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**DEPARTMENT OF HOMELAND SECURITY  
U.S. Customs and Border Protection**

**DEPARTMENT OF THE TREASURY**

**19 CFR Parts 12 and 127**

**[USCBP-2016-0056]**

**RIN 1515-AE13**

**Toxic Substance Control Act Chemical Substance Import Certification Process Revisions**

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security,  
Department of the Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes to amend the U.S. Customs and Border Protection (CBP) regulations regarding the requirement to file a Toxic Substances Control Act (TSCA) certification when importing into the customs territory of the United States chemicals in bulk form or as part of mixtures and articles containing a chemical or mixture. The proposed regulations include an electronic option for filing TSCA certifications, consistent with the Security and Accountability for Every Port Act of 2006. This document also proposes to clarify and add certain definitions, and to eliminate the paper-based blanket certification process. The document was prepared in consultation with the Environmental Protection Agency (EPA), the agency with primary responsibility for implementing TSCA.

**DATES:** Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

**ADDRESSES:** You may submit comments, identified by docket number USCBP-2016-0056, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Trade and Commercial Regulations Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street NE., 10th Floor, Washington, DC 20229-1177.

Instructions: All submissions received must include the agency name and docket title for this rulemaking, and must reference docket number USCBP-2016-0056. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of the document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected during business days between the hours of 9:00 a.m. and 4:30 p.m. at the Office of Trade, Customs and Border Protection, 90 K Street NE., 10th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

**FOR FURTHER INFORMATION CONTACT:** For operational issues related to the filing of EPA forms with CBP, contact William R. Scopa, Branch Chief, Partner Government Agency Branch, Trade Policy and Programs, Office of Trade, at [William.R.Scopa@cbp.dhs.gov](mailto:William.R.Scopa@cbp.dhs.gov). For EPA policy questions, contact Harlan Weir, at [Weir.Harlan@epa.gov](mailto:Weir.Harlan@epa.gov).

**SUPPLEMENTARY INFORMATION:**

## **Public Participation**

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rulemaking. Comments that will provide the most assistance to CBP will reference a specific portion of the proposed rulemaking, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. See ADDRESSES above for information on how to submit comments. CBP is particularly interested in comments on the following issues:

- Does collection of the names, phone number, and email address of the TSCA import certifier impact your business/industry? If so, how (to the extent possible, please quantify impacts)?
- Does the electronic submission of TSCA certifications to ACE affect your business/industry? If so, how (to the extent possible, please quantify impacts)?

## **Background**

### **I. Authority**

#### **A. Toxic Substances Control Act (TSCA)**

In 1976, Congress enacted the Toxic Substances Control Act (TSCA) in order to, among other things, protect human health and the environment against unreasonable risks resulting from manufacture, distribution in commerce, processing, use, or disposal of chemical substances or mixtures. (15 U.S.C. 2601 et seq.) The U.S. Environmental Protection Agency (EPA) is the agency primarily responsible for implementation of TSCA. Section 13 of TSCA (15 U.S.C. 2612) governs the entry of those chemical substances and mixtures, and articles containing such

chemical substances or mixtures into the customs territory of the United States and authorizes the Secretary of the Treasury, authority subsequently delegated to the U.S. Customs and Border Protection (CBP), to refuse entry of any chemical substance, mixture, or article that: (1) fails to comply with any rule in effect under TSCA; or (2) is offered for entry in violation of TSCA section 5 or 6 (15 U.S.C. 2604 or 2605) or Subchapter IV (15 U.S.C. 2681 et seq.), or in violation of a rule or order under those provisions or in violation of an order issued in a civil action brought under TSCA section 5 or 7 (15 U.S.C. 2604 or 2606) or Subchapter IV (15 U.S.C. 2681 et seq.). Section 13 also sets forth procedural requirements in connection with an entry refusal and authorizes CBP, after consultation with EPA, to issue rules for the administration of section 13.

## **B. Current Regulations**

The CBP regulations implementing section 13 are contained in §§ 12.118 through 12.127 and § 127.28 of title 19 of the Code of Federal Regulations (19 CFR 12.118 through 12.127 and 127.28).

Section 12.118 describes the statutory authority for the promulgation of regulations under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), by the Secretary of Treasury in consultation with the Administrator of EPA.

Section 12.119 sets forth the scope of the regulations in §§ 12.120 through 12.127 stating that these provisions apply to the importation into the customs territory of the United States of chemical substances in bulk form and as part of mixtures under TSCA as well as articles containing a chemical substance or mixture if so required by the Administrator by specific rule under TSCA. Section 12.120 provides definitions for purposes of the TSCA regulations.

Under 19 CFR 12.121(a), when a TSCA chemical substance is imported in bulk form or as part of a mixture or a non-TSCA chemical is imported, an importer or the importer's customs broker must submit a signed certification stating either: (1) all chemical substances in the shipment comply with all applicable rules or orders under TSCA and that the importer is not offering a chemical substance for entry in violation of TSCA or any rule or order thereunder (a positive certification), or (2) all chemicals in the shipment are not subject to TSCA (a negative certification). Section 12.121(b) states that the provisions of paragraph (a) apply to a TSCA chemical substance or mixture as part of an article only when required by a rule or order under TSCA.

Under 19 CFR 12.121(a)(2)(i), the TSCA certification must be filed with the director of the port of entry before release of the shipment. The certification may appear as a typed or stamped statement either: (1) on the entry document or commercial invoice, or on a preprinted attachment to the entry document or commercial invoice, or (2) in the case of a release under a special permit for an immediate delivery under 19 CFR 142.21 or in the case of an entry under 19 CFR 142.3, on the commercial invoice or an attachment to the commercial invoice. Further, importers are allowed to use paper blanket certifications under 19 CFR 12.121(a)(2)(ii).

Section 12.125 establishes the procedures for the importer to provide notice of exportation whenever the EPA Administrator directs CBP to refuse entry under § 12.123. Under § 12.126, an importer who intends to abandon a shipment after receiving a notice of refusal of entry is directed to provide written notice of intent to abandon to CBP.

Section 12.127 provides that a shipment detained under § 12.122 shall be considered to be unclaimed or abandoned and shall be turned over to the EPA Administrator for storage or disposition when the importer has not brought the shipment into compliance or exported the shipment within the required time limits.

Section 127.28(i) sets forth the procedures for the disposition of special classes of merchandise that are found to be inadmissible into the United States by the EPA for not complying with the terms of TSCA.

## **II. Proposed Amendments**

### **A. Description, Scope, and Definitions**

CBP is proposing changes to §§ 12.118 through 12.121 to clarify the description, scope, and definitions of the requirements for the importation of chemical substances, mixtures and articles containing a chemical substance or mixture, as well as the requirements associated with non-TSCA chemicals. In § 12.118 we propose to revise the description of the Toxic Substances Control Act for clarity. In addition, CBP proposes to clarify the scope of the regulations by revising certain definitions. The regulations currently include requirements for “chemical substances,” regardless of whether the substance is subject to TSCA. The definition of “chemical substance” in section 3(2) of the TSCA excludes certain substances, e.g., pesticides. Although these chemicals are excluded from the definition of “chemical substance” under

TSCA, importers are still required to file a negative certification under § 12.121(a), to certify that the shipment is not subject to TSCA. Because using the term “chemical substance” to refer to chemicals that are not subject to TSCA may be confusing, this document proposes to clarify the scope of the regulations in § 12.119 and the reporting requirements in § 12.121 by including language that makes clear that the regulation applies to the importation of chemicals regardless of whether they are “chemical substances” subject to TSCA. In proposed § 12.120, definitions are revised to ensure consistency between the terms used in the definitions and the terms used elsewhere in these regulations.

The EPA’s regulations implementing section 13 of TSCA, codified at 40 CFR 707.20(b)(2)(ii), require the submission of a TSCA negative certification when a chemical import is not clearly identified as a pesticide or other chemical not subject to TSCA. Current CBP regulations at 19 CFR part 12 do not include an exemption from the negative certification requirement for chemicals that are clearly identified as a pesticide or other chemical not subject to TSCA, and CBP is not proposing to codify such an exemption. CBP requests comments, however, on whether such an exemption is appropriate. The requirements for TSCA certification are set forth in CBP’s regulations in § 12.121, and based on the outcome of this rulemaking, CBP anticipates that if necessary EPA would adjust the imports policy statement at 40 CFR part 707 accordingly.

This document also proposes to replace the existing definition of the term “chemical substance in bulk form” in § 12.120(b) with a definition of “TSCA chemical substance in bulk form”, and add new definitions for the terms “TSCA chemical substance as part of a mixture” in § 12.120(c) and “non-TSCA chemical” in § 12.120(d). These definitions are being revised and added to clarify that the certification obligations apply to both chemical substances and mixtures

that are subject to TSCA, which require a positive certification, as well as those chemicals and mixtures that are not subject to TSCA, which require a negative certification and to ensure that terms used in the regulatory text are defined when necessary. “Mixture” is a statutory term in TSCA that does not apply to non-TSCA chemicals. Non-TSCA chemicals require a negative certification whether imported as a single non-TSCA chemical or mixed with other non-TSCA chemicals. In addition, in §§ 12.122(a) and (b), 12.123(b), 12.124(a), 12.125(b), and 127.28, this document proposes to revise references to “chemical substances, mixtures, or articles” to clarify that these regulations apply to TSCA chemical substances, mixtures, or articles as well as non-TSCA chemicals. This document also proposes to add a definition of the term “Administrator” to mean the Administrator of the EPA, and “covered commodity” to properly describe a commodity that is subject to actions under §§ 12.122 through 12.127 and § 127.28. In § 12.120, this document proposes to define the term “covered commodity” to include any merchandise that is an article, a TSCA chemical substance in bulk form, a non-TSCA chemical (as those terms are defined in § 12.120(a), (b), or (d)), or that is a mixture as defined in TSCA.

This document proposes to revise § 12.119 to ensure that the scope of the regulation accurately reflects the requirements with regard to certain TSCA chemical substances and non-TSCA chemicals. The scope as written in the existing regulation does not accurately describe all items addressed in the regulation. This proposed rule also clarifies the limitation regarding articles (i.e., “if so required by the Administrator by specific rule under TSCA”), applies to the requirement for a certification in § 12.121, but does not apply to actions taken under § 12.122 and following sections. This document proposes, in §§ 12.122, 12.124, 12.125, and 127.28, to use the term “covered commodity” as defined in a proposed definition in § 12.120, to refer to

any commodity that may be subject to those sections. In § 12.124, this proposed rule proposes to change the name of the agency from “Customs Service” to “CBP”.

## **B. Electronic Option Allowed for Import Certification**

On February 10, 2016, CBP published a notice in the **Federal Register** (81 FR 7133) announcing that CBP was modifying the National Customs Automation Program (NCAP) test concerning electronic filings of data to ACE, known as the Partner Government Agency (PGA) Message Set test to allow for the transmission of TSCA certification data. Prior to the conclusion of that test, CBP will evaluate the test to assess the reliability and utility of the electronic TSCA certification process. If CBP determines that the TSCA NCAP test is successful, CBP will conclude that test in conjunction with the publication of the final rule implementing the changes proposed in this notice.

The proposed regulations provide an electronic option for filing TSCA certifications, consistent with Executive Order (EO) 13659, Streamlining the Export/Import Process for America’s Businesses, which seeks to reduce unnecessary procedural requirements relating to, among other things, importing into the United States, while continuing to protect our national security, public health and safety, the environment, and natural resources. See 79 FR 10657 (February 25, 2014). The proposed regulations are also consistent with the Security and Accountability for Every Port Act of 2006 (“SAFE Port Act,” 19 U.S.C. 1411(d)) which mandates that all federal agencies that require documentation for clearing or licensing the importation of cargo participate in the International Trade Data System (ITDS) by using a CBP-authorized Electronic Data Interchange (EDI) system as a single portal for the collection and distribution of standard electronic import and export data required by all participating Federal agencies.

In order to submit an electronic positive or negative TSCA certification, importers or their agents would be required to submit their entry filings to ACE or any other CBP-authorized electronic data interchange (EDI) system. This document also proposes to require in § 12.121(a)(3) the submission of additional information relating to the certifying individual, including name, phone number, and email address for TSCA certifications submitted either in writing or electronically. The collection of contact information for the certifying individual will facilitate the resolution of issues related to particular shipments. This document also changes in § 12.121(c) the reference to paragraph (a)(1) to paragraph (a) which concerns TSCA certifications.

### **C. Blanket Certifications**

CBP is proposing to eliminate the blanket certification process. The existing paper-based blanket certification process set forth in current § 12.121(a)(2)(ii) has limited utility because each blanket certification is only valid at one port of entry and is only valid for one year. In addition, the current blanket certification process is more burdensome than the current entry-specific certification process because it requires filers to report a statement referring to the blanket certification and incorporating it by reference for each entry, as well as four data elements on the blanket certification itself, including product name, Harmonized Tariff Schedule of the United States (HTSUS) subheading number, and the name and address of the foreign supplier. Because the electronic TSCA certification process will require only a certification code, along with the name and contact information of the TSCA certifier, and because the paper-based blanket certification has limited application, we believe the elimination of the blanket certification process will reduce the reporting burden for importers.

### **D. Notice of Exportation and Abandonment**

In addition, this document proposes to amend §§ 12.125 and 12.126 to allow importers to provide electronic notice of exportation and abandonment as an alternative to the paper-based written notice process allowed under the existing regulations.

The automation of these processes will modernize the way that CBP and EPA interact with importers of chemicals, and ensure effective application of regulatory controls. CBP estimates approximately 2.5 million TSCA positive certifications and 230,000 TSCA negative certifications are received annually. The electronic collection of TSCA certifications for processing in ACE will improve information access, data integration with CBP entry information, and the data quality of TSCA certifications. As a result, CBP expects improved communication among EPA, CBP, and importers.

#### **E. Plain Language Revisions**

CBP is proposing minor changes to §§ 12.118 through 12.127 by removing the word “shall” and revising the sentence grammar to simplify the language. The use of “shall” is imprecise and outdated. Plain language guidance recommends to replace “shall” with the word “must,” “will,” or another word that more appropriately conveys the intended meaning. This is part of the U.S. government efforts to update regulatory text per plain language guidance.

### **III. Estimated Costs and Benefits of this Rule**

#### **A. Costs**

The costs for the regulated community to implement TSCA certification via this proposed rule would be minimal. CBP and EPA estimate that providing the name, phone number, and email address of the import certifier would result in a net increase in information collection burden of three minutes for each of the estimated 2.5 million TSCA positive certifications and

230,000 TSCA negative certifications (increased cost of about \$3 per certification), yielding an annual trade increased cost of \$8.41 million.

## **B. Benefits**

The use of the ACE system is intended to streamline the cargo entry and review process. The benefits to industry for implementing electronic reporting for TSCA import certification specifically would be limited in this rule compared to the overall benefits of utilizing ACE. With migration to ACE, the access plus integration with CBP entry data will facilitate interagency communications, as well as assist CBP and EPA in contacting brokers and importers (with the assistance of the new data elements for certifier contact information). Additionally, EPA staff will have improved capability to verify information for use in developing targeting strategies, and other mission critical information gathering tasks.

## **IV. Statutory and Executive Order Reviews**

### **A. Executive Orders 12866 and 13563**

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule is not a “significant regulatory action,” under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed this regulation. An Economic Analysis for this action, which is contained in a document entitled “Economic Analysis for Custom and Border Protection (CBP) Proposed Rule on TSCA Import Certifications

in ACE/ITDS,” is available in the docket for this rulemaking and is summarized in the previous section of this document.

## **B. Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 et. seq.) requires federal agencies to assess the effects of regulations on small entities, including businesses, nonprofit organizations, and governments, and—in some instances—to examine alternatives to the regulations that may reduce adverse economic effects on significantly impacted small entities. Section 604 of the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, requires an agency to perform a regulatory flexibility analysis for a rule unless the agency certifies under section 605(b) that the regulatory action would not have a significant (economic) impact on a substantial number of small entities (SISNOSE). The RFA does not specifically define “a significant economic impact on a substantial number” of small entities.

A small entity analysis (SEA) was conducted and summarized herein. The SEA consists of: two quantitative analyses of impacts of the proposed rule on small entities for TSCA positive certifications, a qualitative discussion of impacts for TSCA negative certifications, and an integrative analysis of the combined universe of TSCA positive and TSCA negative certifications (all entities affected by the rule). These analyses provide information on the magnitude and extent of cost impacts for the purpose of supporting a CBP certification that the proposed rule would not result in significant (economic) impact on a substantial number of small entities (SISNOSE). For additional details, see the Economic Analysis for this action, which is contained in a document entitled “Economic Analysis for Customs and Border Protection (CBP)

Proposed Rule on TSCA Import Certifications in ACE/ITDS,” and is available in the docket for this rulemaking.

For TSCA positive certifications, the first quantitative analysis is a screening analysis of cost impacts to the smallest entities associated with TSCA positive certifications; and the second, a more detailed distributional analysis of impacts associated with TSCA positive certifications. These analyses use cost impact percentages to measure potential impacts on small parent entities affected by the proposed rule. The cost impact percentage is defined as annualized compliance costs resulting from the TSCA positive certification portion of the proposed rule as a percentage of annual revenues or sales, a commonly available and objective measure of a company’s business volume. As is the expected case for this rule, when increases in regulatory costs are minimal, they represent a small fraction of a typical entity’s revenue, and therefore the impacts of the regulation are minimal.

The first quantitative analysis for TSCA positive certifications is a screening analysis that provides a concise estimate of small entity impacts under the proposed rule by examining whether an “average small parent entity” incurs significant economic impact. The results of this analysis are presented in Table 1. The second quantitative analysis is a detailed distributional analysis that provides an estimate of small entity impacts under the assumption that affected entities have the same size characteristics as the overall industry sector. The results of this analysis are presented in Table 2.

| NAICS            | NAICS Code Description                    | Parent Entities with 0 to 4 Employees |           |           | All Small Parent Entities |           |           |
|------------------|---|---------------------------------------|-----------|-----------|---------------------------|-----------|-----------|
|                  |   | Average Revenue                       | 1% Impact | 3% Impact | Average Revenue           | 1% Impact | 3% Impact |
| 325 <sup>a</sup> | Chemical Manufacturing                    | \$1,457,186                           | No        | No        | \$80,841,890              | No        | No        |
| 324 <sup>b</sup> | Petroleum and Coal Products Manufacturing | \$2,120,398                           | No        | No        | \$556,652,918             | No        | No        |

<sup>a</sup> For NAICS 325, the analysis of parent entities with 0 to 4 employees include 3,261 businesses while the analysis of all parent entities includes 9,772 businesses.

<sup>b</sup> For NAICS 324, the analysis of parent entities with 0 to 4 employees include 391 businesses while the analysis of all parent entities includes 1,189 businesses.

| NAICS | NAICS Code Description                    | Parent Entities | Small Parent Entities | Number and Percent of Small Parent Entities Incurring Impact of... |           |           | Minimum Impact <sup>a</sup> | Mean Impact <sup>b</sup> | Maximum Impact <sup>c</sup> |
|-------|---|-----------------|-----------------------|--|-----------|-----------|-----------------------------|--------------------------|-----------------------------|
|       |   |                 |                       | <1%  | 1-3%      | >3%       |                             |                          |                             |
| 325   | Chemical Manufacturing                    | 11,175          | 11,175                | 11,175<br>(100%)   | 0<br>(0%) | 0<br>(0%) | <0.001%                     | 0.015%                   | 0.032%                      |
| 324   | Petroleum and Coal Products Manufacturing | 3,657           | 3,657                 | 3,657<br>(100%)  | 0<br>(0%) | 0<br>(0%) | <0.001%                     | 0.009%                   | 0.022%                      |

<sup>a</sup> Of the 11,175 small entities in NAICS 325, the minimum impact experienced by any entity was <0.001%. Of the 3,657 small entities in NAICS 324, the minimum impact experienced by any entity was <0.001%.

<sup>b</sup> Of the 11,175 small entities in NAICS 325, the mean impact experienced by any entity was 0.015%. Of the 3,657 small entities in NAICS 324, the mean impact experienced by any entity was 0.009%.

<sup>c</sup> Of the 11,175 small entities in NAICS 325, the maximum impact experienced by any entity was 0.032%. Of the 3,657 small entities in NAICS 324, the maximum impact experienced by any entity was 0.022%.

The small entity screening analysis for TSCA positive certifications demonstrates that no small entities are expected to incur impacts of one percent or greater. The detailed distributional analysis for TSCA positive certifications shows that while a large number of small entities in certain sectors may be affected by the proposed rule, all of these small entities are expected to incur impacts of considerably less than one percent.

For TSCA negative certifications, because the unit incremental steady state burden associated with positive and negative certification are virtually the same (2.93 versus 2.98 minutes, respectively), the small entity impacts associated with negative certifications are similar to the small entity impacts associated with positive certifications, and are considerably less than one percent.

Integrating the above information for all firms submitting TSCA positive certifications and/or TSCA negative certifications requires consideration of the degree to which the firms submitting each type of certification overlap. Since this detailed information is not readily available, an assessment is made via review of lower-bound and upper-bound impact scenarios. At the lower bound with an assumption of no overlap, firms submitting TSCA positive and TSCA negative certifications are completely isolated and separate. Each firm incurs about three minutes additional burden per certification with associated impacts of less than one percent, yielding overall impacts of less than one percent for all firms. In the upper-bound scenario, with an assumption that all firms overlap, firms submit both TSCA positive and negative certifications at the same transaction rates per firm for each type of certification. All firms incur twice the burden due to managing twice as many certifications (*i.e.*, in comparison to three minutes per certification, the “double duty” requires six minutes for one positive certification plus one negative certification). Nonetheless, the associated overall impacts are still less than one percent for all firms.

Per conventional practices including EPA guidance, even if a substantial number of entities are affected by a proposed rule, as long as the impact to these entities is very low, the rule can be determined to not result in a significant impact on a substantial number of small entities. Based on the evidence of the analyses summarized above, CBP certifies that this

proposed rule will not have a significant economic impact on a substantial number of small entities (no SISNOSE).

### **C. Paperwork Reduction Act**

As this proposed rule does not establish a new collection of information, as defined in the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the provisions of the Paperwork Reduction Act are inapplicable.

### **D. Unfunded Mandates Reform Act (UMRA)**

This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

### **E. Signing Authority**

This proposed regulation is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the authority of the Secretary of the Treasury (or that of his or her delegate) to approve regulations pertaining to certain customs revenue functions.

### **List of Subjects**

#### *19 CFR Part 12*

Customs duties and inspection, Entry of merchandise, Imports, Reporting and recordkeeping requirements.

#### *19 CFR Part 127*

Customs duties and inspection, Exports, Freight, Reporting and recordkeeping requirements.

## Proposed Amendments to the CBP Regulations

For the reasons set forth in the preamble, 19 CFR parts 12 and 127 are proposed to be amended as set forth below.

### **PART 12--SPECIAL CLASSES OF MERCHANDISE**

1. The general and specific authority citations for part 12 continue to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

\* \* \* \* \*

Sections 12.118 through 12.127 also issued under 15 U.S.C. 2601 et seq.

\* \* \* \* \*

2. Revise § 12.118 to read as follows:

#### **§ 12.118 Toxic Substances Control Act.**

The Toxic Substances Control Act (“TSCA”) (15 U.S.C. 2601 et seq.) governs the importation into the customs territory of the United States of a chemical substance in bulk form or as part of a mixture, and articles containing a chemical substance or mixture. Such importations are also governed by these regulations which are issued under the authority of section 13(b) of TSCA (15 U.S.C. 2612(b)).

3. Revise §12.119 to read as follows:

#### **§ 12.119 Scope.**

Sections 12.120 through 12.127 apply to the importation into the customs territory of the United States of:

- (a) Chemical substances in bulk form and as part of a mixture under TSCA;
- (b) Chemicals not subject to TSCA; and

(c) Articles containing a chemical substance or mixture.

4. In §12.120, revise paragraph (b) and add paragraphs (c), (d), (e), and (f) to read as follows:

**§ 12.120 Definitions.**

\* \* \* \* \*

(b) *TSCA chemical substance in bulk form* means a chemical substance as set forth in section 3(2) of TSCA, (15 U.S.C. 2602(2)) (other than as part of an 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.

(c) *TSCA chemical substance as part of a mixture* means a chemical substance as set forth in section 3(2) of TSCA, (15 U.S.C. 2602(2)) that is part of a combination of two or more chemical substances as set forth in section 3(8) of TSCA.

(d) *Non-TSCA chemical* means any chemical that is excluded from the definition of TSCA chemical substance by section 3(2)(B) (ii) through (vi) of TSCA, (15 U.S.C. 2602(2) (B) (ii) through (vi)) (other than as part of a mixture), regardless of form.

(e) *Covered commodity* means merchandise that meets the terms of one of the definitions specified in paragraphs (a), (b), or (d) of this section or that is a mixture as defined in TSCA.

(f) *Administrator* means the Administrator of the Environmental Protection Agency (EPA).

5. In § 12.121, revise paragraphs (a), (b), and (c) to read as follows:

**§ 12.121 Reporting requirements.**

(a) *Certification required.* (1) The importer of a TSCA chemical substance in bulk form

or as part of a mixture, or the authorized agent of such an importer, must certify in writing or electronically that the chemical shipment complies with all applicable rules and orders under TSCA by filing with CBP the following statement:

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.

(2) The importer of any non-TSCA chemical, or the authorized agent of such an importer, must certify in writing or electronically that the chemical shipment is not subject to TSCA by filing with CBP the following statement:

I certify that all chemicals in this shipment are not subject to TSCA.

(3) *Filing of certification.* (i) The appropriate certification required under paragraph (a) of this section must be filed with the director of the port of entry in writing or electronically to the Automated Commercial Environment (ACE) system or any other CBP-authorized EDI system prior to release of the shipment. For each entry subject to certification under paragraph (a) of this section, the importer or their agent must identify the certifier by name, phone number, and email address.

(ii) Written certifications must appear as a typed or stamped statement:

(A) On an appropriate entry document or commercial invoice or on an attachment to that entry document or invoice; or

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

(b) *TSCA chemical substances or mixtures as parts of articles.* An importer of a TSCA chemical substance or mixture as part of an article must comply with the certification

requirements set forth in paragraph (a) of this section only if required to do so by a rule or order issued under TSCA.

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

**§ 12.122 [Amended]**

6. Amend § 12.122:

a. By removing the word “shall” each place it appears and adding in its place the word “will”; and

b. In paragraphs (a) and (b) by removing the words “chemical substances, mixtures, or articles” and adding in their place the words “covered commodity”.

**§ 12.122 [Amended]**

7. Amend § 12.123:

a. By removing the word “shall” each place it appears and adding in its place the word “will”; and

b. In paragraph (b), third sentence, by removing the words “chemical substance, mixture, or article” and adding in their place the words “a covered commodity”.

8. Amend § 12.124 as follows:

a. In paragraph (a) by removing the words “chemical substances, mixtures, or articles” and adding in their place the words “a covered commodity”;

b. In paragraph (a) by removing the word “shall” and adding in its place the word “must”;

c. In paragraph (b) by removing the words “Customs Service” and adding in its place “CBP”.

9. Amend § 12.125:

a. By revising the introductory text;

b. In paragraph (b) by removing the words “chemical substances, mixtures, or articles” and adding in their place the words “covered commodity”.

The revision reads as follows:

**§ 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 must submit notice of the exportation either in writing to the port director or electronically to CBP through ACE or any other CBP-authorized EDI system. The importer must include the following information in the notice of exportation:

\* \* \* \* \*

10. Revise § 12.126 to read as follows:

**§ 12.126 Notice of abandonment.**

If the importer intends to abandon the shipment after receiving notice of refusal of entry, the importer must present a notice of intent to abandon in writing to the port director or electronically to CBP through ACE or any other CBP-authorized EDI system. Notification under this section is a waiver of any right to export the merchandise. The importer will remain liable for any expense incurred in the storage and/or disposal of abandoned merchandise.

11. Amend § 12.127 to read as follows:

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

A shipment detained under § 12.122 will be considered to be unclaimed or abandoned and will 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 in § 12.124. The importer will remain liable for any expenses in the storage and/or disposal of abandoned merchandise.

**PART 127—GENERAL ORDER, UNCLAIMED, AND ABANDONED MERCHANDISE**

12. The general and specific authority citations for part 127 continue to read as follows:

**Authority:** 19 U.S.C. 66, 1311, 1312, 1484, 1485, 1490, 1491, 1492, 1493, 1506, 1559, 1563, 1623, 1624, 1646a; 26 U.S.C. 5753.

\* \* \* \* \*

Section 127.28 also issued under 15 U.S.C. 2612, 26 U.S.C. 5688;

\* \* \* \* \*

13. Amend § 127.28, paragraph (i) to read as follows:

**§ 127.28 Special merchandise.**

\* \* \* \* \*

(i) Goods subject to TSCA Requirements. Goods subject to TSCA requirements, i.e., covered commodities as defined in § 12.120 of this chapter, will be inspected by a

representative of the Environmental Protection Agency to ascertain whether they comply with Toxic Substances Control Act and the regulations and orders issued thereunder. If found not to comply with these requirements that good must be exported or otherwise disposed of immediately in accordance with the provisions of §§ 12.125 through 12.127 of this chapter.

R. Gil Kerlikowske  
Commissioner  
U.S. Customs and Border Protection

Approved: August 23, 2016.

Timothy E. Skud

Deputy Assistant Secretary of the Treasury

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