

Title: Confidentiality Rules, OMB Control Number 2020-0003; EPA ICR Number 1665.06, expiring 9/30/2003.

Abstract: EPA administers a number of environmental protection statutes (e.g., the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Resource Conservation and Recovery Act; and the Comprehensive Environmental Response, Compensation, and Liability Act), under which the Agency collects information from thousands of facilities in many economic sectors. In addition, businesses submit information to EPA without the Agency requesting it. The information addresses topics such as toxic chemicals, industrial processes, waste streams, and regulatory compliance. In many cases, businesses that submit information claim it as CBI. EPA established the procedures described in 40 CFR part 2, subparts A and B, to protect the confidentiality of information as well as the rights of the public to obtain access to information under the Freedom of Information Act (FOIA). In accordance with these regulations, when EPA finds it necessary to make a final confidentiality determination (e.g., in response to a FOIA request or in the course of rulemaking or litigation) or an advance confidentiality determination, it notifies the affected business by sending a letter requesting substantiation of the confidentiality claim. This letter provides the affected business with an opportunity to submit comments (i.e., a substantiation). This ICR relates to the collection of information that will assist EPA in determining whether previously submitted information is entitled to confidential treatment.

EPA is proposing to use an updated Request for Substantiation letter ("proposed letter"). The proposed letter consists of two samples to address separate factual situations: Sample Letter A and Sample Letter B. The use of two letters is a clarification of existing EPA procedures. Some of the information requested differs slightly from the current Request for Substantiation letter, concerning the possible voluntary nature of the submission and the issue of substantial competitive harm, and takes into account the vast amount of information now available electronically. Nevertheless, EPA estimates that the overall burden is the same. The proposed letter would apply to any context where a final confidentiality determination is needed, either in response to FOIA requests or in other situations (e.g., where EPA is making information public to support

rulemakings), or in the case of an advance confidentiality determination.

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 are listed in 40 CFR part 9 and 48 CFR chapter 15.

EPA is soliciting comments to:

- (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (iii) Enhance the quality, utility, and clarity of the information to be collected; and
- (iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Current Burden Statement: EPA estimates that in response to the procedures outlined in 40 CFR part 2, subpart B, the Agency would notify 543 businesses annually and provide them with an opportunity to submit comments explaining why previously submitted information should be treated as confidential. Of the 543 businesses, EPA estimates that approximately 443 industries would respond by submitting substantiations. The Agency estimates that it takes industry approximately 14 hours and \$464.43 in labor costs to prepare and submit each substantiation; or a total of 6,202 hours at a cost of \$205,742.49 in labor for all 443 substantiations. For those 100 businesses that do not submit substantiations, they are still likely to spend approximately 1 hour at a cost of \$32.04 in labor to review EPA's notice, examine the information in question, and make a decision not to respond; or a total of 100 hours at a cost of \$3,204.00 in labor costs for reviewing and deciding not to respond in 100 cases. The total burden on industry to review and, if desired, respond to 543 EPA substantiation requests is 6,302 hours at a cost of \$208,946.49 in labor.

In addition, when EPA utilizes the services of contractors/subcontractors under the authority of 40 CFR part 2, subpart B, all contractor/subcontractor employees who may be given access to confidential information must first sign

confidentiality agreements stating that they will honor the terms of the contract/subcontract which requires the protection of CBI. Contractor/subcontractor businesses must maintain a file of all such agreements. EPA estimates that there are about 129 contractor/subcontractor businesses that handle CBI in connection with their work for EPA each year. These 129 contractor/subcontractor businesses together have a total of approximately 658 employees who must sign confidentiality agreements each year. Each employee would need approximately 0.1 hour to review and sign an agreement, at a cost of \$3.34 in labor; employees' review and signature of all agreements would require approximately 65.8 hours at a cost of \$2,197.72 in labor per year. In addition, each subcontractor/contractor business would need approximately 0.5 hour at a cost of \$8.07 in labor per year to maintain a file of employee confidentiality agreements; the 129 contractor/subcontractor businesses together would require a total of 64.5 hours at a labor cost of \$1,041.03 to maintain a file of confidentiality agreements. The total burden for signing and maintaining confidentiality agreements would thus be 130.3 hours at a cost of \$3,238.75.

The overall burden for handling confidentiality claims—including the substantiation process and the signing and maintaining of confidentiality agreements—would be 6,432.3 hours at a total labor cost of \$212,185.24 per year. EPA estimates that no capital costs or operation and maintenance costs would be incurred as a result of this information collection.

EPA is soliciting the following additional information to assist in its assessment of the Agency's burden statement:

1. How many substantiation requests do you receive from EPA per year? How many CBI substantiations do you submit per year in response?
2. What is the average number, type, and level of staff involved in preparing a substantiation of CBI claims?
3. What is the average number of hours per staff type and level required to prepare a substantiation of CBI claims? How does this hour estimate breakdown by the following activities:
 - a. Read/review EPA's substantiation request.
 - b. Review information claimed confidential.
 - c. Prepare substantiation.
4. What is the average wage per hour for each staff type and level involved in preparing substantiations?