

alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the nose wheel steering and reduced controllability of the airplane on the ground, accomplish the following:

Installation of Circuit Breaker and Related Wiring and Relocation of the Circuit Breaker, if Applicable

(a) Within 6 months after the effective date of this AD, install a new circuit breaker and related wiring, per Saab Service Bulletin 340-32-120, Revision 01, dated August 29, 2000.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM-116, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM-116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Dutch airworthiness directive (SAD) 1-155, dated February 28, 2000.

Issued in Renton, Washington, on December 15, 2000.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 2

[FRL-6921-2]

Public Information and Confidentiality: Advance Notice of Proposed Rulemaking; Withdrawal of 1994 Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking (ANPRM); withdrawal of 1994 proposed rule.

SUMMARY: EPA is providing advance notice of proposed rulemaking regarding revisions of its regulations dealing with the handling of confidential business information (CBI). We refer to these as "the CBI regulations." As part of this process, we are planning to revise the current CBI regulations so they will be in plain language and will reflect current case law and recent technological developments. In revising the CBI regulations, we also intend to improve our processing of requests for CBI while ensuring appropriate protection of confidential business information. We are seeking comments as to the extent of additional revisions. EPA is also withdrawing its November 23, 1994 Proposed Rulemaking (59 FR 60445).

DATES: Comments on this advance notice of proposed rulemaking must be submitted by March 21, 2001. EPA will be holding a public meeting on the potential revision of the CBI regulations on January 18, 2001 from 9:00 a.m. to 4:30 p.m. in the EPA Auditorium, 401 M Street, SW Washington, DC. Please direct all correspondence to the addresses shown below.

ADDRESSES: Written comments should be submitted (in duplicate if possible) to Docket Number EC-2000-004, Enforcement and Compliance Docket and Information Center (ECDIC), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Room 4033, Mail Code 2201A, Washington, DC 20460; Phone, 202-564-2614 or 202-564-2119; Fax, 202-501-1011 EMail, *docket.oeca@epa.gov*. Written, but not oral, comments for the official record will also be accepted at the public meeting. Documents related to this advance notice of proposed rulemaking are available for public inspection and viewing by contacting the ECDIC at this same address. The ECDIC is open from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays.

Comments in an electronic format also should reference docket number EC-2000-004. All electronic comments must be submitted as an ASCII file and should avoid the use of special characters and any form of encryption. Commenters should not submit any CBI electronically. To the extent a comment contains CBI, commenters must submit an original and one copy of CBI under separate cover to: Alan Margolis, Office of Information Collection, Office of Environmental Information, U.S.

Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Mail Code 2822, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Alan Margolis, Office of Information Collection, Office of Environmental Information, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Mail Code 2822, Washington, DC 20460; Phone, 202-260-9329; Fax, 202-401-4544; Email, *margolis.alan@epa.gov*.

SUPPLEMENTARY INFORMATION:

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I. Purpose and Background of ANPRM

In this ANPRM, we provide advance notice of proposed rulemaking regarding revisions of our CBI regulations. Our intent is to ensure that the regulations are in plain language, and that they adequately protect CBI in light of current caselaw and recent technological developments. Additionally, EPA is reviewing its current regulations to determine whether there are ways the Agency could reduce the burden on the regulated community while also ensuring the adequate protection of CBI and streamlining the Agency's processes for handling CBI. The ANPRM sets forth existing problems with current policies and suggests possible options for improving the efficiency of the Agency's CBI operations.

Under the Freedom of Information Act (FOIA), any person has a right to obtain federal agency records, except to the extent that such records (or portions thereof) are protected from disclosure by one of nine exemptions or three exclusions. Exemption 4 of FOIA, 5 U.S.C. 552(b)(4), protects "trade secrets and commercial or financial information obtained from a person and privileged or confidential." In 1976, EPA first promulgated its comprehensive CBI regulations, which are codified as 40 CFR part 2, subpart B. EPA's CBI regulations are part of its public information regulations and implement Exemption 4 of FOIA. In addition to

implementing FOIA Exemption 4, the CBI regulations also generally address issues outside of the FOIA context that involve the handling, processing, and disclosure of CBI under specific EPA-administered statutes. The CBI regulations set out procedures for EPA to make confidentiality determinations for information claimed as confidential.

II. Withdrawal of 1994 Proposal

On November 23, 1994, EPA published a proposed rule on Public Information and Confidentiality ("the 1994 proposal"), which proposed amendments to the CBI regulations (59 FR 60445). The intent of the proposed rule was to eliminate unnecessary procedures and to streamline and expedite activities involving CBI. Major changes raised in 1994 included up-front assertion of CBI claims, up-front substantiation, sunset provisions, different options for changing the manner of processing FOIA requests, and clarification regarding the release of aggregated data. Over 60 comments were received from the public. The rule was not finalized due to the complexity of the issues raised in the public comments. EPA is withdrawing this proposed rule on December 21, 2000. EPA will initiate a new and separate rulemaking based on the issues raised in the comments to this ANPRM and at the public meeting.

III. Major CBI Topics

EPA intends to revise its CBI regulations to make them less burdensome on EPA and the submitters of CBI, while preserving the public's right to obtain publicly available information and ensuring the adequate protection of CBI. For each idea presented below, we discuss some existing problems with current policies and suggest possible options for improving the policies. EPA welcomes comments on any of the topics discussed below. We are not proposing any specific action regarding the CBI regulations at this time but are providing background information and requesting additional information that we should consider.

A. Submissions of Confidential Business Information

EPA receives a large number of submissions of various types of information claimed as CBI. Many of the claims received are very broad, and the Agency has limited resources to deal with this stream of information. As a result, large amounts of information claimed as CBI are retained by the Agency longer than necessary, and broad or non-specific CBI claims may

limit public access to information that is not actually CBI. We are considering the following options to facilitate EPA's examination and, if appropriate, protection of this material, as well as the Agency's responses to those who request the information under FOIA.

1. Up-front Substantiation of CBI Claims

An option that a number of other agencies have used to reduce the number of overly-broad or non-specific CBI claims is the use of up-front substantiation. Up-front substantiation would require the submission of statements setting forth the basis of business confidentiality at the time the information is first submitted and claimed confidential. Our current CBI regulations require that when EPA is determining whether information claimed as confidential is entitled to confidential treatment, it must notify affected businesses that they may submit comments substantiating their claims of confidentiality (see section 2.204(e)). The CBI regulations generally do not require a business to submit a substantiation until disclosure becomes an issue.

Although EPA realizes that seeking complete up-front substantiations may increase the burden on submitters of information, we are exploring options to permit the reduction of overly-broad or non-specific CBI claims, while requiring less handling and storage of the information claimed as confidential. One possible option would be to require that certain elements of a CBI substantiation be provided when the information is submitted and claimed as confidential. A more comprehensive substantiation would be required only if disclosure becomes an issue. We believe this would help reduce the number of overly-broad or non-specific claims, while providing only an incremental burden on submitters. Additionally, EPA is interested in comments concerning whether it should require up-front substantiation when only portions of documents are claimed as CBI. The Agency is interested in other suggestions for facilitating the initial CBI determination process.

2. Submission of Redacted Copies

An additional method of streamlining the CBI process would be to require that a copy of the document from which information claimed to be confidential has been deleted (hereinafter "redacted copy") be submitted along with a copy of the material claimed as confidential. The submission of redacted copies would enable the Agency to respond in a timely fashion to FOIA requests for CBI by releasing the redacted copy of

the information to the FOIA requester. Certain submitters to the Agency already submit redacted copies of information as a matter of practice. EPA is soliciting comments concerning the effect of requiring businesses to submit redacted copies whenever they submit information claimed as confidential.

B. EPA Treatment of Information Claimed as CBI

EPA often finds it necessary to make final confidentiality determinations as a result of FOIA requests or rulemaking. Final determinations are written by the EPA legal office in consultation with the appropriate EPA program staff. EPA is interested in improving the efficiency of this process. In addition, the Agency has relied on class determinations and the aggregation of data in order to maximize Agency resources, ensure the timely release of information to the public, and appropriately protect information that is claimed to be confidential. We are seeking comments and suggestions on the use of class determinations and data aggregation.

The Agency is also considering adding language to the CBI regulations concerning the disposition of records containing CBI in accordance with the appropriate records management schedules. We are seeking comments on the possible addition of this language to the CBI regulations.

1. Class Determinations

Title 40 CFR section 2.207 permits EPA to use class determinations to make known its position regarding the manner in which information within a class will be treated by EPA under the CBI regulations. EPA relies on class determinations to permit efficient processing of numerous FOIA requests for the same types of CBI. Certain affected businesses have expressed concern over the Agency's reliance on class determinations, arguing that decisions about whether specific information is entitled to be treated as CBI are best made on a case-by-case basis. We are soliciting comments on the benefits or the harm resulting from EPA's use of class determinations.

2. Aggregation of Data

EPA uses several mechanisms to ensure that public records in rulemaking adequately allow for meaningful public comment and effective judicial review, while at the same time complying with the Agency's CBI obligations. These mechanisms include using summaries or aggregations of data as well as identity-masking strategies, to develop a public rulemaking record from information

claimed as CBI while avoiding the disclosure of such information.

EPA does not have general guidelines for aggregating CBI data, and we are seeking comments on whether such guidelines are needed. We are also interested in suggestions concerning the form such guidelines could take, given the diversity of data submitted to the Agency.

3. Mosaic Effect

Since the 1976 regulations were promulgated, the information landscape has changed. The rapid growth of the Internet and other electronic means of disseminating information, the increasing use of competitive intelligence measures by private industry, and the perceived potential for environmental terrorist attacks have heightened concerns about the public release of information. The main challenge to the Agency is to achieve an appropriate balance between disclosing information to the public and withholding information that could cause competitive harm.

In response to the growth of the Internet, the regulated community has made the argument that multiple pieces of data which may not qualify individually to be treated as CBI and are made publicly available can be pieced together to reveal a trade secret. EPA held discussions with stakeholders about the potential for such a "mosaic effect" as part of the EPA/State Stakeholder Forum on Public Information Policies, in Chicago on November 15–16, 1999 (for summary see EPA's web site at www.epa.gov/oei/issuepapers). No consensus was reached on whether the "mosaic effect" exists, how extensive or serious it is, or how EPA could address it. This lack of consensus was also reflected in the General Accounting Office's report "Environmental Information, EPA Could Better Address Concerns About Disseminating Sensitive Business Information" (GAO/RCED-99-156, General Accounting Office, June 1999), citing the range of views expressed by industry representatives and competitive intelligence professionals.

In several lawsuits, courts have recognized the mosaic approach in sustaining a finding that the disclosure of information that was not in and of itself harmful, would be harmful when combined with information already available to the requestor. These courts, however, made their decisions on a case-by-case basis by examining the facts that would lead to such an

outcome.¹ EPA is not aware of any general government policy or regulation that attempts to regulate the dissemination or disclosure of information based on the concept of a mosaic effect. Our current policy is to continue treating such claims on an individual case-by-case basis, as required by FOIA. In doing so, we would also consider any concerns raised by the submitter of the information regarding its potential to be combined with other information in a way that could result in competitive harm.

We are soliciting comments on this issue, particularly specific examples of the harm resulting from the mosaic effect and ideas to prevent harm while also preserving the public's right to obtain government-held information that is not exempt from disclosure under FOIA.

In addition to the issues listed above, we are dealing with other issues concerning CBI. These issues are driven by legal concerns. We describe them below.

4. Disposition of CBI

EPA's current CBI regulations do not address the disposition of CBI records. Retention of all records (including CBI records) is governed by records schedules approved by the Archivist of the United States. National Archives and Records Administration (NARA) regulations at 36 CFR Part 1256 allow for the transfer of CBI records to the Federal Records Centers and the National Archives. The Agency is considering adding language to the CBI regulations referencing the appropriate retirement of records containing CBI in accordance with NARA-approved records schedules. The purpose of this addition is to encourage compliance with the NARA regulations and EPA records schedules by the various EPA offices responsible for handling CBI. EPA is soliciting comments on the addition of this language to the CBI regulations.

5. Definition of "voluntarily submitted information"

Since the promulgation of the CBI regulations, the definition of "voluntarily submitted information" used in our CBI regulations has been called into question by the decision in *Critical Mass Energy Project v. NRC*, 975

F.2d 871 (D.C. Cir. 1992). *Critical Mass* held that "voluntarily" submitted information should be categorically protected as confidential, provided it is not "customarily" disclosed to the public by the submitter. Cases subsequent to *Critical Mass* have clarified the meaning of "voluntary" pursuant to the holding in *Critical Mass*.

The Department of Justice, in accordance with recent case law, has concluded that a submitter's voluntary participation in an activity does not govern whether any submissions made in connection with that activity are likewise "voluntary." Submissions that are required to realize the benefits of a voluntary program are considered to be mandatory.² EPA's current regulations defining voluntary are located at 2.201(i)(2) and 2.208 and predate the *Critical Mass* decision. EPA is considering revision of the regulatory language to reflect the decision in *Critical Mass* and the subsequent case law defining "voluntarily submitted."

6. Legal Challenge to 40 CFR 2.205(c)

Under section 2.205(c) of our CBI regulations, EPA will automatically treat as CBI a substantiation marked as confidential by the submitter in accordance with section 2.203(b) if the information in the substantiation is not otherwise possessed by EPA. When EPA receives a FOIA request for such a substantiation, we do not request that the affected business submit comments substantiating why the information in its previous CBI substantiation should be treated as confidential, and we automatically deny the FOIA request for the substantiation on the basis of section 2.205(c). The result is that information submitted to EPA in a CBI substantiation and claimed as CBI is treated differently than all other business information submitted to EPA and claimed as CBI. This special treatment has been challenged in United States District Court (*Northwest Coalition for Alternatives to Pesticides (NCAP) v. EPA*, D.D.C., Civil Action No. 99-437) on the grounds that it violates FOIA.

EPA has currently repropose a rule to eliminate the automatic protection of CBI substantiations (65 FR 52684, Aug. 30, 2000). This rule was originally published in the **Federal Register** in October 1999, in response to a lawsuit from NCAP. EPA is repropose the rule to explain in more detail why the proposed change in its CBI regulations

¹ See, e.g., *Trans-Pacific Policing Agreement v. United States Customs Service*, 1998 U.S. Dist. LEXIS 7800 (D.D.C. 1998), *reversed and remanded*, 177 F.3d 1022 (D.C. Cir. 1999); *Timken Co. v. United States Customs Service*, 491 F. Supp. 557 (D.D.C. 1980); *Department of Justice Freedom of Information Act Guide & Privacy Act Overview*, p. 201 (May 2000 Edition).

² See *Public Citizen Health Research Group v. FDA*, 964 F. Supp. 413, 414 (D.D.C. 1997); *Lykes Bros. Steamship Company v. Pena*, 1993 WL 786064 (D.D.C. 1993); *Department of Justice Freedom of Information Act Guide & Privacy Act Overview*, pp. 173-174 (May 2000 Edition).

is needed. EPA has proposed that the rule be applied prospectively, but we are soliciting further comments on this issue.

List of Subjects in 40 CFR Part 2

Environmental protection, Administrative practice and procedure, Confidential business information, Freedom of information, Government employees.

Dated: December 15, 2000.

Carol M. Browner,
Administrator.

[FR Doc. 00-32565 Filed 12-20-00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WY-001-0006b; FRL-6886-9]

Clean Air Act Approval and Promulgation of State Implementation Plan; Wyoming; Revisions to Air Pollution Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to partially approve and partially disapprove revisions to the State Implementation Plan (SIP) submitted by the Governor of Wyoming on May 21, 1999. The submittal incorporates revisions to the following sections of the Wyoming Air Quality Standards and Regulations (WAQSR): Section 2 Definitions, Section 4 Sulfur oxides, Section 5 Sulfuric acid mist, Section 8 Ozone, Section 9 Volatile organic compounds, Section 10 Nitrogen oxides, Section 14 Control of particulate emissions, and Section 21 Permit requirements for construction, modification and operation. EPA is proposing to partially disapprove the provisions that allow the Administrator of the Wyoming Air Quality Division to approve alternative test methods to those required in the SIP (sections 2, 4, 5, 10, and 14 of the WAQSR) because such provisions are inconsistent with section 110(i) of the Clean Air Act (Act) and the requirement that SIP provisions can only be modified through revision to the SIP and approval by EPA. The intended effect of this action, once final, is to make federally enforceable those provisions that EPA is approving. EPA is proposing this action under section 110 of the Act.

In the "Rules and Regulations" section of this **Federal Register**, EPA is acting on the State's SIP revision as a

direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Comments must be received in writing on or before January 22, 2001.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202-2466. Copies of the State documents relevant to this action are available for public inspection at the Air Quality Division, Department of Environmental Quality, 122 West 25th Street, Cheyenne, Wyoming, 82002.

FOR FURTHER INFORMATION CONTACT: Kerri Fiedler, EPA Region VIII, (303) 312-6493.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 6, 2000.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 00-32240 Filed 12-20-00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[Docket Id-00-01; FRL-6920-8]

Finding of Attainment for PM-10; Portneuf Valley PM-10 Nonattainment Area, Idaho

AGENCY: Environmental Protection Agency (EPA or we).

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA is extending the public comment period on EPA's notice of proposed rulemaking "Finding of Attainment for PM-10; Portneuf Valley PM-10 Nonattainment Area, Idaho," published on December 6, 2000 at 65 FR 76203. The comment period was originally scheduled to close on December 26, 2000. The comment period is being extended until January 19, 2001.

DATES: All comments regarding EPA's proposed rulemaking published on December 6, 2000 must be received by EPA in writing on or before close of business on January 19, 2001.

ADDRESSES: Written comments should be mailed to Debra Suzuki, SIP Manager, Office of Air Quality, Mailcode OAQ-107, EPA Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101. Copies of documents relevant to this action are available for public review during normal business hours (8:00 AM to 4:30 PM) at this same address.

FOR FURTHER INFORMATION CONTACT: Steven K. Body, Office of Air Quality, EPA Region 10, 1200 Sixth Avenue, Seattle Washington, 98101, (206) 553-0782.

SUPPLEMENTARY INFORMATION: On December 6, 2000, we solicited public comment on a proposal to find that the Portneuf Valley nonattainment area in Idaho has attained the National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter of less than, or equal to a nominal ten micrometers (PM-10) as of December 31, 1996. See 65 FR 76203. In the proposal, we stated that EPA would accept public comments on the proposal until December 26, 2000.

EPA has received a request to extend the public comment period. In light of this request, we are extending the public comment period to January 19, 2001, resulting in a public comment period of 44 days. All written comments received by EPA by January 19, 2001, will be considered in our final action.