

TSCA CBI Expirations

What Companies Need to Know Now

Philip A. Moffat

Attorney, Verdant Law

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Philip A. Moffat

Attorney

25 years of experience advising clients on all aspects of TSCA, including PMN/SNUN submissions, exemption eligibility, enforcement defense, internal investigations, and self-audits.

Presentation Overview

1. How CBI
Expiration
Works

2. Practical
Pitfalls

3. What to Do
Now

1. How CBI Expiration Works

Background on CBI

- TSCA §14 allows companies to protect certain information from public disclosure
 - Claims arise across many submission types — PMNs, SNUNs, CDR reports, §8(e) submissions, etc.
- There are two categories of CBI:
 - Specific chemical identities
 - Everything else (company identity, production volumes, manufacturing details, etc.)
- Under requirements introduced in the 2016 amendments to TSCA, most CBI claims:
 - Must be substantiated
 - Expire 10 years after assertion
- Now, 10 years later, the first claims under amended TSCA are expiring

Claims Exempt from Expiration

- Certain CBI claims do not need to be substantiated and do not expire:
 1. Manufacturing/processing details
 2. Marketing and sales info
 3. Supplier or customer identity
 4. Full mixture composition/percentages
 5. Use, function, or application info
 6. Production/import volumes
 7. Specific chemical identity *pre-commercial distribution* (e.g., PMN with no NOC filed)
- All other CBI — including specific chemical identity claims for commercialized chemicals — expires

10-Year Expiration Mechanism

- For specific chemical identity claims, the 10-year period runs from the earliest assertion by any submitter, not from your own filing date
 - Example: Company A asserts in 2017, Company B asserts in 2020; both claims expire in 2027
 - A company's claim can expire earlier than expected because of another company's submission
- All other claims expire 10 years after assertion
- Claims will continue to expire (and can be extended) every 10 years in perpetuity with adequate substantiation

Extension Requests

- Extension requests must be filed at least 30 days before expiration through a CDX reporting tool
- Requests must be substantiated to the same standard as the original claim
 - The best practice is to specifically address why protections should be extended another 10 years
 - This presents an opportunity to strengthen substantiation
- Information that is no longer eligible for CBI protections cannot be extended
 - For example, in the 10 years since assertion, covered information may have been publicly disclosed

Consequences of Expiration

- If no timely request for extension is filed, EPA's position is that the covered information can be disclosed without notice to the claimant
 - For example, EPA may move a specific chemical identity from the *confidential* to the *non-confidential* portion of the TSCA Inventory
- Unlike claim *denials*, there may be no opportunity for judicial review

Notifications

- EPA must provide 60 days' notice before a claim expires
 - Because requests for extension are due 30 days before expiration, this means companies only have 30 days to act after receiving notice
- Two methods of notification:
 - Direct notifications via CDX
 - Online lists of expiring claims
- The TSCA Inventory also shows expiration dates for some specific chemical identity claims, but only for a minority of listed identities

The Online Lists

- EPA publishes three lists monthly:
 1. TSCA submissions with expiring claims
 2. CBI chemical identities expiring
 3. List of companies with expiring claims

2. Expiring specific chemical identities

	A	B	C	D
1	PMN_NUMBER	ACCESSION_NUMBER	EPA_UID	RENEWAL_EXPIRATION_DATE
2	P070395	195541	UID-2016-00296	5-Dec-2026
3	P160248	200294	UID-2016-00281	5-Dec-2026
4	P070395	195541	UID-2016-00296	5-Dec-2026
5	J160033	305114	UID-2016-00311	19-Dec-2026

1. Submissions with expiring claims

	A	B	C
1	Case Number	Expiration Date	Submission Type
2	8EHQ-16-20588	1-Dec-26	Section 8(e)
3	8EHQ-16-20589	1-Dec-26	Section 8(e)
4	BF-17-0033	1-Dec-26	Bona Fide
5	L-17-0082	1-Dec-26	Low Volume Exemption (LVE)
6	L-17-0083	1-Dec-26	Low Volume Exemption (LVE)
7	8EHQ-16-20593	2-Dec-26	Section 8(e)

3. Companies with expiring claims

Company Name

Adesis, Inc

AFCONA Chemicals USA Inc.

AFTON CHEMICAL CORPORATION

AGFA CORPORATION

AIR PRODUCTS AND CHEMICALS

Ajinomoto Fine-Techno USA Corporation

CDX Notifications

- Notices are sent to the CDX account of the individual who submitted the original filing
 - If EPA sees that the notification has not been opened, EPA *may* reach out to other CDX accounts associated with the submission (e.g., technical contacts or agents)

2. Practical Pitfalls

Practical Difficulties with CDX

- Employee turnover or changes in ownership may mean CDX notifications are delivered to unmonitored inboxes
- CDX accounts may be inaccessible, requiring coordination with CDX Helpdesk
- Submission passphrases may have been lost
 - Though access to original submission is not required to file an extension request
- Not all TSCA submissions may be on CDX:
 - Paper filings
 - Physical materials provided to EPA pursuant to a TSCA subpoena or inspection

Changes in Ownership

- Companies acquiring a business should verify their access to previous TSCA filings
- Gaining access may require a joint notice of transfer of ownership with the original submitter
- Companies involved in a transaction should consider what the reps & warranties and other provisions say about TSCA and CBI and cooperation
- The acquiring company should monitor EPA's list of companies with expiring claims for the name of the original submitting entity

Burgess Pigment Co. v. EPA

- A Georgia company, Burgess Pigment Co., is challenging EPA's denial of a long-held CBI claim for a specific chemical identity
- The denial was based on Burgess missing a 2018 procedural deadline
- Burgess argues that the chemical identity otherwise meets the criteria for CBI protections, that TSCA does not allow CBI disclosures based on an inadvertent mistake, and that EPA's denial unreasonably elevates form over function
- A federal judge recently denied EPA's motion to dismiss, saying EPA's "unwillingness to budge on an overly technical rule may cement irreparable and irrevocable devastation to a small family-owned business"
- If successful, the challenge could result in more guardrails against EPA disclosures of CBI due to procedural errors

3. What to Do Now

Recommended Next Steps

- Confirm access to relevant CDX accounts and submissions
- Update contact information on file for TSCA submissions
- Review the monthly expiring-claims lists on an ongoing basis
- Check each Inventory update for specific chemical identity expiration dates
- Maintain an internal catalogue of claims and their expiration dates

Recommended Next Steps Cont.

- File extension requests at least 30 days before expiration
 - EPA asks that you wait for notice of the expiration (from the online lists or CDX)
- Monitor for EPA's response (approval or denial) on CDX
- Ensure best CDX practices going forward
 - Update contact information as necessary
 - Preserve passwords
 - Grant multiple employees access to relevant CDX accounts
 - Update internal CBI catalogue with claims made in new filings

Conclusions

1. The first CBI claims made under the 2016 amendments to TSCA are expiring now
2. Claims not timely extended can be disclosed without further notice
3. CDX notifications are not a reliable way to track expirations
4. Ongoing litigation may limit EPA's ability to disclose allegedly deficient CBI
5. Bottom line: companies should prepare now, not wait for a notice

Questions?

Philip A. Moffat

pmoffat@verdantlaw.com

202-828-1233