination for this category but instead made determination for individual data elements. The data category contains data elements determined to be CBI and data elements determined to be non-CBI.

### 1. Major Changes to the Scope and Determinations for Particular Data Categories

This section provides a summary of major changes to the scope of this action as well as changes to the determinations for particular data categories. For a discussion of changes to the confidentiality determinations for particular data elements, see Section II.B of this preamble for direct emitters and Section II.C of this preamble for suppliers.

- Although we proposed determinations for the data elements in the following subparts, we have decided not to make final determinations for the data elements in these subparts in this action for the reasons specified in Section II.A.3 of this preamble:

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

- We are finalizing CBI determinations for 24 data elements that were added to Part 98 in response to comment on the three proposed revisions notices. The proposed revisions were addressed in the July 2010 CBI proposals. The 24 data elements are the same types of data as those data elements that were included in the CBI proposals and therefore are given the same confidentiality determinations in this final action. For a more detailed explanation, please see Section II.A.3 of this preamble.

- Although we proposed a determination for the direct emitter data category Inputs to Emission Equations, we have decided not to make a final determination for this data category in this action for the reasons specified in Section II.A.4 of this preamble.

- Although we proposed category-wide determinations for the following direct emitter data categories, in this action we have made final determinations for individual data elements in these categories for the

reasons specified in Section II.A.5 of this preamble:

- Unit/Process Static Characteristics that are Not Inputs to Emission Equations.
- Unit/Process Operating Characteristics that are Not Inputs to Emission Equations.

Following is a summary of the major comments and responses regarding the scope of this action, EPA's approach and rationale for making confidentiality determinations, and other overarching issues. Responses to major comments on determinations for the direct emitter data elements and supplier data elements are included in Sections II.B.2 through II.B.10 (direct emitter data categories) and II.C.2 through II.C.13 (supplier data categories) of this preamble. Responses to comments on the proposed amendments to 40 CFR part 2 are included in Section II.D of this preamble. Other comments and responses thereto can be found in "Proposed Confidentiality Determinations and Data Handling Procedures for Part 98 Data: Responses to Public Comments" in Docket EPA-HQ-OAR-2009-0924 and on the Web site, <http://www.epa.gov/climatechange/emissions/ghgrulemaking.html>.

### 2. General Approach To Making CBI Determinations

*Comment:* Many commenters supported EPA's approach of grouping together similar data elements and making determinations based on their similar characteristics. Several commenters stated that the approach is reasonable and that the proposed data categories are appropriate. Many commenters agreed with EPA that this approach would speed the publication of data and reduce both the administrative burden on EPA and the amount of paperwork for reporters submitting their annual reports. Some commenters stated that this approach would benefit reporters of data determined to be CBI, as it would prevent competitors from forcing them to defend data on a case-by-case basis in Agency CBI proceedings. Another commenter stated that EPA's approach would provide certainty to the regulated community regarding which specific data elements will be afforded protection from disclosure. This commenter believes that an ad hoc approach could lead to inconsistent CBI determinations, both for the same data element in a given subpart and for similar data elements in different subparts. This commenter also stated that some small businesses may be unfamiliar with the Agency's case-by-

case confidentiality claim provisions and would be placed at a disadvantage to competitors who were familiar with the case-by-case process.

Although many commenters supported EPA's approach, other commenters argued that EPA should allow reporters to submit case-by-case CBI claims with their annual reports. Some commenters questioned EPA's authority to make category-based confidentiality determinations. Several commenters argued that EPA should evaluate all CBI claims on a case-by-case basis, while others asserted that EPA should evaluate some claims this way. Some commenters argued that EPA's approach to making CBI determinations for Part 98 data was inconsistent with other EPA programs that evaluate CBI claims on a case-by-case basis. Several commenters argued that case-by-case determinations provide greater flexibility to allow the proper consideration of facility-specific issues in context and that category-wide CBI determinations would not allow for a thorough evaluation of the potential economic impacts on individual facilities from the disclosure of sensitive information. Some commenters stated that case-by-case determinations are essential because each facility's circumstances are unique. Others argued that retaining a case-by-case determination option would not preclude EPA from making the proposed category-based CBI determinations for some of the data elements.

Many commenters asserted that they preferred case-by-case determinations despite the additional work and expense it would require. These commenters stated that individual reporters should be allowed to decide whether the cost and effort involved in preparing a confidentiality claim was worthwhile. Some commenters stated that this approach would deprive regulated entities of a fair and reasonable procedure to document CBI claims. Other commenters stated that EPA's approach infringed upon the rights of regulated entities by imposing presumptive CBI determinations and not allowing individual entities to submit their own CBI claims. A few commenters argued that EPA was effectively preventing reporters from rebutting CBI determinations for Part 98 data.

*Response:* EPA agrees with commenters who stated that category-based CBI determinations reduce the burden on the regulated community. EPA also agrees with comments that category-based CBI determinations allow for timely publication of emission

data and data not otherwise eligible for confidential treatment. If EPA allowed individual CBI claims, EPA would likely receive a significant number of claims because of the large number of individual reporters required to submit annual reports (more than 10,000) and the large number of different data elements (more than 1,900). Facilities would likely make multiple CBI claims that would each need to be substantiated. Given the time and resources required for facilities to prepare the claims and for EPA to evaluate each individual CBI claim, timely publication of data would be difficult to achieve.

We disagree with commenters who stated that EPA does not have the authority to make category-based CBI determinations. While EPA generally makes CBI determinations on a case-by-case basis in accordance with 40 CFR part 2, EPA has authority, as demonstrated by the analogous provisions of 40 CFR 2.207 (Class Determinations), to make category-based CBI determinations where it would serve a useful purpose (40 CFR 2.207(a)(3)) and the data in a category share common characteristics that result in identical treatment of all data in the category (40 CFR 207(a)(2)). As discussed above, EPA concluded that the categorical approach, added to 40 CFR 2.301 through this action, was warranted as it will result in the timely release of data while also reducing the burden on reporting entities to substantiate multiple CBI claims for each annual report. EPA also believes that the categorical approach is appropriate in this case because there are over 1,900 Part 98 data elements included in this action and many of them share common characteristics. Consistent with the provisions of 40 CFR 2.207, EPA issued the July 2010 CBI proposals containing categorical confidentiality determinations for Part 98 data, and provided the public an opportunity to comment. EPA specifically sought comment on whether the data categories were appropriate or if they were too broad or too narrow. Based on the comments received, of the 22 data categories proposed, EPA concluded that categorical determinations were not appropriate for five data categories. For these five data categories, EPA made confidentiality determinations for individual data elements.

EPA also disagrees with the comments that the approach taken in this final action is inconsistent with the handling of CBI claims under other EPA programs or that the approach is contrary to regulatory provisions for

CBI. As we explained in the July 7, 2010 CBI proposal, our CBI determinations were made using the definition of emission data at 40 CFR 2.301(a)(2)(i). EPA has used this definition of emission data for over 20 years to make decisions on individual case-by-case CBI claims. For data that did not meet the definition of emission data, we used the existing criteria from the CBI regulations at 40 CFR 2.208 to evaluate and determine the confidentiality of the Part 98 data elements in this action.

We further disagree with the comment that facility-specific issues cannot be addressed through the category-based approach taken in this final action. In the July 2010 CBI proposals, we expressly sought comment on facility-specific situations in which CBI protection should be provided. We have received comments on facility-specific issues and addressed those comments in the relevant sections of this preamble. Specifically, for the handful of data elements where commenters were able to demonstrate that conditions varied significantly among reporters, EPA decided not to make a final confidentiality determination for the particular data element in this final action. The confidentiality status of these data elements will be evaluated on a case-by-case basis, in accordance with the existing CBI regulations in 40 CFR part 2, subpart B upon receipt of a public request for these data elements.

We also disagree with the commenters who claimed that EPA should provide reporters a case-by-case determination option. As mentioned above, we have addressed the comments on facility-specific issues in this final action. We received no specific comment or information indicating, nor do we have reason to believe, that reporting facilities would have any new or different information to substantiate their CBI claims at the time they submit data beyond that information available to them during the public comment periods on the CBI proposals. We therefore do not believe that a case-by-case determination at the time of data submittal would result in a different confidentiality determination.

We further disagree with commenters who stated that EPA's approach imposed presumptive CBI determinations without allowing businesses a fair and reasonable procedure to document CBI claims. In July 2010, we proposed CBI determinations for Part 98 data elements and provided stakeholders as well as the general public an opportunity to comment on data elements as well as data categories that might qualify for CBI protection and made it clear that

this was the opportunity for reporters to substantiate their CBI claims. For example, in Section I.E of the preamble to the July 7, 2010 CBI proposal, we stated that "this rulemaking provides the reporting businesses an opportunity to justify any confidentiality claim they may have for the data they are required to submit" and in Section II.B of the July 7, 2010 CBI proposal preamble we specifically solicited comment on the proposed data categories, confidentiality determinations, and any "unique circumstances \* \* \* that would warrant making subpart-specific confidentiality determinations." Stakeholders were given a 60-day comment period to review the proposed determinations and prepare documentation substantiating any CBI claims. We consider the 60-day comment period to be more than adequate, especially in light of the 15 days businesses have under the existing CBI regulations to respond to requests for information substantiating a CBI claim (see 40 CFR 2.204(e)). During the comment periods, the reporting facilities were able to consider the Agency's proposed confidentiality determinations in preparing their CBI claims and supporting documentation; businesses do not have such insight into EPA's likely positions when substantiating CBI claims on a case-by-case basis under the existing CBI regulations that apply to non-Part 98 data. As shown in this notice, EPA considered and addressed the comments received in finalizing the confidentiality determinations in this action.

Finally, we disagree with commenters who argued that the approach we selected prevents facilities from rebutting EPA's determinations. By issuing the CBI proposals for public comment, the Agency already gave the reporting facilities an opportunity to rebut the Agency's proposed confidentiality determinations. In contrast, under the existing CBI regulations that apply to non-Part 98 data, businesses would not know of EPA's position when substantiating CBI claims and therefore would not have an opportunity to rebut EPA's position in its substantiation. Further, as discussed in more detail in the Judicial Review section above, the confidentiality determinations made in this final action are subject to judicial review under section 307(b) of the CAA, thereby offering reporters another opportunity to rebut the Agency's determination.

### 3. Scope of the CBI Proposal

*Comment:* In the July 7, 2010 CBI proposal, we included data elements from seven new subparts that had been



proposed but not yet finalized (*i.e.*, subparts I, L, W, DD, SS, RR,<sup>3</sup> and QQ). These seven subparts were subsequently finalized in three separate rulemakings (see 75 FR 74458, November 30, 2010; 75 FR 74774, December 1, 2010; and 75 FR 75060, December 1, 2010). During the comment period for the CBI proposal, a few commenters recommended that EPA not finalize confidentiality determinations for data elements from the seven proposed subparts until after EPA finalized those subparts. These commenters expressed concern that data elements in the finalized subparts would differ from those in the proposed subparts. The commenters therefore suggested that EPA not finalize the CBI determinations for data elements in these seven subparts without providing the public with opportunity to comment on the confidentiality determinations for any new data elements that might be added when these subparts were finalized.

The July 2010 CBI proposals also included confidentiality determinations for new and revised data elements that were proposed in three Part 98 revision notices (see 75 FR 18455, April, 12, 2010, 75 FR 33950, June 15, 2010 and 75 FR 48744, August 11, 2010). One commenter suggested that EPA allow stakeholders to submit comments on the CBI determinations for these data elements after EPA finalized the Part 98 revision notices. The commenter did not identify the specific notice or proposed data elements that were of concern.

**Response:** EPA has decided to undertake a separate action to determine the confidentiality status for data elements reported under subparts I, L, W, DD, SS, RR, UU, and QQ. As anticipated by some of the commenters, we made significant changes (both in number and substance) to the reporting requirements between proposal and finalization of these subparts. For instance, we added approximately 300 new data elements. Further, because EPA made substantive revisions to the subparts in response to comment (*e.g.*, revisions to the measurement and calculation methodologies), the revised and added data elements differ significantly from the data elements that were included in the July CBI proposal for these subparts. In light of the above, we have decided to re-propose confidentiality determinations for the data elements in subparts I, L, W, DD, SS, RR, UU, and QQ. We plan to issue

this re-proposal and finalize the confidentiality determinations for the data elements before the March 31, 2012 reporting deadline for these subparts.<sup>4</sup>

However, EPA disagrees with the commenter who argued that EPA needed to allow additional time for comments on the July CBI proposals after finalization of the three proposed revisions to Part 98 covered by the CBI proposals (*i.e.*, those proposed in 75 FR 18455, April, 12, 2010, 75 FR 33950, June 15, 2010 and 75 FR 48744, August 11, 2010). The July 2010 CBI proposals included all data elements that were either revised or added in these proposed amendments. The final amendments made minor changes to certain proposed data elements, deleted data elements, and added 24 new data elements. A list of the new data elements are provided in the memorandum "Final Data Category Assignments and Confidentiality Determinations for Part 98 Reporting Elements" in Docket EPA-HQ-OAR-2009-0924 and on EPA's Web site, <http://www.epa.gov/climatechange/emissions/CBI.html>. Most of the changes to the reported data elements are editorial in nature (*e.g.*, clarifications to the existing requirements, changes to the rule citation, or corrections to cross-references) and, as revised, did not result in changes to the data category assignment or CBI determination for these data elements.

Although the July 2010 CBI proposals did not specifically address the new data elements that were added when EPA finalized these three revision notices, the CBI proposals included proposed confidentiality determinations for data elements that are of the same types as these new data elements. Having proposed and sought comment on the confidentiality determinations and supporting rationales for the same types of data in the CBI proposals, EPA does not believe that additional time is necessary for comment on these 24 new data elements for which we are finalizing determinations in this action. Based on the comments received, we are able to include in this action final confidentiality determinations for these

24 data elements consistent with the final determinations for the same types of data elements. Specifically, for each of the 24 data elements, we have identified the same type of data elements that were included in the July 2010 CBI proposals. We have assigned each of the 24 new data elements to the category with the same type of data elements, and applied the final confidentiality determinations for the assigned category to the new data element.

Where a new data element is the same type as a data element for which EPA has made an individual confidentiality determination (as opposed to a categorical determination), EPA has made the same individual determination for such new data element. The 24 data elements, their final CBI determinations, and rationales for these determinations (including examples of the same types of data elements covered in the July 2010 CBI proposals) are discussed in detail in Section II.B of this preamble for direct emitter source categories and Section II.C of this preamble for supplier source categories.

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

**Comment:** EPA received many comments from industry and other stakeholders regarding our July 7, 2010 CBI proposed determination that data elements in the Inputs to Emission Equations category are emission data, as defined in 40 CFR 2.301(a)(2)(i), that are ineligible for confidential treatment. Many commenters from industry disagreed with this determination. These commenters were concerned that public availability of these data elements would harm their competitive position. Other commenters supported our proposal and stated that transparency was important for building public confidence in the accuracy of the reported data and for enabling meaningful public comment on any future Climate Change policy.

**Response:** In the July 2010 CBI proposals, EPA proposed that the data elements in the Inputs to Emission Equations category are emission data under 40 CFR 2.301(a)(2)(i). Under the Clean Air Act section 114(c), EPA cannot protect emission data as confidential business information. EPA received comments raising serious concerns regarding potential harmful consequences from public availability of these data elements. EPA concluded that some of these comments warrant more extensive evaluation. For this reason, EPA decided not to finalize the confidentiality determination for the

<sup>3</sup> The reporting rules for CO<sub>2</sub> injection and sequestration were initially proposed under a single subpart (subpart RR). However, EPA later decided to separate subpart RR into two subparts: Geologic Sequestration of Carbon Dioxide (subpart RR) and Injection of Carbon Dioxide (subpart UU).

<sup>4</sup> Facilities subject to 40 CFR part 98, subpart RR must submit requests for exemption as a Research and Development Project or their proposed Monitoring, Reporting and Verification Plans in 2011. Since these documents likely will be submitted before the final confidentiality determinations for subpart RR are made, EPA will evaluate individual CBI claims regarding these two submittals on a case-by-case basis, in accordance with the existing CBI regulations in 40 CFR part 2, subpart B, either upon EPA's receipt of these documents or upon receipt of a public request for the documents. For additional information regarding these data elements, see 75 FR 75060, December 1, 2011.

data elements in the direct emitter data category Inputs to Emission Equations in this action. Instead, we recently published a "Call for Information: Information on Inputs to Emission Equations under the Mandatory Reporting of Greenhouse Gases Rule" that solicits additional information to help with the more in-depth evaluation relative to Inputs to Emission Equations (see 75 FR 81366, December 27, 2010). In addition, EPA recently published an Interim Final notice to defer reporting of these data elements on a short-term basis (75 FR 81338, December 27, 2010) and a proposal to further defer reporting of these data elements for reporting years 2011, and 2012 until March 31, 2014 (75 FR 81350, December 27, 2010). As explained in these notices, EPA concluded that it should complete its evaluation of these data elements and make final confidentiality determinations for the data elements in this category before collecting such data to avoid possibly causing unnecessary and unintentional, but irreparable, harm which reporters allege could occur if Inputs to Emission Equations were made publicly available.

In the July 7, 2010 CBI proposal, EPA defined the data elements in the Inputs to Emission Equations category as data elements that are "inputs to equations specified in Part 98 for calculating emissions to be reported by direct emitters \* \* \* and are used by the reporting direct emitting sources to calculate their annual GHG emission under Part 98" (75 FR 39094 July 7, 2010). However, in preparing the interim final and proposed deferral notices described above, EPA noted that the July 2010 CBI proposals inadvertently included in the Inputs to Equations category 69 data elements that are information related to emissions calculations but are not the actual inputs specified in any Part 98 emission calculation. For example, a subpart may require that reporters complete a particular calculation for each unit across a facility. In this circumstance, a reporter would gather necessary data and complete the calculation for each unit. Although Part 98 specifies that reporters must complete the calculation for each unit, the actual number of units would not be an input to the emission equation based on our description of the Inputs to Equations category.

Thirty-seven data elements, listed below, were moved out of the Inputs to Equations category because after further consideration, we determined the frequency of measurement that is prescribed in the "Calculating GHG emissions" sections differs from that of the data element that is reported. For

example, in Equation Y-1a in 98.253(b)(1)(ii)(a), "CC<sub>p</sub>", the average carbon content of the flare gas combusted, is required to be monitored either daily or weekly. The daily or weekly carbon content of the flare gas combusted, however, is not required to be reported. Instead, pursuant to 98.256(e)(6), the "annual average carbon content of the flare gas" is required to be reported. Therefore, the carbon content is required to be measured and used to calculate emissions at a higher frequency than that which is required to be reported. As a result, the reporting element is an average of the actual values that are used to calculate the emissions, and is not actually used to calculate emissions. In cases such as these, we have determined that the reporting elements are not inputs to equations.

- Annual volume of flare gas combusted (reported under 40 CFR 98.256(e)(6)).
- Annual average molecular weight of the flare gas (reported under 40 CFR 98.256(e)(6)).
- Annual average Carbon content of the flare gas for each flare (reported under 40 CFR 98.256(e)(6)).
- Annual volume of flare gas combusted for each flare (reported under 40 CFR 98.256(e)(7)).
- Annual average CO<sub>2</sub> concentration for each flare (reported under 40 CFR 98.256(e)(7)).
- Annual average concentration of carbon containing compound other than CO<sub>2</sub> in the flare gas stream for each flare (reported under 40 CFR 98.256(e)(7)(i)).
- Annual volume of flare gas combusted (reported under 40 CFR 98.256(e)(8)).
- Annual average higher heating value of the flare gas (reported under 40 CFR 98.256(e)(8)).
- Annual average value of the exhaust gas flow rate reported by refineries (reported under 40 CFR 98.256(f)(7)).
- Annual average value of %CO<sub>2</sub> reported by refineries (reported under 40 CFR 98.256(f)(7)).
- Annual average value of %CO reported by refineries (reported under 40 CFR 98.256(f)(7)).
- Annual average value of the inlet air flow rate reported by refineries (reported under 40 CFR 98.256(f)(8)).
- Annual average value of oxygen-enriched air flow rate reported by refineries (reported under 40 CFR 98.256(f)(8)).
- Annual average value of %O<sub>2</sub> reported by refineries (reported under 40 CFR 98.256(f)(8)).
- Annual average value of %O<sub>oxy</sub> reported by refineries (reported under 40 CFR 98.256(f)(8)).

- Annual average value of %CO<sub>2</sub> reported by refineries (reported under 40 CFR 98.256(f)(8)).
- Annual average value of %CO reported by refineries (reported under 40 CFR 98.256(f)(8)).
- Annual average value of the inlet air flow rate reported by refineries (reported under 40 CFR 98.256(f)(9)).
- Annual average value of oxygen-enriched air flow rate reported by refineries (reported under 40 CFR 98.256(f)(9)).
- Annual average value of %N<sub>2oxy</sub> reported by refineries (reported under 40 CFR 98.256(f)(9)).
- Annual average value of %N<sub>2</sub> exhaust reported by refineries (reported under 40 CFR 98.256(f)(9)).
- Average coke burn-off quantity per cycle or measurement period for each catalytic cracking unit, traditional fluid coking unit, and catalytic reforming unit reported by refineries (reported under 40 CFR 98.256(f)(13)).
- Annual volume of recycled tail gas (if not used to calculate the recycling correction factor) (reported under 40 CFR 98.256(h)(5)).
- Annual average mole fraction of carbon in the tail gas (if not used to calculate recycling correction factor) (reported under 40 CFR 98.256(h)(5)).
- Annual volumetric flow discharged to the atmosphere (reported under 40 CFR 98.256(l)(5)).
- Annual average mole fraction of each GHG above the concentration threshold or otherwise required to be reported (reported under 40 CFR 98.256(l)(5)).
- Quarterly CEMS CH<sub>4</sub> concentration data used to calculate CH<sub>4</sub> liberated from degasification systems average from daily data (C) (reported under 40 CFR 98.326(i)).
- Quarterly CH<sub>4</sub> concentration data based on weekly sampling data (C) (reported under 40 CFR 98.326(i)).
- For landfills with gas collection systems, report total volumetric flow of landfill gas collected for destruction for the reporting year (reported under 40 CFR 98.346(i)(1)).
- Annual average CH<sub>4</sub> concentration of landfill gas collected for destruction (reported under 40 CFR 98.346(i)(2)).
- Monthly average temperature at which flow is measured for landfill gas collected for destruction (reported under 40 CFR 98.346(i)(3)).
- Monthly average pressure at which flow is measured for landfill gas collected for destruction (reported under 40 CFR 98.346(i)(3)).
- Cumulative volumetric biogas flow for each week that biogas is collected for destruction (if using daily sampling) (reported under 40 CFR 98.356(d)(2)).

- Weekly average CH<sub>4</sub> concentration for each week that biogas is collected for destruction (if using daily sampling) (reported under 40 CFR 98.356(d)(3)).

- Weekly average temperature at which flow is measured for biogas collected for destruction (if using daily sampling) (reported under 40 CFR 98.356(d)(4)).

- Weekly average moisture content for each week at which flow is measured for biogas collected for destruction (if using daily sampling) (reported under 40 CFR 98.356(d)(5)).

- Weekly average pressure for each week at which flow is measured for biogas collected for destruction (if using daily sampling) (reported under 40 CFR 98.356(d)(6)).

Because the 69 data elements are not inputs to emission equations, we did not include these data elements in the December 27, 2010 deferral actions described above. At that time, we noted that “The list of inputs to equations is slightly different than what was proposed in the July 7, 2010 CBI proposal. Reporting elements included in this category are values used by reporters to calculate equation outputs” (75 FR 81350, December 27, 2010). In this action, we reassigned each of the 69 data elements that are not the actual inputs to equations specified in Part 98 to an appropriate direct emitter data category based on the type and characteristics of each data element. As a result, these data elements are no longer in the Inputs to Equations category but are in categories with the same types of data elements. Because the July 2010 CBI proposals included for comment proposed determinations and supporting rationales for data elements that are of the same types as these 69 data elements, we believe that it is appropriate for us to take final action on the confidentiality determinations for these reassigned data elements. Specifically, where we have assigned a data element to a data category with a categorical determination, we applied the final confidentiality determination for the assigned category to the new data element. Where a new data element is assigned to a data category without a categorical confidentiality determination, we identified the same type of data element(s) in that category that were covered by the CBI proposals, and we applied the confidentiality determination for the same type of data elements to the reassigned data element. For a list of these reassigned data elements, the category to which they were assigned, and their final confidentiality status, and examples of the same type of data element identified in the particular category,

see Table C in the memorandum “Final Data Category Assignments and Confidentiality Determinations for Part 98 Reporting Elements” in Docket EPA–HQ–OAR–2009–0924 and on EPA’s Web site (see <http://www.epa.gov/climatechange/emissions/CBI.html>).

#### 5. Categorical Determinations for the Direct Emitter Categories Unit/Process Static Characteristics and Unit/Process Operating Characteristics That Are Not Inputs to Emission Equations

*Comment:* In the July 2010 CBI proposals, we proposed that all the data elements in the direct emitter categories Unit/Process Static Characteristics that are Not Inputs to Emission Equations and Unit/Process Operating Characteristics that are Not Inputs to Emission Equations would be non-CBI. In these proposals, we stated that the disclosure of the data elements in these data categories would be unlikely to cause competitive harm and also noted that some of the data elements were already available from other public sources. Several commenters expressed concern that EPA had not fully evaluated the potential harm of public availability of some of the data elements in these two categories and recommended that we re-evaluate the confidentiality determinations for these data elements in these two data categories. Some commenters disagreed with our conclusion that much of the data in these categories was already publicly available through other sources. Some commenters identified specific data elements and provided supporting rationale explaining why they should be eligible for confidential treatment. However, most commenters provided only broad statements that did not identify specific data elements or provide detailed supporting rationale, but instead expressed concern that disclosure of data elements in these categories could cause potential harm to some reporters.

*Response:* In evaluating the comments submitted, EPA determined that the comments raised issues that warranted additional consideration. Because many of the comments did not specify the data elements that were of concern, EPA decided to re-evaluate each data element in these two data categories to ensure that concerns were fully addressed. As a result of our re-evaluation, EPA decided not to make the proposed categorical determination that all data elements in these two categories are non-CBI and has determined that some of the data elements assigned to these data categories are eligible for confidential treatment. This decision was based on

new information collected by the Agency and/or provided by commenters. For the summary of the comments and a detailed discussion of the rationale for final determinations for the data elements in these categories, see Sections II.B.6 and II.B.7 of this preamble.

#### 6. Timing of the CBI Proposal

*Comment:* Several commenters expressed concern regarding the timing of the July 7, 2010 CBI proposal. These commenters stated that EPA should have addressed CBI in the April 10, 2009 proposal for the GHG Reporting Rule (74 FR 16448). They asserted that EPA’s decision not to address CBI in the original proposal for the GHG Reporting Rule negatively affected their ability to properly evaluate Part 98 when it was initially proposed. Some commenters stated that they advocated for calculation methods that relied on mass balance equations because they believe that the inputs to those equations would be held confidential. Some commenters asserted that they would have supported third party verification had they known that reported data would not be afforded confidential treatment.

In certain circumstances, the CAA allows parties to petition EPA to reconsider aspects of newly enacted regulations implementing the CAA. Some industries petitioned EPA regarding certain aspects of the Part 98 requirements. Some commenters stated that EPA should have published the CBI proposal before discussing these petitions with industry and that EPA’s decision not to do so prejudiced the industries that participated in those discussions.

*Response:* We disagree with commenters who stated that they did not have sufficient notice regarding types of data that would be eligible for confidential treatment because the CBI issue was not addressed during the April 10, 2009 proposal for the GHG Reporting Rule. We also disagree with commenters who suggested the timing of the CBI proposal prejudiced those reporters who entered into discussions with EPA regarding petitions for reconsideration of certain Part 98 requirements prior to the publication of the July 2010 CBI proposals. We stated in the preamble to the April 10, 2009 proposal that “emission data collected under CAA sections 114 and 208 cannot be considered CBI” (see 74 FR 16463, April 10, 2009). EPA’s CBI regulations define emission data at 40 CFR 2.301; EPA used this definition to determine which Part 98 data elements are emission data and therefore not eligible for confidential treatment pursuant to

CAA section 114(c). For data that do not meet the definition of emission data, EPA considered the confidentiality determination criteria at 40 CFR 2.208 to make the CBI determinations. Both the emission data definition at 40 CFR 2.301 and the confidentiality determination criteria at 40 CFR 2.208 have been part of EPA's CBI regulations since the regulations were first promulgated in 1976. Furthermore, the comments on the original Part 98 proposal received in 2009 indicate that the commenters were aware that section 114(c) of the CAA requires that emission data cannot be protected. As evidenced by the comments, commenters were aware 15 months before EPA's publication of the July 7, 2010 CBI proposal that CAA section 114(c) requires emission data to be made publicly available (See 74 FR 56260 and 56287, October 30, 2009). Commenters who entered into discussions with EPA regarding petitions in 2010 would also have been aware of CAA section 114(c) at the time they made these agreements. In light of EPA's long-standing regulatory provisions, we reject commenters' claim that they had insufficient notice regarding EPA's approach to confidential treatment of data or that reporters who entered into settlement agreements were prejudiced.

EPA notes that many of the commenters who expressed concern with the timing of the CBI proposal were primarily concerned with EPA's proposal that data in the Inputs to Emissions Equations category would be publicly available. As discussed in more detail above, EPA is not finalizing in this action the confidentiality status for the data in the Inputs to Emission Equations category. For additional information on inputs to equations, please see Section II.A.4 of this preamble.

#### 7. Extent To Which CEMS Can Be Used to Reduce the Number of Data Elements Disclosed to the Public

*Comment:* In the preamble to the July 7, 2010 CBI proposal, we noted that facilities who choose to use continuous emission monitoring systems (CEMS) may have fewer CBI concerns. As these facilities use CEMS to monitor emissions, we observed that certain data elements would not be used as inputs to emission equations, which we had proposed to be emission data and therefore subject to disclosure under CAA section 114(c). In addition, facilities using CEMS would report fewer data elements than those using emission equations (75 FR 39109, July 7, 2010). In that preamble, we requested comment on the extent to which CEMS

could be used to relieve industry concerns regarding public disclosure of sensitive data. Several commenters agreed that CEMS may be a viable option for many sources because CEMS for measuring CO<sub>2</sub> emissions are readily available. One commenter recommended that EPA require CEMS for reporters who want to withhold sensitive data. However, other commenters stated that using CEMS is expensive and is not a cost-effective approach for determining GHG emissions. Some commenters argued that CEMS would be a viable option only for sources that have few emission points because the costs of installing and operating CEMS units on a large number of stacks would be prohibitively expensive. Other commenters argued that Part 98 does not provide all source categories an option to use CEMS to measure GHG emissions and that CEMS would not be technically achievable for some industries. For example, some commenters stated that CEMS would not be technically feasible for the fluorochemical industry because of technical difficulties in designing a CEMS for monitoring fluorinated GHG emissions. These commenters argued that CEMS used in the fluorochemical industry would have to be able to detect a wide variety of fluorinated GHGs and would also have to withstand highly corrosive operating conditions due to the presence of hydrofluoric and hydrochloric acid in the fluorochemical process vent streams.

Some commenters noted that CEMS could not be used to alleviate CBI concerns for the 2010 reporting year unless the sources had already installed CEMS to measure GHG emissions as of January 1, 2010. One commenter argued that facilities selected their 2010 monitoring methods before EPA proposed to make raw material and other throughput information public. This commenter recommended that EPA delay reporting for at least one year to allow facilities an opportunity to purchase and install CEMS before having to report their emissions.

*Response:* These comments relate to data elements in the Inputs to Emission Equations category, as the use of CEMS reduces the number of data elements necessary to be used as inputs to emission calculations. Currently, 20 of the 34 Part 98 subparts for direct emitters provide an option to use CEMS for determining CO<sub>2</sub> emissions. In addition, the Part 98 subparts for adipic acid (subpart E) and nitric acid (subpart V) allow facilities to petition EPA for approval to use N<sub>2</sub>O CEMS. However, a CEMS option for other GHGs, such as CH<sub>4</sub>, SF<sub>6</sub>, and fluorinated GHGs, is not

currently included in Part 98. EPA agrees with commenters that CEMS may not be practicable feasible at this time for all sources covered by the reporting rule, and therefore may not be an option in all circumstances where a reporter is concerned about the public disclosure of data they consider sensitive. We also recognize that many sources did not elect to use CEMS during the 2010 reporting period and therefore would not be able to use CEMS to mitigate their CBI concerns for the 2010 reporting year. However, as noted in Section II.A.4 of this preamble, EPA is addressing these concerns through a separate process. EPA has published an Interim Final Rule that will defer reporting of data elements in the Inputs to Emission Equation data category for the 2010 annual report (75 FR 81338, December 27, 2010) and a proposal to defer reporting of these data elements until 2014 (75 FR 81350, December 27, 2010). EPA also issued a notice announcing a call for information soliciting additional information so that EPA can adequately evaluate additional monitoring and verification approaches that would not use sensitive data elements as Inputs to Emission Equations (75 FR 81366, December 27, 2010).

#### 8. Duration of Confidentiality Treatment

*Comment:* In the July 7, 2010 CBI proposal, EPA requested comment on whether there should be a time limit on protection of data determined to be CBI. A few commenters asserted that confidential treatment of CBI should be limited to a given period of time and stated that EPA should use its authority under 40 CFR 2.208(a) to disclose data when disclosure would no longer cause substantial harm to the reporters' competitive position. These commenters argued that not all of the data determined to be CBI may warrant permanent treatment as confidential. Some commenters recommended that EPA develop a process to establish the duration of the confidential status of each type of information. One commenter recommended that CBI status automatically lapse after two years unless a reporter submits a request to extend the duration of CBI protection and makes a satisfactory showing that disclosure of the data would cause substantial harm to its competitive position. This commenter suggested that a two year period was a reasonable time period because of the rate at which the market changes.

However, most commenters stated that CBI status should not be time-limited. Many stated that data designated as CBI remain relevant and

sensitive for many years after the reporting year has passed and that its disclosure at any time likely would cause competitive harm to the reporting entity. One commenter stated that industry marketing trends play out over long time frames and that competitors value market, process, and production data even after five or 10 years. One commenter recommended that CBI data remain protected as CBI for the life of the reporting entity.

**Response:** In the July 7, 2010 CBI proposal, we recognized that market conditions change such that data once considered CBI may become less sensitive over time. Therefore, we requested comment on whether there were any particular Part 98 data elements that would become less sensitive over time, the amount of time after which they would no longer be sensitive, and the reason for the change in the sensitivity of the data elements. Although some commenters recommended that confidentiality determinations should be time limited, the commenters did not provide information that would provide sufficient basis for EPA to limit the determinations made in this action for any particular data elements to a specific period of time. Although a commenter suggested that the confidential treatment should expire after two years, the commenter did not provide any specific information on what changes in market conditions after this two year period would result in data no longer satisfying the criteria for confidential treatment. We note that other CBI determinations made by EPA are generally not time-limited. Furthermore, today's amendment to 40 CFR 2.301 (*Special rules governing certain information obtained under the Clean Air Act*) provides procedures for EPA to modify a prior confidentiality determination (see 40 CFR 2.301(d)(4)) should certain Part 98 data no longer be entitled to confidential treatment because of changes in the applicable law or newly discovered or changed facts. This provision reflects the requirements in CBI regulations at 40 CFR 2.205(h) for modifying prior determinations for other information. We do not see a need to establish a process different from that which we had proposed for declassifying CBI.

#### B. Direct Emitters

##### 1. Major Changes to Determinations

We are finalizing our category assignments for data elements in the direct emitter subparts specified in Section I.C of this preamble for 10 of the 11 direct emitter data categories and our

confidentiality determinations for these 10 direct emitter data categories. As discussed in Section II.A.4 of this preamble, the confidentiality determinations for the data elements in the Inputs to Emission Equations category are not being finalized in this action. Further, as discussed in Section II.A.5 of this preamble, for the Unit/Process Static Characteristics that are Not Inputs to Emission Equations and the Unit/Process Operating Characteristics categories that are Not Inputs to Emission Equations, EPA is making final confidentiality determinations for each data element within these categories, rather than finalizing the category-wide determinations proposed in the CBI proposals.

The major changes since our CBI proposals to the 10 direct emitter data categories and the confidentiality determinations finalized in this action are summarized below.

- We have assigned certain data elements for reporting process emissions (*i.e.*, the amount of GHG generated by a production facility) at 40 CFR 98.76(a) and (b)(1), 40 CFR 98.166(a)(1) and (b)(1), and 40 CFR 98.196(a) and (b)(1) as follows for the reasons specified in Section II.B.3 of this preamble:
  - For facilities that collect a portion of the CO<sub>2</sub> for use on site or for shipment off site, the data elements for reporting process emissions are categorized in the Unit/Process Operating Characteristics that are Not used as Inputs to Emissions Equations data category.
  - For facilities that discharge all process emissions to the atmosphere, the data elements for reporting process emissions are categorized in the Emissions data category.
- We have added seven new data elements to the Emissions category for the reasons specified in Section II.B.3 of this preamble. The data elements are as follows:
  - Annual emissions aggregated for all GHGs from all applicable source categories, expressed in metric tons of CO<sub>2</sub>e calculated using Equation A-1 (reported under 40 CFR 98.3(c)(12)(i)).
  - Annual emissions of biogenic CO<sub>2</sub>, expressed in metric tons (excluding biogenic CO<sub>2</sub> emissions from part 75 units), aggregated for all applicable source categories (reported under 40 CFR 98.3(c)(12)(ii)).
  - Annual emissions from each applicable source category, expressed in metric tons of biogenic CO<sub>2</sub> (excluding biogenic CO<sub>2</sub> emissions

from part 75 units (reported under 40 CFR 98.3(c)(12)(iii)(A)).

- Annual emissions from each applicable source category, expressed in metric tons of CO<sub>2</sub> (including biogenic CO<sub>2</sub> emissions from 40 CFR part 75 units and excluding biogenic CO<sub>2</sub> emissions from other non-part 75 units and other source categories) (reported under 40 CFR 98.3(c)(12)(iii)(B)).
- Annual emissions from each applicable source category, expressed in metric tons of CH<sub>4</sub> (reported under 40 CFR 98.3(c)(12)(iii)(C)).
- Annual emissions from each applicable source category, expressed in metric tons of N<sub>2</sub>O (reported under 40 CFR 98.3(c)(12)(iii)(D)).
- Annual emissions from each applicable source category, expressed in metric tons of each fluorinated GHG (including those not listed in Table A-1 to subpart A) (reported under 40 CFR 98.3(c)(12)(iii)(E)).
  - We have moved three data elements from the Inputs to Emission Equations category to the Emissions category for the reasons specified in Section II.B.3 of this preamble. The data elements are as follows:
    - Annual CO<sub>2</sub> emissions from each wet-process phosphoric acid process line (reported under 40 CFR 98.266(f)(2)).
    - Annual volumetric flow discharged to the atmosphere from each process vent (reported under 40 CFR 98.256(l)(5)).
    - Annual average mole fraction of each GHG above the concentration threshold or otherwise required to be reported (reported under 40 CFR 98.256(l)(5)).
  - We have added one new data element to the Calculation Methodology and Methodological Tier category for the reasons specified in Section II.B.4 of this preamble. This data element requires facilities to indicate whether the annual volume of flare gas combusted and the annual average higher heating value of the flare gas were determined using standard conditions of 68 °F and 14.7 psia or 60 °F and 14.7 psia (reported under 40 CFR 98.256(e)(8)).
  - Although we proposed non-CBI determinations for the Unit/Process Static Characteristics that are Not Inputs to Emission Equations data category, we have made individual confidentiality determinations for data elements in this category in this final action.
  - We have decided not to make final confidentiality determinations for the following 21 elements in the Unit/Process Static Characteristics that are Not Inputs to Emission Equations for the

reasons described in Sections II.B.6 of this preamble. These data elements are as follows:

- The annual ferroalloy product production capacity (reported under 40 CFR 98.116(a)).
- The annual lead product production capacity reported by facilities using CEMS (reported under 40 CFR 98.186(a)(2)).
- The annual lead product production capacity for facilities not using CEMS (reported under 40 CFR 98.186(b)(3)).
- The annual lead product production capacity for each smelting furnace reported by facilities not using CEMS (reported under 40 CFR 98.186(b)(3)).
- The annual lime production capacity (reported under 40 CFR 98.196(b)(15)).
- The type of nitric acid process (reported under 40 CFR 98.226(k)).
- The maximum rated throughput capacity of the catalytic cracking unit, traditional fluid coking, or catalytic reforming unit (reported under 40 CFR 98.256(f)(3)).
- The maximum rated throughput of the sulfur recovery plant (reported under 40 CFR 98.256(h)(2)).
- The maximum rated throughput of each coke calcining unit (reported under 40 CFR 98.256(i)(2)).
- The annual phosphoric acid permitted production capacity (reported under 40 CFR 98.266(b)).
- The annual phosphoric acid production capacity for each wet-process phosphoric acid process line (reported under 40 CFR 98.266(f)(3)).
- The annual production capacity of silicon carbide reported by facilities using CEMS (reported under 40 CFR 98.286(a)(3)).
- The annual production capacity of silicon carbide reported by facilities not using CEMS (reported under 40 CFR 98.286(b)(3)).
- The annual production capacity of soda ash for each manufacturing line reported by facilities using CEMS (reported under 40 CFR 98.296(a)(3)).
- The annual production capacity of soda ash reported by facilities not using CEMS (reported under 40 CFR 98.296(b)(4)).
- The annual production capacity of titanium dioxide reported by facilities using CEMS (reported under 40 CFR 98.316(a)(4)).
- The annual production capacity of titanium dioxide for each production line reported by facilities not using CEMS (reported under 40 CFR 98.316(b)(5)).
- The description of the gas collection system at an underground coal mine (reported under 40 CFR 98.326(q)).
- The annual zinc product production capacity reported by facilities using CEMS (reported under 40 CFR 98.336(a)(1)).
- The annual zinc product production capacity reported by facilities not using CEMS (reported under 40 CFR 98.336(b)(2)).
- The description and/or diagram of the industrial wastewater treatment system (reported under 40 CFR 98.356(a)).
  - We have added one new data element to the Unit/Process Static Characteristics Not used as Inputs to Emission Equations category for the reasons specified in Section II.B.6 of this preamble. This data element requires municipal landfills to report a description of the aeration system used at their landfill, including aeration blower capacity (reported under 40 CFR 98.346(d)(1)) and is determined to be non-CBI.
  - We have moved one data element from the Facility and Unit Identifier Information category to the Unit/Process Static Characteristics that are Not Inputs to Emission Equations data category and have made a determination that this data element is non-CBI for the reasons specified in Section II.B.6 of this preamble. This data element requires facilities to report the type of combustion unit (reported under 40 CFR 98.36(b)(2)).
  - We have moved 13 data elements from Inputs to Emission Equations to the Unit/Process Static Characteristics that are Not Inputs to Emission Equations category and made the following determinations for the reasons specified in Section II.B.6. These data elements and the final determinations are as follows:
    - Number of abatement technologies used at adipic acid production plants (reported under 40 CFR 98.56(e)) is not CBI.
    - Number of cement kilns (reported under 40 CFR 98.86(b)(4)) is not CBI.
    - Total number of glass furnaces (reported under 40 CFR 98.146(b)(8)) is not CBI.
    - Total number of lead smelting furnaces (reported under 40 CFR 98.186(b)(5)) is not CBI.
    - Number of nitric acid trains (reported under 40 CFR 98.226(f)) is not CBI.
    - Number of wet-process phosphoric acid lines (reported under 40 CFR 98.266(f)(7)) is not CBI.
    - Number of separate chloride process lines located at titanium dioxide production facilities (reported under 40 CFR 98.316(b)(14)) is not CBI.
    - Number of Waelz kilns used for zinc production (reported under 40 CFR 98.336(b)(4)) is not CBI.
- Number of electrothermic furnaces used for zinc production (reported under 40 CFR 98.336(b)(5)) is not CBI.
- Total number of delayed coking units (reported under 40 CFR 256(k)(3)) is not CBI.
- The typical drum or vessel outage (reported under 40 CFR 98.256(k)(3)) is CBI.
- The number of delayed coking drums or vessels (reported under 40 CFR 98.256(k)(3)) is CBI.
- The number of delayed coking drums in a set (reported under 40 CFR 98.256(k)(4)) is CBI.
  - We have double listed five data elements in the Unit/Process Static Characteristics that are Not Inputs to Emission Equations category and in the Inputs to Emission Equations category. For those reporters who do not use the data elements in the specified equations, the data elements are in the Unit/Process Static Characteristics that are Not Inputs to Emission Equations. We have made the following determinations and for the reasons specified in Section II.B.6:
    - Number and type of each source of equipment leaks at petroleum refineries when reported by facilities not using Equation Y-21 to calculate emissions (reported under 40 CFR 98.256(n)(3)) is not CBI.
    - Year in which a closed municipal landfill last accepted waste and year an open municipal landfill expects to close, where reported by landfills that do not use Equation HH-3 (reported under 40 CFR 98.346(a)) is not CBI.
    - Capacity of the municipal landfill, where reported by open landfills and by closed landfills that do not use Equation HH-3 (reported under 40 CFR 98.346(a)) is not CBI.
    - Year in which a closed industrial landfill last accepted waste and year an open industrial landfills expects to close, where reported by landfills that do not use Equation TT-4 (reported under 40 CFR 98.466(a)(3)) is not CBI.
    - Capacity of the industrial landfill, where reported by open landfills and by closed landfills that do not use Equation TT-4 (reported under 40 CFR 98.466(a)(4)) is not CBI.
    - Although we proposed a non-CBI determination for all data in the Unit/Process Operating characteristics that are not Inputs to Emission Equations category, we have made individual confidentiality determinations for the data elements in this category in this final action. Specifically, we have determined that the following data elements in this category qualify as CBI as discussed in Section II.B.7 of this preamble:

- The reason for submitting a Best Available Monitoring Methods (BAMM) extension request (reported under 40 CFR 98.3(d)(2)(ii)(C)).
- The reason why equipment was not or could not be obtained and installed during a planned shutdown between October 30, 2009 and April 1, 2010 as reported in a BAMM extension request (reported under 40 CFR 98.3(d)(2)(ii)(E)).
- Planned installation date for monitoring equipment as reported in a BAMM extension request (reported under 40 CFR 98.3(d)(2)(ii)(F)).
- The anticipated date on which a facility applying for a BAMM extension will begin using the monitoring methods specified in Part 98 (reported under 40 CFR 98.3(d)(2)(ii)(F)).
- The sampling analysis results of carbon content of feedstock as determined from QA/QC supplier data under 40 CFR 98.74(e) by ammonia manufacturing facilities (reported under 40 CFR 98.76(b)(6)).
- The mass fraction of each sample analyzed for all tests used to verify the carbonate-based mineral mass fraction of raw materials charged to glass manufacturing facilities (reported under 40 CFR 98.146(b)(5)(iii)).
- The explanation of change greater than 30 percent in a magnesium production facility's cover gas usage rate (reported under 40 CFR 98.206(g)).
- The types of materials loaded that have an equilibrium vapor phase concentration of CH<sub>4</sub> of 0.5 volume per cent or greater (reported under 40 CFR 98.256(p)(2)).
- The sampling analysis results for carbon content of petroleum coke consumed by a silicon carbide production facility as determined for QA/QC of data provided by raw material suppliers (reported under 40 CFR 98.286(b)(7)).
- The sampling analysis results of carbon content of petroleum coke consumed by titanium dioxide production facilities for QA/QC of data provided by raw material suppliers (reported under 40 CFR 98.316(b)(13)).
- We have added the following four new data elements to the Unit/Process Operating Characteristics that are Not Inputs to Emission Equations category and have also determined that these data elements are not CBI for the reasons specified in Section II.B.7 of this preamble. The data elements are as follows:
  - Indication of whether active aeration of the waste in the landfill was conducted during the reporting year (reported under 40 CFR 98.346(d)(1)).
  - Fraction of the landfill containing waste affected by the aeration (reported under 40 CFR 98.346(d)(1)).
  - Total number of hours during the year the aeration blower was operated (reported under 40 CFR 98.346(d)(1)).
  - Other factors used as a basis for the selected methane correction factor (MCF) value (reported under 40 CFR 98.346(d)(1)).
  - We have moved 37 data elements from the Inputs to Emission Equations category to the Unit/Process Operating Characteristics that are Not Inputs to Emission Equations category for the reasons specified in Section II.B.7 of this preamble. A list of these data elements is provided in the memorandum "Final Data Category Assignments and Confidentiality Determinations for Part 98 Reporting Elements" (see Docket EPA-HQ-OAR-2009-0924 and the Web site (<http://www.epa.gov/climatechange/emissions/ghgrulemaking.html>)). We have determined that the following data elements are CBI:
    - Annual average value of the inlet air flow rate reported by refineries (40 CFR 98.256(f)(8)).
    - Annual average value of oxygen-enriched air flow rate reported by refineries (40 CFR 98.256(f)(8)).
    - The average annual value of %O<sub>oxy</sub> reported by refineries (40 CFR 98.256(f)(8)).
    - Annual average value of the inlet air flow rate reported by refineries (reported under 40 CFR 98.256(f)(9)).
    - Annual average value of oxygen-enriched air flow rate reported by refineries (reported under 40 CFR 98.256(f)(9)).
    - Annual average value of %N<sub>2oxy</sub> reported by refineries (reported under 40 CFR 98.256(f)(9)).
    - Number of regeneration cycles or measurement periods during the reporting year for each catalytic cracking unit, traditional fluid coking unit, and catalytic reforming unit reported by refineries (reported under 40 CFR 98.256(f)(13)).
    - Average coke burn-off quantity per cycle or measurement period for each catalytic cracking units, traditional fluid coking units, and catalytic reforming units reported by refineries (reported under 40 CFR 98.256(f)(13)).
    - We have decided not to make final confidentiality determinations for the following seven data elements in the Unit/Process Operating Characteristics that are Not Inputs to Emission Equations for the reasons described in Sections II.B.6 of this preamble. These data elements are as follows:
      - Annual average value of the exhaust gas flow rate reported by refineries (40 CFR 98.256(f)(7)).
      - Annual average value of %CO<sub>2</sub> reported by refineries (40 CFR 98.256(f)(7)).
      - Annual average value of %CO reported by refineries (40 CFR 98.256(f)(7)).
      - Annual average value of %O<sub>2</sub> reported by refineries (40 CFR 98.256(f)(8)).
      - Annual average value of %CO<sub>2</sub> reported by refineries (40 CFR 98.256(f)(8)).
      - Annual average value of %CO reported by refineries (40 CFR 98.256(f)(8)).
      - Annual average value of %N<sub>2</sub> exhaust reported by refineries (reported under 40 CFR 98.256(f)(9)).
      - We have double listed six data elements in the Unit/Process Operating Characteristics that are Not Inputs to Emission Equations category and in the Inputs to Emission Equations category. For those reporters who do not use the data elements in the specified equations, the data elements are in the Unit/Process Operating Characteristics that are Not Inputs to Emission Equations and have the following determinations for the reasons specified in Section II.B.7 of this preamble:
        - Annual volume of recycled tail gas (if not used to calculate the recycling correction factor (reported under 40 CFR 98.256(h)(5)) is CBI.
        - Annual average mole fraction of carbon in the tail gas (if not used to calculate recycling correction factor) (reported under 40 CFR 98.256(h)(5)) is CBI.
        - Weekly average temperature at which flow is measured for biogas collected for destruction (if using daily sampling) (reported under 40 CFR 356(d)(4)) is not CBI.
        - Weekly average moisture content for each week at which flow is measured for biogas collected for destruction (if using daily sampling) (reported under 40 CFR 356(d)(5)) is not CBI.
        - Weekly average pressure for each week at which flow is measured for biogas collected for destruction (if using daily sampling) (reported under 40 CFR 98.356(d)(6)) is not CBI.
        - Surface area at the start of the reporting year for the landfill sections that contain waste and that are associated with the selected cover type for facilities that do not use a landfill gas collection system (reported under 40 CFR 98.466(e)(2)) is not CBI.
        - We have moved seven data elements from the Calculation



Methodology and Methodological Tier category to the Test and Calibration Methods category for the reasons specified in Section II.B.8 of this preamble:

- The basis for the unit-specific factor (*i.e.*, select from average of multiple source tests; single source test within last 5 years; single source test more than 5 years ago; source test of identical unit at same facility) (40 CFR 98.256(i)(8)).
- The basis for the CO<sub>2</sub> emission factor used in Equation Y-16b (40 CFR 98.256(j)(8)).
- The basis for the carbon emission factor used in Equation Y-16b (40 CFR 98.256(j)(8)).
- Indication of the measurement or estimation method used for measuring volumetric flow discharge for each process vent (40 CFR 98.256(l)(5)).
- Indication of the measurement or estimation method used for measuring average mole fraction of each GHG for each process vent (40 CFR 98.256(l)(5)).
- The basis for the CH<sub>4</sub> emission factor used (*i.e.*, select from weekly or more often measurements; Periodic (less frequent than weekly) measurements; average of multiple source tests; one-time source test; default factor) for uncontrolled blowdown systems (40 CFR 98.256(m)(3)).
- Basis for the mole fraction of CH<sub>4</sub> in the vent gas from the unstabilized crude oil storage tank (*i.e.*, measurement of methane composition; engineering estimate of methane composition based on crude composition; default) for storage tanks that process unstabilized crude oil (40 CFR 98.256(o)(4)(vi)).

- We have moved two data elements from the Inputs to Emission Equations category to the Test and Calibration Methods category for the reasons specified in Section II.B.8 of this preamble:

- Date of measurement of the volumetric flow rate for each ventilation monitoring point (40 CFR 98.326(f)).
- Date of measurement of methane concentration for each ventilation monitoring point (40 CFR 98.326(g)).

- We have moved three data elements from the Inputs to Emission Equations category to the Production/Throughput Data that are Not Inputs to Emission Equations for the reasons specified in Section II.B.9 of this preamble:

- Annual quantity of petrochemicals produced (40 CFR 98.246(a)(5)).
- Volume or mass of off-specification product produced (40 CFR 98.246(a)(9)).

- Monthly production of titanium dioxide for each production process (40 CFR 98.316(b)(8)).

- We have double listed two data elements in the Production/Throughput Data that are Not Inputs to Emission Equations and in the Inputs to Emission Equations category. For those reporters who do not use the data elements in the specified equations, the data elements are in the Production/Throughput Data that are Not Inputs to Emission Equations and have the following determinations for the reasons specified in Section II.B.9 of this preamble:

- Cumulative volumetric biogas flow for each week that biogas is collected for destruction reported by wastewater treatment facilities using daily sampling (40 CFR 98.356(d)(2)).
- Weekly average CH<sub>4</sub> concentration for each week that biogas is collected for destruction reported by wastewater treatment facilities using daily sampling (40 CFR 98.356(d)(3)).

- Although we had proposed that the data element that requires reporting of the annual quantity of CO<sub>2</sub> captured for use on site (40 CFR 98.196(b)(17)(i)) to be in the Unit/Process Operating Characteristics that are Not used as Inputs to Emissions Equations Data category, we have moved this data element to the Production/Throughput Data that are Not Inputs to Emission Equations Data category for the reasons specified in Section II.B.9 of this preamble.

The rationale for these changes can be found in Sections II.B.2 through II.B.10 of this preamble and in the “Proposed Confidentiality Determinations and Data Handling Procedures for Part 98 Data: Responses to Public Comments” (available in the Docket EPA-HQ-OAR-2009-0924 and on the Web site (<http://www.epa.gov/climatechange/emissions/ghgrulemaking.html>)).

A list of all the direct emitter data elements and their category assignment under this final action is provided, by subpart and data category, in a memorandum (see “Final Data Category Assignments and Confidentiality Determinations for Part 98 Reporting Elements” in Docket EPA-HQ-OAR-2009-0924) and on the Web site (<http://www.epa.gov/climatechange/emissions/ghgrulemaking.html>).

## 2. Facility and Unit Identifier Information Category

*Comment:* Only a few commenters submitted comments on this data category. The majority of those providing comments agreed with EPA’s proposed determination that the data elements in this category are not eligible

for confidential treatment because they meet the definition of emission data in 40 CFR 2.301(a)(2)(i). One commenter agreed with EPA’s determination that the phrase “identity \* \* \* of any emission” in 40 CFR 2.301(a)(2)(i)(A) refers not only to the names of the pollutants being emitted, but also includes other identifying information, such as plant name, address, city, state, zip code, emission point or device description, and North American Industry Classification System (NAICS) code.

Although most commenters agreed with the proposed determination for this category, one commenter stated that the customer meter number and combustion unit identifiers reported in accordance with 40 CFR 98.36(c)(1) and (c)(3) should be held as confidential.

*Response:* The few commenters who disagreed with our proposed determination for this data category did not provide any rationale or facts explaining why the data in this category do not meet the definition of emission data at 40 CFR 2.301(a)(2)(i), as we proposed in the July CBI proposal. Rather, they claimed that the data elements in this category are sensitive and therefore, qualify as CBI. However, CAA section 114(c) does not afford confidential treatment to emission data, even if they were CBI. In any case, except for the comments discussed below on certain specific data elements, the commenters made general and conclusory CBI claims; they did not provide facts or rationales explaining why any of the data elements in this category are CBI. On the other hand, we note that many of the data elements assigned to the category are already available to the public through other sources. For example, the name and location of a facility and descriptions of emission units are included in construction and operating permits (*e.g.*, PSD and Title V permits).

With respect to the specific comment on the customer meter number and combustion unit identifiers that were required under 40 CFR 98.36(c)(1) and (c)(3) at the time of CBI proposal, these data elements are no longer required to be reported under 40 CFR part 98, subpart C (see the amendments to this subpart published in 75 FR 79092, December 17, 2010). Therefore, according to the comment, there is no CBI concern.

## 3. Emissions Category

*New Data Elements:* In this final action, we have added the following seven new data elements to this data category:



- Annual emissions aggregated for all GHGs from all applicable source categories, expressed in metric tons of CO<sub>2</sub>e calculated using Equation A–1 (reported under 40 CFR 98.3(c)(12)(i)).

- Annual emissions of biogenic CO<sub>2</sub>, expressed in metric tons (excluding biogenic CO<sub>2</sub> emissions from part 75 units), aggregated for all applicable source categories (reported under 40 CFR 98.3(c)(12)(ii)).

- Annual emissions from each applicable source category, expressed in metric tons of biogenic CO<sub>2</sub> (excluding biogenic CO<sub>2</sub> emissions from 40 CFR part 75 units (reported under 40 CFR 98.3(c)(12)(iii)(A)).

- Annual emissions from each applicable source category, expressed in metric tons of CO<sub>2</sub> (including biogenic CO<sub>2</sub> emissions from 40 CFR part 75 units and excluding biogenic CO<sub>2</sub> emissions from other non-part 75 units and other source categories) (reported under 40 CFR 98.3(c)(12)(iii)(B)).

- Annual emissions from each applicable source category, expressed in metric tons of CH<sub>4</sub> (reported under 40 CFR 98.3(c)(12)(iii)(C)).

- Annual emissions from each applicable source category, expressed in metric tons of N<sub>2</sub>O (reported under 40 CFR 98.3(c)(12)(iii)(D)).

- Annual emissions from each applicable source category, expressed in metric tons of each fluorinated GHG (including those not listed in Table A–1 of subpart A) (reported under 40 CFR 98.3(c)(12)(iii)(E)).

These new data elements were added to subpart A by the amendments published on December 17, 2010 (75 FR 79092) and were not included in the July 2010 CBI proposals. The new data elements require the reporting of GHG emissions data for combustion units, which are the same type of data as all the other data elements in the Emissions category. Because the CBI proposals addressed the same type of data elements, we do not see a need to propose confidentiality determination for these new data elements before taking final action. We conclude that it is appropriate to include these seven data elements in this data category and finalize their confidentiality determinations as part of this data category in this action.

**Moved Data Elements:** In this final action, we have moved the following data elements to the Emissions category from the Inputs to Emission Equations category:

- Annual CO<sub>2</sub> emissions from each wet-process phosphoric acid process line (reported under 40 CFR 98.266(f)(2)).

- Annual volumetric flow discharged to the atmosphere from each process vent (reported under 40 CFR 98.256(l)(5)).

- Annual average mole fraction of each GHG above the concentration threshold or otherwise required to be reported (reported under 40 CFR 98.256(l)(5)).

These data elements require the reporting of GHG emissions or information about the rate or concentration of GHG emissions into the atmosphere from phosphoric acid manufacturing plants and process vents at petroleum refineries. These data elements were inadvertently placed in the Inputs to Emission Equations category in the July 7, 2010 CBI proposal and have been moved to this category because they are the same type of data (*i.e.* information regarding the quantity and characteristics of GHG emissions) as all the other data elements in the Emissions category. Because these data elements are the same type of data as the other elements in this category, we have concluded that the emission data determination applied to this category also applies to these three data elements and finalize this determination in this action.

**Comment:** In the July 7, 2010 CBI proposal, EPA proposed that the data elements in this data category would not be eligible for confidential treatment because they met the definition of emission data in 40 CFR 2.301(a)(2)(i). Most commenters agreed with this proposed determination. Some commenters noted that this type of information is often reported to EPA and State and local agencies by facilities as part of compliance certification and deviation reports and is made available to the public in annual emission inventories. Some commenters noted that information about emissions is not sensitive, and others argued that disclosure of GHG emissions is critical to furthering public understanding of the sources of GHG emissions and to enabling stakeholder participation in the critique and analysis of any future GHG rulemaking.

Although many commenters supported the disclosure of GHG emission data and agreed that these data meet the definition of emission data, some commenters expressed concern that the disclosure of emissions data for individual process lines or units would cause competitive harm to their businesses. These commenters were concerned that emissions information could be used to calculate other data they consider to be sensitive and would harm their competitive position. For example, some commenters

recommended that the annual CO<sub>2</sub> process emissions for units should be held as confidential because they claimed that it may be used to determine sensitive information about manufacturing capacities and material throughputs.

A few commenters noted that some data elements included in this data category do not meet the definition of emission data because some of the CO<sub>2</sub> generated by a process are collected and therefore, not emitted to the atmosphere. In particular, these commenters noted that the annual CO<sub>2</sub> process emissions reported by ammonia production plants (see 40 CFR 98.76(b)(1)) may include CO<sub>2</sub> that is not released to the atmosphere because some ammonia plants collect CO<sub>2</sub> for use in other processes (*e.g.*, production of urea). Some commenters recommended that process emissions should be held confidential because such data might be used to determine sensitive information about manufacturing capacities and material throughput.

**Response:** EPA learned from some commenters that in certain situations some of the CO<sub>2</sub> generated by a process are collected and either used onsite (*e.g.*, urea manufacture) or transferred off site. In three subparts,<sup>5</sup> the CO<sub>2</sub> that is collected is reported as “CO<sub>2</sub> process emissions.” In those few situations where a reporter collects a portion of the CO<sub>2</sub> generated by a process, EPA agrees that the following data elements 40 CFR 98.76(a) and (b)(1), 40 CFR 98.166(a) and (b)(1), and 40 CFR 98.196(a) and (b)(1) do not reflect the emissions “which has been emitted by the source” and therefore do not meet the definition of emission data in 40 CFR 2.301(a)(2)(i). In these limited situations, the data element is assigned in this final action to the data category Unit/Process Operating Characteristics that are Not Inputs to Emission Equations and is determined to be non-CBI.<sup>6</sup> However, for those facilities where a reporter does not collect the CO<sub>2</sub> generated by a process such that the CO<sub>2</sub> is emitted into the atmosphere, the data element remains in the Emissions Data Category.

As described above, some commenters expressed concern with our proposed determination, because they claimed that some of the data elements in this category are sensitive business information the disclosure of which could cause competitive business harm.

<sup>5</sup> 40 CFR part 98, subpart G (Ammonia Manufacturing), subpart P (Hydrogen Production), and subpart S (Lime Manufacturing).

<sup>6</sup> Please see Section II.B.8 for the discussion on the confidentiality determination for these data elements.

However, these commenters did not provide any rationale or facts explaining why the data in this category do not meet the definition of emission data at 40 CFR 2.301(a)(2)(i), as we proposed in the July CBI proposal. Rather, they claimed that the data elements in this category are sensitive and therefore, qualify as CBI. However, CAA section 114(c) does not afford confidential treatment to emission data, even if they were sensitive. On the other hand, we note that data elements similar to the data elements included in this category are available to the public through other sources. For example, unit level emissions of certain pollutants are available through the National Emissions Inventory. We therefore conclude that our proposed determination for this data category is appropriate and finalize that determination in this action.

#### 4. Calculation Methodology and Methodological Tier Category

*New Data Elements:* EPA has added one new data element to this data category. This new data element requires refineries to indicate whether the annual volume of flare gas combusted and the annual average higher heating value of the flare gas were determined using standard conditions of 68 °F and 14.7 psia or the alternative conditions of 60 °F and 14.7 psia (reported under 40 CFR 98.256(e)(8)). This data element is used to determine which of the two possible values of the molar volume conversion factor should be used as an input to the emission equation and therefore is used to determine the correct methodology for calculating emissions. Although this new data element was added to Part 98 after the July 2010 CBI proposals and therefore not included in the CBI proposals (see 75 FR 79092, December 17, 2010), it is the same in type and characteristics to other data elements assigned to this category and for which confidentiality determination was proposed in the CBI proposals (e.g., temperature at which gaseous feedstock and volumes were determined (reported under 40 CFR 98.246(a)(4) and type of fuel combusted (reported under 40 CFR 98.36(b)(4))). Because the CBI proposals addressed the same type of data elements, we do not see a need to propose confidentiality determination for this new data element before taking final action. We therefore conclude that it is appropriate to assign this data element to this data category and finalize its confidentiality determination as part of this data category in this action.

*Comment:* In the July 7, 2010 CBI proposal, EPA proposed that the data in this category meet the definition of emission data at 40 CFR 2.301(a)(2)(i) and therefore, are not eligible for confidential treatment. Several commenters agreed that the data elements in this data category are not entitled to confidential treatment. Some commenters stated that the information was not sensitive or proprietary. One commenter noted that this type of information is provided in compliance certifications under other regulations.

However, other commenters disagreed with EPA's proposed determination for this data category. Some commenters stated that the methodology used by a reporting facility to calculate its GHG emissions was sensitive and should be considered confidential. Others believed that the capacity of a combustion unit (reported under 40 CFR part 98, subpart C and used to determine the appropriate Tier for calculating CO<sub>2</sub>, N<sub>2</sub>O and CH<sub>4</sub> emissions from combustion units) can be used by competitors to assess production capabilities and derive market strategies that would cause competitive harm to the reporter if disclosed to the public. Some commenters stated that the type of fuel used (reported under 40 CFR part 98, subpart C and used to determine the appropriate Tier for calculating CO<sub>2</sub>, N<sub>2</sub>O and CH<sub>4</sub> emissions from combustion units) is proprietary information that could be used to determine cost structure. One commenter stated that some facilities use unconventional fuels in their process and that the use of these fuels is not known by their competitors. This commenter argued that the use of these unconventional fuels represents a key competitive advantage for such facilities and should be considered CBI.

One commenter stated that certain data reported under 40 CFR part 98, subpart TT (Industrial landfills), including the types of materials in each waste stream and the method for estimating historical waste disposal quantities would allow a competitor to determine process-specific information, such as production quantities, that would be harmful to the competitive position of reporters.

*Response:* As described in Section II.C.5 of the preamble to the July 7, 2010 CBI proposal, the data elements in the Calculation Methodology and Methodological Tier category consist of the methodology and other information, such as unit capacity and fuel type, that are necessary to determine that the emissions were calculated using an appropriate methodology. EPA therefore proposed to determine that the data

elements in this category meet the definition of emission data at 40 CFR 2.301(a)(2)(i). Although some commenters argued that the data elements in this category are sensitive, none claimed nor provided information that these data elements do not meet the definition of emission data in 40 CFR 2.301(a)(2)(i).

Further, the type of fuel required to be reported is generic information that would not reveal specific information about the composition of the fuel. For example, a facility that burns waste process gases from a manufacturing process is required to report only that they combust "off-gas." Similarly, the maximum capacity of a combustion unit is already publicly available from other sources (e.g., Title V permits). Further, we disagree with the commenter who stated that the types of materials in each waste stream and the method for estimating historical waste disposal quantities reported under 40 CFR part 98, subpart TT (Industrial Landfills) are sensitive or proprietary. To estimate the historical amount of waste sent to an industrial landfill, facilities select one of the methods specified in the rule. The methods include direct measurement of the waste and an alternative estimation method for use by reporters who do not have measurement records of the waste disposed. The method used by the reporter does not disclose any information about the design or operating characteristics of production processes, historical production volumes, or any other production-related information. For the types of materials in each waste stream, facilities select from the generic list of waste types specified in the rule under Table TT-1, an approach that does not reveal any proprietary or sensitive information about a process.

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

*Comment:* Many commenters on this data category agreed with EPA's proposed determination that the data elements meet the definition of emission data in 40 CFR 2.301(a)(2)(i) and therefore do not qualify for confidential treatment. One commenter stated that the data elements in this category should be public because poor equipment operation, failure to collect required data, and other factors undermine the availability of accurate and complete emissions data. Other commenters agreed that the method used to calculate substitute values should be publicly available and noted that protocols for determining substitute

values are often included in State and local regulations.

However, other commenters argued that the method used to estimate the missing data constitutes sensitive business information, while others asserted that the time period over which data is missing is sensitive. Another commenter stated that detailed discussions of what data were missing, why they were missing, and how a facility generated substitute values provide insight into a facility's underlying process operations and therefore should be handled as CBI.

*Response:* Although some commenters disagreed with EPA's proposed determination that the data elements in this data category are emission data, none of the commenters provided rationale for how the data in this category does not meet the definition of emission data or any information to refute or alter EPA's assessment that the data elements in this category are needed to determine whether a reasonable methodology was used to determine substitute values, and whether the annual GHG emissions are correctly calculated, thus qualifying these data as emission data under 40 CFR 2.301(a)(2)(i). This data 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, reasons for using substitute values, and the method used to determine a substitute value. For reasons described above and in Section II.C.6 of the proposal preamble (75 FR 39094, July 7, 2010), EPA has determined in this final action, that 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)(2)(i).

#### 6. Unit/Process Static Characteristics That Are Not Inputs to Emissions Equations Category

*New Data Elements:* EPA has added one new data element to this data category. This data element requires municipal landfills to report a description of the aeration systems used at their landfills, including the aeration blower capacity (reported under 40 CFR 98.346(d)(1)). This new data element was added to subpart HH by the amendments published on October 28, 2010 (75 FR 66434) and was not included in the July 2010 CBI proposals. This data element is the same type of data as other data elements included in this category in the CBI proposals (e.g., description of the landfill gas collection system (reported under 40 CFR

98.346(i)(7)). For the same reasons set forth below and in Section II.C.7 of the July 7, 2010 CBI proposal (see 75 FR 39111) for the same types of data in this category, we have determined that this data element is not CBI. Specifically, this data element would provide only general, non-sensitive, information (e.g., such as the blower capacity for aeration system); such general information would not reveal the mechanics or any innovative aspects of the system's design and operation that might be considered as trade secret or CBI.

*Moved and Double-Listed Data Elements:* EPA reassigned one data element from the Facility and Unit Identifier Information category and 13 data elements from the Inputs to Emission Equations category to this data category. EPA has also double-listed<sup>7</sup> five data elements in both the Inputs to Emission Equations category and this category. These data elements are listed in Section II.B.1 of this preamble and share the same characteristics as those data elements previously assigned to the Unit/Process Static Characteristics that are not Inputs to Emission Equations category in the July 2010 CBI proposals. Specifically, they consist of operating characteristics that do not change over time that are not used as inputs to emission equations. As with other data elements in this category, none of the 19 data elements added to this data category meet the definition of emission data at 40 CFR 2.301(a)(2)(i)(A) because they are not “\* \* \* 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 \* \* \*”. As explained in more detail below, in response to comments, EPA re-evaluated the data elements in this data category and concluded that the proposed categorical determination of non-CBI may not be appropriate for all the data elements in this category. Based on the comments and EPA's re-evaluation, EPA concluded that three of the 19 data elements moved to this data category are entitled to confidential treatment. The three data elements determined to be CBI in this action are:

- The typical drum or vessel outage (40 CFR 98.256(k)(3));
- The total number of delayed coking drums or vessels (40 CFR 98.256(k)(3)); and
- The number of delayed coking drums in the set (40 CFR 98.256(k)(4)).

<sup>7</sup> For those reporters who do not use the data elements in the equations specified in Section II.B.1 of this preamble, the data elements are in the Unit/Process Static Characteristics that are Not Inputs to Emission Equations.

These data elements can be used by competitors to determine the actual raw material input to a delayed coking unit and would provide insight into innovative operating practices that are considered sensitive by the reporter because they provide the reporter with a competitive advantage over other refineries. For example, changes in operating practices can produce increases in production capacity without adding new drums/vessels. Further, comments from refineries indicate that they consider these data elements to be sensitive and take precautions to ensure this information is not made public. We are also not aware of any public sources for these data elements. For the reasons described above, we conclude that these three data elements are CBI.

With respect to the remaining 16 data elements that are reassigned to this data category, most include the number of emission units, production lines, or abatement devices (e.g., number of cement kilns reported by facilities not using CEMS, number of nitric acid trains) or descriptions of the units (see Section II.B.1 of this preamble for the list of reassigned data elements). They also include the year in which a landfill closed (reported under 40 CFR 98.346(a) by closed municipal landfills that do not use Equation HH-3 to calculate emissions and 40 CFR 98.466(a)(3) by closed industrial landfills not using Equation TT-4), an estimate of the year in which an open landfill expects to close (reported under 40 CFR 98.346(a) by open municipal landfills and 40 CFR 98.466(a)(3) by open industrial landfills), capacity of municipal and industrial landfills (reported under 40 CFR 98.346(a) by closed municipal landfills not using Equation HH-3 and by all open municipal landfills; and 40 CFR 98.466(a)(4) by closed industrial landfills not using Equation TT-4 to calculate emissions and by all open industrial landfills). These data elements have been moved to this category because they are the same type of data as many other data elements already assigned to this data category (e.g., number of cement kilns reported by facilities using CEMS, reported under 40 CFR 98.86(a)(3)). For the reasons discussed in more detail in Section II.C.7 of the July 7, 2010 CBI proposal (see 75 FR 39111), EPA has concluded the disclosure of these data elements is unlikely to cause competitive harm. These data elements do not provide insight into current production rates, raw material consumption, or other information that competitors could use to discern market share and other

sensitive information. The number of production units and control devices, general information regarding the type of combustion unit (*e.g.*, whether the unit is a boiler, flare, internal combustion engine, process heater, *etc.*), the design capacity of a landfill, and dates of closure or expected closure constitute general information that is already available to the public through other sources (*e.g.*, Title V operating permits). Although only general information regarding the type of combustion unit is available in permits, detailed information on the type of combustion devices is available from other public sources, (*e.g.*, National Emissions Inventory).

*Comment:* This data category primarily includes information about the number and capacity of process lines and production units, though it also includes a few unique data elements that require reporting of the specific type of unit or descriptions of processes. Some commenters agreed with EPA's determination that the data in this category is not CBI because it is either already available to the public through other sources (*e.g.*, Title V permits, NEI) or is not likely to cause competitive harm if made available. However, several commenters expressed concern that competitors could use some data elements in this category (*e.g.*, number and capacity of production units/process lines), in combination with other data to infer information about individual facilities, potentially causing reporters competitive harm. In particular, some commenters were concerned that capacity information, such as the annual capacity of process line or production unit, could be used to determine whether a competitor has available capacity to expand production to meet increased market demand. These commenters argued that a competitor could use this information, in combination with actual production data, to develop market strategies that would be harmful to a reporter. Some commenters recommended that EPA allow reporters to make individual case-by-case CBI claims for data elements in this data category.

*Response:* The commenters raised a concern that the proposed non-CBI determination may not be appropriate for certain data elements in this category. Note that EPA did not receive comments specific to the data elements in this category objecting to our proposed determination that the data elements in this category do not meet the definition of emission data because none of the data elements are inputs to equations/calculation methods or information otherwise needed to

calculate or determine emissions. We therefore conclude that the proposed determination was appropriate in this regard and finalize in this action our determination that the data elements in this category are not emission data under 40 CFR 2.301(a)(2)(i).

In response to the comments that a non-CBI determination for this category was not appropriate, EPA decided to re-evaluate each data element assigned to this data category to determine if the proposed determination applies. As part of this process, EPA reviewed public comments regarding specific data elements, conducted additional reviews of alternative public sources (*e.g.*, Title V permits, NEI databases) and re-evaluated whether public availability of each data element would be likely to cause harm to the competitive position of the reporter. Through this process, we have determined that only three of the data elements assigned to the Unit/Process Static Characteristics category are eligible for confidential treatment.

- The typical drum or vessel outage (40 CFR 98.256(k)(3));
- The total number of delayed coking drums or vessels (40 CFR 98.256(k)(3)); and
- The number of delayed coking drums in the set (40 CFR 98.256(k)(4)).

These three data elements were added to this category in this final action. For the explanation of why these data elements are determined to be CBI, please see the discussion of moved and double-listed data elements listed above for Section II.B.6.

Based on our review, EPA has decided not to make a final determination for the following 21 data elements in this data category:

- The annual ferroalloy product production capacity (reported under 40 CFR 98.116(a)).
- The annual lead product production capacity reported by facilities using CEMS (reported under 40 CFR 98.186(a)(2)).
- The annual lead product production capacity for facilities not using CEMS (reported under 40 CFR 98.186(b)(3)).
- The annual lead product production capacity for each smelting furnace reported by facilities not using CEMS (reported under 40 CFR 98.186(b)(3)).
- The annual lime production capacity (reported under 40 CFR 98.196(b)(15)).
- The type of nitric acid process (reported under 40 CFR 98.226(k)).
- The maximum rated throughput capacity of the catalytic cracking unit, traditional fluid coking, or catalytic

reforming unit (reported under 40 CFR 98.256(f)(3)).

- The maximum rated throughput of the sulfur recovery plant (reported under 40 CFR 98.256(h)(2)).
  - The maximum rated throughput of each coke calcining unit (reported under 40 CFR 98.256(i)(2)).
  - The annual phosphoric acid permitted production capacity (reported under 40 CFR 98.266(b)).
  - The annual phosphoric acid production capacity for each wet-process phosphoric acid process line (reported under 40 CFR 98.266(f)(3)).
  - The annual production capacity of silicon carbide reported by facilities using CEMS (reported under 40 CFR 98.286(a)(3)).
  - The annual production capacity of silicon carbide reported by facilities not using CEMS (reported under 40 CFR 98.286(b)(3)).
  - The annual production capacity of soda ash for each manufacturing line reported by facilities using CEMS (reported under 40 CFR 98.296(a)(3)).
  - The annual production capacity of soda ash reported by facilities not using CEMS (reported under 40 CFR 98.296(b)(4)).
  - The annual production capacity of titanium dioxide reported by facilities using CEMS (reported under 40 CFR 98.316(a)(4)).
  - The annual production capacity of titanium dioxide for each production line reported by facilities not using CEMS (reported under 40 CFR 98.316(b)(5)).
  - The description of the gas collection system at an underground coal mine (reported under 40 CFR 98.326(q)).
  - The annual zinc product production capacity reported by facilities using CEMS (reported under 40 CFR 98.336(a)(1)).
  - The annual zinc product production capacity reported by facilities not using CEMS (reported under 40 CFR 98.336(b)(2)).
  - Description or diagram of the reporter's industrial wastewater treatment system reported by facilities subject to subpart II (reported under 40 CFR 98.356(a)).
- For the reasons explained below, we have decided not to make a CBI determination for these data elements. Many of these data elements require facilities to report the maximum production capacity of the facility or process line. In the July 2010 CBI proposals, we proposed that capacity data would be not entitled to CBI protection because we believed capacity data to be readily available from other public sources (*e.g.*, permits, trade and

government publications). We received a number of comments that capacity data may not be readily available for all sources and claims that capacity information is competitively sensitive. EPA reviewed the available capacity information and determined that the situation may vary for individual facilities. While the capacity data elements listed above are generally publicly available, there may be facilities where this data is not public. Further, the information publicly available for facilities may not necessarily be the same as the data elements required under Part 98. We therefore decided not to make a confidentiality determination for the data elements on capacity listed above at this time.

Similarly, we decided not to make determinations for the type of nitric acid production process (reported under 40 CFR 98.226(k), description of the gas collection system at an underground coal mine (reported under 40 CFR 98.326(q)), and description of the wastewater treatment system (reported under 40 CFR 98.356(a)). We consider it unlikely that most reporters would consider the type of nitric acid production process, description of wastewater treatment facility or the gas collection system at an underground coal mine to be sensitive. However, we can envision reporters submitting more detailed information than anticipated that would provide specific details on the operation of their facility that would be considered sensitive. For example, 40 CFR 98.326(q) requires reporters to submit a description of the gas collection system at an underground coal mine. If reporters submitted detailed diagrams of their facilities these diagrams may contain information that is proprietary or sensitive or may provide insight into other production processes. EPA is also not aware of any public sources of these data. Therefore, although we believe it is unlikely that these data elements would cause competitive harm, EPA has decided not to make determinations for these data elements at this time.

Except for the data elements discussed above, we have determined that all other data elements in this data category are not CBI for the same reasons we set forth in Section II.C.7 of the July 7, 2010 CBI proposal (see 75 FR 39111). We disagree with commenters who recommended that the number of process lines or units be held confidential because their disclosure would be likely to cause competitive harm. This information is generally included in both construction and Title V operating permits as well as in permit

applications and permit fact sheets and is therefore already publicly available. Permits include requirements or limits for each specific unit or process line. Because the number of production units is already publicly available, these data elements do not qualify for confidential treatment (see 40 CFR 2.208(c)).

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

*New Data Elements:* EPA has added four new data elements to this data category (see Section II.B.1 of this preamble for a list of the new data elements). The new data elements are reported by municipal landfills that use an alternative methane correction factor instead of the default factor provided in 40 CFR part 98, subpart HH. The data elements consist of information on the operation of aeration systems at the landfill, such as the number of hours it was operated and the fraction of the landfill subject to aeration. These new data elements were added to subpart HH by the amendments published on October 28, 2010 (75 FR 66434) and were not included in the July 2010 CBI proposals. These data elements are the same type of data as other data elements included in this category in the July 2010 CBI proposals (e.g., the type of cover material used and the surface area of the landfill (reported under 40 CFR 98.346(f)). Like these other data elements in this category, the four data elements at issue provide general information about the operation of a municipal landfill; such information does not reveal any trade secrets or other sensitive business information regarding the design or operation of an aeration system or the landfill. Further, this type of data on landfills is generally already publicly available from the municipalities operating landfills. We have therefore concluded that the release of this data will not cause substantial competitive harm to the reporter and are finalizing our determination that these data elements are non-CBI in this action.

*Moved and Double-Listed Data Elements:* In response to comments stating that CO<sub>2</sub> generated by a process is not actual emissions if a portion of the CO<sub>2</sub> is collected, EPA has added six data elements to this data category under certain conditions. Specifically, the data elements for reporting the total CO<sub>2</sub> generated by a process under three subparts are added to this category only for those facilities that collect a portion of the CO<sub>2</sub> for use on site or for shipment off site. We are including these data elements in the Unit/Process Operating Characteristics that are Not

Used as Inputs to Emission Equations Data Category, because these data elements relate to operating characteristics of a production process that may vary over time. As with the other data elements in this category, they do not meet the definition of emission data at 40 CFR

2.301(a)(2)(i)(A). As discussed in more detail below in this subsection, we received comments that the proposed category-based non-CBI determination may not be appropriate for all the data elements assigned to this category and, in response, we reviewed individual data elements assigned to this data category to determine whether the proposed determination applies. For reporters who collect the generated CO<sub>2</sub> by a process, we determined that the data element on the amount of CO<sub>2</sub> is not CBI. Public availability of the data is not likely to cause substantial harm to the competitive position of the reporter because the data reported is the GHG generated by the industrial process and does not reveal any sensitive information on how much of the GHG generated was collected, how much of the collected GHG was used onsite (e.g., for urea production or sugar refining), or how much was transferred off site. As described in Section II.A.4 of this preamble, EPA moved 37 data elements that were improperly placed in the Inputs to Emission Equations category in the July 2010 CBI proposals. EPA also double-listed<sup>8</sup> six data elements in both the Inputs to Emission Equations category and the Unit/Process Operating Characteristics that are Not Inputs to Emission Equations category. These 43 data elements share the same characteristics as those data elements previously assigned to the Unit/Process Operating Characteristics that are not Inputs to Emission Equations category in the July 2010 CBI proposals. Specifically, they consist of operating parameters that change over time that are not used as inputs to emission equations. For a list of the reassigned data elements, see the memorandum "Final Data Category Assignments and Confidentiality Determinations for Part 98 Reporting Elements" (see Docket EPA-HQ-OAR-2009-0924 and the Web site, <http://www.epa.gov/climatechange/emissions/ghgrulemaking.html>). As discussed in more detail below in this subsection, we received comments that the proposed category-based non-CBI determination may not be appropriate

<sup>8</sup>For those reporters who do not use the data elements in the specified equations in Section II.B.1 of this preamble, the data elements are in the Unit/Process Operating Characteristics that are Not Inputs to Emission Equations category.

for all the data elements assigned to this category and, in response, we reviewed individual data elements assigned to this data category to determine whether the proposed determination applies. Based on our review, we determined that 10 of the 43 data elements are entitled to confidential treatment. The 10 data elements determined to be CBI are as follows:

- Annual average value of the inlet air flow rate reported by refineries (40 CFR 98.256(f)(8)).
- Annual average value of oxygen-enriched air flow rate reported by refineries (40 CFR 98.256(f)(8)).
- Annual average value of %O<sub>oxy</sub> reported by refineries (40 CFR 98.256(f)(8)).
- Annual average value of the inlet air flow rate reported by refineries (40 CFR 98.256(f)(9)).
- Annual average value of oxygen-enriched air flow rate reported by refineries (40 CFR 98.256(f)(9)).
- Annual average value of %N<sub>2,oxy</sub> reported by refineries (40 CFR 98.256(f)(9)).
- Number of regeneration cycles or measurement periods during the reporting year for each catalytic cracking unit, traditional fluid coking unit, and catalytic reforming unit reported by refineries (40 CFR 98.256(f)(13)).
- Average coke burn-off quantity per cycle or measurement period for each catalytic cracking unit, traditional fluid coking unit, and catalytic reforming unit reported by refineries (40 CFR 98.256(f)(13)).
- Annual volume of recycled tail gas (if not used to calculate the recycling correction factor) (reported under 40 CFR 98.256(h)(5)).
- Annual average mole fraction of carbon in the tail gas (if not used to calculate recycling correction factor) (reported under 40 CFR 98.256(h)(5)).

As with the other data elements in this category, none of these 10 data elements meet the definition of emission data at 40 CFR 2.301(a)(2)(i)(A) because they are not “\* \* \* 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\* \* \*”. We also determined that public availability of these data would cause competitive harm to reporters for the following reasons. Information on the flow rates and composition of inputs to the catalytic cracking units (*i.e.*, 40 CFR 98.256(f)(8) and (f)(9)) provide insight into the operation of the production process that may reveal operating conditions that are considered

sensitive by the reporter because they provide the reporter with a competitive advantage over other refineries. The average coke burn-off quantity per cycle/measurement period for individual catalytic cracking units, traditional fluid coking units, and catalytic reforming units (reported under 40 CFR 98.256(f)(13)) discloses information about the operation of the unit (*e.g.*, the level of reforming), and indicates the quantity of naphthalene the feedstock and the quantity of aromatics produced. The annual volume of tail gas recycled and the mole fraction of carbon in the tail gas (reported under 40 CFR 98.256(h)(5)) provide information about the refinery’s ability to process different types of crude oil, and the products the refinery can produce. Further, comments from refineries indicate that they consider these data elements to be sensitive and take precautions to ensure this information is not made public. We are also not aware of any public sources for these data elements. For the reasons described above, we conclude that these data elements are CBI.

EPA decided not to make final confidentiality determinations for seven of the 43 data elements in this category. These data elements are as follows:

- Annual average value of the exhaust gas flow rate reported by refineries (40 CFR 98.256(f)(7)).
- Annual average value of %CO<sub>2</sub> reported by refineries (40 CFR 98.256(f)(7)).
- Annual average value of %CO reported by refineries (40 CFR 98.256(f)(7)).
- Annual average value of %O<sub>2</sub> reported by refineries (40 CFR 98.256(f)(8)).
- Annual average value of %CO<sub>2</sub> reported by refineries (40 CFR 98.256(f)(8)).
- Annual average value of %CO reported by refineries (40 CFR 98.256(f)(8)).
- Annual average value of %N<sub>2</sub> exhaust reported by refineries (reported under 40 CFR 98.256(f)(9)).

Based on our review of these data elements, we have concluded that the configuration of individual facilities would impact the confidentiality determinations for these data elements. Because we do not have the necessary information on the facility configuration, we are unable to make a confidentiality determination for these data elements. For example, under 40 CFR 98.256(f)(7) facilities report the exhaust flow rate and outlet concentrations of CO<sub>2</sub> and CO. In some cases, the exhaust gases from these units are exhausted directly to the

atmosphere. In such cases, the flow rate and CO<sub>2</sub> and CO content of the exhaust gases meet the definition of emission data at 40 CFR 2.301(a)(2)(i)(A) because they are “\* \* \* 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\* \* \*” and therefore precluded from confidential treatment pursuant to CAA section 114(c). However, other reporters do not exhaust these gases directly to the atmosphere but instead route them to other units (*e.g.*, other combustion units). For these facilities, the flow rate and concentrations of CO<sub>2</sub> and CO reported under 40 CFR 98.256(f)(7) would not be precluded from CBI treatment because the data elements would not meet the definition of emission data since they do not provide information on the type and characteristics of pollutants emitted to the atmosphere. Because we do not have information on site-specific conditions that impact the status of these data elements, we have decided not to make determinations for these 7 data elements in this action.

With respect to the remaining 26 data elements moved to the data category from Inputs to Emissions Equations, for the reasons discussed in more detail in Section II.C.7 of the July 7, 2010 CBI proposal (see 75 FR 39111), EPA has concluded the disclosure of these data elements is unlikely to cause competitive harm. These data elements do not provide insight into current production rates, raw material consumption, or other information that competitors could use to discern market share and other sensitive information. They consist of data elements such as the amount and carbon content of gases sent to flares at refineries and the dates on which ventilation/degasification occurs at underground coal mines, which are not considered to be sensitive information.

*Comment:* The data elements in this data category consist of operating characteristics related to production processes. Unlike the Unit/Process Static Characteristics that are Not Inputs to Emission Equations category discussed Section II.B.6 of this preamble, these data elements change with changes in operations or processes. Some commenters agreed with EPA’s proposed determination that the data in this category would not qualify for confidential treatment under CAA section 114(c) because it was general information that was not likely to cause competitive harm to reporters. However, several commenters expressed concern

that competitors could use some data elements in this category, in combination with other data, to discern information about individual facilities and processes, causing competitive harm. Some commenters noted that many of the data elements in this category are not already available to the public, supporting the assertion that they would cause competitive harm if disclosed. For example, one commenter noted that the number of operating kilns reported by a cement manufacturing facility (reported under 40 CFR 98.86(a)(3) and 98.86(b)(4)) was not information already available to the public. This commenter stated that the number of operating kilns could be used by competitors to determine the amount of product produced, estimate market share, and pricing structures. The commenter believes that this information could put the reporter at a competitive disadvantage. Other commenters recommended that the quality assurance/quality control data, collected by facilities to verify data provided by raw material suppliers, should be held confidential because competitors could use these data to determine product composition and process design or operating characteristics that reporters consider proprietary. One commenter stated that certain information submitted as part of BAMB extension requests was sensitive information requiring confidential treatment. This commenter specifically identified the following data elements from BAMB extension requests as confidential: the reason for the extension request (40 CFR 98.3(d)(2)(ii)(C)) and the planned installation date of monitoring equipment (40 CFR 98.3(d)(2)(ii)(F)). The commenter noted that this information could be used by competitors to determine a company's ability to capitalize on specific market opportunities and would allow competitors to target markets based on weaknesses and vulnerabilities. The commenter further stated that information on future shutdowns would allow competitors to increase production during a reporter's shutdown and would likely cause serious harm to the reporter's competitive position.

Other commenters recommended EPA allow reporters to make individual case-by-case CBI claims for data elements in this data category.

**Response:** The comments raised a concern that the proposed non-CBI determination may not be appropriate for certain data elements in this category. Note that EPA did not receive comments specific to the data elements

in this category objecting to our proposed determination that the data elements in this category do meet the definition of emission data because none of the data elements are inputs to equations/calculation methods or information otherwise needed to calculate or determine emissions. We therefore conclude that the proposed determination was appropriate in this regard and finalize in this action our determination that the data elements in this category are not emission data under 40 CFR 2.301(a)(2)(i).

In response to the comments that a non-CBI determination for this category was not appropriate, EPA decided to re-evaluate each data element assigned to this data category to determine whether the proposed determination applies. As part of this process, EPA reviewed public comments regarding specific data elements, conducted additional reviews of alternative public data sources (e.g., Title V permits, NEI databases) and re-evaluated whether each data element would be likely to cause harm to a reporter's competitive position. Through this process, we have determined that ten data elements in the Unit/Process Operating Characteristics that are Not Inputs to Emission Equations category are CBI. These data elements include the following:

- The reason for submitting a BAMB extension request (reported under 40 CFR 98.3(d)(ii)(C)).
- The reason why equipment was not or could not be obtained and installed during a planned shutdown between October 30, 2009 and April 1, 2010 as reported in a BAMB extension request (reported under 40 CFR 98.3(d)(2)(ii)(E)).
- Planned installation date for monitoring equipment as reported in a BAMB extension request (reported under 40 CFR 98.3(d)(2)(ii)(F)).
- The anticipated date on which a facility applying for a BAMB extension will begin using the monitoring methods specified in Part 98 (reported under 40 CFR 98.3(d)(2)(ii)(F)).
- The sampling analysis results of carbon content of feedstock as determined from QA/QC supplier data under 40 CFR 98.74(e) by ammonia manufacturing facilities (reported under 40 CFR 98.76(b)(6)).
- The mass fraction of each sample analyzed for all tests used to verify (i.e., QA/QC) the carbonate-based mineral mass fraction for each carbonate-based raw material charged to a continuous glass melting furnace (reported under 40 CFR 98.146(b)(5)(iii)).
- The explanation of change greater than 30 percent in a magnesium

production facility's cover gas usage rate (reported under 40 CFR 98.206(g)).

- The types of materials loaded by vessel type that have an equilibrium vapor phase concentration of CH<sub>4</sub> of 0.5 volume per cent or greater (reported under 40 CFR 98.256(p)(2)).

- The sampling analysis results for carbon content of petroleum coke consumed by a silicon carbide production facility as determined for QA/QC of data provided by raw material suppliers (reported under 40 CFR 98.286(b)(7)).

- The sampling analysis results of carbon content of petroleum coke consumed by titanium dioxide production facilities for QA/QC of data provided by raw material suppliers (reported under 40 CFR 316(b)(13)).

EPA has learned that these data elements are not publicly available information, and they consist of proprietary information about a process, method of operation, composition of raw materials or products that are commonly considered CBI.

EPA agrees with commenters who recommended that certain data elements submitted as part of BAMB extension requests are eligible for confidential treatment. At the time of the CBI proposals, we believed the reason for requesting a BAMB extension (reported under 40 CFR 98.3(d)(2)(ii)(C)) and the reason why equipment was not (or could not be) installed (reported under 40 CFR 98.3(d)(2)(ii)(E)) would be generic information that would not reveal any sensitive operating information. However, since that time EPA has reviewed a number of BAMB extension requests and determined that they contain more detailed information, such as process diagrams and operational information, than we had previously anticipated. We also note that many facilities have claimed these data as CBI in their BAMB extension requests because they provide insight into facility-specific operating conditions or process design that are not available from other sources and would harm their competitive position if released. We also agree with those commenters who stated that the planned installation date and the date of anticipated startup (reported under 40 CFR 98.3(d)(2)(ii)(F)) provides sensitive information regarding future process shutdowns. These data elements likely would cause competitive harm if disclosed because competitors could use this information to anticipate and potentially benefit from future decreases in product supply. For example, a competitor able to anticipate the shutdown of a reporter's facility and resulting decrease in product supply,



could use this information to steal customers from a reporters by increasing its own production or could adjust the price of their own products.

We also agree that the results of sampling and analysis data used to quality assurance/quality control data on the composition of raw materials would be likely to cause competitive harm to reporters and is not available from other sources. Competitors could use the composition of raw materials to identify a firm's raw material supplier and estimate production costs. In the case of glass manufacturing facilities, the data would also reveal proprietary information about product formulation or recipe. Since this information is not available from other sources and may be used by competitors to devise competitive strategies that would likely harm the competitive position of the reporter, EPA has determined that these data are eligible for confidential treatment.

We have also determined that the data element reported by petroleum refineries under subpart Y related to the types of materials loaded that have an equilibrium vapor phase concentration of CH<sub>4</sub> of 0.5 volume percent or greater (40 CFR 98.256(p)(2)) are entitled to confidential treatment. EPA has learned that this data is only released in aggregate form by EIA. This data could be used by competitors in combination with other information to discern the approximate quantities of materials used in loading operations. Information of this type would provide competitors insight into the shipping activities conducted at refineries.

Except for the data elements listed above, we conclude for the reasons set forth below and in Section II.C.7 of the July 7, 2010 CBI proposal that the proposed non-CBI determination is appropriate for all other data elements belonging to this data category and are finalizing these determinations in this action. We disagree with commenters who recommended that the number of units operated during a reporting year should be held confidential. This information cannot be used to determine production data for a facility and would not provide insight into a facility's design or operating procedures. It is also unlikely to reveal any information regarding future production that would be useful to competitors or allow competitors to anticipate future shutdowns. EPA therefore continues to conclude that public availability of these data elements would not cause competitive harm to the reporter.

#### 8. Test and Calibration Methods Category

*Moved Data Elements:* EPA determined that the following seven data elements were incorrectly assigned to the Methods and Methodological Tier category:

- The basis for the unit-specific factor (*i.e.*, select from average of multiple source tests; Single source test within last 5 years; Single source test more than 5 years ago; Source test of identical unit at same facility) (40 CFR 98.256(i)(8)).
- The basis for the CO<sub>2</sub> emission factor used in Equation Y-16b (40 CFR 98.256(j)(8)).
- The basis for the carbon emission factor used in Equation Y-16b (40 CFR 98.256(j)(8)).
- Indication of the measurement or estimation method used for measuring volumetric flow discharge for each process vent (40 CFR 98.256(l)(5)).
- Indication of the measurement or estimation method used for measuring average mole fraction of each GHG for each process vent (40 CFR 98.256(l)(5)).
- The basis for the CH<sub>4</sub> emission factor used (*i.e.*, select from weekly or more often measurements; Periodic (less frequent than weekly) measurements; average of multiple source tests; One-time source test; Default factor) for uncontrolled blowdown systems (40 CFR 98.256(m)(3)).
- Basis for the mole fraction of CH<sub>4</sub> in the vent gas from the unstabilized crude oil storage tank (*i.e.*, measurement of methane composition; engineering estimate of methane composition based on crude composition; default) for storage tanks that process unstabilized crude oil (40 CFR 98.256(o)(4)(vi)).

EPA has also determined that the following two data elements were incorrectly assigned to the Inputs to Emission Equations category:

- Date of measurement of the volumetric flow rate for each ventilation monitoring point (40 CFR 98.326(f)).
- Date of measurement of methane concentration for each ventilation monitoring point (40 CFR 98.326(g)).

These nine data elements provide information on how specific parameters or emission factors were determined (*e.g.*, weekly measurements versus daily measurements, direct measurement versus engineering estimates) or the dates on which measurements were made. They are not used to calculate emissions or to determine the calculation method used to calculate the GHG emissions. Therefore, we have assigned these data elements to the Test and Calibration methods category, which contains similar data elements. For example, 40 CFR 98.256(i)(8) is

similar to 40 CFR 98.256(e)(10), which requires refineries to report the basis for the value of the fraction of carbon in the flare gas contributed to methane by selecting from the following list: Daily or more often measurements; weekly measurements; periodic (less frequent than weekly) measurements; One-time measurement; engineering estimate; default (0.4); and other. Since these data elements are similar in type to the data elements included in this category, we have concluded that the non-CBI determination applied to the Test and Calibration Methods category also applies to these data elements.

*Comment:* This data category includes information on calibration methods used to calibrate monitoring instruments, the frequency of sampling and analysis, methods used in performance tests, and methods used for analyzing the compositions of materials. Few commenters submitted comments on this data category. Many of those commenters agreed with EPA's proposed determination that disclosure of the data elements in this category would not cause competitive harm to reporters. One commenter noted that the type of test methods and other data elements included in this data category are generally already specified in the GHG Reporting Rule. This commenter asserted that data elements confirming that the correct monitoring methods or calibration procedures were used are generally not the type of data considered competitively sensitive by reporters.

A few commenters disagreed with EPA's proposed determination for this data category. One commenter thought that the description of the BMM used (reported under 40 CFR 98.3(c)(7)) should be held as confidential information, but did not provide any explanation or rationale for why this data element would be likely to cause substantial harm to their competitive position. One commenter indicated that the method used to measure the frequency and duration of anode effects or overvoltage (reported under 40 CFR 98.66(d)) should be considered confidential. This commenter stated that information about the method used to measure these parameters could be used in combination with other reported data to estimate other parameters that would cause competitive harm (*e.g.*, aluminum production). This commenter also identified the date on which tests were completed to determine emissions factors (reported under 40 CFR 98.66(c)(3)) as confidential, but did not provide any rationale for why this data element would cause competitive harm.



*Response:* Although some commenters disagreed with our proposed determination for this category, only one provided rationale supporting that claim. However, for the reasons explained below, we disagree with the commenter that the method used to measure parameters, such as the frequency and duration of anode effects or overvoltage (reported under 40 CFR 98.66(d)), could be used to derive other sensitive information that would cause competitive harm. As previously described in Section II.C.9 in the proposal preamble (75 FR 39094, July 7, 2010), the data elements in this category, including those noted in the comments, consist of descriptions of devices or methods used to measure a parameter, the method and frequency of calibrating measurement devices, and the frequency and analytical methods used for conducting performance tests or sample analysis. The type of device used to make the measurement (e.g., flow meter, weighing scales) and the frequency and method of calibrating the measuring device do not reveal the actual values of the measured parameters or provide any other sensitive information about the design or operating characteristics of a process. The standardized analytical method and the frequency of sample collection and analysis are generally specified by each subpart and do not provide any insight into the design or operating conditions of a facility. For the reasons stated above and in Section II.C.9 in the proposal preamble (75 FR 39094, July 7, 2010), we conclude that our proposed non-CBI determination for this data category is appropriate.

#### 9. Production/Throughput Data Elements That Are Not Inputs to Emission Equations and Raw Materials Consumed That Are Not Inputs to Emission Equations Categories

*Moved and Double-Listed Data Elements:* After reviewing industry comments related to the capture of process emissions for use on site, EPA determined that the data element required to be reported by 40 CFR 98.196(b)(17)(i) was incorrectly assigned to the Unit/Process Operating Characteristics That Are Not Used as Inputs to Emission Equations Data Category. EPA has determined that this data element, which requires lime manufacturers to report the amount of CO<sub>2</sub> captured for use in on-site processes, is information about materials used in a production process. Such information relates to production (such as the actual production rate) and not unit/process operating characteristics. Therefore, we have

assigned this data element to the Production/Throughput Data That Are Not Inputs to Emissions Equations Data Category (which contains similar data elements (e.g., 40 CFR 98.76(b)(13) requiring ammonia facilities to report the amount of CO<sub>2</sub> from the ammonia production process used to produce urea) and have concluded that the CBI determination applied to that category also applies to this data element.

EPA has moved three data elements from the Inputs to Emission Equations category to the Production/Throughput Data That Are Not Inputs to Emission Equations and double-listed<sup>9</sup> two data elements in these two categories.<sup>10</sup> Each of these five data elements requires the reporting of either the quantity or composition of a product, which are the same type of data assigned to this category. For example, the annual quantity of petrochemicals produced (40 CFR 98.246(a)(5)), volume or mass of off-specification product produced (40 CFR 98.246(a)(9)), and monthly production of titanium dioxide (40 CFR 98.316(b)(8)) are the same type of data as 40 CFR 296(b)(6) (monthly production of soda ash) and 40 CFR 98.316(b)(5) (annual production of titanium dioxide). The cumulative volumetric biogas flow and the weekly average CH<sub>4</sub> concentration for each week that biogas is collected for destruction reported by wastewater treatment facilities using daily sampling ((40 CFR 98.356(d)(2) and (d)(3)) are also the same as the other data elements listed in this category because they can be used to determine the average weekly biogas production for the wastewater treatment facility. Because these five data elements are the same type of data as the other data elements in this category, we have concluded that the CBI determination applied to that category also applies to this data element.

*Comment:* Many commenters supported EPA's proposed determination that the data in these two data categories (none of which are inputs to equations/calculation methods or information otherwise needed to calculate or determine emissions) qualify for confidential treatment. The commenters agreed that the data elements in these data categories should be kept confidential because disclosure of these data would cause substantial harm to the competitive position of reporters. They argue that disclosure of these data could provide competitors

with insight into a facility's operational strengths and weaknesses as well as revealing information about raw material sources. Some commenters argued that the data are currently held as CBI under other Federal programs that collect these data. Others agreed with EPA's proposal that the data elements in these data categories do not meet the definition of emission data (40 CFR 2.301(a)(2)(i)).

Several commenters identified specific data elements from these data categories as confidential and provided information describing why they considered the data sensitive. For example, commenters stated that data elements that provide the chemical composition of products could be used by competitors to deduce the types of feedstock or raw materials used in the process. Other commenters stated that data on the quantities of product and by-products produced and raw materials consumed should be kept confidential because this information can be used by competitors to determine production costs, process efficiency, and market share.

Although most commenters agreed with EPA's proposed determinations for these two data categories, a few commenters believe that EPA should make data in these categories available to the public. Some commenters recommended that EPA disclose the data in these data categories because it would promote confidence in the data and would be consistent with the CAA. They stated that these data elements are verification data that are necessary to ensure the reported emissions are accurate. They argued that since the data elements may be used to verify the GHG emissions, they meet the definition of emission data in 40 CFR 2.301(a)(2)(i). They further argued that these data elements are especially important where facilities use indirect measurement methods (e.g., emission factors) to estimate emissions. Another commenter stated that EPA should publish production throughput and raw material consumption data because this information is essential for making comparisons between facilities. This commenter argued that the data in these data categories should be made public because, without this information, the public would not be able to determine the amount of GHGs per unit of production, which is useful for assessing and comparing the carbon efficiency of a facility.

*Response:* We disagree with those commenters who argued that, because the data in these categories are used to verify the reported GHG emissions, these data meet the definition of

<sup>9</sup> For those reporters who do not use the data elements in the equations specified in Section II.B.1, the data elements are in the Production/Throughput Data That Are Not Inputs to Emission Equations.

emission data in 40 CFR 2.301(a)(2)(i). As we described in the July 7, 2010 CBI proposal, none of the data elements in these data categories are used by reporters to calculate GHG emissions under Part 98. Although the data may be used to verify the accuracy of the reported emissions, we do not consider them “necessary to determine” the amount of GHG emissions under Part 98 because emissions are in fact calculated without these data elements. Therefore, these data elements do not meet the definition of emission data in 40 CFR 2.301(a)(2). We agree that these data elements are useful for making comparisons between industries and individual facilities and could be useful to industry, non-government organizations (NGOs), public, and other stakeholders when assessing any regulatory program. However, CAA section 114(c) requires that EPA afford confidential treatment to CBI (except for emission data). These commenters did not claim or provide any information indicating that data elements in these categories are not CBI. Further, many other commenters provided information explaining how the release of data in this category might provide insight into production rates, methods, and efficiencies causing harm to the competitive position of reporters. We therefore conclude that our proposed CBI determinations for these two data categories are appropriate and finalize these CBI determinations in this action.

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

*Comment:* Only a few commenters submitted comments on this data category. The majority of those commenters agreed with EPA’s proposed determination that disclosure of these data would substantially harm the competitive position of reporters and that therefore the data in this category qualify for confidential treatment. A few commenters provided very general statements that disclosure of these data would be consistent with CAA and the Greenhouse Gas Reporting Program (GHGRP). We have also received comments generally claiming that all or most Part 98 data elements should be made available to the public. However, these commenters did not provide any specific rationale for that position.

*Response:* Although some commenters disagreed with our proposed determination that data in this category qualify as CBI, none provided any rationale or information for us to evaluate whether our proposed determination is not appropriate for any

data elements in this data category. The commenters did not explain how the data in this category meet the definition of emission data, provide alternative public sources demonstrating that the data is already publicly available, or provide information demonstrating how disclosure of the data elements in this category would not cause competitive harm. Furthermore, most comments on this data category confirm that disclosure of the data elements in this category could divulge sensitive information about specific processes used by the facility or vendor information, and the disclosure of this information is likely to cause substantial harm to reporters. In light of the above, we conclude that our proposed CBI determination for this data category is appropriate and finalize that determination in this action.

#### C. Suppliers

##### 1. Major Changes to Determinations for Supplier Data Elements Since Proposal

We are finalizing our category assignments of the data elements in the supplier subparts specified in Section I.C. of this preamble for the 11 supplier data categories and our confidentiality determinations for these 11 supplier data categories, including the individual determinations for certain data elements in the following categories: GHGs Reported, Production/Throughput Quantities and Composition, and Unit/Process Operating Characteristics. Major changes to the determinations for the supplier data elements since our CBI proposals include:

- Although we had proposed that the total CO<sub>2</sub> supplied as reported under subpart PP would be non-CBI, we have determined in this final action that this information is CBI for industrial CO<sub>2</sub> production facilities (e.g., ammonia production facilities that collect CO<sub>2</sub> for transfer off site), is non-CBI for CO<sub>2</sub> production wells, and is CBI for importers and exporters for the reasons specified in Section II.C.3 of this preamble.

- In this final action, we have added the following new data element to the GHGs Reported category: the total annual CO<sub>2</sub> mass supplied in metric tons as calculated using Equation PP-3b (40 CFR 98.426(c)(2)(iii)). We have determined that this data element is CBI when reported by industrial production facilities, and is non-CBI when reported by CO<sub>2</sub> production wells for the reasons specified in Section II.C.3 of this preamble.

- Although we had proposed a non-CBI status for the following data elements in the GHGs Reported data

category, we have determined in this final action that they qualify as CBI under the following conditions for the reasons specified in Section II.C.3 of this preamble. These data elements are as follows:

- The total combined supplier level CO<sub>2</sub>e (40 CFR 98.3(c)(5)(i)) is CBI if the reporter produces, imports, exports or otherwise supplies just one product and if EPA has determined that the amount of that one product produced, imported, exported or otherwise supplied is CBI.
- The quantity of each GHG (40 CFR 98.3(c)(5)(ii)) is CBI if the reporter produces, imports, exports, or otherwise supplies just one product and if EPA has determined that the amount of that one product produced, imported, exported or otherwise supplied is CBI.

- EPA has decided not to make final confidentiality determinations for data elements reported by importers of Coal-Based Liquids and Petroleum Products (subparts LL and MM) describing the amount and type of materials imported. These data elements are described in the GHGs Reported and Production/Throughput data categories. For additional information, see Sections II.C.3 and II.C.4 of this preamble.

- In this final action, we have added the following two new data elements to the Production/Throughput Quantities and Composition data category. We have also determined, as explained in Section II.C.4 of this preamble, that these data elements are CBI when reported by industrial production facilities, and non-CBI when reported by CO<sub>2</sub> production wells. The data elements are as follows:

- The total annual CO<sub>2</sub> mass through main flow meter(s) in metric tons (40 CFR 98.426(c)(2)(i)).
- The total annual CO<sub>2</sub> mass through subsequent flow meter(s) in metric tons (40 CFR 98.426(c)(2)(ii)).
- Although we had proposed a non-CBI status for the following data elements in the Production/Throughput data category, we have determined in this final action that they qualify as CBI for the reasons specified in Section II.C.4 of this preamble. These data elements are as follows:

- Facility-level and meter-level CO<sub>2</sub> supply data reported by industrial CO<sub>2</sub> production facilities under subpart PP.
- The amount of CO<sub>2</sub> supplied to each of 13 types of end-users reported under subpart PP.

- Although we had proposed a non-CBI status for the following data elements in the Unit/Process Operating

Characteristics data category, we have determined in this final action that they qualify as CBI for the reasons specified in Section II.C.6 of this preamble. These data elements are as follows:

- The dates on which fluorinated GHGs are imported and/or exported reported under subpart OO (40 CFR 98.416(c)(3) and (d)(5)).
- The port of entry or export reported under subpart OO (40 CFR 98.416(c)(4) and (d)(5)).
- The reason for submitting a BMM extension request and reason why monitoring equipment was not installed by the required deadline reported under subpart A (40 CFR 98.3(d)(2)(ii)(C)) and 98.3(d)(2)(ii)(E)).
- The dates of planned installation and anticipated compliance with monitoring requirements submitted in BMM extension requests reported under subpart A (40 CFR 98.3(d)(2)(ii)(F)).

• In this final action, we have added the following new data element to the Unit/Process Operating Characteristics data category: Location of each flow meter in relation to the point of segregation (40 CFR 98.426(c)(2)(iv)). We have also determined that this data element is not CBI for the reasons specified in Section II.C.6 of this preamble.

• In this final action, we have added the following seven new data elements to the Amount and Composition of Materials Received data category. We have also determined that these data elements are CBI for the reasons specified in Section II.C.10 of this preamble. The data elements are as follows:

- EIA crude stream code (40 CFR 98.396(a)(20)(v)).
- Crude stream name (40 CFR 98.396(a)(20)(v)).
- Generic name for crude stream (40 CFR 98.396(a)(20)(vi)).
- EIA two-letter country or state production area code for batch (40 CFR 98.396(a)(20)(vi)).
- Volume of crude oil in barrels injected into a crude oil supply or reservoir (40 CFR 98.396(a)(22)).
- Report the next most appropriate tier of the batch definition for reporting batch information under 40 CFR 98.396(a)(20) (40 CFR 98.396(a)(23)).
- Indication of whether the material is a blended non-crude feedstock or blended product (40 CFR 98.396(d)(1)(iii)).

The rationales for these changes can be found below in Sections II.C.2 through C.13 of this preamble and in the “Proposed Confidentiality Determinations and Data Handling

Procedures for Part 98 Data: Responses to Public Comments” (available in the Docket EPA–HQ–OAR–2009–0924 and on the Web site

<http://www.epa.gov/climatechange/emissions/ghgrulemaking.html>).

A final list of all the data elements in each supplier data category, by subpart, is provided in a memorandum (see Memorandum “Final Data Category Assignments and Confidentiality Determinations for Part 98 Reporting Elements” in Docket EPA–HQ–OAR–2009–0924 and on the Web site (<http://www.epa.gov/climatechange/emissions/ghgrulemaking.html>)).

## 2. General Comments on the Supplier Data Categories

*Comment:* Most commenters agreed with our proposed determination that none of the supplier data categories meet the definition of emission data in 40 CFR 2.301(a)(2)(i). Some commenters agreed with our proposal, but argued that all data that are not emission data should be kept confidential.

Two commenters disagreed with EPA’s proposal that none of the supplier data categories meet the definition of emission data. These commenters stated that the fuels and other products reported by suppliers are eventually emitted and that the suppliers are thus the ultimate source of those emissions. They further argued that if “\* \* \* EPA seeks to measure emissions from entities which use supplied fuels or gases, it may measure emissions from these “source[s] of emissions” by seeking data from suppliers.”<sup>11</sup>

*Response:* EPA disagrees with those commenters who stated that the definition of emission data includes supplier data. As explained in the July 7, 2010 CBI proposal, 40 CFR 2.301(a)(2)(i) defines emission data to refer to emissions emitted or authorized to be emitted by a reporting facility. The data reported under the supplier subparts pertains to certain products that would result in GHG emissions if released, combusted, or oxidized by the downstream user of these products. EPA agrees that it may use the data reported under the supplier subparts to calculate the GHG emissions that would result from the use or combustion of the products supplied by these reporters. Nevertheless, the data reported under the supplier subparts does not include information on the actual emissions that occur at supplier facilities. Therefore, in this action, we finalize our

determination that the supplier data elements do not meet the definition of emission data as that term is defined in 40 CFR 2.301(a)(2)(i).

We also disagree with those commenters who stated that all supplier data should be held as confidential because the supplier data does not meet the definition of emission data. Under the Freedom of Information Act and the CAA section 114(c), EPA is required to disclose information that does not qualify for confidential treatment. In the July 2010 CBI proposals, EPA proposed to determine, either by category or data element, that certain supplier data elements are CBI while others are non-CBI. The CBI proposals provided detailed rationales for EPA’s proposed determinations. Most commenters did not provide information that a specific determination or supporting rationale was flawed or otherwise inappropriate. For those that did raise supplier-specific issues, we addressed those comments in the relevant sections of this preamble (see Section II.C.3 through II.C.13 of this preamble for comments on the supplier data categories).

## 3. GHGs Reported Category

*New Data Elements:* EPA has added one new data element to this data category. This data element requires production facilities subject to subpart PP to report the total annual CO<sub>2</sub> mass supplied in metric tons as calculated using Equation PP–3b (40 CFR 98.426(c)(2)(iii)). This new data element was added to subpart PP by the amendments published on December 17, 2010 (75 FR 79092) and was not included in the July 2010 CBI proposals. This data element is identical to other data elements already assigned to this data category (e.g., the annual mass of CO<sub>2</sub> from all flow meters and CO<sub>2</sub> streams that deliver CO<sub>2</sub> to containers (40 CFR 98.426(c)(1)). Consistent with the determination made for other CO<sub>2</sub> supply data elements reported under subpart PP, EPA has determined that this new data element is eligible for confidential treatment when reported by industrial CO<sub>2</sub> production facilities, but not entitled to confidential treatment when reported by CO<sub>2</sub> production wells. As explained below in the response to comments on this data category, although CO<sub>2</sub> supply data is generally available for CO<sub>2</sub> production wells, we have found no public sources of such data for industrial CO<sub>2</sub> production facilities. Furthermore, some commenters stated that CO<sub>2</sub> supply data for industrial CO<sub>2</sub> production facilities would be likely to cause competitive harm if disclosed to the public because information documenting the amount of

<sup>11</sup> See letter to the U.S. EPA Administrator from the Clean Air Task Force, Natural Resources Defense Council, and Sierra Club, submitted August 26, 2010 (EPA–HQ–OAR–2009–0924–0018.1).

CO<sub>2</sub> collected and transferred off site would provide competitors with sensitive information that may be used to determine a reporter's market share and to gain insight into a reporter's ability to meet increases in market demand. The final determinations for this data category are summarized in Table 4 of this preamble.

*Comment on Suppliers of CO<sub>2</sub> (Subpart PP):* Some commenters believe that the amount of CO<sub>2</sub> collected at facilities for transfer off site (reported under subpart PP) should be held confidential for industrial production facilities such as ammonia manufacturing plants. These commenters stated that this information does not meet the definition of emission data; is not already publicly available; and can be combined with other information, such as emissions data reported for the associated combustion units, to estimate plant performance, which would cause competitive harm. We also received comments that the amount of CO<sub>2</sub> imported or exported (also reported under subpart PP) does not meet the definition of emission data, is not already publicly, and should be protected as CBI as the release of this data could cause competitive harm.

*Response:* We agree with commenters who recommended that the data elements describing the amount of CO<sub>2</sub> supplied reported by industrial facilities (e.g., ammonia and lime manufacturing plants) and by importers and exporters under subpart PP are CBI. We agree that, for suppliers, the amount of CO<sub>2</sub> collected by production facilities and transferred off site and the amount of CO<sub>2</sub> imported or exported does not meet the definition of emission data in 40 CFR 2.301(a)(2)(i), because the CO<sub>2</sub> is not emitted at the reporter's facility. We previously proposed that this data element would be non-CBI for all CO<sub>2</sub> suppliers because we had identified sources of CO<sub>2</sub> supply data. However, we have since determined that although facility-level CO<sub>2</sub> supply data is generally available for CO<sub>2</sub> production wells, such data for industrial CO<sub>2</sub> production facilities is not publicly available. Likewise, the amount of CO<sub>2</sub> supplied is generally not available for importers and exporters. We therefore agree with the commenters that the amount of CO<sub>2</sub> collected by production facilities and transferred off site and the amount of CO<sub>2</sub> imported/exported are not already available to the public. Based on the information provided by the commenters, we also agree that for industrial sources and for importers/exporters the information would be likely to cause competitive harm. For industrial sources, we agree with

commenters who argued that the availability of information documenting the amount of CO<sub>2</sub> collected and transferred off site would provide competitors with sensitive information that may be used to determine a reporter's market share and to gain insight into a reporter's ability to meet increases in market demand. For CO<sub>2</sub> importers and exporters, the data would provide competitors with information on market share, which could be used to devise marketing strategies that undermine or weaken a competitor's position. For the reasons stated above, we have determined the total CO<sub>2</sub> supplied as reported under subpart PP would be CBI when reported by industrial CO<sub>2</sub> production facilities (e.g., ammonia production facilities that collect CO<sub>2</sub> for transfer off site), non-CBI when reported by CO<sub>2</sub> production wells, and CBI when reported by importers and exporters.

*Comment on Suppliers of Coal-Based Liquid Fuels (Subpart LL) and Suppliers of Petroleum Products (Subpart MM):* Some commenters recommended that total facility-level CO<sub>2</sub> and total importer level CO<sub>2</sub> from subparts LL and MM should be eligible for confidential treatment. EPA had proposed that importer data for subparts LL and MM would not be eligible for confidential treatment because importer data is already publicly available from the U.S. Energy Information Administration (EIA). One commenter disagreed with EPA and stated that data reported by importers under subparts LL and MM is not publicly available through EIA. This commenter stated that EPA's definitions of petroleum products and miscellaneous products differ from those used by the EIA and that these differences in reporting requirements would result in some supplier data being available to the public for the first time. Another commenter recommended that the amount of CO<sub>2</sub> reported, quantities of product, and other information for imported products be held confidential. This commenter agreed that imports are routinely reported to EIA, but stated that the company that reports the data to the EIA may be a company that is under contract with the end-user (e.g., a broker relationship). As a result, the importer under Part 98 and the importer under EIA could be different entities. The commenter argued that, in these circumstances, the amount and composition of material imported by the part98 reporter would not already be publicly available.

*Response:* EPA has reviewed the comments on the proposed determinations for data elements

reported by importers of coal-based liquids and petroleum products under subparts LL and MM (40 CFR 98.386(b)(7) and (b)(8); and 40 CFR 98.396(b)(7) and (b)(8)). We previously proposed a non-CBI status for these data elements because we believed the data elements were available to the public through EIA. Although we recognized that there are some differences in the products reported under Part 98 and EIA reporting program, we previously considered the differences to be minor and unlikely to reveal sensitive information. However, we agree with the commenter that EPA's definitions of petroleum products and miscellaneous products differ from those used by the EIA and that in some instances these differences may reveal information about the characteristics of an imported product that is not available through EIA. We also agree that this information would cause competitive harm in some situations (e.g., where the importer uses the imported product as a raw material for their manufacturing process, the amount and characteristics of the raw material provide competitors with sensitive information on the manufacturing process, production costs, and efficiencies). However, we also note that the extent to which these Part 98 data elements reveal competitively harmful information would depend on the type of product imported because some of the Part 98 product definitions are identical to or sufficiently similar to those used by EIA (e.g., the Part 98 definition of ethane is identical to that of EIA). We were not aware at the time of the proposal that some importers subject to Part 98 are not required to report their imports to the EIA and that the data is instead reported by brokers and published by EIA using the brokerage's name rather than the name of the company who ultimately instigated and received the imported products. Therefore, EPA agrees with the commenters that, in some limited cases, different entities may be required to report import data under 40 CFR part 98, subparts LL and MM and under the EIA reporting program. In such instances, we agree that the EIA data does not reveal the identity of the company reporting import data under Part 98 and therefore, we conclude that in these limited situations the data is not publicly available because it cannot be associated with Part 98 reporter. Since the circumstances vary for each reporter with regard to whether the data reported under Part 98 is available through EIA, EPA has decided not to make a confidentiality determination at this

time that would apply to all importers of coal-based liquids and petroleum products. Therefore, EPA is not finalizing confidentiality determinations in this action for data on the amount of CO<sub>2</sub> supplied reported by importers of Coal-Based Liquids and Petroleum Products (40 CFR 98.386(b)(7) and (b)(8); and 40 CFR 98.396(b)(7) and (b)(8)).

*Comment on Facility-level CO<sub>2</sub>e:* Most commenters agreed with EPA's proposal that the total combined supplier-level CO<sub>2</sub>e for subparts LL through PP and the total amount of GHGs reported for the specific subpart should be publicly available, while CO<sub>2</sub>e reported for individual products under subparts LL through OO should be held confidential unless the data is already publicly available. However, some commenters were concerned that the combined supplier-level CO<sub>2</sub>e reported for subparts LL through PP could provide information on the amount of product produced where the reporters produce only one product. Similarly, some commenters recommended that the importer/exporter-level CO<sub>2</sub>e for subparts LL through PP should be held confidential for reporters who import and/or export only one product. These commenters stated that the actual pounds or tons of the specific product produced, imported, or exported could be easily discerned from the reported CO<sub>2</sub>e data. Several commenters stated that competitors could use these data to gain insight into marketing strengths and weaknesses and thereby gain a competitive advantage over reporting

entities. Some commenters noted that to be consistent with the proposal to treat product-specific production throughput in the Production/Throughput Quantities and Composition Category as CBI, EPA should also determine that supplier-level CO<sub>2</sub>e data are CBI for facilities and importers/exporters with a single product. Some commenters recommended that the supplier-level CO<sub>2</sub>e data be held as confidential in cases in which a reporter produces or imports/exports only a few products or in which facilities produce large amounts of one product and smaller amounts of other products.

*Response:* Although there are likely to be very few reporters that supply only one product, EPA agrees with commenters that the total combined supplier-level CO<sub>2</sub>e for subparts LL through PP and the total quantity of each GHG supplied qualify as CBI if the reporter supplies only one of the products listed in subparts LL through PP and if EPA determined that the production, import, export or supply rate for that product is CBI (see Table 4 of this preamble for the list of production/throughput data elements determined to be CBI and Section II.D.3 of the July 7, 2010 CBI preamble for the rationale). In such instances, we agree with the commenters that the supplier level CO<sub>2</sub>e information may be used to calculate certain production and import/export data that we have determined to be CBI. Therefore, although we had proposed a non-CBI status for the following data elements, we have determined in this final action

that they qualify as CBI under the following conditions for the reasons stated above:

- The total combined supplier level CO<sub>2</sub>e (40 CFR 98.3(c)(5)(i)) is confidential if the reporter produces, imports, exports or otherwise supplies just one product and if EPA has determined that the amount of that one product produced, imported, exported or otherwise supplied is CBI.
- The quantity of each GHG (40 CFR 98.3(c)(5)(ii)) is confidential if the reporter produces, imports, exports or otherwise supplies just one product and if EPA has determined that the amount of that one product produced, imported, exported or otherwise supplied is CBI.

We disagree with commenters who recommended that facility-level and importer/exporter-level CO<sub>2</sub>e data should be held confidential for facilities that supply two or more products. We do not believe, nor did we receive any information indicating, that where a facility supplies multiple products, competitors would be able to estimate with any degree of certainty the quantities of a specific product produced, imported, or exported using the facility-level or importer/exporter-level CO<sub>2</sub>e data. Therefore, we concluded that our proposed non-CBI determination for suppliers who supply two or more products is appropriate and finalize that determination in this action (see Table 4 of this preamble for the final confidentiality determinations for the Greenhouse Gases Reported).

TABLE 4—FINAL CBI DETERMINATION FOR GREENHOUSE GASES REPORTED

| Source category (Part 98 subpart)                                                            | Data elements                                                                                          | Are these data CBI? |
|----------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------|---------------------|
| General Provisions (Subpart A) .....                                                         | Total facility-level CO <sub>2</sub> e from subparts LL–PP <sup>a</sup> .....                          | No. <sup>b</sup>    |
| Suppliers of Coal-Based Liquid Fuels and Petroleum Products (subparts LL and MM): Producers. | Facility-level CO <sub>2</sub> from each subpart <sup>c</sup> .....                                    | No. <sup>b</sup>    |
| Suppliers of Coal-Based Liquids and Petroleum Products (subparts LL and MM): Exporters.      | Product-specific CO <sub>2</sub> .....                                                                 | Yes.                |
|                                                                                              | Exporter level CO <sub>2</sub> from each subpart <sup>c</sup> .....                                    | No <sup>b</sup> .   |
| Suppliers of Natural Gas and NGLs (subpart NN): Local Distribution Companies (LDCs).         | Product-specific CO <sub>2</sub> .....                                                                 | Yes.                |
| Suppliers of Natural Gas and NGLs (subpart NN): Fractionators.                               | LDC-level CO <sub>2</sub> from subpart NN <sup>c</sup> ; Product-specific CO <sub>2</sub> .....        | No.                 |
| Suppliers of Industrial GHGs (subpart OO): Producers .....                                   | Facility-level CO <sub>2</sub> from subpart NN <sup>c</sup> .....                                      | No <sup>b</sup> .   |
|                                                                                              | Product-specific CO <sub>2</sub> .....                                                                 | Yes.                |
| Suppliers of Industrial GHGs (subpart OO): Importers and Exporters.                          | Facility-level GHG quantities, by gas, from subpart OO <sup>c</sup> ; Product-specific GHG quantities. | Yes.                |
| Suppliers of CO <sub>2</sub> (subpart PP): Production Wells .....                            | Importer/exporter level GHG, by gas, from subpart OO <sup>c</sup> ; Product-specific GHG quantities.   | Yes.                |
| Suppliers of CO <sub>2</sub> (subpart PP): Industrial Production Facilities.                 | Facility-level CO <sub>2</sub> for subpart PP <sup>c</sup> .....                                       | No.                 |
| Suppliers of CO <sub>2</sub> (subpart PP): Importers and Exporters ....                      | Facility-level CO <sub>2</sub> for subpart PP <sup>c</sup> .....                                       | Yes.                |
|                                                                                              | Importer/Exporter-level CO <sub>2</sub> for subpart PP <sup>c</sup> .....                              | Yes.                |

<sup>a</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. 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>b</sup> This data element is confidential if the reporter produces, imports, exports or otherwise supplies just one product and if EPA has determined that the amount of that one product produced, imported, exported or otherwise supplied is CBI.

<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.

#### 4. Production/Throughput Quantities and Composition Category

*New Data Elements:* EPA has added two new data elements to this data category:

- The total annual CO<sub>2</sub> mass through main flow meter(s) in metric tons (40 CFR 98.426(c)(2)(i)).
- The total annual CO<sub>2</sub> mass through subsequent flow meter(s) in metric tons (40 CFR 98.426(c)(2)(ii)).

These new data elements were added by the amendments published on December 17, 2010 (75 FR 79092) and were not included in the July 2010 CBI proposals. These data elements, which require reporters subject to subpart PP to provide CO<sub>2</sub> throughput data for individual flow meters located at the plant, are the same type of data as other data elements already assigned to this data category (e.g., the annual mass for each mass flow meter reported by facilities using Equation PP-1 (40 CFR 98.426(a)(1)). Consistent with the determination made for other meter-level CO<sub>2</sub> data in this category, EPA has determined that these two new data elements are eligible for confidential treatment when reported by industrial CO<sub>2</sub> production facilities, but not entitled to confidential treatment when reported by production wells. As discussed in Section II.C.3 of this preamble, although facility-level CO<sub>2</sub> supply data is generally available for CO<sub>2</sub> production wells, we have found no public sources of such data for industrial CO<sub>2</sub> production facilities. Furthermore, some commenters stated that CO<sub>2</sub> supply data for industrial production facilities would be likely to cause competitive harm if disclosed to the public because information documenting the amount of CO<sub>2</sub> collected and transferred off site would provide competitors with sensitive information that may be used to determine a reporter's market share and

to gain insight into a reporter's ability to meet increases in market demand. Since the facility-level CO<sub>2</sub> data can be discerned from the meter-level CO<sub>2</sub> data reported for the two new data elements, we have concluded that these data elements are CBI when reported by industrial suppliers of CO<sub>2</sub> and non-CBI when reported by CO<sub>2</sub> production wells.

*Comment:* In the July 7, 2010 CBI proposal, EPA proposed that most data elements in the Production/Throughput and Composition Category would be entitled to confidential treatment, except for the following: (1) Facility-level and importer/exporter-level data for suppliers of CO<sub>2</sub>, (2) data reported by natural gas LDCs, and (3) data reported by importers of petroleum products. Most commenters agreed with our proposed confidentiality determinations and with our rationale that facility-level data on the annual quantities and types of natural gas liquids, petroleum products, and industrial GHGs produced by facilities would cause competitive harm if disclosed to the public.

A number of commenters agreed with the determination that the data reported under subpart OO should be held confidential. One commenter stated that disclosure of subpart OO data reported by exporters would often disclose data on production facilities because some production facilities export all or nearly all of their products. Others agreed that product composition data reported under subpart OO is sensitive information that would harm the competitive position of U.S. companies. However, other commenters disagreed, stating that the composition of products reported under 40 CFR part 98, subpart OO should be disclosed because of the high global warming potentials of these products.

Some commenters believe that the mass of CO<sub>2</sub> transferred off site

(reported under 40 CFR part 98, subpart PP) should be held confidential for industrial production facilities such as ammonia manufacturing plants and for CO<sub>2</sub> importers and exporters. As discussed in Section II.C.3 of this preamble for related data elements, commenters stated that data on the amount of CO<sub>2</sub> supplied is not already publicly available for industrial CO<sub>2</sub> production facilities and CO<sub>2</sub> importers and exporters and would likely cause competitive harm if disclosed to the public.

Several commenters disagreed with our proposed determinations for data on the quantities and types of natural gas liquids and petroleum products imported into the U.S. (reported under subparts LL and MM) and recommended that this data be held confidential. As discussed in Section II.C.3 of this preamble for related data elements, some commenters argued that the amount and type of product imported is not publicly available from EIA for importers that use a broker, because the broker reports the import data to EIA under the broker's name. They also stated that the Part 98 product definitions differed from those of EIA and that these differences could reveal information not available through EIA. They also noted that disclosure of the amount and quantity of imported material could cause competitive harm to importers because it would reveal the type and rate of consumption of raw materials at their production facilities which could be used to discern sensitive process information (e.g., production efficiency).

*Response:* The final determinations for this data category are summarized in Table 5 of this preamble. Except as described below, we have finalized the confidentiality determinations as proposed in the July 2010 CBI proposals.

TABLE 5—FINAL CONFIDENTIALITY DETERMINATION FOR SUPPLIER PRODUCTION/THROUGHPUT QUANTITIES AND COMPOSITION DATA

| Source category (Part 98 Subpart)                                                            | Data elements                                                        | Are these data CBI <sup>a</sup> (Y/N)? |
|----------------------------------------------------------------------------------------------|----------------------------------------------------------------------|----------------------------------------|
| Suppliers of Coal-Based Liquid Fuels and Petroleum Products (Subparts LL and MM): Producers. | Facility level, by product .....                                     | Yes.                                   |
| Suppliers of Coal-Based Liquids and Petroleum Products (Subparts LL and MM): Exporters.      | Exporter level, by product .....                                     | Yes.                                   |
| 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.                                   |
| Suppliers of industrial GHGs (Subpart OO): Producers.                                        | Facility level, by fluorinated GHG .....                             | Yes.                                   |
|                                                                                              | Facility level throughput <sup>b</sup> information, by process ..... | Yes.                                   |
| Suppliers of industrial GHGs (Subpart OO): Importers and exporters.                          | Importer and exporter level, by fluorinated GHG .....                | Yes.                                   |
| Suppliers of CO <sub>2</sub> (Subpart PP): Production wells .....                            | Facility-level total CO <sub>2</sub> production .....                | No.                                    |
|                                                                                              | CO <sub>2</sub> mass or volume measured by flow meter .....          | No.                                    |

TABLE 5—FINAL CONFIDENTIALITY DETERMINATION FOR SUPPLIER PRODUCTION/THROUGHPUT QUANTITIES AND COMPOSITION DATA—Continued

| Source category (Part 98 Subpart)                                            | Data elements                                                                                   | Are these data CBI <sup>a</sup> (Y/N)? |
|------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|----------------------------------------|
| Suppliers of CO <sub>2</sub> (Subpart PP): Industrial production facilities. | Facility level annually aggregated production information, by end use application.              | No.                                    |
|                                                                              | Facility-level total CO <sub>2</sub> production .....                                           | Yes.                                   |
|                                                                              | CO <sub>2</sub> mass or volume measured by flow meter .....                                     | Yes.                                   |
|                                                                              | Facility level annually aggregated production information, by end use application.              | Yes.                                   |
| Suppliers of CO <sub>2</sub> (PP): Importers and exporters .....             | Importer and exporter level total CO <sub>2</sub> imported/exported .....                       | Yes.                                   |
|                                                                              | CO <sub>2</sub> mass or volume measured by flow meter, scales and weigh bills.                  | Yes.                                   |
|                                                                              | Importer and exporter level annually aggregated production information, by end use application. | Yes.                                   |

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

<sup>b</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.

EPA has determined that the meter-level CO<sub>2</sub> data and the amount of CO<sub>2</sub> supplied to each of the 13 types of end-users (reported under 40 CFR 98.426(f)), is CBI for industrial suppliers of CO<sub>2</sub> and for CO<sub>2</sub> importers and exporters. As discussed in Section II.C.3 of this preamble, we previously proposed that these data elements would be non-CBI for all CO<sub>2</sub> producers because we had identified sources CO<sub>2</sub> supply data. However, we have since determined that although CO<sub>2</sub> supply data are generally available for CO<sub>2</sub> production wells, such data for industrial CO<sub>2</sub> production facilities and for CO<sub>2</sub> importers and exporters is not publicly available. We therefore agree with the commenter that these data are not already available to the public. The meter-level CO<sub>2</sub> data and the amount of CO<sub>2</sub> supplied to each of the 13 types of end-users can be used to calculate the facility-level CO<sub>2</sub> supply data for industrial sources. Information documenting the amount of CO<sub>2</sub> collected and transferred off site, including the data elements at issue, provides competitors with sensitive information that may be used to determine a facility's market share and to gain insight into a facility's ability to meet increases in market demand.

EPA is not making a final confidentiality determination for data elements that describe the amount and type of coal-based liquids and petroleum products reported by importers (subparts LL and MM). As discussed in Section II.C.3 of this preamble, EPA was not able to make a determination at this time that would apply to all importers of coal-based liquids and petroleum products because the determination would vary depending on importer-specific characteristics (e.g., whether the report to EIA, what type(s) of products they

import). For the detailed discussion of the rationale for this decision, see EPA's response in Section II.C.3 of this preamble related to Suppliers of Coal-Based Liquid Fuels and Suppliers of Petroleum Products (Subpart LL and Subpart MM).

#### 5. Identification Information Category

*Comment:* Some commenters agreed with EPA's proposed determination that the data in this category do not qualify for confidential treatment. However, a few commenters disagreed with our proposal. Commenters were concerned that disclosure of certain data elements in this category, particularly the company name and address, would enable competitors to determine the quantity and type of materials imported/exported by a particular company. Another commenter stated that the competitive position of businesses would be harmed if the name and address of U.S. parent companies and their percentage of ownership interest is made publically available. These commenters argued that this information could be used together with other data to determine market share and other competitive information.

*Response:* We disagree with those commenters who believe the disclosure of the data in this category would likely cause competitive harm to suppliers. We are not aware of any situations, nor did the commenters provide any examples, in which the name, address, and U.S. parent company of an importer or exporter has been or could be linked with other available data to disclose sensitive business information. Further, reporters eligible to hold confidential the quantities and compositions of imported materials (such as those reporters importing fluorinated GHGs under 40 CFR part 98, subpart OO) may submit manifest confidentiality requests

to the U.S. Customs and Border Protection (CBP) to protect as confidential its name and address on customs forms. Therefore, competitors would not be able to link customs data on the quantity and type of material imported with the name and address of the Part 98 reporter. For the reasons stated above, we conclude that our proposed non-CBI determination for this data category is appropriate.

#### 6. Unit/Process Operating Characteristics Category

*New Data Elements:* EPA has added one new data element to this data category for suppliers subject to subpart PP. This data element requires production facilities to report the location of each flow meter in relation to the point of segregation (reported under 40 CFR 98.426(c)(2)(iv)). The data element was added by the amendments published on December 17, 2010 (75 FR 79092) and was not included in the July 2010 CBI proposals. This data element is exactly the same type of location information as required by other data elements already assigned to this data category (e.g., the location of each volumetric flow meter in the process chain in relation to the points of CO<sub>2</sub> stream capture, dehydration, compression, and other processing reported under 40 CFR 98.426(b)(7)). In the CBI proposal, we explained that disclosure of such location information is not likely to cause competitive harm to the reporting facilities because it does not provide descriptions or diagrams on the design or operation of a facility's production process or reveal any other potentially sensitive information about any facility. Therefore, we have determined in this final action that the data elements in the Unit/Process Operating Characteristics category relative to location information,



including this new data element, are not CBI.

*Comment:* For this data category, EPA proposed that only one data element (the estimated percent transformation efficiency reported under 40 CFR part 98, subpart OO for fluorinated production process) would be eligible for confidential treatment. Many commenters agreed that most data in this category do not qualify for confidential treatment. Several commenters also supported EPA's proposed determination that the estimated percent transformation efficiency of each production process for the fluorinated GHG produced under 40 CFR part 98, subpart OO is CBI.

Other commenters disagreed with our proposal and recommended that all unit/process operating characteristics should be considered CBI. Most of these commenters provided broad statements that operating data provides competitors with sensitive business information, but did not identify which specific data elements or explain how their disclosure would cause competitive harm to reporters. However, a few commenters provided more detailed rationales regarding specific data elements. One commenter believes the subpart OO data element concerning the date on which a change to a fluorinated GHG product occurs should be kept confidential because the dates would indicate to competitors that the reporter was making changes to their product. Another commenter believes the dates on which fluorinated GHGs are imported and/or exported and the port of entry and port of export should be entitled to confidential treatment because this information could be used in conjunction with customs records to identify the amount of material imported/exported by the reporter. This commenter added that to protect confidential and competitively sensitive information, importers and exporters can submit manifest confidentiality requests to U.S. CBP. According to the commenter, CBP allows importers and exporters to claim their names and addresses as confidential but not information on the material imported/exported, the port, or the date. This commenter argued that disclosure of such import/export data would place businesses required to report under Part 98 at a significant competitive risk and argued that information on the date and port of import/export could be used by competitors (both domestic and international) to discern import and export practices, and potentially shipment data.

One commenter stated that certain information submitted as part of BAMB

extension requests was sensitive information requiring confidential treatment. This commenter specifically identified the following data elements from BAMB extension requests as confidential: The reason for the extension request (40 CFR 98.3(d)(2)(ii)(C)) and the planned installation date of monitoring equipment (40 CFR 98.3(d)(2)(ii)(F)). This commenter stated that this information is not available from other public sources and, if disclosed, would cause competitive harm by enabling competitors to determine a company's ability to capitalize on specific market opportunities and allowing competitors to target markets based on weaknesses and vulnerabilities. They further noted that information on future shutdowns would allow competitors to increase production during a reporter's shutdown and would likely cause serious harm to the reporter's competitive position.

*Response:* Except as described below, we have finalized the proposed confidentiality determinations for the data elements in this category. In response to comments received, we have determined that the following data elements in this data category are CBI:

- Dates of import/export (40 CFR part 98, subpart OO).
- Ports of import/export (40 CFR part 98, subpart OO).
- The reason for submitting a BAMB extension request (40 CFR part 98, subpart A).
- The reason why equipment was not or could not be obtained or installed during a planned shutdown between October 30, 2009 and April 1, 2010 (as reported in a BAMB extension request (40 CFR part 98, subpart A)).
- Planned installation date for monitoring equipment as reported in a BAMB extension request (40 CFR 98.3(d)(2)(ii)(F)).
- Anticipated date on which facility will begin using the full monitoring methods in the rule (40 CFR 98.3(d)(2)(ii)(F)).

At the time of the July 10 CBI proposals, we were not aware of any potential competitive harm that would likely result from the disclosure of the dates on which fluorinated GHGs are imported and/or exported and the port of entry and export (reported under 40 CFR part 98, subpart OO). Since then, we have learned that release of these data elements to the public could allow competitors to link customs records on quantities and product composition with the import and export data reported under Part 98, thus allowing competitors to determine market share and devise marketing strategies to

undermine or weaken a competitor's position. Because disclosure of these data elements is likely to cause the substantial harm described above to suppliers reporting these data under Part 98, we have determined in this final action that these data elements qualify as CBI.

EPA agrees with commenters who recommended that certain data elements submitted as part of BAMB extension requests are eligible for confidential treatment. At the time of proposal, we believed the reason for requesting a BAMB extension (reported under 40 CFR 98.3(d)(2)(ii)(C)) and the reason why equipment was not (or could not be) installed (reported under 40 CFR 98.3(d)(2)(ii)(E)) would be generic information that would not reveal any sensitive operating information. However, since proposal EPA has reviewed a number of BAMB extension requests and determined that they contain more detailed information, such as process diagrams and operational information, than we had previously anticipated. We also note that many facilities have claimed these data as CBI because they provide insight into facility-specific operating conditions or process design that are not available from other sources and would harm their competitive position if released.

We also agree with those commenters that stated that the planned installation date and the date of anticipated startup (reported under 40 CFR 98.3(d)(2)(ii)(F)) provides competitive information regarding future process shutdowns. Based on new information received in comments, we have concluded that these data elements could provide information about the operation of a facility that can be used by competitors to anticipate and potentially benefit from future decreases in product supply. For example, a competitor could increase its own market share by increasing production or increase its profits by increasing prices during these periods. Based on this new information, EPA has determined that these data elements qualify as CBI.

Although some commenters claimed that the data element concerning the date on which a change to a fluorinated GHG product occurs (40 CFR 98.416(f)) should be confidential, they did not provide rationale or supporting information that enable us to assess their claim. Because we are not aware of any situations under which public disclosure of this data element is likely to cause substantial harm to suppliers reporting these data elements, our position regarding this data element remains unchanged in this final action.

## 7. Calculation, Test, and Calibration Methods Category

*Comment:* We received several comments agreeing with EPA that disclosing the calculation, test, and calibration methods would be unlikely to reveal proprietary business information. No commenters disagreed with our proposed determination that the data elements in this category are not CBI.

*Response:* We appreciate the commenters' support of our proposed non-CBI determination for this data category. In light of these comments, we conclude that our proposed non-CBI determination for this data category (as described in 75 FR 39126, July 7, 2010) is appropriate and finalize that determination in this action.

## 8. Data Elements for Periods of Missing Data That Are Not Related to Production/Throughput

*Comment:* We received comments supporting EPA's proposed determination that the data in this data category are not CBI. No commenters opposed our proposed determination that the data in this category are not CBI.

*Response:* We appreciate the commenters' support of our proposed determination for this data category. In light of these comments, we conclude that our proposed non-CBI determination for this data category (as described in 75 FR 39128, July 7, 2010) is appropriate and finalize that determination in this action.

## 9. Emission Factor Category

*Comment:* Several commenters agreed with EPA's proposed determination that the data in this data category qualify for confidential treatment. These commenters agreed with EPA's proposed determination that disclosure of this data would substantially harm the competitive position of suppliers and therefore it should be kept confidential. Other commenters disagreed with EPA's proposed CBI determination, arguing that most of the Part 98 supplier data should be considered non-CBI. However, these commenters did not provide any specific rationale or information explaining why any data element in this data category should be considered non-CBI, but instead provided only general statements that making data available to the public was consistent with the CAA and that it was the purpose of the GHGRP to make GHG emissions data available to the public.

*Response:* Although some commenters disagreed with EPA's

proposed determination that the data elements in this data category qualify for confidential treatment, they did not provide any rationale or information for us to evaluate whether the proposed CBI determination may not be appropriate for any data elements in this data category. Specifically, the commenters did not provide any information to support why data in this particular category would meet the definition of emission data. Neither did the commenter explain why any data element in this category does not qualify as CBI. For instance, the commenter did not claim that any data element in this category is already publicly available or disagree with EPA's assessment that disclosure of these data elements would likely cause competitive harm. Further, the commenters who supported our proposed determination explained that the information is held confidential by companies and that disclosure would cause substantial harm to the competitive position. The commenters who supported our proposed determination agreed with EPA's rationale described in Section II.D.8 of the July 7, 2010 CBI proposal that emission factors can be used to back-calculate the carbon share of the supplier's products and raw materials. In light of the above, we conclude that our proposed determination for this data category is appropriate and finalize the determination in this action.

## 10. Amount and Composition of Materials Received Category

### New Data Elements:

EPA has added the following six new data elements to this data category:

- EIA crude stream code (40 CFR 98.396(a)(20)(v)).
- Crude stream name (40 CFR 98.396(a)(20)(v)).
- Generic name for crude stream (40 CFR 98.396(a)(20)(vi)).
- EIA two-letter country or state production area code for batch (40 CFR 98.396(a)(20)(vi)).
- Volume of crude oil in barrels injected into a crude oil supply or reservoir (40 CFR 98.396(a)(22)).
- Indication of whether the material is a blended non-crude feedstock or blended product (40 CFR 98.396(d)(1)(iii)).

The data elements were added by the amendments published on October 28, 2010 (75 FR 66434) and were not included in the July 2010 CBI proposals. The data elements require the reporting of information about the composition and type of raw materials used by facilities that produce products listed in subpart MM. They are the same type of data as other data elements already

included in this data category in the CBI proposals. For example, 40 CFR 98.396(a)(20)(vi) is the same type of data as 40 CFR 98.396(a)(20)(iv), which requires the country of origin the crude oil batch to be reported, and 40 CFR 98.396(a)(22) is the same type of data as 40 CFR 98.406(a)(2), which requires the quantity of ethane product received by natural gas fractionators. In the July 2010 CBI proposals, we explained that disclosure of the data elements in this category would likely cause substantial competitive harm to the reporting facilities. For example, we explained how information about a reporter's raw material source could be used to discern design or operating limitations (*e.g.*, show that a facility only processes certain types of crude oil) or could be used to develop competitive strategies to increase the cost of certain types of raw materials. In other cases, the amount of raw material consumed can be used in combination with production data to infer the operating efficiency (*e.g.*, amount of product produced per unit of raw material consumed), which would allow competitors to infer production costs and pricing structures (see 75 FR 39127, July 7, 2010). Because the CBI proposal included data elements that are the same in type and characteristic as the six new data elements, we conclude that the proposal adequately addresses these six data elements and that a separate CBI proposal for these data elements is not necessary. For the reasons set forth in this section and in Section II.C.9 of the July 7, 2010 CBI proposal, we have determined in this final action that the data elements in this data category qualify as CBI. This determination applies to all the data elements in this category, including the six new data elements listed above.

*Comment:* Most commenters agreed with EPA's proposed determination that the amount and composition of materials received by suppliers qualify for confidential treatment. These commenters agreed that, if released, the amount and composition of materials received by suppliers would likely cause substantial harm to the competitive positions of businesses reporting these data because it would reveal sensitive information about the manufacturing process or the composition of the product. Although most commenters supported EPA's proposed CBI determination for this category, some commenters disagreed. These commenters argued that all or most Part 98 data elements should be made available to the public. These commenters did not provide any

information explaining why any specific data element in this data category should be considered emission or otherwise non-CBI, but instead submitted general statements that disclosure of these data would be consistent with the CAA and the GHGRP.

*Response:* Although some commenters disagreed with EPA's proposed determination that the data elements in this data category qualify for confidential treatment, they did not provide any rationale or information for us to evaluate whether the proposed CBI determination may not be appropriate for any data elements in this data category. Specifically, the commenters did not provide any information to support why data in this particular category would meet the definition of emission data. Neither did the commenter explain why any data element in this category does not qualify as CBI. For instance, the commenters did not claim that any data element in this category is already publicly available, nor did they disagree with EPA's assessment that disclosure of these data elements would likely cause competitive harm. The commenters who supported our proposed determination agreed with EPA's rationale described in Section II.D.9 of the July 2010 CBI proposal that disclosure of data elements in this category is likely to cause substantial harm to reporters. In light of the above, we conclude that our proposed determination for this data category is appropriate and are finalizing the determination in this action.

#### 11. Data Elements for Periods of Missing Data That Are Related to Production/Throughput

*Comment:* Several commenters agreed with EPA's proposed determination that the data in this data category qualify for confidential treatment. These commenters expressed agreement with EPA's proposed determination that disclosure of this data would substantially harm the competitive position of suppliers and therefore should be kept confidential.

Although most commenters supported EPA's proposed CBI determination for this category, some commenters disagreed. These commenters argued that all or most Part 98 data elements should be made available to the public. These commenters did not provide any rationale explaining why any specific data element in this data category should be considered emission data or otherwise non-CBI, but instead submitted general statements that disclosure of these data would be

consistent with the CAA and the GHGRP.

*Response:* Although some commenters disagreed with EPA's proposed determination that the data elements in this data category qualify for confidential treatment, they did not provide any rationale or information for us to evaluate whether our proposed determination is not appropriate for any data elements in this data category. Specifically, the commenters did not provide any information to support why data in this particular category would meet the definition of emission data. Neither did the commenter explain why any data element in this category does not qualify as CBI. For instance, the commenters did not claim that any data element in this category is already publicly available, nor did they disagree with EPA's assessment that disclosure of these data elements would likely cause competitive harm. Further, the commenters who supported our proposed determination agreed with EPA's rationale described in Section II.D.10 of the July 2010 CBI proposal that the data elements in this category 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. We therefore conclude that our proposed determination for this data category is appropriate and finalize the determination in this action.

#### 12. Supplier Customer and Vendor Information Category

*Comment:* Several commenters agreed with EPA's proposed determination that the data elements in this category qualify for confidential treatment. Some stated that the data was not publicly available and that they take steps to ensure the information is maintained as confidential. Several agreed with EPA's proposed determination that disclosure of these data elements would substantially harm the competitive position of suppliers. One stated that customers and vendors often require such data to be kept confidential and that in some cases this requirement is included in legal contracts, such as agreements for purchase or supply. Others stated that the identity of a vendor is proprietary information since it would allow competitors to determine customer base and identify large customers.

Although most commenters supported EPA's proposed CBI determination for this category, some commenters disagreed. These commenters argued that all or most of the Part 98 data

should be considered non-CBI. These commenters did not provide any specific rationale regarding the data elements in this category, but instead submitted general statements that disclosure of these data would be consistent with the CAA and the GHGRP.

*Response:* Although a few commenters disagree with EPA's proposed determination that the data elements in this category are eligible for confidential treatment, they did not provide any rationale or information for us to evaluate why any data element in this category should be considered non-CBI. Specifically, they did not provide any information to support why data in this particular category would meet the definition of emission data. The commenters did not claim that any data element in this category is already publicly available, nor did they disagree with EPA's assessment that disclosure of these data elements would likely cause competitive harm. Furthermore, commenters who supported our proposed determination explained that the information is held confidential by companies and that disclosure would cause substantial harm to the competitive position of their company by revealing information about customer base and in some cases the identity of individual customers, which would enable competitors to develop marketing strategies designed to steal these customers. We therefore conclude that our proposed determination for this data category is appropriate and finalize the determination in this action.

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

*Comment:* Only a few commenters submitted comments on this data category. The majority of those providing comments agreed with EPA's proposed determination that disclosure of the data in this category would substantially harm the competitive position of reporters and that the data in this category therefore qualify for confidential treatment under 40 CFR 2.208. Some of these commenters also confirmed that they take measures to keep the data secret and that the information is not available from other sources.

Although some commenters supported EPA's proposed CBI determination for this category, other commenters disagreed. These commenters argued that all or most of the Part 98 data should be considered non-CBI. These commenters did not provide any specific rationale regarding the data elements in this category, but

instead submitted general statements that disclosure of these data would be consistent with the CAA and the GHGRP.

*Response:* While some commenters disagreed with EPA's proposed determination that this data is eligible for confidential treatment, they did not provide specific rationale or information for us to evaluate whether our proposed determination may not be appropriate for any data element in this category. Specifically, they did not provide any information to support why data in this particular category would meet the definition of emission data. Neither did the commenter explain why any data element in this category does not qualify as CBI. For instance, they did not claim that any data element in this category is already publicly available, nor did they disagree with EPA's assessment that disclosure of these data elements would likely cause competitive harm. Furthermore, the commenters who supported our proposed determination explained that the information is held confidential by companies and confirmed that disclosure of the data elements in this category could divulge sensitive information about specific processes that would likely cause substantial harm to reporters. We therefore conclude that our proposed determination for this data category is appropriate and finalize the determination in this action.

#### *D. Amendment to 40 CFR Part 2 Addressing Treatment of Part 98 Data Elements*

The July 7, 2010 CBI proposal included proposed amendments to 40 CFR 2.301 (*Special rules governing certain information obtained under the Clean Air Act*) that would establish procedures for EPA's handling of data collected under 40 CFR part 98 in accordance with EPA's final confidentiality determinations for the data. In this action, EPA finalizes the proposed amendment without change.

The final amendment authorizes EPA to release Part 98 data elements determined to be "emission data" or not otherwise entitled to confidential treatment without further procedural requirements. The final amendment also sets forth procedures for the treatment of information in Part 98 determined to be CBI. These procedures are similar to and consistent with the existing 40 CFR part 2 procedures for handling information determined to be CBI.

#### **1. Summary of Comments and Responses on the Amendments to 40 CFR Part 2**

*Comment:* One commenter recommended EPA revise 40 CFR 2.301(d) to include provisions either establishing a time limit on the duration of CBI determination or establishing a process by which data elements designated as CBI could be reclassified. Another commenter argued that if the Office of General Counsel makes a determination that information is no longer CBI, companies should be afforded the same opportunity to comment as provided under 40 CFR 2.204(e) and the opportunity for judicial challenge of the Agency's final determination, as provided under 40 CFR 2.205(f).

*Response:* As discussed in Section II.A.8 of this preamble (Time Limits on Confidentiality Determinations), the commenters did not provide supporting information explaining how data determined to be CBI in this action will become less sensitive over any specific period of time such that EPA should limit its CBI determination for such data to that time period. We note that other CBI determinations made by EPA are generally not time limited. Further, the final amendment to 40 CFR 2.301 provides procedures for EPA to modify a prior confidentiality determination (see 40 CFR 2.301(d)(4)) should certain Part 98 data be no longer entitled to confidential treatment because of a change in the applicable law or newly discovered or changed facts. This provision reflects the requirements in CBI regulations at 40 CFR 2.205(h) for modifying prior determinations for other information. For the reasons stated above, we do not believe that a time limit on the duration of CBI determinations made in this action is justified or necessary.

Further, consistent with 40 CFR 2.204(e), we provided reporters notice and an opportunity to comment by making confidentiality determinations for Part 98 data through notice and comment rulemaking. In this action stakeholders were given the opportunity to submit CBI claims and supporting documentation during the 60-day comment period for the proposed CBI determinations. We received no specific comment or information, nor do we have any reason to believe, that reporting facilities would have had any new or different information to substantiate their claims at the time they submit the data elements as opposed to that available during the public comment period for the CBI proposals. Further, during the comment period, the

reporting facilities were able to consider the Agency's proposed confidentiality determinations in preparing their CBI claims and supporting documentations; businesses do not generally have such insight into EPA's positions when substantiating CBI claims under the existing CBI regulations. Lastly, as provided in the Judicial Review section of this notice, this final action is subject to judicial review under CAA section 307(b).

### **III. Statutory and Executive Order Reviews**

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the 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 Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

#### *B. Paperwork Reduction Act*

The amendments to 40 CFR part 2 do not impose any new information collection burden. The amendments are administrative in nature and do not increase the recordkeeping and reporting burden associated with Part 98. However, the OMB has previously approved the information collection requirements contained in the Part 98 regulations promulgated on October 30, 2009 under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060-0629. EPA has also submitted the Information Collection Request requirements for four additional Part 98 subparts promulgated on July 12, 2010 to OMB for approval (see 75 FR 39756). 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 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 amendments to 40 CFR part 2 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 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 Part 98 (74 FR 56369, October 30, 2009). Subsequent small entity analyses for additional Part 98 subparts were conducted and the results presented in: Section IV.D of the preamble to "Mandatory Reporting of Greenhouse Gases From Magnesium Production, Underground Coal Mines, Industrial Wastewater Treatment, and Industrial Waste (75 FR 39736, July 12, 2010); Section IV.D of the preamble to "Mandatory Reporting of Greenhouse Gases: Additional Sources of Fluorinated GHGs" (75 FR 74744, December 1, 2010); Section III.D of the preamble to "Mandatory Reporting of Greenhouse Gases: Injection and Geologic Sequestration of Carbon Dioxide" (75 FR 75060, December 1, 2010); Section III.D of the preamble to "Mandatory Reporting of Greenhouse Gases: Petroleum and Natural Gas Systems" (75 FR 74458, November 30, 2010). These analyses showed that the cost-to-sales ratio, comparing the compliance costs for affected industry sectors with industry-specific data on revenues for small businesses, are less than one percent for establishments owned by small businesses that EPA considers most likely to be covered by the reporting program. For small governments, EPA compared the average costs of compliance for

combustion, local distribution companies, and landfills to average revenues and found that the costs of compliance with the reporting rule constitute less than one percent of average revenues for the smallest category of governments (*i.e.*, those with fewer than 10,000 people). We concluded from these analyses that Part 98 did not have a significant impact on a substantial number of small entities. This rule will not impose any new requirement on small entities that are not currently required by Part 98. The 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, this rule does not have a significant economic impact on a substantial number of small entities.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has taken several steps to reduce the impact of Part 98 on small entities. When we developed Part 98, we set applicability thresholds that reduced the number of small businesses required to report. We also did not require facilities to install CEMS if they did not already have them, and developed tiered methods that are simpler and less burdensome for some source categories. We also considered public comments submitted by small businesses and organizations that include small business members. After promulgation of Part 98, we provided a range of compliance tools, online training webinars, and other compliance assistance of use to small businesses. EPA continues to conduct significant outreach on the mandatory GHG reporting rule and maintains an "open door" policy for stakeholders to help inform EPA's understanding of key issues for industries and others.

#### *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 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, or Tribal governments, in the aggregate, or the private sector in any one year. The amendments are administrative in nature and do not increase the costs of compliance for facilities to comply with Part 98. Thus, the amendments to 40 CFR part 2 are not subject to the requirements of sections 202 or 205 of the 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 Part 98 (74 FR 56370).

#### *E. Executive Order 131132: Federalism*

The 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 Executive Order 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 Part 98 rule (74 FR 56266).

The amendments to 40 CFR part 2 are administrative in nature and apply to data reported under Part 98 by facilities that directly emit GHGs or supply fuel or chemicals that may emit GHGs when used. Part 98 does not apply to governmental entities unless the government entity owns a facility that directly emit GHGs above threshold levels such as large stationary combustion sources or landfills, so relatively few government facilities would be affected. The amendments to 40 CFR part 2 also do not limit the power of States or local governments to collect GHG data or regulate GHG emissions. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comments on the proposed action from State and local officials. For a discussion of how Part 98 relates to existing State programs and a

summary of EPA's consultations with State and local government representatives during the development of Part 98, see Sections II and VIII of the preamble to the final Part 98 (74 FR 56260, October 30, 2009), respectively. In addition, after the July 7, 2010 CBI proposal, EPA held meetings with associations including State and local agencies, and considered public comments submitted by such agencies in developing the final confidentiality determinations and 40 CFR part 2 amendments.

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

This action is not expected to have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because this action is administrative in nature and does not impose any new requirements on Tribes. Thus, Executive Order 13175 does not apply to this action. However, EPA consulted with Tribal officials in developing Part 98. 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 Part 98 (74 FR 56371, October 30, 2009).

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This action is not a “significant energy action” as defined in Executive Order 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 amendments to 40 CFR part 2 are administrative in nature and therefore do not have any adverse impacts on 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 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.

The amendments do not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

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

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

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the U.S. prior to publication of the rule in the **Federal**

**Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This rule will be effective July 25, 2011.

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

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

Dated: May 19, 2011.

**Lisa P. Jackson**,  
Administrator.

For the reasons stated in the preamble, title 40, chapter I, of the Code of Federal Regulations is 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 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).

\* \* \* \* \*

[FR Doc. 2011-12930 Filed 5-25-11; 8:45 am]

**BILLING CODE 6560-50-P**