ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 2

[EPA–HQ–OAR–2009–0924; FRL–9179–4]

RIN 2060–AQ04

Proposed Confidentiality Determinations for Data Required Under the Mandatory Greenhouse Gas Reporting Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental proposal.

SUMMARY: This action supplements EPA's July 7, 2010 "Proposed Confidentiality Determinations for Data Required under the Mandatory Greenhouse Gas Reporting Rule and Proposed Amendment to Special Rules Governing Certain Information Obtained under the Clean Air Act". In this action, EPA is proposing confidentiality determinations for the data elements proposed to be added or revised in the "Proposed Rulemaking: Revision of Certain Provisions of the Mandatory Reporting of Greenhouse Gases Rule," also signed today. This action addresses only the confidentiality of the new and revised data elements proposed in the concurrent notice.

DATES: *Comments.* Comments must be received on or before August 26, 2010, or by September 10, 2010 if a public hearing is held (*see* below).

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 August 3, 2010. Upon such request, EPA will hold the hearing on August 11, 2010 in the Washington, DC area starting at 9 a.m., local time. EPA will provide further information about the hearing on its Web page if a hearing is requested.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2009–0924, by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the online instructions for submitting comments.

E-mail: GHGReportingCBI@epa.gov.

Fax: (202) 566–1741.

Mail: Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 6102T, Attention Docket ID No. EPA–HQ–OAR–2009–0924, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Hand Delivery: EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2009–0924. 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 GENERAL 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.* For technical information, contact the Greenhouse Gas Reporting Rule Hotline at: *http://www.epa.gov/climatechange/emissions/ghgrule_contactus.htm.* Alternatively, contact Carole Cook at 202–343–9263.

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

Regulated Entities. This supplemental action affects entities required to submit annual greenhouse gas (GHG) reports under 40 CFR Part 98. The Administrator determined that Part 98 is subject to the provisions of Clean Air Act (CAA) section 307(d). *See* CAA section 307(d)(1)(V) (the provisions of CAA section 307(d) apply to "such other actions as the Administrator may determine"). The Mandatory Greenhouse Gas Reporting Rule and this action affect fuel and chemicals suppliers, and direct emitters of GHGs. Affected categories and entities include those listed in Table 1 of the preamble to the "Proposed Confidentiality Determinations for Data Required under the Mandatory Greenhouse Gas Reporting Rule and Proposed Amendment to Special Rules Governing Certain Information Obtained under the Clean Air Act" (75 FR 39094).

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

CAA Clean Air Act
CBI confidential business information
CFR Code of Federal Regulations
EPA U.S. Environmental Protection Agency
GHG greenhouse gas
U.S. United States

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I. General Information

A. Background

Under Part 98 of the final Mandatory Greenhouse Gas Reporting Rule (74 FR 56259, October 30, 2009, and subsequent amendments), hereinafter referred to as Part 98, EPA will collect data from facilities that directly emit GHGs from their processes or stationary fuel combustion sources ("direct emitters") as well as upstream suppliers of fuels and industrial GHGs ("suppliers").

Following the publication of the proposed Mandatory GHG Reporting Rule on April 10, 2009 (74 FR 16448), EPA received comments both supporting and opposing the public release of data collected under Part 98. Industry commenters generally expressed concern that EPA would disclose reported data that industry considers trade secrets or confidential business information, hereinafter collectively referred to as CBI. Other commenters favored disclosure of information, and some argued that all of the information gathered under Part 98 should be "emission data" and hence not entitled to confidential treatment.

In response to these comments, EPA initiated a rulemaking to establish the confidentiality status of Part 98 data elements and procedures for handling Part 98 data. On July 7, 2010, EPA published the "Proposed Confidentiality Determinations for Data Required under the Mandatory Greenhouse Gas Reporting Rule and Proposed Amendment to Special Rules Governing Certain Information Obtained under the Clean Air Act" (75 FR 39094), herinafter referred to as the July 7, 2010 confidentiality proposal.

Concurrent to today's action, EPA signed the "Proposed Rulemaking: Revision of Certain Provisions of the Mandatory Reporting of Greenhouse Gases Rule" herinafter referred to as the Part 98 amendment proposal. The Part 98 Amendments proposal, if finalized, would result in changes to certain part 98 data elements. Because the July 7, 2010 confidentiality proposal was issued before the Part 98 amendment proposal, it did not address the revised and new data elements in the amendments proposal. This action contains EPA's proposed confidentiality determination for the new and revised data elements included in the Part 98 amendment proposal.

B. Proposed Changes to the Part 98 Reporting Requirements

As mentioned above, EPA proposed amendments to Part 98 that, if finalized, would make clarifying and technical changes to reporting requirements. Proposed revisions include allowing greater flexibility or simplified calculation methods for certain sources, amending data reporting requirements and definitions, and providing technical corrections, clarifying and other amendments. The proposed amendments include addition of new reporting requirements and deletion of certain existing reporting requirements.

The proposed amendments include changes to the data elements required by 40 CFR part 98, subpart A and the following Part 98 subparts promulgated in 2009:

- Subpart C, General Stationary Fuel Combustion Sources;
- Subpart D, Electricity Generation;
- Subpart F, Aluminum Production;
- Subpart G, Ammonia Manufacturing;
- Subpart V, Nitric Acid Production;
- Subpart X, Petrochemical Production;
- Subpart Y, Petrochemical Production;
- Subpart OO, Suppliers of Industrial Greenhouse Gases; and
- Subpart PP, Suppliers of Carbon Dioxide.

After consideration of public comment, EPA intends to issue a final action.

C. Proposed Confidentiality Determinations for the Proposed New and Revised Data Elements

In the July 7, 2010 confidentiality proposal, EPA described the methodology and rationale for the proposed confidentiality determinations. To make the proposed determinations, EPA first grouped the Part 98 data elements into 22 data categories (11 direct emitter data categories and 11 supplier data categories) and then proposed confidentiality determinations on a category basis. Exceptions to this approach were made for three of the supplier data categories, where confidentiality determinations were made for individual data elements within the category rather than by category. For the list of all 22 data categories and brief descriptions of the data elements within each category, please *see* Section II.C (for direct emitter data categories) and Section II.D (for supplier data categories) of the July 7, 2010 confidentiality proposal.

As discussed in Section I.B of today's supplemental proposal, in the Part 98 amendment proposal, EPA proposed amending part 98 to add, delete and revise certain data elements. Today's action contains EPA's proposed confidentiality determination for the proposed new and revised data elements.

Consistent with the approach set forth in the July 7, 2010 confidentiality proposal, each new or revised data element is assigned to one of the 22 data categories based on the type and characteristics of the data element. Because the scopes of the existing data categories are sufficient to cover the proposed new data elements, no new data category is proposed. For a list of the new and revised data elements addressed in the Part 98 amendments proposal and their assigned data categories, please *see* Memorandum "Data Category Assignments for the Proposed Revisions to the Part 98 Reporting Requirements" in Docket EPA–HQ–OAR–2009–0924 and on the Web site (*http://www.epa.gov/climatechange/emissions/CBI.html.*)

As mentioned above, EPA proposed confidentiality determinations for part 98 data on a category basis except for three supplier categories, where confidentiality determinations were made for individual data elements within the category rather than by category. These three supplier data categories are: "Greenhouse Gases Reported", "Production/Throughput Quantities and Composition", and "Unit/Process Operating Characteristics". Except for data elements assigned to the three supplier data categories listed above, EPA proposes in this supplemental notice to apply the confidentiality determination (and supporting rationales) for the data category to which the proposed new or revised data element is assigned.

For each revised data element, EPA assessed whether the proposed revisions to the data element changed the existing data category assignment. The proposed changes to existing data elements were generally minor changes to correct references, clarify the reporting requirement, or simplify reporting. None of the proposed revisions to the existing data elements affect the existing category assignments for these data elements.

The proposed amendments to part 98 would add two new data elements to the "Production/Throughput Quantities and Composition" supplier data category and three new data elements to the "Unit/Process Operating Characteristics" supplier data category. As previously mentioned, confidentiality determinations were proposed for individual data elements within these categories rather than on a category basis. Similarly, EPA evaluated individually the confidentiality status of the proposed new data elements assigned to these two data categories.

In the July 7, 2010 confidentiality proposal, EPA proposed to determine that *none* of the Part 98 supplier data qualify as "emission data" as that term is defined at 40 CFR 2.301(a)(i).[1] EPA then proposed CBI determinations for supplier data by considering the confidentiality determination criteria at 40 CFR 2.208. In particular, EPA focused on whether release of the data is likely to cause substantial harm to the business's competitive position. *See* 40 CFR 2.208(e)(1). Consistent with this approach, EPA proposes the following CBI determinations for the proposed new supplier data elements in the "Production/Throughput Quantities and Composition" and "Unit/Process Operating Characteristics" supplier data categories.

One new data element added to the "Production/Throughput Quantities and Composition" data category requires facilities that produce fluorinated GHGs to report the concentration of each fluorinated GHG contained in their products. These data would be reported in a one-time report submitted by fluorinated GHG production facilities by March 31, 2011. The other new data element assigned to this data category would require fluorinated GHG production facilities to submit a revised report of the concentrations of fluorinated GHGs when changes are made to the compositions of their products. EPA proposes that these data elements be considered CBI. Like the other product specific data elements included in this data category in the July 7, 2010 confidentiality proposal, these two data elements would provide sensitive information on product composition that is not already publicly available and would likely harm the competitive position of fluorinated GHG producers. For more detailed rationales in support of our proposed CBI determination for these two new data elements, please *see* Section II.D.3 of the July 7, 2010 confidentiality proposal, which discusses the ways in which product-specific production quantities and product composition data could be used by competitors of a reporting facility to gain insights and develop market strategies that would harm the reporter's competitive position.

The three new data elements added to the data category for "Unit/Process Operating Characteristics" consist of the following data elements:

- The location of the mass flow meter in the process chain in relation to the points of CO_2 stream capture, dehydration, compression, and other processing (40 CFR part 98, subpart PP).
- The location of the volumetric flow meter in the process chain in relation to the points of CO_2 stream capture, dehydration, compression, and other processing (40 CFR part 98, subpart PP).
- Date on which changes were made to fluorinated GHG concentrations in a product or the date on which production of a new product commenced (40 CFR part 98, subpart OO).

The location of flow meters does not provide information on the design or operation of a facility's production processes or the design or operation of any CO_2 compression, dehydration, or other purification process that may be present at the facility. Facilities are not required to provide detailed and potentially sensitive information about their facilities, such as descriptions or diagrams of their processes. Rather reporters are only required to report limited information on the location of a flow meter in terms of its position relative to other processes, such as the CO_2 stream capture, dehydration, compression, and other processing. Similarly, the date on which manufacture of a new product commenced or changes were made to the composition of a fluorinated GHG product does not disclose the actual composition of the product, the raw materials used to make the product, the method of manufacture, or the efficiency of the manufacturing process. The manufacture of a new product and changes to existing product lines is often publicly available through company marking materials and other sources (*e.g.,* publication or revisions to Material Safety Data Sheets). Since the disclosure of these data elements is unlikely to harm the competitive position of the reporter, we propose these three data elements would not be entitled to confidential treatment.

When finalized, the changes to the data elements may not be exactly the same as those proposed in the Part 98 amendment proposal; however, we expect that any revisions to data elements in the final amendment would still logically fall into the same or another data category that is addressed in the confidentiality proposal and would therefore be covered by the confidentiality determination for that data category. If the final amendments differ from those included in the Part 98 amendment proposal, EPA will address those changes in the final confidentiality determination action.

D. Request for Comments

This supplemental action provides affected businesses, other stakeholders, and the general public an opportunity to provide comment on the proposed confidentiality determinations for the proposed new and revised data elements. For the proposed new and revised data elements, we are soliciting comment on the issues raised in the July 7, 2010 confidentiality proposal as they apply to the new and revised data elements addressed in the part 98 amendment proposal and this supplemental notice. Specifically, we are soliciting comment on whether the data category assignments for the proposed new and revised data elements are reasonable and appropriate (*i.e.,* whether the proposed new and revised data elements are sufficiently similar to the other data elements listed in their assigned data category or whether a different data category would be more appropriate). We are also soliciting comment on whether the proposed confidentiality determinations for these data elements are appropriate, whether any specific circumstances exist that would warrant different confidentiality determinations for these data elements, and whether any unique circumstances exist where a limited process would be appropriate to re-evaluate EPA's final determinations for these data elements. For a list of the proposed new and revised data elements and their assigned data categories, please *see* the memorandum "Data Category Assignments for the Proposed Revisions to the Part 98 Reporting Requirements" in Docket EPA–HQ–OAR–2009–0924 and on the Web site (*http://www.epa.gov/climatechange/emissions/CBI.html.*)

We are also interested in receiving suggestions on appropriate formats for publishing the proposed new and revised data elements (both CBI and non-CBI data). For those new and revised data elements for which we propose confidential treatment, we are soliciting suggestions for the best methods of aggregating the data and comment on whether publishing any of the new and revised data elements in ranges at the facility-level would provide valuable information that aggregated data may not convey.

In today's notice we are soliciting comment only on the proposed confidentiality determinations for the new and revised data elements contained in the Part 98 amendment proposal. We are not soliciting further comment on those data elements in the July 7, 2010 confidentiality proposal for

[1] Section 114(c) of the CAA requires that "emission data" shall be publicly available.

which no changes are proposed in the Part 98 amendment proposal.

II. Statutory and Executive Order Reviews

The statutory and executive order reviews do not apply to this notice because this notice does not propose any regulatory changes. For a complete discussion of the statutory and executive order reviews as they apply to the proposed amendments to 40 CFR part 2, *see* the notice "Proposed Confidentiality Determinations for Data Required under the Mandatory Greenhouse Gas Reporting Rule and Proposed Amendment to Special Rules Governing Certain Information Obtained under the Clean Air Act" (75 FR 39094).

List of Subjects 40 CFR Part 2

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

Dated: July 20, 2010.

Lisa P. Jackson,

Administrator.

[FR Doc. 2010–18229 Filed 7–26–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2010–0321, FRL–9180–5]

Approval and Promulgation of Implementation Plans; New York Prevention of Significant Deterioration of Air Quality and Nonattainment New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the New York State Implementation Plan (SIP) submitted by the New York State Department of Environmental Conservation on March 3, 2009. The proposed revisions would create a new New York State Prevention of Significant Deterioration of Air Quality (PSD) regulations program and modify the existing New York State Nonattainment New Source Review (NNSR) regulations in the SIP. These proposed revisions also address changes mandated by the revised Federal New Source Review (NSR) regulations, referred to as the "2002 NSR Reform Rules." EPA's 2002 NSR Reform Rules, proposed by New York State for inclusion in the New York SIP with some changes, include provisions for baseline emissions calculations, an actual-to-projected-actual methodology for calculating emissions changes, options for plantwide applicability limits, and recordkeeping and reporting requirements. If EPA finalizes approval of New York's regulations, New York will implement its own PSD and NNSR State regulations. EPA notes that, in this proposal, no action is being taken on certain items of New York's revisions that relate to the Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule ("Tailoring Rule").

DATES: Comments must be received on or before August 26, 2010.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–R02–OAR–2010–0321, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *Werner.Raymond@epa.gov*.
- *Fax:* 212–637–3901.
- *Mail:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.
- *Hand Delivery:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R02–OAR–2010–0321. 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

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 Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. EPA requests, if at all possible, that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Frank Jon, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4085; e-mail address: *jon.frank@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, references to "EPA," "we," "us," or "our," are intended to mean the Environmental Protection Agency. The supplementary information is arranged as follows:

I. What is being addressed in this document?
II. What is the background for this action?
III. What is EPA's analysis of New York's NSR rule revisions?
IV. What action is EPA proposing to take?
V. Statutory and Executive Order Reviews

I. What is being addressed in this document?

On March 3, 2009, the State of New York, through the New York State Department of Environmental Conservation (NYSDEC), submitted to EPA Region 2 revisions to the New York