

TOXIC SUBSTANCES CONTROL ACT

ANSWERS TO YOUR IMPORTANT QUESTIONS

QUESTION #1 How is “chemical substance” defined under TSCA?

ANSWER #1 “Chemical substance” is defined in section 3 of TSCA as any organic or inorganic substance of a particular molecular identity, including:

- any combination of such substances occurring in whole or in part as a result of a chemical reaction or occurring in nature; and
- any element or uncombined radical.

Chemical substance does not include:

- any mixture;
- any pesticide (as defined in the Federal Insecticide, Fungicide, and Rodenticide Act) when manufactured, processed, or distributed in commerce for use as a pesticide;
- tobacco or any tobacco product;
- any source material, special nuclear material or by-product material (as such terms are defined in the Atomic Act of 1954 and regulations issued under such Act);
- any article (i.e., firearms and ammunition) the sale of which is subject to the tax imposed by section 4181 of the Internal Revenue Code of 1954 (determined without regard to any exemptions from such tax provided by section 4182 or 4221 or any other provision of such Code); and
- any food, food additive, drug, cosmetic, or device (as such terms are defined in section 201 of the Federal Food, Drug, and Cosmetic Act) when manufactured, processed, or distributed in commerce for use as a food, food additive, drug, cosmetic, or device.

A chemical substance in bulk form is defined in the Customs rule at 12.120(b) as “a chemical substance (other than part of a mixture or article) in containers used for purposes of transportation or containment, provided the chemical substance is intended to be removed from the container and has an end use or commercial purpose separate from the container.”

QUESTION #2 How is “article” defined?

ANSWER #2 (1) “Article, “In the Customs rule at section 12.120(a)(1), is a manufactured item which:

- is formed to a specific shape, or design during manufacture;
- has end use functions dependent in whole or in part upon its shape or design during the end use; and
- 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 section 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 section 12.120(a)(1) are those that 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.

QUESTION #3 **For which articles is a certification required pursuant to section 12.121(b) of the Customs rule?**

ANSWER #3 Articles require no certification at this time; however, any further regulations on articles may specify import requirements.

QUESTION #4 **Are metallurgical Intermediates classified as chemical substances or articles?**

ANSWER #4 If an item is manufactured in a particular shape for the purpose of shipping convenience and the shape of the item has no function in the end use, it is not considered an article. Thus, items such as metal ingots, billets, and blooms are chemical substances, do not require TSCA certification.

For purposes of compliance with section 5 and section 13, OTS will consider items being imported as articles if they are manufactured in a specific shape or design for a particular end use application, and this design is maintained as an essential feature in the finished product. Thus, materials such as metal or plastic sheets, wire, coated fabric, rolled carpet, sheets of plywood and other similar materials will be viewed as articles by OTS, even if, for example, subsequent to import they are rolled or drawn thinner, cut, printed, laminated, or thermoformed, as long as they meet the above criteria. None of these items would be subject to TSCA import certification unless they contained a chemical substance or mixture for which certification is required by a specific rule under TSCA. Also, they would not be subject to Pre-manufacture Notice (PMN) requirements.

QUESTION #5 **We import small plastic sheets with chemical coatings for analysis in our quality control laboratories. Do these require certification?**

ANSWER #5 See Answer #4 above.

QUESTION #6 **Is waste imported for disposal in drums and not removed from the drums considered an article?**

ANSWER #6 No, such waste is not an article; it is a bulk chemical and requires a positive certification. See, however, questions 70 and 71.

QUESTION #7 **If an importer imports a piece of machinery which contains PCBs, is a positive certification necessary?**

ANSWER #7 Because TSCA considers the term "import" to be synonymous with "manufacture", no PCB equipment can be imported after July 2, 1979, unless an exemption is obtained from EPA. If the exemption has been obtained, no TSCA certification is required for the import of the machinery, since the PCBs

are part of an article (the machinery) and are not removed from that article. However, the PCBs are subject to the provisions of the TSCA section 6(e) PCB rules.

QUESTION #8 Can a “new” (not on the inventory) dielectric fluid (not a PCB) be imported in a capacitor or transformer?

ANSWER #8 As long as it is not removed from the capacitor or transformer, the fluid is considered to be part of an article and may be imported as such. Import separate from the article would require a pre-manufacture notice 90 days before import.

QUESTION #9 A large number of exports, such as argon, hydrogen and oxygen, are shipped in pressure containers, such as cylinders, tank trucks, and tank cars. Upon return, the containers and any residuals are released as instruments of International Traffic without entry papers. Is a certification required for these residuals?

ANSWER #9 Containers are considered articles and, as such, do not require certification as long as residuals therein do not constitute bulk quantities.

QUESTION #10 How is mixture defined under TSCA?

ANSWER #10 The term mixture is defined in section 3 of TSCA as follows: “any combination of two or more chemical substances if the combination does not occur in nature and is not, in whole or in part, the result of a chemical reaction; except that such term does include any combination which occurs, in whole or in part, as a result of a chemical reaction if none of the chemical substances comprising the combination is a new chemical substance and if the combination could have been manufactured for commercial purposes without a chemical reaction at the time the chemical substances comprising the combination were combined.”

QUESTION #11 How are mixtures defined under TSCA?

ANSWER #11 Each chemical substance in the mixture (other than impurities) must be identified. [However, there are certain complex chemicals (e.g., castor oil, barium iron oxide) that are designated “Class 2” substances on the TSCA inventory to which this will not apply.] After identifying each chemical substance, it is necessary to determine whether all the individual substances are on the inventory and are in compliance with specific rules under sections 5,6 and 7 of TSCA before signing the positive certification.

QUESTION #12 Do mixtures such as paints, cleaners, and the like have to be certified?

ANSWER #12 Yes, the procedure outlined in the answer to the preceding question must be followed and a positive certification signed.

QUESTION #13 Does the certification requirement apply to shipments of final products that are chemical mixtures? For example, would the rule apply to a shipment of cartons of carburetor cleaner?

ANSWER #13 Yes, certification is required for shipments of final products that are chemical mixtures.

II. CERTIFICATION FORMAT

QUESTION #14 What is the acceptable certification language and format and on what document should the certification be made?

ANSWER #14 The specific language for a positive certification is:

"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."

Or, for a negative certification:

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

No other language may be substituted. Both positive and negative statements may be preprinted, typed, or stamped on the invoice used in connection with the entry and entry summary procedures. The certification statements may be signed by means of an authorized facsimile signature.

For those entries or entry summaries processed electronically this statement will be in the form of a Certification Code transmitted as part of the Automated Broker Interface (ABI) transmission. The entry filer will be obligated by this Certification Code to the same extent as if these statements were submitted on entry or entry summary documents.

QUESTION #15 Can a single or "blanket" certificate be used to cover several shipments of the same chemical made over a one-year period?

ANSWER #15 Yes, if a "blanket" certification (see Part III of this section) has been authorized by the appropriate District Director of U.S. Customs and a statement to that effect is included on the commercial invoice or entry document.

QUESTION #16 Is it necessary for the Importer to include the Chemical Abstracts Service (CAS) number for each chemical covered by the certification?

ANSWER #16 No, CAS numbers are not required, but they could be useful in speeding verification of proper certification. Note that only a few of the existing CAS numbers are actually on the TSCA inventory. Importers must not assume that the existence of a CAS number means that TSCA requirements are met.

III. BLANKET CERTIFICATION

QUESTION #17 Can you discuss procedures for “blanket” certification?

ANSWER #17 “Blanket” certification must be made on the letterhead of the certifying firm and signed by an authorized person. All blanket certifications shall initially be annual on a calendar year basis, subject to renewal. Once accepted, a blanket certification may be revoked for cause by the District Director of the U.S. Customs Service at any time.

QUESTION #18 Is it necessary to list tariff item numbers on blanket certifications?

ANSWER #18 Yes, blanket certifications will be one of the sources U.S. customs will use to develop its TSCA data base, which will ultimately facilitate the clearance of goods subject to TSCA. Since this database is Harmonized Tariff Schedule (HTS)-oriented, tariff item numbers are necessary.

QUESTION #19 Must suppliers’ names and addresses be listed?

ANSWER #19 Yes, names and addresses must be listed to simplify resolution of compliance problems that may arise.

QUESTION #20 Is it necessary to file blanket certifications at each port of entry?

ANSWER #20 No, blanket certifications need to be filed with each district where importation’s are anticipated, since their acceptance is at the option of each Customs District Director for his or her district.

QUESTION #21 Are there resources that I can contact for assistance?

ANSWER #21 There is a TSCA hotline phone number at 202/544-1404. The EPA has a regional Research Library at 312/353-2022. Also, you might try the Web site maintained by Cornell University at <http://msds.pdc.cornell.edu>