

## Waiver of Selected Requirements for Electronic Reporting of Confidential Business Information

### Background

On June 7, 2023, EPA published a final rule in the Federal Register (*Confidential Business Information Claims Under the Toxic Substances Control Act (TSCA)*, 88 FR 37155, June 7, 2023). The rule makes a variety of changes to existing EPA regulations regarding assertion and treatment of confidential business information (CBI) under the Toxic Substances Control Act (TSCA). The effective date of this rule is August 7, 2023.

The final rule includes a provision at 40 CFR 703.5(f), requiring that all TSCA submissions bearing CBI claims must (with limited exceptions) be submitted via EPA's electronic submission portal, CDX. Many TSCA submissions are already filed using existing CDX submission tools, including some tools required under existing TSCA regulations.

EPA has been developing additional tools necessary to enable the expanded electronic reporting that will be required by section 703.5(f). However, development and testing of these tools will not be complete in time to enable the additional electronic reporting required by section 703.5(f). EPA expects these tools to be available by October 16, 2023.

Section 703.5(f)(1) provides that EPA reserves the ability to waive these electronic reporting requirements, at its discretion, where compliance is infeasible. Therefore, EPA is issuing a time-limited waiver of selected electronic reporting requirements, as detailed below. Also included below is guidance on how to submit the information until the tools become available.

Any information subject to section 703.5(f) and not included in the waiver below must still be reported electronically, as required by applicable EPA regulation.

### Waiver

EPA hereby waives the application of electronic reporting requirements contained in 40 CFR 703.5(f) for the following types of information:

- Responses to substantiation questions specified in 40 CFR 703.5(b) as incorporated into the following TSCA electronic reporting forms and tools available in CISS:
  - Enforcement Communication Form
    - <https://www.regulations.gov/document/EPA-HQ-OPPT-2021-0419-0071>
  - General Communication Form
    - <https://www.regulations.gov/document/EPA-HQ-OPPT-2021-0419-0064>
  - TSCA Mercury Electronic Reporting – MER
    - <https://www.regulations.gov/document/EPA-HQ-OPPT-2021-0419-0086>
  - TSCA Risk Evaluation Submission
    - <https://www.regulations.gov/document/EPA-HQ-OPPT-2021-0419-0085> and
    - <https://www.regulations.gov/document/EPA-HQ-OPPT-2021-0419-0080>

- TSCA Section 12(b)
  - <https://www.regulations.gov/document/EPA-HQ-OPPT-2021-0419-0062>
- TSCA Section 4
  - <https://www.regulations.gov/document/EPA-HQ-OPPT-2021-0419-0072>,
  - <https://www.regulations.gov/document/EPA-HQ-OPPT-2021-0419-0069>,
  - <https://www.regulations.gov/document/EPA-HQ-OPPT-2021-0419-0070>,
  - <https://www.regulations.gov/document/EPA-HQ-OPPT-2021-0419-0081>, and
  - <https://www.regulations.gov/document/EPA-HQ-OPPT-2021-0419-0084>
- TSCA Section 5 Notices and Supports
  - <https://www.regulations.gov/document/EPA-HQ-OPPT-2021-0419-0073>,
  - <https://www.regulations.gov/document/EPA-HQ-OPPT-2021-0419-0068>, and
  - <https://www.regulations.gov/document/EPA-HQ-OPPT-2021-0419-0066>
- TSCA Section 8(d) – Health & Safety Data Report
  - <https://www.regulations.gov/document/EPA-HQ-OPPT-2021-0419-0082>
- TSCA Section 8(e) – Notice
  - <https://www.regulations.gov/document/EPA-HQ-OPPT-2021-0419-0083>
- Electronic reporting requirements for the following submission types, to the extent not available in electronic submission tools formerly designated as voluntary to use:
  - TSCA Section 12(b)
  - TSCA Section 8(c)
  - TSCA Section 8(e)

This waiver is effective as of August 7, 2023, and expires on October 16, 2023.

**Guidance for reporting while the waiver is in effect**

Waived requirement:	Instructions during waiver period:
Responses to new substantiation questions (40 CFR 703.5(b)) embedded in the following CISS TSCA reporting tools/forms: <ul style="list-style-type: none"> <li>○ Enforcement Communication Form</li> <li>○ General Communication Form</li> <li>○ Mercury Electronic Reporting Form</li> <li>○ Risk Evaluation Submission Forms</li> <li>○ Section 12(b) Form</li> <li>○ Section 4 Forms</li> <li>○ Section 5 Notices and Supports Forms</li> <li>○ Section 8(d) – Health &amp; Safety Data Report Form</li> <li>○ Section 8(e) – Notice Form</li> </ul>	In the period between August 7, 2023 and October 16, 2023, TSCA submitters should continue to use the existing reporting tools in CDX to provide any required CBI substantiations, including tools formerly designated as voluntary to use. Submitters should continue to include a separate substantiation attachment with those submissions made using reporting tools that do not incorporate substantiation questions embedded where the information is entered. The substantiation attachment should provide responses to the new substantiation questions (40 CFR 703.5(b)).  Substantiation attachment template documents with the updated questions are available on EPA’s website ( <a href="https://www.epa.gov/tsca-cbi/what-include-cbi-substantiations">https://www.epa.gov/tsca-cbi/what-include-cbi-substantiations</a> ) for those who voluntarily choose to use them. For those opting not to use the EPA provided substantiation

	attachment templates, responses to the new substantiation questions should be provided in the substantiation attachment included with these submissions.
<p>New electronic reporting requirements for the following submission types:</p> <ul style="list-style-type: none"> <li>○ TSCA Section 12(b)</li> <li>○ TSCA Section 8(c)</li> <li>○ TSCA Section 8(e) (if the submission includes CBI claims)</li> </ul>	E-reporting tools for TSCA Section 12(b) and TSCA Section 8(e) submissions have been available for use on a voluntary basis. The rule makes e-reporting for TSCA Section 12(b) submissions and TSCA Section 8(e) submissions mandatory. EPA expects that submitters will comply with these requirements by using the existing e-reporting tools. If EPA issues any reporting requirements under TSCA Section 8(c), the TSCA 8(c) action will include reporting instructions.

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