

40 CFR Part 2, effective as of January 1, 1992 (excerpts)

2.100 Definitions. For the purposes of this part:

- (a) "EPA" means the United States Environmental Protection Agency.
- (b) "EPA Record" or, simply "record" means any document, writing, photograph, sound or magnetic recording, drawing, or other similar thing by which information has been preserved, from which the information can be retrieved and copied, and over which EPA has possession or control. It may include copies of the records of other Federal agencies (see s 2.111(d)). The term includes informal writings (such as drafts and the like), and also includes information preserved in a form which must be translated or deciphered by machine in order to be intelligible to humans. The term includes documents and the like which were created or acquired by EPA, its predecessors, its officers, and its employees by use of Government funds or in the course of transacting official business. However, the term does not include materials which are the personal records of an EPA officer or employee. Nor does the term include materials published by non-Federal organizations which are readily available to the public, such as books, journals, and periodicals available through reference libraries, even if such materials are in EPA's possession.
- (c) "Request" means a request to inspect or obtain a copy of one or more records.
- (d) "Requestor" means any person who has submitted a request to EPA.
- (e) The term "'commercial use' request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade or profit interests of the requestor or the person on whose behalf the request is made. In determining whether a requestor properly belongs in this category, EPA must determine the use to which a requestor will put the documents requested. Moreover, where EPA has reasonable cause to doubt the use to which a requestor will put the records sought, or where that use is not clear from the request itself, EPA may seek additional clarification before assigning the request to a specific category.
- (f) The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (e) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.
- (g) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution or professional education, and an institution of vocational education, which operates a program or programs of scholarly research.
- (h) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but EPA may also look to the past publication record of a requestor in making this determination.
- (i) The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searching for material must be done in the most efficient and least expensive manner so as to minimize costs for both the EPA and the requestor. For example, EPA will not engage in line-by-line search when merely duplicating an entire document would prove the less expensive and quicker method of complying with a request. "Search" will be distinguished, moreover, from "review" of material in order to determine whether the material is exempt from disclosure (see paragraph (j) of this section). Searches may be done manually or by computer using existing programming.
- (j) The term "review" refers to the process of examining documents located in response to a request that is for a

commercial use (see paragraph (e) of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving legal or policy issues regarding the application of exemptions. (Documents must be reviewed in responding to all requests; however, review time may only be charged to Commercial Use Requesters.)

- (k) The term "duplication" refers to the process of making a copy of a document necessary to respond to an FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others. The copy provided must be in a form that is reasonably usable by requesters.

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2.208 Substantive criteria for use in confidentiality determinations.

Determinations issued under ss 2.204 through 2.207 shall hold that business information is entitled to confidential treatment for the benefit of a particular business if--

- (a) The business has asserted a business confidentiality claim which has not expired by its terms, nor been waived nor withdrawn;
- (b) The business has satisfactorily shown that it has taken reasonable measures to protect the confidentiality of the information, and that it intends to continue to take such measures;
- (c) The information is not, and has not been, reasonably obtainable without the business's consent by other persons (other than governmental bodies) by use of legitimate means (other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding);
- (d) No statute specifically requires disclosure of the information; and
- (e) Either--
 - (1) The business has satisfactorily shown that disclosure of the information is likely to cause substantial harm to the business's competitive position; or
 - (2) The information is voluntarily submitted information (see s 2.201(i)), and its disclosure would be likely to impair the Government's ability to obtain necessary information in the future.

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2.301 Special rules governing certain information obtained under the Clean Air Act.

- (a) Definitions. For the purpose of this section:
 - (1) "Act" means the Clean Air Act, as amended, 42 U.S.C. 7401 et seq.
 - (2) (i) "Emission data" means, with reference to any source of emission of any substance into the air--
 - (A) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any emission which has been emitted by the source (or of any pollutant resulting from any emission by the source), or any combination of the foregoing;
 - (B) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of the emissions which, under an applicable standard or limitation, the source was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source); and
 - (C) A general description of the location and/or nature of the source to the extent necessary to identify the source and to distinguish it from other sources (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source).
 - (ii) Notwithstanding paragraph (a)(2)(i) of this section, the following information shall be considered to be "emission data" only to the extent necessary to allow EPA to disclose publicly that a source is (or is not) in compliance with an applicable standard or limitation, or to allow EPA to demonstrate the feasibility, practicability, or attainability (or lack thereof) of an existing or proposed standard or limitation:
 - (A) Information concerning research, or the results of research, on any project, method, device

- or installation (or any component thereof) which was produced, developed, installed, and used only for research purposes; and
- (B) Information concerning any product, method, device, or installation (or any component thereof) designed and intended to be marketed or used commercially but not yet so marketed or used.
- (3) "Standard or limitation" means any emission standard or limitation established or publicly proposed pursuant to the Act or pursuant to any regulation under the Act.
- (4) "Proceeding" means any rulemaking, adjudication, or licensing conducted by EPA under the Act or under regulations which implement the Act, except for determinations under this subpart.
- (5) "Manufacturer" has the meaning given it in section 216(1) of the Act, 42 U.S.C. 7550(1).
- (b) Applicability.
- (1) This section applies to business information which was--
- (i) Provided or obtained under section 114 of the Act, 42 U.S.C. 7414, by the owner or operator of any stationary source, for the purpose (A) of developing or assisting in the development of any implementation plan under section 110 or 111(d) of the Act, 42 U.S.C. 7410, 7411(d), any standard of performance under section 111 of the Act, 42 U.S.C. 7411, or any emission standard under section 112 of the Act, 42 U.S.C. 7412, (B) of determining whether any person is in violation of any such standard or any requirement of such a plan, or (C) of carrying out any provision of the Act (except a provision of Part II of the Act with respect to a manufacturer of new motor vehicles or new motor vehicle engines);
- (ii) Provided or obtained under section 208 of the Act, 42 U.S.C. 7542, for the purpose of enabling the Administrator to determine whether a manufacturer has acted or is acting in compliance with the Act and regulations under the Act, or provided or obtained under section 206(c) of the Act, 42 U.S.C. 7525(c); or
- (iii) Provided in response to a subpoena for the production of papers, books, or documents issued under the authority of section 307(a) of the Act, 42 U.S.C. 7607(a).
- (2) Information will be considered to have been provided or obtained under section 114 of the Act if it was provided in response to a request by EPA made for any of the purposes stated in section 114, or if its submission could have been required under section 114, regardless of whether section 114 was cited as the authority for any request for the information, whether an order to provide the information was issued under section 113(a) of the Act, 42 U.S.C. 7413(a), whether an action was brought under section 113(b) of the Act, 42 U.S.C. 7413(b), or whether the information was provided directly to EPA or through some third person.
- (3) Information will be considered to have been provided or obtained under section 208 of the Act if it was provided in response to a request by EPA made for any of the purposes stated in section 208, or if its submission could have been required under section 208, regardless of whether section 208 was cited as the authority for any request for the information, whether an action was brought under section 204 of the Act, 42 U.S.C. 7523, or whether the information was provided directly to EPA or through some third person.
- (4) Information will be considered to have been provided or obtained under section 206(c) of the Act if it was provided in response to a request by EPA made for any of the purposes stated in section 206(c), or if its submission could have been required under section 206(c) regardless of whether section 206(c) was cited as authority for any request for the information, whether an action was brought under section 204 of the Act, 42 U.S.C. 7523, or whether the information was provided directly to EPA or through some third person.
- (5) Information will be considered to have been provided or obtained under section 307(a), of the Act if it was provided in response to a subpoena issued under section 307(a), or if its production could have been required by subpoena under section 307(a), regardless of whether section 307(a) was cited as the authority for any request for the information, whether a subpoena was issued by EPA, whether a court issued an order under section 307(a), or whether the information was provided directly to EPA or through some third person.
- (6) This section specifically does not apply to information obtained under section 115(j) or 211(b) of the

Act, 42 U.S.C. 7415(j), 7545(b).

- (c) Basic rules which apply without change. Sections 2.201 through 2.207, s 2.209 and ss 2.211 through 2.215 apply without change to information to which this section applies.
- (d) [Reserved]
- (e) Substantive criteria for use in confidentiality determinations. Section 2.208 applies to information to which this section applies, except that information which is emission data or a standard or limitation is not eligible for confidential treatment. No information to which this section applies is voluntarily submitted information.
- (f) Availability of information not entitled to confidential treatment. Section 2.210 does not apply to information to which this section applies. Emission data, standards or limitations, and any other information provided under section 114 or 208 of the Act which is determined under this subpart not to be entitled to confidential treatment, shall be available to the public notwithstanding any other provision of this part. Emission data and standards or limitations provided in response to a subpoena issued under section 307(a) of the Act shall be available to the public notwithstanding any other provision of this part. Information (other than emission data and standards or limitations) provided in response to a subpoena issued under section 307(a) of the Act, which is determined under this subpart not to be entitled to confidential treatment, shall be available to the public, unless EPA determines that the information is exempt from mandatory disclosure under 5 U.S.C. 552(b) for reasons other than reasons of business confidentiality and cannot or should not be made available to the public.
- (g) Disclosure of information relevant to a proceeding.
 - (1) Under sections 114, 208 and 307 of the Act, any information to which this section applies may be released by EPA because of the relevance of the information to a proceeding, notwithstanding the fact that the information otherwise might be entitled to confidential treatment under this subpart. Release of information because of its relevance to a proceeding shall be made only in accordance with this paragraph (g).
 - (2) In connection with any proceeding other than a proceeding involving a decision by a presiding officer after an evidentiary or adjudicatory hearing, information to which this section applies which may be entitled to confidential treatment may be made available to the public under this paragraph (g)(2). No information shall be made available to the public under this paragraph (g)(2) until any affected business has been informed that EPA is considering making the information available to the public under this paragraph (g)(2) in connection with an identified proceeding, and has afforded the business a reasonable period for comment (such notice and opportunity to comment may be afforded in connection with the notice prescribed by s 2.204(d)(1) and s 2.204(e)). Information may be made available to the public under this paragraph (g)(2) only if, after consideration of any timely comments submitted by the business, the General Counsel determines that the information is relevant to the subject of the proceeding and the EPA office conducting the proceeding determines that the public interest would be served by making the information available to the public. Any affected business shall be given at least 5 days' notice by the General Counsel prior to making the information available to the public.
 - (3) In connection with any proceeding involving a decision by a presiding officer after an evidentiary or adjudicatory hearing, information to which this section applies which may be entitled to confidential treatment may be made available to the public, or to one or more parties of record to the proceeding, upon EPA's initiative, under this paragraph (g)(3). An EPA office proposing disclosure of information under this paragraph (g)(3), shall so notify the presiding officer in writing. Upon receipt of such a notification, the presiding officer shall notify each affected business that disclosure under this paragraph (g)(3) has been proposed, and shall afford each such business a period for comment found by the presiding officer to be reasonable under the circumstances. Information may be disclosed under this paragraph (g)(3) only if, after consideration of any timely comments submitted by the business, the EPA office determines in writing that, for reasons directly associated with the conduct of the proceeding, the contemplated disclosure would serve the public interest, and the presiding officer determines in writing that the information is relevant to a matter in controversy in the proceeding. The presiding officer may condition disclosure of the information to a party of record on the making of such protective arrangements and commitments as he finds to be warranted. Disclosure to one or more parties of record, under protective arrangements or commitments, shall not, of itself, affect the eligibility of information

for confidential treatment under the other provisions of this subpart. Any affected business shall be given at least 5 days notice by the presiding officer prior to making the information available to the public or to one or more of the parties of record to the proceeding.

- (4) In connection with any proceeding involving a decision by a presiding officer after an evidentiary or adjudicatory hearing, information to which this section applies may be made available to one or more parties of record to the proceeding, upon request of a party, under this paragraph (g)(4). A party of record seeking disclosure of information shall direct his request to the presiding officer. Upon receipt of such a request, the presiding officer shall notify each affected business that disclosure under this paragraph (g)(4) has been requested, and shall afford each such business a period for comment found by the presiding officer to be reasonable under the circumstances. Information may be disclosed to a party of record under this paragraph (g)(4) only if, after consideration of any timely comments submitted by the business, the presiding officer determines in writing that (i) the party of record has satisfactorily shown that with respect to a significant matter which is in controversy in the proceeding, the party's ability to participate effectively in the proceeding will be significantly impaired unless the information is disclosed to him, and (ii) any harm to an affected business that would result from the disclosure is likely to be outweighed by the benefit to the proceeding and to the public interest that would result from the disclosure. The presiding officer may condition disclosure of the information to a party of record on the making of such protective arrangements and commitments as he finds to be warranted. Disclosure to one or more parties of record, under protective arrangements or commitments, shall not, of itself, affect the eligibility of information to confidential treatment under the other provisions of this subpart. Any affected business shall be given at least 5 days notice by the presiding officer prior to making the information available to one or more of the parties of record to the proceeding.
- (h) Disclosure to authorized representatives.
 - (1) Under sections 114, 208 and 307(a) of the Act, EPA possesses authority to disclose to any authorized representative of the United States any information to which this section applies, notwithstanding the fact that the information might otherwise be entitled to confidential treatment under this subpart. Such authority may be exercised only in accordance with paragraph (h)(2) or (h)(3) of this section.
 - (2)
 - (i) A person under contract or subcontract to EPA to perform work for EPA in connection with the Act or regulations which implement the Act may be considered an authorized representative of the United States for purposes of this paragraph (h). Subject to the limitations in this paragraph (h)(2), information to which this section applies may be disclosed to such a person if the EPA program office managing the contract or subcontract first determines in writing that such disclosure is necessary in order that the contractor or subcontractor may carry out the work required by the contract or subcontract.
 - (ii) No information shall be disclosed under the paragraph (h)(2), unless this contract or subcontract in question provides:
 - (A) That the contractor or subcontractor and the contractor's or subcontractor's employees shall use the information only for the purpose of carrying out the work required by the contract or subcontract, shall refrain from disclosing the information to anyone other than EPA without the prior written approval of each affected business or of an EPA legal office, and shall return to EPA all copies of the information (and any abstracts or extracts therefrom) upon request by the EPA program office, whenever the information is no longer required by the contractor or subcontractor for the performance of the work required under the contract or subcontract, or upon completion of the contract or subcontract;
 - (B) That the contractor or subcontractor shall obtain a written agreement to honor such terms of the contract or subcontract from each of the contractor's or subcontractor's employees who will have access to the information, before such employee is allowed such access; and
 - (C) That the contractor or subcontractor acknowledges and agrees that the contract or subcontract provisions concerning the use and disclosure of business information are included for the benefit of, and shall be enforceable by, both EPA and any affected business having an interest in information concerning it supplied to the contractor or subcontractor by EPA under the contract or subcontract.

- (iii) No information shall be disclosed under this paragraph (h)(2) until each affected business has been furnished notice of the contemplated disclosure by the EPA program office and has been afforded a period found reasonable by that office (not less than 5 working days) to submit its comments. Such notice shall include a description of the information to be disclosed, the identity of the contractor or subcontractor, the contract or subcontract number, if any, and the purposes to be served by the disclosure.
 - (iv) The EPA program office shall prepare a record of each disclosure under this paragraph (h)(2), showing the contractor or subcontractor, the contract or subcontract number, the information disclosed, the date(s) of disclosure, and each affected business. The EPA program office shall maintain the record of disclosure and the determination of necessity prepared under paragraph (h)(2)(i) of this section for a period of not less than 36 months after the date of the disclosure.
- (3) A state or local governmental agency which has duties or responsibilities under the Act, or under regulations which implement the Act, may be considered an authorized representative of the United States for purposes of this paragraph (h). Information to which this section applies may be furnished to such an agency at the agency's written request, but only if--
- (i) The agency has first furnished to the EPA office having custody of the information a written opinion from the agency's chief legal officer or counsel stating that under applicable state or local law the agency has the authority to compel a business which possesses such information to disclose it to the agency, or
 - (ii) Each affected business is informed of those disclosures under this paragraph (h)(3) which pertain to it, and the agency has shown to the satisfaction of an EPA legal office that the agency's use and disclosure of such information will be governed by state or local law and procedures which will provide adequate protection to the interests of affected businesses.

2.302 Special rules governing certain information obtained under the Clean Water Act.

- (a) Definitions. For the purposes of this section:
- (1) "Act" means the Clean Water Act, as amended, 33 U.S.C. 1251 et seq.
 - (2) (i) "Effluent data" means, with reference to any source of discharge of any pollutant (as that term is defined in section 502(6) of the Act, 33 U.S.C. 1362 (6))--
 - (A) Information necessary to determine the identity, amount, frequency, concentration, temperature, or other characteristics (to the extent related to water quality) of any pollutant which has been discharged by the source (or of any pollutant resulting from any discharge from the source), or any combination of the foregoing;
 - (B) Information necessary to determine the identity, amount, frequency, concentration, temperature, or other characteristics (to the extent related to water quality) of the pollutants which, under an applicable standard or limitation, the source was authorized to discharge (including, to the extent necessary for such purpose, a description of the manner or rate of operation of the source); and
 - (C) A general description of the location and/or nature of the source to the extent necessary to identify the source and to distinguish it from other sources (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source).
 - (ii) Notwithstanding paragraph (a)(2)(i) of this section, the following information shall be considered to be "effluent data" only to the extent necessary to allow EPA to disclose publicly that a source is (or is not) in compliance with an applicable standard or limitation, or to allow EPA to demonstrate the feasibility, practicability, or attainability (or lack thereof) of an existing or proposed standard or limitation:
 - (A) Information concerning research, or the results of research, on any product, method, device, or installation (or any component thereof) which was produced, developed, installed, and used only for research purposes; and
 - (B) Information concerning any product, method, device, or installation (or any component thereof) designed and intended to be marketed or used commercially but not yet so

marketed or used.

- (3) "Standard or limitation" means any prohibition, any effluent limitation, or any toxic, pre-treatment or new source performance standard established or publicly proposed pursuant to the Act or pursuant to regulations under the Act, including limitations or prohibitions in a permit issued or proposed by EPA or by a State under section 402 of the Act, 33 U.S.C. 1342.
 - (4) "Proceeding" means any rulemaking, adjudication, or licensing conducted by EPA under the Act or under regulations which implement the Act, except for determinations under this part.
- (b) Applicability.
- (1) This section applies only to business information--
 - (i) Provided to or obtained by EPA under section 308 of the Act, 33 U.S.C. 1318, by or from the owner or operator of any point source, for the purpose of carrying out the objective of the Act (including but not limited to developing or assisting in the development of any standard or limitation under the Act, or determining whether any person is in violation of any such standard or limitation); or
 - (ii) Provided to or obtained by EPA under section 509(a) of the Act, 33 U.S.C. 1369(a).
 - (2) Information will be considered to have been provided or obtained under section 308 of the Act if it was provided in response to a request by EPA made for any of the purposes stated in section 308, or if its submission could have been required under section 308, regardless of whether section 308 was cited as the authority for any request for the information, whether an order to provide the information was issued under section 309(a)(3) of the Act, 33 U.S.C. 1319(a)(3), whether a civil action was brought under section 309(b) of the Act, 33 U.S.C. 1319(b), and whether the information was provided directly to EPA or through some third person.
 - (3) Information will be considered to have been provided or obtained under section 509(a) of the Act if it was provided in response to a subpoena issued under section 509(a), or if its production could have been required by subpoena under section 509(a), regardless of whether section 509(a) was cited as the authority for any request for the information, whether a subpoena was issued by EPA, whether a court issued an order under section 307(a), or whether the information was provided directly to EPA or through some third person.
 - (4) This section specifically does not apply to information obtained under section 310(d) or 312(g)(3) of the Act, 33 U.S.C. 1320(d), 1322(g)(3).
- (c) Basic rules which apply without change. Sections 2.201 through 2.207, s 2.209, ss 2.211 through 2.215 apply without change to information to which this section applies.
- (d) [Reserved]
- (e) Substantive criteria for use in confidentiality determinations. Section 2.208 applies to information to which this section applies, except that information which is effluent data or a standard or limitation is not eligible for confidential treatment. No information to which this section applies is voluntarily submitted information.
- (f) Availability of information not entitled to confidential treatment. Section 2.210 does not apply to information to which this section applies. Effluent data, standards or limitations, and any other information provided or obtained under section 308 of the Act which is determined under this subpart not to be entitled to confidential treatment, shall be available to the public notwithstanding any other provision of this part. Effluent data and standards or limitations provided in response to a subpoena issued under section 509(a) of the Act shall be available to the public notwithstanding any other provision of this part. Information (other than effluent data and standards or limitations) provided in response to a subpoena issued under section 509(a) of the Act, which is determined under this subpart not to be entitled to confidential treatment, shall be available to the public, unless EPA determines that the information is exempt from mandatory disclosure under 5 U.S.C. 552(b) for reasons other than reasons of business confidentiality and cannot or should not be made available to the public.
- (g) Disclosure of information relevant to a proceeding. (1) Under sections 308 and 509(a) of the Act, any information to which this section applies may be released by EPA because of the relevance of the information to a proceeding, notwithstanding the fact that the information otherwise might be entitled to confidential treatment under this subpart. Release of information to which this section applies because of its relevance to a proceeding shall be made only in accordance with this paragraph (g).

- (2) to (4) The provisions of s 2.301(g)(2), (g)(3), and (g)(4) are incorporated by reference as paragraphs (g)(2), (g)(3), and (g)(4), respectively of this section.
- (h) Disclosure to authorized representatives. (1) Under sections 308 and 509(a) of the Act, EPA possesses authority to disclose to any authorized representative of the United States any information to which this section applies, notwithstanding the fact that the information might otherwise be entitled to confidential treatment under this subpart. Such authority may be exercised only in accordance with paragraph (h)(2) or (h)(3) of this section.
 - (2) to (3) The provisions of s 2.301 (h)(2) and (h)(3) are incorporated by reference as paragraphs (h)(2) and (h)(3), respectively, of this section.

2.304 Special rules governing certain information obtained under the Safe Drinking Water Act

- (a) Definitions. For the purposes of this section:
 - (1) "Act" means the Safe Drinking Water Act, 42 U.S.C. 300f et seq.
 - (2) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.
 - (3) "Proceeding" means any rulemaking, adjudication, or licensing process conducted by EPA under the Act or under regulations which implement the Act, except for any determination under this part.
- (b) Applicability.
 - (1) This section applies only to information--
 - (i) Which was provided to or obtained by EPA pursuant to a requirement of a regulation which was issued by EPA under the Act for the purpose of--
 - (A) Assisting the Administrator in establishing regulations under the Act;
 - (B) Determining whether the person providing the information has acted or is acting in compliance with the Act; or
 - (C) Administering any program of financial assistance under the Act; and
 - (ii) Which was provided by a person--
 - (A) Who is a supplier of water, as defined in section 1401(5) of the Act, 42 U.S.C. 300f(5);
 - (B) Who is or may be subject to a primary drinking water regulation under section 1412 of the Act, 42 U.S.C. 300g-1;
 - (C) Who is or may be subject to an applicable underground injection control program, as defined in section 1422(d) of the Act, 42 U.S.C. 300h-1(d);
 - (D) Who is or may be subject to the permit requirements of section 1424(b) of the Act, 42 U.S.C. 300h-3(b);
 - (E) Who is or may be subject to an order issued under section 1441(c) of the Act, 42 U.S.C. 300j(c); or
 - (F) Who is a grantee, as defined in section 1445(e) of the Act, 42 U.S.C. 300j-4(e).
 - (2) This section applies to any information which is described by paragraph (b)(1) of this section if it was provided in response to a request by EPA or its authorized representative (or by a State agency administering any program under the Act) made for any purpose stated in paragraph (b)(1) of this section, or if its submission could have been required under section 1445 of the Act, 42 U.S.C. 300j-4, regardless of whether such section was cited in any request for the information, or whether the information was provided directly to EPA or through some third person.
- (c) Basic rules which apply without change. Sections 2.201 through 2.207, s 2.209, and ss 2.211 through 2.215 apply without change to information to which this section applies.
- (d) [Reserved]
- (e) Substantive criteria for use in confidentiality determinations. Section 2.208 applies to information to which this section applies, except that information which deals with the existence, absence, or level of contaminants in drinking water is not eligible for confidential treatment. No information to which this section applies is voluntarily submitted information.
- (f) Nondisclosure for reasons other than business confidentiality or where disclosure is prohibited by other statute. Section 2.210 applies to information to which this section applies, except that information which deals with the existence, absence, or level of contaminants in drinking water shall be available to the public notwithstanding any other provision of this part.

- (g) Disclosure of information relevant to a proceeding. (1) Under section 1445(d) of the Act, any information to which this section applies may be released by EPA because of the relevance of the information to a proceeding, notwithstanding the fact that the information otherwise might be entitled to confidential treatment under this subpart. Release of information to which this section applies because of its relevance to a proceeding shall be made only in accordance with this paragraph (g).
(2) to (4) The provisions of s 2.301(g)(2), (g)(3), (g)(4) are incorporated by reference as paragraphs (g)(2), (g)(3), and (g)(4), respectively, of this section.
- (h) Disclosure to authorized representatives. (1) Under section 1445(d) of the Act, EPA possesses authority to disclose to any authorized representative of the United States any information to which this section applies, notwithstanding the fact that the information otherwise might be entitled to confidential treatment under this subpart. Such authority may be exercised only in accordance with paragraph (h)(2) or (h)(3) of this section.
(2) to (3) The provisions of s 2.301 (h)(2) and (h)(3) are incorporated by reference as paragraphs (h)(2) and (h)(3), respectively, of this section.

2.305 Special rules governing certain information obtained under the Solid Waste Disposal Act, as amended.

- (a) Definitions. For purposes of this section:
 - (1) "Act" means the Solid Waste Disposal Act, as amended, including amendments made by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6901 et seq.
 - (2) "Person" has the meaning given it in section 1004(15) of the Act, 42 U.S.C. 6903(15).
 - (3) "Hazardous waste" has the meaning given it in section 1004(5) of the Act, 42 U.S.C. 6903(5).
 - (4) "Proceeding" means any rulemaking, adjudication, or licensing conducted by EPA under the Act or under regulations which implement the Act including the issuance of administrative orders and the approval or disapproval of plans (e.g. closure plans) submitted by persons subject to regulation under the Act, but not including determinations under this subpart.
- (b) Applicability. This section applies to information provided to or obtained by EPA under section 3001(b)(3)(B), 3007, or 9005 of the Act, 42 U.S.C 6921(b)(3)(B), 6927, or 6995. Information will be considered to have been provided or obtained under sections 3001(b)(3)(B), 3007, or 9005 of the Act if it was provided in response to a request from EDA made for any of the purposes stated in the Act or if its submission could have been required under those provisions of the Act regardless of whether a specific section was cited as the authority for any request for the information or whether the information was provide directly to EPA or through some third person.
- (c) Basic rules which apply without change. Sections 2.201 through 2.207 and ss 2.209 through 2.215 apply without change to information to which this section applies.
- (d) [Reserved]
- (e) Substantive criteria for use in confidentiality determinations. Section 2.208 applies without change to information to which this section applies; however, no information to which this section applies is voluntarily submitted information.
- (f) [Reserved]
- (g) Disclosure of information relevant in a proceeding.
 - (1) Under sections 3007(b) and 9005(b) of the Act (42 U.S.C. 6927(b) and 6995(b)), any information to which this section applies may be disclosed by EPA because of the relevance of the information in a proceeding under the Act, notwithstanding the fact that the information otherwise might be entitled to confidential treatment under this subpart. Disclosure of information to which this section applies because of its relevance in a proceeding shall be made only in accordance with this paragraph (g).
 - (2) to (4) The provisions of s 2.301 (g)(2), (g)(3), and (g)(4) are incorporated by reference as paragraphs (g)(2), (g)(3), and (g)(4), respectively, of this section.
- (h) Disclosure to authorized representatives.
 - (1) Under sections 3001(b)(3)(B), 3007(b), and 9005(b) of the Act (42 U.S.C. 6921(b)(3)(B), 6927(b), and 6995(b)), EPA possesses authority to disclose to any authorized representative of the United States any information to which this section applies, notwithstanding the fact that the information might otherwise be entitled to confidential treatment under this subpart. Such authority may be exercised only in accordance with paragraph (h)(2) or (h)(3) of this section.

- (2) to (3) The provisions of s 2.301 (h)(2) and (h)(3) are incorporated by reference as paragraphs (h)(2) and (h)(3), respectively, of this section.
- (4) At the time any information is furnished to a contractor, subcontractor, or state or local government agency under this paragraph(h), the EPA office furnishing the information to the contractor, subcontractor, or state or local government agency shall notify the contractor, subcontractor, or state or local government agency that the information may be entitled to confidential treatment and that any knowing and willful disclosure of the information may subject the contractor, subcontractor, or state or local government agency and its employees to penalties in section 3001(b)(3)(B), 3007(b)(2), or 9005(b)(1) of the Act (42 U.S.C. 6921(b)(3)(B), 6927(b), or 6995(b)).

2.310 Special rules governing certain information obtained under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

- (a) Definitions. For purposes of this section:
 - (1) "Act" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 et seq.
 - (2) "Person" has the meaning given it in section 101(21) of the Act, 42 U.S.C. 9601(21).
 - (3) "Facility" has the meaning given it in section 101(9) of the Act, 42 U.S.C. 9601(9).
 - (4) "Hazardous substance" has the meaning given it in section 101(14) of the Act, 42 U.S.C. 9601(14).
 - (5) "Release" has the meaning given it in section 101 (22) of the Act, 42 U.S.C. 9601(22).
 - (6) "Proceeding" means any rulemaking or adjudication conducted by EPA under the Act or under regulations which implement the Act (including the issuance of administrative orders under section 106 of the Act), or any administrative determination made under section 104 of the Act, but not including determinations under this subpart.
- (b) Applicability. This section applies only to information provided to or obtained by EPA under section 104 of the Act, 42 U.S.C. 9604, by or from any person who stores, treats, or disposes of hazardous wastes; or where necessary to ascertain facts not available at the facility where such hazardous substances are located, by or from any person who generates, transports, or otherwise handles or has handled hazardous substances. Information will be considered to have been provided or obtained under section 104 of the Act if it was provided in response to a request from EPA or a representative of EPA made for any of the purposes stated in section 104, or if its submission could have been required under section 104, regardless of whether section 104 was cited as authority for any request for the information or whether the information was provided directly to EPA or through some third person.
- (c) Basic rules which apply without change. Sections 2.201 through 2.207 and ss 2.209 through 2.215 apply without change to information to which this section applies.
- (d) [Reserved]
- (e) Substantive criteria for use in confidentiality determinations. Section 2.208 applies without change to information to which this section applies; however, no information to which this section applies is voluntarily submitted information.
- (f) [Reserved]
- (g)
 - (1) Under section 104(e)(2)(A) of the Act (42 U.S.C. 9604(e)(2)(A)) any information to which this section applies may be disclosed by EPA because of the relevance of the information in a proceeding under the Act, notwithstanding the fact that the information otherwise might be entitled to confidential treatment under this subpart. Disclosure of information to which this section applies because of its relevance in a proceeding shall be made only in accordance with this paragraph (g).
 - (2) The provisions of s 2.301(g)(2) are to be used as paragraph (g)(2) of this section.
 - (3) The provisions of s 2.301(g)(3) are to be used as paragraph (g)(3) of this section.
 - (4) The provisions of s 2.301(g)(4) are to be used as paragraph (g)(3) of this section.
- (h) Disclosure to authorized representatives.
 - (1) Under section 104(e)(2) of the Act (42 U.S.C. 9604(e)(2)), EPA possesses authority to disclose to any authorized representative of the United States any information to which this section applies, notwithstanding the fact that the information might otherwise be entitled to confidential treatment under

this subpart. Such authority may be exercised only in accordance with paragraph (h)(2) or (h)(3) of this section.

- (2) The provisions of s 2.301(h)(2) are to be used as paragraph (h)(2) of this section.
- (3) The provisions of s 2.301(h)(3) are to be used as paragraph (h)(3) of this section.
- (4) At the time any information is furnished to a contractor, subcontractor, or state or local government agency under this paragraph (h), the EPA office furnishing the information to the contractor, subcontractor, or state or local government agency shall notify the contractor, subcontractor, or state or local government agency that the information may be entitled to confidential treatment and that any knowing and willful disclosure of the information may subject the contractor, subcontractor, or state or local government agency and its employees to penalties in section 104(e)(2)(B) of the Act (42 U.S.C. s 9604(e)(2)(B)).