



Tribal access to Confidential Information from Businesses on toxic chemicals they use in making products:

30-day EPA comment period ends April 16th!



The national law that regulates the use of chemicals by businesses is called the Toxic Substances Control Act, called TSCA “Toska” for short. This law was changed in 2016 in many good ways. Under this law, EPA obtains information on the chemicals that businesses use, or will use, in their products they sell. Tribes now can request this information from EPA, even if businesses think it is a private business matter. This information is called TSCA confidential business information or “CBI”.

A tribe can make a CBI request for one of three reasons:

- 1) Management or enforcement of a law,
- 2) Use in a non-emergency situation by a tribal health or environmental professional, or by a doctor or nurse treating a patient or patients.
- 3) Use in an emergency situation by a physician, nurse, poison control center, public health or environmental official, or first responder. There must be a health or environmental basis for calling it an emergency.



EPA is developing guidelines for tribes to request CBI, at:

<https://www.regulations.gov/document?D=EPA-HQ-OPPT-2017-0652-0007>. All of the draft documents, including how to identify if the request is made due to an emergency, are available at <https://www.regulations.gov/docket?D=EPA-HQ-OPPT-2017-0652>.

We are hoping that EPA will conduct tribal consultation in the near future. Please submit your tribe’s comments online by Monday, April 16th 11:59 PM Eastern time at this link:

<https://www.regulations.gov/comment?D=EPA-HQ-OPPT-2017-0652-0003>.

For more details about CBI in TSCA, the law, in Section 14d. You can find it on page 35 of the law online with this link: <https://www.gpo.gov/fdsys/pkg/PLAW-114publ182/pdf/PLAW-114publ182.pdf>.

The entire TSCA in the form of the U.S. Code, or USC, can be found at

<https://www.gpo.gov/fdsys/pkg/USCODE-2016-title15/pdf/USCODE-2016-title15-chap53.pdf>.

Note that in this document the CBI part in “TSCA Section 14d” is found at Section 2613(d).



EPA anticipates using tribal comments to finalize the CBI guidance documents. The final guidance will be released in June 2018.

Questions on the draft guidance documents may be directed to Jessica Barkas, barkas.jessica@epa.gov, 202-250-8880.

For a draft template letter that tribes may use to develop their own comments on the guidelines, see below or visit our page www.tribaltoxics.org. Comment letters may be submitted online by April 16th, 11:59 PM Eastern time at this link:

<https://www.regulations.gov/comment?D=EPA-HQ-OPPT-2017-0652-0003>.

[COPY and PASTE ONTO TRIBAL LETTERHEAD]

Charlotte Bertrand
Acting Principal Deputy Assistant Administrator, OCSP
Document Control Office (7407M)
Office of Pollution Prevention and Toxics (OPPT)
US Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460-0001

RE: Guidance on Expanded Access to TSCA Confidential Business Information

Dear Ms. Bertrand:

[INSERT TRIBE HERE] appreciates the opportunity for public comment on the US EPA's three draft guidance documents (Guidance) for expanded access to confidential business information as provided by TSCA, as amended on June 22, 2016. We ask the agency to reconsider its decision not to hold tribal consultation on this subject. Federally-recognized tribes have the authority and responsibility to respond to chemical exposures, releases, spills, incidents, accidents, and other emergency response situations, to both human and environmental exposures to all potentially toxic substances. Furthermore, Tribes have law enforcement agencies with law enforcement, field staff and emergency first responders, and health clinics employing medical staff including physicians and nurses that may at times, have a need to know all the chemical components involved in exposure events. The expanded access to TSCA CBI does in fact have an effect on tribal governments, providing them the opportunity to access critical information necessary to the proper handling and disposal, as well as diagnoses and treatment options for protection of their Tribal Members' health and well being.

[TRIBE MAY INSERT description here, OR DELETE this paragraph: Describe here if you have law enforcement authority, such as through the Bureau of Indian Affairs Office of Justice Services funding, and include that the authority is under federal Public Law 93-638, the Indian Self-Determination and Education Assistance Act (638). If you have tribal staff trained and responsible for responding to a fuel or oil spill, describe that here, and under what law, such as federal Public Law 93-638 for protection of tribal natural resources, Indian trust land, Native allotments and townsites; or under the Clean Water Act with treatment in a manner similar to a state (TAS). If your tribe has an agreement with Indian Health Services to provide medical care, including in emergency situations, then describe that here, including that the authority is under federal Public Law 93-638.]

Whereas [INSERT TRIBE HERE] has authority and responsibility for protection and other services to our tribal members, the disclosure of TSCA CBI is relevant and beneficial to our self-governance and the protection of our tribal members and tribal resources.

As an impacted Tribe then, we observe that this action which EPA is taking to issue guidance for expanded access to CBI does have tribal implications and effect on tribal

governments. Therefore, the online docket contains a substantial error. It reads (italics added):

This action *does not* have tribal implications because it will *not* have any effect on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000).¹

Additionally, we bring to your attention the three following items which we recommend you change.

- The Guidance should align with TSCA, and should not create additional requirements for a tribal government to access CBI, as it is written in TSCA section 14(c)(4)(B) regarding the “content and form of the statements of need” for CBI to administer or enforce a law.
- Tribes should not have to recreate EPA’s CBI process as the guidance suggests. Tribes would not be requiring entities to submit their claims of CBI to the tribal government. Rather tribes are partnering with EPA to access the information in the claims entities have made to EPA.
- The guidance should be more specific about timelines for EPA to respond to requests for CBI and the agreements submitted. Also, considering that a majority of EPA’s processes are now administered electronically it seems archaic to require the access agreements be submitted in hard copy; the agency’s preference for commenting on these very guidance documents is via online submissions in the Federal Register.

Given the importance of this matter to our tribe and other tribes across the Nation, we request that this comment period be extended and that opportunities be afforded for consultation with tribal governments in a manner consistent with EPA policies. We look forward to the agency’s response to our comments within 90 days.

Sincerely,
[NAME HERE]
[TITLE HERE]
[TRIBE HERE]

¹ EPA-HQ-OPPT-2017-0652-0003, under Supplementary Information, Section V. Statutory and Executive Order Reviews, F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments.