Enclosure 3

July 2017

Summary of Procedures for Safeguarding Clean Air Act Confidential Business Information

1. Purpose

This memorandum describes U.S. Environmental Protection Agency (EPA), Office of Air Quality Planning and Standards (OAQPS) policy and procedures set forth for the handling of information claimed as Confidential Business Information (CBI), whether submitted voluntarily or obtained under Section 114 of the Clean Air Act (CAA), and governed by EPA regulations in 40 Code of Federal Regulations (CFR), Part 2, Subpart B, and other EPA regulations and policies.

2. Reference Documents:

a. Clean Air Act, as amended.
b. 40 CFR, Chapter 1, Part 2, Subpart B - Confidentiality of Business Information.
c. EPA Information Security Manual.
d. Clean Air Act Confidential Business Information Security Manual (January 2002).

3. Exception:

This document was prepared as a summary of data gathering and handling procedures used by the OAQPS of the EPA. Nothing in this document shall be construed as superseding or being in conflict with any applicable regulations, statutes, or policies to which EPA is subject.

4. Definition:

Confidential Business Information - Information claimed by the provider to be confidential. This information may be identified with such titles as trade secret, secret, administrative secret, company secret, secret proprietary, privileged, administrative confidential, company confidential, confidential proprietary, or proprietary. NOTE: These markings should not be confused with the classification markings of national security information identified in Executive Order 11652.

5. Background

Section 114 (c) of the CAA, as amended, reads as follows:

"Any records, reports, or information obtained under subsection (a) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof (other than emission data), to which the Administrator has access under this section if made public, would divulge methods or processes entitled to protection as trade secrets of such person, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of Section 1905 of Title 18 of the United States Code, except that such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act or when relevant in any proceeding under this Act."

The treatment of CBI by EPA, including data obtained under Section 114 of the CAA, is governed by 40 CFR Part 2. These regulations require EPA offices to include a notice with each request for information to inform the business of: (1) its right to assert a claim of confidentiality covering part or all of the information, (2) the method for asserting a claim, and (3) the effect of failure to assert a claim at time of submission. In addition, the regulations: (1) set forth procedures for the safeguarding of confidential information, (2) contain provisions for providing confidential information to authorized representatives, (3) contain provisions for the release of information to the Congress, Comptroller General, other Federal agencies, State and local governments, and Courts, (4) permit the disclosure of information within EPA to employees with an official need for the information, and (5) prohibit wrongful use of such information and cite penalties for wrongful disclosure. Further, the regulations contain the Agency's basic rule concerning the treatment of requests for information under the Freedom of Information Act (FOIA) (5 U.S.C. 552).

6. Procedures:

a. Request for Information.

Each request for information made under the provisions of Section 114(a) includes the standard enclosure "EPA's Information Gathering Authority under Section 114 of the Clean Air Act" which was designed to meet the requirement of 40 CFR Part 2 discussed above.

b. Receipt of CAA CBI.

Upon receipt of information for which confidential treatment has been requested, the OAQPS Document Control Officer (DCO) logs in the material and a permanent file is established. If part of the material is claimed to be confidential, that portion should be marked "Subject to Confidentiality Claim." In compliance with Sections 2.204 and 2.208 of 40 CFR

Part 2, the Group Leader responsible for the requested information reviews the information to determine the validity of the confidentiality claim as prescribed by the sections. If the information is clearly not confidential, the Group Leader prepares a letter for the signature of the responsible Division Director to notify the business of this finding. Information claimed as confidential is hand carried to the OAQPS CBI Office to be logged into the OAQPS CAA CBI tracking system and filed for safekeeping. The OAQPS CAA CBI tracking system provides a brief description of the material (submitter, subject, number of pages, etc.), identifies it with the correct project number or work assignment number, and lists those persons who are authorized to have access to the information. A record of personnel accessing the information (Attachment A) is also kept on filed. By regulation, confidential information must be so marked or designated by the originator. The EPA takes additional measures to ensure that the proprietary designation is uniformly indicated and immediately observable. All unmarked or undesignated information (except as noted below) may be authorized for public release.

c. Storage of CAA CBI.

Folders, documents, or material containing CAA CBI (as defined) shall be secured according to the instructions listed in the OAQPS Security Manual. In addition, the CBI storage area that has been identified specifically for that purpose is equipped with a supplementary locking device. The storage area and files are under the direct control of the OAQPS DCO.

Access to the storage area is limited to the DCO, Document Control Assistant, and the minimum number of persons required to effectively maintain normal business operations as directed by the Director, Planning, Resources, and Regional Management Staff (PRRMS).

Files may be issued upon confirmation that the requesting individual is authorized to receive the information. All confidential files must be returned no later than close of business on the same day. The intended user must sign the CBI Control Record when checking out files.

Individuals signing out confidential files are responsible for their safekeeping. Files must never be left unattended. The information must not be disclosed to any non-authorized personnel.

Storage procedures for CAA CBI by an authorized representative of EPA (see Section d. below) must be, at a minimum, as secure as those established for EPA offices within OAQPS. Whenever CBI is removed from the EPA files to be transmitted to an authorized representative, a notation is made in the file's control record and transfer log indicating what information was transmitted, the date, and the recipient. The authorized representative returns a signed receipt to the DCO.

d. Access to CAA CBI.

Only authorized EPA employees may open or distribute CAA CBI.

Only employees who require, have a need to know, and are authorized access to CAA CBI in the performance of their official duties are permitted to review documents and, upon receiving a confidential document, must sign and date a form to certify their access to the document.

The Group Leader having primary responsibility for the CAA CBI provides a memorandum to the DCO designating those personnel authorized to access specific CBI. No person is automatically entitled to access based solely on grade, position, or security clearance. The names of persons granted access to CAA CBI are placed on the CAA CBI access list. The CAA CBI access list indicates the "specific" CBI each person is permitted to see. The access list is reviewed and updated periodically.

Companies under contract to perform work for the EPA may be designated authorized representatives of EPA. As authorized representatives, contractors may be granted access to CAA CBI. The following conditions apply when it has been determined that disclosure is necessary:

(1) The contractor designated as a representative and its employees (a) may use such confidential information only for the purpose of carrying out the work required, (b) must refrain from disclosing the information to anyone other than EPA without having received from EPA prior written approval of each affected business or of an EPA legal office, and (c) must return to EPA all copies of the information (and any abstracts or excerpts there from) upon request or whenever the information is no longer required for the performance of the work.

(2) The authorized contractor designated as a representative must obtain a written confidentiality agreement from each of its employees who will have access to the information. A copy of each employee agreement must be furnished to EPA before access is permitted.

(3) The contractor designated as an authorized representative must agree that the conditions in the contract concerning the use and disclosure of CAA CBI are included for the benefit of, and shall be enforceable by, both EPA and any affected business having a proprietary interest in the information.

Information may be released to or accessed by EPA employees other than OAQPS employees only upon approval of the Director, PRRMS.

Requests for CAA CBI from other Federal agencies, Congress, the Comptroller General, Courts, etc., are processed in accordance with 40 CFR Part 2, Subpart B.

Requests under the FOIA are handled in accordance with 40 CFR Part 2, Subpart A. The FOIA Coordinator must be consulted prior to responding to any request for information if a claim of confidentiality has been asserted or if there is reason to believe that a claim might be made if the business knew release was intended.

e. Use and Disclosure of CAA CBI.

The CAA CBI, as defined, may not be used in publications, supporting documentation, memoranda, etc., that become a part of the public domain, except as provided for in 40 CFR Part 2, Subpart B. The CAA CBI may not be summarized without the approval of the Group Leader responsible for the CAA CBI. Any authorized reproductions must be logged into the CAA CBI document tracking system and treated according to the same procedures applicable to the original confidential material. Documents, materials, or extracts of information generated by EPA which contain CAA CBI must be stamped "Subject to Confidentiality Claim" and a cover sheet must be attached to identify the material as CBI.

f. Handling of Information Gathered during Site Visits

Because industrial-data-gathering visits, plant inspections, and source testing (collectively site visits) can involve receipt of CAA CBI, it is the policy of OAQPS to protect all parties involved in the following manner:

(1) At the beginning of the site visit, EPA or its authorized representative will discuss with the industry representatives the information sought and how it is to be used. Our preference is that the facility not discuss or reveal any information they consider to be CBI unless necessary to meet the data gathering objectives of the site visit.

(2) If it becomes necessary to discuss any CBI, we will request the industry representatives clearly identify the CBI information at the time it is discussed. If possible, information for which a confidentiality claim is made should be segregated from the non-CBI information and mailed directly to the OAQPS Document Control Officer Assistant: Ms. Katrina Chambers, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, (MD-C404-02), 109 T.W. Alexander Drive, Research Triangle Park, North Carolina 27711. If mailing is not possible, any data designated as CBI by the facility will be hand carried back to the OAQPS office.

(3) Following a site visit a trip report is usually prepared to include, as practicable, pertinent information received during the visit. The report may be prepared by either EPA or its authorized representative. This draft report will not contain any information the industry representatives have designated as CBI. We will request that the industry representatives review the report for accuracy and return the report with any comments to the EPA representative. This report will then be authorized for release and/or entry into the rulemaking docket.

(4) Any material identified as CAA CBI will be kept in the CBI files as described above. If it becomes necessary to use any of this CBI information or to obtain industry review for technical accuracy, we will separately submit it to the site for review. The material will be clearly identified as Subject to Confidentiality Claim with an attached yellow cover sheet. A custody receipt for the information will also be enclosed. Please sign and date the form to acknowledge receipt of the trip report and return a copy of the form by mail or fax to Ms. Katrina Chambers, the Document Control Officer Assistant. The site is requested by cover letter to review the material for accuracy, confirm the specific information that is being claimed as CBI, and return an edited copy to the responsible EPA representative within the time specified. The

original draft of this material is kept in the CBI file until the edited copy is returned by the RIO. Any CBI in the edited copy will also be kept in the CBI file.

Attachments (2)

CAA CONFIDENTIAL BUSINESS INFORMATION CONTROL RECORD

DATE RECEIVED:	RESPONSIBLE GROUP:	CONTROL NUMBER:
DATE OF DOCUMENT:	DOCUMENT AUTHOR:	

DESCRIPTION (PROVIDING ORGANIZATION, TITLE, SUBJECT, NUMBER OF COPIES, NUMBER OF PAGES)

RETURN DATE:	DESTRUCTION DATE:	INITIALS:

EACH PERSON WHO IS GIVEN ACCESS TO THIS DOCUMENT MUST FILL IN THE INFORMATION BELOW.

CHECK-OUT			CHECK-IN		
SIGNATURE	DATE	TIME	SIGNATURE	DATE	TIME

CAA Form 1 (Rev. 01/02)

I. AUTHORIZATION FOR ACCESS TO CAA CBI FOR FEDERAL EMPLOYEES

FULL NAME	POSITION
SSN XXX-XX-_____(Last Four)	OFFICE

It is the responsibility of each Authorizing Official* to ensure that the employees under his/her supervision who require access to CAA CBI:

1. Sign the Confidentiality Agreement for Federal Employees
2. Are fully informed regarding their security responsibilities for CAA CBI.
3. Obtain access only to that CAA CBI required to perform their official duties

SIGNATURE OF AUTHORIZING OFFICIAL*	TELEPHONE NO.	DATE
TITLE	LOCATION	

II. CONFIDENTIALITY AGREEMENT FOR FEDERAL EMPLOYEES

I understand that, in accordance with my official duties, I will have access to certain Confidential Business Information submitted under the Clean Air Act (CAA) (42 U.S.C. 7401 et seq.)

I understand that, under 18 U.S.C. 1905 and 18 U.S.C. 1924, I am liable for a possible fine of up to $1,000 and/or imprisonment for up to one year, if I willfully disclose CAA Confidential Business Information to any person not authorized to receive it. Additionally, I understand that, I may be subject to disciplinary action for violation of this agreement with penalties ranging up to and including dismissal.

I am aware that, I may be subject to criminal penalties under 18 U.S.C. 1001 if I have made any statement of material facts knowing that such statement is false or if I willfully conceal any material fact.

I agree that, upon the termination of my duties, transfer or departure from the Environmental Protection Agency, I will return all materials in my possession containing CAA Confidential Business Information to the OAQPS CBI Office.

I certify that I have read and understand these procedures and those outlined in the CAA CBI Security Manual.

SIGNATURE	TELEPHONE NO.	DATE

III. THE UNDERSIGNED CERTIFIES THE ALL TRAINING AND TEST REQUIREMENTS HAVE BEEN MET BY THE EMPLOYEE.

SIGNATURE CBI MANAGER/DCO	TELEPHONE NO.	DATE

IV. ANNUAL RE-CERTIFICATION: I certify that, in conjunction with my duties, I require access to CAA CBI. I am current with all CBI handling procedures and security guidelines as outlined in the CCA CBI Security Manual.

Date		Date		Date		Date		Date		Date	
Initial		Initial		Initial		Initial		Initial		Initial	
Date		Date		Date		Date		Date		Date	
Initial		Initial		Initial		Initial		Initial		Initial	

CAA CBI From 2 (Rev. 10/08) * Must be Division Director (or equivalent) or above.