

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 98**

[EPA-HQ-OAR-2009-0925; FRL-9130-6]

RIN 2060-AQ02

**Mandatory Reporting of Greenhouse Gases**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule amendment.

**SUMMARY:** EPA is proposing to amend the Mandatory Greenhouse Gas (GHG) Reporting Rule, to require reporters subject to the rule to provide: The name, address, and ownership status of their U.S. parent company; their primary and all other applicable North American Industry Classification System (NAICS) code(s); and an indication of whether or not any of their reported emissions are from a cogeneration unit. The Mandatory GHG Reporting Rule requires greenhouse gas emitting facilities and suppliers of fuels and industrial gases from all sectors of the economy to report their greenhouse gas emissions and to provide certain additional supporting data in annual reports submitted to EPA.

**DATES:** *Comments.* Comments must be received on or before June 11, 2010.

*Public Hearing.* EPA does not plan to conduct a public hearing unless requested. To request a hearing, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section by April 19, 2010. If requested, the public hearing will be conducted on or about April 19, 2010 in the Washington, DC area. EPA will provide further information about the hearing on its webpage if a hearing is requested.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2009-0925, by one of the following methods:

- *Federal eRule amendment making Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *E-mail:* [GHGReportingCPNAICS@epa.gov](mailto:GHGReportingCPNAICS@epa.gov).

- *Fax:* (202) 566-1741.
- *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 2822T, Attention Docket ID No. EPA-HQ-OAR-2009-0925, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

- *Hand/Courier Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004, Attention Docket ID No. EPA-HQ-OAR-2009-0925. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OAR-2009-0925, GHG Reporting Corporate Parent and NAICS Code. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of

special characters, any form of encryption, and be free of any defects or viruses.

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

**FOR FURTHER INFORMATION CONTACT:** Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC-6207J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343-9263; fax number: (202) 343-2342; e-mail address: [GHGMRR@epa.gov](mailto:GHGMRR@epa.gov).

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

*Regulated Entities.* This proposed amendment to the Mandatory GHG Reporting Rule would affect facilities that are direct emitters of GHGs, and suppliers of fuels and industrial gases, that are already subject to the rule. Regulated categories and entities would include those listed in Table 1 of this preamble:

TABLE 1—EXAMPLES OF REGULATED ENTITIES BY CATEGORY

Category	NAICS code	Examples of regulated entities
General Stationary Fuel Combustion Sources .....	.....	Facilities operating boilers, process heaters, incinerators, turbines, and internal combustion engines:
	211	Extractors of crude petroleum and natural gas.
	321	Manufacturers of lumber and wood products.
	322	Pulp and paper mills.
	325	Chemical manufacturers.
	324	Petroleum refineries and manufacturers of coal products.
	316, 326, 339	Manufacturers of rubber and miscellaneous plastic products.

TABLE 1—EXAMPLES OF REGULATED ENTITIES BY CATEGORY—Continued

Category	NAICS code	Examples of regulated entities
Electricity Generation .....	331	Steel works, blast furnaces.
	332	Electroplating, plating, polishing, anodizing, and coloring.
	336	Manufacturers of motor vehicle parts and accessories.
	221	Electric, gas, and sanitary services.
	622	Health services.
	611	Educational services.
Electricity Generation .....	221112	Fossil-fuel fired electric generating units, including units owned by Federal and municipal governments and units located in Indian Country.
Adipic Acid Production .....	325199	Adipic acid manufacturing facilities.
Aluminum Production .....	331312	Primary Aluminum production facilities.
Ammonia Manufacturing .....	325311	Anhydrous and aqueous ammonia manufacturing facilities.
Cement Production .....	327310	Portland Cement manufacturing plants.
Ferroalloy Production .....	331112	Ferroalloys manufacturing facilities.
Glass Production .....	327211	Flat glass manufacturing facilities.
	327213	Glass container manufacturing facilities.
	327212	Other pressed and blown glass and glassware manufacturing facilities.
HCFC–22 Production and HFC–23 Destruction .....	325120	Chlorodifluoromethane manufacturing facilities.
Hydrogen Production .....	325120	Hydrogen manufacturing facilities.
Iron and Steel Production .....	331111	Integrated iron and steel mills, steel companies, sinter plants, blast furnaces, basic oxygen process furnace shops.
Lead Production .....	331419	Primary lead smelting and refining facilities.
	331492	Secondary lead smelting and refining facilities.
Lime Production .....	327410	Calcium oxide, calcium hydroxide, dolomitic hydrates manufacturing facilities.
Nitric Acid Production .....	325311	Nitric acid manufacturing facilities.
Petrochemical Production .....	325111	Ethylene dichloride manufacturing facilities.
	325199	Acrylonitrile, ethylene oxide, methanol manufacturing facilities.
	325110	Ethylene manufacturing facilities.
	325182	Carbon black manufacturing facilities.
Petroleum Refineries .....	324110	Petroleum refineries.
Phosphoric Acid Production .....	325312	Phosphoric acid manufacturing facilities.
Pulp and Paper Manufacturing .....	322110	Pulp mills.
	322121	Paper mills.
	322130	Paperboard mills.
Silicon Carbide Production .....	327910	Silicon carbide abrasives manufacturing facilities.
Soda Ash Manufacturing .....	325181	Alkalies and chlorine manufacturing facilities.
	212391	Soda ash, natural, mining and/or beneficiation.
Titanium Dioxide Production .....	325188	Titanium dioxide manufacturing facilities.
Zinc Production .....	331419	Primary zinc refining facilities.
	331492	Zinc dust reclaiming facilities, recovering from scrap and/or alloying purchased metals.
Municipal Solid Waste Landfills .....	562212	Solid waste landfills.
	221320	Sewage treatment facilities.
Manure <sup>1</sup> Management .....	112111	Beef cattle feedlots.
	112120	Dairy cattle and milk production facilities.
	112210	Hog and pig farms.
	112310	Chicken egg production facilities.
	112330	Turkey Production.
	112320	Broilers and Other Meat type Chicken Production.
Suppliers of Coal Based Liquids Fuels .....	211111	Coal liquefaction at mine sites.
Suppliers of Petroleum Products .....	324110	Petroleum refineries.
Suppliers of Natural Gas and NGLs .....	221210	Natural gas distribution facilities.
	211112	Natural gas liquid extraction facilities.
Suppliers of Industrial GHGs .....	325120	Industrial gas manufacturing facilities.
Suppliers of Carbon Dioxide (CO <sub>2</sub> ) .....	325120	Industrial gas manufacturing facilities.

<sup>1</sup> EPA is not implementing subpart JJ of the Mandatory GHG Reporting Rule due to a Congressional restriction prohibiting the expenditure of funds for this purpose.

Table 1 of this preamble is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. Table 1 lists the types of entities that EPA currently is aware of that could be potentially affected by this action. Other types of entities not listed

in the table could also be subject to reporting requirements. To determine whether an entity is affected by this action, you should carefully examine the applicability criteria found in 40 CFR part 98, subpart A. If you have questions regarding the applicability of this action to a particular entity, consult

the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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

- CAA Clean Air Act
- CBI confidential business information
- CFC chlorofluorocarbon

CFR Code of Federal Regulations  
 CO<sub>2</sub> carbon dioxide  
 CO<sub>2</sub>e CO<sub>2</sub>-equivalent  
 CUSIP Committee on Uniform Security Identification Procedures  
 DUNS Data Universal Numbering System  
 eGRID Generation Resource Integrated Database  
 EO Executive Order  
 EPA U.S. Environmental Protection Agency  
 FEIN Federal Employee Identification Numbers  
 GHG greenhouse gas  
 HCFC hydrochlorofluorocarbon  
 HFC hydrofluorocarbon  
 HFE hydrofluoroether  
 ICIS Integrated Compliance Information System  
 ICR Information Collection Request  
 NAICS North American Industry Classification System  
 NIH National Institutes of Health  
 NTTAA National Technology Transfer and Advancement Act of 1995  
 OMB Office of Management and Budget  
 RCRAInfo Resource Conservation and Recovery Act database  
 RFA Regulatory Flexibility Act  
 RGGI Regional Greenhouse Gas Initiative  
 SBREFA Small Business Regulatory Enforcement Fairness Act  
 SEC Securities and Exchange Commission  
 SIC Standard Industrial Classification  
 TCR The Climate Registry  
 TRI Toxics Release Inventory  
 TSCA Toxic Substances Control Act  
 UMRA Unfunded Mandates Reform Act  
 U.S. United States  
 WCI Western Climate Initiative  
 WRI World Resources Institute

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## I. Background

### A. Background on Proposed Rule Amendment

The Mandatory GHG Reporting Rule, published on October 30, 2009 (74 FR 56260), requires reporting by facilities that emit GHGs (“facilities”) and by suppliers of fuels and industrial gases (“suppliers”). Facilities and suppliers that meet the applicability criteria in subpart A of 40 CFR part 98 (“regulated entities” or “reporters”) must submit annual GHG reports.<sup>2</sup> A list of the information that all reporters must submit in their annual reports is included in the general provisions of the rule (see 40 CFR 98.3(c)). This list includes owner/operator identification information, but does not currently require reporters to provide information on their U.S. parent company, on their primary and other applicable NAICS code(s), or on whether any of their reported emissions are from a cogeneration unit. In this notice, EPA proposes amendments to the Mandatory GHG Reporting Rule that would require facilities and suppliers subject to the rule to provide this additional information in their annual reports.

This preamble is divided into four sections. The first section of the preamble provides background and an overview of the proposed rule amendment, discusses EPA’s legal authority under the Clean Air Act (CAA) for collecting the proposed additional information and describes the relationship between this information and the information already collected by other Federal, regional, and State reporting programs. The second section of the preamble states the proposed rule requirements and summarizes the rationale for requiring facilities and suppliers subject to the rule to report this additional information on an annual basis. This section also includes a summary of issues associated with the proposed rule amendment upon which EPA is particularly interested in

receiving comment. The third section of the preamble provides a summary of the impacts and costs of the proposed rule amendment. The fourth and final section of the preamble discusses the various statutory and executive order requirements applicable to the proposed rule amendment.

### B. Summary of the Proposed Rule Amendment

EPA is proposing to add three data elements to the list of data elements specified in 40 CFR 98.3. These data elements would be included in the annual GHG reports that facilities and suppliers subject to the Mandatory GHG Reporting Rule are required to submit. Specifically, this proposed rule amendment would require each reporter to (1) provide the legal name and physical address of its highest-level U.S. parent company and to indicate its ownership status by selecting from a list of codes provided by EPA;<sup>3</sup> (2) provide its primary and other applicable North American Industry Classification System (NAICS) code(s); and (3) indicate whether any of its reported emissions are from a cogeneration unit.

This proposed rule amendment applies to all facilities and suppliers required to report under 40 CFR part 98, published on October 30, 2009 (74 FR 56260).<sup>4</sup> Therefore, all facilities and suppliers that meet the applicability criteria in 40 CFR part 98, subpart A would be required to report the additional data elements included in this proposal.<sup>5</sup>

### C. Legal Authority

EPA is proposing this rule amendment under the existing authority provided in CAA section 114. As noted in the Mandatory GHG Reporting Rule, CAA section 114 provides EPA with broad authority to require the information mandated by this proposed rule amendment because such information will inform EPA’s implementation of various CAA provisions (74 FR 66264). Under CAA section 114(a)(1), the Administrator may require emission sources, persons subject to the CAA, manufacturers of emission control or process equipment,

<sup>3</sup> This information would not be required if, upon finalization of this rule amendment, EPA decides to require reporters to list all of their U.S. parent companies and their respective percentages of ownership.

<sup>4</sup> If additional categories are proposed and finalized in 40 CFR part 98, then this rule amendment would apply to those categories as well.

<sup>5</sup> EPA is not implementing subpart JJ of the Mandatory GHG Reporting Rule due to a Congressional restriction prohibiting the expenditure of funds for this purpose.

<sup>2</sup> Because they are not covered under 40 CFR part 98, this rule does not apply to mobile sources.

or persons whom the Administrator believes may have necessary information, to monitor and report emissions and to provide such other information as the Administrator requests for the purposes of carrying out any provision of the CAA (except for a provision of title II with respect to motor vehicles).

As discussed in greater detail in the response to comments for the final Mandatory GHG Reporting Rule, EPA may gather information for a variety of purposes, including for the purpose of assisting in the development of emissions standards under CAA section 111, determining compliance with implementation plans or standards, or more broadly for “carrying out any provision” of the CAA. Section 103 of the CAA authorizes EPA to establish a national research and development program, including nonregulatory approaches and technologies, for the prevention and control of air pollution, including greenhouse gases. The data collected under this proposed rule amendment could inform EPA’s implementation of section 103(g) of the CAA regarding improvements in sector based nonregulatory strategies and technologies for preventing or reducing air pollutants.

In addition, corporate parent and NAICS code data could assist EPA in developing and improving air pollution emission inventories. A more detailed understanding of the sources and operational categories of GHG emissions could lead to improvements in air pollution emissions information that is relied upon to develop effective control methods. The additional information may also inform regulatory strategies being evaluated by EPA.

Given the broad scope of CAA section 114, it is appropriate for EPA to gather the information required by this proposed rule amendment because such information is relevant to EPA’s carrying out a wide variety of CAA provisions.

#### D. Relationship to Other Programs

This section of the preamble discusses other Federal and non-Federal reporting programs that collect information similar to the information that EPA would collect under this proposed rule amendment. Although considerable information on GHG emitting industrial facilities and on suppliers of fuel and industrial gas is already collected by EPA, other Federal and State agencies, and private and nonprofit organizations, no other source of information meets all of the objectives that EPA has set out for this proposed rulemaking. Specifically, no other reporting program meets all of

the following criteria: Identifies each reporter’s highest-level U.S. parent company; identifies each reporter’s primary and all other applicable NAICS codes; includes information on cogeneration; covers all reporters to the Greenhouse Gas Mandatory Reporting Rule; is collected annually; and is available to EPA.

This section of the preamble reviews the data collected under other reporting programs and compares those data with the data that would be collected under this proposed rule amendment. Section II of the preamble (Proposed Rule Amendment and Rationale) compares the specific definitions that EPA is proposing to use for U.S. parent company, NAICS code, and cogeneration unit, for purposes of this rule amendment, with the definitions used by other Federal and non-Federal programs, and explains why we have selected the particular definitions that are used here.

#### 1. EPA and Other Federal Data Collection Programs U.S. Parent Company

Currently, three EPA programs collect parent company information: The Toxics Release Inventory (TRI) under Section 313 of the Emergency Planning and Community Right-to-Know Act; Risk Management Plans under Section 212(r) of the Clean Air Act; and the Inventory Update Rule under the Toxic Substances Control Act (TSCA). Of these three programs, TRI is the only one that requires reporters to submit information on their highest-level U.S. parent company.<sup>6</sup> TRI requires the parent’s name and Dun & Bradstreet Universal Numbering System (DUNS)<sup>7</sup> identifier to be reported annually. EPA estimates that approximately two-thirds of the reporters to the Mandatory GHG Reporting Rule are also required to report to TRI.

Risk Management Plans under CAA section 212(r) are required to include information on “parent company.”<sup>8</sup>

<sup>6</sup> For purposes of TRI Form R, a reporter’s parent company is defined as the highest-level company, located in the United States that directly owns at least 50 percent of the voting stock of the company (Toxic Chemical Release Inventory Reporting Forms and Instructions, EPA 260-R-09-006, October 2009, page 34).

<sup>7</sup> The Data Universal Numbering System (DUNS) is a unique 9-digit numerical identifier used to identify individual business entities in databases maintained by Dun & Bradstreet.

<sup>8</sup> EPA’s guidance for Risk Management Plans states “Your parent company is the corporation or other business entity that owns at least 50 percent of the voting stock of your company. If you are owned by a joint venture, enter the first of your two major owners here. If your company does not have a parent company, leave this data element blank.” Risk Management Plan Guidance, [http://www.epa.gov/emergencies/docs/chem/RMPeSubmit\\_users\\_manual.pdf#page=33](http://www.epa.gov/emergencies/docs/chem/RMPeSubmit_users_manual.pdf#page=33).

However, the parent company reported in a Risk Management Plan is not necessarily the highest-level U.S. parent company. Risk Management Plans are generally submitted only once every five years, but must be updated when a chemical accident occurs at a facility. The Inventory Update Rule under TSCA requires reporting of both the production facility where a specific chemical is produced and the corporate unit responsible for the production or importation of the chemical. However, reporters are not required to identify the highest-level U.S. parent company and the program does not define “company.”

Several EPA programs under the CAA, including the Mandatory GHG Reporting Rule, require reporters to identify the “owner or operator” of each affected facility. In these programs, “owner”<sup>9</sup> refers to the person or legal entity that owns the facility and its productive infrastructure. “Operator”<sup>10</sup> refers to the legal entity that controls day-to-day operations. Under some regulatory and reporting programs, “operator” refers specifically to the plant or site manager. Although in some cases, the owner or operator is also the highest-level U.S. parent company, the information currently collected under the majority of CAA programs is not designed to specifically identify the highest-level U.S. parent company or to provide insight into the corporate ownership structure because that information is not necessary to determine compliance with particular regulatory requirements. EPA does generate information on the highest-level U.S. parent company of electric generating facilities in its Emissions and Generation Resource Integrated Database (eGRID). However, these parent company data are based on ownership information reported to the Energy Information Administration of the U.S. Department of Energy, and on internal EPA research. eGRID contains U.S. parent company data for approximately 5,000 electric generating facilities, of which approximately 2,000

[www.epa.gov/emergencies/docs/chem/RMPeSubmit\\_users\\_manual.pdf#page=33](http://www.epa.gov/emergencies/docs/chem/RMPeSubmit_users_manual.pdf#page=33).

<sup>9</sup> Under 40 CFR 98.6, “owner” means any person who has a legal or equitable title to, has a leasehold interest in, or control of a facility or supplier, except a person whose legal or equitable title to or leasehold interest in the facility or supplier arises solely because the person is a limited partner in a partnership that has legal or equitable title to, has a leasehold interest in, or control of the facility or supplier shall not be considered an “owner” of the facility or supplier.

<sup>10</sup> Under 40 CFR 98.6, “Operator” means any person who operates or supervises a facility or supplier.

are projected to be subject to the Mandatory GHG Reporting Rule.<sup>11</sup>

#### Primary and Other NAICS Codes

In addition to collecting information on reporters' U.S. parent companies, this proposed rule amendment would require facilities and suppliers reporting under the Mandatory GHG Reporting Rule to report their primary and other applicable NAICS codes.<sup>12</sup> This information is useful for benchmarking the environmental performance of companies and facilities relative to others in their sector. Among all EPA programs, only TRI requires reporters to submit primary NAICS codes as well as other relevant NAICS codes. As noted above, EPA estimates that approximately two-thirds of the reporters under the Mandatory GHG Reporting Rule are also required to report to TRI.

EPA does collect NAICS code information through routine compliance reporting in multiple programs, but those data are not complete. The air compliance data contained in the Air Facilities System and the water compliance data contained in the Permit Compliance System both include primary NAICS codes, but not other relevant NAICS codes. Conversely, the compliance data for hazardous waste management contained in the Resource Conservation and Recovery Act database (RCRAInfo) include multiple NAICS codes for facilities with more than one relevant code, but do not identify the primary NAICS code. The Integrated Compliance Information System (ICIS), which houses a variety of enforcement records, also includes NAICS codes, but does not explain how these codes are derived. In addition, none of the compliance databases provide complete coverage of the facilities subject to the Mandatory GHG Reporting Rule.

<sup>11</sup> Of the approximately 3,000 electric generating facilities that are not projected to be subject to the Mandatory GHG Reporting Rule, about half do not combust any fossil fuel (e.g., they utilize hydro, nuclear, wind or solar power) and the other half emit or are expected to emit less than 25,000 metric tons of CO<sub>2</sub>e per year. The approximately 2,000 electric generating facilities that are projected to be subject to the Mandatory GHG Reporting Rule account for 99.7% of the total GHG emissions from all electric generators.

<sup>12</sup> A reporter's primary North American Industrial Classification System (NAICS) code is defined as the six-digit NAICS code that represents the reporter's primary product/activity/service as defined in "North American Industrial Classification System Manual 2007," available from the U.S. Department of Commerce, National Technical Information Service. All other NAICS codes relating to product(s)/activity(s)/service(s) which provide economic profit (but which are not related to the principal source of revenue) are additional NAICS codes.

#### Cogeneration

There are currently no EPA programs that require facilities or suppliers to report the use of cogeneration units. EPA's Combined Heat and Power Partnership, a voluntary program created in 2001, requires that Partners complete a Letter of Intent stating that they agree to provide data on existing combined heat and power (also known as cogeneration) projects and on new project development to help EPA determine climate benefits.<sup>13</sup> However, this is a voluntary program and does not provide coverage of all cogeneration units. The Energy Information Administration does collect information on cogeneration from utility and non-utility power generators greater than 1 megawatt (MW).<sup>14</sup>

#### 2. Non-Federal Data Collection Programs

EPA is aware of a number of State, regional, and international GHG reporting programs that are in place or under development. In developing this proposed rule amendment, EPA reviewed 18 State programs. A summary of these State programs may be found in the docket at EPA-HQ-OAR-2009-0925. EPA also reviewed four other reporting initiatives or protocols: The Climate Registry (TCR), the World Resources Institute (WRI) Greenhouse Gas Protocol, the Regional Greenhouse Gas Initiative (RGGI), and the Western Climate Initiative (WCI). In reviewing these GHG reporting programs, EPA considered whether they contain information on U.S. parent company, NAICS code(s), or cogeneration that is comparable in coverage (of facilities and suppliers), specific information collected, data quality and timeliness, to what would be required under this proposed rule amendment. EPA also considered whether the Agency had access to the data collected under these programs.

In general, EPA found that the data collected under State and other non-Federal data collection programs are designed to serve the specific purposes of those programs and do not appear to meet the objectives of this proposed rule amendment.

#### U.S. Parent Company

EPA identified two State programs—those in California and Delaware—that require reporting of parent company

<sup>13</sup> <http://www.epa.gov/chp>.

<sup>14</sup> EIA-860, Annual Electric Generator Report <http://www.eia.doe.gov/cneaf/electricity/page/eia860.html>; and,

EIA-861, Annual Electric Power Industry Report <http://www.eia.doe.gov/cneaf/electricity/page/eia861.html>.

information. The Climate Registry and WRI Greenhouse Gas Protocol also encourage reporters to list their parent company on a voluntary basis but do not require this information. The Climate Registry and WRI Greenhouse Gas Protocol encourage participating organizations to report their GHG emissions at the highest organizational level (e.g., corporate level), and that the organization account for all emissions sources. RGGI collects information on corporate associations from those organizations that submit bids in its annual GHG allowance auctions. Additional information on the collection of corporate and/or parent company information by California, Delaware, TCR, WCI, and RGGI, as well as on the WRI Greenhouse Gas Protocol, may be found in the docket at EPA-HQ-OAR-2009-0925.

#### Primary and Other NAICS Codes

All of the State programs require reporting of either the NAICS codes or Standard Industrial Classification (SIC) codes. The Western Climate Initiative is the only regional reporting program that requires reporters to submit their NAICS codes as part of their annual report.

#### Cogeneration

Most State reporting programs do not require separate reporting of cogeneration emissions or notification regarding the operation of cogeneration units. RGGI does not require any additional reporting for cogeneration units. WCI requires limited information on type of unit and thermal output.<sup>15</sup> However, WCI is considering including separate reporting requirements for cogeneration units.<sup>17</sup>

Of the State programs that require cogeneration reporting, the California and New Mexico programs have the most extensive reporting requirements. For these programs, reporters with a cogeneration unit must report detailed information on the type of unit; the amount of electricity generated; the amount of thermal energy produced; the amount of electricity and thermal energy used on site, sold to a distributor,

<sup>15</sup> Regional Greenhouse Gas Initiative: Final Model Rule, December 31, 2008 ([http://www.westernclimateinitiative.org/component/remository/Reporting-Committee-Documents/Draft-Essential-Requirements-for-Mandatory-Reporting-Final-Draft-\(May-7&-2009\)/orderby,4/page,1/](http://www.westernclimateinitiative.org/component/remository/Reporting-Committee-Documents/Draft-Essential-Requirements-for-Mandatory-Reporting-Final-Draft-(May-7&-2009)/orderby,4/page,1/)).

<sup>16</sup> Western Climate Initiative: Final Essential Requirements for Mandatory Reporting—July 15, 2009 (<http://www.westernclimateinitiative.org/component/remository/func-startdown/118/>).

<sup>17</sup> Western Climate Initiative: Background Document and Progress Report for Essential Requirements of Mandatory Reporting for the Western Climate Initiative, January 6, 2009 (<http://www.westernclimateinitiative.org/component/remository/func-startdown/74/>).

or provided directly to another company; the total GHG emissions for the unit; the GHG emissions allocated to thermal energy output; and the GHG emissions allocated to electricity generation. The California reporting rule also requires the amount of supplemental fuel consumed by duct burners for heat recovery steam generators.<sup>18 19</sup>

Although reporting of cogeneration is not required by TCR, reporters are encouraged to report emissions at the unit level and to allocate emissions between electric and thermal energy outputs for cogeneration units.<sup>20</sup>

**II. Proposed Rule Amendment and Rationale**

This section of the preamble explains the requirements of the proposed rule amendment as well as the rationale for EPA’s proposal for collecting the additional data elements summarized in Section I.B. of this preamble.

This proposed rule amendment would provide information useful to EPA in carrying out a number of potential nonregulatory and regulatory efforts authorized under the CAA, including informing the development of future climate change strategies. For example, through data collected under this proposed rule amendment, EPA would gain a better understanding of the aggregate GHG emissions of corporations and specific industry sectors.

*A. U.S. Parent Company*

Although the proposed rule language includes the requirements for only one option (i.e., Option 2 below), EPA is proposing two options for collecting U.S. parent company information:

**Option 1**

EPA is proposing to require all facilities and suppliers subject to the Mandatory GHG Reporting Rule (40 CFR part 98) to provide the legal name and physical address of their U.S. parent company. Under this option, a reporter’s U.S. parent company is defined as the highest-level company, located in the United States, and with the largest ownership interest in the reporting entity as of December 31 of the reporting year. The U.S. parent company’s physical address is defined as the street address, city, state and zip code of the U.S. parent company’s physical location.

Each reporter would also be required to indicate one of the following with respect to its ownership status:

- “S”—single ownership (the reporting entity is entirely owned by a single company which is not owned by any other company, e.g., it is not a subsidiary or division of another company).
- “W”—wholly owned (the reporting entity is entirely owned by a single company which is, itself, owned by another company, e.g., it is a subsidiary or division of another company).
- “M”—multiple owners (the reporting entity is owned by more than one company).<sup>21</sup>

**Option 2**

EPA is also proposing that reporters list the names and physical addresses of all of their U.S. parent companies and their respective percentages of ownership. Under Option 2, EPA proposes to define U.S. parent company(s) as the highest-level U.S. company(s) with an ownership interest

in the reporting entity as of December 31 of the reporting year. The physical address of a U.S. parent company is defined as the street address, city, state and zip code of the U.S. parent company’s physical location.

With this option EPA recognizes that some facilities and suppliers may be owned by multiple companies and seeks to gather a more complete picture of the ownership status for each reporter. Facilities and suppliers would be required to report all of their U.S. parent companies regardless of the percentage of their ownership stake. Note that this option would not necessarily ask for all of the owners in an individual reporter’s corporate structure, just the highest-level parent companies. If a facility or supplier has only one parent company, that company should be reported at 100 percent.

Reporting all U.S. parent companies by their percentage of ownership would provide EPA with a more complete picture of a facility’s or supplier’s parent companies rather than having information solely on the parent company with the largest ownership interest. This option would provide EPA with a more complete data set.

EPA is proposing to provide the following instruction to reporters on how to report the U.S. parent company(s) data element under options 1 and 2 as described above:

Each reporter must provide the legal name(s) and physical address(es) of their U.S. parent company(s). Table 2 of this preamble provides examples along with additional instruction to assist with the determination of a reporter’s U.S. parent company(s):

**TABLE 2—PROPOSED INSTRUCTION FOR REPORTERS ON HOW TO REPORT U.S. PARENT COMPANY(S)**

Reporting scenario	How to report U.S. parent company under Option 1	How to report U.S. parent company under Option 2
The reporting entity is entirely owned by a single U.S. company that is not owned by any other company (e.g., it is not a subsidiary or division of another company).	Provide that company’s legal name and physical address as the U.S. parent company. Mark “S” for Single Ownership in the associated box.	Provide that company’s legal name and physical address as the U.S. parent company. Enter 100% as the percent ownership
The reporting entity is entirely owned by a single U.S. company which is, itself, owned by another company (e.g., it is a division or subsidiary of a higher-level company).	Provide the legal name and physical address of the highest-level company in the ownership hierarchy as the U.S. parent company. Mark “W” for Wholly Owned in the associated box.	Provide the legal name and physical address of the highest-level company in the ownership hierarchy as the U.S. parent company. Enter 100% as the percent ownership.
The reporting entity is owned by more than one U.S. company (e.g., company A owns 40%, company B owns 35% and company C owns 25%).	Provide the legal name and physical address of the company with the largest ownership interest as the U.S. parent company. Mark “M” for Multiple Owners.	Provide the legal names and physical addresses of all of the companies with an ownership interest as U.S. parent companies. Enter the percent ownership of each company.

<sup>18</sup> California Code of Regulations, Title 17, Section 95112.

<sup>19</sup> New Mexico Greenhouse Gas Mandatory Emissions Reporting: Emissions Quantification Procedures for 20.2.73 NMAC and 20.2.87 NMAC,

Emissions Year 2009. [http://www.nmenv.state.nm.us/aqb/ghg/documents/NM\\_GHGEl\\_quantif\\_procedures\\_2009.pdf](http://www.nmenv.state.nm.us/aqb/ghg/documents/NM_GHGEl_quantif_procedures_2009.pdf).

<sup>20</sup> The Climate Registry: General Reporting Protocol, Version 1.1, May 2008 (<http://www.theclimateregistry.org>).

<sup>21</sup> This information, “S”, “W” and “M” would not be required under Option 2.

TABLE 2—PROPOSED INSTRUCTION FOR REPORTERS ON HOW TO REPORT U.S. PARENT COMPANY(S)—Continued

Reporting scenario	How to report U.S. parent company under Option 1	How to report U.S. parent company under Option 2
The reporting entity is entirely owned by a foreign company.	Provide the legal name and physical address of the foreign company's highest-level company based in the U.S. as the U.S. parent company. Mark "W" for Wholly Owned in the associated box.	Provide the legal name and physical address of the foreign company's highest-level company based in the U.S. as the U.S. parent company. Enter 100% as the percent ownership.
The reporting entity is partially owned by a foreign company.	(1) If the reporting entity is not entirely owned by the foreign company, but the foreign company has the largest ownership interest, then provide the legal name and physical address of the foreign company's highest-level company based in the U.S. as the U.S. parent company. Mark "M" for Multiple Owners in the associated box. (2) If the foreign company does not have the largest ownership interest in the reporting entity, then provide the name and physical address of the company with the largest ownership interest as the U.S. parent company. Mark "M" for Multiple Owners in the associated box.	Provide the legal name and physical address of the foreign entity's highest-level company based in the U.S., along with the legal names and physical addresses of all the other companies with an ownership interest, as U.S. parent companies. Enter the percent ownership of each company.
The reporting entity is owned by a joint venture or cooperative.	The joint venture or cooperative is its own U.S. parent company. Provide the joint venture or cooperative's legal name and physical address as the U.S. parent company. Mark "W" for Wholly Owned in the associated box.	The joint venture or cooperative is its own U.S. parent company. Provide the joint venture or cooperative's legal name and physical address as the U.S. parent company. Enter 100% as the percent ownership.
The reporting entity is a Federally-owned facility	Enter U.S. Government, and leave the address field and ownership box blank.	Enter U.S. Government, and leave the address and percent ownership fields blank.

EPA may issue additional guidance for reporters after this proposed rule amendment is finalized.

The proposed definition of U.S. parent company used in this proposed rule amendment is similar to that used in the TRI program. However, to improve data quality, EPA is proposing to slightly modify the definition of the U.S. parent company used in the TRI program for the purposes of this proposed rule amendment. EPA is proposing to adjust the ownership criteria used in the TRI definition of U.S. parent company from over 50 percent of voting stock to largest ownership interest in the company for the purpose of this action only. EPA is not proposing to alter the definition used for the TRI program. In reviewing TRI data, EPA has determined that the TRI definition may result in incomplete information in situations where a company has multiple owners, but no one company owns over 50 percent.

In addition, EPA reviewed how corporations and/or parent companies are defined in the WRI Greenhouse Gas Protocol, TCR, and RGGI to determine if some or all of the definitions could be applied to this proposed rule amendment. Neither WRI, TCR, nor RGGI have a definition of U.S. parent company, and after a review of the programs, EPA determined that the definitions of corporation (and similar

terminology depending on the program) are not appropriate for this proposed rule amendment. For a summary of this analysis please see the docket at EPA-HQ-OAR-2009-0925.

#### Rationale

The purpose of collecting the name and physical address of the U.S. parent company(s) on the annual reporting form for the Mandatory GHG Reporting Rule is to assist in aggregating facility-based GHG emissions data to the corporate level. This additional data element would allow EPA to compile more comprehensive information on corporate GHG emissions and conduct a variety of analyses. EPA received some comments on the Mandatory GHG Reporting Rule from various entities supporting the collection of parent company data and emphasizing the importance of being able to aggregate the data to the corporate level. For example, one commenter stated that "Company identification is a critical requirement for \* \* \* understanding the impact, risks, and opportunities \* \* \* due to climate change."<sup>22</sup> Another commenter stated, "That the EPA [should] add a requirement that facilities subject to reporting under the proposed rule clearly identify their

<sup>22</sup> Comment Docket ID No. EPA-HQ-OAR-2008-0508-0415.1.

parent company and the proportion of the facility the parent/holding company owns. Without this information it is very difficult to consolidate facility level data to company level data

\* \* \*<sup>23</sup> 23

EPA recognizes that data aggregated at the corporate level would likely be incomplete because the Mandatory GHG Reporting Rule requires reporting of only those emissions for which calculation methods are provided in the rule and, for certain source categories, requires reporting only from those facilities and suppliers whose emissions are above specified thresholds. In other words, corporate-level data might be incomplete, because 40 CFR part 98 does not cover all GHG emissions from every source, and some facilities and operations within a company may not be required to report their GHG emissions.

However, collecting information on U.S. parent company(s) would augment and complement the facility-level GHG emission data currently collected under the Mandatory GHG Reporting Rule and would not be repetitive of information already collected in the rule. In addition, the Mandatory GHG Reporting Rule covers approximately 85 percent of U.S. GHG emissions, therefore the data

<sup>23</sup> Comment Docket ID No. EPA-HQ-OAR-2008-0508-0984.1.

collected under this proposed rule amendment would be useful.

Under Option 1, each reporter would report the legal name and physical address of their highest-level U.S. parent company and would select from a list of three possible ownership structures, selecting the type of ownership that best describes the ownership structure for the facility or supplier. Using this approach, EPA would collect information on whether a facility or supplier is owned by a single entity or multiple entities. Option 1 would enable EPA to collect additional data on the ownership structure of a facility or supplier, which would allow (with additional research) a more complete picture of a facility's or supplier's GHG emissions among U.S. parent companies, without requiring facilities to list all of their owners.

Under Option 2, facilities and suppliers would report the legal names and physical addresses of all their U.S. parent companies together with each U.S. parent company's percentage of ownership. The advantage of this option is that it would provide EPA with a more complete picture of a facility's or supplier's parent companies rather than having information on solely the parent company with the largest ownership interest.

#### Other Data Element Considered

EPA considered adding a requirement to this proposed rule amendment to report a numeric corporate identifier derived from a database that would verify the facility-parent company linkage. EPA considered both private and public sources of facility-parent company identifiers including the following: Dun & Bradstreet Data Universal Numbering System (DUNS), Securities and Exchange Commission (SEC) Central Index Key, Stock Tickers, Committee on Uniform Security Identification Procedures (CUSIP), Federal Employee Identification Numbers (FEIN), National Institutes of Health (NIH) Electronic Research Administration, and LexisNexis. For a summary of these corporate identifiers please see the docket at EPA-HQ-OAR-2009-0925. EPA decided not to propose a numeric identifier because none of the options considered meet the Agency's data needs. The privately held databases such as Dun & Bradstreet DUNS and CUSIP require a licensing agreement with the Agency, which potentially restricts the use of the data. In addition, users outside of EPA would need to purchase a license to use the numeric identifier data element. Several of the options considered, such as stock tickers, CUSIP, SEC central index key,

and LexisNexis only cover public corporations. The Mandatory GHG Reporting Rule covers both private and public corporations. In accordance with Internal Revenue Code 6103, FEINs can only be collected and released on a voluntary basis and EPA would have no method for evaluating the quality of the information. Accordingly we are not proposing a corporate numeric identifier.

#### B. NAICS Code

In addition to collecting information on each reporter's U.S. parent company(s), this proposed rule amendment would require each facility or supplier reporting under the Mandatory GHG Reporting Rule to report its primary NAICS code and any other NAICS codes applicable to its facility. This information is useful because it would provide an additional data element that can assist EPA to further aggregate and analyze the data collected under the Mandatory GHG Reporting Rule at the sector level.

For the purposes of this proposed rule amendment, EPA is proposing to define a reporter's primary North American Industry Classification System (NAICS) code as the six-digit code that represents the reporter's primary product/activity/service at the facility, as defined in "North American Industry Classification System Manual 2007," available from the U.S. Department of Commerce, National Technical Information Service. The primary NAICS code is the principal source of revenue. EPA is proposing to define additional NAICS codes as those codes that correspond to product(s)/activity(s)/service(s) that provide economic profit, but that are not related to the principal source of revenue. EPA considered using three and four digit NAICS codes, but chose the six digit NAICS code(s) because they provide more detailed information. In addition, use of the six digit NAICS codes is consistent with TRI and other EPA databases. Therefore, the six digit NAICS codes allow data to be compared across EPA data sets.

EPA is proposing the following instructions to reporters regarding the designation of NAICS code(s):

Enter the six-digit North American Industry Classification System (NAICS) code that most accurately describes the primary product/activity/service at the facility, based on value of shipments. A facility may consist of two or more distinct and separate economic units that may have different NAICS codes. Provide all other NAICS codes relating to product(s)/activity(s)/service(s) that provide economic profit, but that are not related to the principal source of

revenue for your facility, in order of largest revenue to smallest. For additional guidance on how to determine the proper NAICS code(s) go to <http://www.census.gov/eos/www/naics/>.

Federal facilities should report the NAICS code that most closely represents the activities taking place at the site. For example, a federally-owned, fossil-fuel fired electrical power plant would be classified as 221112—electric power generation, fossil fuels.

The proposed definition and instructions for reporting NAICS codes are consistent with those used by TRI and other EPA data collections. In addition, the definition and methodology for determining the primary NAICS code for a facility are consistent with the definition and methodology used by the Bureau of the Census and other government agencies.

#### C. Cogeneration

EPA is proposing to require that reporters subject to the Mandatory GHG Reporting Rule indicate (by checking yes or no) whether some or all of the GHG emissions they report are from a cogeneration (also known as combined heat and power (CHP)) unit located at the facility. For the purposes of this proposal, a cogeneration unit is defined as a unit that produces electric energy and useful thermal energy for industrial, commercial, or heating and cooling purposes, through the sequential [or simultaneous] use of the original fuel energy.<sup>24</sup> EPA based this proposed definition of cogeneration on the Agency's Acid Rain Program to promote consistency and comparable data collection across EPA regulatory programs.

Cogeneration units generate both electricity and thermal energy from a single fuel source. Because less fuel is burned to produce each unit of energy output, cogeneration is more efficient than separate generation of electricity and thermal energy to meet the facility's loads, thereby reducing air pollution and GHG emissions. Additional efficiencies and emissions reductions are gained by the reduction or elimination of transmission and distribution line losses associated with transporting central station generation.

Facilities with cogeneration units may increase their on-site GHG emissions when compared to similar facilities purchasing central-station electricity and generating separate thermal energy on-site. This can occur because the facility is using cogeneration to efficiently generate electric and thermal

<sup>24</sup> 40 CFR 72.2.



energy for its own use and in some cases, selling excess power to the grid. While more fuel is being burned on site, it is displacing purchased central electric generation off-site, as well as the stand-alone generation of on site thermal energy, and the associated GHG emissions. Even in these cases, cogeneration units can result in net reductions of GHG emissions compared to separate power and heat generation.

Information on the types and characteristics of facilities that employ cogeneration technologies and the performance of cogeneration units could be important to future development of greenhouse gas mitigation strategies. EPA recognizes that the information required under this proposal may not, by itself, be sufficient to determine the actual quantity of GHG emissions occurring from cogeneration units at individual reporting facilities, companies or NAICS sectors. It would also not provide the degree to which those cogeneration emissions displace fossil fuel or other fuel source emissions from central station generation plants. However, the proposed information would allow EPA and States to identify facilities using cogeneration. In addition, EPA recognizes that not all emissions at individual reporting facilities with cogeneration are attributable to the cogeneration unit(s). As such, it should not be inferred that all emissions at an individual reporting facility with cogeneration are attributed to the cogeneration unit(s).

This information is not currently collected by EPA and only limited data are available from other Federal and State programs. EPA's Combined Heat and Power Partnership,<sup>25</sup> a voluntary program created in 2001, requires that Partners complete a Letter of Intent that states that Partner agrees to provide data on existing Combined Heat and Power (also known as cogeneration) projects and new project development to help EPA determine climate benefits. Because the Combined Heat and Power Partnership is a voluntary program, it is not a comprehensive source for this data. The data available from the Energy Information Administration of the U.S. Department of Energy is limited to utility and non-utility power generators greater than 1 MW.<sup>26</sup> By requiring all facilities subject to the Mandatory GHG Reporting Rule to report the operation of cogeneration units at their facility, EPA would significantly broaden its

knowledge regarding the current implementation of cogeneration in all sectors of the economy. By collecting this information annually, EPA would also be able to track changes in the use of this technology in individual sectors and across the entire U.S. economy.

The burden of reporting this additional information to EPA would be minimal, because reporters are already required to submit annual reports and should readily know (or could quickly determine), whether there is a cogeneration unit at the facility.

#### *D. Frequency of Reporting*

EPA is proposing to require that facilities and suppliers subject to the Mandatory GHG Reporting Rule submit information regarding their U.S. parent company, their NAICS code(s), and whether or not any of their reported emissions are from a cogeneration unit, on an annual basis, as part of their annual reports. EPA is further proposing to require that regulated entities report this information as it exists on December 31 of the reporting year, to be consistent with other EPA reporting programs, such as TRI.

EPA recognizes that a reporter's U.S. parent company and/or NAICS code(s) may change during the course of the year. In some instances this information may even change multiple times throughout the year. However, EPA determined that if it were to require reporters to update these data elements more than once a year, such as every time there is a change in a reporter's U.S. parent company, or in its primary product, activity, or service, the burden of this information collection would be greater than the benefit of obtaining that additional information. Therefore, EPA is proposing that reporters only be required to report on these data elements once a year, as part of their regularly scheduled annual reports.

#### *E. Applicability*

EPA proposes that all facilities and suppliers subject to the Mandatory GHG Reporting Rule be required to report the additional information proposed in this amendment. The proposed definitions of "U.S. parent company," "primary and other applicable NAICS code(s)," and "cogeneration unit" would apply only to this proposal to add these data elements to the list of items that must be reported under 40 CFR 98.3(c) of subpart A. The proposed definitions would not change the applicability of any subpart in the promulgated Mandatory GHG Reporting Rule (40 CFR part 98). They also would not change the level of reporting or who is required to submit reports.

The proposed definition of U.S. parent company would not override or change the meaning of similar terms that refer to company level or corporate level requirements. Many subparts (including subparts A, C, G, K, P, Q, R, Y, GG, and HH) use the term "company records," which is defined in subpart A. The term "corporate level" is used in subpart MM to require importers and exporters to report at the corporate level, rather than the facility level. "Corporate documents" are referred to in subpart A. None of these terms, definitions, or associated requirements would be affected by the proposed definition of "U.S. parent company."

In addition, the proposed definition of U.S. parent company would also not affect the definitions of "importer" and "exporter" in subpart A, or the applicability of the suppliers source categories (40 CFR part 98). The proposed definition also does not affect the term "local distribution company" as described in 40 CFR part 98, subpart NN. These terms retain their meaning in the Mandatory GHG Reporting Rule.

#### *F. Request for Comment*

EPA requests comments on its proposal to require reporters under the Mandatory GHG Reporting Rule (40 CFR part 98) to provide information regarding their U.S. parent company, their NAICS code(s), and whether any of their reported emissions are from a cogeneration unit.

While EPA is interested in receiving comments on the proposal in its entirety, EPA is particularly interested in receiving comments on the following issues. First, EPA is interested in receiving comments on using numeric corporate identifiers and whether there are additional numeric identifiers the Agency should consider for this proposed rule amendment.

Second, EPA solicits comments on whether it should be mandatory or voluntary for reporters to indicate whether or not any of their emissions arise from the operation of cogeneration units. EPA is interested in receiving comments, data, and analysis on both the option of mandating the disclosure of this information, and the option of making the reporting of this information voluntary.

Third, EPA solicits comments on whether facilities and suppliers owned by foreign companies always have a U.S.-based parent company as defined in today's proposal. EPA is interested in receiving comments, data and analysis on whether there may be instances where foreign-owned facilities and suppliers do not have a U.S. parent company. Where commenters believe

<sup>25</sup> <http://www.epa.gov/chp>.

<sup>26</sup> EIA-860, Annual Electric Generator Report <http://www.eia.doe.gov/cneaf/electricity/page/eia860.html>; and, EIA-861, Annual Electric Power Industry Report <http://www.eia.doe.gov/cneaf/electricity/page/eia861.html>.

that such instances may occur, EPA seeks suggestions on how to address this issue.

Lastly, EPA solicits comments regarding the utility and burden of updating the additional information required by this proposed rule amendment on a more frequent basis than the proposed annual reporting. For example, should reporters be required to update the information whenever changes occur with respect to a reporter's U.S. parent company or NAICS code(s)?

While this notice seeks comments on EPA's proposal to collect information on the U.S. parent company(s) and NAICS code(s) of facilities and suppliers required to report under the Mandatory GHG Reporting Rule, and on whether any of the emissions reported by these entities are from cogeneration units, EPA is not reopening the final Mandatory GHG Reporting Rule, and is seeking no further comment on the Mandatory GHG Reporting Rule.

### III. Economic Impacts of the Proposed Rule Amendment

This section of the preamble examines the costs and economic impacts of the proposed rulemaking and the estimated economic impacts of the rule on affected entities, including estimated impacts on small entities. Complete detail on the economic impacts of the proposed rule can be found in the text of the Economic Impact Analysis (EIA) (EPA-HQ-OAR-2009-0925).

#### A. How were compliance costs estimated?

##### 1. Summary of Method Used To Estimate Compliance Costs

The cost analysis estimates the incremental contributions to total reporting burden expected under the Mandatory GHG Reporting Rule and compliance costs associated with reporting the data elements described above. EPA estimated compliance costs based on the time reporters spend meeting the proposed requirements and the associated labor wage rates. EPA's estimated costs of compliance are discussed below and in greater detail in Section 4 of the Economic Impact Analysis (EIA) (EPA-HQ-OAR-2009-0925).

**Labor Costs.** All of the reporting costs include the time of managers, lawyers, and technical staff in both the private sector and the public sector. To reflect that both management and technical staff will be involved in reporting the above data elements, an overall blended wage rate was developed based on estimates from the Toxics Release

Inventory (TRI) program for similar data element reporting at similar facilities. Management staff is estimated to be involved in approximately 0.8 percent of the reporting, while technical staff is likely to be needed for the remaining 99.2 percent. Thus, the blended wage rate used in this analysis is \$60.22 per hour. The amount of time required to provide the required information is estimated to be, under Option 1, 80 minutes per facility in the first year and 40 minutes per facility in subsequent years. Under Option 2, the amount of time required for facilities with one owner is 80 minutes per facility in the first year and 40 minutes per facility in subsequent years; time estimated for facilities with more than one owner is 125 minutes per facility in the first year and 85 minutes per facility in subsequent years.

**Cost basis.** The cost analysis is based on facilities and suppliers currently subject to the Mandatory GHG Reporting Rule and does not account for those expected to be added to the program through upcoming supplemental proposals. The methods and assumptions used to estimate the compliance costs for facilities and suppliers currently subject to the rule would likewise apply to those that may be added to the Mandatory GHG Reporting Rule program in the future. The addition of new facilities or suppliers would increase the total compliance costs in proportion to the increase of the reporting universe. Accordingly, EPA does not expect the burden for newly added industries to change the conclusions of this economic analysis.

#### B. What are the costs of the rule?

##### 1. Summary of Costs

As shown in Table 3 of this preamble, the total national cost under Option 1 is approximately \$877,000 in the first year and about \$436,000 in subsequent years (all estimates are in \$2006). These estimates include a public sector burden estimate of \$85,000 in the first year and \$40,000 in subsequent years for program implementation and verification activities.

Total national cost under Option 2 is approximately \$889,000 in the first year and about \$443,000 in subsequent years (all estimates are in \$2006). Option 2 costs include a public sector burden estimate of \$90,000 in the first year and \$40,000 in subsequent years for program implementation and verification activities. See Table 3 in the next section for a summary of the costs.

#### C. What are the economic impacts of the rule?

##### 1. Summary of Economic Impacts

EPA prepared an economic analysis to evaluate the impacts of the proposed rule. The analysis estimates the private direct compliance costs per facility and provides a national burden estimate, which includes public costs associated with program implementation and verification activities. Reporting costs were estimated to be less than \$100 per facility. As a result, the rule is unlikely to result in significant changes in firms' production decisions or economic choices.

#### D. What Are the Impacts of the Rule on Small Businesses?

##### 1. Summary of Impacts on Small Businesses

As required by the Regulatory Flexibility Act (RFA) and the Small Business Regulatory Enforcement Fairness Act (SBREFA), EPA assessed the potential impacts of the rule on small entities (small businesses, governments, and non-profit organizations). (See Section VI.C of this preamble for definitions of small entities.)

EPA conducted a screening assessment comparing compliance costs for affected industry sectors to industry-specific receipts data for establishments owned by small businesses. This ratio constitutes a "sales" test that computes the annualized compliance costs of this rule as a percentage of sales and determines whether the ratio exceeds some level (e.g., 1 percent or 3 percent).

The average ratio of annualized reporting program costs to revenues would be less than 0.01%. As a result, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities.

### IV. Statutory and Executive Order Reviews

#### A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

Although this is not a significant economic rule, EPA prepared an analysis of the potential costs and benefits associated with the proposed rule amendment to provide insights on the potential effects. This analysis is contained in the Economic Impact Analysis. A copy of the analysis is available in the docket (EPA-HQ-OAR-

2009–0925) for this action and is briefly summarized here. In the economic analysis, EPA has identified the proposed rule's two alternative options

as well as a summary of the compliance burden and the costs. The cost analysis, presented in Section III of this preamble, estimates the total annualized

burden, which is presented in Table 3 of this preamble:

TABLE 3—COST SUMMARY FOR TWO ALTERNATIVES UNDER THE PROPOSED RULEMAKING

Cost	Option 1 (in thousands, \$2006)		Option 2 (in thousands, \$2006)	
	Year 1	Subsequent years	Year 1	Subsequent years
National compliance .....	\$792	\$396	\$799	\$403
Public .....	85	40	90	40
Total .....	877	436	889	443

Note: Numbers may not add due to rounding.

Overall, EPA has concluded that the costs of the proposal to collect U.S. parent company(s), NAICS codes, and cogeneration information as part of the Mandatory GHG Reporting Rule are outweighed by the potential benefits of more comprehensive information about GHG emissions.

#### B. Paperwork Reduction Act

The information collection requirements for this proposed rule amendment has been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document was previously prepared for the final Mandatory GHG Reporting Rule and was assigned EPA ICR number 2300.03. The information collection requirements of this proposed rule amendment to the Mandatory GHG Reporting Rule are documented in an additional ICR document, which was assigned EPA ICR number 2374.01.

The collection of additional information from facilities and suppliers reporting under the Mandatory GHG Reporting Rule identifying U.S. parent company(s), primary and other applicable NAICS codes, and an indication of whether or not the reported emissions include any emissions from a cogeneration unit, would assist EPA in aggregating facility level data to the corporate and sector levels. In addition, users of the data could compare emissions among facilities with and without cogeneration. This proposed rule amendment would provide information useful for a variety of policies, and potential nonregulatory and regulatory efforts, including informing the development of future climate change regulatory strategies. For example, through data collected under this proposed rule amendment, EPA would gain a better understanding of the aggregate GHG emissions of

corporations and specific industry sectors.

This information collection is mandatory and will be carried out under CAA section 114. Information identified and marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. However, emissions information collected under CAA section 114 cannot be claimed as CBI and will be made public.

The projected average annual cost and hour burden for non-Federal respondents is about \$528,000 and 8,800 hours under option 1 and \$535,000 and 8,900 hours under option 2. The estimated average annual burden per response is 0.15 hour per either option; the proposed frequency of response is annual for all respondents that must comply with the proposed rule amendment; and the estimated average number of likely respondents per year is 9,868 under either option. The cost burden to respondents resulting from the collection of information includes the total capital cost annualized over the equipment's expected useful life (averaging \$ 0), a total operation and maintenance component (averaging \$0 per year), and a labor cost component (averaging \$528,000 per year under Option 1 and \$535,000 under Option 2). Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this proposed rule amendment. Submit any comments related to the ICR to EPA and OMB. See **ADDRESSES** section at the beginning of

this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after April 12, 2010, a comment to OMB is best assured of having its full effect if OMB receives it by May 12, 2010. The final rule amendment will respond to any OMB or public comments on the information collection requirements contained in this proposal.

#### C. Regulatory Flexibility Act (RFA)

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

For purposes of assessing the impacts of the proposed rule amendment on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of the proposed rule amendment on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The additional per-entity costs under

each option are substantially smaller (option 1: Less than \$81 in year 1 and \$41 in subsequent years) (option 2: Less than \$81 in year 1 and \$41 in subsequent years) than the burden for the overall rule. The costs are therefore not enough to constitute a significant economic impact on a substantial number of small entities. The small entities directly regulated by the proposed rule amendment include small businesses across all sectors encompassed by the rule, small governmental jurisdictions and small non-profits. We have determined that some small businesses will be affected because their production processes emit GHGs that must be reported, or because they have stationary combustion units on site that emit GHGs that must be reported. Small governments and small non-profits are generally affected because they have regulated landfills or stationary combustion units on site, or because they own a local distribution company subject to 40 CFR part 98, subpart NN (natural gas suppliers).

At promulgation of the final Mandatory GHG Reporting rule, EPA examined the impact on small entities (74 FR 56369). In addition, EPA described the steps the EPA took to reduce the impact of the Mandatory GHG Reporting Rule on small entities (74 FR 56369).

EPA continues to be interested in the potential impacts of the proposed rule amendment on small entities and welcomes comments on issues related to such impacts.

#### *D. Unfunded Mandates Reform Act (UMRA)*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, requires Federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Federal agencies must also develop a plan to provide notice to small governments that might be significantly or uniquely affected by any regulatory requirements. The plan must enable officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and must inform, educate, and advise small governments on compliance with the regulatory requirements.

The proposed rule amendment does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. As shown

in the Economic Impact Analysis, EPA estimated the several national cost estimates and found annual expenditures were below \$100 million threshold (\$400,000 to \$1.5 million, including the sensitivity analysis.) Thus, the proposed rule amendment is not subject to the requirements of sections 202 or 205 of UMRA.

The proposed rule amendment 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 proposed new rule requires facilities and suppliers already subject to the Mandatory GHG Reporting Rule to provide additional data in each annual GHG report, and the additional data elements required are the same for all reporters (private and public). In addition, EPA's small entity analysis shows the average ratio of annualized reporting program costs to revenues would be less than 0.01 percent.

The proposed rule amendment to the Mandatory GHG Reporting Rule applies directly to reporters that supply fuel or industrial gases that when used emit greenhouse gases, and to reporters that directly emit greenhouses gases. The proposed rule amendment does not apply to governmental entities unless the government entity owns a facility that directly emits greenhouse gases above threshold levels such as a landfill or large stationary combustion source. In addition, the proposed rule amendment does not impose any implementation responsibilities on State, local, or Tribal governments and it is not expected to increase the cost of existing regulatory programs managed by those governments. Thus, the impacts on governments affected by the proposed rule amendment are expected to be minimal.

#### *E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in EO 13132. However, for a more detailed discussion about how the Mandatory GHG Reporting Rule relates to existing State programs, please see Section II of the preamble to the final Mandatory GHG Reporting Rule (74 FR 56266).

This proposed rule amendment applies directly to reporters that supply fuel or chemicals that when used emit greenhouse gases or facilities that directly emit greenhouses gases. It does

not apply to governmental entities unless the government entity owns a facility that directly emits greenhouse gases above threshold levels such as a landfill or large stationary combustion source, so relatively few government facilities would be affected. This proposed rule amendment also does not limit the power of States or localities to collect GHG data and/or regulate GHG emissions. Thus, EO 13132 does not apply to this action.

In the spirit of EO 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comments on this proposed action from State and local officials.

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

This proposed rule amendment is not expected to have Tribal implications, as specified in EO 13175 (65 FR 67249, November 9, 2000). The proposed amendment applies directly to entities that supply fuel or chemicals that when used emit greenhouse gases or facilities that directly emit greenhouses gases. This proposed rule amendment does not pose significant costs on either a per-entity or national basis; few, if any, facilities or suppliers that are expected to be affected by the proposed rule amendment are anticipated to be owned by Tribal governments. This proposed rule amendment also does not limit the power of Tribes to collect GHG data and/or regulate GHG emissions. Thus, EO 13175 does not apply to the proposed amendment.

Although EO 13175 does not apply to this proposed rule amendment, EPA sought opportunities to provide information to Tribal governments and representatives during development of the rule amendment, as documented in the preamble to the promulgated Mandatory GHG Reporting Rule (74 FR 56371).

EPA specifically solicits additional comment on this proposed rule amendment from Tribal officials.

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

EPA interprets EO 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 EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This action is not subject to EO 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under EO 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 (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rule amendment does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

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

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

**List of Subjects in 40 CFR Part 98**

Environmental protection, Administrative practice and procedure, Greenhouse gases, Incorporation by

reference, Suppliers, Reporting and recordkeeping requirements.

Dated: March 22, 2010.

**Lisa P. Jackson**,  
Administrator.

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

**PART 98—[AMENDED]**

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

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

**Subpart A—[Amended]**

2. Section 98.3 is amended as follows:
- By adding paragraph (c)(4)(v).
  - By adding paragraph (c)(10).
  - By adding paragraph (c)(11).

**§ 98.3 What are the general monitoring, reporting, recordkeeping and verification requirements of this part?**

\* \* \* \* \*

(c) \* \* \*

(4) \* \* \*

(v) Indicate whether reported emissions from the facility include emissions from a cogeneration unit (yes or no).

\* \* \* \* \*

(10) NAICS code(s) that apply to the facility or supplier.

(i) Primary NAICS code. Report the NAICS code(s) that most accurately describes the primary product/activity/service at the facility, based on revenue. The primary product/activity/service at the facility provides economic profit and is the principal source of revenue.

(ii) Additional NAICS code(s). Report additional NAICS codes that correspond to product(s)/activity(s)/service(s) at the facility that provide economic profit, but that are not related to the principal source of revenue. If more than one additional NAICS code applies, list the additional NAICS codes in the order of the largest revenue to the smallest.

(11) Legal name(s) and physical address(es) of the highest-level United States parent company(s) and the percentage of ownership interest for each listed parent company as of December 31 of the reporting year.

(i) For reporting the United States parent company(s) and their percentage(s) of ownership interest, follow these instructions:

(A) If the reporting entity is entirely owned by a single United States company that is not owned by another company, provide that company's legal name and physical address as the United States parent company and report 100 percent ownership.

(B) If the reporting entity is entirely owned by a single United States company that is, itself, owned by another company (e.g., it is a division or subsidiary of a higher-level company), provide the legal name and physical address of the highest-level company in the ownership hierarchy as the United States parent company and report 100 percent ownership.

(C) If the reporting entity is owned by more than one United States company (e.g., company A owns 40 percent, company B owns 35 percent, and company C owns 25 percent), provide the legal names and physical addresses of all the companies with an ownership interest as the United States parent companies and report the percent ownership of each.

(D) If the reporting entity is owned by a joint venture or a cooperative, the joint venture or cooperative is its own U.S. parent company. Provide the legal name and physical address of the joint venture or cooperative as the United States parent company, and report 100 percent ownership by the joint venture or cooperative.

(E) If the reporting entity is entirely owned by a foreign company, provide the legal name and physical address of the foreign company's highest-level company based in the United States as the United States parent company, and report 100 percent ownership.

(F) If the reporting entity is partially owned by a foreign company, provide the legal name and physical address of the foreign company's highest-level company based in the United States, along with the legal names and physical addresses of all the other companies with an ownership interest, as United States parent companies, and report the percent ownership of each of these companies.

(G) If you are reporting for a federally owned facility, report "U.S. Government" and do not report physical address or percent ownership.

(ii) [Reserved]

\* \* \* \* \*

3. Section 98.6 is amended by adding definitions of "Cogeneration unit", "North American Industry Classification System (NAICS) code(s)", "Physical address", and "United States parent company(s)" in alphabetical order to read as follows:

**§ 98.6 Definitions.**

\* \* \* \* \*

*Cogeneration unit* means a unit that produces electrical energy and useful thermal energy for industrial, commercial, or heating or cooling purposes, through the sequential or

simultaneous use of the original fuel energy.

\* \* \* \* \*

*North American Industry Classification System (NAICS) code(s)* means the six-digit code(s) that represents the product(s)/activity(s)/service(s) at a facility or supplier as defined in “North American Industrial Classification System Manual 2007,”

available from the U.S. Department of Commerce, National Technical Information Service.

\* \* \* \* \*

*Physical address*, with respect to a United States parent company as defined in this section, means the street address, city, State and zip code of that company’s physical location.

\* \* \* \* \*

*United States parent company(s)* mean the highest-level United States company(s) with an ownership interest in the reporting entity as of December 31 of the reporting year.

\* \* \* \* \*

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