

§ 707.20 Chemical substances import policy.

(a) *Scope.*

(1) This statement addresses the policy of the Environmental Protection Agency (EPA) on importation of chemical substances, mixtures, and articles under section 13 of the Toxic Substances Control Act (TSCA; 15 U.S.C. 2601 *et seq.*). In particular, it addresses aspects of the regulation promulgated by the United States Customs Service (Customs), Department of the Treasury (19 CFR 12.118 through 12.127, and 127.28 [amended]) to implement section 13 of TSCA, 15 U.S.C. 2612. Section 13 requires the Secretary of the Treasury to refuse entry into the Customs territory of the United States of a chemical substance, mixture, or article if it does not comply with rules in effect under TSCA, or if it is offered for entry in violation of TSCA or rules or orders under TSCA.

(2) In addition to this statement of policy, EPA will continue, as necessary, to address problems associated with imports in rulemaking and other actions under individual sections of TSCA, i.e., sections 4, 5, 6, 7, 8, and 12. Sections 5, 6, and 7 apply directly to imports subject to the section 13 requirements. Section 12 may apply to export of a shipment that is refused entry under section 13. Importers may have obligations under sections 4 and 8; section 4 and 8 requirements for importers would not apply to individual chemical shipments and thus are not included under section 13 requirements. Interested persons should refer to the records of these individual rulemaking actions for specific information and guidance.

(b) *Objectives.*

(1) TSCA is intended to be comprehensive, and assure protection of health and the environment from unreasonable risks associated with chemicals whether the chemicals are imported or produced domestically. This intent is manifested by the inclusion of importation in the Act's definition of the term "manufacture": "[M]anufacture means to import * * *, produce, or manufacture" (15 U.S.C. 2602(7)). Thus, importers are responsible for insuring that chemical importation complies with TSCA just as domestic manufacturers are responsible for insuring that chemical manufacture complies with TSCA.

(2)(i) The section 13 rule requires importers to sign the following statement for each import of chemical substances subject to TSCA: "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 under TSCA." The certification will document that, in accordance with TSCA, the importer has taken the necessary steps to insure compliance.

(ii) The section 13 rule requires importers of chemicals not subject to TSCA (e.g., pesticides) to certify that compliance with TSCA is not required. Importers must certify this by signing the statement: "I certify that all chemicals in this shipment are not subject to TSCA." This is appropriate when a chemical import is not clearly identified as a pesticide or other chemical not subject to TSCA.

(3) The United States is involved in a major effort toward international harmonization in the control of chemicals. At such time as international agreement is reached on this issue, EPA would be prepared to modify its policy if necessary. EPA believes that its international harmonization efforts in the control of chemicals will protect health and the environment while fulfilling its obligations under the Trade Agreements Act of 1979.(c)

(1) *General certification.*

(i) The rule promulgated under section 13 of TSCA by Customs, in consultation with EPA, implements the requirement of section 13 that chemical substances, mixtures, or articles not in compliance with TSCA, or whose importation is not in compliance with TSCA, shall be denied entry into the customs territory of the United States. The rule requires that importers certify by a statement, on the entry document or invoice, that any shipment of a chemical substance subject to TSCA, imported in bulk or as part of a mixture, complies with TSCA, and that it is not offered for entry in violation of TSCA or any rule or order under TSCA, or that the chemicals imported are not subject to TSCA.

(ii) The certification applies to TSCA sections 5, 6, and 7.

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(iii) EPA expects that this certification will be based upon actual knowledge of the importer in most cases. However, EPA realizes that sometimes importers may not have actual knowledge of the chemical composition of imported mixtures. In these cases, the importer should attempt to discover the chemical constituents of the shipment by contacting another party to the transaction (e.g., his principal or the foreign manufacturer). This person may be able to identify the components of the mixture, or at least state that the substances comply with TSCA. The greater the effort an importer makes to learn the identities of the imported substances and their compliance with TSCA, the smaller his chance of committing a violation by importing a noncomplying shipment. If a shipment is ultimately determined to have violated TSCA, the good faith efforts of the importer to verify compliance, as evidenced by documents contained in his files, may obviate or mitigate the assessment of a civil penalty under section 16 of TSCA.

(2) *EPA enforcement.*

- (i) EPA and Customs will monitor chemical imports to determine if shipments and their import comply with the certification requirements and the substantive mandates of TSCA. Customs will refuse entry to any shipment until such time as the certification is properly submitted. Customs will also detain a shipment if there are reasonable grounds to believe that such shipment or its import violates TSCA or regulations or orders thereunder. A violative shipment must either be brought into compliance, exported, destroyed, or voluntarily abandoned within the time periods prescribed in 19 CFR 12.124 of the section 13 rule.
- (ii) (ii) When EPA determines that a shipment should be detained, EPA will identify the reasons for the detention and the necessary actions for an importer to bring the shipment into compliance with TSCA. If EPA has given this information to Customs before the district director issues the detention notice, the information will become part of the detention notice. The importer should contact one of the following EPA regional offices for guidance as to the proper procedures to correct any deficiencies in the shipment.
- (iii) (iii) If Customs detains or refuses entry of a shipment (other than for failure to make the general certification) and the importer takes measures necessary to bring the shipment into conformity with the requirements of TSCA, EPA officials will reassess the shipment to determine its current compliance status. When a shipment is no longer in violation, EPA will notify the district director and the importer. The district director will then release the shipment. This notice will also serve as a determination to permit entry under 19 CFR 12.123(c) if a shipment is brought into compliance before the 19 CFR 12.123(c) decisionmaking process has been completed. If compliance is achieved after a 19 CFR 12.123(c) determination (adverse to the importer) has been made, the EPA notice to the district director will serve as a reversal of the decision to refuse entry.(3) *EPA assistance.* Assistance in determining whether a chemical shipment is in compliance with TSCA can be obtained from the Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, Room E-543B, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 544-0551.

[48 FR 55464, Dec. 13, 1983, as amended at 60 FR 34463, July 3, 1995; 62 FR 1834, Jan. 14, 1997; 75 FR 69353, Nov. 12, 2010; 76 FR 49674, Aug. 11, 2011; 78 FR 37978, June 25, 2013]