



## **ENVIRONMENTAL PROTECTION AGENCY**

**[EPA-HQ-OGC-2020-0020; FRL-10009-37-OMS]**

### **Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Confidentiality Rules (Renewal)**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Confidentiality Rules (EPA ICR Number 1665.14, OMB Control Number 2020-0003) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through May 31, 2020. Public comments were previously requested via the *Federal Register* on January 23, 2020 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. 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:** Additional comments may be submitted on or before **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, referencing Docket ID Number EPA-HQ-OGC-2020-0020, to (1) EPA online using [www.regulations.gov](http://www.regulations.gov) (our preferred method) or [hq.foia@epa.gov](mailto:hq.foia@epa.gov). 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.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review - Open for Public Comments" or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Christopher T. Creech, National FOIA Office, Office of General Counsel, Environmental Protection Agency; telephone number: 202-564-4286; email address: [creech.christopher@epa.gov](mailto: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](http://www.regulations.gov). 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>.

*Abstract:* The U.S. Environmental Protection Agency (EPA or Agency) established the requirements set forth in 40 C.F.R. § 2.201 et seq. "Confidentiality of Business Information" to establish rules to govern claims of confidential business information (CBI), i.e., the rules governing the handling by the Agency of business information which is or may be entitled to confidential treatment, 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 this information.

*Form Numbers:* None.

*Respondents/affected entities:* Respondents can potentially include any business that submitted to EPA information that may be claimed as CBI. Respondents can be entities in both the manufacturing (SIC codes 20-30) 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:* \$169,290.00 (per year), includes \$0 annualized capital or operation & maintenance costs.

*Changes in the 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 hours total. This decrease of hours spent 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 because 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 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 because 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.

**Courtney Kerwin,**

*Director, Regulatory Support Division.*

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