interested public has been involved in its development for the last several years, including state litigation concerning the Rule. Therefore, EPA does not anticipate extending the public comment period beyond 30 days absent extraordinary or compelling circumstances.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 9, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2012–4172 Filed 2–21–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 98

[EPA–HQ–OAR–2011–0028; FRL–9633–6]

RIN 2060–AQ70

Mandatory Reporting of Greenhouse Gases Rule: Confidentiality Determinations and Best Available Monitoring Methods Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action re-proposes confidentiality determinations for the data elements in subpart I, Electronics Manufacturing source category, of the Mandatory Reporting of Greenhouse Gases Rule. On July 7, 2010, the EPA proposed confidentiality determinations for then-proposed subpart I data elements and is now issuing this re-proposal due to significant changes to certain data elements in the final subpart I reporting requirements. In addition, the EPA is proposing amendments to subpart I regarding the calculation and reporting of emissions from facilities that use best available monitoring methods. Proposed amendments would remove the obligation to recalculate and resubmit emission estimates for the period during which the facility used best available monitoring methods after the facility has begun using all applicable monitoring methods of subpart I.

DATES: *Comments.* Comments must be received on or before March 23, 2012 unless a public hearing is requested by February 29, 2012. If a timely hearing request is submitted, we must receive written comments on or before April 9, 2012.

Public Hearing. The EPA does not plan to conduct a public hearing unless requested. To request a hearing, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section by February 29, 2012. Upon such request, the EPA will hold the hearing on March 8, 2012 in the Washington, DC area starting at 9 a.m., local time. EPA will provide further information about the hearing on its Web page if a hearing is requested.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2011–0028, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Email: GHGReportingCBI@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 6102T, Attention Docket ID No. EPA–HQ–OAR–2011–0028, 1200 Pennsylvania Avenue NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2011–0028. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute.

Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. Send or deliver information identified as CBI to only the mail or hand/courier delivery address listed above, attention: Docket ID No. EPA–HQ–OAR–2011–0028. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email,

comment directly to the EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC–6207J), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 343–9263; fax number: (202) 343–2342; email address: *GHGReportingRule@epa.gov.* For technical information, contact the Greenhouse Gas Reporting Rule Hotline at: *http://www.epa.gov/climatechange/emissions/ghgrule_contactus.htm.* Alternatively, contact Carole Cook at (202) 343–9263.

SUPPLEMENTARY INFORMATION: *Additional information on submitting comments:* To expedite review of your comments by agency staff, you are encouraged to send a separate copy of your comments, in addition to the copy you submit to the official docket, to Carole Cook, U.S. EPA, Office of Atmospheric Programs, Climate Change Division, Mail Code 6207–J, Washington, DC 20460, telephone (202) 343–9263, email address: *GHGReportingRule@epa.gov.*

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this proposal, memoranda to the docket, and all other related information will also be available through the WWW on the EPA's Greenhouse Gas Reporting Rule Web site at *http://www.epa.gov/climatechange/.*

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

BAMM best available monitoring methods
CAA Clean Air Act
CO_2 carbon dioxide
CBI confidential business information
CFR Code of Federal Regulations
DRE Destruction or Removal Efficiency
EPA U.S. Environmental Protection Agency
F–GHG fluorinated greenhouse gas
GHG greenhouse gas
HTF heat transfer fluid
$mtCO_2e$ metric ton carbon dioxide equivalent
N_2O nitrous oxide
NTTAA National Technology Transfer and Advancement Act of 1995
OMB Office of Management & Budget
RFA Regulatory Flexibility Act
RSASTP Random Sampling Abatement System Testing Program
UMRA Unfunded Mandates Reform Act of 1995
U.S. United States
WWW Worldwide Web

Organization of This Document. The following outline is provided to aid in locating information in this preamble. Section I of this preamble provides general information on the Greenhouse Gas Reporting Program and preparing comments on this action. Sections II and III discuss the CBI re-proposal, and Section IV discusses the proposed amendments to the best available monitoring provisions. Section V discusses statutes and executive orders applicable to this action.

I. General Information
A. What is the purpose of this action?
B. Does this action apply to me?
C. Legal Authority
D. What should I consider as I prepare my comments to the EPA?
II. Background and General Rationale on CBI Re-Proposal
A. Background on CBI Re-Proposal
B. What is the rationale for re-proposing the CBI determinations for subpart I?
C. How does the Subpart I Heat Transfer Fluid Provisions final rule affect the CBI re-proposal?
III. Re-Proposal of CBI Determinations for Subpart I
A. Overview
B. Request for Comments
C. Approach to Making Confidentiality Determinations
D. Proposed Confidentiality Determinations for Individual Data Elements in Two Data Categories
E. Commenting on the Proposed Confidentiality Determinations in Two Direct Emitter Categories
IV. Background and Rationale for the Proposed Amendments to the Best Available Monitoring Method Provisions
V. 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 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
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

I. General Information

A. What is the purpose of this action?

The EPA is re-proposing confidentiality determinations for the data elements in subpart I of 40 CFR part 98 of the Mandatory Reporting of Greenhouse Gases Rule (hereinafter referred to as ''Part 98''). Subpart I of Part 98 requires monitoring and reporting of greenhouse gas (GHG) emissions from electronics manufacturing. The electronics manufacturing source category (hereinafter referred to as ''subpart I'') includes facilities that have annual emissions equal to or greater than 25,000 $mtCO_2e$.

The proposed confidentiality determinations in this notice cover all of the data elements that are currently in subpart I except for those that are in the ''Inputs to Emission Equations'' data category. The covered data elements and their proposed data category assignments are listed by data category in the memorandum entitled ''Proposed Data Category Assignments for Subpart I'' in Docket EPA–HQ–OAR–2011–0028.

This action also proposes amendments to provisions in subpart I regarding the calculation and reporting of emissions from facilities that use best available monitoring methods (BAMM). Following the December 1, 2010 publication finalizing subpart I in the ''Mandatory Reporting of Greenhouse Gases: Additional Sources of

Fluorinated GHGs'' rule (75 FR 74774, hereinafter referred to as the ''final subpart I rule''), industry members requested reconsideration of several provisions in the final subpart I rule. This action responds to a petition for reconsideration of the specific subpart I provisions that require facilities that have been granted extensions to use BAMM to recalculate their emissions for the time period for which BAMM was granted at a later date, after they have begun following all applicable monitoring requirements of subpart I.

In today's notice, the EPA is not taking any action on other issues raised by the petitioners. Although we are not seeking comment on those issues at this time, the EPA reserves the right to further consider those issues at a later time.

B. Does this action apply to me?

This proposal affects entities that are required to submit annual GHG reports under subpart I of 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 affect owners and operators of electronics manufacturing facilities. 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
Electronics Manufacturing	334111	Microcomputers manufacturing facilities.
	334413	Semiconductor, photovoltaic (solid-state) device manufacturing facilities.
	334419	Liquid crystal display unit screens manufacturing facilities.
	334419	Micro-electro-mechanical systems manufacturing facilities.

Table 1 of this preamble lists the types of entities that potentially could be affected by the reporting requirements under the subpart covered by this proposal. However, this list is not intended to be exhaustive, but rather provides a guide for readers regarding facilities likely to be affected by this action. Other types of facilities not listed in the table could also be subject to reporting requirements. To determine whether you are affected by this action, you should carefully examine the applicability criteria found in 40 CFR part 98, subpart A as well as 40 CFR part 98, subpart I. If you have questions regarding the applicability of this action to a particular facility, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

C. Legal Authority

The EPA is proposing rule amendments under its existing CAA authority, specifically authorities provided in CAA section 114. As stated in the preamble to the 2009 final rule (74 FR 56260) and the Response to Comments on the Proposed Rule, Volume 9, Legal Issues, CAA section 114 provides the EPA broad authority to obtain the information in Part 98, including those in subpart I, because such data would inform and are relevant to the EPA's carrying out a wide variety of CAA provisions. As discussed in the preamble to the initial proposed Part 98 (74 FR 16448, April 10, 2009), CAA section 114(a)(1) authorizes the Administrator to require emissions sources, persons subject to the CAA, manufacturers of control or process equipment, or persons whom the Administrator believes may have necessary information to monitor and report emissions and provide such other information the Administrator requests for the purposes of carrying out any provision of the CAA.

D. What should I consider as I prepare my comments to the EPA?

1. Submitting Comments That Contain CBI

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

Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. Send or deliver information identified as CBI to only the mail or hand/courier delivery address listed above, attention: Docket ID No. EPA–HQ–OAR–2011–0028.

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

2. Tips for Preparing Your Comments

When submitting comments, remember to:

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

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

Explain why you agree or disagree, and suggest alternatives and substitute language for your requested changes.

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

If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow us to reproduce your estimate.

Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

To expedite review of your comments by agency staff, you are encouraged to send a separate copy of your comments, in addition to the copy you submit to the official docket, to Carole Cook, U.S. EPA, Office of Atmospheric Programs, Climate Change Division, Mail Code 6207–J, Washington, DC 20460, telephone (202) 343–9263, email *GHGReportingCBI@epa.gov*. You are also encouraged to send a separate copy of your CBI information to Carole Cook

at the provided mailing address in the **FOR FURTHER INFORMATION CONTACT** section. Please do not send CBI to the electronic docket or by email.

II. Background and General Rationale on CBI Re-Proposal

A. Background on CBI Re-Proposal

On October 30, 2009, the EPA published the Mandatory GHG Reporting Rule, 40 CFR part 98, for collecting information regarding GHGs from a broad range of industry sectors (74 FR 56260). Under Part 98 and its subsequent amendments, certain facilities and suppliers above specified thresholds are required to report GHG information to the EPA annually. For facilities, this includes those that directly emit GHGs (''direct emitters'') and those that geologically sequester or otherwise inject carbon dioxide (CO_2) underground. The data to be reported consists of GHG emission and supply information as well as other data, including information necessary to characterize, quantify, and verify the reported emissions and supplied quantities. 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).''

The EPA proposed confidentiality determinations for Part 98 data elements, including data elements contained in subpart I in the July 7, 2010 proposed CBI determination proposal (75 FR 39094, hereafter referred to as the ''July 7, 2010 CBI proposal''). The data reporting requirements for subpart I were finalized on December 1, 2010 (75 FR 74774) as an amendment to Part 98. As explained in more detail in Section II.C of this preamble, many data elements were added or changed following proposal of the subpart I reporting requirements. Further, in a separate action, the EPA is finalizing amendments to subpart I, which revise one data element and add two new data elements. See ''Greenhouse Gas Reporting Program: Electronics Manufacturing (Subpart I): Revisions to Heat Transfer Fluid Provisions'' (hereinafter referred to as the ''Subpart I Heat Transfer Fluid Provisions final rule''). In light of the above, today we are re-proposing for public comment the confidentiality determinations for the data elements in subpart I to reflect the finalized new and revised data elements in this subpart.

On May 26, 2011, the EPA published the final CBI determinations for the data elements in 34 Part 98 subparts, except for those data elements that were assigned to the ''Inputs to Emission Equations'' data category (76 FR 30782, hereinafter referred to as the ''Final CBI Rule''). That final rule did not include CBI determinations for subpart I.

The Final CBI Rule: (1) Created and finalized 22 data categories for Part 98 data elements; (2) assigned data elements in 34 subparts to appropriate data categories; (3) for 16 data categories, issued category-based final CBI determinations for all data elements assigned to the category; and (4) for the other five data categories (excluding the inputs to emission equations category), determined that the data elements assigned to those categories are not ''emission data'' but made individual final CBI determination for those data elements. The EPA also did not make categorical determinations regarding the CBI status of these five categories. The EPA did not make final confidentiality determinations for the data elements assigned to the ''Inputs to Emission Equations'' data category.

The EPA finalized subpart I reporting requirements on December 1, 2010 (75 FR 74774). The final subpart I rule substantively revised data reporting elements and added new data reporting elements relative to the July 7, 2010 CBI proposal. In addition, in a separate action, the EPA is finalizing amendments to subpart I, which revises one data reporting element and adds two new data reporting elements. Today's re-proposal addresses the subpart I data elements as finalized, including the amendments discussed above.[1]

B. What is the rationale for re-proposing the CBI determinations for subpart I?

In the July 7, 2010 CBI Proposal, the EPA proposed CBI determinations for the data elements in then-proposed subpart I because the EPA initially did not anticipate any significant change to these data elements when finalizing the subpart I reporting requirements. In light of the changes described in section II.A of this preamble to the subpart I data elements since the July 7, 2010 CBI proposal, the EPA is re-proposing the confidentiality determinations for the data elements in subpart I.

Because this is a re-proposal, the agency is not responding to previous comments submitted on the July 7, 2010 CBI proposal relative to the data elements in this subpart. Although we considered those comments when developing this re-proposal, we encourage you to resubmit all relevant comments to ensure full consideration by the EPA in this rulemaking. In resubmitting previous comments, please make any necessary changes to clarify that you are addressing the re-proposal and add details as requested in Section III.E of this preamble.

C. How does the Subpart I Heat Transfer Fluid Provisions final rule affect the CBI re-proposal?

In a separate action, the EPA is finalizing technical revisions, clarifications, and other amendments to subpart I of Part 98 in the Subpart I Heat Transfer Fluid Provisions final rule.

The Subpart I Heat Transfer Fluid Provisions final rule is revising one and adding two subpart I data elements that are not inputs. Accordingly, we are making data category assignments to these three new and revised elements as finalized in the Subpart I Heat Transfer Fluid Provisions final rule. The revised data element includes a wording change from ''each fluorinated GHG used'' to ''each fluorinated heat transfer fluid used.'' The two new data elements require a facility to report (1) the date on which the facility began monitoring emissions of fluorinated heat transfer fluids (HTFs) and (2) whether the emission estimate includes emissions from all applications or only from the applications specified in the definition of fluorinated heat transfer fluids. The re-proposal addresses the data elements we are finalizing in the Subpart I Heat Transfer Fluid Provisions final rule, published as a separate action.

III. Re-Proposal of CBI Determinations for Subpart I

A. Overview

We propose to assign each of the data elements in subpart I, a direct emitter subpart, to one of 11 direct emitter data categories created in the Final CBI Rule. For eight of the 11 direct emitter categories, the EPA has made categorical confidentiality determinations, finalized in the Final CBI rule. For these eight categories, the EPA is proposing to apply the same categorical confidentiality determinations (made in the Final CBI rule) to the subpart I reporting elements assigned to each of these categories.

[1] Please note that the EPA also made other final revisions to subpart I in 2011 including an extension of best available monitoring methods (76 FR 36339, June 22, 2011) and changes to provide flexibility (76 FR 59542, September 27, 2011), but these actions did not change the list of reported data elements for subpart I.

In the Final CBI Rule, for two of the 11 data categories, the EPA did not make categorical confidentiality determinations, but rather made confidentiality determinations on an element-by-element basis. We are therefore following the same approach in this action for the subpart I reporting elements assigned to these two data categories. For three data elements within these two data categories, the EPA is proposing to make no CBI determination and, instead, make a case-by-case determination for actual data reported in these elements, as described in more detail in Section III.D of this preamble.

Lastly, in the Final CBI Rule, for the final data category, ''Inputs to Emission Equations,'' the EPA did not make a final confidentiality determination and indicated that this issue would be addressed in a future action. Please note that in the August 25, 2011 Final Deferral, the EPA has already assigned certain subpart I data elements to the inputs data category. We are not proposing to assign any additional data elements to the inputs data category in this action. Please see the following Web site for further information on this topic: *http://www.epa.gov/climatechange/emissions/CBI.html.*

Table 2 of this preamble summarizes the confidentiality determinations that were made in the Final CBI Rule for the following direct emitter data categories created in that notice excluding the ''Inputs to Emission Equations'' data category as final determinations for that category have not yet been made.

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

Data category	Confidentiality determination for data elements in each category		
	Emission data [a]	Data that are not emission data and not CBI	Data that are not emission data but are CBI [b]
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 [c]	X [c]
Unit/Process Operating Characteristics that are Not Inputs to Emission Equations		X [c]	X [c]
Test and Calibration Methods		X	
Production/Throughput Data that are Not Inputs to Emission Equations			X
Raw Materials Consumed that are Not Inputs to Emission Equations			X
Process-Specific and Vendor Data Submitted in BAMM Extension Requests			X

[a] Under CAA section 114(c), ''emission data'' are not entitled to confidential treatment. The term ''emission data'' is defined at 40 CFR 2.301(a)(2)(i).
[b] Section 114(c) of the CAA affords confidential treatment to data (except emission data) that are considered CBI.
[c] In the Final CBI Rule, this data category contains both data elements determined to be CBI and those determined not to be CBI.

B. Request for Comments

Today's action provides affected businesses subject to Part 98, other stakeholders, and the general public an opportunity to provide comment on several aspects of this proposal. For the CBI component of this rulemaking, we are soliciting comment on the following specific issues.

First, we seek comment on the proposed data category assignment for each of these data elements. If you believe that the EPA has improperly assigned certain data elements in this subpart to one of the data categories, please provide specific comments identifying which data elements may be mis-assigned along with a detailed explanation of why you believe them to be incorrectly assigned and in which data category you believe they would best belong.

Second, we seek comment on our proposal to apply the categorical confidentiality determinations (made in the Final CBI Rule for eight direct emitter data categories) to the data elements in subpart I that are assigned to those categories.

Third, for those data elements assigned to the two direct emitter data categories without categorical CBI determinations, we seek comment on the individual confidentiality determinations we are proposing for these data elements. If you comment on this issue, please provide specific comment along with detailed rationale and supporting information on whether such data element does or does not qualify as CBI.

C. Approach to Making Confidentiality Determinations

For subpart I, the EPA proposes to assign each data element to one of 10 non-inputs direct emitter data categories. Please see the memorandum entitled ''Proposed Data Category Assignments for Subpart I'' in the docket: EPA–HQ–OAR–2011–0028 for a list of the data elements in these subparts and their proposed category assignment. As noted previously, the EPA made categorical confidentiality determinations for eight direct emitter data categories and the EPA proposes to apply those final determinations to the data elements assigned to those categories in this rulemaking. For the data elements in the two direct emitter data categories that do not have categorical confidentiality determinations, we are proposing to make confidentiality determinations on an individual data element basis.[2]

The following two direct emitter data categories do not have category-based CBI determinations: ''Unit/Process 'Static' Characteristics That are Not Inputs to Emission Equations'' and ''Unit/Process Operating Characteristics That are Not Inputs to Emission Equations.'' In Section III.D of this preamble, the data elements in these two data categories that are part of the annual GHG report submission and part of the subpart I BAMM use extension requests are identified in a table. For all data elements in these two data categories, the EPA states in the table the reasons for proposing to determine

[2] As mentioned above, EPA determined that data elements in these two categories are not ''emission data'' under CAA section 114(c) and 40 CFR 2.301(a)(2)(i) for purposes of determining the GHG emissions to be reported under Part 98. That determination would apply to data elements in subpart I assigned to those categories through this rulemaking.

that each does or does not qualify as CBI under CAA section 114(c). These data elements are also listed individually by data category and proposed confidentiality determination in the memorandum entitled ''Proposed Data Category Assignments for Subpart I'' in Docket EPA–HQ–OAR–2011–0028. For three data elements, the EPA is proposing to make no CBI determination and, instead, make a case-by-case determination for actual data reported in these elements, as described in more detail in the table in Section III.D of this preamble. The EPA is specifically soliciting comments on the CBI proposals for data elements in these two data categories.

D. Proposed Confidentiality Determinations for Individual Data Elements in Two Data Categories

As described in Section III.C of this preamble, the EPA is proposing confidentiality determinations on an element-by-element basis for those that we are proposing to assign to the ''Unit/Process 'Static' Characteristics That are Not Inputs to Emission Equations'' and ''Unit/Process Operating Characteristics That are Not Inputs to Emission Equations'' data categories. In this section, the EPA presents in Table 3 and Table 4 of this preamble the data elements that we are proposing to assign to those two data categories and the reasons for proposing to determine that each does or does not qualify as CBI under CAA section 114(c), or the reason that we are not making a CBI determination.

The electronics manufacturing industry uses multiple long-lived fluorinated greenhouse gases (fluorinated GHGs), as well as nitrous oxide (N_2O) during manufacturing of electronic devices, including, but not limited to, liquid crystal displays, microelectro-mechanical systems, photovoltaic cells, and semiconductors. Fluorinated GHGs are used mainly for plasma etching of silicon materials, cleaning deposition tool chambers, and wafer cleaning, but may be used in other types of electronics manufacturing processes. Besides dielectric film etching and chamber cleaning, much smaller quantities of fluorinated GHGs are used to etch polysilicon films and refractory metal films like tungsten. Additionally, some electronics manufacturing equipment may employ fluorinated GHG liquids as HTFs. Nitrous oxide may be the oxidizer of choice during deposition of silicon oxide films in manufacturing electronic devices.

These electronic manufacturing steps are performed in carefully controlled process chambers containing the silicon wafers and the fluorinated GHGs or N_2O. Producing a finished wafer with multiple electronic devices (e.g., computer chips) may require depositing and etching 50 or more individual layers of material. The conditions under which the individual steps are performed, the ability of a facility to produce certain electronic features, and the ability of a facility to produce a certain number of devices with a minimum number of defects at a certain cost per unit, among other variables, affect the overall efficiency of the manufacturing process, and thus contribute to the business's profitability. These processes, therefore, are a factor in the competitive standing of a particular facility in this industry.

The ''Unit/Process 'Static' Characteristics That Are Not Inputs to Emission Equations'' Data Category

The EPA is proposing to assign 16 subpart I data elements to the ''Unit/Process 'Static' Characteristics That are Not Inputs to Emission Equations'' data category because they are basic characteristics of abatement devices and tools that do not vary with time or with the operations of the process (and are not inputs to emission equations). These 16 data elements are shown in Table 3 of this preamble along with their proposed confidentiality determination and the associated justification for the determination:

TABLE 3—DATA ELEMENTS PROPOSED TO BE ASSIGNED TO THE ''UNIT/PROCESS 'STATIC' CHARACTERISTICS THAT ARE NOT INPUTS TO EMISSION EQUATIONS'' DATA CATEGORY

Data element	Proposed to be confidential?	Justification
1. For all fluorinated greenhouse gases (F–GHG) or N_2O used at your facility for which you have not calculated emissions using Equations I–6 through I–10: Report a brief description of GHG use.	Yes	Subpart I lists five manufacturing processes in 40 CFR 98.96(a) that are common to the electronics manufacturing industry. If a facility employs an uncommon process during manufacturing, then the reporting facility must instead report a description of the uncommon process (see 40 CFR 98.96(g)). As such, this data element may cover novel production methods that may have been developed by the reporting facility, generally at great expense and time investment. Facilities develop and use such methods because they improve manufacturing efficiencies, reduce manufacturing costs, or improve product performance, quality, or production rate, thereby conferring a competitive advantage. Should competitors gain knowledge of such an exclusive method, they could undercut the facility's competitive advantage, by replicating it at less expense. Therefore, the EPA finds that releasing the report of a brief description of GHG use would likely result in substantial competitive harm.

TABLE 3—DATA ELEMENTS PROPOSED TO BE ASSIGNED TO THE "UNIT/PROCESS 'STATIC' CHARACTERISTICS THAT ARE NOT INPUTS TO EMISSION EQUATIONS" DATA CATEGORY—Continued

Data element	Proposed to be confidential?	Justification
2. Identification of the quantifiable metric used in your facility-specific engineering model to apportion gas consumption (may not be reported in 2011, 2012, and 2013).	No CBI determination proposed in this rulemaking.	The EPA was petitioned to reconsider the method and data elements related to apportioning and, as an initial response to that petition, the EPA is not requiring the reporting of these recipe-specific data elements for the 2011, 2012, and 2013 reporting years. Under the methods in subpart I at this time, those data elements are not needed to comply with subpart I during those years. Given that the EPA is still considering longer-term responses to the petition, the EPA proposes to evaluate the confidentiality status of these data elements on a case-by-case basis, in accordance with existing CBI regulations in 40 CFR part 2, subpart B.
3. Inventory of all abatement systems through which fluorinated GHGs or N_2O flow at your facility.	Yes	The inventory of abatement systems at the facility may provide insight into the number of tools at the facility. Information on the type and number of tools at the facility coupled with production capacity could then enable competitors to reverse-engineer the facility's approximate manufacturing cost using the competitor's own tool operating costs. Disclosure of this type of cost information has the potential to undermine competition within the industry because it could allow competitors to ascertain the relative strength of their market position and to identify sources of competitive advantage (or disadvantage) in the industry. This could encourage weaker competitors to leave the industry prematurely or lead stronger competitors to adopt anticompetitive practices (such as predatory pricing) in an effort to force out weaker competitors.
4. Description of all abatement systems through which fluorinated GHGs or N_2O flow at your facility.	No	The description of abatement systems does not provide information about the specific processes being run at the facility; only provides information about the specific abatement system's being employed at the facility. Further, it does not provide insight to competitors about the type and number of process tools used at the facility, and does not provide insight into the design or operation efficiencies of the plant, nor other information (e.g., market share, ability to increase production to meet new increases in demand, or price structures).
5. Number of abatement devices of each manufacturer through which fluorinated GHGs or N_2O flow at your facility.	Yes	The number of abatement systems at the facility may provide insight into the number of tools at the facility. Information on the type and number of tools at the facility coupled with production capacity could then enable competitors to reverse-engineer the facility's approximate manufacturing cost using the competitor's own tool operating costs. Disclosure of this type of cost information has the potential to undermine competition within the industry because it could allow competitors to ascertain the relative strength of their market position and to identify sources of competitive advantage (or disadvantage) in the industry. This could lead stronger competitors to adopt anticompetitive practices (such as predatory pricing) in an effort to force out weaker competitors or encourage weaker competitors to leave the industry prematurely.
6. Model numbers of abatement devices through which fluorinated GHGs or N_2O flow at your facility.	No	Information on what type of abatement system is being used at the facility, including model numbers of abatement devices, does not provide insight into the type of processes being run at the facility. Further, it does not provide insight to competitors about the type and number of process tools used at the facility.
7. Destruction or removal efficiencies, if any, claimed by manufacturers of abatement devices through which fluorinated GHGs or N_2O flow at your facility.	No	The destruction or removal efficiencies do not provide insight about the specific process being run at the facility; this information should be available publically via a manufacturer's Web site/press materials. It should also be provided as part of the abatement system specifications.

TABLE 3—DATA ELEMENTS PROPOSED TO BE ASSIGNED TO THE "UNIT/PROCESS 'STATIC' CHARACTERISTICS THAT ARE NOT INPUTS TO EMISSION EQUATIONS" DATA CATEGORY—Continued

Data element	Proposed to be confidential?	Justification
8. Description of the tools associated with each abatement system.	Yes	At a subpart I facility, disclosure of the type or description of manufacturing tools used for specific process steps would provide insight into how the reporting facility is configured and how it achieves its specific manufacturing performance. If information on a facility's tool types and manufacturing steps is revealed, a competitor could use this information to replicate the facility's manufacturing configuration, thereby undercutting the competitive advantage that the facility has built by achieving a higher level of manufacturing performance.
9. Model numbers of the tools associated with each abatement system.	Yes	At a subpart I facility, disclosure of the model numbers of manufacturing tools used for specific process steps would provide insight into the type of tool used and how the reporting facility is configured and achieves its specific manufacturing performance. If information on a facility's tool types and manufacturing steps is revealed, a competitor could use this information to replicate the facility's manufacturing configuration, thereby undercutting the competitive advantage that the facility has built by achieving a higher level of manufacturing performance.
10. The tool recipe(s),[3] process sub-type, or type associated with each abatement system.	Yes	At a subpart I facility, disclosure of the recipe(s), process sub-type, or type associated with each abatement system for specific process steps would provide insight into how the reporting facility is configured and achieves its specific manufacturing performance. If information on a facility's tool types and manufacturing steps is revealed, a competitor could use this information to replicate the facility's manufacturing configuration, thereby undercutting the competitive advantage that the facility has built by achieving a higher level of manufacturing performance.
11. Certification that the abatement systems for which controlled emissions are being reported are specifically designed for fluorinated GHG and N_2O abatement, including abatement system supplier documentation.	No	The abatement system certification does not provide any insight into the design or operation efficiencies of the plant or other information, that, if made publicly available, the release of which would be likely to result in substantial competitive harm. Moreover, certification statements will consist of only the language that the EPA publicly provides in the data reporting tool and will not include any facility- or process-specific information that could be considered exclusive.
12. A description of the abatement system class for which you are reporting controlled emissions.	No	The abatement system class description does not provide any information about the specific processes being run at the facility; it relates to the use of the random sampling abatement system testing program (RSASTP) (40 CFR 98.94(f)(4)); where the facility elects to directly measure the destruction removal efficiency (DRE), this information ensures that they have followed the RSASTP. This description does not provide insight into the design or operation efficiencies of the plant, nor other information (e.g., market share, ability to increase production to meet new increases in demand, or price structures).
13. The manufacturer of the abatement system in the class for which you are reporting controlled emissions.	No	The abatement system manufacturer does not provide any information about the specific processes being run at the facility; it relates to the use of the RSASTP; where the facility elects to directly measure the DRE, this information ensures that they have followed the RSASTP. This information does not provide insight into the design or operation efficiencies of the plant, nor other information (e.g., market share, ability to increase production to meet new increases in demand, or price structures).

TABLE 3—DATA ELEMENTS PROPOSED TO BE ASSIGNED TO THE ''UNIT/PROCESS 'STATIC' CHARACTERISTICS THAT ARE NOT INPUTS TO EMISSION EQUATIONS'' DATA CATEGORY—Continued

Data element	Proposed to be confidential?	Justification
14. The model number of the abatement system in the class for which you are reporting controlled emissions.	No	The abatement system model number and class do not provide any information about the specific processes being run at the facility; they relate to the use of the RSASTP; where the facility elects to directly measure the DRE, this information ensures that they have followed the RSASTP. This information does not provide insight to competitors about the type and number of process tools used at the facility.
15. For each fluorinated HTF used, whether the emission estimate includes emissions from all applications or from only the applications specified in the definition of fluorinated HTFs in 40 CFR 98.98.	No	This information does not contain any process specific information; it is related to a flexibility provision that the EPA finalized in a separate action. The release of this information does not provide insight into the design or operation efficiencies of the plant, nor other information (e.g., market share, ability to increase production to meet new increases in demand, or price structures).
16. For reporting year 2012 only, the date on which you began monitoring emissions of fluorinated heat transfer fluids whose vapor pressure falls below 1 mm of Hg absolute at 25 degrees C.	No	This information does not provide details about the specific processes being run at the facility; it enables the EPA to ascertain the time-period for which fluorinated HTFs are being reported. The release of this information does not provide insight into the design or operation efficiencies of the plant, nor other information (e.g., market share, ability to increase production to meet new increases in demand, or price structures).

The ''Unit/Process Operating Characteristics That Are Not Inputs to Emission Equations'' Data Category

The EPA is proposing to assign 23 subpart I data elements to the ''Unit/process Operating Characteristics That Are Not Inputs to Emission Equations'' data category because they are characteristics of the abatement systems and other equipment, the facility conditions, and the products manufactured that vary over time with changes in operations and processes (and are not inputs to emission equations). Thirteen of these data elements are part of extension requests for the use of BAMM and generally relate to the reasons for a request and expected dates of compliance. Ten are part of the annual GHG report for 40 CFR part 98, subpart I. These 23 data elements are shown in Table 4 of this preamble along with their proposed confidentiality determination and the associated justification for the determination:

TABLE 4—DATA ELEMENTS PROPOSED TO BE ASSIGNED TO THE ''UNIT/PROCESS OPERATING CHARACTERISTICS THAT ARE NOT INPUTS TO EMISSION EQUATIONS'' DATA CATEGORY

Data element	Proposed to be confidential?	Justification
1. Annual manufacturing capacity of a facility as determined in Equation I–5.	No	This information is already publicly available through the World Fab Forecast,[4] a subscription-based report containing in-depth analysis down to the detail of each fab [or facility] in the electronics industry. The Forecast is published and updated quarterly by SEMI, the global industry association serving the manufacturing supply chains for the microelectronic, display and photovoltaic industries. The EPA reviewed the available capacity information and determined that, while those capacity data elements are generally publicly available, there may be facilities for which this data is not public. The EPA is proposing that the ''annual manufacturing capacity of a facility as determined in Equation I–5'' data element (item 1) not be treated as confidential, because it is already publicly available through the World Fab Forecast. The EPA seeks comment on this proposed determination.

[3] ''Recipe'' is a term of art in electronics manufacturing and is defined in 40 CFR 98.98 as a ''specific combination of gases, under specific conditions of reactor temperature, pressure, flow, radio frequency (RF) power and duration, used repeatedly to fabricate a specific feature on a specific film or substrate''.

TABLE 4—DATA ELEMENTS PROPOSED TO BE ASSIGNED TO THE "UNIT/PROCESS OPERATING CHARACTERISTICS THAT ARE NOT INPUTS TO EMISSION EQUATIONS" DATA CATEGORY—Continued

Data element	Proposed to be confidential?	Justification
2. For facilities that manufacture semiconductors, the diameter of wafers manufactured at a facility.	No	The diameter of wafers manufactured at a facility is already publicly available through the World Fab Forecast, a subscription-based report containing in-depth analysis down to the detail of each fab [or facility] in the semiconductor industry. The Forecast is published and updated quarterly by SEMI, the global industry association serving the manufacturing supply chains for the microelectronic, display and photovoltaic industries.
3. Film or substrate that was etched/cleaned and the feature type that was etched.	No CBI determination proposed in this rulemaking.	EPA was petitioned to reconsider the method and data elements related to the recipe-specific method and, as an initial response to that petition, the EPA is not requiring the reporting of these recipe-specific data elements for the 2011, 2012, and 2013 reporting years. Under the methods in subpart I at this time, those data elements are not needed to comply with subpart I during those years. Given that the EPA is still considering longer-term responses to the petition, the EPA proposes to evaluate the confidentiality status of these data elements on a case-by-case basis, in accordance with existing CBI regulations in 40 CFR part 2, subpart B.
4. Certification that the recipes included in a set of similar recipes are similar.	No CBI determination proposed in this rulemaking.	The EPA was petitioned to reconsider the method and data elements related to the recipe-specific method and, as an initial response to that petition, the EPA is not requiring the reporting of these recipe-specific data elements for the 2011, 2012, and 2013 reporting years. Under the methods in subpart I at this time, those data elements are not needed to comply with subpart I during those years. Given that the EPA is still considering longer-term responses to the petition, the EPA proposes to evaluate the confidentiality status of these certifications on a case-by-case basis, in accordance with existing CBI regulations in 40 CFR part 2, subpart B.
5. When you use factors for fluorinated GHG process utilization and by-product formation rates other than the defaults provided in Tables I–3, I–4, I–5, I–6, and I–7 and/or N_2O utilization factors other than the defaults provided in Table I–8, certification that the conditions under which the measurements were made for facility-specific N_2O utilization factors are representative of your facility's N_2O emitting production processes.	No	These certification statements are general in nature, do not reveal other information (e.g., market share, ability to increase production to meet new increases in demand, price structures), and do not provide any insight into the design or operation efficiencies of the plant that would likely result in substantial competitive harm. Moreover, the EPA certification statements consist only of the language that the EPA publicly provides in the data reporting tool and do not include any facility- or process-specific information that could be considered exclusive.
6. Destruction and removal efficiency measurement records for abatement system through which fluorinated GHGs or N_2O flow at your facility over its in-use life.	No	These measurement records are limited to information about the performance of the abatement systems and do not include information about the operating conditions around the abatement system or the manufacturing tool to which it is attached. Destruction efficiency information would not likely cause substantial competitive harm if released, because it does not provide any insight into novel, exclusive production methods that may have been developed by the facility.
7. Certification that the abatement system is installed, maintained, and operated according to manufacturer specifications.	No	These certification statements are general in nature, do not provide any insight into the design or operation efficiencies of the plant, and do not reveal other information (e.g., market share, ability to increase production to meet new increases in demand, price structures) that would likely result in substantial competitive harm. Moreover, the EPA certification statements consist only of the language that the EPA publicly provides in the data reporting tool and do not include any facility- or process-specific information that could be considered exclusive.

TABLE 4—DATA ELEMENTS PROPOSED TO BE ASSIGNED TO THE "UNIT/PROCESS OPERATING CHARACTERISTICS THAT ARE NOT INPUTS TO EMISSION EQUATIONS" DATA CATEGORY—Continued

Data element	Proposed to be confidential?	Justification
8. The fluorinated GHG and N_2O in the effluent stream to the abatement system in the class for which you are reporting controlled emissions.	No	This data element does not include information on the quantity of gas(es) produced or the manufacturing tool that produces the gas(es). The type of fluorinated gas in the effluent stream would not likely cause substantial competitive harm if released, because all facilities use the same types of process gases that are typically found in effluent streams. The type of gas does not provide any insight into the costs of producing semiconductors at the facility or any novel production methods that may have been developed by the facility to improve manufacturing efficiencies, reduce manufacturing costs, or improve product performance.
9. The total number of abatement systems in that abatement system class for the reporting year.	Yes	The EPA finds that information relating to the number of abatement systems at the facility may provide insight into the number of tools at the facility. Information on the type and number of tools at the facility coupled with production capacity could then enable competitors to reverse-engineer the facility's approximate manufacturing cost using the competitor's own tool operating costs. Disclosure of this type of cost information has the potential to undermine competition within the industry because it could allow competitors to ascertain the relative strength of their market position and to identify sources of competitive advantage (or disadvantage) among competitors. This could encourage weaker competitors to leave the industry prematurely or lead stronger competitors to adopt anticompetitive practices (such as predatory pricing) in an effort to force out weaker competitors.
10. The total number of abatement systems for which destruction or removal efficiency was measured in that abatement system class for the reporting year.	Yes	This data element refers to the statistical sample size of abatement systems that the facility analyzed in order to determine with sufficient statistical confidence the efficiency of all like abatement systems in that class. Subpart I specifies that 20 percent of the total number of abatement systems must be analyzed every year. Therefore, a competitor could use statistical sample size data to determine the total number of abatement systems at the facility. Since the EPA proposes that the total number of abatement systems is CBI, as described above, the EPA finds that the statistical sample size of abatement systems would likely cause substantial competitive harm if revealed.
11. Extension requests which request BAMM in 2011 for parameters other than recipe-specific utilization and by-product formation rates for the plasma etching process type: Reasons why the needed equipment could not be obtained, installed, or operated or why the needed measurement service could not be provided before July 1, 2011.	Yes	The EPA has reviewed all BAMM use extension requests and determined that this data element contains detailed operational information, which could provide insight into configuration efficiencies that the facility has developed, generally at great expense and time investment, to minimize manufacturing cost and to maximize the manufacturing rate. If a competitor could review such information on the facility's configuration, the competitor would be able to adopt the facility's efficiency practices with less development time or expense and would gain competitive advantage at the expense of the facility's competitive advantage.
12. Extension requests which request BAMM in 2011 for parameters other than recipe-specific utilization and by-product formation rates for the plasma etching process type: If the reason for the extension is that the equipment cannot be purchased, delivered, or installed before July 1, 2011, include supporting documentation (e.g., backorder notices or unexpected delays or descriptions of actions taken to expedite delivery or installation).	No	This data element does not contain process diagrams, operational information, or any other information that would give insight for competitors to gain an advantage over the reporter. Rather, it provides information on administrative activities and regulatory requirements to which the facility is subject that are not protected as proprietary or exclusive by the reporting facilities.

TABLE 4—DATA ELEMENTS PROPOSED TO BE ASSIGNED TO THE "UNIT/PROCESS OPERATING CHARACTERISTICS THAT ARE NOT INPUTS TO EMISSION EQUATIONS" DATA CATEGORY—Continued

Data element	Proposed to be confidential?	Justification
13. Extension requests which request BAMM in 2011 for parameters other than recipe-specific utilization and by-product formation rates for the plasma etching process type: If the reason for the extension is that service providers were unable to provide necessary measurement services, include supporting documentation demonstrating that these services could not be acquired before July 1, 2011. This documentation must include written correspondence to and from at least three service providers stating that they will not be available to provide the necessary services before July 1, 2011.	No	This data element does not contain detailed information that would give insight for competitors to gain an advantage over the reporter. Rather, it provides information on regulatory requirements and administrative activities to which the facility is subject that are not protected as proprietary or exclusive by the reporting facilities.
14. Extension requests which request BAMM in 2011 for parameters other than recipe-specific utilization and by-product formation rates for the plasma etching process type: Specific actions the owner or operator will take to comply with monitoring requirements by January 1, 2012.	No	This data element does not contain detailed information, such as process diagrams and operational information or any other information that would give insight for competitors to gain an advantage over the reporter. Rather, it provides information on administrative activities and regulatory requirements to which the facility is subject that are not protected as proprietary or exclusive by the reporting facilities.
15. Extension requests which request BAMM in 2011 for recipe-specific utilization and by-product formation rates for plasma etching process type: Reasons why the needed equipment could not be obtained, installed, or operated or why the needed measurement service could not be provided before December 31, 2011.	Yes	The EPA has reviewed all BAMM use extension requests and determined that this data element contains detailed information, such as operational information, which could provide insight into configuration efficiencies that the facility has developed, generally at great expense and time investment, to minimize manufacturing cost and to maximize the manufacturing rate. If a competitor could review such information on the facility's configuration, the competitor would be able to adopt the facility's efficiency practices with less development time or expense and would gain competitive advantage at the expense of the facility's competitive advantage.
16. Extension requests which request BAMM in 2011 for recipe-specific utilization and by-product formation rates for plasma etching process type: If the reason for the extension is that the equipment cannot be purchased, delivered, or installed before December 31, 2011, include supporting documentation (e.g., backorder notices or unexpected delays or descriptions of actions taken to expedite delivery or installation).	No	This data element does not contain detailed information, such as process diagrams and operational information or any other information that would give insight for competitors to gain an advantage over the reporter. Rather, it provides information on administrative activities and regulatory requirements to which the facility is subject that are not protected as proprietary or exclusive by the reporting facilities.
17. Extension requests which request BAMM in 2011 for recipe-specific utilization and by-product formation rates for plasma etching process type: If the reason for the extension is that service providers were unable to provide necessary measurement services, include supporting documentation demonstrating that these services could not be acquired before December 31, 2011. This documentation must include written correspondence to and from at least three service providers stating that they will not be available to provide the necessary services before December 31, 2011.	No	This data element does not contain detailed information, such as process diagrams and operational information or any other information that would give insight for competitors to gain an advantage over the reporter. Rather, it provides information on administrative activities and regulatory requirements to which the facility is subject that are not protected as proprietary or exclusive by the reporting facilities.
18. Extension requests which request BAMM in 2011 for recipe-specific utilization and by-product formation rates for plasma etching process type: Specific actions the owner or operator will take to comply with monitoring requirements by January 1, 2012.	No	This data element does not contain detailed information, such as process diagrams and operational information or any other information that would give insight for competitors to gain an advantage over the reporter. Rather, it provides information on administrative activities and regulatory requirements to which the facility is subject that are not protected as proprietary or exclusive by the reporting facilities.

TABLE 4—DATA ELEMENTS PROPOSED TO BE ASSIGNED TO THE "UNIT/PROCESS OPERATING CHARACTERISTICS THAT ARE NOT INPUTS TO EMISSION EQUATIONS" DATA CATEGORY—Continued

Data element	Proposed to be confidential?	Justification
19. Extension requests which request BAMM beyond 2011: Explanation as to why the requirements cannot be met.	Yes	The EPA has reviewed all of BAMM use extension requests and determined that this data element may contain operational information, which could provide insight into configuration efficiencies that the facility has developed, generally at great expense and time investment, to minimize manufacturing cost and to maximize the manufacturing rate. If a competitor could review such information on the facility's configuration, the competitor would be able to adopt the facility's efficiency practices with less development time or expense and would gain competitive advantage at the expense of the facility's competitive advantage.
20. Extension requests which request BAMM beyond 2011: Description of the unique circumstances necessitating an extension, including specific technical infeasibilities that conflict with data collection.	No	This data element does not contain detailed operational information or any other information that would give insight for competitors to gain an advantage over the reporter. Rather, it provides information on administrative activities and regulatory requirements to which the facility is subject that are not protected as proprietary or exclusive by the reporting facilities.
21. Extension requests which request BAMM beyond 2011: Description of the unique circumstances necessitating an extension, including specific data collection issues that do not meet safety regulations or specific laws or regulations that conflict with data collection.	No	This data element does not contain detailed information that would give insight for competitors to gain an advantage over the reporter. Rather, it provides information on administrative activities and regulatory requirements to which the facility is subject that are not protected as proprietary or exclusive by the reporting facilities.
22. Extension requests which request BAMM beyond 2011: Explanation and supporting documentation of how the owner or operator will receive the required data and/or services to comply with the reporting requirements.	No	This data element does not contain process diagrams or operational information that would give insight for competitors to gain an advantage over the reporter. Rather, it provides information on administrative activities and regulatory requirements to which the facility is subject that are not protected as proprietary or exclusive by the reporting facilities.
23. Extension requests which request BAMM beyond 2011: Explanation and supporting documentation of when the owner or operator will receive the required data and/or services to comply with the reporting requirements.	Yes	This data element could reveal information about the installation date of equipment and the date of anticipated startup. This could provide sensitive information regarding future process shutdowns or capacity increases, and likely would cause substantial competitive harm if disclosed, because competitors could use this information to anticipate and potentially benefit from future increases or decreases in product supply. For example, a competitor able to anticipate the shutdown or the increase in capacity of a reporter's facility and resulting decrease or increase in product supply could use this information to attract customers from a facility by increasing its own production or by adjusting the price of its own products.

E. Commenting on the Proposed Confidentiality Determinations in Two Direct Emitter Categories

We seek comment on the proposed confidentiality status of data elements in 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"). By proposing confidentiality determinations prior to data reporting through this proposal and rulemaking process, we provide potential reporters an opportunity to submit comments identifying data they consider sensitive and the rationales and supporting documentation, same as those they would otherwise submit for case-by-case confidentiality determinations. We will evaluate claims of confidentiality before finalizing the confidentiality determinations. Please note that this will be reporters' only opportunity to substantiate your confidentiality claim. Upon finalization of this rule, the EPA will release or withhold subpart I data in accordance with 40 CFR 2.301, which contains special provisions governing the treatment of 40 CFR part 98 data for which confidentiality determinations have been made through rulemaking.

Please consider the following instructions in submitting comments on the data elements in subpart I.

Please identify each individual data element you do or do not consider to be CBI or emission data in your comments. Please explain specifically how the public release of that particular data element would or would not cause a competitive disadvantage to a facility. Discuss how this data element may be different from or similar to data that are already publicly available. Please submit information identifying any publicly available sources of

[4] *http://www.semi.org/en/Store/MarketInformation/fabdatabase/ctr_027238.*

information containing the specific data elements in question, since data that are already available through other sources would not be CBI. In your comments, please identify the manner and location in which each specific data element you identify is available, including a citation. If the data are physically published, such as in a book, industry trade publication, or federal agency publication, provide the title, volume number (if applicable), author(s), publisher, publication date, and ISBN or other identifier. For data published on a Web site, provide the address of the Web site and the date you last visited the Web site and identify the Web site publisher and content author.

If your concern is that competitors could use a particular input to discern sensitive information, specifically describe the pathway by which this could occur and explain how the discerned information would negatively affect your competitive position. Describe any unique process or aspect of your facility that would be revealed if the particular data element you consider sensitive were made publicly available. If the data element you identify would cause harm only when used in combination with other publicly available data, then describe the other data, identify the public source(s) of these data, and explain how the combination of data could be used to cause competitive harm. Describe the measures currently taken to keep the data confidential. Avoid conclusory and unsubstantiated statements, or general assertions regarding potential harm. Please be as specific as possible in your comments and include all information necessary for the EPA to evaluate your comments.

IV. Background and Rationale for the Proposed Amendments to the Best Available Monitoring Method Provisions

Following the publication of the final subpart I rule in the **Federal Register,** an industry association requested reconsideration of numerous provisions in the final rule. The proposed amendments in this action are in response to the request for reconsideration of the specific provision that requires facilities that have been granted extensions to use best available monitoring methods (BAMM) to recalculate their emissions for the time period for which BAMM was used at a later date using methods that are fully compliant with subpart I. The other amendments that have been made to date are also related to the reconsideration petition.

As mentioned above in Section II.C of this preamble, the EPA is finalizing technical corrections and revisions regarding the definition of fluorinated HTFs and the provisions to estimate and report emissions of fluorinated HTFs in a separate action.

As finalized in December 2010, subpart I allowed facilities to use BAMM without going through an application process until July 1, 2011. In 2011, the EPA published other amendments to subpart I, including several related to the BAMM provisions. On June 22, 2011, the EPA extended the period in subpart I for using the BAMM provisions without going through an application process to September 30, 2011 (76 FR 36339). Under the September 27, 2011 amendments to subpart I, this initial BAMM period was extended through December 31, 2011. Facilities were given until October 17, 2011 to apply for an extension beyond this initial period. Under subpart I, facilities could apply to use BAMM after December 31, 2011 for any parameter for which it is not reasonably feasible to acquire, install, or operate a required piece of monitoring equipment in a facility, or to procure necessary measurement services (40 CFR 94(a)(1)).

Also on September 27, 2011, the EPA amended the calculation and monitoring provisions for large semiconductor manufacturing facilities that fabricate devices on wafers measuring 300 millimeters or less in diameter (76 FR 59542). The large semiconductor manufacturing facilities are those that have an annual manufacturing capacity of greater than 10,500 square meters of substrate. For reporting years 2011, 2012, and 2013, these amendments allow the large semiconductor facilities the option to calculate emissions using default emission factors already contained in subpart I, instead of using recipe-specific utilization and by-product formation rates for the plasma etching process type.

The EPA is proposing to amend subpart I to remove the requirement that facilities that are granted an extension to use BAMM must recalculate and resubmit the emissions estimate for the BAMM extension period. Currently, subpart I requires facilities, after the end of the period for which they have been granted a BAMM extension, to recalculate and resubmit all emissions after they have begun following all applicable monitoring methods of subpart I. The September 27, 2011 amendments did not alter the BAMM recalculation provisions in subpart I.

Under 40 CFR 98.94(a)(2) and (3), a facility granted an extension ''through December 31, 2011'', per the original schedule in the rule, must include recalculated 2011 emissions in its 2012 emission report due in 2013, unless it receives an additional extension. Under 40 CFR 98.94(a)(4), a facility granted an extension beyond December 31, 2011, must include recalculated 2012 emissions in its 2013 emission report due in March 2014. Under 40 CFR 98.94(a)(2) and (a)(4), facilities are not required to verify their 2011 and 2012 BAMM engineering model for apportioning gas consumption in their recalculated report.

The petitioners have noted that in the case of subpart I, the requirement for facilities to recalculate emissions in full compliance with subpart I would require them to implement data collection at a level of detail that is not currently feasible for all facilities using the BAMM provisions.

Industry members that are applying for BAMM extensions have noted that, although they have systems to track data that are pertinent to processing of wafers and determining tool capacities and manufacturing efficiency, those systems are not currently designed to apportion gas usage to any particular recipe or tool, or to produce the apportioning factors required by the rule. They have also noted that they will not have the systems in place (including hardware and software upgrades) to collect the data needed to develop heel factors, and to track abatement system up-time according to subpart I.

The petitioners also noted that the compliance schedule for subpart I does not provide adequate time for facilities using BAMM to implement the data collection needed to recalculate emissions at a later date. The final subpart I was published on December 1, 2010, and became effective on January 1, 2011. On January 1, 2011, a facility would have needed some method in place to track the chemicals, the flow stabilization times, reactor pressure, individual gas flow rates, and applied radio frequency power.

After considering these requests, the EPA is proposing to remove the requirements to recalculate and resubmit all emission estimates for subpart I. The EPA has determined that there may be significant burden imposed by a broad recalculation requirement for subpart I. In addition, the EPA's ongoing consideration of potential further revisions to the calculation and monitoring requirements complicates the recalculation requirement. For example, while the agency may want to evaluate the feasibility of a recalculation requirement for any new methodologies,

we do not believe the automatic imposition of a recalculation requirement is appropriate at this time. Finally, it is important to note, the majority of the other subparts of Part 98 with specific BAMM provisions do not require facilities to recalculate or resubmit emission estimates after the BAMM period has been completed. We have, therefore, concluded that it is not necessary to require facilities that have been granted extensions to use best available monitoring methods to recalculate their emissions for the time period for which BAMM was used at a later date using calculation methods in subpart I.

V. 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), this action, which is proposing to (1) assign subpart I data reporting elements into data categories; (2) determine CBI status for the remaining data elements for which determinations have not yet been made; and (3) amend reporting methodologies in subpart I that would reduce the data collection and submittal burden for certain facilities, is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

As previously mentioned, this action proposes confidentiality determinations and proposes amended reporting methodologies in subpart I that would reduce the data collection burden for certain facilities. This action does not increase the reporting burden. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in subpart I, under 40 CFR part 98, under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) documents prepared by the EPA have been assigned OMB control number 2060–0650 for subpart I. The OMB control numbers for the EPA's regulations in 40 CFR are listed at 40 CFR part 9.

C. Regulatory Flexibility Act (RFA)

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

For purposes of assessing the impacts of this re-proposal 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; or (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 action proposes confidentiality determinations and proposes amended reporting methodologies in subpart I that would reduce the data collection burden for certain facilities. After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this proposed rule are facilities included in NAICS codes for Semiconductor and Related Device Manufacturing (334413) and Other Computer Peripheral Equipment Manufacturing (334119). As shown in Tables 5–13 and 5–14 of the Economic Impact Analysis for the Mandatory Reporting of Greenhouse Gas Emissions Final Rule (74 FR 56260, October 30, 2009) available in docket number EPA–HQ–OAR–2008–0508, the average ratio of annualized reporting program costs to receipts of establishments owned by model small enterprises was less than 1% for industries presumed likely to have small businesses covered by the reporting program.

The EPA took several steps to reduce the impact of Part 98 on small entities. For example, the EPA determined appropriate thresholds that reduced the number of small businesses reporting. For some source categories, the EPA developed tiered methods that are simpler and less burdensome. In addition, the EPA conducted several meetings with industry associations to discuss regulatory options and the corresponding burden on industry, such as recordkeeping and reporting. Finally, the EPA continues to conduct significant outreach on the mandatory GHG reporting rule and maintains an ''open door'' policy for stakeholders to help inform the EPA's understanding of key issues for the industries.

We continue to be interested in the potential impacts of this action on small entities and welcome comments on issues related to such effects.

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 the EPA regulatory proposals with significant federal intergovernmental mandates and must inform, educate, and advise small governments on compliance with the regulatory requirements.

This action, which is proposing confidentiality determinations and amended reporting methodologies in subpart I that would reduce the data collection burden for certain facilities, does not contain a federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. This action does not increase the reporting burden. Thus, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

In developing Part 98, the EPA consulted with small governments pursuant to a plan established under section 203 of the UMRA to address impacts of regulatory requirements in the rule that might significantly or uniquely affect small governments. For a summary of the 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.D of the preamble to the final rule (74 FR 56370, October 30, 2009).

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. However, for a

more detailed discussion about how Part 98 relates to existing state programs, please see Section II of the preamble to the final rule (74 FR 56266, October 30, 2009).

This action, which is proposing confidentiality determinations and amended reporting methodologies in subpart I that would reduce the data collection burden, would only apply to certain electronics manufacturers. No state or local government facilities are known to be engaged in the activities that would be affected by the provisions in this proposed rule. This action also does not limit the power of states or localities to collect GHG data and/or regulate GHG emissions. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicits comment on this proposed action from state and local officials. For a summary of the EPA's consultation with state and local organizations and representatives in developing Part 98, see Section VIII.E of the preamble to the final rule (74 FR 56371, October 30, 2009).

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action, which proposes confidentiality determinations and proposes amended reporting methodologies in subpart I that would reduce the data collection burden for certain facilities, does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). No tribal facilities are known to be engaged in the activities affected by this action. Thus, Executive Order 13175 does not apply to this action. For a summary of the EPA's consultations with tribal governments and representatives, see Section VIII.F of the preamble to the final rule (74 FR 56371, October 30, 2009). The EPA specifically solicits additional comment on this proposed action from tribal officials.

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

The 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, which is proposing to (1) assign subpart I data reporting elements into data categories; (2) determine CBI status for the remaining data elements for which determinations have not yet been made; and (3) amend reporting methodologies in subpart I that would reduce the data collection and submittal burden for certain facilities, 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, which is proposing to (1) assign subpart I data reporting elements into data categories; (2) determine CBI status for the remaining data elements for which determinations have not yet been made; and (3) amend reporting methodologies in subpart I that would reduce the data collection and submittal burden for certain facilities, is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)). It is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action does not increase the reporting burden. The proposed rule amendments in this action do not impose any significant changes to the current reporting requirements contained in 40 CFR part 98, subpart I; rather, the proposed amendments to the reporting requirements would only affect certain electronics manufacturers. Therefore, this action is not subject to Executive Order 13211.

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 (15 U.S.C. 272 note) directs the 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. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

This action, which is proposing to (1) assign subpart I data reporting elements into data categories; (2) determine CBI status for the remaining data elements for which determinations have not yet been made; and (3) amend reporting methodologies in subpart I that would reduce the data collection and submittal burden for certain facilities, does not involve technical standards. Therefore, the EPA is not considering the use of any voluntary consensus standards.

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

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.

The EPA has determined that this action, which is proposing to (1) assign subpart I data reporting elements into data categories; (2) determine CBI status for the remaining data elements for which determinations have not yet been made; and (3) amend reporting methodologies in subpart I that would reduce the data collection and submittal burden for certain facilities, 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. This action addresses only reporting and recordkeeping procedures.

List of Subjects 40 CFR Part 98

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

Dated: February 10, 2012.

Lisa P. Jackson,

Administrator.

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

PART 98—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart I—[Amended]

2. Section 98.94 is amended by revising paragraphs (a)(2)(iii), (a)(3)(iii), and (a)(4)(iii) to read as follows:

§ 98.94 Monitoring and QA/QC requirements.

(a) * * *

(2) * * *

(iii) *Approval criteria.* To obtain approval, the owner or operator must demonstrate to the Administrator's satisfaction that by July 1, 2011, it is not reasonably feasible to acquire, install, or operate the required piece of monitoring equipment, or procure necessary measurement services to comply with the requirements of this subpart.

(3) * * *

(iii) *Approval criteria.* To obtain approval, the owner or operator must demonstrate to the Administrator's satisfaction that by December 31, 2011 it is not reasonably feasible to acquire, install, or operate the required piece of monitoring equipment or procure necessary measurement services to comply with the requirements of this subpart.

(4) * * *

(iii) *Approval criteria.* To obtain approval, the owner or operator must demonstrate to the Administrator's satisfaction that by December 31, 2011 (or in the case of facilities that are required to calculate and report emissions in accordance with § 98.93(a)(2)(ii)(A), December 31, 2012), it is not reasonably feasible to acquire, install, or operate the required piece of monitoring equipment according to the requirements of this subpart.

* * * * *

[FR Doc. 2012–3778 Filed 2–21–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 302

[EPA–HQ–SFUND–2011–0965; FRL–9636–1]

Designation of Hazardous Substances; Designation, Reportable Quantities, and Notification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to reinstate the maximum observed constituent concentrations for several listed hazardous wastes that were inadvertently removed from the regulations by a November 8, 2000 final rule. Also, in the ''Rules and Regulations'' section of this **Federal Register**, EPA is reinstating the same maximum observed constituent concentrations via a direct final rule without a prior proposed rule. If we receive no adverse comment, the direct final rule will become effective, and we will not take further action on this proposed rule.

DATES: Written comments must be received by March 23, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–2011–0965, by mail to the Environmental Protection Agency, EPA Docket Center (EPA/DC), Superfund Docket Mailcode: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the ''Rules and Regulations'' section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For general information, contact the Superfund, TRI, EPCRA, RMP and Oil Information Center at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For more detailed information on specific aspects of this proposed rule, contact Lynn Beasley at (202) 564–1965 (*beasley.lynn@epa.gov*), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460–0002, Mail Code 5104A.

SUPPLEMENTARY INFORMATION:

I. Why is EPA issuing this proposed rule?

This document proposes to reinstate the maximum observed constituent concentrations for several listed hazardous wastes that were inadvertently removed from the regulations by a November 8, 2000 final rule. The listed hazardous wastes and the respective reportable quantities are included in the regulations for Hazardous Substances and Reportable Quantities. We have published a direct final rule to reinstate the maximum observed constituent concentrations in the ''Rules and Regulations'' section of this **Federal Register** because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, however, we will withdraw the direct final rule and it will not take effect. We would address all public comments in any subsequent final rule based on this proposed rule. We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

II. Does this action apply to me?

Type of entity	Examples of affected entities
Federal Agencies	National Response Center and any Federal agency that may release or respond to releases of hazardous substances.
State and Local Governments	State Emergency Response Commissions, and Local Emergency Planning Committees.
Responsible Parties	Those entities responsible for the release of a hazardous substance from a vessel or facility. Those entities with an interest in the substances that were inadvertently removed from the table of maximum observed constituent concentrations for listed hazardous wastes K169, K170, K171, and K172 in 40 CFR 302.6(b)(1)(iii).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

III. What does this amendment do?

This proposed rule would reinstate the maximum observed constituent concentrations for listed hazardous wastes K169, K170, K171, and K172 to the table found in 40 CFR