

# CLIENT ALERT

## CBP Proposes to Amend TSCA Certification Requirements

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On August 29, [U.S. Customs and Border Protection \(CBP\)](#) published a [proposal](#) to amend the regulations regarding the requirement to file a Toxic Substances Control Act (TSCA) certification when importing chemical substances 1) in bulk form, 2) as part of mixtures, or 3) in articles containing a chemical substance or mixture. The proposed amendments include an electronic option for filing TSCA certifications, the clarification of certain definitions, and elimination of the paper-based blanket certification process.

Section 13 of TSCA (15 U.S.C. § 2612) governs the entry of chemical substances and mixtures, and articles containing such chemical substances or mixtures, into the customs territory of the United States. Under this statute, CBP has the authority to refuse entry of any chemical substance, mixture, or article that fails to comply with any rules in effect under TSCA. The CBP regulations implementing section 13 of TSCA are contained in 19 C.F.R. §§ 12.118 through 12.127 and § 127.28.

CBP is proposing four changes to these regulations.

1. CBP proposes to amend certain definitions to clarify that the certification obligations apply to both chemical substances and mixtures that are subject to TSCA (which require a “positive” certification) and those chemicals and mixtures that are not subject to TSCA (which require a “negative” certification). To that end, CBP proposes to modify the scope of reporting to cover “a chemical substance in bulk form or as part of a mixture, and articles containing a chemical substance or mixture.”
  - Importers of TSCA chemicals in bulk form or as part of a mixture will be required to submit a **positive** certification, certifying that the shipment complies with all applicable TSCA rules.
  - Importers of non-TSCA chemicals (*e.g.*, pesticides subject to regulation under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA)) in bulk form or as part of a mixture will be required to submit a **negative** certification, certifying that the chemicals in the shipment are not subject to TSCA.
  - Importers of articles containing TSCA chemicals or mixtures will only have to submit a certification if required to by a rule or order issued under TSCA.

We note that CBP is specifically soliciting comments as to whether there should be an exemption from the negative certification requirement for chemicals which are clearly identified as being pesticides or other chemicals not subject to TSCA. Eliminating the negative certification requirement in these circumstances would seem to be beneficial for most importers of non-TSCA regulated chemical products, such as pharmaceuticals or pesticides. We also note that CBP’s proposed amendments pertaining to “articles containing chemicals or mixtures” may not align completely with EPA’s guidance on this issue, which distinguishes between chemical substances imported as *part of* an article versus chemical substances *contained in* an article. Companies that import articles may wish to submit comments on the proposed rule, to clarify these potential inconsistencies.

2. CBP proposes to allow importers the option to file TSCA Certifications electronically through the Automated Commercial Environment (ACE). The proposed regulation would also require certifications to include, for the first time, the name and contact information for the person making the certification.
3. CBP proposes to eliminate the existing paper-based “blanket” certification process. CBP asserts that this process is burdensome, and has limited utility. CBP further asserts that the electronic filing option is a more efficient solution. Companies that currently utilize blanket certifications (typically companies that frequently import the same chemical product through a particular port of entry) may wish to submit comments on CBP’s proposal to eliminate that option.
4. CBP proposes to allow importers to provide electronic notice of exportation and abandonment as an alternative to the paper-based written notice allowed under the existing regulations.
  - CBP is accepting comments on all aspects of its proposed amendments, which are due by September 28, 2016. CBP indicates that it is particularly interested in receiving comments on the following questions: Whether the collection of the names, phone numbers, and email addresses of the TSCA import certifier will impact your business or industry.
  - Whether the electronic submission of TSCA certifications in the Automated Commercial Environment (ACE) will affect your or industry.
  - Whether there should be an exemption from the negative certification requirement for chemicals that are clearly labeled as a pesticide or other chemical not subject to TSCA.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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