

# *TSCA Certification*

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Date

I certify that all chemical substances in this shipment comply with all applicable rules or orders under TSCA and that I am not offering a chemical substance for entry in violation of TSCA or any applicable rule or order thereunder.

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Signature

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Title

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Consignee/Importer



## CHEMICAL SUBSTANCES IN BULK AND AS PART OF MIXTURES AND ARTICLES

**Source:** Sections 12.118 through 12.127 were issued under T.D. 83-158, 48 FR 34739, Aug. 1, 1983, unless otherwise noted.

### § 12.118 Toxic Substances Control Act.

The importation into the customs territory of the United States of a chemical substance in bulk or as part of a mixture, or article *containing a chemical substance or mixture*, is governed by the Toxic Substances Control Act ("TSCA") (15 U.S.C. 2601 *et seq.*), and by regulations issued under the authority of section 13(b), TSCA (15 U.S.C. 2612(b)) by the Secretary of the Treasury in consultation with the Administrator, Environmental Protection Agency ("EPA").

### § 12.119 Scope.

Sections 12.120 through 12.127 apply to the importation into the customs territory of the United States of chemical substances in bulk and as part of mixtures under TSCA. Sections 12.120 through 12.127 also apply to articles containing a chemical substance or mixture if so required by the Administrator by specific rule under TSCA.

### § 12.120 Definitions.

Except as otherwise provided below, the terms used in §§ 12.121 through 12.127 have the meanings set forth for those terms in TSCA.

(a) *Article.*

(1) *Article* means a manufactured item which:

(i) Is formed to a specific shape or design during manufacture,

(ii) Has end use functions dependent in whole or in part upon its shape or design during the end use, and

(iii) Has either no change of chemical composition during its end use or only those changes of composition which have no commercial purpose separate from that of the article and that may occur as described in § 12.120(a)(2); except that fluids and particles are not considered articles regardless of shape or design.

(2) The allowable changes of composition, referred to in § 12.120(a)(1), are those which result from a chemical reaction that occurs upon the end use of other chemical substances, mixtures, or articles such as adhesives, paints, miscellaneous cleaners or other household products, fuels and fuel additives, water softening and treatment agents, photographic films, batteries, matches, and safety flares in which the chemical substance manufactured upon end use of the article is not itself manufactured for distribution in commerce or for use as an intermediate.

(b) *Chemical substance in bulk form* means a chemical substance (other than as part of a mixture or article) in containers used for purposes of transportation or containment, provided that the chemical substance is intended to be removed from the container and has an end use or commercial purpose separate from the container.

### § 12.121 Reporting requirements.

(a) *All chemical substances in bulk or mixtures.* The importer of a chemical substance, imported in bulk or as part of a mixture, shall certify to the director of the port of entry that the chemical shipment is subject to TSCA and complies with all applicable rules and orders thereunder, or is not subject to TSCA. The importer, or his authorized agent, shall sign one of the following statements:

I certify that all chemical substances in this shipment comply with all applicable rules or orders under TSCA and that I am not offering a chemical substance for entry in violation of TSCA or any applicable rule or order thereunder.

I certify that all chemicals in this shipment are not subject to TSCA. The certification, which shall be filed with the district director at the port of entry before release of the shipment, may appear as a typed or stamped statement:

(1) On an appropriate entry document or commercial invoice, or on a preprinted attachment to such entry or invoice.

(2) On the commercial invoice or an attachment to the invoice, in the event of release under a special permit for an immediate delivery, as provided for in § 142.21 of this chapter, or entry, as provided for in § 142.3 of this chapter.

(b) *Chemical substance or mixture as part of articles.* Each importer of a chemical substance or mixture as part of an article shall meet the reporting requirements set forth in paragraph (a) of this section only if required by a rule or order under TSCA.

(c) *Facsimile signatures.* The certification statements in paragraph (a) of this section may be signed by means of an authorized facsimile signature.

[T.D. 95-78, 60 FR 50025, Sept. 27, 1995]

### § 12.122 Detention of certain shipments.

(a) The director of the port of arrival shall detain, at the importer's risk and expense, shipments of chemical substances, mixtures, or articles:

(1) Which have been banned from the customs territory of the United States by a rule or order issued under section 5 or 6 of TSCA (15 U.S.C. 2604 or 2605) or

(2) Which have been ordered seized because of imminent hazards as specified under section 7 of TSCA (15 U.S.C. 2606).

(b) The director of the port of entry shall detain shipments of chemical substances, mixtures, or articles at the importer's risk and expense, in the following situations:

(1) Whenever the Administrator has reasonable grounds to believe that the shipment is not in compliance with TSCA and notifies the port director to detain the shipment.

(2) Whenever the port director has reasonable grounds to believe that the shipment is not in compliance with TSCA; or

(3) Whenever the importer fails to certify compliance with TSCA as required by § 12.121.

(c) Upon detention of a shipment, the port director shall give prompt notice to the Administrator and the importer. The notice shall include the reasons for detention.

(d) A detained shipment shall not be held in the custody of the port director for more than 48 hours after the date of detention. Thereafter, the shipment shall be promptly turned over to the Administrator for storage or disposition as provided for in §§12.127 and 127.28(i), unless previously released to the importer under bond as provided in § 12.123(b). Notice of intent to abandon the shipment by the importer shall constitute a waiver of all time periods specified in parts 12 and 127.

[T.D. 95-78, 60 FR 50025, Sept. 27, 1995]

#### § 12.123 Procedure after detention.

(a) *Submission of written documentation.* If a shipment is detained by a port director under § 12.122, the importer may submit written documentation to the Administrator with a copy to the port director within 20 days from the date of notice of detention, to show cause why the shipment should not be refused entry. If an importer submits that documentation, the Administrator shall allow or deny entry of the shipment within 10 days of receipt of the documentation, and in any case shall allow or deny entry of the shipment within 30 days of the date of notice of detention.

(b) *Release under Bond.* The port director may release to the importer a shipment detained for any of the reasons given in § 12.122 when the port director has reasonable grounds to believe that the shipment may be brought into compliance, or when the port director deems it appropriate under § 141.66 of this chapter. Any such release shall be conditioned upon furnishing a bond on Customs Form 7551, 7553, or 7595 for the return of the shipment to Customs custody. The bond shall be for the full amount required in § 113.14 of this chapter. If a shipment of chemical substance, mixture, or article is released to the importer under bond, the shipment shall be held intact and shall not be used or otherwise disposed of until the Administrator makes a final determination on entry as provided for in paragraph (c) of this section.

(c) *Determination by the Administrator.* After consideration of the available evidence and within 30 days from the notice of detention, the Administrator shall notify the port director and the importer of his decision either to permit or refuse entry of the shipment. If the Administrator finds that the shipment is in compliance with TSCA, the port director shall release the shipment to the importer. If the Administrator finds that the shipment is not in compliance, the port director shall:

(1) Refuse delivery to the importer, giving reasons for such refusal, or

(2) If the shipment has been released on bond, demand its redelivery under the terms of the bond, giving reasons for such demand. If the merchandise is not redelivered within 30 days from the date of the redelivery notice, the port director shall assess liquidated damages in the full amount of the bond.

[T.D. 95-78, 60 FR 50025, Sept. 27, 1995]

#### § 12.124 Time limitations and extensions.

(a) *Time limitations.* The importer of a shipment of chemical substances, mixtures, or articles which has been detained under § 12.122 shall bring the shipment into compliance with TSCA or export the shipment from the customs territory of the United States within 90 days after notice of detention or 30 days of demand for redelivery, whichever comes first.

(b) *Time extensions.* The port director, upon notification by the Administrator, may grant an extension of not more than 30 days if, due to delays caused by the Environmental Protection Agency or the Customs Service:

(1) The importer is unable, for good cause shown, to bring a shipment into compliance with the Act within the required time period; or

(2) The importer is unable to export the shipment from the customs territory of the United States within the required time period.

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#### § 12.125 Notice of exportation.

Whenever the Administrator directs the port director to refuse entry under § 12.123 and the importer exports the non-complying shipment within the 30 day period of notice of refusal of entry or within 90 days of demand for redelivery, the importer shall give written notice of the fact of exportation to the Administrator and the port director. The importer shall include the following information in the notice of exportation:

- (a) The name and address of the exporter or his agent;
- (b) A description of the chemical substances, mixtures, or articles exported;
- (c) The destination (country);
- (d) The port of arrival at the destination;
- (e) The carrier;
- (f) The date of exportation; and
- (g) The bill of lading or the air way bill number.

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#### § 12.126 Notice of abandonment.

If the importer intends to abandon the shipment after receiving notice of refusal of entry, the importer shall present a written notice of intent to abandon to the port director and the Administrator. Notification under this section is a waiver of any right to export the merchandise. The importer shall remain liable for any expense incurred in the storage and/or disposal of abandoned merchandise.

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#### § 12.127 Decision to store or dispose.

(a) A shipment detained under § 12.122 shall be considered to be unclaimed or abandoned and shall be turned over to the Administrator for storage or disposition as provided for in § 127.28(i) of this chapter if the importer has not brought the shipment into compliance with TSCA and has not exported the shipment within time limitations or extensions specified according to § 12.124. The importer shall remain liable for any expenses in the storage and/or disposal of abandoned merchandise.