

reporting information would be considered non-confidential. EPA stated that this would effectively provide the same benefits as publishing the baseline values for these three parameters as it would clearly show whether and how much a refiner violated the standards applicable for these fuel parameters while preserving valid claims of business confidentiality.

EPA's proposal to change the regulations regarding business confidentiality was based in large part on evidence, presented by interested parties in the oil refining industry, arguing that detailed information regarding the quality of a business' 1990 gasoline production would allow a competitor to calculate the business' current cost of producing reformulated gasoline much more accurately with this baseline information. This increased ability to predict current cost of production would lead to significant adverse competitive harm. According to the interested parties, information on individual baseline fuel parameters (i.e., sulfur, olefins and T90) would have much more adverse competitive impact than information on individual baseline exhaust emission values.

In the proposal, EPA also stated that requests for release of other baseline information would be governed by the regulations on the confidentiality of business information at 40 CFR part 2 subpart B. By deferring to 40 CFR part 2 subpart B, the factual and legal issues concerning disclosure of this information may be resolved on a case-by-case basis under EPA's CBI rules.

D. Summary and Analysis of Comments

EPA received less than ten comments on this issue; most generally supported the proposal. Commenters agreed with EPA that the proposal would properly inform the public of each refiner's standards yet would minimize competitive harm and would protect each refiner's competitive business interests. Commenters also mentioned that foregoing publication of some baseline information does not hinder EPA's ability to enforce the RFG (or anti-dumping) programs. One commenter stated that no negative environmental effects would occur due to the proposed change. EPA agrees with all of these comments.

Commenters also mentioned that indiscriminate publication of baseline data would be contrary to the Agency's stated rationale for establishing the procedures set forth in the CBI regulations. While EPA believes the December 1993 final rule provisions were consistent with the rationale of the Agency's CBI regulations, EPA believes

that the changes adopted today are a more appropriate mechanism to implement this rationale. The December 1993 rule was based on the view that all information submitted by a refiner regarding its individual baseline should be considered non-confidential emissions data, and therefore would not be protected from release notwithstanding its claimed confidential nature. See CAA section 114, 208. In the rule adopted today, EPA basically limits this determination to the information that will be published—individual baseline exhaust emission levels. The reporting information that is considered non-confidential does not meet the definition of confidential business information, without addressing whether it is emissions data. The confidentiality of the remaining baseline information will be addressed under EPA's CBI regulations. Instead of pre-determining whether this remaining information is confidential business information or whether it is emissions data, these issues will be resolved as needed on a case-by-case basis under EPA's CBI regulations. This will allow for a case specific inquiry, focusing on any unique aspects that might be specific to a refiner and thereby reducing the risk of improper disclosure. Having reconsidered these issues, especially the competitive harm that could occur if a refiner's entire baseline information were available for release, EPA believes that the alternative contained in the August 1995 proposal and finalized today will retain the benefits of publishing all of a refiner's individual baseline exhaust emission levels while minimizing competitive harm. One commenter stated that with the proposal the regulations now conformed to the CBI rules.

Another commenter stated that the Act exempts only emission data from CBI rules and that the baseline information is not emission data. EPA disagrees with this comment with respect to the individual baseline exhaust emissions levels. With respect to the remaining individual baseline information, the issue of whether it is or is not emissions data is not resolved by this rulemaking, but will be resolved as needed under EPA's CBI regulations.

Several commenters expressed concern about the ability to claim confidentiality now on baseline information not originally marked confidential. For example, under the December 1993 rule baseline values for sulfur, olefins and T90 were not considered confidential, and many baseline submitters may therefore not have claimed that information as confidential. If not allowed to claim

confidentiality now, someone could arguably request and receive that information from EPA. However, baseline submitters can, and in fact are encouraged to now submit claims of confidentiality on baseline information that the submitter considers confidential, even though not originally marked confidential. EPA's CBI regulations do not prohibit a company from notifying EPA that it now claims certain previously submitted information as business confidential. See 40 CFR 2.203, 2.204(c). This also addresses the suggestion by one commenter that EPA take precautions in releasing other baseline information. Once a company makes such a claim, EPA's regulations generally call for notifying the company and giving it an opportunity to justify the claim of confidentiality prior to any release of the information to the public.

One commenter was concerned about the public perception of any published information, citing potential pressure (presumably to be cleaner than one's standard) from competitors and non-informed public and the resulting impact on investor support. The commenter implied that this kind of pressure can be especially burdensome if performance margins are tight. This same commenter was particularly concerned about small refiners and stated that big refiners are protected by (the ability to) aggregate baselines. While multi-refinery refiners do have the option to aggregate baselines for compliance purposes, publication of baseline information is on a refinery basis, and multi-refinery refiners have no advantage over single-refinery refiners in that regard. This commenter also implicitly suggested that EPA consider relaxing the publication requirements for small refiners since EPA has determined that the contribution to emissions of small refiners is minimal to the point of relaxing some requirements. However, the issue of when and under what conditions to allow for baseline adjustments is a separate issue. Whether or not a refiner meets such criteria, EPA believes there is a continuing value in publishing the applicable standards, including standards based on baseline adjustments. This value, described above, occurs whether the business is small or large. There is also no indication that the business pressures noted by this commenter are greater for small businesses.

E. Final Rule

EPA today finalizes the provisions regarding the confidentiality of information submitted for individual