

Confidential Business Information (CBI)

**BRS Stakeholder Meeting
December 13, 2011
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Outline

- Defining CBI
- Justification statements
- Current guidance
- Getting it right the first time

What is CBI?



- Information that would be protected from disclosure under section (b)(4) of the Freedom of Information Act (FOIA) is classified as confidential business information (CBI). This includes trade secrets and commercial or financial information found to be confidential.
- **A trade secret** is information relating to the production process, including production data, formulas, and processes, and quality control tests and data, as well as research methodology and data generated in the development of the production process. Such information must be (1) commercially valuable, (2) used in one's business and (3) maintained in secrecy.
- **Commercial or financial information** may be deemed confidential if review establishes that the applicant faces active competition in the area to which the information relates and that substantial competitive harm would result from disclosure. Information such as safety data, efficacy or potency data, and environmental data may be such confidential information.





What is CBI?



- Information determined to be CBI is protected from public disclosure. All documents submitted to APHIS are subject to the Freedom of Information Act (FOIA), which requires that records submitted to Federal agencies be made available to the public (http://www.aphis.usda.gov/brs/pdf/Doc_Prep_Guidance.pdf).
- APHIS provides the public with documents it receives when formally requested through the APHIS FOIA office. Additionally, APHIS voluntarily makes many submitted documents freely available on its website (http://www.aphis.usda.gov/biotechnology/brs_main.shtml).
- FOIA exempts from disclosure certain types of information related to trade secrets and commercial or financial information, collectively referred to as CBI. Documents submitted to APHIS that contain CBI require special handling.
- For more information about the type of information that can be declared as CBI see, http://www.aphis.usda.gov/brs/pdf/Doc_Prep_Guidance.pdf.



Justification Statements



- **Confidential Business Information (CBI)** must be justified in terms related to competitive or financial harm due to its release.
- Information is not protected from disclosure simply because the applicant does not want the information to be made public. The applicant must include a statement justifying all claims of CBI.
- The statement must be detailed enough to demonstrate that each piece of information claimed as CBI meets the definitions of trade secret or commercial or financial information.
- Each piece of information that is claimed as CBI must be justified in the statement. For examples of the type of information that can be claimed as CBI and the definitions of commercial or financial harm, see http://www.aphis.usda.gov/brs/pdf/Doc_Prep_Guidance.pdf.

Current Guidance



- http://www.aphis.usda.gov/brs/pdf/Doc_Prep_Guidance.pdf
- If you are sending us a CBI marked document then you need to also send a CBI-deleted versions.
- This includes, but is not limited to:
 - applications;
 - attachments / supporting documents;
 - planting and environmental reports.
- Documents should be dated and indicate a version number if appropriate.
- We recommend that you don't send us petitions that contain CBI!



Getting it Right the First Time



- We want you to prepare your CBI justifications as though you were preparing them for release under the FOIA. The APHIS FOIA Office says your justification should tell us:
- What each category of information reveals about your organization's business.
- How a competitor could use this information to cause your company competitive harm.
- The specific competitive harm (e.g., financial, research & development, etc.) that could result if the information is released.
- All Federal Agencies receive CBI guidance/FOIA guidance through case law. Familiarize yourself with these current court decisions:

<http://www.justice.gov/oip/courtdecisions/exemption4.html>



For More Information



- What if I still have questions about CBI or preparing a justification statement?
- Contact:
Document Control Officer
USDA APHIS BRS
4700 River Road, Unit 146
Riverdale, Maryland 20737
(301) 734-0667 or (301) 851-3892