

§ 12.114

cause the destruction of any such shipment not exported by the consignee within 90-calendar days after the expiration of the detention period specified or authorized by paragraph (b) of this section.

[CBP Dec. 16-15, 81 FR 67143, Sept. 30, 2016]

§ 12.114 Release or refusal of delivery.

If the EPA directs the port director to release the shipment of pesticides or devices, the shipment will be released to the consignee. If the EPA directs the port director to refuse delivery of the shipment, the shipment will be refused delivery and treated as a prohibited importation. The port director will cause the destruction of any shipment refused delivery and not exported by the consignee within 90-calendar days after notice of such refusal of delivery.

[CBP Dec. 16-15, 81 FR 67143, Sept. 30, 2016]

§ 12.115 Release under bond of shipment detained for examination.

If the EPA so directs, a shipment of pesticides or devices will be detained at the importer's risk and expense by the port director pending an examination by the Administrator to determine whether the shipment complies with the requirements of the Act. However, a shipment detained for examination may be released to the consignee prior to a determination by the Administrator provided a bond is furnished on CBP Form 301, or its electronic equivalent, containing the bond conditions set forth in § 113.62 of this chapter, for the return of the merchandise to CBP custody, and upon entry of the merchandise and the satisfaction of all other applicable laws. The bond will be in an amount deemed appropriate by CBP. When a shipment of pesticides or devices is released to the consignee under bond, the pesticides or devices must not be used or otherwise disposed of until the determination on compliance with the requirements of the Act is made by the Administrator.

[CBP Dec. 16-15, 81 FR 67143, Sept. 30, 2016]

§ 12.116 Samples.

Upon the request of the Administrator, either on the completed Notice of Arrival or otherwise, the port director will deliver to the Administrator

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samples of the imported pesticides or devices, together with all accompanying labels, circulars, and advertising matter pertaining to such merchandise. The port director will notify the consignee that the samples of imported pesticides or devices, together with all accompanying labels, circulars, and advertising matter pertaining to such merchandise have been delivered to the Administrator.

[T.D. 75-194, 40 FR 32322, Aug. 1, 1975, as amended by CBP Dec. 16-15, 81 FR 67143, Sept. 30, 2016]

§ 12.117 Procedure after examination.

(a) *Merchandise complying with the Act.* If, upon examination or analysis of a sample from a shipment of pesticides or devices, the sample is found to be in compliance with the Act, the Administrator will notify the port director that the shipment may be released to the consignee.

(b) *Merchandise not complying with the Act.* If, upon examination or analysis of a sample from a shipment of pesticides or devices, the sample is found to be in violation of the Act, the consignee will be notified promptly by the Administrator of the nature of the violation and be given a reasonable time, not to exceed 20 days, to submit written material or, at his option, to appear before the Administrator and introduce testimony, to show cause why the shipment should not be destroyed or refused entry. If, after consideration of all the evidence presented, it is still the opinion of the Administrator that the merchandise is in violation of the Act, the Administrator will notify the port director of this opinion and the port director will either (1) refuse delivery to the consignee, or (2) if the shipment has been released to the consignee under bond, demand redelivery of the shipment under the terms of the bond. If the merchandise is not redelivered within 30 days after the date of demand by the port director, the port director will issue a demand for liquidated damages in the full amount of the bond if it is a single entry bond, or if a continuous bond is used, the amount that would have been taken under a single entry bond. The port director will cause the destruction of any merchandise refused delivery to the

consignee, or redelivered by the consignee pursuant to a demand therefor, and not exported by the consignee within 90 days after notice of such refusal of delivery or within 90 days after such redelivery, as applicable.

[T.D. 75-194, 40 FR 32322, Aug. 1, 1975, as amended by T.D. 84-213, 49 FR 41168, Oct. 19, 1984; CBP Dec. 16-15, 81 FR 67143, Sept. 30, 2016]

CHEMICAL SUBSTANCES IN BULK AND AS PART OF MIXTURES AND ARTICLES

SOURCE: Sections 12.118 through 12.127 issued by T.D. 83-158, 48 FR 34739, Aug. 1, 1983, unless otherwise noted.

§ 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)).

[CBP Dec. 16-28, 81 FR 94985, Dec. 27, 2016]

§ 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) TSCA-excluded chemicals; and
- (c) Articles containing a chemical substance or mixture if so required by the Administrator by specific rule under TSCA.

[CBP Dec. 16-28, 81 FR 94985, Dec. 27, 2016]

§ 12.120 Definitions.

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

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

- (i) Is formed to a specific shape or design during manufacture,
- (ii) Has end use functions dependent in whole or in part upon its shape or design during the end use, and

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

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

(b) *TSCA chemical substance in bulk form*. "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*. "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(10) of TSCA.

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

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