ECOS

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Clearwater, Florida

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By email vote

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Alexandria, Virginia

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Sausalito, California

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Scottsdale, Arizona

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Nashville, Tennessee

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Arlington, Virginia

Revised April 6, 2022
Asheville, North Carolina

Revised March 26, 2025
Arlington, Virginia

As certified by
Ben Grumbles
Executive Director

STATE ACCESS TO CONFIDENTIAL BUSINESS INFORMATION UNDER THE TOXIC SUBSTANCES CONTROL ACT

WHEREAS, U.S. EPA regulates existing and new toxic chemicals for use in commerce under the Toxic Substances Control Act (TSCA); and

WHEREAS, regulated companies file information with U.S. EPA about the manufacture, use, import, and environmental and human health impacts of toxic chemicals; and

WHEREAS, ECOS represents states, territories, and the District of Columbia, throughout this resolution the term "states" indicates states, territories, and the District of Columbia; and

WHEREAS, states and tribal governments, in partnership with U.S. EPA, have a continuing interest in, and responsibility for protecting public health and the environment through reducing risks from toxic chemicals and the hazards they pose in commerce; and

WHEREAS, all entities providing data to U.S. EPA should provide data in an open and transparent manner with adequate substantiation for any confidential business information (CBI) claims; and

WHEREAS, U.S. EPA's general practice is to limit unwarranted claims of confidentiality on the identity of chemicals previously disclosed on the public portion of the TSCA Chemical Substance Inventory, and

that are the subject of studies submitted to U.S. EPA that show a substantial risk to public health and the environment; and

WHEREAS, TSCA was amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act (Lautenberg) which was signed into law in 2016; and

WHEREAS, under Lautenberg states and tribal governments with sufficient authority and appropriate measures in place to protect confidential information can access CBI for the purpose of development, administration or enforcement of a law; and

WHEREAS, ECOS helps states, tribal governments, and EPA cooperatively implement Lautenberg and share best chemicals management practices.

NOW, THEREFORE, BE IT RESOLVED THAT THE ENVIRONMENTAL COUNCIL OF THE STATES (ECOS):

Commends U.S. EPA on its commitment to provide for greater public access to information on toxic chemicals by providing qualified states and tribal governments with access to CBI;

Urges U.S. EPA to seek and invest additional resources to address timely review and substantiation of new and existing claims of CBI and to make information publicly available as required by Lautenberg, and to use TSCA fee structures to ensure the U.S. EPA program has sufficient resources to implement CBI designation, redesignation, and sharing with states and tribal governments in a timely fashion;

Urges U.S. EPA to work with states and tribes to streamline the process by which states and tribes can request access to TSCA CBI;

Urges Congress to monitor U.S. EPA's compliance with its requirements in reformed TSCA that U.S. EPA:
- Require re-substantiation of past CBI claims for active chemicals on the TSCA Inventory, in order to ensure that important information becomes available to states, tribes, and the public if that information does not meet current criteria for protection from disclosure; and
- Substantiate CBI claims when they are submitted to the Agency, ensuring that they have an expiration date after which they must be re-substantiated, and review and act on CBI claims in a timely fashion;

Urges U.S. EPA to recognize the breadth and diversity of state and tribal laws for which access to a wide range of TSCA CBI could be useful for purposes of administration or enforcement; and

Urges U.S. EPA to respond to requests to enter into information sharing agreements and subsequently, to requests for TSCA CBI, within 30 days.