

Federal Register

**Monday
December 1, 1980**

**PLAINTIFF'S
EXHIBIT**

KM-388

Part VII

Environmental Protection Agency and Department of the Treasury

Customs Service

**Chemical Imports and Exports; Special
Classes of Merchandise**

KMX 01158

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 707

[OPTS 130000; (TSH-FRL 1506-1)]

Chemical Imports and Exports; Proposed Policy Statement for Chemical Substances; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA)

ACTION: Proposed policy statement

SUMMARY: EPA solicits public comment on a proposed policy on imports of chemicals subjects to the Toxic Substances Control Act (TSCA or the Act). The policy concerns the rule proposed today by the U.S. Customs Service (Customs), Treasury Department, by authority of section 13 of TSCA; 19 U.S.C. 2612.

DATE: Comments must be postmarked by March 2, 1981. For information on public meetings, see below.

ADDRESS: Comments must hear the document control number OPTS-130000 and must be submitted to: Document Control Officer (TS-793), U.S. Environmental Protection Agency, Office of Pesticides and Toxic Substances, 401 M Street, SW., Washington, D.C. 20460.

All comments received, as well as public records in this proceeding, will be available for public inspection from 8:00 a.m. to 4:00 p.m. at: U.S. Environmental Protection Agency, Office of Pesticides and Toxic Substances Reading Room, Room 447 East Tower, 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Industry Assistance Office (TS-799), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460; 800-424-9065 toll free; in Washington, D.C. 554-1404.

SUPPLEMENTARY INFORMATION: This notice solicits comment on a statement of policy concerning EPA responsibilities under section 13 of TSCA (15 U.S.C. 2612). This section requires the U.S. Treasury Department to refuse entry into the U.S. customs territory of chemical substances, mixtures, and articles containing chemical substances or mixtures that do not comply with rules under TSCA, or that are offered for entry in violation of TSCA or rules or orders in effect under TSCA. Further, section 13 requires the Treasury Department to consult with EPA and to issue rules to control

imports subject to TSCA. The U.S. Customs Service has published the proposed section 13 rule elsewhere in today's *Federal Register*.

This proposed policy statement concerns EPA's responsibilities under the proposed rule. This statement is not subject to the notice and comment provisions of the Administrative Procedure Act (5 U.S.C. 553). However, EPA has chosen to publish its policy in proposal form in order to solicit public comment on the subject of ensuring that imported chemical substances meet the requirements of TSCA. In developing this policy, informal meetings on the practical aspects of fulfilling the requirements for imports proposed in the section 13 rule published today, were held with importing industry representatives, foreign government representatives, and other interested persons. The discussion during those meetings, as well as the concerns of the agencies involved, have been considered in developing this proposed statement.

TSCA's Treatment of Imports

The policy of Congress toward regulations of imports under TSCA is expressed in the legislative history of the Act: "[I]mported chemical substances and mixtures will be subject to regulation in the same manner as domestically produced chemical substances and mixtures are. In addition, importers of chemical substances and mixtures will have the same responsibilities and obligations as domestic manufacturers." H.R. Rep. No. 94-1341, 94th Cong. 2d Session 12-13 (1976).

The Act recognizes the critical position of importers in protecting health and the environment from exposure to hazardous chemicals by defining "manufacture" to include importation in addition to domestic production and manufacture (Section 3(7); 15 U.S.C. 2602). Consequently, whenever the Act places responsibilities on domestic manufacturers, the responsibilities also extend to importers.

The TSCA regulations that apply to importers, because they are defined as manufacturers, include, among other things, section 5 rules for chemicals not on the TSCA Inventory and for chemicals subject to notification for significant new uses, and controls and labeling requirements under section 6. Such rules under section 5 and section 6 must be complied with before chemicals may be imported. Importers are also subject to export notification requirements under section 12 when entry is denied for an intended import,

and the importer chooses to export noncomplying shipments.

In addition, because TSCA defines importers as manufacturers, importers are subject to rules such as testing requirements under section 4 and reporting requirements under section 8. However, because such rules do not apply to individual chemical shipments, and because compliance with such rules may be a lengthy procedure, importation would not depend on the importers' satisfaction of section 4 and section 8 requirements.

Likewise, importers are subject as manufacturers to sanctions for violations of the Act. Section 16 of TSCA describes civil penalties and criminal penalties to be invoked in proper cases. Moreover, section 17 provides for specific enforcement of the Act by the district courts of the United States, and for seizure and condemnation of noncomplying chemical substances, mixtures, and articles by process of libel. If an imported shipment does not comply with the Act, EPA will seek appropriate remedies under TSCA against persons responsible for the violations. These sanctions are in addition to those which may independently be prescribed for violation of the Customs rule.

The Proposed Customs Section 13 Rule

The proposed rule would require the importer of a chemical substance in bulk or mixture to certify at the port of entry that the shipment and its entry comply with TSCA and all applicable rules developed under TSCA. In some cases, the importer would also be required to submit a Special Chemical Import Report Form. The proposed rule also describes entry and detention procedures that would be used to ensure compliance.

Customs would have the responsibility for detaining all shipments that fail to comply with TSCA and all applicable rules and orders under TSCA. EPA's responsibilities under the proposed rule would be to determine whether detained shipments or their entries comply; to notify Customs which shipments should be detained; and to identify steps necessary to bring detained shipments into compliance, or to be taken when shipments are not brought into compliance. Because of its relevant knowledge and expertise, EPA would also be responsible for storage and disposal of abandoned noncomplying shipments.

Meaning of Certification

Certification that a chemical import complies with TSCA, and that an

importer has discharged all his TSCA obligations related to the import, is proposed to be accomplished by a brief statement to be typed on an entry document or invoice and to be signed by the importer. The statement would read: "I certify that all chemical substances in this shipment comply with all rules under TSCA and that I am not offering a chemical substance for entry in violation of TSCA or any rule or order under TSCA."

It should be noted that certification means to comply with rules in effect under TSCA, and that no more detailed information than is needed to comply with other TSCA rules would be needed to comply with the section 13 certification requirement. The section 13 rule requires importers to certify that other TSCA requirements are satisfied; section 13 by itself does not impose additional substantive requirements.

The exact TSCA requirements concerning chemical imports will continually change as new chemical substances are added to the Inventory after premanufacture review under section 5 of the Act, and as new rules are developed under other sections of TSCA. Consequently, it will be important for importers to remain informed of TSCA rules.

Inventory and Premanufacture Notice Requirements

Section 5(a)(1) of TSCA imposes an important duty on persons who intend to import new chemical substances into the United States. Persons who import chemical substances not on the TSCA Inventory must submit section 5 notices 90 days prior to import. If a chemical substance is not on the Inventory, its importation would comply with TSCA requirements only if (a) the chemical substance had completed EPA review under section 5, or (b) it were exempt from section 5 requirements.

A chemical substance is considered to be on the Inventory if it is on the EPA Master Inventory File. This includes the most recently published chemical substances Inventory (including any supplements or revisions) and substances accepted for inclusion on the Inventory but not yet published. At the time of this proposal, the most recently published Inventory is the Revised Inventory. This consists of the Initial Inventory published on June 1, 1979, together with the Cumulative Supplement published on July 30, 1980.

It should be noted that the TSCA section 5 requirements apply to chemical substances manufactured or processed for commercial purposes. Thus, regarding compliance with Section 5, the importer certification would apply

only to chemical substances intentionally present in the import. Byproducts, coproducts, and impurities are not generally subject to section 5 requirements. Moreover, there are specific exemptions from section 5 requirements. One exemption applies to chemical substances imported solely for research and development. The importer would himself determine whether an import were intended solely for research and development. Another exemption applies to chemical substances imported for test marketing purposes. However, persons importing chemical substances for test marketing purposes must apply for an exemption from section 5 requirements. For additional information on section 5 requirements, see: Proposed Premanufacture Notification Requirements and Review Procedures, published in the Federal Register of January 10, 1979 (44 FR 2242); Premanufacturing Notification Requirements and Review Procedures, Statement of Interim Policy, published in the Federal Register of May 15, 1979 (44 FR 28564); Reproposal of Premanufacture Notice Form and Provisions of Rules, published in the Federal Register of October 16, 1979 (44 FR 59764).

Other Requirements

Certification of compliance with TSCA also means that imported chemical substances and their importation comply with any applicable chemical control or reporting requirements in effect under TSCA. These requirements include, among others, significant new use notification requirements under section 5(a)(2); prohibitions or limitations on production, processing, or distribution under sections 5(e), 5(f), or 6; labeling rules under section 8; and orders under section 7. Importers will need to be aware of rules that apply to intended imports of chemical substances in bulk or mixtures in order to ensure that applicable rules have been observed.

Where labeling is required before shipments can enter, certification of compliance with the labeling requirements will be part of this general certification. An opportunity to comment on the basis for this certification and EPA enforcement policy will be provided when such a labeling rule is proposed.

It should be noted that importers' responsibilities under sections 4 and 8 are excluded from these certification requirements.

Basis for Certification; Enforcement

Under the proposed section 13 rule, the importer is required to place the

certification of compliance on the appropriate entry document. The importer who certifies may, in a particular case, be the person primarily liable for payment of duties or one of his agents. In some cases, a domestic purchaser may cause the importation and handle the entire entry process himself, without employing agents. In other cases, brokers or other agents may be used. In any case, the person certifying compliance must ensure that the imported chemicals are in compliance with the law.

Whenever the documents accompanying the imported shipment identify the chemical exactly, the person who is certifying compliance can check the identity against requirements under TSCA. When the chemical substance or mixture is imported under a name that does not identify it exactly, and the person certifying does not otherwise know the identity, he 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 substance or mixture, or at least state that the substance or mixture complies with TSCA. The greater the effort an importer makes to learn the identities of the imported substances, the smaller his chance of committing a violation by importing a noncomplying shipment. If a shipment were ultimately determined to have violated TSCA, the good faith effort of the importer to verify compliance, as evidenced by documents contained in his files, would obviate or mitigate the assessment of a civil penalty under section 16 of TSCA.

Chemicals Subject to Rule

Under the proposed rule, certification of compliance with TSCA would be required for chemical substances imported in bulk or mixtures. The certification requirement would become effective 30 days after the promulgation of the section 13 rule.

The proposed rule would not require certification for chemical substances imported as part of articles. The primary reason for not requiring certification of articles at this time is the impossibility of identifying their component chemical substances and mixtures for purposes of determining whether they are on the Inventory. If it becomes necessary to obtain information about individually regulated chemicals imported as part of articles, EPA could develop Special Chemical Import Report Forms as part of rulemakings on specific chemicals. Importer certification of TSCA compliance for all articles would, as a

practical matter, be an unenforceable requirement.

Special Chemical Import Report Forms

The proposed section 13 rule contains a provision for future development of Special Chemical Import Report Forms. These forms could be required for entry in cases when EPA needs information beyond the importer's certification. For example, a chemical specific control rule might require importers to report quantities imported. If EPA found it necessary to have this information reported at the time of entry, a Special Chemical Import Report Form could be developed. However, forms are *not* proposed at this time. Instead, when the need for such a form arises, it will be developed as part of the appropriate chemical-specific control rule under TSCA, with review and comment opportunity at that time.

Relevant Definitions

Because importers' compliance with the proposed section 13 rule would hinge on whether shipments and their importation are in compliance with other rules developed under TSCA, an effort has been made toward consistency among section 13 definitions and those developed under other sections of TSCA. For example, the meaning for "article" in the section 13 rule parallels the definition used in the TSCA Inventory rule (40 CFR 710.2(f); 710.4(d)(5)), and in the proposed Premanufacture Notification rule (44 FR 2264, at 40 CFR 720.2; 44 FR 2267, at 40 CFR 720.13(e)(5)), and encompasses the definition used in the proposed PBB-TRIS information reporting rule (44 FR 59109, at 40 CFR 713.11(a)). The phrase, "chemical substance in bulk form" used in the section 13 rule has not been specifically defined in rules previously developed under TSCA. However, this definition parallels a TSCA Inventory "note" regarding reporting chemical substances imported in bulk form (40 CFR 710.3(a)(2)(ii)), and also the definition of "import in bulk form" in the proposed Premanufacture Notification rule (44 FR 2265, at 40 CFR 720.2), in the proposed PBB-TRIS information reporting rule (44 FR 59109, at 40 CFR 713.11(e)), and in the proposed General Recordkeeping and Reporting Rules (45 FR 13655, at 40 CFR 712.12(e)). It is also important that the section 13 definition for the term "importer" be compatible with Customs practice. In this policy, "importer" is defined by reference to the Customs proposed section 13 rule. This adopts the general Customs definition at 19 CFR 101.1(k).

The definitions of these terms are repeated here for convenience:

"Article" means a manufactured item which (i) is formed to a specific shape or design during manufacture, (ii) has end use function(s) dependent in whole or in part upon its shape or design during 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 below; except that fluids and particles are not considered articles regardless of shape or design. The allowable changes of composition, referred to above, are those which result from a chemical reaction that occurs upon 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.

"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.

"Importer" means the person primarily liable for the payment of any duties on the merchandise, or an authorized agent acting on his behalf. The importer may be: (1) the consignee, or (2) the importer of record, or (3) the actual owner of the merchandise if an actual owner's declaration and superseding bond has been filed in accordance with Section 141.20 of this chapter, or (4) The transferee of the merchandise, if the right to withdraw merchandise in a bonded warehouse has been transferred in accordance with subpart C of Part 144 of this chapter.

Note.—"Chapter" refers to Chapter I of 19 CFR, U.S. Customs Service, Department of the Treasury.

International Cooperation

In proposing these requirements, EPA recognizes its obligations under Title IV of the Trade Agreements Act of 1979 (Public Law 96-39). That recently enacted law provides the legal framework for implementing trade agreements entered into by the United States; Title IV (Standards Code) sets forth principles and procedures for Federal agencies, including EPA, to follow in their rulemakings, to prevent

the creation of unnecessary technical barriers to foreign trade.

The Standards Code is not intended to prevent Federal agencies from making rules or setting standards affecting international trade, for example, in chemical products, if such measures have a demonstrable purpose to achieve a legitimate domestic objective, such as protecting health, safety, and the environment within the United States, and do not serve to exclude imported products that fully meet the objectives of such measures. The Standards Code states, however, that agencies involved in such rulemakings shall consider the adoption of existing international standards, if they are appropriate, and ensure that imported products are treated no less favorably than like domestic or other imported products. Although there are no existing international standards for control of imported chemicals, at such time as international agreement is reached, EPA would be prepared to modify this policy as needed. However, EPA considers that the TSCA section 13 policy complies with the principles of the international Standards Code. In addition, the certification required by this policy is designed to acknowledge compliance with TSCA requirements that are also in effect for domestically manufactured chemicals.

EPA Assistance

EPA is considering how to most efficiently publicize the TSCA requirements for chemical imports. The Office of Pesticides and Toxic Substances, Industry Assistance Office (IAO) will answer specific questions to help determine whether a chemical is on the Inventory. In addition, if comments indicate that it would be helpful, periodic TSCA fact sheets could be made available to U.S.-based foreign embassies, U.S. embassies abroad, and U.S. Customs offices both here and abroad. Fact sheets could also be made available to U.S. and foreign importing organizations and individuals. However, to ensure that TSCA fact sheet information would be useful, EPA requests comments on the information that importers would find most helpful in such fact sheets.

Public Meetings

On February 24, 1981 (12-4 p.m.) and February 25, 1981 (12-4 p.m.), EPA personnel responsible for developing this proposal will be available to meet with interested persons from companies, trade associations, organized labor, and citizen organizations who request time to present oral comments on the proposal. The meetings will be held at

the Hospitality House—Motor Inn, 2000 Jefferson Davis Highway (across from Crystal City Plaza), Arlington, Virginia 22202 (703-920-8600). The Agency will make transcripts or summaries to include in the official public record.

Persons should call EPA's Industry Assistance Office at the number listed above under "For Further Information Contact" to request time to present oral comment at these meetings.

In line with EPA's desire to facilitate input from smaller companies and local organizations, the Agency would hold a meeting outside of Washington in a locale central to a group requesting such a meeting where there is demonstrated interest in and need for it.

While the meetings will be open to the public, participation will be limited to those requesting an opportunity to comment and EPA personnel designated for the session.

Official Record

EPA has established an official record for this policy (docket number OPTS 130000). This record is available for public inspection in the Office of Pesticides and Toxic Substances, Room 447 East Tower, from 8 a.m. to 4 p.m. on working days. This record includes (1) the rule proposed by Customs (45 FR —), (2) this proposed policy statement, (3) written and substantive oral comments, (4) minutes or transcripts of public meetings held on the policy, (5) the economic impact statement prepared on alternative section 13 requirements, and (6) any other material the Administrator identifies on or before the promulgation date of the policy statement.

Two informal public meetings were held with industry and foreign government representatives on December 11 and December 13, 1979, respectively. Minutes of these meetings are included in the record, along with copies of the materials distributed to meeting participants before and during the meeting: a summary of the draft rule, and a list of discussion topics on which EPA particularly solicited information.

Also included in the record is the Economic Impact Assessment of the Section 13 Importer Regulations of the Toxic Substances Control Act, prepared by Fred C. Hart Associates, Inc., final report dated November 6, 1979.

EPA will designate the complete record on or before the date that the policy is final. The final policy statement will permit persons to point out any errors or omissions in the record.

EPA has determined that this document does not contain a major proposal requiring preparation of a

Regulatory Analysis under Executive Order No. 12044.

Therefore it is proposed to add to Part 707 a new Subpart B consisting of § 707.20 to read as follows:

PART 707—IMPORTS AND EXPORTS

Subpart A—[Reserved]

Subpart B—General Import Requirements and Restrictions

§ 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 proposed by the United States Customs Service (Customs), Department of the Treasury (published in today's Federal Register), 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 rulemakings under individual sections of TSCA, e.g. sections 5, 6, and 7. Interested persons should refer to the records of these individual rulemaking actions for specific information and guidance.

(b) *Basic objectives of section 13.* (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," which says in pertinent part: "[M]anufacturer means to import . . . , produce, or manufacture" (15 U.S.C. 2602 § 3(7)). Thus, importers are responsible for ensuring that chemical importation complies with TSCA just as domestic manufacturers are responsible for ensuring that chemical manufacture complies with TSCA.

(2) The section 13 rule requires importers to sign the following statement for each import of chemical substances in bulk or mixture: "I certify that all chemical substances in this

shipment comply with all rules under TSCA and that I am not offering a chemical substance for entry in violation of TSCA or any rule or order under TSCA." The certification will document that, in accordance with TSCA, the importer has taken the necessary steps to ensure compliance.

(3) The U.S. 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 needed. EPA believes that its international harmonization efforts in the control of chemicals will protect human health and the environment while fulfilling its obligations under the Trade Agreements Act of 1979.

(c) *The section 13 rule.*—(1) *General Certification.* (A) The rule promulgated under section 13 of TSCA by the Customs Service, 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 import shipment of a chemical substance 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.

(B) 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 substance or mixture, or at least state that the substances or mixture complies 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 were ultimately determined to have violated TSCA, the good faith effort of the importer to verify compliance, as evidenced by documents contained in his files, would obviate or mitigate the assessment of a civil penalty under section 16 of TSCA.

(2) *Special Chemical Import Report Form.* The section 13 rule provides for use of a special form to be required by

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EPA in connection with rules made under other sections of TSCA. The contents, procedures, and compliance policy for this form will be prescribed during rulemaking for these other rules. The EPA's intent is to reserve use of this form to cases in which individual regulatory actions have been taken on specified chemicals.

(3) *EPA enforcement.* (A) EPA and the Customs Service 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, or voluntarily abandoned within the time periods prescribed in § 12.124 of the section 13 rule.

(B) When EPA determines that a shipment should be detained, EPA will identify the reasons for the detention and the necessary actions for the 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. If this information is not included in the detention notice, the importer should contact one of EPA's regional offices for guidance as to the proper procedures for correcting any deficiencies in the shipment. As part of the final policy, an individual in each of the ten regions will be designated as a TSCA import contact, and a list of appropriate telephone numbers will be published.

(C) 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, and EPA official will reassess the shipment to determine its current compliance status. Assuming a shipment is no longer in violation, EPA will notify the district director who will then release the shipment. This notice will also serve as a determination to permit entry under § 12.123(c) if a shipment is brought into compliance before the § 12.123(c) decision-making process has been completed. If compliance is achieved after a § 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.

(4) *EPA assistance.* Assistance in determining whether a chemical shipment is in compliance with TSCA can be obtained from the Industry Assistance Office (TS-799), U.S. Environmental Protection Agency 401 M Street, SW., Washington, D.C. 20460; 800-424-9065, toll free; in Washington, D.C., 554-1404.

[Sec. 13 (90 Stat. 2034; 15 U.S.C. 2612)]

Dated: November 21, 1980.

Douglas M. Costle,
Administrator.

[FR Doc 80-37244 Filed 11-28-80; 8:45 am]
BILLING CODE 6560-31

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 12 and 127

Special Classes of Merchandise

AGENCY: U.S. Customs Service,
Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to inform the importing public about the Toxic Substances Control Act ("TSCA") and to amend the Customs Regulations to regulate the entry of any chemical substance, imported in bulk or as part of a mixture, or article containing a chemical substance or mixture into the customs territory of the United States. The proposed amendments, which have been developed after consultation with the Environmental Protection Agency ("EPA"), are designed to implement TSCA by requiring the importer of a chemical shipment to certify at the port of entry that the shipment is in compliance with TSCA and all rules and orders under TSCA.

DATE: Comments must be received on or before March 2, 1981.

ADDRESS: Comments may be addressed to the Commissioner of Customs, Attention, Regulations and Research Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Harrison C. Feese, Entry Examination and Liquidation Branch, Duty Assessment Division, Office of Trade Operations, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229, 202-566-8651; or Industry Assistance Office (TS 799), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, 800-424-9065 (Toll Free), calls within the District of Columbia—554-1404.

SUPPLEMENTARY INFORMATION:

Background

The Toxic Substances Control Act ("TSCA"), Pub. L. 94-469, approved October 11, 1976, was enacted by the Congress to regulate commerce and protect human health and the environment by requiring testing and necessary use restrictions on certain chemical substances, and for other purposes. Section 13, TSCA, directs the Secretary of the Treasury, after consultation with the Administrator, Environmental Protection Agency ("EPA"), to refuse entry into the customs territory of the United States (the "customs territory") of any chemical substance, mixture, or article containing a chemical substance or mixture that:

1. Fails to comply with any rule in effect under TSCA, or
2. Is offered for entry in violation of section 5 or 6, TSCA, a rule or order issued under section 5 or 6, or an order issued in a civil action brought under section 5 or 7, TSCA.

Section 13 further provides that if a chemical substance, mixture, or article is refused entry, the Secretary shall notify the consignee of the entry refusal, not release the shipment to the consignee, except under bond, and cause its disposal or storage under such rules as the Secretary may prescribe if the shipment has not been exported by the consignee within 90 days from the date of receipt of the notice of entry refusal.

To implement the provisions of section 13, Customs and EPA have developed proposed amendments to Parts 12 and 127, Customs Regulations (19 CFR Parts 12, 127), to regulate the entry of any chemical substance, imported in bulk or as part of a mixture, or an article containing a chemical substance or mixture into the customs territory.

Reporting Requirements

Importer Certification

Proposed § 12.121, Customs Regulations, would require each importer of a chemical substance, mixture, or article containing a chemical substance or mixture subject to a specific regulation under TSCA, to certify to the district director of Customs at the port of entry that the shipment is in full compliance with TSCA and all rules and orders under TSCA. The certification would appear as a signed, typed statement (1) on the entry summary document, or, for those entries which do not have entry summaries, on the appropriate entry document, or (2) in the event of release under a special permit for an immediate delivery, as provided for in § 142.21, Customs Regulations, or entry, as provided for in § 142.3, Customs Regulations, either on the importer's invoice or an attachment to the invoice, or (3) on the Special Chemical Import Report Form, if the importer is required to submit this form, as explained below.

By signing the certification statement, the importer certifies the following:

1. The shipment is in compliance with the premanufacture notification requirements of section 5, TSCA, which provide that, unless exempted by the Administrator, EPA, a person must notify the Administrator at least 90 days before manufacture, importing, or processing, if the person intends to:

(a) Manufacture or import for a commercial purpose a new chemical substance (one not included on the Inventory compiled pursuant to section 8(b), TSCA), or

(b) Manufacture, import, or process any chemical substance for a use which the Administrator has determined, by rule, is a significant new use. (No significant new use rules have been promulgated to date).

EPA's initial Toxic Substances Control Act Chemical Substances Inventory was issued on June 1, 1979, and the premanufacture notification requirements for chemical substances imported in bulk became effective on July 1, 1979. For Chemical substances as part of mixtures, premanufacture notification requirements will begin 30

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days after publication of the EPA's Revised Inventory. Until 30 days after publication of the Revised Inventory, importers can report chemicals which are not included on EPA's Initial Inventory and that they import as part of a mixture or article for the first time after December 31, 1979. These chemicals will be included on EPA's Revised Inventory.

2. The shipment does not violate any rule in effect under TSCA or any rule or order issued under sections 5, 6, or 7, TSCA. These rules or orders may pertain to limitations under section 5(e) or (f) on importing new chemical substances or chemical substances to be imported for a significant new use, chemical control regulations under section 6, or judicial orders under section 7.

3. All required information submittals are complete and accurate.

Special Chemical Import Report Form

To enforce TSCA, in certain cases EPA may require information beyond the importer's certification. Proposed section 12.121(b) provides that if required by the Administrator by rule under TSCA for a chemical substance, the importer shall submit an EPA Special Chemical Import Report Form to the district director at the port of entry. This form would certify that the shipment is in compliance with TSCA and all rules developed under TSCA, and would also require certain information such as amount imported, intended use, distribution, disposal, exposure, or other information, as required by a rule under TSCA.

To date, EPA has not issued any rules which would require the submission of a Special Chemical Import Report Form. EPA plans to develop the form as the need to control imports of specific chemicals arises. When developed, the form will be subject to clearance and approval of the Office of Management and Budget and EPA will provide notice and an opportunity for public comment.

Alternatives to Importer Certification Considered

EPA and Customs considered other alternatives to requiring importer certification of compliance with TSCA, recognizing that some importers may not have complete information about their chemical shipments. In some cases, the foreign exporter is not the chemical manufacturer. In other cases, the foreign manufacturer may be reluctant to divulge specific information regarding the shipment.

The most direct way to secure this information would be to require the exporter to submit the necessary data.

However, neither TSCA nor any other law authorizes EPA or Customs to place such requirements directly upon the foreign exporter. The responsibility of reporting must be on the importer.

EPA also considered requiring the importer to submit detailed reports, including the chemical identity and tradenames of the merchandise. These reports could provide a more thorough information base on which to make decisions regarding chemical importations. EPA is not proposing this option, however, for several reasons. The initial problem that importers would face in securing general information about chemical shipments would most likely escalate if importers asked for specific chemical information such as processing specifications or the proportions of a chemical substance in a mixture.

Even if importers could provide specific chemical information, much of it would not be useful because most Customs officials are not trained to interpret chemical reports and would not have time to check long tradenames against lists cross-referenced with regulated chemicals. It also would be nearly impossible for EPA to develop a useful tradename list because of the number of countries producing chemicals, the number of individual foreign manufacturers and processors, and the constant need to update the list.

EPA and Customs view the proposed regulations as the most reasonable and least burdensome approach to monitoring imported chemical shipment. An economic impact report, "Economic Impact Assessment of the Section 13 Importer Regulations of the Toxic Substances Control Act" (see below), analyzes the private sector costs of various means of providing importer certification. The proposed regulations appear to be the most feasible approach. Also, by asking the foreign exporter and/or manufacturer about compliance with TSCA, the importer would be educating the foreign chemical market about United States requirements for chemical importation. This education process should facilitate overall achievement of TSCA objectives. Eventually, the proposed reporting system could be amended to reflect change or development in international import agreements.

Detention of Shipments

Under TSCA, EPA is authorized to control chemical substances found to pose an unreasonable risk to human health or the environment. Sections 5 and 6, TSCA, permit the Administrator to issue a rule or order to prohibit or limit the manufacture, processing,

distribution in commerce, use, or disposal of a chemical substance. Under section 7, TSCA, the Administrator may commence a civil action in a U.S. district court for seizure of an imminently hazardous chemical substance or mixture or any article containing such a substance or mixture. To minimize any risk to health or the environment, proposed § 12.122(a) provides that the district director at 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 by a rule or order issued under sections 5 or 6, TSCA, or (2) which have been ordered seized because of imminent hazard pursuant to section 7, TSCA, or (3) as otherwise directed by the Administrator.

Proposed § 12.122(b) provides for detention of a chemical shipment at the port of entry, at the importer's risk and expense, whenever: (1) the importer fails to certify compliance with TSCA, or (2) the Administrator, after giving notice with reasons to the importer, notifies the district director to detain the shipment, or (3) the district director has reasonable grounds to believe that the shipment is not in compliance with TSCA or any regulations and orders issued under TSCA. In the event of detention, the district director will promptly notify the importer and the Administrator and explain the reasons for detention.

Procedure After Detention

Submission of Written Documentation

Proposed § 12.123 provides that the importer may submit written documentation to the Administrator, with a copy to the district director at the port of entry, within 20 days from the date of the notice of detention to show cause why the shipment should not be refused entry. The importer may also obtain custody of the detained shipment by furnishing a Customs bond for the return of the shipment to Customs custody.

Determination by the Administrator

The Administrator, after consideration of the available evidence and within 30 days from the notice of detention, will determine whether the detained shipment complies with TSCA. If the Administrator finds that the shipment is in compliance, the district director shall release the shipment to the importer. If the Administrator finds that the shipment is not in compliance, the district director shall either refuse to deliver the shipment to the importer and explain the reasons for this refusal, or, if

the shipment has been released on bond, demand the redelivery of the shipment under the terms of the bond and explain the reasons for this demand.

Time Limitations

Proposed § 12.124 provides that the importer of a detained shipment shall bring the shipment into compliance with TSCA or remove it from the customs territory within 90 days after notice of detention or 30 days after demand for redelivery, whichever comes first. The district director, upon notification by the Administrator, may grant a 30-day extension if the importer is unable to bring the merchandise into compliance with TSCA or remove it from the customs territory within the required time period due to delays caused by EPA or Customs.

Notice of Intent To Abandon or Export a Detained Shipment

If a shipment does not comply with TSCA, the importer may abandon or export it. Under proposed section 12.126, if the importer decides to abandon the shipment, written notice of intent to abandon must be presented to the district director and the Administrator. By submission of this certification, the importer waives any right to export the shipment and the importer remains liable for any expenses incurred in the storage and/or disposal of the merchandise. Under proposed section 12.125, if the importer decides to export the shipment, written notice of exportation must be presented to the district director and the Administrator.

Storage or disposal of Shipments

Under proposed § 12.127, a detained shipment shall be considered to be unclaimed and abandoned and shall be stored or disposed of by the Administrator if the importer has not brought the shipment into compliance within the required time period and any extension specified in proposed § 12.124, and (1) has not exported the shipment within the required time period and any extension specified in proposed § 12.124, or (2) has certified intent to abandon the shipment.

Authority

This amendment is proposed under the authority of section 13, 90 Stat. 2034 (15 U.S.C. 2612), R.S. 251, as amended (19 U.S.C. 66), and sections 624, 46 Stat. 759 (19 U.S.C. 1624).

Comments

Before adopting this proposal, consideration will be given by EPA and Customs to any written comments, preferably in quadruplicate, submitted

timely to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with § 103.8(b), Customs Regulations (19 CFR 103.8(b)), during regular business hours at the Regulations and Research Division, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2428, Washington, D.C. 20229. Comments will also be available for public inspection from 8:00 a.m. to 4:00 p.m. at the Environmental Protection Agency, Office of Pesticides and Toxic Substances Reading Room, 447 East Tower, 401 M Street, SW., Washington, D.C. 20460, as part of E.P.A. docket number OPTS 3000.

Economic Impact Analysis Statement

Estimated costs for industry compliance with this regulation are contained in a report entitled, "Economic Impact Assessment of the Section 13 Importer Regulations of the Toxic Substances Control Act", dated November, 1979. This report indicates that total cost to industry will be approximately \$2.3 million.

The economic impact study is available for review at the Environmental Protection Agency, Office of Pesticides and Toxic Substances, Reading Room, Room 447 East Tower, 401 M Street, SW., Washington, D.C. 20460.

Inapplicability of Executive Order 12044

This document is not subject to the Treasury Department directive implementing Executive Order 12044, "Improving Government Regulations," because the regulation was in process before May 22, 1978, the effective date of the directive.

EPA has determined that this document does not contain a major proposal requiring preparation of a Regulatory Analysis under Executive Order 12044.

Drafting Information

The principal author of this document was Laurie Strassberg Amster, Regulations and Research Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs and EPA offices participated in its development.

Proposed Amendments

PART 12—SPECIAL CLASSES OF MERCHANDISE

It is proposed to amend Part 12, Customs Regulations (19 CFR Part 12), by adding new §§ 12.118 through 12.127 to read as follows:

Chemical Substances in Bulk and as Part of Mixtures and Articles

§ 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 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 may 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 function(s) dependent in whole or in part upon its shape or design during 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) below; 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 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 district director at the port of entry that the chemical shipment is in compliance with TSCA and all rules and orders under TSCA. The importer shall make this certification by signing the following statement:

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

This certification shall appear as a typed statement.

(1) On the entry summary document, or, for those entries which do not have entry summaries, on the appropriate entry document, or

(2) In the event of release under a special permit for an immediate delivery, as provided for in section 142.21 of this chapter, or entry, as provided for in section 142.3 of this chapter, either on the importer's invoice or an attachment to the invoice, or

(3) On the Special Chemical Import Report Form, if the importer is required to submit this form as provided for in paragraph (b) of this section.

(b) *Certain regulated chemical substances.* If specifically required by the Administrator by rule under TSCA, each importer of a chemical substance, imported in bulk or as part of a mixture, shall submit an EPA Special Chemical Import Report Form to the district director at the port of entry.

(c) *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 paragraphs (a) and (b) of this section only if required by a rule or order under TSCA.

§ 12.122 Detention of certain shipments.

(a) The district director at 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 sections 5 or 6 of TSCA (15 U.S.C. 2604 or 2605) or

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

(3) As otherwise directed by the Administrator.

(b) The district director at 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, gives detention notice with reasons to the importer, and notifies the district director to detain the shipment; or

(2) Whenever the district 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.

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

§ 12.123 Procedure after detention.

(a) *Submission of written documentation.* If a shipment is detained by a district director under section 12.122, the importer may submit written documentation to the Administrator with a copy to the district director within 20 days from the date of notice of detention to show cause why the shipment should not be refused entry.

(b) *Release on Bond.* The district director may release to the importer a shipment detained for any of the reasons given in § 12.122 when the district director has reasonable grounds to believe that the shipment may be brought into compliance, or when the district 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 a 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 district director 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 district director shall release the shipment to the

importer. If the Administrator finds that the shipment is not in compliance, the district director shall:

(1) Refuse delivery to the importer, with 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 district director shall assess liquidated damages in the full amount of the bond.

§ 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 district 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.

§ 12.125 Notice of exportation.

Whenever the Administrator directs the district director to refuse entry under § 12.123 and the importer exports the non-complying shipment within the 90 day period of notice of refusal of entry or within 30 days of demand for redelivery, the importer shall give written notice of the fact of exportation to the Administrator and the district 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 waybill number.

§ 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 district 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 expenses incurred in the storage and/or disposal of abandoned merchandise.

§ 12.127 Decision to store or dispose.

A shipment detained under section 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 within time limitations or extensions specified according to § 12.124 and:

(a) Has not exported the shipment within time limitations or extensions specified according to § 12.124; or

(b) Has certified intent to abandon the shipment in accordance with § 12.126.

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

It is proposed to amend Part 127, Customs Regulations (19 CFR Part 127), by adding a new subsection (i) to section 127.28, to read as follows:

§ 127.28 [Amended]

(i) *Chemical substances, mixtures, and articles containing chemical substances or mixtures.* Chemical substances, mixtures, and articles containing chemical substances or mixtures, as these items are defined in section 3, Toxic Substances Control Act ("TSCA") and section 12.120 of this chapter, shall be inspected by a representative of the Environmental Protection Agency to ascertain whether they comply with TSCA and the regulations and orders issued thereunder. If found not to comply with these requirements they shall be exported or otherwise disposed of immediately in accordance with the provisions of § 12.125 through 12.127 of this chapter.

Approved: November 14, 1980.

William T. Archey,

Commissioner of Customs.

Richard J. Davis,

Assistant Secretary of the Treasury.

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