

Proposed Confidentiality Determinations for Subpart I and Revisions to the Subpart I BMM Provisions under the Greenhouse Gas Reporting Program

Action

- This action proposes to determine which data elements under the Electronics Manufacturing source category (subpart I) of part 40 CFR 98¹ (the Greenhouse Gas Reporting Rule, or Part 98) would or would not be entitled to treatment as confidential business information (CBI) under the Clean Air Act (CAA). These data elements will be reported to EPA for the first time in September 2012 under the Greenhouse Gas Reporting Program (GHGRP).
- This proposal does not address proposed confidentiality determinations for data elements that are inputs to emission equations, the reporting of which EPA deferred until 2015 for subpart I reporting elements in an August 25, 2011 final action.
- EPA will release and withhold part 98 subpart I data in accordance with the result of this rulemaking and the CBI regulations at 40 CFR 2.301. EPA intends to finalize the confidentiality determinations for the data elements in subpart I before the September 28, 2012 reporting deadline.
- This action also proposes to amend subpart I to remove the requirement that facilities that use “best available monitoring methods” (BMM) <<http://www.epa.gov/ghgreporting/reporters/subpart/i.html>> must recalculate their previous years’ emissions and resubmit them to EPA.

Background

- Typically, EPA makes determinations related to business confidentiality under the CAA on a case-by-case basis. However, for the GHGRP, EPA has taken a categorical approach for addressing claims of CBI that identifies the data elements that will be treated as CBI in advance of reporting. This approach was necessary due to the thousands of entities reporting under the GHGRP and the hundreds of data elements across the rule. Because of this volume, case-by-case determinations of confidentiality would inhibit timely release of the data. Furthermore, EPA followed this approach, in part, in order to provide to reporters, in advance of their required reporting, consistency and stability regarding the confidential treatment of the data that they are required to report.

¹ On October 30, 2009, EPA published the Mandatory Greenhouse Gas Reporting Rule at 40 CFR part 98 for collecting information regarding greenhouse gases from a broad range of industry sectors. Under part 98 and its subsequent amendments, certain facilities and suppliers above specified thresholds are required to report greenhouse gas information to EPA annually.

- On May 26, 2011, EPA finalized a rule outlining and codifying this approach for the GHGRP and making confidentiality determinations for data elements for 34 subparts of part 98. This action proposes confidentiality determinations for data elements in subpart I of part 98.
- EPA finalized the subpart I BMM provisions in December 2010 (75 FR 74774). In that final rule, EPA required all facilities that were allowed to use BMM to recalculate the previous reporting years' emissions once the BMM period has expired and resubmit them to EPA.

Proposed Confidentiality Determinations

EPA is proposing confidentiality determinations for 10 data categories as follows:

- Data elements in the following data categories are proposed to be categorized as “emission data” and therefore, under CAA section 114, be released to the public:
 - Facility and Unit Identifier Information (e.g., facility name and physical address);
 - Emissions;
 - Calculation Methodology and Methodological Tier; and
 - Data elements reported for periods of missing data that are not inputs to emission equations.
- Data elements in the following data category are proposed to be neither emission data nor CBI. Therefore, the data elements in the following data category would be released to the public:
 - Test and Calibration Methods.
- Data elements in the following data categories are proposed to be treated as CBI and would qualify as CBI. Therefore, the data elements in the following data categories would not be released to the public:
 - Production/Throughput Data (that are not inputs to emission equations);
 - Raw Materials Data (that are not inputs to emission equations); and
 - Detailed Process Specific and Vendor Information Submitted in Petitions to Extend the Use of BMM.
- EPA proposed CBI determinations for most of the individual data elements in the following categories; some are proposed to be CBI and some are proposed not to qualify for CBI protection (and would be released to the public). For several data elements in these categories, no CBI determination has been made. EPA proposes to evaluate the confidentiality status of these data elements on a case-by-case basis, in accordance with existing CBI regulations in 40 CFR, part 2, subpart B:
 - Unit Static Characteristics (that are not inputs to emission equations); and
 - Unit Operating Characteristics (that are not inputs to emission equations).

Next Steps and Implementation

- This proposal will be published in the *Federal Register* and will be available at www.regulations.gov.
- A prepublication version is available on our Web site at: <http://www.epa.gov/ghgreporting/reporters/subpart/i.html>
- The public comment period is open for 30 days after publication in the *Federal Register*.
- After consideration of public comments, EPA intends to issue final confidentiality determinations for subpart I in 2012.

More Information

For more information on the GHGRP, including guidance and a schedule of training opportunities, please visit EPA's GHG Mandatory Reporting Rule Website: <http://www.epa.gov/ghgreporting/index.html>.

For more information on the rulemakings related to CBI under the GHGRP: <http://www.epa.gov/ghgreporting/reporters/cbi/index.html>.

For more information on subpart I BAMB: <http://www.epa.gov/ghgreporting/reporters/subpart/i.html>.