CAER CBI Procedures Project Team - Final Report

Contents

I. Project Overview

As part of the Combined Air Emission Reporting (CAER), the EPA and State, Local and Tribal (SLT) air programs are working together to identify opportunities to reduce redundancy, improve quality, and increase efficiency in the reporting of air emissions from facilities. One of the research areas identified by the Product Design Team (PDT) under CAER was to study the confidential business information (CBI) procedures currently used in emissions reporting programs and how they could potentially be applied under a shared emission reporting system as envisioned under CAER. Consistent with the priority goals of the overall CAER implementation plan, particular consideration was given to CBI procedures that could be applied to emissions data through electronic reporting systems.

This project report, along with others related to research on the different components needed for developing a shared emissions system will provide the broader audience of SLT and EPA program offices involved with emissions reporting a deeper understanding of what type of activities are part of the overall CAER effort. The CAER team hopes this will prompt interest and further engagement to provide feedback and input to future phases of the projects.

Section II of this report describes the information researched and collected for this project regarding in-use CBI procedures. Also, for purposes of this compilation and review, there was no attempt to strictly define what should be considered CBI in any given reporting program. We recognized from our research that the treatment of CBI is approached in various ways according to specific program rules and applications. The basic objective of this project was to identify the variations and functionalities of current CBI treatment procedures used by different emissions reporting programs, and thus reflect the flexibility needed to incorporate CBI procedures into the future CAER solution.

Section III relates possible CAER workflow scenarios for the use of a common emission form (CEF) to the basic types of CBI treatment procedures that were identified through the research on this project. We provide example illustrations of how CBI procedures might be incorporated in a couple of likely CEF workflow scenarios. Section III also provides further considerations for addressing CBI procedures in the development of a CEF under the CAER project.

Appendix 1 summarizes CBI procedures and definitions currently used at different SLT programs, and Appendix 2 lists the reference sources that we used in the SLT program research. Appendix 3 summarizes CBI procedures at federal emissions reporting programs researched as part of this project.

II. Identification of In-Use CBI Procedures

a. Description of Research to Identify In-Use CBI Procedures

The CAER CBI project team prepared a compilation of CBI procedures identified from the review of a sample of state programs represented in the CAER Phase 1 Date Model Team survey results, as well as EPA programs such as the Emissions Inventory System/National Emissions Inventory (EIS/NEI) system, Greenhouse Gas Reporting Program (GHGRP) and the Toxics Release Inventory (TRI).
The objective of this research was to identify how CBI is collected and treated by different SLTs and federal programs, and it focused on the following points, which are addressed throughout this document:

- What is the SLT definition of CBI (language of rule/regulation/guidance that defines what constitutes confidential information)?
- What data items can be classified as confidential?
- What data items cannot be considered confidential?
- Are certain data items always considered confidential or do facilities need to specifically claim confidentiality?
- Is justification for CBI required?
- How is CBI functionally handled in the reporting system? E.g., Does the program allow for labeling/tagging data elements and information confidential upon electronic submittal? Or is CBI handled separately, such as through hard-copy?

We considered the CBI procedures at eight SLTs that collect CBI in their electronic emissions reporting systems (i.e., Alabama, Indiana, Iowa, Missouri, Pennsylvania, Minnesota, Louisiana, Wyoming), at three SLTs that do not collect CBI electronically (i.e., North Carolina, Georgia, and Mississippi) and at three federal programs (i.e., EPA's Toxics Release Inventory, Greenhouse Gas Reporting Program, and the National Emissions Inventory). The SLTs were selected from the state-run survey respondents to the first phase of the CAER Data Model R&D project that was completed in 2017.

The research mostly consisted of looking at published regulations on air emissions reporting or guidelines for completing the emissions reporting forms contained on public websites. In a couple of cases, program system staff were contacted to confirm CBI procedural steps or provided additional clarification through their participation in existing CAER R&D teams.

A summary of the findings for the CBI procedures and rules for each SLT researched can be found in Appendix 1. A list of SLT regulations, guidance and public websites researched can be found in Appendix 2 of this document.

b. Summary of CBI Procedures Research

Appendix 1 shows information collected on the SLT CBI procedures, the data element types that can be treated as CBI, regulatory language pertinent to CBI procedures for air emissions reporting, and other information on how CBI procedures function for the SLT's emissions reporting program. The following are some key summary observations that helped the CBI team frame the basic types of CBI procedures being used, as discussed later in Section II.c.

High-level observations

- The majority of SLTs generally refer to 40 CFR 2.301 ("Special rules governing certain information obtained under the Clean Air Act") as a basic reference point on how to treat CBI and what can and cannot be claimed as confidential.

- Most SLTs indicate that "emission data" cannot be claimed as confidential, as stipulated in the 40 CFR 2.301: "information which is emission data, a standard or limitation, or is collected pursuant to section 211(b)(2)(A) of the Act is not eligible for confidential treatment". However, SLTs have different views on whether certain specific data elements used in emission calculations can be considered CBI, and have incorporated these views into their reporting guidelines and regulations.

- Not all SLTs have CBI definitions specifically related to *air* emission reporting, even if they may refer to CBI in their emissions reporting regulations. Most of the CBI definitions provided are listed in general terms and are applied cross-media. SLTs usually refer to CBI as information to which they have access and that, if made public would reveal trade secrets such as methods or processes and would harm a business's competitive position.

- Some SLTs link CBI with their permitting processes and may allow or require facilities to flag CBI data in their permit applications (e.g. MN, LA, IN, MO) and then, in some cases, that CBI designation is carried over the emissions inventory for that data element (e.g., MN).

- With appropriate justification and rationale, often through a separate required hard-copy request procedure, many SLTs will allow emission factors and throughputs to be claimed as confidential, as well as certain company information (e.g., sales figures, processes, methods of production, chemical trade secrets).

- Most SLTs that collect CBI electronically mark CBI data through a flag or checkbox in their data systems. For example, the State and Local Emissions Inventory System (SLEIS) used by a number of SLTs has such a CBI 'check box' system. However, with most of these systems the flagging is often not associated with a particular data element, but with a certain entry screen level (e.g., process level screen, unit level screen, etc.). The 'flag" or "check box" simply indicates to the program staff that some information from that entry level screen is being requested to be kept confidential. In all these cases, through a parallel process, the reporter must make a formal

3

request through hard-copy submittal to the agency including the rationale and specific data elements that are being requested to kept as CBI.

- There are also a few SLTs that do not have a "flag", per se, to indicate CBI directly in electronic reporting systems, but instead have different procedures, including:
  - Special section of reporting form needs to be filled in to identify CBI
  - No flags used and CBI not entered in the system, but handled through separate, often hard-copy process
  - CBI "flagged" through an indicator number. For example, a "*bogus number identifies CBI, (e.g. process rate of all nines, '9999999')*"

- In most cases, facilities need to specifically claim confidentiality for certain data items, which will then have to be reviewed by and approved by SLT authorities. In most cases, SLTs require a written justification for CBI claims, substantiated by accompanying documentation.

- Some SLTs do not collect CBI in their electronic data systems at all, and instead require that all CBI data be submitted separately on hardcopy format only (e.g. NC, MS). Most of these states also require facilities to provide written justification and documentation for CBI claims, which will then have to be reviewed and approved by them.

- States are generally tightening down on definitions and the process for being able to claim CBI, which has greatly reduced the number of facilities submitting claims for CBI. Also, facilities may initially 'flag' in their submittal that they have sensitive or confidential information included, but do not follow-up with the formal request and approval for CBI classification for the specific data elements they deem sensitive (i.e., they decide not to pursue formal confidentiality request).

c. General Categories of CBI procedures Identified

In reviewing the different types of CBI procedures utilized by different emissions reporting programs at both the SLT and federal program level, the CBI team noticed commonalities between the procedures. Based on those observed commonalities, Table II.1 describes the five main category types of CBI procedures identified in the research. Table II.1 provides a general description of the CBI treatment type, followed by examples of its application in various programs. By identifying the basic category types of CBI procedures, the CBI team was then able to match these procedures to different CEF workflow scenarios, which is described in Section III a.

Table II.1 Basic CBI Treatment Types Identified in Research

CBI Treatment Type #	Description of CBI Treatment Type	Examples of Application
A	Sensitive information not required nor collected by system (never gets transmitted by reporter) – e.g., total emissions only required.	EIS does not collect or maintain data as CBI, and any data sent to EIS is not treated as CBI by the EPA.

		Note that EIS does not require that emission factor (EF) or throughput data be submitted for acceptance (even though these are required data by regulation).
B	Program rules clearly define up front what can be considered "CBI" and "not CBI" for purposes of reporting. In some cases, the sensitive information gets submitted, but receives formal CBI handling at the collection agency. Depending on program, defined CBI data may be submitted electronically or separately through hard-copy.	See various SLT and federal programs (e.g., MO, GHG RP) for their rules/guidelines that define specifically what data elements are considered CBI for submittals (can vary from program to program).
C	Electronic reporting system allows 'yes/no' flags to be set by reporter to indicate that certain data element fields contain potentially sensitive information that required CBI treatment. Typically set by reporter upon submittal in the electronic reporting system, with a parallel requirement of the reporter to send in a separate, hard-copy rationale/justification for the specific data elements for which CBI is being requested.	SLEIS option for flagging process level information as "CBI", which means it does not get sent to EPA—similar approach used by number of SLT programs in their systems (e.g., LA, MN). Some programs require 'dummy' entries for fields that reporters flag as CBI.
D	Program allows reporter to submit (and provide substantiation for) claims of confidentiality for certain data elements they deem sensitive. Reporter may send both a 'sanitized' and 'unsanitized' versions of emissions reporting data along with the confidentiality claims.	A number of SLT programs operate in this manner (e.g., WY, LA).
E	System has a separated service that is accessed by the reporter only (through local download or automated service built into reporting system) to handle data elements and calculations involving sensitive information—sensitive information resides *only* at the local reporter station for calculations and there is no transfer to collecting agency. However, results of built-in verification checks can be shared with collection agency (e.g., pass/fail indicators).	Federal GHG RP in the E-GRT system—service is called "Inputs Verifier Tool", available to reporter upon entry into E-GRT for certain calculations.

III.   CBI Treatment Procedures in a CAER Common Emissions Form (CEF) Approach

a.   Crosswalk of CBI Procedure Types and Possible CEF Usage Scenarios

As part of the proposed future state under CAER, one of the possible solutions involves the use of a "common emissions form" or CEF. Initial thoughts on how a CEF could work evolved out of a September 2016 workshop where staff from four state agencies and four EPA program offices

investigated different CEF usage scenarios and workflows as representative by the participating programs, and the possible design and application of a CEF to collect and share emissions data across different programs. The CEF concept includes more than just a web form, since it includes several important back-end features including quality assurance and routing data to existing state and EPA program data bases. For this project, the CBI project team looked at possible CEF usage scenarios and the application of one or more of the identified basic types of CBI procedures identified from the earlier described research.

The CAER PDT, and specifically the Data Model project team, are investigating the possible workflows that could be associated with the use of a CEF approach. The workflow scenarios range from an SLT program fully adopting the CEF as its reporting interface along with direct distribution to different reporting programs and their databases, to an SLT program that retains essentially all aspects of its existing reporting interface and emissions database management but where the pertinent emissions data are pushed to a CEF background application to distribute data to relevant programs. There are hybrid scenarios that fall within these ranges, all of which are being further investigated and defined as part of the next phase of the Data Model team.

The following list shows the basic conceptual workflows for SLT usage of a CEF approach in CAER. The basic workflows do not represent any final determinations on how and if a CEF would be used, but were developed through the September 2016 workshop and follow-up discussions from the CAER PDT and the Data Model R&D team. Please note that these basic workflows will evolve over time as the Data Model team progresses into subsequent phases of the CEF development; however, for the purposes of this project, the basic workflows help to illustrate how the CBI procedures could possibly be applied within likely CAER workflow scenarios and will help further development of the CEF and its different components.

Basic CEF Conceptual Workflows
1. Existing SLT interface and back-end are retained; CEF only receives data from SLT system for distributing to other programs
2. Existing SLT interface and back-end are retained, SLT interface able to pull data from CEF and to push data to CEF for distributing to other programs
3. CEF replaces SLT interface but an SLT database is retained; CEF is used to distribute/share emissions data with other programs
4. SLT uses CEF directly to collect data from facility users and to distribute/share emissions data with other programs

Using the CEF workflows listed above, the CBI team prepared a matrix crosswalk of the previously identified basic CBI treatment types (using the "CBI Treatment #" from Table II.1 to cross-reference) and these four CEF workflows. Table III.1 shows this crosswalk, with characteristics for each of the different combinations, as well as some implications for developing the CEF.

In order to pursue the basic objective to integrate CBI procedures as part of a CEF-based approach, one of the first areas to research is the possible integration and connectivity options as they relate to the different defined workflows. For example, one identified workflow as currently defined, and described above, is the scenario where an SLT program fully adopts the CEF for emissions reporting purposes. Under such a scenario, one possibility might be to embed the CBI procedures directly into the

CEF as part of its construction. Alternatively, under a CEF workflow scenario where an SLT program wishes to maintain its existing reporting system as is, with CEF running more as an export application function to which SLT system data is pushed for distributing/sharing with EPA and other programs, it may be more simply a matter of only exporting non-CBI information through the CEF export. In this manner, an SLT program can maintain all of its existing CBI procedures and functionalities as they exist in their current reporting system, and simply transfer only the non-CBI data (as defined by that SLT).

Table III.1 Cross-walk of CEF Workflow Scenarios and Basic CBI Treatment Types

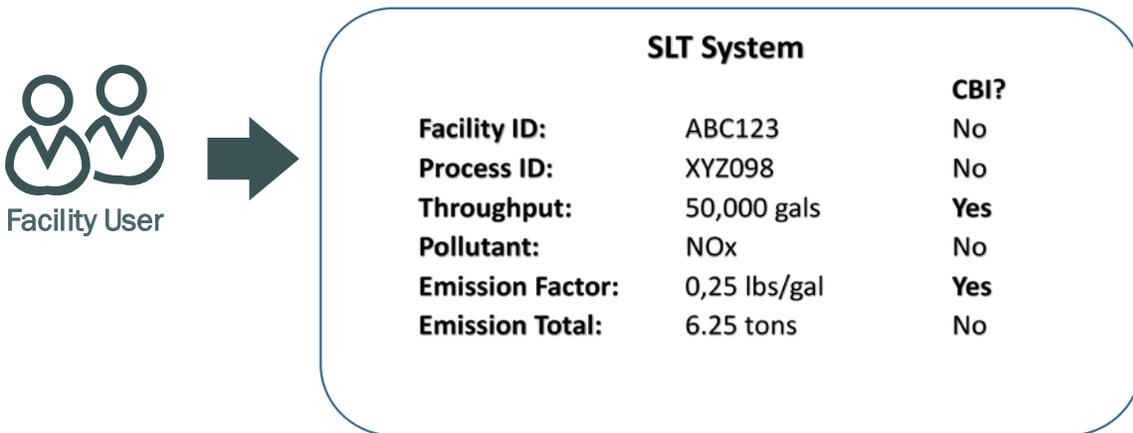| CEF Workflow	CBI Treatment					Implications for CEF
	A	**B**	**C**	**D**	**E**	
1	CEF would only receive non-sensitive data elements (emission totals and other required data)	CEF would only receive non-sensitive data elements (emission totals and other required data)	CEF would receive any data not flagged as sensitive (unless it is a required data element)	CEF would receive "sanitized" version of reported data (provided all required data elements are included)	CEF would receive emission totals and any meta-data provided by separate tool along with any other required data elements	No implications, since the SLT system manages CBI data and only sends the non-CBI data to CEF.
2	Same as above	Same as above	Same as above	Same as above	Same as above	Same as above
3	CEF would only receive non-sensitive data elements (emission totals and other required data)	CEF would be used to collect all data, with CBI elements flagged. Upon submittal, CEF would transmit all data to SLT database and non-CBI data to program databases.	CEF would be used to collect all data, with CBI elements flagged. Upon submittal, CEF would transmit all data to SLT database and non-CBI data to program databases.	CEF would allow for submittal of 'sanitized' data with instructions to send 'unsanitized' version to SLT agency. Once SLT agency approves 'unsanitized' version they indicate approval in CEF.	CEF includes the ability to receive data from a separate tool. This tool would reside locally on user's system and only provide certain, non-CBI data to CEF.	- CEF would need to "handle" CBI data as it is entered into CEF. Once submitted, SLT-specific business rules would dictate where CBI data elements go. -The CEF could run at the SLT server and only pass non-CBI data on to EPA, retain CBI info at SLT database. - Could apply SLT-specific workflows for handling "sanitized" and "unsanitized" reports.
4	There is no local SLT database, so options for storing and handling CBI data is limited.	There is no local SLT database, so options for storing and handling CBI data is limited.	There is no local SLT database, so options for storing and handling CBI data is limited.	CEF would allow for submittal of 'sanitized' data with instructions to send 'unsanitized' version to SLT agency. Once SLT agency approves 'unsanitized' version they indicate approval in CEF.	CEF includes the ability to receive data from a separate tool. This tool would reside locally on user's system and only provide certain, non-CBI data to CEF.	If the CEF has limited ability to handle and store CBI information, then only two treatment options exist, **D & E**. Both options allow CEF to receive non-CBI data from users but allow for verification that these data are correct/accurate. Since this workflow involves SLT relying entirely on CAER databases, there is no option of storing CBI information.

b. Example Illustrations of CBI Applications in Possible CEF Workflows

To further illustrate how the CBI procedures might be applied within the CEF, the CBI team looked at a couple of likely CEF workflow scenarios and developed some simple step diagrams. The first step diagram below shows how the "1C" scenario from Table III.1 might work, and the second step diagram shows how the "4E" scenario might work.   These scenarios are presented here since they reflect what would be likely CEF usage scenarios; "1C" representing a scenario where an SLT keeps its current electronic interface and system and uses the CEF more as a data export/transmission application, and a "4E" scenario where an SLT adopts the direct usage of the CEF as its electronic interface and reporting system. It is worth noting that CEF workflow "4" scenario has been mentioned under the CAER PDT as one possible pilot scenario for the CAER project.
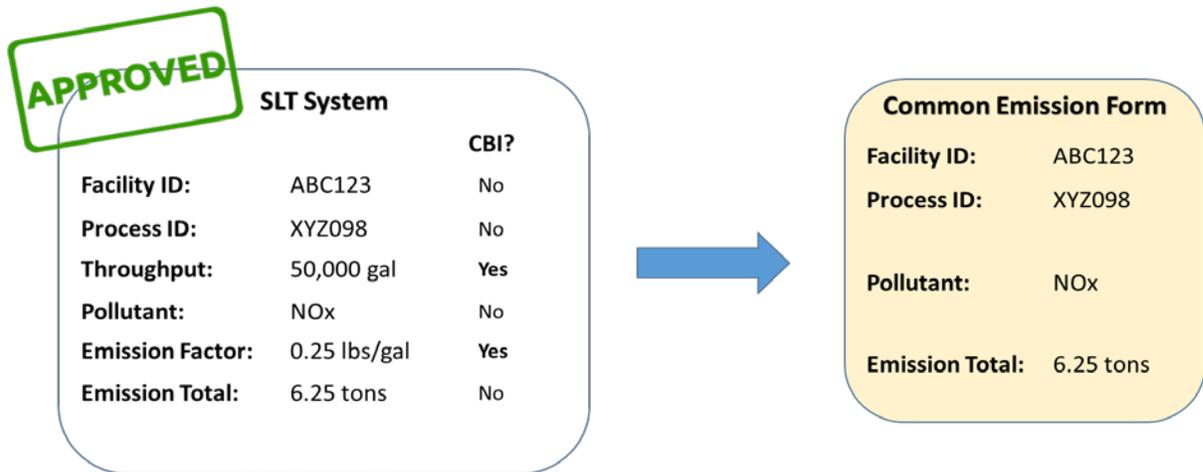
Scenario 1C

In this scenario, the SLT agency has, and will continue to use, its own electronic reporting system. In this particular example, the SLT system has the ability to flag individual data elements as CBI. This exact functionality is not a requirement of a 1C scenario, but is used to illustrate a potential workflow involving CBI data elements.

Facility users would log into the SLT system and follow the normal SLT reporting procedures. In the example shown below, the facility has entered data for a particular process (XYZ098) and indicated that the throughput and emission factor are both CBI.

SLT System

|		CBI?
Facility ID:	ABC123	No
Process ID:	XYZ098	No
Throughput:	50,000 gals	**Yes**
Pollutant:	NOx	No
Emission Factor:	0,25 lbs/gal	**Yes**
Emission Total:	6.25 tons	No

Facility User

Next, the SLT agency reviews and approves the submitted emissions report. Once approved, the non-CBI data is submitted to the CEF.

Scenario 4E

In this scenario, the SLT agency adopts the direct usage of the CEF as its electronic interface and reporting system. In this example, the SLT is using the CEF with the reporter option to use an associated calculator application we are referring to as the "Calculator Tool" (note: the calculator tool application is only a conceptual design for the CEF and is used here for illustration purposes only). Use of this "Calculator Tool" allows the facility user to input potentially sensitive information (such as throughput data) without that information being passed on to the CEF. The "Calculator Tool" includes built-in QA checks so that both the SLT and others have assurance that the emission totals calculated with the tool are appropriate.

The facility user will log into the CEF and complete the provided forms. At the SLT's discretion, an option will be available for the facility user to utilize the "Calculator Tool" as shown below.
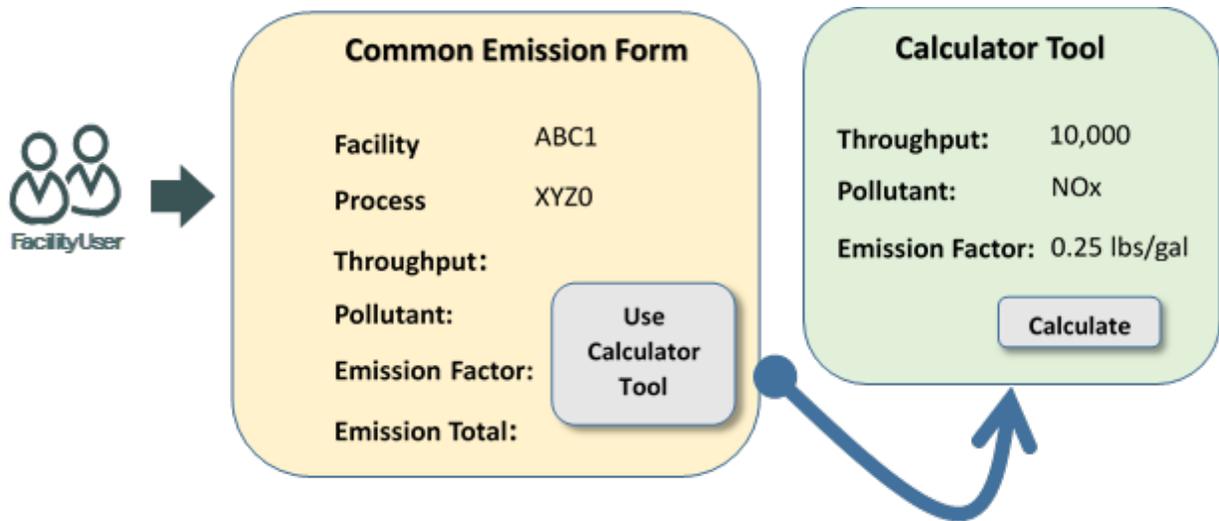
After the facility user enters data, the "Calculator Tool" runs calculations and validation checks and allows for the creation of a report that can be saved or provided, either electronically or as hard-copy, to the SLT agency for further verification (through an SLT's CBI-secure workflow). The calculated emission total is then provided to the CEF, which is submitted as shown below.
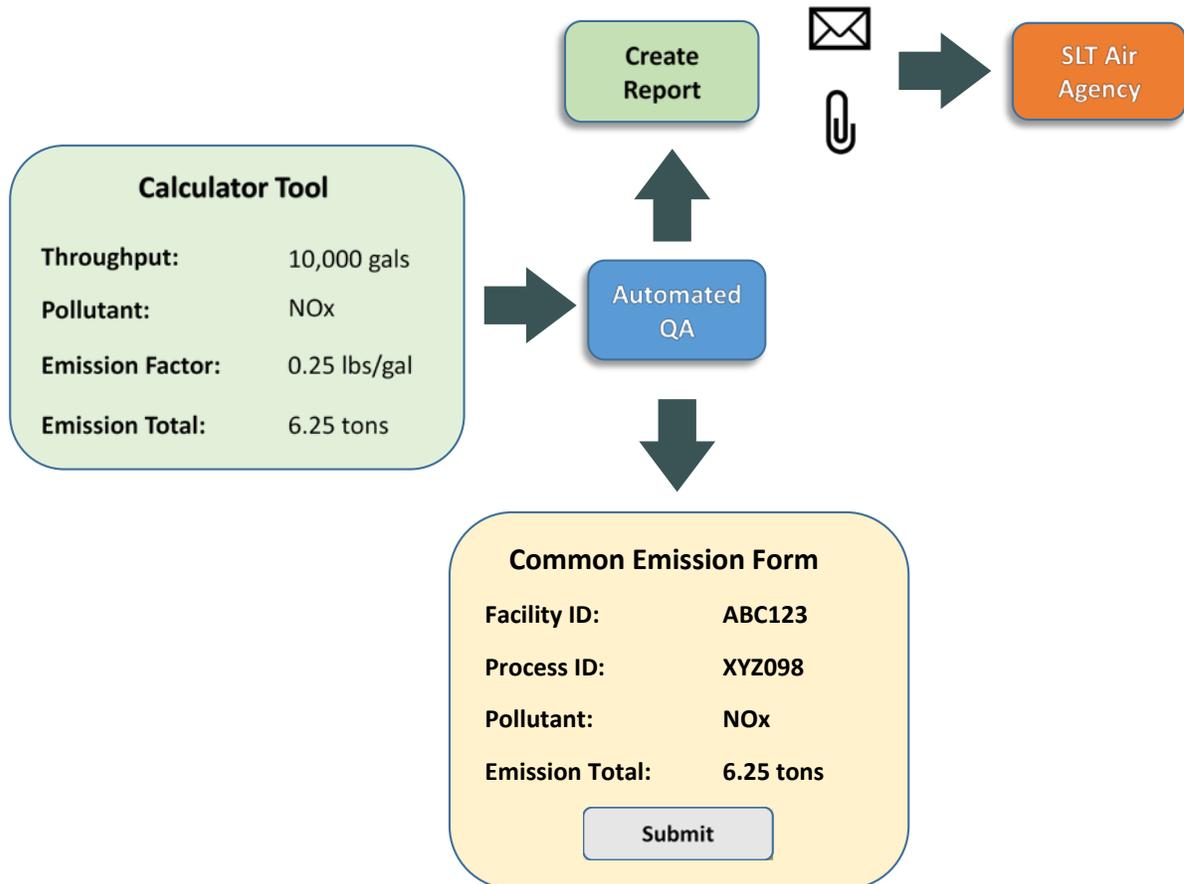
c. Further Considerations for CBI treatment in the Development of the CAER CEF

One likely next step under the CAER project would be to identify and apply a specific CBI procedure, and associated functionality, to the collected data elements as defined for use in a pilot/prototype CEF construction resulting from the CAER Data Model team. This step will require considering the results of this project as part of the design configuration of the CEF under the Data Model team as it moves into further development of a defined construct for the CEF.

Ultimately the goal is to test potential CBI procedural routines and applications to CAER through a full pilot scale application of a CEF for emissions data reporting and sharing at a candidate SLT. As of the date of this report, a CAER CEF pilot has not yet been designed and scoped out, so it is not certain which CAER CEF workflow scenario will be represented in the pilot. Preliminary planning by the PDT, as mentioned above, has identified an SLT program's direct adoption of a CEF (workflow 4) as one possible candidate type for a pilot demonstration, but that is not yet certain. As part of the pilot demonstration, business rules and governance plans for the implementation of the CBI procedures would need to be established along with the functional aspects of the CEF system. The choice of how to integrate CBI procedures into the CEF should be part of the overall design and functionality requirements for the CEF prototype, such that they are fully consistent with the emissions data workflows and, equally important, with the pilot SLT program's CBI rules and requirements.

In developing a prototype for the CEF, and for future variants of the CEF design, the CBI project has identified a list of underlying principles that should be considered in integrating CBI procedures into the CEF designs. Table III.2 shows, in the first column, the original CAER principles contained in the CAER Implementation Plan that are most pertinent to the CBI project, and then in the second column, the CBI team's recommendation on how the general principle applies to the specific application of CBI procedures in the CEF. The last column provides some additional considerations and comments at it relates to implementing the applicable principle. These principles should be kept in mind in as the CEF design constructs are developed.

Table III.2 Basic Design Principles and Considerations for CBI Procedures within the CEF

General CAER Principle (from CAER Implementation Plan)	Principles and Considerations as applied to CBI procedures within CAER CEF Design	Additional Comments
Respect Existing Infrastructure: Emphasis is on combined CAER approach here cost effective and *minimizing disruptions to existing reporting systems*.	Whatever form a CEF takes, it should not interfere/jeopardize or violate an existing system's CBI rules (applies to SLT reporting systems and federal reporting systems).	For example, a CEF should not allow data fields that are considered CBI by an SLT system to be transmitted or shared.
Initially pursue solutions that *do not require updates to existing regulations*.	The treatment of CBI in a CEF should be designed to accommodate SLT and federal reporting system's rules for CBI.	Some states have very specific regulations as to what defines CBI. The approach to CBI within a CEF should not require SLT regulations to change so that the SLT can use the CEF.
As part of the effort, assess the need for "surgical" changes to regulations or guidance which would help modernize *WITHOUT being controversial*.	Do not seek to redefine what CBI means for a given program or create strict definitions of terms (e.g., "emissions data") which have been applied and defined through an SLTs deliberative and regulatory process. Create flexibility in the approach for CBI treatment in the CEF to accommodate the different interpretations of CBI terms and elements.	For example, for the purposes of CAER, we need not develop universal rules or guidance that tries to strictly define what does/does not constitute CBI elements of 'emissions data' for every SLT and federal program in the country.
Seek solutions that can *support current SLT reporting systems*.	The treatment of CBI in a CEF should depend to a great extent on the way a CEF is used by or interacts with a SLT system or federal reporting system. Options for CBI treatment should be designed to match the variation in use of the CEF.	It will be useful for this project to consider a couple of different scenarios on how CEF might be used and match that to possible approaches for CBI handling. For example, direct use of a CEF that has computation capabilities and inputs will need to address CBI differently than a 'lighter' use of the CEF to simply transmit emissions values.
Share public emissions and facility attribute data collected among all parties	The primary goal is share '*public emissions*' –not necessarily various inputs and other parameters that could be potentially sensitive. To the extent that a CEF can be designed to *not* collect potentially sensitive	The data fields associated with emission inputs need to be considered carefully to reflect how some SLTs and federal programs treat these either as CBI or at least, as non-shared data. For example, an SLT

General CAER Principle (from CAER Implementation Plan)	Principles and Considerations as applied to CBI procedures within CAER CEF Design	Additional Comments
	data, the CBI treatment will become simpler and will avoid requiring the implementation team to create a myriad of CBI rules to reflect the CBI treatment variation across the many SLT and federal programs.	program may want to opt out of transmitting any emission calculation inputs that it deems 'sensitive' information, even though the SLT system collects such info. The CEF should allow this option.

Appendix 1 - Examples of SLT Procedures for Handling Confidential Data

State	Description of Procedure and/or Language of Rule/Regulation
Alabama	Alabama uses the AEERS (Air Emissions Electronic Reporting System). The AEERS system allows the reporter to check a box prior to hitting 'submit' button for the facility emissions entry. The check box states "My facility is mailing confidential information separately to ADEM. The submitted report will not be approved until the documentation is received". The reporter can submit documentation electronically showing calculation details (as an attachment to the electronic submission), however the reporter must check another box that states "I acknowledge that confidential information must NOT be included in the uploaded documentation and understand that all uploaded documentation will be available for public access on the ADEM eFILE system".
Georgia	--Emissions reporting system has no CBI Flag or CBI treatment in GA EI current online application. --Report everything to EPA including EF, and Throughput data which are required by GA. --GA stakeholders would like to have CBI options when submitting EI --GA EI require industry to submit its EF and throughput --GA Permitting online application GEOS treat CBI in paper only. Most CBI requests come in through GA permitting, and are from Chemical facilities, including such data elements as: •Temperature •Production Capacity •GA has 28 applications with CBI requests •No digital submittal for CBI requested facilities •All CBI info is in paper files format and stored in office file room Pertinent section of GA Rule 50-18-70 states: 1. A **hard-copy** affidavit supporting the claim that information in the Submittal is protected under Georgia law from disclosure to the public must be executed and submitted to the EPD. The affidavit must be submitted with and attached to BOTH the redacted and protected versions (as defined below) of the Submittal when they are submitted to EPD. For online Submittals through GEOS, the affidavit must also be uploaded in accordance with specific instructions. The affidavit must cite the specific Code Sections(s), including paragraph(s) and sub-paragraph(s), if applicable, of the Georgia Open Records Act, O.C.G.A. § 50-18-70, *et seq.*, and other Georgia laws, if applicable, upon which the claim(s) are based. The affidavit should follow the outline provided by EPD.

State	Description of Procedure and/or Language of Rule/Regulation
Indiana	Example data items that can be classified as confidential (based on information found in SLT's regulations): - Emission factors - Manufacturing processes - Throughput of raw material or capacity - Maximum capacity - Design capacity Any information meeting the definition of "emission data", as defined by IN cannot be kept confidential. However, IN notes that "*if a permittee takes an enforceable limit to avoid a permitting program or other regulation (…), certain information would not constitute "emission data""*, providing the following example: "*if annual emissions can be determined through data other than actual throughput of raw material or capacity (for example, Continuous Emissions Monitoring Systems [CEMS] data or airflow and grain loading), then **throughput of raw material information, maximum capacity, or design capacity would not constitute "emission data**."* "*A person submitting a claim of confidentiality shall **designate and segregate the information** and the supporting information to which the claim applies in a manner that is sufficiently clear to allow the department to identify all confidential claim materials**. One (1) of the following methods shall be used** to indicate that the information and any of the supporting information under subsection (d) is claimed as confidential: (1) **Attaching a cover sheet** instructing which information is to be treated as confidential. (2) **Marking each page or item of information** as: (A) confidential; (B) confidential claim material; (C) trade secrets; or (D) confidential business information.*"
Iowa	Facility can indicate that a data field is CBI, request is reviewed and approved by IA attorney. Once approved, IA flags the data field so it is not to be passed to EPA. Additional text from source: "*A business which submits information to the department may assert a business confidentiality claim in the manner prescribed in the application or instruction, if any, otherwise by placing on or attaching to the information, at the time it is submitted, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret," "proprietary," or "company confidential." When only a portion of the information is claimed to be confidential, only that portion shall be deleted from the application, report or other recorded submission, with appropriate reference to a separate claim for business confidentiality, which separate claim shall be submitted as specified above.*" "*All claims for confidentiality must be substantiated with the following information: (1) A statement of all measures the business has taken to protect the confidentiality of the information, and a statement of intent to continue to take such measures; (2) Practices and policies of other businesses, if known, regarding confidentiality of similar information;*"

State	Description of Procedure and/or Language of Rule/Regulation
	(3) A statement that the information is not, and has not been, reasonably attainable without the consent of the business by other persons other than government bodies by use of legitimate means; *(4) A statement demonstrating that disclosure of the information is likely to cause substantial harm to the business's competitive position;* *(5) A reference to any other determinations of confidential status of the information or similar information."*
Louisiana	Louisiana has an electronic reporting system called ERIC (Emissions Reporting and Inventory Center). The 'process' group screen entry form has a field labeled "confidentiality" – a simple check box that indicates whether confidentiality has been requested by reporter (the flag is not associated with a specific data element on the screen). Separately, through hard-copy submittal to the agency, the reporter makes the formal request and submits rationale for CBI treatment for the specific data elements. All data elements are submitted in ERIC, but then the actual treatment of any particular data elements as CBI is based on the formally approved CBI request. Example CBI data element includes proprietary information such as "a given unit's production rate". The CBI flag, and associated requests for formal CBI approval, are not widely used by reporters. Additional text from source: *"…**confidentiality is requested in writing** to the Office of the Secretary"; "**Each request shall be submitted with two versions of the information or records; one version to be clearly marked "confidential," and the other to be clearly marked "public."** 1. The **confidential version is to show all information** and must clearly indicate what confidential information is excised from the public version. 2. The public version is to have the confidential information excised and must clearly show that confidential information has been excised. 3. Blacking out confidential portions of otherwise public records is permissible, provided that the blacked-out portions are clearly identified in both confidential and public versions."*
Minnesota	Minnesota's electronic reporting system (called CEDR) contains a flag at the facility level, unit level, and process level entry screens that is labeled "Confidential (Y/N)". Similar to other systems, the flags are not associated with any specific data element but merely indicate that some data field(s) at that entry screen level have been requested by the reporter and approved by the state permitting program staff (CBI requests for specific data fields are made by the reporter to the permitting staff through a separate process). The confidentiality flag is NOT set by the industry reporter, but by the inventory program staff based on notification that separate CBI approvals from the state permitting staff have been issued. It is used to alert the inventory staff that there is confidential data included in the report and that this data needs to handled accordingly (e.g., no public release). The specific data fields for which CBI is designated is available from the permitting staff. Example data items that can be classified as confidential (based on information found in SLT's regulations:

State	Description of Procedure and/or Language of Rule/Regulation
	- Sales figures, processes, or methods of production unique to the owner or operator, security information, trade secret information; maximum design capacity data. Only a small percentage of facilities as for CBI treatment. Mainly chemical plants and refineries. Through put data is typically not treated as CBI, but there are some exceptions.
Mississippi	Allow a facility to mark anything as CBI, however…regulations say *"(a)* **a written confidentiality claim is made when the information is supplied; The request must be made, in writing**, *no later than simultaneously with the submission of the information to MDEQ"* CBI data is sent to State, but is held back from EPA. CBI can be claimed on the permit and typically not questioned unless there is a challenge. Example data items that can be classified as confidential (based on information found in SLT's regulations: - *"personnel records, appraisals, attorney communications and work product, and certain enforcement/investigative materials";* - *"records furnished to public bodies by third parties which contain trade secrets or confidential commercial or financial information (…) and that do not concern environmental protection"*
Missouri	The Missouri Emission Inventory System (MoEIS) has a simple check box which is contained in this case on the "submit EIQ' screen. The check box asks "Does this EIQ contain confidential information?", with yes/no response allowed. The check box is an indicator to the program staff that some information is being requested to be kept confidential, but the check box is not associated with a specific data field that is considered CBI. Separately, the reporter must make a formal request through hard-copy submittal to the agency including the rationale and specific data elements that are being requested to kept as CBI. All the data elements are sent with the EIQ submittal, and it is up to the program office to treat the approved CBI data elements in accordance with the CBI procedures in place (e.g., no public release). Only a small fraction of total facilities formally request confidentiality; some may check the box, but don't necessarily follow through with the formal request that most associate the box check. Example data items that can be classified as confidential (based on information found in SLT's regulations): - Activity/throughput (for each period reported) - Emission factor - Winter/Spring/Summer/Fall throughput - Design capacity (including boiler capacity, if applicable) - Primary capture and control efficiencies - Total capture and control efficiency - Maximum hourly design rates (MHDR) - Certain stack test information

State	Description of Procedure and/or Language of Rule/Regulation
	Additional text from source: *"What do you need to do to ensure confidentiality?* *1. **Submit the request for confidentiality <u>at the same time</u> as you submit your initial emissions inventory questionnaire (EIQ).** Since the Missouri Department of Natural Resources will not extend the due dates for EIQs, you must plan ahead. If **you are submitting your EIQ through MoEIS, the department must receive your request for confidentiality <u>on the same day</u> that you press "Submit" for your EIQ.** 2. When you submit your request for confidentiality (…) you must (…) list the data elements you want held confidential. This will improve consistency among requests and ease processing."*
Pennsylvania	Example data items that can be classified as confidential (based on information found in SLT's regulations): - "Only throughputs and operating schedules can be treated as confidential" - "production or sales figures or methods, processes or production unique to such person, (…) including intellectual property rights". *Additional text from source:* *"Confidential status **must be requested in a letter** to the DEP regional office annually. The letter must specify the sub facilities and information that are affected and the reasons for needing confidentiality."*
North Carolina	Facility must justify why a data field should be considered CBI. Data is submitted to NC, but held until there is a determination at which point NC can flag data for non-submission to EPA. CBI calculations must be sent to NC in paper copy. *Additional text from source:* *"**Each page which contains material claimed to be confidential should be clearly stamped "confidential"** in red with the specific information highlighted."*
Wyoming	Wyoming uses the "Inventory, Monitoring, Permitting, And Compliance Tracking" (IMPACT) data system to submit applications, reports, and documents electronically to WDEQ. At the Emission Process Level there is a Yes/No field that states: "Schedule/Materials/Variables/Factors/Explanations contain Trade Secrets?" [Yes] [No]." If YES is selected, then this version of the EI will be stored as a "Trade Secret Version." If YES, justification documentation must also be attached. Using the File Attachment wizard, the filer selects "Trade Secret Document" as the Attachment Type and uploads the doc containing the justification information. The filer must also submit a non-Trade Secret Version of the EI. Thus, a facility approved for CBI makes two submissions to the State system: one with the CBI data (Un-sanitized) and one without the CBI data (sanitized). They only have a handful of facilities which are approved for CBI. *Additional text from source:* *"An applicant who submits information which it desires to be held confidential may do so by **stamping the information as "Confidential" and submitting it in a separate envelope marked "Confidential"."***

Appendix 2 Reference Sources for SLT CBI Procedures and Rules

- Alabama**,** Air Division - Air Pollution Control Program
- Indiana, Nonrule Policy Documents
- Iowa**,** Air regulations, Public Records and Fair Information Practices
- **Louisiana**
  - o LA Emissions Reporting and Inventory Center (ERIC) User manual
  - o Louisiana Guidance for Air Permitting Actions, Appendix A Glossary:
  - o LA Regulations on Environmental Quality
- **Maricopa County (AZ)**
  - o Maricopa County Emissions Inventory - Instructions for Reporting 2016 Emissions
  - o Classification and reporting - confidentiality of records:
- Michigan**,** Air Emissions Reporting System (MAERS)
- **Minnesota**
  - o Help document for air emission inventory – Large EI type
  - o Confidentiality guidance
  - o Minnesota Administrative Rules
- **Mississippi**
  - o Administrative Procedures Act Rules
  - o MS Code § 49-17-39 (2013)
- **Missouri:**
  - o CSR 10-6.210 Confidential Information
  - o Confidential EIQ Information
  - o Missouri Code of State Regulations
- **North Carolina,** Annual Air Pollutant Point Source Emission Inventory
- **South Carolina:**
  - o South Carolina, Regulation 61-62, Air Pollution Control Regulations and Standards:
  - o South Carolina Confidentiality Policy
- **Pennsylvania**
  - o Pennsylvania Air Pollution Control Act
  - o Instructions for Completing the Annual Emission Inventory Reporting Forms
- **Wyoming**:
  - o Air Quality – Permitting Requirements
  - o Administrative Rules Search: (See "Environmental Quality, Dept. of (020)" section)

Appendix 3 Federal Programs CBI Procedures

Three federal programs were researched, i.e., the Greenhouse Gas Reporting Program, Toxics Release Inventory, and the National Emissions Inventory. The National Emissions Inventory[1] does not include CBI-related information.

Programs	Language of rule/regulation that defines what constitutes confidential information	List of data items that can be classified as confidential	Are certain data items always considered confidential or do facilities need to specifically claim confidentiality?	Treatment of CBI
Greenhouse Gas Reporting Program[2]	For definition of CBI, the Greenhouse Gas Reporting Program refers to the Clean Air Act: *"Data collected under the Greenhouse Gas Reporting Program must be available to the public unless the data qualify for confidential treatment*	*"EPA typically makes confidentiality determinations under the Clean Air Act on a case-by-case basis. Due to the large numbers of entities reporting under the Greenhouse Gas Reporting Program and the large number of data reporting elements, EPA concluded that case-by-case determinations would not result in a timely release of non-confidential data. EPA determines which data will be protected as (...) CBI through rulemakings and other actions. Any data submitted under the GHGRP that is classified as CBI will be protected under the provisions of 40 CFR part 2, subpart B."* *"For data elements assigned to the ''Unit/Process 'Static' Characteristics that Are Not Inputs to Emission*	Facilities need to specifically claim confidentiality. EPA makes confidentiality determinations under the Clean Air Act on a case-by-case basis.	*"On October 24, 2014, EPA published amendments to reporting and recordkeeping requirements that included an alternative electronic verification approach for certain reporters. These changes address concerns that public disclosure of certain data elements that are inputs to the equations used to calculate emissions would reveal business sensitive information. Where disclosure concerns were identified, EPA is requiring that in lieu of reporting these inputs, facilities must enter the inputs into an electronic inputs verification tool (IVT), and will be subject to enhanced recordkeeping and reporting requirements. These inputs will be used to conduct verification checks at the time of report submission but will not be collected by EPA. This approach will maintain EPA's ability to*

---

[1] National Emissions Inventory (NEI)
[2] Greenhouse Gas Reporting Program, CBI

Programs	Language of rule/regulation that defines what constitutes confidential information	List of data items that can be classified as confidential	Are certain data items always considered confidential or do facilities need to specifically claim confidentiality?	Treatment of CBI
	under the Clean Air Act."	*Equations'' and ''Unit/Process Operating Characteristics that Are Not Inputs to Emission Equations,'' the EPA makes confidentiality determinations on a case-by-case basis".* Other elements that can be classified as confidential can be found in the *"Direct Emitters CBI Table"*		*verify emissions and ensure compliance with the program."*
EPA's Toxics Release Inventory (TRI)[3]	Does not include a definition of CBI, but refers to the 40 CFR Part 350 provisions.	- chemical identities on the Form A as on the Form R	*"Facilities may assert a trade secrecy claim for a chemical identity on the Form A as on the Form R. Reports submitted on a per chemical basis protect against the disclosure of trade secrets. Form A's with trade secrecy claims, like Form R's with similar claims, will be separately handled upon receipt to protect against disclosure.*	*"For any EPCRA Section 313 chemical whose identity is claimed as trade secret, two versions of the substantiation form must be submitted to EPA as prescribed in 40 CFR Part 350 (…). Trade secret reporting must be done via hard-copy, paper reporting.* *One set of reports, the unsanitized version, must provide the actual identity of the EPCRA Section 313 chemical. The other set of reports, i.e., the "sanitized" version, must provide a generic class or category for the chemical that is structurally descriptive of the EPCRA Section 313 chemical. If EPA deems the trade secret substantiation form valid, only the sanitized set of forms will be made available to the public."*

---

[3] EPA Toxics Release Inventory (TRI) Program

Programs	Language of rule/regulation that defines what constitutes confidential information	List of data items that can be classified as confidential	Are certain data items always considered confidential or do facilities need to specifically claim confidentiality?	Treatment of CBI
			Commingling trade secret chemical identities with non-trade secret chemical identities on the same submission increases the risk of disclosure."	*"Paper submissions must be sent to both EPA and the state or the designated official of an Indian tribe and follow the requirements for reporting trade secrets. If a report is not received by both EPA and the state (or the designated official of an Indian tribe), the submitter is considered out of compliance and subject to enforcement action. (…) E-mailed submissions will not be accepted. "*