

Environmental Protection Agency

§ 2.203

in applying the provisions of this subpart, it will often be necessary to separate the individual items of information into two or more categories, and to afford different treatment to the information in each such category. The need for differentiation of this type may arise, e.g., because a business confidentiality claim covers only a portion of a record, or because only a portion of the record is eligible for confidential treatment. EPA offices taking action under this subpart must be alert to this problem.

(f) In taking actions under this subpart, EPA offices should consider whether it is possible to obtain the affected business's consent to disclosure of useful portions of records while protecting the information which is or may be entitled to confidentiality (e.g., by withholding such portions of a record as would identify a business, or by disclosing data in the form of industry-wide aggregates, multi-year averages or totals, or some similar form).

(g) This subpart does not apply to questions concerning entitlement to confidential treatment or information which concerns an individual solely in his personal, as opposed to business, capacity.

[41 FR 36902, Sept. 1, 1976, as amended at 43 FR 40000, Sept. 8, 1978; 50 FR 51661, Dec. 18, 1985]

§ 2.203 Notice to be included in EPA requests, demands, and forms; method of asserting business confidentiality claim; effect of failure to assert claim at time of submission.

(a) *Notice to be included in certain requests and demands for information, and in certain forms.* Whenever an EPA office makes a written request or demand that a business furnish information which, in the office's opinion, is likely to be regarded by the business as entitled to confidential treatment under this subpart, or whenever an EPA office prescribes a form for use by businesses in furnishing such information, the request, demand, or form shall include or enclose a notice which—

(1) States that the business may, if it desires, assert a business confidentiality claim covering part or all of the information, in the manner described

by paragraph (b) of this section, and that information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures, set forth in this subpart;

(2) States that if no such claim accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to the business; and

(3) Furnishes a citation of the location of this subpart in the Code of Federal Regulations and the FEDERAL REGISTER.

(b) *Method and time of asserting business confidentiality claim.* A business which is submitting information to EPA may assert a business confidentiality claim covering the information by placing on (or attaching to) the information, at the time it is submitted to EPA, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as *trade secret, proprietary, or company confidential*. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified by the business, and may be submitted separately to facilitate identification and handling by EPA. If the business desires confidential treatment only until a certain date or until the occurrence of a certain event, the notice should so state.

(c) *Effect of failure to assert claim at time of submission of information.* If information was submitted by a business to EPA on or after October 1, 1976, in response to an EPA request or demand (or on an EPA-prescribed form) which contained the substance of the notice required by paragraph (a) of this section, and if no business confidentiality claim accompanied the information when it was received by EPA, the inquiry to the business normally required by § 2.204(c)(2) need not be made. If a claim covering the information is received after the information itself is received, EPA will make such efforts as are administratively practicable to associate the late claim with copies of the previously-submitted information in EPA files (see § 2.204(c)(1)). However, EPA cannot assure that such efforts will be effective, in light of the possibility of prior disclosure or widespread prior dissemination of the information.