



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2020-0020; FRL-10004-65-OGC]

Proposed Information Collection Request; Comment Request; Renewal of Existing Information Collection Request for Confidential Business Information Substantiation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), “**Renewal of Existing Information Collection Request for Confidential Business Information Substantiation**” (EPA ICR No. 1665.14, OMB Control No. 2020-003) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through May 31, 2020. 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.

DATES: Comments must be submitted on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Submit your comments, referencing Docket ID No. EPA-HQ-OGC-2020-0020, online using www.regulations.gov (our preferred method), by email to hq.foia@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave., NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without

change including any personal information provided, unless the comment includes profanity, threats, information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Christopher T. Creech, National FOIA Office, (2310A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: 202-564-4286; email address: creech.christopher@epa.gov.

SUPPLEMENTARY INFORMATION:

Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at www.regulations.gov or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit <http://www.epa.gov/dockets>.

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it 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 in completing CBI determinations; (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. EPA will consider

the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another Federal Register notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The U.S. Environmental Protection Agency (EPA) established the requirements set forth in 40 CFR, Part 2, Subpart B, “Confidentiality of Business Information.” The requirements govern business confidentiality claims. The requirements include the handling by the Agency of business information which is or may be entitled to confidential treatment, requiring business submitters to substantiate CBI claims, determining whether such information is entitled to confidential treatment for reasons of business confidentiality, and responding to Freedom of Information Act (FOIA) requests pursuant to 5 U.S.C. §552 for information claimed as CBI.

Form Numbers: None.

Respondents/affected entities: Respondents include any business submitting information to EPA that it claims as CBI. EPA receives such information from both the manufacturing (SIC codes 20-39) and non-manufacturing sectors (no SIC codes identified).

Respondent’s obligation to respond: Voluntary and mandatory

Estimated number of respondents: 198 (total).

Frequency of response: 1 response per respondent annually

Total estimated burden: 752.4 hours (per year). Burden is defined at 5 CFR 1320.03(b)

Total estimated cost: \$169,290 (per year), includes \$0 annualized capital or operation & maintenance costs.

Changes in Estimates: The revised requests for substantiation will decrease the estimated burden hours for each response, although it increases the total estimated respondent burden compared

with the ICR currently approved by OMB. The decrease is 2 hours for each business response; the increase is based on an expected higher response rate under the new form, producing an increase from 488 hours to 752.4 hours total. These changes are due to the removal of a question that required a company to describe, with specificity, the “substantial competitive harm” that would occur as a direct result of disclosing the information. EPA modified its substantiation questions as a result of the U.S. Supreme Court’s decision in *Food Marketing Institute v. Argus Leader Media* (Argus), 139 S. Ct. 2356 (2019), which evaluated the definition of “confidential” as used in Exemption 4 of the Freedom of Information Act (FOIA). 5 U.S.C. 552(b)(4). In the Argus decision, the Court held that at least where “[1] commercial or financial information is both customarily and actually treated as private by its owner and [2] provided to the government under an assurance of privacy, the information is ‘confidential’ within the meaning of Exemption 4.” Argus, 139 S. Ct. at 2366. EPA has reduced burdens to business submitters by removing the requirement to explain with specificity whatever “substantial competitive harm” a submitter claims would ensue from release of each CBI claim. The evaluation of “substantial competitive harm” had required businesses to analyze and describe the potential impacts of release. EPA has replaced that question with modified questions that require a factual description of the submitter’s handling and treatment of the CBI-claimed information, as well as a description of any assurances provided by EPA at the time of submission. This replacement will reduce the burden on companies since evaluation and analysis of “substantial competitive harm” is no longer required. Further, EPA reframed preexisting questions to solicit “yes” or “no” responses, which further reduces burdens on submitters. These modifications will result in greater clarity to business submitters and improved responses as the Agency completes its confidentiality determinations. The Agency anticipates that this lower burden on each response will increase

the response rate from 21% in the prior analysis to 66% in the present analysis. EPA has already experienced an increase in response rate as a result of the Supreme Court's decision and expects this change to continue under the new form. EPA also made other adjustments in its analysis including adjustments in the hourly costs for both the Agency and responding companies as well as removing a category of burden that was not relevant to EPA's information request.

Dated: January 15, 2020.

Timothy R. Epp,

Associate General Counsel.

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