business information are included for the benefit of, and shall be enforceable by, both the United States government and any affected business having an interest in information concerning it supplied to the contractor or subcontractor by the United States government 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 made 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 section.

(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.

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, regard-

less 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, 2.209, 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
§ 2.303 Special rules governing certain information obtained under the Noise Control Act of 1972.

(a) Definitions. For the purposes of this section:


(2) Manufacturer has the meaning given it in 42 U.S.C. 4902(6).

(3) Product has the meaning given it in 42 U.S.C. 4902(3).

(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.

(b) Applicability. This section applies only to information provided to or obtained by EPA under section 13 of the Act, 42 U.S.C. 4912, by or from any manufacturer of any product to which regulations under section 6 or 8 of the Act (42 U.S.C. 4905, 4907) apply. Information will be deemed to have been provided or obtained under section 13 of the Act, if it was provided in response to a request by EPA made for the purpose of enabling EPA to determine whether the manufacturer has acted or is acting in compliance with the Act, or if its submission could have been required under section 13 of the Act, regardless of whether section 13 was cited as authority for the request, whether an order to provide such information was issued under section 11(d) of the Act, 42 U.S.C. 4910(d), and whether the information was provided directly to EPA by the manufacturer or through some third person.

(c) Basic rules which apply without change. Sections 2.201 through 2.207 and 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 to a proceeding. (1) Under section 13 of the Act, any information to which this section applies may be released by EPA because of its relevance to a matter in controversy in 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

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