



TSCA CBI Notice Questions and Answers

1. Q: Why am I receiving this notice?

A: This Notice provides your business with instructions about how to assert a claim of confidentiality (or confidential business information (CBI) claim) covering information submitted to or obtained by EPA during or after its inspection (or other compliance monitoring). EPA inspection reports may be available to the public, including, but not limited to <https://echo.epa.gov>.

An inspection report is a document written by the inspector that includes accurate and objective observations and environmental conditions during a field inspection. Along with other associated information from an inspection, the inspection report may be used to determine a facility's compliance with environmental regulations.

The Notice you are receiving assists your business in making a CBI claim at the time of the inspection and describes the procedures and timeframes associated with the CBI process under EPA's regulations set forth in the Code of Federal Regulations at 40 C.F.R. part 2, subpart B, (general CBI) and 40 C.F.R. part 703 (Toxic Substances Control Act (TSCA) CBI).

2. Q: What is CBI? What is TSCA CBI?

A: The EPA determines whether information is "CBI" by examining that information under Exemption 4 of the Freedom of Information Act and other pertinent laws and regulations. Exemption 4 of the Freedom of Information Act protects "trade secrets and commercial or financial information obtained from a person and [that is] privileged or confidential," 5 U.S.C. § 552(b)(4), from disclosure to the public.

Exemption 4 covers two distinct categories of information: (1) trade secrets; and (2) information that is (a) commercial or financial, and (b) obtained from a person, and (c) privileged or confidential.

For more information about what is CBI under Exemption 4, please visit the Department of Justice's guidance at: <https://www.justice.gov/oip/exemption-4-after-supreme-courts-ruling-food-marketing-institute-v-argus-leader-media>.

In an inspection context, a TSCA CBI claim is information that is submitted to or obtained by EPA under the TSCA authorities or during a TSCA inspection and claimed as CBI under section 14 of TSCA. Among other substantive and procedural requirements, a submitter must demonstrate a reasonable basis to conclude that disclosing the information would likely cause substantial harm to the Company's competitive position in order to establish eligibility for confidentiality protections. 15 U.S.C. § 2613(c)(1)(B).

3. Q: Are there time limitations for asserting TSCA CBI claims? Are there time limits for substantiating TSCA CBI claims?

A: YES. TSCA CBI claims must be asserted at the time of submission of information (at the time of inspection for information collected at the site of inspection). If no claim is asserted, EPA may release the information to the public without further notice.

Generally, TSCA CBI claims must be substantiated at the time of submission to EPA, unless a certain exception or exemption applies under Part 703.5(b). In the case of information collected or obtained by EPA during an inspection, there is a 10-business day period allowed for substantiating a TSCA CBI claim asserted during an inspection. The 10-day period begins on the day after an inspection concludes. For example, if the inspection of your business commenced on Monday and concluded on Tuesday, the 10-business day period begins on Wednesday.

If information is submitted at any time other than during an inspection, any CBI claim needs to be made along with the submission.

4. Q: What are some examples of information that is TSCA CBI?

A: Some types of information that if kept private or secret, and not excluded from being considered CBI (*see* Question 5 below), may qualify as CBI include:

- Sales or marketing plans or information that would reveal marketing strategy.
- “Trade Secrets,” i.e., a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort.
- Manufacturing or quality control process information.
- Portions of submittal that describe innovative technology.
- Production volumes of chemicals or amount stored at a company facility.
- Detailed industrial process descriptions or process and instrumentation drawings.
- A company’s manufacturing, importing or processing information of a specific chemical.
- Financial data regarding a company (e.g., assets, profits, taxes, commercialization, client lists) obtained from any source.
- Banking information (account numbers in statements or on checks).
- Contractor-supplied information concerning the contractor’s direct labor rates, overhead, fringe benefits, identities or employees and their salaries, monthly progress reports, contract proposals & fees.
- Customer and supplier lists.
- Profit and loss data.

5. Q: What are some examples of information that is NOT TSCA CBI?

A: While this is not a comprehensive list, the following information generally is not entitled to confidential treatment as CBI (the same information *may* be exempt from disclosure under FOIA for other reasons, however, such as personal privacy):

- Information which is publicly available.
 - E.g. Protect Your Family and Renovate Right pamphlets
 - Lease agreements
 - Lead Renovation, Repair and Painting (RRP) recordkeeping requirements, i.e. Checklists
 - 1018 Lead Disclosure Forms
 - Lead inspection/risk assessment reports and results
- Lists of RRP jobs completed and subcontracts
- Contracts and permits for renovation work
- Information that is public information by reason of statute or regulation. For example, with very limited exceptions, health and safety data are not protected under TSCA.
- Information which was submitted to a federal, tribal, state or local government which was not claimed as CBI.

6. How do I assert a TSCA CBI claim?

A: A business may assert a CBI claim by highlighting, bracketing, boxing, or circling the information claimed as CBI, and marking the page or document with language such as “trade secret,” “proprietary,” “company confidential,” “PBI,” or “CBI.” You must provide a copy of the documents to EPA in which all of the claimed CBI remains visible. In addition to the original submission, you must also submit a sanitized version of the document that blacks out or removes the information you are claiming as CBI.

This information must be submitted via EPA’s [Central Data Exchange \(CDX\)](#) Program Service titled “CSPP: Submissions for Chemical Safety and Pesticide Programs” under its drop-down “TSCA Enforcement and Compliance Communications” application. For more information about registering for CDX view FAQs “Where can I get a copy of the CSPP CDX Registration Guide?” Click [here](#) to download a copy of the CSPP CDX Registration Guide.

The information should be provided as one or more electronic files in a form that allows EPA to readily retrieve and utilize the information using commercially available software, accompanied by an index that identifies the file software and version, file name(s), size(s), and date(s) of creation. Information should be submitted as a combination of portable document format (pdf) searchable (*i.e.*, using optical character recognition (OCR)) files and spreadsheet files should be submitted in comma separated value (CSV) format.

If your business requests confidential treatment only until a certain date or until a certain event happens, then please indicate this at the time your business makes its CBI claim.

The Notice includes a box that you or the inspector may use to list and generally describe the CBI claims. You are strongly encouraged, but not required, to use EPA’s Notice. The Notice provides an easy and readily available method to document the assertion of any

claims or the absence of claims. The Notice is also useful for documenting claims for information that will be provided to the inspector on a future date after the inspection, or where a physical document is not being submitted, such as when confidential information is captured in photographs taken by an inspector.

7. Q: What happens after I make a TSCA CBI claim?

A: When a TSCA CBI claim is asserted as permitted by section 14 of TSCA and in accordance with procedures set out in 40 CFR 703.5 (including substantiating such claims), the information will be protected from disclosure (except as otherwise provided in 40 CFR 703 and 40 CFR 2.306) unless the agency makes a formal determination that the information is not entitled to confidential treatment (e.g. finding that the information is not CBI), the claim is withdrawn, or the claim expires. EPA’s regulations at 40 C.F.R. § 703.7 and 703.8 describe the procedures for making final CBI determinations. Consistent with TSCA section 14(g), many TSCA CBI claims are reviewed in the 90 days following receipt of the claim. Other TSCA CBI claims may be reviewed by EPA at any time several other circumstances occur (listed in TSCA section 14(f)), such as when the information becomes the subject of a FOIA request.

8. Q: What happens if I am asked to review and substantiate my TSCA CBI claim(s)?

A: Under certain circumstances listed in TSCA section 14(f), such as if a FOIA request is submitted to EPA for the information you claimed as CBI, EPA must review the CBI claim and either approve or deny it. EPA will review any existing CBI substantiation for your CBI claim and may require new or additional substantiation. If EPA requires new or additional substantiation, notice of the review will be directed to you and it will require substantiation, typically within 15 business days from your receipt of the written notice. Failure to respond during that time or seek a timely extension will result in a waiver of any claim and the information may be provided to the public without further notice.

9. Q: Can I claim everything as TSCA CBI? What happens if I make an inappropriate or careless claim?

A: No, not unless the entire submission is actually TSCA CBI. FOIA Exemption 4 allows for “trade secrets and commercial or financial information obtained from a person and [that is] privileged or confidential” submitted to EPA to be withheld from public disclosure. 5 U.S.C. § 552(b)(4). However, publicly available information, as well as information that is mandated by law to be disclosed to the public (e.g., effluent data, emissions data, etc.), may not be protected as CBI. TSCA section 14 lists additional exclusions from CBI protections, such as limited CBI protections for health and safety information.

By asserting a TSCA CBI claim, you are certifying that the information supporting the claim (substantiation and other assertions) are accurate and complete to the best of your knowledge and belief. If you assert an inappropriate or careless CBI claim or support a claim with inaccurate substantiation, you may undermine the merits of potentially valid CBI claims for other information.

10. Q: How does EPA prevent the unauthorized release of my CBI-claimed information?

A: Information that is claimed as CBI will be handled in a manner that is consistent with the procedures set forth in 40 C.F.R Part 2, Subpart B, 40 CFR Part 703, as well as the Trade Secrets Act, 5 U.S.C. § 1905 and the TSCA CBI Protection Manual. For example, as required by the TSCA CBI Protection Manual, EPA employees and contractors who handle TSCA CBI as part of their duties must undergo annual training and follow additional rigorous procedures for handling CBI and maintaining CBI access.

11. Q: Where can I get more information?

A: EPA's information security policy can be found at <https://www.epa.gov/irmpoli8/information-security-policy>. EPA's TSCA CBI regulations are available at: 40 C.F.R. 703 and 40 CFR 2.306, <https://www.ecfr.gov>.

12. Q: What if I make a TSCA CBI claim during the inspection, but change my mind after the inspection?

A: EPA needs a written statement of withdrawal. You may simply contact the inspector in writing by mail or email to let them know you want to withdraw your CBI claim. If you call EPA to withdraw your CBI claim, then EPA will memorialize your request back to you in writing. You may also withdraw claims from materials you have previously submitted to EPA using the procedures in 40 CFR 703.5(i).

13. Q: What if I do not believe I am authorized to make a TSCA CBI claim for my business?

A: EPA's regulations do not specify who from a business is authorized to make a CBI claim. If you are authorized to submit information to EPA on behalf of the business, you should make all efforts to determine what, if any, CBI claims your business would like to assert on the information you submit. If you are not authorized or unsure of your authorization, EPA suggests you consult with management within your organization or with legal counsel for the business. If an authorized person is on site, that person may review all claims prior to the conclusion of the inspection. If the authorized person is not on site during the inspection, you can either have the authorized person speak with the EPA inspector by phone while the inspector is still onsite, or you may provide the CBI Notice to the authorized person.

14. Q: If I do not have a TSCA CBI claim, do I still have to submit the notice, i.e., what happens if I do not make a TSCA CBI claim/complete the notice?

A: If you do not submit the notice during the inspection or make a CBI claim through some other method, then EPA will not treat your information as CBI-claimed information.

15. Q: What if I am unsure if some information that I provided during an inspection is TSCA CBI?

A: You have the opportunity to assert a CBI claim over the information submitted to EPA at the time of inspection. You may withdraw the claim later if no longer needed.

16. Q: Do I have to provide EPA with my CBI documents?

A: EPA encourages you to provide all requested and other appropriate information at the time of the inspection to help facilitate a smooth and efficient inspection process for both the inspector and your facility. EPA's authority to inspect your business and request information at the time of inspection comes from federal laws and implementing regulations. If you refuse to provide information to EPA at the time of inspection, EPA may seek alternate ways of obtaining the information; for example, EPA may issue an information request that is enforceable in federal district court or EPA may obtain a search warrant or subpoena.