



TSCA/RRP Inspection Information Sheet: “Confidential Business Information”

Information collected during a Renovation, Repair, and Painting (RRP) Rule inspection is considered enforcement sensitive and may be protected from disclosure under the Freedom of Information Act. In addition, confidential business information (CBI) may be eligible for protection if it meets the requirements under section 14(a) of Toxic Substances Control Act (TSCA) and Exemption 4 of the Freedom of Information Act; see also EPA confidentiality regulations at 40 CFR part 2, subpart B. The regulated firm or individual should carefully read the regulation before asserting a business confidentiality claim since not all information claimed as CBI is eligible for confidential treatment.

What are examples of types of business information that can be protected?

Information submitted to EPA in a recorded form may be eligible for confidential treatment where, for example, the concept of **trade secrecy** or **comparable legal concepts** give the business the right to limit its use or disclosure to others in order that the business may **obtain or retain business advantage**. An example of a potentially valid CBI claim might be a secret formula to a new product. An example of a potentially invalid claim might be the street address of a known business or other information which can be found in public records or is otherwise publicly available.

How does a business assert a claim of CBI?

A CBI claim should be made when the information is submitted to EPA. *After* EPA receives information claimed as CBI, the Agency *may* send the claimant a request for substantiation – the inspector will normally NOT request substantiation at the time of the inspection. The business will be expected to submit to EPA a detailed written response to the substantiation questions for each piece of information claimed as CBI (including individual pieces of data within a single document). Whether the claim of CBI has been adequately substantiated is the decision of EPA. Under 40 CFR 2.205(d), failure to provide substantiation will result in waiver of the confidentiality claim.

If the business chooses to assert a confidentiality claim, the inspector will provide the *TSCA Confidential Notice Form* and the *Declaration of Confidential Business Information Form*. These Forms contain information and instructions on asserting a CBI claim.



The substantiation questions are as follows:

1. Is your company asserting this CBI claim on its own behalf? If not, please provide company name, address and telephone number of the entity asserting the claim.
2. For what time period does your company assert your confidentiality claim(s)? If the claim is to extend until a certain event or point in time, please indicate that event or time period. Explain why such information should remain confidential until such point.
3. Has the information been disclosed to others without your consent?
4. Has the information been disclosed to any other governmental agency or EPA representative at any other time? If so, identify the agency or EPA representative to which the information was disclosed and provide the date and circumstances. Was the disclosure accompanied at that time by a claim of confidentiality? If so, attach a copy of the document reflecting the confidentiality agreement.
5. Has your company taken reasonable measures to protect the information and does it intend to continue to take such measures?
 - a. Briefly describe any physical or procedural restrictions within your company relating to the use and storage of the information you are claiming CBI.
 - b. Does anyone outside your company have access to any of the information claimed CBI, and are they restricted by confidentiality agreement(s)? If so, explain the content of the agreement(s).
 - c. Does the information claimed as CBI appear, or is it referred to, in any of the following?
 - i. Advertising or promotional material.
 - ii. Professional or trade publications.
 - iii. Any other media or publications available to the public or to your competitors.If so, indicate where the information appears, include copies and explain why it should nonetheless be treated as confidential.
6. Has EPA, another federal agency or a court made any confidentiality determination regarding information associated with this claim? If so, provide copies of such determinations.
7. Would disclosure cause substantial harm to your competitive position? If so, describe:
 - a. What harmful effects would result;
 - b. Why those effects should be viewed as substantial; and
 - c. What is the causal relationship between disclosure and the harmful effects.
8. Other information may have bearing on a CBI determination.

The failure to substantiate a confidentiality claim upon request of EPA will result in waiver of the confidentiality claim.