

**ENVIRONMENTAL PROTECTION
AGENCY**

40 CFR Part 98

[EPA-HQ-OAR-2011-0028; FRL-9706-6]

RIN 2060-AQ70

**Final Confidentiality Determinations
for Regulations Under the Mandatory
Reporting of Greenhouse Gases Rule**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes confidentiality determinations for certain data elements in regulations under the Mandatory Greenhouse Gas Reporting Rule. In addition, the EPA is finalizing amendments to defer the reporting deadline of certain data elements until 2013 and to defer the reporting deadline of certain data elements until 2015. Lastly, the EPA is finalizing amendments regarding the calculation and reporting of emissions from facilities that use best available monitoring methods. This action does not include final confidentiality determinations for data elements in the "Inputs to Emission Equations" data category.

DATES: This rule will be effective on September 12, 2012, except for the amendments to Tables A-6 and A-7 of 40 CFR part 98 subpart A and the amendments to 40 CFR part 98 subpart I (§ 98.94(a)(2)(iii), (a)(3)(iii), and (a)(4)(iii)), which are effective on August 13, 2012.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2011-0028. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information may not be publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and is publicly available in hard copy only. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the EPA's Docket Center, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT:

Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC-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 and implementation materials, please go to the Web site <http://www.epa.gov/climatechange/emissions/CBI.html>. To submit a question, select "Rule Help Center," followed by "Contact Us."

SUPPLEMENTARY INFORMATION:

Worldwide Web (WWW). In addition to being available in Docket ID No. EPA-HQ-OAR-2011-0028, following the Administrator's signature, an electronic copy of this final rule will be available through the WWW on the EPA's Greenhouse Gas Reporting Program Web site at <http://www.epa.gov/climatechange/emissions/ghgrulemaking.html>.

What is the effective date? The final rule is effective on September 12, 2012, except for the amendments to Tables A-6 and A-7 of 40 CFR part 98 subpart A and the amendments to 40 CFR part 98 subpart I (section 98.94(a)(2)(iii), (a)(3)(iii), and (a)(4)(iii)), which are effective on August 13, 2012. Section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. chapter 5, generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. EPA is issuing this final rule under section 307(d)(1) of the Clean Air Act, which states: "The provisions of section 553 through 557 of Title 5 shall not, except as expressly provided in this section, apply to actions to which this subsection applies." Thus, section 553(d) of the APA does not apply to this rule. EPA is nevertheless acting consistently with the purposes underlying APA section 553(d) in making the amendments to subparts A and I effective on August 13, 2012. The amendments to subpart A defer the reporting deadline for several inputs to emission equations and the amendments to subpart I remove the requirement for some facilities to recalculate and report data under that subpart. An effective date less than 30 days after the date of publication in such circumstances is consistent with the purposes of APA section 553(d), which provides an exception for any action that grants or recognizes an exemption or relieves a restriction.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of this final rule is available only by filing

a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit (the Court) by October 12, 2012. Under CAA section 307(d)(7)(B), only an objection to this final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Section 307(d)(7)(B) of the CAA also provides a mechanism for the EPA to convene a proceeding for reconsideration, "[i]f the person raising an objection can demonstrate to EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule." Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, Environmental Protection Agency, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20004. Note, under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

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

BAMM Best Available Monitoring Methods
CAA Clean Air Act
CO₂ Carbon Dioxide
CBI Confidential Business Information
CBP U.S. Customs and Border Protection
CFR Code of Federal Regulations
EIA Energy Information Administration
ER Enhanced Recovery
EPA U.S. Environmental Protection Agency
F-GHG Fluorinated Greenhouse Gas
GHG Greenhouse Gas
ICR Information Collection Request
NTTAA National Technology Transfer and
Advancement Act of 1995
OMB Office of Management & Budget
R&D Research and Development
RFA Regulatory Flexibility Act
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.

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I. General Information

A. What is the purpose and background of this action?

The first purpose of this action is to finalize confidentiality determinations for the data elements (except those in the “Inputs to Emission Equations” data category and certain additional subpart I data elements) in seven subparts of 40 CFR part 98 of the Mandatory Greenhouse Gases Reporting Rule (hereafter referred to as “Part 98”):

- Subpart I—Electronics Manufacturing
- Subpart W—Petroleum and Natural Gas Systems
- Subpart DD—Use of Electric Transmission and Distribution Equipment
- Subpart QQ—Imports and Exports of Equipment Pre-Charged with Fluorinated GHGs or Containing Fluorinated GHGs in Closed-Cell Foams
- Subpart RR—Geologic Sequestration of Carbon Dioxide
- Subpart SS—Manufacture of Electric Transmission and Distribution Equipment
- Subpart UU—Injection of Carbon Dioxide

The second purpose of this action is to finalize confidentiality

determinations for new data elements (that are not inputs to emission equations) added to subparts II and TT in the Technical Corrections final rule¹ after the EPA issued final confidentiality determinations for non-inputs to equations data elements in these two subparts.²

The third purpose of this action is to finalize amendments to subpart A of Part 98 to defer until 2013 or 2015 the reporting deadline for inputs to emission equations data elements recently added by the Technical Corrections final rule. These data elements are in subparts W, FF, and TT.

The fourth purpose of this action is to finalize amendments to subpart I regarding the calculation and reporting of emissions from facilities that use best available monitoring methods (BAMM). These amendments remove the obligation to recalculate and resubmit emission estimates for the period during which the facility used best available monitoring methods.

As noted above, we are making final confidentiality determinations for the data elements reported under the finalized subparts of Part 98 identified in Table 1 of this preamble. We are not making final confidentiality determinations for data elements in this action not identified in Table 1. We are also finalizing amendments to Tables A–6 and A–7 of subpart A for the subparts shown in Table 1 of this preamble.

TABLE 1—SUBPARTS AND DATA ELEMENTS COVERED IN THIS FINAL RULE

Subpart	Confidentiality determinations	Amendments to Table A–6 or A–7
I	Some data elements (excludes recipe-specific data elements, a manufacturing capacity data element, and inputs to emission equations). ^a	none.
W	All data elements except inputs to emission equations	Table A–7.
DD	All data elements except inputs to emission equations	none.
FF	None but finalizes two data elements recently added to 40 CFR 98.326(o) ^c as inputs to emission equations ..	none. ^b
II	Some data elements (only includes data elements added by 76 FR 73886)	none.
QQ	All data elements except inputs to emission equations	none.
RR	All data elements except inputs to emission equations	none.
SS	All data elements except inputs to emission equations	none.
TT	Some data elements (only includes data elements added by 76 FR 73886)	Table A–6.
UU	All data elements except inputs to emission equations	none.

^aFor the reasons provided in Section II of this preamble, certain subpart I data elements are not covered in this final rule. For a list of subpart I data elements not covered in this rule, see Table 4 in the Memorandum, “Final Data Category Assignments and Confidentiality Determinations for the 2012 Final CBI Rule.”

^bAs explained in the 2012 CBI re-proposal, paragraph §98.326(o) is already included in Table A–6 of subpart A for reporting by March 31, 2013; therefore, no amendments to Table A–6 of subpart A are necessary to include these two new subpart FF data elements in the list of deferred data elements.

^c76 FR 73886, November 29, 2011.

¹76 FR 73886, November 29, 2011.

²Final confidentiality determinations for subparts II and TT were made in the 2011 Final CBI Rule (76 FR 30782, May 26, 2011).

1. Background for CBI Determinations for All Data Elements That Are Not in the “Inputs to Emissions Equations” Data Category

This action finalizes confidentiality determinations for data elements specified in Table 1 of this preamble. For information on the history of CBI determinations for the data elements at issue, see the following notices (available at <http://www.epa.gov/climatechange/emissions/CBI.html>):

- 75 FR 39094, July 7, 2010; hereafter referred to as the “July 7, 2010 CBI proposal.” Proposed confidentiality determinations for Part 98 data elements, including subparts I, W, DD, II, QQ, RR, SS, and TT.

- 76 FR 30782, May 26, 2011; hereafter referred to as the “2011 Final CBI Rule.” Finalized confidentiality determinations for data categories, assigned data elements to data categories and published the final CBI determinations for the data elements in 34 Part 98 subparts, except for those assigned to the “Inputs to Emission Equations” data category. This included confidentiality determinations for subparts II and TT and excluded confidentiality determinations for subparts I, W, DD, QQ, RR, SS, and UU.³

- 77 FR 1434, January 10, 2012; hereafter referred to as “2012 CBI re-proposal.” The EPA re-proposed for public comment the confidentiality determinations for the data elements in subparts L,⁴ DD, QQ, RR, SS, and UU, as well as new data elements (added by the Technical Corrections final rule) in subparts II and TT to reflect the reporting data elements in the final subparts and all subsequent

amendments to these subparts up to the date of the 2012 CBI re-proposal.

- 77 FR 10434, February 22, 2012; hereafter referred to as “Subpart I CBI re-proposal.” The EPA re-proposed for public comment the confidentiality determinations for many data elements in subpart I to reflect the reporting data elements in the 2010 final subpart I and all subsequent amendments to subpart I up to the date of the Subpart I CBI re-proposal.

- 77 FR 11039, February 24, 2012; hereafter referred to as “Subpart W CBI re-proposal.” The EPA re-proposed for public comment the confidentiality determinations for the data elements in subpart W to reflect the data elements in the 2010 final subpart W and all subsequent amendments to subpart W up to the date of the Subpart W CBI re-proposal.

2. Background on Data Elements in the “Inputs to Emissions Equations” Data Category

This rule finalizes amendments to Tables A–6 and A–7 of subpart A to defer the deadline for reporting certain recently added data elements in subparts W, FF, and TT that we are assigning to the “Inputs to Emission Equations” data category. This action does not include final confidentiality determinations for data elements that are in the “Inputs to Emission Equations” data category. For information on the history of the deferral of the reporting deadline for inputs, see the following notices (available at <http://www.epa.gov/climatechange/emissions/CBI.html>):

- 75 FR 81366, December 27, 2010; hereafter referred to as the “call for information.” Requested comment on whether each data element used as an

input to an emission equation for direct emitters was likely to cause substantial competitive harm if made publicly available.

- 76 FR 53057, August 25, 2011; hereafter referred to as the “Final Deferral Notice.” The EPA deferred the deadline for direct emitter reporters to report inputs to emission equations data elements. The EPA deferred the deadline for reporting some of these data elements to March 31, 2013, and others to March 31, 2015. Subpart FF and TT inputs were deferred to March 31, 2013, and are identified in Table A–6 of subpart A, and subpart W inputs were deferred to March 31, 2015, and are identified in Table A–7 of subpart A.

B. Does this action apply to me?

This final rule affects entities required to submit annual greenhouse gas (GHG) reports under certain subparts 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, petroleum and natural gas systems, electric power systems, electrical equipment manufacturing facilities, carbon dioxide (CO₂) enhanced oil and gas recovery projects, acid gas injection projects, geologic sequestration projects, importers and exporters of pre-charged equipment and closed-cell foams, industrial wastewater treatment facilities, underground coal mines, and industrial waste landfills. Affected categories and entities include those listed in Table 2 of this preamble.

TABLE 2—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.
Petroleum and Natural Gas Systems	486210	Pipeline transportation of natural gas.
	221210	Natural gas distribution facilities.
	211	Extractors of crude petroleum and natural gas.
	211112	Natural gas liquid extraction facilities.
Electrical Equipment Use	221121	Electric bulk power transmission and control facilities.
Electrical Equipment Manufacture or Refurbishment	33531	Power transmission and distribution switchgear and specialty transformers manufacturing facilities.

³ The EPA initially proposed subparts RR and UU as a single subpart (subpart RR); however, as a result of public comments on subpart RR, the EPA moved all definitions, requirements, and procedures for facilities conducting only CO₂ injection (without geologic sequestration) into a new subpart (subpart UU). Subpart RR retained all

definitions, requirements, and procedures related to facilities conducting geologic sequestration.

⁴ For subpart L, the EPA received comments raising concerns that the release of certain data elements that the EPA proposed to classify as emissions data, and that therefore would not be eligible for treatment as CBI, would reveal trade

secrets and may violate export control laws. The EPA is not finalizing confidentiality determinations for subpart L data elements in this action. The confidentiality determinations for subpart L will be addressed separately. Please see Docket ID No. EPA–HQ–OAR–2011–0147 for more information.

TABLE 2—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY—Continued

Category	NAICS	Examples of affected facilities	
Importers and Exporters of Pre-charged Equipment and Closed-Cell Foams.	423730	Air-conditioning equipment (except room units) merchant wholesalers.	
	333415	Air-conditioning equipment (except motor vehicle) manufacturing.	
	336391	Motor vehicle air-conditioning manufacturing.	
	423620	Air-conditioners, room, merchant wholesalers.	
	443111	Household appliance stores.	
	423730	Automotive air-conditioners merchant wholesalers.	
	326150	Polyurethane foam products manufacturing.	
	335313	Circuit breakers, power, manufacturing.	
CO ₂ Enhanced Oil and Gas Recovery Projects	423610	Circuit breakers merchant wholesalers.	
	211	Oil and gas extraction projects using CO ₂ enhanced recovery.	
Acid Gas Injection Projects	211111 or 211112	Projects that inject acid gas containing CO ₂ underground.	
Geologic Sequestration Projects	N/A	CO ₂ geologic sequestration projects.	
Underground Coal Mines	212113	Underground anthracite coal mining operations.	
	212112	Underground bituminous coal mining operations.	
Industrial Wastewater Treatment	322110	Pulp mills.	
	322121	Paper mills.	
	322122	Newsprint mills.	
	322130	Paperboard mills.	
	311611	Meat processing facilities.	
	311411	Frozen fruit, juice, and vegetable manufacturing facilities.	
	311421	Fruit and vegetable canning facilities.	
	325193	Ethanol manufacturing facilities.	
	324110	Petroleum refineries.	
	Industrial Waste Landfills	562212	Solid waste landfills.
		322110	Pulp mills.
322121		Paper mills.	
322122		Newsprint mills.	
322130		Paperboard mills.	
311611		Meat processing facilities.	
311411		Frozen fruit, juice, and vegetable manufacturing facilities.	
311421		Fruit and vegetable canning facilities.	
	221320	Sewage treatment facilities.	

Table 2 of this preamble lists the types of entities that potentially could be affected by the confidentiality determinations and amendments under the subparts covered by this action. However, this list is not intended to be exhaustive, but rather provides a guide for readers regarding facilities and suppliers likely to be affected by this action. Other types of facilities and suppliers not listed in the table could also be subject to this action. 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 subparts I, W, DD, FF, II, QQ, RR, SS, TT, and UU. 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 finalizing certain amendments to Part 98 under its existing CAA authority, specifically authorities provided in CAA section 114. As stated in the preamble to the 2009 Mandatory Reporting of

Greenhouse Gases final rule (74 FR 56260, October 30, 2009) 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 because such data inform and are relevant to the EPA's carrying out a wide variety of CAA provisions. As discussed in the preamble to the initial Part 98 proposal (74 FR 16448, April 10, 2009), CAA section 114(a)(1) authorizes the Administrator to require emissions sources, persons subject to the CAA, manufacturers of 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.

In addition, the EPA is finalizing confidentiality determinations for certain Part 98 data under its authorities provided in sections 114, 301 and 307 of the CAA. As mentioned above, CAA section 114 provides the EPA authority to obtain the information in Part 98. Section 114(c) of the CAA requires that

the EPA make publicly available information obtained under CAA section 114 except for information (excluding emission data) that qualifies for confidential treatment. The Administrator has determined that this action (Part 98 amendment and confidentiality determinations) is subject to the provisions of CAA section 307(d).

D. Approach to Making Confidentiality Determinations

As explained in the 2012 CBI re-proposal, we are applying the same approach to making confidentiality determinations as was used in the 2011 Final CBI Rule. Specifically, we have assigned each data element specified in Table 1 of this preamble to one of 21 data categories⁵ based on the type and characteristics of the data element. The

⁵ As previously mentioned, this final rule does not address the confidentiality of data elements in the "Inputs to Emission Equations" data category. For data elements in subparts W, FF, and TT that we are assigning to the "Inputs to Emission Equations" data category in this action, please see Table 3 of the Memorandum titled "Final Data Category Assignments and Confidentiality Determinations for the 2012 Final CBI Rule."

data categories are listed in Tables 3 and 4 of this preamble. For a description of each data category and the type and characteristics of data elements assigned to each, please see Sections II.C and II.D of the July 7, 2010 CBI proposal.

In the 2011 Final CBI Rule, the EPA made categorical confidentiality determinations (i.e., one determination that applies to all data elements in that category) for 16 data categories (eight direct emitter data categories and eight supplier data categories). The categorical determinations for each of these 16 data category are specified in Tables 3 and 4 of this preamble. In this action, we have similarly assigned each of the data elements at issue (see Table

1 of this preamble) to one of the data categories created in the 2011 Final CBI rule. We have applied the categorical determinations made for 16 of the data categories to the data elements that assigned to those data categories.

In the 2011 Final CBI rule, the EPA determined that the data elements assigned to the remaining five data categories (two direct emitter data categories (see Table 3 of this preamble) and three supplier data categories (see Table 4 of this preamble) are not "emission data" (as defined at 40 CFR 2.301(a)(2)(i)). However, instead of categorical determinations, we made final CBI determinations for individual data elements assigned to those five data

categories. In making these individual CBI determinations, we considered the confidentiality determination criteria at 40 CFR 2.208, in particular whether release of the data is likely to cause substantial harm to the business' competitive position. See 40 CFR 2.208(e)(1). Consistent with that approach, in this action we determined that data elements identified in Table 1 of this preamble that are assigned to these five data categories are not emission data and made final confidentiality determinations for these data elements in accordance with 40 CFR 2.208.

TABLE 3—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 BAMB 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 2011 Final CBI Rule, this data category contains both data elements determined to be CBI and those determined not to be CBI.

TABLE 4—SUMMARY OF FINAL CONFIDENTIALITY DETERMINATIONS FOR SUPPLIER DATA CATEGORIES

Data category	Confidentiality determinations 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
GHGs Reported	X ^c	X ^c
Production/Throughput Quantities and Composition	X ^c	X ^c
Identification Information	X	.....
Unit/Process Operating Characteristics	X ^c	X ^c
Calculation, Test, and Calibration Methods	X	.....
Data Elements Reported for Periods of Missing Data that are Not Related to Production/Throughput or Materials Received	X	.....
Emission Factors	X
Amount and Composition of materials received	X
Data Elements Reported for Periods of Missing Data That are Related to Production/Throughput or Materials Received	X
Supplier Customer and Vendor Information	X
Process-Specific and Vendor Data Submitted in BAMB Extension Requests	X

^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 2011 Final CBI Rule, this data category contains both data elements determined to be CBI and those determined not to be CBI.

II. Confidentiality Determinations for Subparts I, W, DD, QQ, RR, SS, and UU and Responses to Public Comments

A. Final Confidentiality Determinations

In this action, the EPA is finalizing the confidentiality determinations for Part 98 data elements specified in Table 1 of this preamble using the approach outlined in Section I.D of this preamble.

The data category assignments and final confidentiality determinations for the Part 98 data elements specified in Table 1 of this preamble are provided in the memorandum “Final Data Category Assignments and Confidentiality Determinations for the 2012 Final CBI Rule” (see Docket EPA–HQ–OAR–2011–0028 and the Web site, <http://www.epa.gov/climatechange/emissions/CBI.html>).

In Section II.B of this preamble, the EPA describes final confidentiality determinations and summarizes comments and responses for direct emitter data elements in subparts I, W, DD, RR, and SS, which we proposed in 2012 in three actions (see Section I.A.1 of this preamble). In Section II.C of this preamble, the EPA describes final confidentiality determinations and summarizes comments and responses for all supplier data elements in subparts QQ, RR, and UU, which we proposed in the 2012 CBI re-proposal.

B. Direct Emitter Data Categories

For direct emitter subparts I, W, DD, RR,⁶ and SS, the EPA is finalizing the assignment of each data element to one of 10 direct emitter data categories shown in Table 3 of this preamble and the confidentiality determinations for these data elements. Sections II.B.1 through II.B.3 of this preamble discuss the data category assignments and confidentiality determinations of direct emitter data elements in subparts I, W, DD, RR, and SS.

1. Subpart I—Electronics Manufacturing

Summary of Changes.

In the subpart I CBI re-proposal, the EPA proposed confidentiality determinations for certain data elements in this direct emitter subpart. The EPA received comments raising concerns about finalizing the confidentiality determinations for some data elements and requesting the EPA delay finalizing confidentiality determinations for certain reporting elements until after the

EPA has concluded settlement discussions regarding alternatives to the recipe-specific method for semiconductor manufacturing facilities. The EPA did not intend to take action on reporting elements that are currently the subject of these settlement discussions. Due to the number and complexity of data elements included in the proposal, the EPA inadvertently included a few recipe-specific reporting elements that were in data categories for which we proposed categorical confidentiality determinations. EPA is therefore not finalizing confidentiality determinations for any recipe-specific data reporting elements in this action. Additionally, the EPA does not expect facilities will use the recipe-specific method for the 2011 reporting year;⁷ however, facilities using the recipe-specific method would report recipe-specific data elements. Before the EPA could disclose such information, either on its own initiative or upon request, we would 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. The recipe-specific subpart I data elements that were inadvertently included in the proposal and have been removed from this final rule are listed in Table 4 in the memorandum titled “Final Data Category Assignments and Confidentiality Determinations for the 2012 Final CBI Rule.”

Additionally, for the same reason provided above for recipe-specific data elements, we have decided to make no confidentiality determination for one additional data element (the annual manufacturing capacity of a facility as determined in Equation I–5 (listed at 40 CFR 98.96(a))) because it is also the subject of a petition for reconsideration of the December 1, 2010⁸ subpart I rule.

Finally, we are not addressing confidentiality determinations for data elements in the “Inputs to Emission Equations” data category in this final rule. For the remaining subpart I data elements, we are finalizing the confidentiality determinations as proposed. The final confidentiality determinations for these subpart I data elements can be found in the memorandum, “Final Data Category Assignments and Confidentiality Determinations for the 2012 Final CBI Rule.”

⁶ Subpart RR contains elements of both direct emitter and supplier categories and is therefore, listed as both a direct emitter and a supplier source category. For the purposes of this action, EPA placed each subpart RR data element into the appropriate category based on its data type and characteristics, and whether it related to direct emissions from the facility or to GHG supply.

⁷ The *Mandatory Reporting of Greenhouse Gases: Changes to Provisions for Electronics Manufacturing To Provide Flexibility* Final Rule (76 FR 59542, September 27, 2011) allows reporters the opportunity to report using default emission factors instead of using the recipe-specific utilization and by-product formation rates.

⁸ 75 FR 74774, December 1, 2010.

Summary of Comments.

This section contains summaries of the significant public comments and our responses thereto. Additional public comments were also received. Response to these comments can be found in “Confidentiality Determinations in the 2012 CBI re-proposals: Responses to Public Comments” in Docket EPA–HQ–OAR–2011–0028 and on the Web site, <http://www.epa.gov/climatechange/emissions/CBI.html>.

Comment: Two commenters raised concerns about the EPA initiating a rulemaking to determine the confidentiality status of subpart I data elements at the same time the EPA is also considering petitions from the Semiconductor Industry Association for review and reconsideration of the December 1, 2010 subpart I rule.⁹ The commenters stated that the initiation of a rule to address confidentiality determinations that is disconnected from these proceedings may exacerbate instead of resolve the objections and raises unspecified legal and policy issues.

Response: The EPA did not intend to propose confidentiality determinations for data elements that relate to portions of subpart I covered by petitions for reconsideration and review where active settlement negotiations are ongoing. Thus, we are not issuing confidentiality determinations for recipe-specific data reporting elements or for the annual manufacturing capacity in this final rule. These data elements relate to portions of subpart I addressed in the petition entitled “Semiconductor Industry Association Petition for Reconsideration and Request for Stay Pending Reconsideration of Subpart I of the Final Rule for Mandatory Reporting of Greenhouse Gases” (January 31, 2011). However, the EPA does not agree that we need to wait to finalize confidentiality determinations for non-input data elements that are outside the scope of that reconsideration petition, since we do not anticipate proposing any changes in the requirements to report those data elements. Thus, the EPA is finalizing confidentiality determinations for those subpart I data elements listed in Table 1 of the Memorandum, “Final Data Category Assignments and Confidentiality Determinations for the 2012 Final CBI Rule.”

Comment: Commenters argued that the release of the following data elements would reveal trade secrets and intellectual property:

- Annual emissions of each fluorinated greenhouse gas (F–GHG)

⁹ 75 FR 74774, December 1, 2010.

emitted from each process type for which your facility is required to calculate emissions as calculated in Equations I–6 and I–7. (40 CFR 98.96(c)(1))

- Annual emissions of each F–GHG emitted from each process subtype as calculated in Equations I–8 and I–9. (40 CFR 98.96(c)(2))

Specifically, the commenters stated that the release of these data elements could allow competitors to more easily reverse-engineer recipes and back-calculate sensitive information such as the relative proportion of gas-by-gas usage in a recipe or sub-process type.

Response: The data noted are emission data and, therefore, under Section 114(c) of the CAA must be made publicly available. In any case, the reverse engineering which the commenter cites as a potential that would reveal trade secret information can only be accomplished if more data is publicly available, in particular certain inputs to emission equations. The reporting of inputs to emission equations has been deferred. As discussed in the preamble to the Final Deferral Notice, we will in the future make a judgement about the sensitivity of deferred data elements in combination with other data elements.

Comment: Commenters argued that the annual manufacturing capacity as determined by Equation I–5 of subpart I (40 CFR 98.96(a) and proposed as non-CBI) should receive confidential treatment as it will likely generate a capacity different from that reported by the “World Fab Forecast,” which may be instructive to competitors. The commenters suggested that the EPA either determine that this data element is CBI or amend subpart I to remove Equation I–5 of subpart I and alternatively use the maximum manufacturing capacity published by the “World Fab Forecast.”

Response: For the reason provided previously in this Summary to Comments section, the EPA is not finalizing the confidentiality determination for this data element for two reasons. First, this data element is related to a portion of subpart I addressed in the petition entitled “Semiconductor Industry Association Petition for Reconsideration and Request for Stay Pending Reconsideration of Subpart I of the Final Rule for Mandatory Reporting of Greenhouse Gases.” The EPA is actively engaged in settlement negotiations concerning the associated petition for review of the December 1, 2010 subpart I rule. Second, we concluded that making a final confidentiality determination for this data element

would be inappropriate because its sensitivity varies from reporter to reporter. We will instead evaluate the confidentiality status of this data element on a case-by-case basis, in accordance with existing CBI regulations in 40 CFR part 2, subpart B.

2. Subpart W—Petroleum and Natural Gas Systems Summary of Changes

In our subpart W CBI re-proposal, we proposed category assignments and confidentiality determinations for all of the data elements reported under subpart W that are not inputs to emission equations. In this action, we are finalizing without change the category assignments and confidentiality determinations proposed in the Subpart W CBI re-proposal. For a list of the final data category assignments and confidentiality determinations for all of the non-input subpart W data elements as identified in the Subpart W CBI re-proposal, please see the memorandum titled “Final Data Category Assignments and Confidentiality Determinations for the 2012 Final CBI Rule” (see Docket EPA–HQ–OAR–2011–0028 and the GHGRP Web site, <http://www.epa.gov/climatechange/emissions/CBI.html>).

Summary of Comments.

This section contains summaries of the significant public comments and our responses thereto. Other public comments were also received. Responses to these comments can be found in “Confidentiality Determinations in the 2012 CBI re-proposals: Responses to Public Comments” in Docket EPA–HQ–OAR–2011–0028 and on the Web site, <http://www.epa.gov/climatechange/emissions/CBI.html>.

Comment: One commenter stated that data reported for exploratory wells should be held confidential for a period of at least 24 months. This commenter noted that the oil and gas industry makes substantial investments in exploration and development projects and that information regarding exploratory wells is considered to be proprietary by the industry. They state competitive harm may occur if the public can obtain detailed high resolution operational information on a well-by-well basis and on a daily or weekly basis. The commenter also asserted that the EPA’s proposed determinations are inconsistent with other state and federal regulations that allow information regarding exploratory wells to be held confidential. The commenter did not specify which particular data elements would be sensitive for exploratory wells, but stated that oil and gas reserve

information for new wells, geological assessments of new prospects, drilling plans, and detailed well-by-well operational information (such as post-flowback flaring/venting volumes) are considered sensitive. However, the commenter indicated that the identity and location of exploratory wells are not sensitive.

Response: We disagree with the commenter’s recommendation that all non-input to emission equations data elements reported for exploratory wells should be held confidential for a period of two years for the following reasons. First, many of these data elements meet the definition of emission data in 40 CFR 2.301(a)(2)(i) because they are actual GHGs emitted by the facility. Under CAA section 114(c), the EPA must make available emission data, whether or not such data are CBI. For the data elements that are assigned to the “Emissions” data category, the commenter did not claim or provide any justification for why these data elements do not meet the definition of emission data. Furthermore, the emissions from well venting during completions are reported at the sub-basin level by well type (horizontal or vertical). Since the emissions are not reported for each individual well, this information cannot be used to estimate future production levels or any other operational information for any individual exploratory well.

With respect to the non-inputs to emission equations data elements which we proposed would not be emission data but also not CBI, we disagree that they disclose any CBI relative to exploratory wells for the following reasons. First, reporters are not required to report sensitive information on oil and gas reserves, geological assessments of new prospects, drilling plans, or detailed well-by-well operational information. As explained in the re-proposal, these non-input data elements that are not emissions data relate to well completions (e.g., number of completions, number of days gas was vented during completions) and testing (e.g., number of wells tested during the calendar year, average gas-to-oil ratio for each basin, average number of days wells are tested). None of these data elements reveal information regarding the production characteristics or production rates of any individual production well or the potential production rates for exploratory wells. The commenter did not explain why these specific data elements would be likely to cause competitive harm; rather, the commenter provided only very broad comments that certain information on exploratory wells can be

competitively sensitive and did not dispute our rationale that the specific data elements reported under subpart W were unlikely to cause substantial competitive harm.

Second, reporters are not required to identify which wells are exploratory and which are production wells, nor do they report information for individual wells. The non-input data elements reported under subpart W are reported for each basin, sub-basin, tubing diameter/pressure group, or well type (i.e., horizontal or vertical). For example, the reporting of the number of wells tested in a basin within a calendar year (40 CFR 98.236(c)(10)(i)) does not provide any insight into exactly which wells within that basin were tested or whether the wells are being tested after completion of exploratory wells or after workovers on existing wells.

Lastly, we disagree that our decision to consider these data elements to be non-CBI is inconsistent with other state and federal regulations that allow data for exploratory wells to be held confidential. The data reported under subpart W does not include any sensitive information about the underlying geology or potential productivity of an exploratory well, which are the types of information being held as confidential under the state and federal rules mentioned by the commenter. We further note that many of the subpart W data elements are in fact publicly available. For example, the number of well completions for each sub-basin (40 CFR 98.236(c)(6)(i)(A) and (G)) is publicly available from commercial databases (e.g., see <http://www.didesktop.com/products/>) and the EIA.

Therefore, we conclude that our proposed determinations regarding the non-input data elements are appropriate and finalize those determinations in this action.

Comment: One commenter disagreed with our proposed determination that we should afford confidential treatment to the explanation of when an owner or operator will receive the services or equipment necessary to comply with subpart W monitoring requirements (40 CFR 98.234(f)(8)(ii)(C)). This commenter argues that disruptions of oil and gas production from installing monitoring equipment would be brief and unlikely to cause substantial competitive harm to the reporter's competitive position.

Response: We disagree with the commenter's assertion that disruptions from disclosure of this data element would be brief and therefore unlikely to cause substantial competitive harm to the reporter's competitive position. As we noted in the preamble to the Subpart

W CBI re-proposal, this data element comprises forward-looking information about the dates on which an owner or operator will receive the services or equipment necessary to comply with all of the subpart W monitoring requirements. This data element would reveal information to a competitor about when a facility would be installing equipment or when the facility would plan to perform the necessary modifications to their processes in order to comply with the rule. The disclosure of this type of forward-looking information about a facility's operation provides insight into periods when oil and gas production will be reduced at a particular site. This type of information can be used to adjust pricing to take advantage of short-term supply disruptions. Our decision to make this data element CBI is consistent with our previous determination in the 2011 Final CBI Rule that the installation date reported by facilities using BMM (reported under 40 CFR 98.3(d)(2)(ii)(F)) is entitled to CBI treatment because it provides forward-looking production-related information that would likely cause substantial competitive harm if disclosed. Although this commenter claimed the potential harm from disclosure would be insignificant because the disruption would be brief, no supporting information was provided to show that disclosing forward-looking information regarding a short-term disruption in production would not cause harm to a reporter's competitive position.

Therefore, we conclude that our proposed determination that this data element (40 CFR 98.234(f)(8)(ii)(C)) is entitled to confidential treatment is appropriate; we therefore finalize that determination in this action.

Comment: One commenter disagreed with the EPA's proposal to defer the deadline for reporting subpart W data elements used as inputs to emissions equations until 2015. This commenter alleged that the proposed deferral of the reporting deadline for all subpart W inputs was contrary to the intent of the Appropriations Act¹⁰ by contravening Congress's mandate to develop a transparent, economy-wide greenhouse gas inventory. The commenter believes disclosure of the subpart W inputs to emissions equations would not cause competitive harm and claimed that disclosure of these data elements was important for furthering public understanding of the GHG emissions from this industry.

¹⁰ Consolidated Appropriations Act, 2008, Public Law 110-161, 121 Stat. 1844, 2128.

Response: The EPA has extended the reporting deadlines for inputs to emission equations data elements in all Part 98 subparts, including subpart W, in the Final Deferral Notice. As explained in that final rule, the EPA is evaluating the sensitivity of subpart W equation inputs together (as with other subparts) and therefore is requiring all subpart W inputs to be reported by the same deferral deadline.¹¹ Today's action simply imposes the same reporting deadline to subpart W inputs to emission equations that were subsequently added to subpart W and therefore not included in the Final Deferral Notice.¹² We are not revisiting in this action our decision in the Final Deferral Notice to defer reporting of subpart W equation inputs to 2015. See the Response to Comments document published with the Final Deferral Notice for more information on the EPA's rationale for deferring inputs to emission equations. The commenter did not claim that these remaining subpart W equation inputs should have a different deadline from the other subpart W data elements that are inputs to emission equations, nor do we see any reason to do so. We are therefore finalizing our proposal to defer reporting of these data elements to 2015.

3. Subparts DD, RR, and SS

In the 2012 CBI re-proposal, the EPA proposed category assignments and confidentiality determinations for direct emitter subparts DD and SS and the direct emitter data elements in subpart RR. The EPA did not receive comment on the proposed data category assignments or confidentiality determinations for any data elements in subparts DD and SS, nor did we receive comment on the proposed data category assignments or confidentiality determinations for direct emitter data elements in subpart RR. (We did, however, receive comment on the proposed confidentiality determinations for supplier data elements in subpart RR, which are summarized in Section II.C.2 of this preamble.) The EPA is now finalizing the category assignment and confidentiality determinations for the subpart DD and SS data elements and subpart RR direct emitter data elements as proposed. The final category assignments and confidentiality determinations for these data elements

¹¹ 76 FR 53057, August 25, 2011.

¹² As mentioned elsewhere in this notice and not relevant to this specific comment, we are also removing certain subpart W data elements from the "Inputs to Emission Equations" category and making confidentiality determinations for a number of subpart W data elements previously assigned to the "Inputs to Emission Equations" category.

can be found in the memorandum, “Final Data Category Assignments and Confidentiality Determinations for the 2012 Final CBI Rule.”

C. GHG Supplier Data Categories

For supplier subparts QQ, RR, and UU, the EPA is finalizing the assignment of each data element to one of 11 supplier data categories. No change has been made to the data category assignments since proposal. The following section lists changes since proposal to confidentiality determinations of supplier data elements assigned to categories with no categorical determination covered in this action (organized by supplier subpart). This section also includes summaries of the major public comments and our responses, organized by subpart. Other public comments and

responses thereto can be found in “Confidentiality Determinations in the 2012 CBI re-proposals: Responses to Public Comments” in Docket EPA–HQ–OAR–2011–0028 and on the Web site, <http://www.epa.gov/climatechange/emissions/CBI.html>.

1. Subpart QQ—Importers and Exporters of Fluorinated Greenhouse Gases Contained in Pre-charged Equipment or Closed-cell Foams

Summary of Changes.

In the 2012 CBI re-proposal, the EPA proposed confidentiality determinations for data elements in supplier subpart QQ. The EPA received comments raising concerns that the release of certain data elements could allow competitors to link import and export data to publicly available customs data, thereby allowing them to discern import

and export practices and potentially sensitive shipment data. As discussed in the summary of the comments section below, after considering these comments, the EPA has decided not to make a final confidentiality determination for the six subpart QQ data elements that reveal the date of import or export (see Table 5 of this preamble for the list of affected data elements). For the remaining subpart QQ data elements that are not listed in Table 5 of this preamble, we are finalizing confidentiality determinations as proposed. The final confidentiality determinations for all subpart QQ data elements can be found in the Memorandum, “Final Data Category Assignments and Confidentiality Determinations for the 2012 Final CBI Rule.”

TABLE 5—SUBPART QQ DATA ELEMENTS FOR WHICH CONFIDENTIALITY STATUS HAS CHANGED SINCE PROPOSAL

Data element	Citation	Finalized data category and determination
Dates on which pre-charged equipment were imported ..	40 CFR 98.436(a)(5)	Unit/Process Operating Characteristics (“No determination”).
Dates on which closed-cell foams were imported	40 CFR 98.436(a)(5)	Unit/Process Operating Characteristics (“No determination”).
If the importer does not know the identity and mass of the F–GHGs within the closed-cell foam: Dates on which the closed-cell foams were imported.	40 CFR 98.436(a)(6)(iv)	Unit/Process Operating Characteristics (“No determination”).
Dates on which pre-charged equipment were exported ..	40 CFR 98.436(b)(5)	Unit/Process Operating Characteristics (“No determination”).
Dates on which closed-cell foams were exported	40 CFR 98.436(b)(5)	Unit/Process Operating Characteristics (“No determination”).
If the exporter does not know the identity and mass of the F–GHGs within the closed-cell foam: Dates on which the closed-cell foams were exported.	40 CFR 98.436(b)(6)(iv)	Unit/Process Operating Characteristics (“No determination”).

Summary of Comments.

This section contains summaries of the significant public comments and our responses thereto. Additional public comments were also received. Response to these comments can be found in “Confidentiality Determinations in the 2012 CBI re-proposals: Responses to Public Comments” in Docket EPA–HQ–OAR–2011–0028 and on the Web site, <http://www.epa.gov/climatechange/emissions/CBI.html>.

Comment: Two commenters disagreed with EPA’s proposed non-CBI determination for eight data elements in the “Unit/Process Operating” Data Category. The commenters claimed that competitors can cross-reference these data elements with publicly available information to discern business-sensitive information. These data elements include (each listing is a separate data element for both importers and exporters):

- Dates on which pre-charged equipment were imported/exported (40 CFR 98.436(a)(5) and (b)(5));

- Dates on which closed-cell foams were imported/exported (40 CFR 98.436(a)(5) and (b)(5));

- If the importer/exporter does not know the identity and mass of the F–GHGs within the closed-cell foam: Dates on which the closed-cell foams were imported/exported (40 CFR 98.436(a)(6)(iv) and (b)(6)(iv)); and

- If the importer/exporter does not know the identity and mass of the F–GHGs within the closed-cell foam: Certification that the importer/exporter was unable to obtain information on the identity and mass of the F–GHGs within the closed-cell foam from the closed-cell foam manufacturer(s) (40 CFR 98.436(a)(6)(vi) and (b)(6)(vi)).

The commenters stated that importers and exporters often submit confidentiality requests to U.S. Customs and Border Protection (CBP) to protect as confidential the information contained in the shipment manifest. In such cases, the CBP protects as confidential the name and address of the importer or exporter, but allows

other information contained in the manifest to be made public. Since the name and address of the importer or exporter are held confidential, the commenter stated that other competitively sensitive information contained in the manifest, such as shipment data (e.g., type and quantities of products imported or exported), cannot be attributed to a particular importer or exporter.

The commenters asserted that the EPA’s proposal would undermine confidentiality requests granted by the CBP because it would release information on the company name, dates of import/export, and certification statements that could be cross-referenced with public information available in manifests. For example, commenters suggested that the manifest provides information on the country of origin and type and volumes of commodities imported or exported. This information is currently available to the public but cannot be linked to a particular importer or exporter where

the CBP has granted confidential treatment of the importer or exporter's name and address.

Response: The EPA agrees with the commenters that competitors could cross-reference the company name and date of import or export with publicly available information to discern competitively sensitive information from the manifest (e.g., country of origin and type and volume of commodities imported or exported). Pursuant to 19 CFR 103.31(d), CBP keeps the name and address of importers and exporters confidential where importers and exporters submit a certification claiming the information in their manifest is confidential. CBP then keeps the name and address of the importer/exporter confidential for a period of two years, which can be extended provided the importer/exporter submits a renewal request within 60 days prior to expiration of the two year period. Although the EPA was aware that manifest data was published, we previously considered matching of individual manifests with the correct importer/exporter would be very difficult. However, the public can request manifest data for specific dates in accordance with 19 CFR 103.31(e) and the CBP makes manifest data (excluding the name and addresses for those claiming confidentiality) available to the public on CD-ROMs. We also agree with the commenter that some of the information contained in manifests could be competitively sensitive for some reporters. For example, the volumes and types of commodities imported or exported by a company can provide information on a competitor's annual production data for individual appliances and foams where the importer/exporter is also the manufacturer of those products. Such information would provide competitors with information on the market share of a competitor's products in the U.S.

market (for imports) and in other countries (for exports). Since the quantity of products imported/exported would be available from the manifest information on an annual basis, competitors would have insight into changes in annual sales of a competitor's products. For example, a decrease in the number of units exported to a particular market would indicate a declining demand for a competitor's product in that particular market.

However, we note that the CBP holds the name and addresses of importers/exporters confidential only when specifically requested by the importer/exporter and that confidentiality is for a period of only two years unless a request for extension is made. We also note that manifest information may not be sensitive for all importers and exporters. Therefore, the EPA has concluded that the date of import or export (40 CFR 98.436(a)(5), (a)(6)(iv), (b)(5), and (b)(6)(iv)) may cause competitive harm for some but not all importers and exporters. As a result, we are not finalizing a confidentiality determination for these data elements. We will 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.

The EPA disagrees with comments that releasing certification data (40 CFR 98.436(a)(6)(vi) and (b)(6)(vi)) would likely cause substantial competitive harm to the importer or exporter. The certification is a statement that the importer or exporter was unable to obtain information on the identity and mass of the fluorinated GHG imported or exported in foams. The certification statement consists of a statement indicating whether the reporter was able to obtain information on the identity and mass of F-GHGs within the imported or exported products, and

does not include any information that a competitor could cross reference with publicly available information to link manifest data to a particular reporter. The commenters did not provide any supporting rationale for how the certification statement, if disclosed, can cause competitive harm. The EPA has concluded the disclosure of the very limited information in the certification statement is unlikely to cause competitive harm; therefore, the EPA is finalizing a determination that the certification statements (40 CFR 98.436(a)(6)(vi) and (b)(6)(vi)) are not eligible for CBI treatment.

2. Subpart RR—Geologic Sequestration of Carbon Dioxide¹³

Summary of Changes.

In the 2012 CBI re-proposal, the EPA proposed non-CBI confidentiality determinations for the supplier data elements in subpart RR. Based on public comment, and for the reasons explained in the Summary of Comments section below, we have decided not to make CBI determinations in this final rule for the subpart RR supplier data elements that are listed in Table 6 of this preamble. We will 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. The EPA did not receive comments on the remaining subpart RR data elements, and is finalizing confidentiality determinations as proposed for the subpart RR data elements that are not listed in Table 6 of this preamble. The final confidentiality determinations for all subpart RR data elements can be found in the Memorandum, "Final Data Category Assignments and Confidentiality Determinations for the 2012 Final CBI Rule" in Docket EPA-HQ-OAR-2011-0028 and on EPA's Web site (see <http://www.epa.gov/climatechange/emissions/CBI.html>).

TABLE 6—SUBPART RR DATA ELEMENTS FOR WHICH CONFIDENTIALITY STATUS HAS CHANGED SINCE PROPOSAL

Data element	Citation	Finalized data category and determination
If you receive CO ₂ by pipeline, report the following for each receiving flow meter: Total net mass of CO ₂ received (metric tons) annually.	40 CFR 98.446(a)(1)	Production/Throughput Quantities and Composition ^a ("No Determination").
If a volumetric flow meter is used to receive CO ₂ report the following unless you reported yes to 40 CFR 98.446(a)(4): Volumetric flow through a receiving flow meter at standard conditions (in standard cubic meters) in each quarter.	40 CFR 98.446(a)(2)(i)	Production/Throughput Quantities and Composition ("No Determination").

¹³ Subpart RR is neither an exclusively direct emitter nor a supplier source category, so for the purposes of this action the EPA assigned each

subpart RR data element to one of the two groups based on its type and characteristics. The EPA assigned subpart RR data elements that pertain to

emissions to one of the direct emitter data categories and the remaining subpart RR data elements to one of the supplier data categories.

TABLE 6—SUBPART RR DATA ELEMENTS FOR WHICH CONFIDENTIALITY STATUS HAS CHANGED SINCE PROPOSAL—Continued

Data element	Citation	Finalized data category and determination
If a volumetric flow meter is used to receive CO ₂ report the following unless you reported yes to 40 CFR 98.446(a)(4): The volumetric flow through a receiving flow meter that is redelivered to another facility without being injected into your well (in standard cubic meters) in each quarter.	40 CFR 98.446(a)(2)(ii)	Production/Throughput Quantities and Composition (“No Determination”).
If a volumetric flow meter is used to receive CO ₂ report the following unless you reported yes to 40 CFR 98.446(a)(4): CO ₂ concentration in the flow (volume percent CO ₂ expressed as a decimal fraction) in each quarter.	40 CFR 98.446(a)(2)(iii)	Production/Throughput Quantities and Composition (“No Determination”).
If a mass flow meter is used to receive CO ₂ report the following unless you reported yes to 40 CFR 98.446(a)(4): The mass flow through a receiving flow meter (in metric tons) in each quarter. ¹	40 CFR 98.446(a)(3)(i)	Production/Throughput Quantities and Composition (“No Determination”).
If a mass flow meter is used to receive CO ₂ report the following unless you reported yes to 40 CFR 98.446(a)(4): The mass flow through a receiving flow meter that is redelivered to another facility without being injected into your well (in metric tons) in each quarter.	40 CFR 98.446(a)(3)(ii)	Production/Throughput Quantities and Composition (“No Determination”).
If a mass flow meter is used to receive CO ₂ report the following unless you reported yes to 40 CFR 98.446(a)(4): The CO ₂ concentration in the flow (weight percent CO ₂ expressed as a decimal fraction) in each quarter.	40 CFR 98.446(a)(3)(iii)	Production/Throughput Quantities and Composition (“No Determination”).
If you receive CO ₂ in containers, report: The mass (in metric tons) or volume at standard conditions (in standard cubic meters) of contents in containers in each quarter.	40 CFR 98.446(b)(1)	Production/Throughput Quantities and Composition (“No Determination”).
If you receive CO ₂ in containers: Concentration of CO ₂ of contents in containers (volume or wt. % CO ₂ expressed as a decimal fraction) in each quarter.	40 CFR 98.446(b)(2)	Production/Throughput Quantities and Composition (“No Determination”).
If you receive CO ₂ in containers, report: The mass (in metric tons) or volume (in standard cubic meters) of contents in containers that is redelivered to another facility without being injected into your well in each quarter.	40 CFR 98.446(b)(3)	Production/Throughput Quantities and Composition (“No Determination”).
If you receive CO ₂ in containers: Net mass of CO ₂ received (metric tons) annually.	40 CFR 98.446(b)(4)	Production/Throughput Quantities and Composition ^a (“No Determination”).
If you use more than one receiving flow meter: Total net mass of CO ₂ received (metric tons) through all flow meters annually.	40 CFR 98.446(c)	Production/Throughput Quantities and Composition ^a (“No Determination”).
If the date specified in 40 CFR 98.446(e) is during the reporting year for this annual report, report the following starting on the date specified in 40 CFR 98.446(e): For each separator flow meter (mass or volumetric), report CO ₂ mass produced (metric tons) annually.	40 CFR 98.446(f)(4)(i)	Production/Throughput Quantities and Composition ^a (“No Determination”).
If the date specified in 40 CFR 98.446(e) is during the reporting year for this annual report, report the following starting on the date specified in 40 CFR 98.446(e): For each separator flow meter (mass or volumetric), report CO ₂ concentration in flow (volume or wt. % CO ₂ expressed as a decimal fraction) in each quarter.	40 CFR 98.446(f)(4)(ii)	Production/Throughput Quantities and Composition (“No Determination”).
If the date specified in 40 CFR 98.446(e) is during the reporting year for this annual report, report the following starting on the date specified in 40 CFR 98.446(e): If a volumetric flow meter is used, volumetric flow rate at standard conditions (standard cubic meters) in each quarter.	40 CFR 98.446(f)(4)(iii)	Production/Throughput Quantities and Composition (“No Determination”).
If the date specified in 40 CFR 98.446(e) is during the reporting year for this annual report, report the following starting on the date specified in 40 CFR 98.446(e): If a mass flow meter is used, mass flow rate (metric tons) in each quarter.	40 CFR 98.446(f)(4)(iv)	Production/Throughput Quantities and Composition (“No Determination”).

^a These data elements could have also been placed in the “Greenhouse Gases Reported” data category because the product is also the GHG reported.

Summary of Comments.

This section contains summaries of the significant public comments and our responses thereto. Other public comments were also received. Response to these comments can be found in “Confidentiality Determinations in the 2012 CBI re-proposals: Responses to

Public Comments” in Docket EPA–HQ–OAR–2011–0028 and on the Web site, <http://www.epa.gov/climatechange/emissions/CBI.html>.

Comment: One commenter that injects CO₂ for enhanced oil and gas recovery (ER) stated that data elements related to the quantity of CO₂ received onsite must

be protected as CBI. The commenter asserted that information on the quantity of CO₂ received at individual flow meters and the total quantity of CO₂ received at a facility that conducts ER is not publicly available. The commenter also disagreed with the EPA’s conclusion that public release of

the quantity of CO₂ received does not create a substantial competitive disadvantage for the company. Combined with publicly available information on CO₂ pipeline capacities, the commenter asserted that CO₂ suppliers and pipeline transportation companies could use data on the quantity of CO₂ reported as received by specific facilities to their advantage in price negotiations on future contracts with the CO₂ purchasers (i.e., the reporting facilities under subparts RR and UU). The commenter stated that this risk is amplified because there are so few CO₂ suppliers in the market.

Response: EPA had proposed that the data elements in Table 6, which relate to the quantity of CO₂ received onsite, are not CBI on the basis that they are either publicly available or may be derived from publicly available data. However, the commenter claims this is not the case for data from facilities that conduct ER. Our initial review of available information lends support to the comment, which suggests that EPA may need to assess the confidentiality determination of these data elements separately for ER and non-ER facilities. However, EPA had not analyzed these data elements in Table 6 separately for ER and non-ER activities in the re-proposal. Further, facilities subject to the reporting requirements in Table 6 are not required to include in their annual report whether they are conducting ER. Therefore, even if EPA were to make separate determinations in this final rule for ER and non-ER facilities, EPA would not be able to withhold or disclose any of the data elements in Table 6 upon finalizing and in accordance with the determinations, which is the reason for making these confidentiality determinations through rulemaking. See 40 CFR 2.301(d). EPA would need additional information, in particular whether the facilities conduct ER, before it can complete its confidentiality determinations for any of these data. In light of the above, the EPA is not making a confidentiality determination for the data elements in Table 6 in this final rule. Should we

decide to make available any of these data in the future, we will at that time 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.

Comment: One commenter that conducts ER asserted that certain data elements related to the quantity of produced CO₂ measured at a separator meter should be protected as CBI. This commenter stated that the total mass of produced CO₂ by well or within a field is not already in the public domain and that the fact that some data from ER wells is publicly available does not demonstrate that publication of this data would not cause competitive harm.

The commenter asserted that CO₂ is an essential commodity in ER projects, and because of its cost, companies go to great lengths to use it efficiently and to recycle as much of it as possible. The commenter stated that publication of produced CO₂ data, when coupled with publicly available information on oil and gas production by well, would enable competitors to calculate CO₂ utilization rates for both individual wells and fields. The commenter noted that because this data would be available annually, it would be possible to track changes in CO₂ utilization over time. The commenter stated that from these CO₂ utilization rates, competitors would gain insight into production costs, as well as information on how the reservoir was performing over time. The commenter stated that this information could be used in contract negotiations for CO₂ supply, as well as enabling competitors to fine tune investment, acquisition, and development strategies.

The commenter also asserted that if data on the quantities of both injected CO₂ and produced CO₂ are publicly available, competitors can determine the quantity of CO₂ received by a site, because the total quantity of CO₂ injected equals the amount of CO₂ received on site plus the amount of CO₂ produced, less any surface emissions (which will be made public under subpart RR because they are “emission data”).

Response: After reviewing the additional information provided by the commenter, the EPA agrees that the mass of produced CO₂ measured at a separator meter could be sensitive information for some facilities that report under Subpart RR and not for others. Therefore, the EPA decided not to make categorical confidentiality determinations for the data elements related to the mass of produced CO₂ measured per separator meter at this time (40 CFR 98.446(f)(4)(i) through (iv) listed in Table 6 of this preamble). We will 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. Subpart UU—Injection of Carbon Dioxide

Summary of Changes.

In the 2012 CBI re-proposal, the EPA proposed confidentiality determinations for subpart UU.¹⁴ We received comment that, for ER projects, information related to the quantity of CO₂ received is not publicly available and may be likely to cause substantial competitive harm if made publicly available. For the reasons explained below, we have determined that the data elements that are listed in Table 7 of this preamble are CBI for facilities without an EPA-approved subpart RR R&D project exemption and non-CBI for facilities with an EPA-approved subpart RR R&D project exemption. The EPA did not receive comments on the remaining subpart UU data elements, and is finalizing confidentiality determinations as proposed for the subpart UU data elements that are not listed in Table 7 of this preamble. The final confidentiality determinations for all subpart UU data elements can be found in the Memorandum, “Final Data Category Assignments and Confidentiality Determinations for the 2012 Final CBI Rule” in Docket EPA–HQ–OAR–2011–0028 and on the EPA’s Web site (*see* <http://www.epa.gov/climatechange/emissions/CBI.html>).

TABLE 7—SUBPART UU DATA ELEMENTS WITH CHANGED CONFIDENTIALITY DETERMINATIONS SINCE PROPOSAL

Data element	Citation	Finalized data category and CBI determination for facilities without an R&D exemption	Finalized data category and CBI determination for facilities with an R&D exemption
If you receive CO ₂ by pipeline, report the following for each receiving flow meter: Total net mass of CO ₂ received (metric tons) annually.	40 CFR 98.476(a)(1)	GHGs Reported and Production/Throughput Quantities and Composition ^a (CBI).	Production/Throughput Quantities and Composition ^a (non-CBI).

¹⁴ Subpart UU is neither a direct emitter nor a supplier source category; for the purposes of this

action, the EPA assigned the subpart UU data elements to one of the supplier data categories

because they are most similar in type and characteristics to supplier data.

TABLE 7—SUBPART UU DATA ELEMENTS WITH CHANGED CONFIDENTIALITY DETERMINATIONS SINCE PROPOSAL—Continued

Data element	Citation	Finalized data category and CBI determination for facilities without an R&D exemption	Finalized data category and CBI determination for facilities with an R&D exemption
If you receive CO ₂ by pipeline, report the following for each receiving flow meter: If a volumetric flow meter is used to receive CO ₂ : Volumetric flow through a receiving flow meter at standard conditions (standard cubic meters) in each quarter.	40 CFR 98.476(a)(2)(i) ...	Production/Throughput Quantities and Composition (CBI).	Production/Throughput Quantities and Composition (non-CBI).
If you receive CO ₂ by pipeline, report the following for each flow meter: If a volumetric flow meter is used to receive CO ₂ : The volumetric flow through a receiving flow meter that is redelivered to another facility without being injected into your well (standard cubic meters) in each quarter.	40 CFR 98.476(a)(2)(ii) ..	Production/Throughput Quantities and Composition (CBI).	Production/Throughput Quantities and Composition (non-CBI).
If you receive CO ₂ by pipeline, report the following for each receiving flow meter: If a volumetric flow meter is used to receive CO ₂ : CO ₂ concentration in the flow (volume % CO ₂ expressed as a decimal fraction) in each quarter.	40 CFR 98.476(a)(2)(iii) ..	Production/Throughput Quantities and Composition (CBI).	Production/Throughput Quantities and Composition (non-CBI).
If you receive CO ₂ by pipeline, report the following for each flow meter: If a mass flow meter is used to receive CO ₂ , report the mass flow through a receiving flow meter (in metric tons) in each quarter.	40 CFR 98.476(a)(3)(i) ...	Production/Throughput Quantities and Composition (CBI).	Production/Throughput Quantities and Composition (non-CBI).
If you receive CO ₂ by pipeline, report the following for each flow meter: If a mass flow meter is used to receive CO ₂ , report the mass flow through a receiving flow meter that is redelivered to another facility without being injected into your well (in metric tons) in each quarter.	40 CFR 98.476(a)(3)(ii) ..	Production/Throughput Quantities and Composition (CBI).	Production/Throughput Quantities and Composition (non-CBI).
If you receive CO ₂ by pipeline, report the following for each flow meter: If a mass flow meter is used to receive CO ₂ , report CO ₂ concentration in the flow (wt. % CO ₂ expressed as a decimal fraction) in each quarter.	40 CFR 98.476(a)(3)(iii) ..	Production/Throughput Quantities and Composition (CBI).	Production/Throughput Quantities and Composition (non-CBI).
If you receive CO ₂ in containers, report: The mass (metric tons) or volume at standard conditions (standard cubic meters) of contents in containers in each quarter.	40 CFR 98.476(b)(1)	Production/Throughput Quantities and Composition (CBI).	Production/Throughput Quantities and Composition (non-CBI).
If you receive CO ₂ in containers, report: The concentration of CO ₂ of contents in containers (volume or wt. % CO ₂ expressed as a decimal fraction) in each quarter.	40 CFR 98.476(b)(2)	Production/Throughput Quantities and Composition (CBI).	Production/Throughput Quantities and Composition (non-CBI).
If you receive CO ₂ in containers, report: The mass (metric tons) or volume (standard cubic meters) of contents in containers that is redelivered to another facility without being injected into your well in each quarter.	40 CFR 98.476(b)(3)	Production/Throughput Quantities and Composition (CBI).	Production/Throughput Quantities and Composition (non-CBI).
If you receive CO ₂ in containers, report: The net total mass of CO ₂ received (in metric tons) annually.	40 CFR 98.476(b)(4)	Production/Throughput Quantities and Composition ^a (CBI).	Production/Throughput Quantities and Composition ^a (non-CBI).
If you use more than one receiving flow meter, report the net total mass of CO ₂ received (metric tons) through all flow meters annually.	40 CFR 98.476(c)	GHGs Reported and Production/Throughput Quantities and Composition ^a (CBI).	Production/Throughput Quantities and Composition ^a (non-CBI).

^a These data elements could have also been placed in the “Greenhouse Gases Reported” data category because the product is also the GHG reported.

Summary of Comments.

This section contains summaries of the significant public comments and our responses thereto. Other public comments were also received. Response to these comments can be found in “Confidentiality Determinations in the 2012 CBI re-proposals: Responses to Public Comments” in Docket EPA-HQ-OAR-2011-0028 and on the Web site, <http://www.epa.gov/climatechange/emissions/CBI.html>.

Comment: One commenter that injects CO₂ for ER stated that certain data elements related to the quantity of CO₂ received on-site must be protected as CBI. The commenter asserted that information on the quantity of CO₂

received at individual flow meters and the total quantity of CO₂ received at a facility that conducts ER is not publicly available. The commenter also disagreed with the EPA’s conclusion that public release of the quantity of CO₂ received does not create a substantial competitive disadvantage for the company. The commenter asserted that, combined with publicly available information on CO₂ pipeline capacities, CO₂ suppliers and pipeline transportation companies could use data on the quantity of CO₂ reported as received by specific facilities to their advantage in price negotiations on future contracts with the CO₂ purchasers (i.e., the reporting facilities under subparts RR and UU).

The commenter stated that this risk is amplified because there are so few CO₂ suppliers in the market.

Response: After reviewing the additional information provided by the commenter, the EPA agrees that the quantity of CO₂ reported as received on site could be sensitive information. The EPA proposed that the data elements related to the quantity of CO₂ received would not be entitled to CBI protection because we believed that none of the data elements on CO₂ received included information on CO₂ prices or contract terms, and would not allow a competitor to deduce the reporter’s operating costs and cause competitive harm. After reviewing this comment and

publicly available information, the EPA agrees that facilities that report under subpart UU and conduct ER activities are likely to experience substantial competitive harm if data on CO₂ received were released to the public. As the commenter notes, the information on the quantity of CO₂ received per flow meter or per reporting facility is not publicly available. If this data were public, knowledge of a CO₂-ER purchaser's demand for CO₂ could give the CO₂ suppliers an unfair advantage in price negotiations. In addition, a small number of companies supply most of the CO₂ to the economy, which further exacerbates the CO₂-ER purchaser's competitive disadvantage. The majority of CO₂ sold to ER operations in the United States is produced from natural CO₂ bearing formations. According to Reporting Year 2010 data from the Greenhouse Gas Reporting Program, two companies dominated the CO₂ supply market, producing approximately 80 percent of the CO₂ available for purchase from natural CO₂ bearing formations.¹⁵

In addition to facilities that conduct ER, acid gas operations (facilities that separate a CO₂ stream during natural gas processing and inject it underground) will report under subpart UU. The amount of CO₂ separated in acid gas operations is reported by these facilities under subpart PP. These facilities are allowed to report the amount of CO₂ received under subpart UU by using the amount of CO₂ reported under subpart PP, following the subpart PP methods and requirements.¹⁶ This subpart PP data was determined to be CBI in the 2011 Final CBI rule. Therefore, the EPA has decided to change the confidentiality determination to treat as CBI 12 subpart UU data elements related to the quantity of CO₂ received (see Table 7 of this preamble for the list of affected data elements).

Other than facilities conducting ER or acid gas operations, the facilities that must report under subpart UU include facilities that have received a Research and Development (R&D) project exemption from subpart RR. The EPA notes that data on the quantity of CO₂ received would not be competitively sensitive for facilities that have received an R&D project exemption from subpart RR. It is standard practice that CO₂ that is received by non-ER facilities for R&D geologic sequestration projects is wholly injected underground without a recycled component. The quantity of CO₂ injected for these projects is readily available from public sources and thus

the quantity of CO₂ received by these projects is widely known.¹⁷ The EPA has concluded that the disclosure of the amount of CO₂ received is unlikely to cause competitive harm to facilities with a R&D project exemption. Therefore, the EPA is finalizing a determination that for the subcategory of subpart UU reporters that have received an R&D project exemption from subpart RR, the 12 data elements related to CO₂ received are not eligible for CBI treatment and will not be protected as CBI (see Table 7 of this preamble for the list of affected data elements).

III. Confidentiality Determinations for New Data Elements in Subparts II and TT and Responses to Public Comments

The Technical Corrections final rule, which was issued after the 2011 Final CBI Rule, added seven new non-input data elements to subparts II and TT. Confidentiality determinations for the remainder of the data elements in these subparts have already been finalized in the 2011 Final CBI Rule. Subsequent to the 2011 Final CBI Rule, we proposed category assignments and confidentiality determinations for these new data elements in the 2012 CBI re-proposal. The EPA did not receive any comment on the data category assignments or confidentiality determinations for any data elements for which we proposed confidentiality determinations for these two subparts in the 2012 CBI re-proposal. Thus, the EPA is finalizing confidentiality determinations for these new subpart II and TT data elements as proposed. The final confidentiality determinations for these new subpart II and TT data elements can be found in the memorandum, "Final Data Category Assignments and Confidentiality Determinations for the 2012 Final CBI Rule."

IV. Amendments to Table A-6 and A-7 To Defer Reporting of Certain Inputs to Emission Equations in Subparts W, FF and TT

We are finalizing the proposed amendments made in the Subpart W CBI re-proposal to Table A-7 of subpart A, which included amendments to address the renumbering of 11 inputs, the addition of 10 new inputs, and the deletion of 21 data elements that were re-categorized to other data categories because the data elements are not the actual values used in the equations. (The deletions recognized, for example,

the distinction between individual measured values used to calculate emissions, which are inputs, and the reported average of these measured values, which is not used as an input to emissions equations.) We are finalizing these amendments as proposed with the exception that we are correcting a typographical error in the Subpart W CBI re-proposal by replacing the word "required" with "recovered" in two entries (40 CFR 98.236(c)(6)(i)(G) and (H)) for subpart W of Table A-7 of subpart A of Part 98. We are finalizing Table A-7 of subpart A with this minor wording change in response to public comment and to more accurately reflect the actual reporting requirements. As proposed in the Subpart W CBI re-proposal, we are deferring the deadline for reporting all subpart W inputs until March 31, 2015 to allow sufficient time to: (1) Evaluate the extent to which potential competitive harm may result if any of the inputs to equations were reported and made publicly available; and (2) determine whether emissions can be calculated or verified using additional methodologies, consistent with the transparency and accuracy goals of Part 98.

The Technical Corrections final rule added one new subpart TT data element that is used as an input to an emission equation (the methane correction factor (MCF) value used in the calculations (40 CFR 98.446(b)(4)). In the 2012 CBI re-proposal, we proposed to assign this data element to the inputs to equations category. We also proposed that this data element be added to Table A-6 of subpart A to defer its reporting to March 31, 2013. We received no comments on the proposal described above. The EPA is therefore finalizing the assignment of this data element to the "Inputs to Emission Equations" data category and its addition to Table A-6 of subpart A to require its reporting by March 31, 2013.

The Technical Corrections final rule similarly added two new subpart FF data elements that are used as inputs to emission equations:

- Moisture content used in Equation FF-1 and FF-3 (40 CFR 98.326(o)).
- The gaseous organic concentration correction factor used, if Equation FF-9 was required (40 CFR 98.326(o)).

In the 2012 CBI re-proposal, we proposed to assign these two data elements in 98.236(o) to the "Inputs to Emission Equations" data category and defer their reporting deadline to March 31, 2013. As explained in the proposed rule, the paragraph citation for these two data elements (40 CFR 98.326(o)) is already included in Table A-6 of subpart A deferring the reporting

¹⁷ For example, see the proceedings of the Department of Energy National Energy Technology Laboratory Carbon Storage Program Infrastructure Annual Review Meeting.

¹⁵ See www.ghgdata.epa.gov.

¹⁶ 40 CFR 98.474(a)(1)(iii) and (a)(3)(iii).

deadline until March 31, 2013; therefore, no amendment to Table A–6 of subpart A is required to defer their reporting to March 31, 2013. We received no public comments on our proposal, and we are finalizing the category assignment and deferral of the reporting deadline for these two new subpart FF data elements as proposed.

In the Technical Corrections final rule, we also re-numbered the rule citations for three subpart TT data reporting elements. In the 2012 CBI re-proposal, the EPA proposed to amend Table A–6 of subpart A list of paragraph references for subpart TT data elements to reflect the revision to the paragraph citations. We did not receive any comment, and we are finalizing as proposed the amendments to Table A–6 of subpart A in this action.

V. Background and Amendments to the Best Available Monitoring Method for Subpart I

A. Background

Following the publication of the final subpart I rule,¹⁸ an industry association requested reconsideration of numerous provisions in the final rule. The final 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 BMM to recalculate their emissions for the time period for which BMM was used at a later date using methods that are fully compliant with subpart I.

B. Amendments to the Best Available Monitoring Method Provisions for Subpart I

For the reasons explained in Section IV of the subpart I CBI re-proposal, we are finalizing amendments to the subpart I BMM provisions. These amendments to subpart I eliminate the requirement that facilities granted an extension to use BMM must recalculate and resubmit the emissions estimate for the BMM extension period. The EPA received comments in support of these amendments and no comments opposing them. Accordingly, we are finalizing as proposed these amendments to subpart I.

VI. Statutory and Executive Order Reviews

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

This action, which finalizes confidentiality determinations for data

elements in the 9 subparts included in the preamble, finalizes amendments to subpart A of Part 98, and removes the requirement that facilities that are granted an extension to use BMM must recalculate and resubmit the emissions estimate for the BMM extension period is not a “significant regulatory action” under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action, which finalizes confidentiality determinations for data elements in the 9 subparts included in the preamble, finalizes amendments to subpart A of Part 98, and removes the requirement that facilities that are granted an extension to use BMM must recalculate and resubmit the emissions estimate for the BMM extension period does not impose any new information collection burden and does not increase the existing reporting burden. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in these subparts, 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 the following OMB control numbers: 2060–0650, for subparts I, DD, and SS; 2060–0651, for subpart W; 2060–0649, for subparts RR and UU; and 2060–0647 for subparts FF, II, and TT. The OMB control numbers for 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 rule on small entities, a small entity is defined as: (1) A small business as defined by the Small Business Administration’s (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small

organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today’s final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of a regulatory flexibility analyses is to identify and address regulatory alternatives “which minimize any significant economic impact of the rule on small entities.” 5 U.S.C. 603,604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. This action, which finalizes confidentiality determinations for data elements in the 9 subparts included in the preamble, finalizes amendments to subpart A of Part 98, and removes the requirement that facilities that are granted an extension to use BMM must recalculate and resubmit the emissions estimate for the BMM extension period does not increase the existing reporting burden on small entities. We have therefore concluded that today’s final rule will relieve or have no burden on small entities subject to the rule.

D. Unfunded Mandates Reform Act (UMRA)

These final rule amendments and confidentiality determinations do not contain a federal mandate that may result in expenditures of \$100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. The amendment to subpart I removes the requirement that facilities that are granted an extension to use BMM must recalculate and resubmit the emissions estimate for the BMM extension period and the confidentiality determinations are administrative in nature and do not increase the costs of compliance for facilities to comply with Part 98. Thus, this rule is not subject to the requirements of sections 202 or 205 of the UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. The confidentiality determinations for data

¹⁸ 75 FR 74774, December 1, 2010.

elements that this action finalizes are administrative in nature, and this action removes the requirement that facilities that are granted an extension to use BAMM must recalculate and resubmit the emissions estimate for the BAMM extension period.

E. Executive Order 13132: Federalism

This action, which finalizes confidentiality determinations for data elements in the 9 subparts included in the preamble, finalizes amendments to subpart A of Part 98, and removes the requirement that facilities that are granted an extension to use BAMM must recalculate and resubmit the emissions estimate for the BAMM extension period 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. For a more detailed discussion about how Part 98 relates to existing state programs, please see Section II of the preamble to the final Greenhouse Gas Reporting Rule (74 FR 56266, October 30, 2009).

This action applies to suppliers of GHGs and facilities that directly emit GHGs above threshold levels. Relatively few government facilities are affected by this action since Part 98 applies only to government entities that own a facility that directly emits GHGs above threshold levels. This action also does not limit the power of states or localities to collect GHG data and/or regulate GHG emissions, nor does it directly affect the power of states or localities to disclose or protect information reported to those states or localities. Thus, Executive Order 13132 does not apply to this action.

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

This action, which finalizes confidentiality determinations for data elements in the 9 subparts included in the preamble, finalizes amendments to subpart A of Part 98, and removes the requirement that facilities that are granted an extension to use BAMM must recalculate and resubmit the emissions estimate for the BAMM extension period does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action does not increase the reporting burden. 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 Greenhouse Gas Reporting Rule (74 FR 56371, October 30, 2009).

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 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 finalizes confidentiality determinations for data elements in the 9 subparts included in the preamble, finalizes amendments to subpart A of Part 98, and removes the requirement that facilities that are granted an extension to use BAMM must recalculate and resubmit the emissions estimate for the BAMM extension period is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, 12(d) (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. NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

This final action, which finalizes confidentiality determinations for data elements in the 9 subparts included in the preamble, finalizes amendments to subpart A of Part 98, and removes the requirement that facilities that are granted an extension to use BAMM must recalculate and resubmit the emissions estimate for the BAMM

extension period does not add any new technical standards or revise any existing technical standards included in Part 98. Therefore, the EPA did not consider the use of any voluntary consensus standards.

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

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

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

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). Therefore, this rule will be effective on September 12, 2012, except for the amendments to Tables A-6 and A-7 of 40 CFR part 98 subpart A and the amendments to 40 CFR part 98 subpart I (section 98.94(a)(2)(iii), (a)(3)(iii), and (a)(4)(iii), which are effective on August 13, 2012.

List of Subjects in 40 CFR Part 98

Environmental protection, Administrative practice and procedure,

Greenhouse gases, Reporting and recordkeeping requirements.
 Dated: August 2, 2012.
Lisa P. Jackson,
Administrator.
 For the reasons stated in the preamble, title 40, chapter I, of the Code

of Federal Regulations is amended as follows:
PART 98—[AMENDED]
 ■ 1. The authority citation for Part 98 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*
Subpart A—[Amended]
 ■ 2. Table A–6 to subpart A of Part 98 is amended by revising the entries for subpart TT to read as follows:

TABLE A–6 TO SUBPART A OF PART 98—DATA ELEMENTS THAT ARE INPUTS TO EMISSION EQUATIONS AND FOR WHICH THE REPORTING DEADLINE IS MARCH 31, 2013

Subpart	Rule citation (40 CFR part 98)	Specific data elements for which reporting date is March 31, 2013 (“All” means all data elements in the cited paragraph are not required to be reported until March 31, 2013)
TT	98.466(a)(2)	All.
TT	98.466(a)(3)	Only last year the landfill accepted waste (for closed landfills using Equation TT–4).
TT	98.466(a)(4)	Only capacity of the landfill in metric tons (for closed landfills using Equation TT–4).
TT	98.466(b)(3)	Only fraction of CH ₄ in landfill gas.
TT	98.466(b)(4)	Only the methane correction factor (MCF) value used in the calculations.
TT	98.466(c)(1)	All.
TT	98.466(c)(4)(i)	All.
TT	98.466(c)(4)(ii)	All.
TT	98.466(c)(4)(iii)	All.
TT	98.466(d)(2)	All.
TT	98.466(d)(3)	Only degradable organic carbon (DOC _x) value used in calculations.
TT	98.466(e)(2)	Only surface area (in square meters) at the start of the reporting year for the landfill sections that contain waste and that are associated with the selected cover type (for facilities using a landfill gas collection system).
TT	98.466(f)	All.

■ 3. Table A–7 to subpart A of Part 98 is amended by revising the entries for subpart W to read as follows:

TABLE A–7 TO SUBPART A OF PART 98—DATA ELEMENTS THAT ARE INPUTS TO EMISSION EQUATIONS AND FOR WHICH THE REPORTING DEADLINE IS MARCH 31, 2015

Subpart	Rule Citation (40 CFR part 98)	Specific Data Elements for Which Reporting Date is March 31, 2015 (“All” means all data elements in the cited paragraph are not required to be reported until March 31, 2015)
W	98.236(c)(1)(i)	All.
W	98.236(c)(1)(ii)	All.
W	98.236(c)(1)(iii)	All.
W	98.236(c)(2)(i)	All.
W	98.236(c)(3)(i)	All.
W	98.236(c)(3)(ii)	Only Calculation Methodology 2.
W	98.236(c)(3)(iii)	All.
W	98.236(c)(3)(iv)	All.
W	98.236(c)(4)(i)(A)	All.
W	98.236(c)(4)(i)(B)	All.
W	98.236(c)(4)(i)(C)	All.
W	98.236(c)(4)(i)(D)	All.
W	98.236(c)(4)(i)(E)	All.
W	98.236(c)(4)(i)(F)	All.
W	98.236(c)(4)(i)(G)	All.
W	98.236(c)(4)(i)(H)	All.
W	98.236(c)(4)(ii)(A)	All.
W	98.236(c)(5)(i)(D)	All.
W	98.236(c)(5)(ii)(C)	All.
W	98.236(c)(6)(i)(B)	All.
W	98.236(c)(6)(i)(D)	All.
W	98.236(c)(6)(i)(E)	All.
W	98.236(c)(6)(i)(F)	All.
W	98.236(c)(6)(i)(G)	Only the amount of natural gas required.
W	98.236(c)(6)(i)(H)	Only the amount of natural gas required.
W	98.236(c)(6)(ii)(A)	All.

TABLE A-7 TO SUBPART A OF PART 98—DATA ELEMENTS THAT ARE INPUTS TO EMISSION EQUATIONS AND FOR WHICH THE REPORTING DEADLINE IS MARCH 31, 2015—Continued

Subpart	Rule Citation (40 CFR part 98)	Specific Data Elements for Which Reporting Date is March 31, 2015 ("All" means all data elements in the cited paragraph are not required to be reported until March 31, 2015)
W	98.236(c)(6)(ii)(B)	All.
W	98.236(c)(7)(i)(A)	Only for Equation W-14A.
W	98.236(c)(8)(i)(F)	All.
W	98.236(c)(8)(i)(K)	All.
W	98.236(c)(8)(ii)(A)	All.
W	98.236(c)(8)(ii)(H)	All.
W	98.236(c)(8)(iii)(A)	All.
W	98.236(c)(8)(iii)(B)	All.
W	98.236(c)(8)(iii)(G)	All.
W	98.236(c)(12)(ii)	All.
W	98.236(c)(12)(v)	All.
W	98.236(c)(13)(i)(E)	All.
W	98.236(c)(13)(i)(F)	All.
W	98.236(c)(13)(ii)(A)	All.
W	98.236(c)(13)(ii)(B)	All.
W	98.236(c)(13)(iii)(A)	All.
W	98.236(c)(13)(iii)(B)	All.
W	98.236(c)(13)(v)(A)	All.
W	98.236(c)(14)(i)(B)	All.
W	98.236(c)(14)(ii)(A)	All.
W	98.236(c)(14)(ii)(B)	All.
W	98.236(c)(14)(iii)(A)	All.
W	98.236(c)(14)(iii)(B)	All.
W	98.236(c)(14)(v)(A)	All.
W	98.236(c)(15)(ii)(A)	All.
W	98.236(c)(15)(ii)(B)	All.
W	98.236(c)(16)(viii)	All.
W	98.236(c)(16)(ix)	All.
W	98.236(c)(16)(x)	All.
W	98.236(c)(16)(xi)	All.
W	98.236(c)(16)(xii)	All.
W	98.236(c)(16)(xiii)	All.
W	98.236(c)(16)(xiv)	All.
W	98.236(c)(16)(xv)	All.
W	98.236(c)(16)(xvi)	All.
W	98.236(c)(17)(ii)	All.
W	98.236(c)(17)(iii)	All.
W	98.236(c)(17)(iv)	All.
W	98.236(c)(18)(i)	All.
W	98.236(c)(18)(ii)	All.
W	98.236(c)(19)(iv)	All.
W	98.236(c)(19)(vii)	All.

* * * * *

Subpart I—[Amended]

■ 4. 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.

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