



ENVIRONMENTAL PROTECTION AGENCY

[FRL-10020-92-OAR]

Production of Confidential Business Information in Pending Enforcement Litigation; Transfer of Information Claimed as Confidential Business Information to the United States Department of Justice and Parties to Certain Litigation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency ("EPA") is providing notice of disclosure relating to the criminal prosecution styled United States v. Emanuele Palma, Case No. 2:19-cr-20626-NGE-DRG (E.D. Mich.) (the "Palma Prosecution"). In response to a court order in the Palma Prosecution, EPA is disclosing documents to the United States Department of Justice ("DOJ") for production in the litigation which may contain information submitted to EPA by vehicle and engine manufacturers that is claimed to be, or has been determined to be, potential confidential business information (collectively "CBI"). The use of the documents and any potential CBI is limited to the Palma Prosecution and its distribution is restricted by the terms of a court issued protective order.

DATES: Access by DOJ and/or the parties to the Palma Prosecution to material, including CBI, discussed in this document, will begin on March 15, 2021, and is expected to continue during the Palma Prosecution.

FOR FURTHER INFORMATION CONTACT: Sara Zaremski, Associate Division Director, Compliance Division, Office of Transportation and Air Quality at ComplianceInfo@epa.gov or (734) 214-4362.

SUPPLEMENTARY INFORMATION: On September 18, 2019, the United States indicted Defendant Emanuel Palma on thirteen counts, including violations of the Clean Air Act under 42 U.S.C. § 7413(c)(2)(A). On November 17, 2020, the United States District Court for the Eastern District of Michigan ordered the prosecution team to obtain and produce to the defendant certain materials in the possession, custody or control of the Environmental Protection Agency, Office of Transportation and Air Quality and Office of Enforcement and Compliance Assurance, Office of Civil Enforcement, Air Enforcement Division (hereinafter, collectively “EPA”). See Opinion and Order Granting Defendant’s Motion for Discovery, United States v. Emanuele Palma, Case No. 2:19-cr-20626-NGE-DRG, dated November 17, 2020 (ECF 58) (hereinafter “the Discovery Order”). This notice is being provided, pursuant to 40 CFR 2.209(d), to inform potentially affected businesses that EPA intends to transmit certain documents, which may contain information submitted by vehicle and engine manufacturers that is claimed to be, or has been determined to be, potential confidential business information (collectively "CBI"), to DOJ for production to the defendant in the criminal prosecution. The documents include EPA communications about, with, and information provided by vehicle and engine manufacturers in connection with the certification of light-duty diesel motor vehicle engines and related compliance matters, some of which may include CBI. The information may also include certification and compliance materials for other manufacturers of mobile source vehicles, engines and equipment, some of which may contain CBI.

The federal district court in the Palma Prosecution has issued a protective order , see Palma Prosecution, ECF 20, dated December 23, 2019, (hereinafter, the "Protective Order"), that governs the treatment of information, including CBI, that is designated as “Protected Information” pursuant to the Protective Order. The Protective Order provides for limited disclosure and use of CBI and for the return or destruction of CBI at the conclusion of the litigation. In accordance with 40 CFR 2.209(c)-(d), the EPA must disclose such information to

DOJ for production in the litigation to the extent required to comply with the obligations of the United States in the Palma Prosecution.

Sarah Dunham, Director,
Office of Transportation and Air Quality.

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