

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY
19 CFR Parts 12 and 127

CBP Dec. No. 16-28

RIN 1515-AE13

TOXIC SUBSTANCE CONTROL ACT CHEMICAL SUBSTANCE IMPORT CERTIFICATION PROCESS REVISIONS

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the U.S. Customs and Border Protection (CBP) regulations regarding the requirement to file a Toxic Substances Control Act (TSCA) certification when importing into the customs territory of the United States chemicals in bulk form or as part of mixtures and articles containing a chemical or mixture. This document amends the regulations to establish an electronic option for importers to file the required U.S. Environmental Protection Agency (EPA) TSCA certifications, consistent with the Security and Accountability for Every Port Act of 2006. This document further amends the regulations to clarify and add certain definitions, and to eliminate the paper-based blanket certification process.

The document was prepared in consultation with EPA, the agency with primary responsibility for implementing TSCA.

DATES: Effective January 26, 2017.

FOR FURTHER INFORMATION CONTACT: For questions related to the filing of EPA forms with CBP, contact William Scopa, Partner Government Agencies Interagency Collaboration Division, Office of Trade, Customs and Border Protection, at *William.R.Scopa@cbp.dhs.gov*. For EPA policy questions, contact Harlan Weir, at *Weir.Harlan@epa.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

Section 13 of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2612) governs the entry of those chemical substances and mixtures, and articles containing such chemical substances or mixtures into the customs territory of the United States and authorizes the Secretary of the Treasury, authority subsequently delegated to the U.S. Customs and Border Protection (CBP), to refuse entry of any chemical substance, mixture, or article that: (1) fails to comply with any rule in effect under TSCA; or (2) is offered for entry in violation of TSCA section 5 or 6 (15 U.S.C. 2604 or 2605) or Subchapter IV (15 U.S.C. 2681 *et seq.*), or in violation of a rule or order under those provisions or in violation of an order issued in a civil action brought under TSCA section 5 or 7 (15 U.S.C. 2604 or 2606) or Subchapter IV (15 U.S.C. 2681 *et seq.*). Section 13 also sets forth procedural requirements in connection with an entry refusal and authorizes CBP, after consultation with EPA, to issue rules for the administration of section 13.

Section 13 of TSCA is implemented in the CBP regulations at §§ 12.118–12.127 and 127.28 of title 19 of the Code of Federal Regulations (19 CFR 12.118–12.127, and 127.28). On August 29, 2016, U.S. Customs and Border Protection (CBP) published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (81 FR 59157) proposing to amend the CBP regulations regarding the requirement to file a Toxic Substances Control Act (TSCA) certification when importing into the customs territory of the United States chemicals in bulk form or as part of mixtures and articles containing a chemical or mixture.

B. Proposed Amendments

The proposed amendments were intended to clarify the description, scope, and definitions of the requirements for the importation of chemical substances, mixtures and articles containing a chemical substance or mixture, as well as the requirements associated with TSCA-excluded chemicals.

This document revises the proposed change in § 12.119 regarding the scope of the regulation. To clarify the regulation based on the public comments, the term “Chemicals not subject to TSCA” in proposed § 12.119(b) is changed in the final rule to “TSCA-excluded chemicals”. In addition, because the proposed revision of the scope in § 12.119(c) was confusing with respect to the application of the regulations to articles in §§ 12.120 through 12.127, we are adding the phrase, “if so required by the Administrator by specific rule under

TSCA” to § 12.119(c), which mirrors the current language of the regulation prior to the proposed amendment.

The final rule replaces the existing definition of the term “chemical substance in bulk form” in § 12.120(b) with a definition of “TSCA chemical substance in bulk form”, and adds new definitions for the terms “TSCA chemical substance as part of a mixture” in § 12.120(c) and “TSCA-excluded chemicals” in § 12.120(d). These definitions are revised and added to clarify that the certification obligations apply to both chemical substances and mixtures that are subject to TSCA, which require a positive certification, as well as those chemicals and mixtures that are not subject to TSCA, which require a negative certification (unless clearly identified as a TSCA-excluded chemical), and to ensure that terms used in the regulatory text are defined when necessary. “Mixture” is a statutory term in TSCA that does not apply to TSCA-excluded chemicals. TSCA-excluded chemicals require a negative certification whether imported as a single TSCA-excluded chemical mixed with other TSCA-excluded chemicals. This document also adds a definition of the term “Administrator” to mean the Administrator of the EPA, and “covered commodity” to include any merchandise that is an article, a TSCA chemical substance in bulk form, TSCA-excluded chemicals (as those terms are defined in § 12.120(a), (b), or (d)), or that is a mixture as defined in TSCA and describe a commodity that is subject to actions under § 12.122, *et seq.* and § 127.28.

In addition, in §§ 12.122(a) and (b), 12.123(b), 12.124(a), 12.125(b), and 127.28, this document revises references to “chemical substances, mixtures, or articles” to clarify that these regulations apply to TSCA chemical substances, mixtures, or articles as well as TSCA-excluded chemicals. In § 12.124, this final rule changes the name of the agency from “Customs Service” to “CBP”.

B. Certifications

The final rule provides an electronic option for filing TSCA certifications, consistent with Executive Order (EO) 13659, *Streamlining the Export/Import Process for America’s Businesses*, which seeks to reduce unnecessary procedural requirements relating to, among other things, importing into the United States, while continuing to protect our national security, public health and safety, the environment, and natural resources. *See* 79 FR 10657 (February 25, 2014). The final rule is consistent with the Security and Accountability for Every Port Act of 2006 (“SAFE Port Act,” 19 U.S.C. 1411(d)) which mandates that all federal agencies that require documentation for clearing or licensing the importation of cargo participate in the In-

ternational Trade Data System (ITDS) by using a CBP-authorized Electronic Data Interchange (EDI) system as a single portal for the collection and distribution of standard electronic import and export data.

In order to submit an electronic TSCA certification, importers or their agents are required by the final rule to submit their entry filings to ACE or any other CBP electronic data interchange (EDI) system authorized to accept entries. This document also requires in § 12.121(a)(3) the submission of additional information relating to the certifying individual, including name, phone number, and email address for TSCA certifications submitted either in writing or electronically. The collection of contact information for the certifying individual will facilitate the resolution of issues related to particular shipments. This document also changes the reference to paragraph (a)(1) found in § 12.121(c) to be a reference to paragraph (a).

The final rule eliminates the blanket certification process. The discontinued paper-based blanket certification process had limited utility because each blanket certification was only valid at one port of entry for one year. In addition, the previous blanket certification process was more burdensome than the entry-specific certification process because it required filers to include a statement referring to the blanket certification and incorporate it by reference for each entry, as well as four data elements on the blanket certification itself, including product name, Harmonized Tariff Schedule of the United States (HTSUS) subheading number, and the name and address of the foreign supplier. Because the electronic TSCA certification process requires only a certification code, along with the name and contact information of the TSCA certifier, and because the paper-based blanket certification had limited application, we believe the elimination of the blanket certification process reduces the reporting burden for importers.

C. Notice of Exportation and Abandonment

In addition, the final rule amends §§ 12.125 and 12.126 to allow importers to provide electronic notice of exportation and abandonment as an alternative to the paper-based written notice process allowed under the existing regulations.

The automation of these processes modernizes the way that CBP and EPA interact with importers of chemicals, and ensures effective application of regulatory controls. CBP estimates approximately 2.5 million TSCA positive certifications and 230,000 TSCA negative certifications are received annually. The electronic collection of TSCA certifications for processing in ACE improves information access,

data integration with CBP entry information, and the data quality of TSCA certifications. As a result, CBP expects improved communication among EPA, CBP, and importers.

D. Plain Language Revisions

The final rule makes minor changes to §§ 12.118–12.127 by removing the word “shall” and revising the sentence grammar to simplify the language. The use of “shall” is imprecise and outdated. Plain language guidance recommends replacing “shall” with the word “must,” “will,” or another word that more appropriately conveys the intended meaning. This is part of the U.S. Government efforts to update regulatory text per plain language guidance.

E. Conclusion of Test to Allow Import Certification

On February 10, 2016, CBP published a notice in the **Federal Register** (81 FR 7133) announcing that CBP was modifying the National Customs Automation Program (NCAP) test concerning electronic filings of data to ACE, known as the Partner Government Agency (PGA) Message Set test, to allow for the transmission of TSCA certification data. As of November 16, 2016, CBP has received 150,661 electronic TSCA certifications through ACE pursuant to the PGA Message Set Test. This volume of electronic submissions indicates that the PGA Message Set Test has been successful and reliable with regard to the electronic submission of TSCA certifications to ACE. Consequently, this document announces the conclusion of the PGA Message Set Test with regard to the submission of the TSCA certification. All other aspects of the PGA Message Set Test remain on-going until ended by announcement in a subsequent **Federal Register** notice.

Discussion of Comments

Fourteen commenters responded to the solicitation of comments to the proposed rule. A description of the comments received, together with CBP’s analysis, is set forth below.

Comment: The trade generally argued against negative certification as applied to chemicals clearly labelled or identified as products that are excluded from TSCA regulation. The list of excluded products includes pesticides, food, food additives, drugs, cosmetics or devices, nuclear material, tobacco products, firearms and ammunition

Multiple commenters argued that the scope of the negative certification in the proposed rule is too broad. One commenter noted that the EPA’s own regulations on TSCA, found at 40 CFR 707.20(b)(2)(ii), only require the submission of a negative certification where the imported chemical products are not otherwise clearly identified as a product not subject to TSCA. A different commenter stated that CBP

should not require certification regarding chemicals that are excluded by the text of TSCA unless there was evidence of problems regarding the labels or other methods of regulating the TSCA-excluded chemicals.

Commenters further indicated that because the proposed rule would affect products already regulated by other agencies, it would create duplicative processes and be incompatible with Executive Order (E.O.) 13659, *Streamlining the Export/Import Process for America's Businesses*. Commenters requested that CBP work to harmonize the proposed rule with current and future EPA regulations, to include an exemption from the negative certification requirement where the imported products are already clearly labelled as a product that is expressly excluded by TSCA.

CBP Response: CBP and EPA agree that the negative certification requirement need not be applied to those chemicals that are otherwise clearly identified as a product excluded from TSCA, which are regulated by other agencies or statutes, including pesticides, food, food additives, drugs, cosmetics, devices, tobacco, tobacco product, nuclear material, firearms and ammunition, as described by § 3(2)(B) (ii)–(vi) of TSCA. The requirement to file a negative certification in § 12.121(a)(2) excludes TSCA-excluded chemicals that are clearly identified as such. This position is consistent with EPA's TSCA section 13 Import Policy, which addresses aspects of the CBP regulation implementing TSCA section 13. See 40 CFR 707.20(b)(2)(ii); 45 FR 82850 (December 16, 1980).

Comment: The proposed rule did not include a “blanket certification” that allowed an importer to qualify for TSCA compliance on reoccurring shipments of the same chemicals to the same port, with a one year duration. Commenters from multiple industries noted that the blanket certification process is useful for companies that import the same product to the same port repeatedly throughout a one-year period. Commenters requested CBP to clarify its rationale for proposing to discontinue the blanket certification, and further argued that a blanket certification process, in some form, would not only benefit the trade, but would be aligned with the goals of E.O. 13659, *i.e.*, by reducing costs and promoting flexibility. One commenter argued that the ACE system cannot be deemed to be more efficient without some form of blanket certification. Commenters urged CBP either to maintain the existing paper-based blanket certification process, or to develop an electronic equivalent.

CBP Response: The reason for removing the blanket permit system is the difficulty of integrating that paper-based certification process, which required CBP to maintain files and track yearly renewals for

verification and compliance, with an otherwise fully automated system. In addition, with the new requirement to submit information on the certifier, renewals would need to be made more frequently in order to keep certifier information updated. Electronic submission of TSCA certifications through ACE, allows for electronic releases without CBP manual processing or reviews.

CBP is aware that the transition from the paper-based system with blanket certifications to an electronic system without blanket certifications may present short-term challenges for filers and importers. However, efforts to preserve the blanket certification process in combination with electronic filing through ACE would actually restrict the system as a whole from achieving maximum efficiency as it would require all filers to undergo extra steps in the PGA message set to input information regarding whether the importer had a blanket certification on file, and for which ports.

Comment: The trade commented that the term “non-TSCA chemical” in the proposed regulation is confusing and should be replaced with the trade term “chemical substances excluded from TSCA,” because all chemicals are subject to TSCA unless excluded and the term “non-TSCA” is used by the trade to refer to chemicals that are subject to TSCA but not yet on the TSCA inventory.

The trade also commented that the phrase “articles containing a chemical substance” is ambiguous, because it can be interpreted to mean an object or vessel that is used to hold a chemical substance as well as an object that is made up of a chemical substance. Finally, the trade commented that a typo appears in the definition of a “covered commodity” at § 12.120(e) of the proposed rule because it claims “the definitions specified in paragraphs (a), (b), and (d). . .” should instead be “(a), (b), and (c). . .”

CBP Response: To address industry’s concerns about the use of the proposed term “non-TSCA chemical,” this term is being changed to “TSCA-excluded chemicals.” The definition of the term “TSCA-excluded chemicals” will remain as it was under “non-TSCA chemical,” which is consistent with the appropriate provisions under TSCA.

The phrase “articles containing a chemical substance” is consistent with the scope as provided under section 13 of TSCA. The term “article” is defined in EPA regulations, as well as in this rule, and has been applied in a variety of TSCA programs and activities for many years. The phrase “chemical substances or mixtures as parts of articles” is used in the appropriate provisions of the § 12.121 reporting requirements of this rule, and this phrase has been used in a variety of TSCA programs and activities, including the TSCA section 13

import program. *See*, 42 FR 64572 (December 23, 1977) (noting that a chemical substance is considered to be imported ‘as part of an article’ if the substance is not intended to be removed from that article and has no end use or commercial purpose separate from the article of which it is a part.). *See also*, Introduction to the Chemical Import Requirements of the Toxic Substances Control Act, USEPA (1999) (stating that chemical substances and mixtures are considered to be imported as part of an article only if the substances or mixtures are not intended to be removed/released from the article and they have no end use or commercial purpose separate from the article of which they are a part) and TSCA Chemical Data Reporting Fact Sheet: Imported Articles, USEPA (January 2016).

Section 12.120(e) of the proposed rule does not contain a typographical error. Paragraph (c) is not needed, because a “covered commodity” includes “mixtures,” including a chemical substance that is part of the mixture. The term “covered commodity” is used to cover all things covered by the rule, including chemicals not subject to TSCA, which would require either a negative certification or proper identification. It is important that the term “covered commodity” cover things not subject to TSCA, given that, for example, CBP can detain shipments that do not have a required negative certification. *See* 19 CFR 12.122(b)(3).

Comment: The proposed rule required an importer to indicate, for each entry subject to either a positive or negative certification requirement, the name, phone number and email address of the person who provided the certification, in writing or electronically through the ACE system.

Multiple commenters indicated that if such a requirement becomes part of the final rule, it should only be required at the header level rather than at each line entry. Commenters argued that this would be important for two reasons: to avoid imposing a repetitive manual task of re-inputting the same information for hundreds of lines; and to help importers meet their requirements to keep submissions under the 8 MB file size limitation.

One commenter stated that the provision of contact information for the certifier should be optional, expressing doubt as to the usefulness of such requirement given that the customs broker has historically served as the point of contact for any CBP or PGA inquiry. A separate commenter questioned the underlying intent for this requirement, requesting clarification as to whether it was intended to provide contact information in the event of a spill or emergency (in which case the commenter argued that the Material Safety Data Sheet already

provides this information), or whether there would be legal ramifications imposed on the person providing the certification.

CBP Response: CBP and EPA need the identifying information so that they can contact the certifying individual when there is a question about the imported article, and for enforcement purposes. The certifying individual contact information is required to know who is certifying and whom to contact if needed. CBP and EPA acknowledge that this requirement may create additional clerical work for filers. However, ACE will allow the requested information to be entered once at the header level using the PG00 record within the PGA Message Set, and then populated under each entry line where specified. In addition, the new process will result in faster cargo clearance. CBP and EPA encourage filers who have importers with routine imports with the same certifying individual information to explore options with third-party software vendors to take advantage of existing technology.

Comment: Commenters requested information regarding how CBP and EPA will treat confidential business information (CBI) collected under the process outlined in the proposed rule, including: where the data will be stored, how the data will be protected, how long the data will be retained, and who will have access to the data.

CBP Response: Access to nonpublic data contained in the ACE system will be limited to CBP officers and relevant personnel at CBP headquarters, as well as limited personnel at partner government agencies. In addition, access to ACE data including Confidential Business Information (CBI) is limited to personnel with the appropriate roles and permissions and is managed by various audit controls on a continual basis.

Comment: Commenters expressed concern regarding what was alleged to be broadening of the scope of EPA authority under 19 CFR 12.120 to 12.127, by amending § 12.119 to cover “articles containing a chemical substance or mixture.” In contrast, the language of § 12.119 prior to amendment limits the scope of application to “articles containing a chemical substance or mixture if so required by the Administrator by specific rule under TSCA.” Commenters asked CBP to clarify what would be required under the revised rule, including the types of articles that would be subject to the different requirements.

CBP Response: Given the concerns expressed by the commenters, and CBP’s desire to provide unambiguous authority to submit TSCA certification elements for imports electronically through the ITDS system, CBP is revising the language proposed for § 12.119 in order to maintain the scope provided for in the existing § 12.119, as applied to

articles. CBP will, however, make stylistic changes to 19 CFR 12.119 in order to provide clarity as to which chemicals the certification requirement will not apply (*i.e.*, TSCA-excluded chemicals). The final rule continues to provide that the regulation applies to “articles containing a chemical substance or mixture if so required by the Administrator by specific rule under TSCA.” CBP will continue to consider whether other changes to the scope of the rule are needed, and may revisit the issue in a future rulemaking.

Comment: One commenter argued that the final regulation implementing the Formaldehyde Emission Standards for Composite Wood Products Act of 2010, which lifts the article exemption for regulated composite wood products, would be impacted by the proposed rule by creating an identification burden on CBP and a compliance burden on the trade for determining regulated items and requirements. The trade stated that clear guidance and training should be available in order to avoid confusion.

CBP Response: Under the final rule, there should be no impact on the EPA’s efforts to implement regulations under the Formaldehyde Emission Standards for Composite Wood Products Act of 2010. In order to ensure that the trade has time to adjust and understand the requirements, the prepublication version of the Formaldehyde Emission Standards for Composite Wood Products final rule provides that the compliance date regarding the import certification requirements of that rule will be delayed two years from publication of that rule. During this period, the EPA may conduct outreach with regulated parties and industry associations in order to familiarize the supply chain with the importer provisions. However, it is the importer’s responsibility to determine whether the shipment is in compliance with a particular regulation is properly identified accordingly.

Comment: One commenter commented in reference to various policy issues regarding how the current Foreign Trade Zone (FTZ) system of filing and reporting will be adapted to the proposed rule. In short, the commenter does not think that TSCA certification requirements should be applied at the time of admission into the FTZ, but rather when the goods leave the FTZ and enter the stream of commerce. The commenter also noted that a “Dual Option” model whereby importers could file PGA data in weekly entry summaries for all FTZ related imports, but would provide PGA data on non-FTZ imports at the time of cargo release. In addition, the commenter seeks confirmation that the current manual Notice of Arrival mechanism will be preserved in ACE.

CBP Response: CBP notes that the importer is only required to make a good faith estimate when making entry of the merchandise,

including the TSCA certifications thereof, when it files the weekly FTZ entry estimate pursuant to § 146.63(c)(1). CBP is aware that under this process, there may be occasions where a TSCA negative certification is issued by the importer in the weekly estimate, and yet the weekly summary reflects that TSCA chemical substances were in fact imported. CBP and EPA will address importers that demonstrate systematic or egregious discrepancies between weekly estimates and weekly summaries on a case-by-case basis and through available enforcement and compliance practices.

Current regulations provide for filing of the Notice of Arrival (NOA) with entry documentation. The proposed electronic implementation maintains that possibility. CBP is working to build functionality for the submission of PGA message set elements as merchandise is admitted to the FTZ through the e-214 process. At that time, there may be a consideration of whether the NOA is more appropriately filed at time of admission into a Foreign Trade Zone.

Comment: Commenters noted that the proposed rule fails to identify the certification requirements and other compliance measures required for imports that enter through either the informal entry process, or Section 321. Commenters indicated that given the increased value threshold to \$800, there will likely be an increase in the number of imports that attempt to enter under Section 321, and thus, CBP needs to provide guidance to the trade as to how it will address TSCA certification, either positive or negative, for imports that enter under Section 321. Commenters argued that both the statutory language and the regulations implementing the TSCA clearly indicate that the law applies to all chemical products entering the United States, not just those in excess of \$800 in value.

CBP Response: The recent amendments to Section 321 did not change the PGA data requirements, only the value of the shipments that qualify for entry free of duty and taxes. Thus, if TSCA import certification compliance was previously required for imports valued \$200 or less, it will also be required when imports are valued \$800 or less under the amended Section 321. CBP is considering options to address the broader question of how importers can best provide the appropriate PGA data, including TSCA certification, for imports that qualify under Section 321.

Conclusion

Accordingly, after review of the comments and further consideration, CBP has decided to adopt as final the proposed rule published in the **Federal Register** (81 FR 59157) on August 29, 2016, with the changes described above.

III. Estimated Costs and Benefits of This Rule

A. Costs

The costs for the regulated community to implement TSCA certification via this final rule would be minimal. CBP and EPA estimate that providing the name, phone number, and email address of the import certifier would result in a net increase in information collection burden of three minutes for each of the estimated 2.5 million TSCA positive certifications and 230,000 TSCA negative certifications (at a cost of about \$3 per certification and assuming no filer takes advantage of the possibility of filing this address information at the header level, as noted above), yielding an annual maximum increased cost to filers of \$8.41 million.

B. Executive Orders 12866 and 13563

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule is not a “significant regulatory action,” under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed this regulation. An Economic Analysis for this action, which is contained in a document entitled “Economic Analysis for Custom and Border Protection (CBP) Final Rule on TSCA Import Certifications in ACE/ ITDS,” is available in the docket for this rulemaking and is summarized in the previous section of this document.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 *et seq.*) requires federal agencies to assess the effects of regulations on small entities, including businesses, nonprofit organizations, and governments, and—in some instances—to examine alternatives to the regulations that may reduce adverse economic effects on significantly impacted small entities. Section 604 of the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, requires an agency to perform a regulatory flexibility analysis for a rule unless the agency certifies under section 605(b) that the regulatory action would not have a significant (economic) impact on a

substantial number of small entities. The RFA does not specifically define “a significant economic impact on a substantial number” of small entities.

A small entity analysis (SEA) was conducted and summarized herein. The SEA consists of: two quantitative analyses of impacts of the final rule on small entities for TSCA positive certifications, a qualitative discussion of impacts for TSCA negative certifications, and an integrative analysis of the combined universe of TSCA positive and TSCA negative certifications (all entities affected by the rule). These analyses provide information on the magnitude and extent of cost impacts for the purpose of supporting a CBP certification that the final rule would not result in significant (economic) impact on a substantial number of small entities. For additional details, *see* the Economic Analysis for this action, which is contained in a document entitled “Economic Analysis for Customs and Border Protection (CBP) Final Rule on TSCA Import Certifications in ACE/ITDS,” and is available in the docket for this rulemaking.

For TSCA positive certifications, the first quantitative analysis is a screening analysis of cost impacts to the smallest entities associated with TSCA positive certifications; and the second, a more detailed distributional analysis of impacts associated with TSCA positive certifications. These analyses use cost impact percentages to measure potential impacts on small parent entities affected by the final rule. The cost impact percentage is defined as annualized compliance costs resulting from the TSCA positive certification portion of the final rule as a percentage of annual revenues or sales, a commonly available and objective measure of a company’s business volume. As is the expected case for this rule, when increases in regulatory costs are minimal, they represent a small fraction of a typical entity’s revenue, and therefore the impacts of the regulation are minimal.

The first quantitative analysis for TSCA positive certifications is a screening analysis that provides a concise estimate of small entity impacts under the final rule by examining whether an “average small parent entity” incurs significant economic impact. The results of this analysis are presented in Table 1. The second quantitative analysis is a detailed distributional analysis that provides an estimate of small entity impacts under the assumption that affected entities have the same size characteristics as the overall industry sector. The results of this analysis are presented in Table 2.

TABLE 1—TSCA Positive Certification Summary of Screening Analysis Results

NAICS	NAICS Code description	Parent entities with 0 to 4 employees			All small parent entities		
		Average revenue	1% Impact	3% Impact	Average revenue	1% Impact	3% Impact
325 ^a ..	Chemical Manufacturing ..	\$1,457,186	No	No	\$80,841,890	No	No
324 ^b ..	Petroleum and Coal Products Manufacturing	\$2,120,398	No	No	\$556,652,918	No	No

^a For NAICS 325, the analysis of parent entities with 0 to 4 employees include 3,261 businesses while the analysis of all parent entities includes 9,772 businesses.

^b For NAICS 324, the analysis of parent entities with 0 to 4 employees include 391 businesses while the analysis of all parent entities includes 1,189 businesses

TABLE 2—TSCA Positive Certification Summary of Detailed Distributional Analysis

NAICS	NAICS Code description	Parent entities	Small parent entities	Number and percent of small parent entities incurring impact of			Minimum impact ^a (%)	Mean impact ^b (%)	Maximum impact ^c (%)
				<1%	1-3%	>3%			
325	Chemical Manufacturing	11,175	11,175	11,175 (100%)	0 (0%)	0 (0%)	<0.001	0.015	0.032
324	Petroleum and Coal Products Manufacturing	3,657	3,657	3,657 (100%)	0 (0%)	0 (0%)	<0.001	0.009	0.022

^a Of the 11,175 small entities in NAICS 325, the minimum impact experienced by any entity was <0.001%. Of the 3,657 small entities in NAICS 324, the minimum impact experienced by any entity was <0.001%.

^b Of the 11,175 small entities in NAICS 325, the mean impact experienced by any entity was 0.015%. Of the 3,657 small entities in NAICS 324, the mean impact experienced by any entity was 0.009%.

^c Of the 11,175 small entities in NAICS 325, the maximum impact experienced by any entity was 0.032%. Of the 3,657 small entities in NAICS 324, the maximum impact experienced by any entity was 0.022%.

The small entity screening analysis for TSCA positive certifications demonstrates that no small entities are expected to incur impacts of one percent or greater. The detailed distributional analysis for TSCA positive certifications shows that while a large number of small entities in certain sectors may be affected by the final rule, all of these small entities are expected to incur impacts of considerably less than one percent.

For TSCA negative certifications, because the unit incremental steady state burden associated with positive and negative certification are virtually the same (2.93 versus 2.98 minutes, respectively), the small entity impacts associated with negative certifications are similar to the small entity impacts associated with positive certifications, and are considerably less than one percent.

Integrating the above information for all firms submitting TSCA positive certifications and/or TSCA negative certifications requires consideration of the degree to which the firms submitting each type of

certification overlap. Since this detailed information is not readily available, an assessment is made via review of lower-bound and upper-bound impact scenarios. At the lower bound with an assumption of no overlap, firms submitting TSCA positive and TSCA negative certifications are completely isolated and separate. Each firm incurs about three minutes additional burden per certification with associated impacts of less than one percent, yielding overall impacts of less than one percent for all firms. In the upper-bound scenario, with an assumption that all firms overlap, firms submit both TSCA positive and negative certifications at the same transaction rates per firm for each type of certification. All firms incur twice the burden due to managing twice as many certifications (*i.e.*, in comparison to three minutes per certification, the “double duty” requires six minutes for one positive certification plus one negative certification). Nonetheless, the associated overall impacts are still less than one percent for all firms.

Per conventional practices including EPA guidance, even if a substantial number of entities are affected by a final rule, as long as the impact to these entities is very low, the rule can be determined to not result in a significant impact on a substantial number of small entities. Based on the evidence of the analyses summarized above, CBP certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

As this rule does not establish a new collection of information, as defined in the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the provisions of the Paperwork Reduction Act are inapplicable.

E. Unfunded Mandates Reform Act (UMRA)

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

F. Signing Authority

This proposed regulation is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the authority of the Secretary of the Treasury (or that of his or her delegate) to approve regulations pertaining to certain customs revenue functions.

List of Subjects

19 CFR Part 12

Customs duties and inspection, Entry of merchandise, Imports, Reporting and recordkeeping requirements.

19 CFR Part 127

Customs duties and inspection, Exports, Freight, Reporting and recordkeeping requirements.

Amendments to the CBP Regulations

For the reasons set forth above, parts 12 and 127 of the Code of Federal Regulations (19 CFR parts 12 and 127) are amended as follows:

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general and specific authority citations for part 12 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

Sections 12.118 through 12.127 also issued under 15 U.S.C. 2601 *et seq.*

* * * * *

■ 2. Revise § 12.118 to read as follows:

§ 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)).

■ 3. Revise § 12.119 to read as follows:

§ 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.

■ 4. In § 12.120, revise paragraph (b) and add paragraphs (c) through (f) to read as follows:

§ 12.120 Definitions.

* * * * *

(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.

(f) *Administrator.* “Administrator” means the Administrator of the Environmental Protection Agency (EPA).

■ 5. Revise § 12.121 to read as follows:

§ 12.121 Reporting requirements.

(a) *Certification required.* (1) The importer or the authorized agent of such an importer of a TSCA chemical substance in bulk form or as part of a mixture, must certify in writing or electronically that the chemical shipment complies with all applicable rules and orders under TSCA by filing with CBP the following statement:

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 thereunder.

(2) The importer or the authorized agent of such an importer of any TSCA-excluded chemical not clearly identified as such must certify in writing or electronically that the chemical shipment is not subject to TSCA by filing with CBP the following statement:

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

(3) *Filing of certification.* (i) The appropriate certification required under paragraph (a) of this section must be filed with the director of the port of entry in writing or electronically to the Automated Commercial Environment (ACE) system or any other CBP-authorized EDI system prior to release of the shipment. For each entry subject to certification under paragraph (a), the name, phone number, and email address of the certifier (the importer or the importer's authorized agent) shall be included.

(ii) Written certifications must appear as a typed or stamped statement:

(A) On an appropriate entry document or commercial invoice or on an attachment to that entry document or invoice; or

(B) In the event of release under a special permit for an immediate delivery as provided for in § 142.21 of this chapter or in the case of an entry as provided for in § 142.3 of this chapter, on the commercial invoice or on an attachment to that invoice.

(b) *TSCA chemical substances or mixtures as parts of articles.* An importer of a TSCA chemical substance or mixture as part of an article must comply with the certification requirements set forth in paragraph (a) of this section only if required to do so by a rule or order issued under TSCA.

(c) *Facsimile signatures.* The certification statements required under paragraph (a) of this section may be signed by means of an authorized facsimile signature.

§ 12.122 [Amended]

■ 6. Amend § 12.122 by removing the word “shall” each place it appears and adding in its place the word “will” and in paragraphs (a) introductory text and (b) introductory text by removing the words “chemical substances, mixtures, or articles” and adding in their place the words “covered commodity”.

§ 12.123 [Amended]

■ 7. Amend § 12.123 by removing the word “shall” each place it appears and adding in its place the word “will” and in paragraph (b), third sentence, by removing the words “chemical substance, mixture, or article” and adding in their place the words “a covered commodity”.

§ 12.124 [Amended]

■ 8. Amend § 12.124 as follows:

■ a. In paragraph (a) by removing the words “chemical substances, mixtures, or articles” and adding in their place the words “a covered commodity”.

■ b. In paragraph (a) by removing the word “shall” and adding in its place the word “must”.

■ c. In paragraph (b) introductory text by removing the words “Customs Service” and adding in its place the word “CBP”.

■ 9. The introductory text of § 12.125 is revised and in paragraph (b) the words “chemical substances, mixtures, or articles” are removed and the words “covered commodity” are added in their place.

The revision reads as follows:

§ 12.125 Notice of exportation.

Whenever the Administrator directs the port director to refuse entry under § 12.123 and the importer exports the non-complying shipment within the 30 day period of notice of refusal of entry or within 90 days of demand for redelivery, the importer must submit notice of the exportation either in writing to the port director or electronically to ACE or any other CBP-authorized EDI system. The importer must include the following information in the notice of exportation:

* * * * *

■ 10. Revise § 12.126 to read as follows:

§ 12.126 Notice of abandonment.

If the importer intends to abandon the shipment after receiving notice of refusal of entry, the importer must present a notice of intent to abandon in writing to the port director or electronically to ACE or any other CBP-authorized EDI system. Notification under this section is a waiver of any right to export the merchandise. The importer will remain liable for any expense incurred in the storage and/or disposal of abandoned merchandise.

■ 11. Revise § 12.127 to read as follows:

§ 12.127 Decision to store or dispose.

A shipment detained under § 12.122 will be considered to be unclaimed or abandoned and will 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 and has not exported the shipment within the time limitations or extensions specified according to § 12.124. The importer will remain liable for any expense in the storage and/or disposal of abandoned merchandise.

PART 127—GENERAL ORDER, UNCLAIMED, AND ABANDONED MERCHANDISE

■ 12. The general and specific authority citations for part 127 continue to read as follows:

Authority: 19 U.S.C. 66, 1311, 1312, 1484, 1485, 1490, 1491, 1492, 1493, 1506, 1559, 1563, 1623, 1624, 1646a; 26 U.S.C. 5753.

* * * * *

Section 127.28 also issued under 15 U.S.C. 2612, 26 U.S.C. 5688;

* * * * *

■ 13. Amend § 127.28 by revising paragraph (i) to read as follows:

§ **127.28 Special merchandise.**

* * * * *

(i) *Good subject to TSCA Requirements.* A good subject to TSCA requirements, *i.e.*, a covered commodity as defined in section 12.120 of this chapter, will be inspected by a representative of the Environmental Protection Agency to ascertain whether it complies with the Toxic Substances Control Act and the regulations and orders issued thereunder. If found not to comply with these requirements that good must be exported or otherwise disposed of immediately in accordance with the provisions of §§ 12.125 through 12.127 of this chapter.

Dated: December 20, 2016.

R. GIL KERLIKOWSKA,
Commissioner,
U.S. Customs and Border Protection.

TIMOTHY E. SKUD,
Deputy Assistant
Secretary of the Treasury.

[Published in the Federal Register, December 27, 2016 (81 FR 94980)]

DEPARTMENT OF THE TREASURY

19 CFR Part 12

CBP Dec. 16-29

RIN 1515-AE11

**IMPORTATIONS OF CERTAIN VEHICLES AND ENGINES
SUBJECT TO FEDERAL ANTIPOLLUTION EMISSION
STANDARDS**

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the U.S. Customs and Border Protection (CBP) regulations relating to the importation into the United States of certain vehicles and engines under the Clean Air Act (CAA) in order to harmonize the documentation requirements applicable to different classes of vehicles and engines that are subject to

the CAA's emission standards. This document further amends the regulations to permit importers to file the required U.S. Environmental Protection Agency (EPA) Declaration Forms with CBP electronically, and amends non-substantive provisions to update regulatory citations and delete obsolete provisions.

DATES: Effective January 26, 2017.

FOR FURTHER INFORMATION CONTACT: For questions related to the filing of EPA forms with CBP, please contact William Scopa, Partner Government Agencies Interagency Collaboration Division, Office of Trade, Customs and Border Protection, at *William.R.Scopa@cbp.dhs.gov*. For questions related to EPA's vehicle and engine imports program, please contact Holly Pugliese at *pugliese.holly@epa.gov*.

SUPPLEMENTARY INFORMATION:

Background

On August 17, 2016, U.S. Customs and Border Protection (CBP) published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (81 FR 54763) proposing to amend title 19 of the Code of Federal Regulations (19 CFR) in order to harmonize the documentation requirements applicable to different classes of vehicles and engines that are subject to the Clean Air Act's (CAA's) emission standards.

Sections 203(a) and (b)(2) of the CAA, 42 U.S.C 7522, deal with the importation of new motor vehicles and new motor engines and the requirement of a Certificate of Conformity (COC) as prescribed by regulation authorized by the CAA. Without a valid COC, the admission of new motor vehicles and new motor engines into the United States will be denied. Section 208 of the CAA, 42 U.S.C. 7542, provides that the Administrator of the U.S. Environmental Protection Agency (EPA) may require a manufacturer to produce, among other items, all records, files, and papers necessary to demonstrate compliance with applicable CAA provisions. Section 213(d) of the CAA, 42 U.S.C. 7547, requires that nonroad vehicles and engine standards be enforced in the same manner as those applicable to onroad vehicles and engines.

These statutory provisions are implemented in the CBP regulations at §§ 12.73 and 12.74 of title 19 of the Code of Federal Regulations (19 CFR 12.73 and 12.74). Section 12.73 provides for "Motor vehicle and engine compliance with Federal antipollution emission requirements," and section 12.74 provides for "Nonroad and stationary engine compliance with Federal antipollution emission requirements."

EPA makes available Declaration Forms 3520–1 (for the importation of passenger vehicles, highway motorcycles and their corresponding engines) and 3520–21 (for the importation of heavy-duty engines and nonroad engines, including engines already installed in vehicles or equipment) for purposes of compliance with the CAA.

The final rule conforms the entry filing requirements applicable to EPA Declaration Form 3520–21 to those that are currently applicable to EPA Declaration Form 3520–1. Sections 12.73(i) and 12.74(b) and (d) are amended to require importers of stationary, nonroad or heavy-duty highway engines (including engines incorporated into vehicles or equipment) to file EPA Declaration Form 3520–21 at the time of entry, except when filing a weekly entry from a foreign trade zone (FTZ) in accordance with 19 CFR 146.63(c)(1). An importer of engines is exempt from the requirement to file an EPA Declaration Form 3520–21 if the importer holds a valid EPA COC and the engines are labeled to show compliance with applicable emission requirements.

Further, the final rule permits importers to file the required EPA Declaration Forms with CBP electronically. The electronic transmission of EPA Declaration Forms 3520–1 and 3520–21 to CBP will automate and enhance the interaction between the EPA and CBP by facilitating electronic collection, processing, sharing, and review of requisite trade data and documents during the cargo import and export process. Lastly, this rule updates regulatory citations and deletes obsolete provisions.

The NPRM solicited for public comments on the proposed rulemaking. The public comment period closed on September 16, 2016.

Discussion of Comments

Four commenters responded to the solicitation of comments to the proposed rule. A description of the comments received, together with CBP's analysis, is set forth below.

Comment: Two commenters expressed a concern with regard to EPA's handling of Type 06 (FTZ) "weekly estimate" entry filings. According to the proposed rule, EPA is requiring all filers to demonstrate compliance with all applicable laws and regulations at the time of cargo release, in particular the filing of EPA Declaration Forms 3520–1 and 3520–21. (19 CFR 12.73(i)(2)). The commenters stated that many vehicle and engine importers would not be able to provide accurate information, such as VIN or engine serial numbers, at the time of entry. When the weekly estimated entry is prepared and filed, the identity of the vehicles and/or engines is many times unknown since the vehicle/engine has not gone into production or has not been ordered for distribution. Both commenters propose to implement the

“dual option” system that is being used by other Partner Government Agencies (PGAs), separating the “regular” Type 06 entry filers, which are required to present PGA data at time of entry/cargo release, from the “weekly” Type 06 entry filers, which are required to present PGA data at the time of entry summary.

CBP Response: CBP reviewed the concerns raised by the commenters and is in agreement with the commenters’ proposal. When a Type 06 (FTZ) entry is filed, the vehicle and engine data used by EPA is required at time of entry/ACE cargo release. When a “weekly estimate” Type 06 entry is filed, the vehicle and engine data used by EPA is required at time of entry summary.

Comment: One of the commenters asked CBP to extend the exemption from filing EPA Declaration Form 3520–21 to any engines and equipment that are exempt from filing that form under the provisions of 40 CFR 1068.201 (test engines and equipment) and 40 CFR 1068.230 (engines and equipment for export). The commenter stated that 40 CFR part 1068, subpart C, provides for the exemption of certain engines and equipment from “some or all of the prohibited acts” of 40 CFR 1068.101(a)(1). The commenter further stated that EPA has deemed such engines and equipment as appropriate for entry into the U.S. commerce and as such are substantively no different from engines and equipment that are covered by a valid COC that is issued under the standard-setting part (e.g. 40 CFR part 1033).

CBP Response: CBP does not agree that the exemption for filing EPA Declaration Form 3520–21 should be extended to engines and equipment for testing and export covered by 40 CFR 1068, subpart C. CBP also does not agree that such engines and equipment are “substantively no different” from engines produced under a valid COC. If engines and equipment are produced under an exemption for testing or export, the exemption is needed because these engines and equipment are different than the certified engines and equipment. It is therefore not correct to consider any exemption under Part 1068 as a basis for determining engines and equipment to be “appropriate for entry into the U.S. commerce.” Exempted engines and equipment are permitted to enter the U.S. commerce subject to certain terms and conditions to ensure compliance with the regulations. Filing import information such as that prescribed by EPA Declaration Form 3520–21 assists with compliance oversight.

Comment: Another commenter expressed a concern with the proposed regulatory language at 19 CFR 12.74(c)(3) which references temporary exemptions, including the partially complete engine exemption under 40 CFR 1068.325(g). The commenter stated that the

proposed language requires a CBP bond, whereas the underlying EPA regulation at 40 CFR 1068.325 states that EPA “may ask” CBP to require a specific bond amount. It is the opinion of the commenter that the proposed language in 19 CFR 12.74(c)(3) would go beyond the EPA requirements and increase the burden on users of the partially complete engine exemption by making the bond and associated administrative process an absolute requirement. The commenter suggested to use “may be required” instead of the proposed “is required” language. The commenter further noted that a similar change would be needed at the beginning of 12.74(c) to harmonize the proposed language in the NPRM with the conditional language in 40 CFR 1068.325.

CBP Response: CBP believes that there is a no conflict between the EPA regulation and the proposed rule regarding the bond requirements and that the proposed rule does not need to be harmonized with the EPA regulation. The proposed rule does not change the substantive bond requirement for conditional entry for nonconforming nonroad engines claiming exemption under the EPA regulations, it only allows for conditional release in conjunction with a bond filed in the Automated Commercial Environment (ACE).

The commenter potentially confuses the different contexts of import bond requirements. The confusion stems from the use of the term “bond” in EPA regulations and CBP regulations. Under 19 CFR 127.74(c)(3) and 19 CFR 113.62, CBP requires a single entry or a continuous bond, to be applied for the conditional release of imported engines as required in all cases (“Basic Import Entry” bond). In contrast, the “bond” referenced in 40 CFR 1068.325, which “may be required,” is addressing situations where EPA “may” want to secure compliance with relevant EPA regulations and have CBP require additional bonding.

Lastly, the substance of 19 CFR 12.74(c) is unchanged by the proposed rule, and has been in place since published in 1998. The only change is to provide for the use of Basic Import Entry bonds submitted through ACE.

Comment: The same commenter requested that the proposed language in 19 CFR 12.74 include permanent exemptions listed in 40 CFR 1068.315(a)–(h), including the manufacturer-owned exemption in 40 CFR 1068.315(b), to make it clear that permanent exemptions also present a valid basis for admission. According to the commenter, CBP and EPA regulations will have apparent inconsistencies and it will be easy for users of those regulations to be confused if no clarifying section is added.

CBP Response: CBP agrees with the inclusion of the permanent exemptions listed in 40 CFR 1068.315 with the exemptions listed in 19 CFR 12.74(c)(3). As such, the regulatory language for 19 CFR 12.74(c)(3) will be amended accordingly below. In addition, the introductory text in section 19 CFR 12.73(h) will be amended by adding reference to 40 CFR parts 85, 86 and 1068 to fully cover the current list of both permanent and temporary exemptions and exclusions found in all applicable EPA regulatory parts.

Comment: The commenter also requested clarification as to whether an imported on-highway motorcycle engine that is separate from, and not installed in, an on-highway motorcycle is subject to 19 CFR 12.73. The commenter pointed out that the EPA Declaration Form 3520–1, recognized by CBP, includes a Code W = “Non-chassis mounted engine to be used in . . . a motorcycle . . . which will be covered by an EPA COC prior to the introduction into commerce.” Unlike other codes on the form, there is no listed underlying regulation associated with the use of Code W.

CBP Response: CBP agrees that a clarification is appropriate as suggested by the commenter. The regulatory text in 19 CFR 12.73(a) will be amended to include separately-imported on-highway motorcycle engines.

Comment: The same commenter requested clarification of a passage in the Preamble in the NPRM which says “although existing 19 CFR 12.73 does not expressly require the submission of the EPA Declaration Form 3520–1, it does require that the same information captured by that form be submitted to CBP.” Specifically, the commenter asked whether the EPA exemption policy for certificate-holding manufacturers (OEMs) to import new motor vehicles and engines without filing Declaration Forms 3520–1 or 3520–21 still applied under 19 CFR 12.73. The commenter expressed concern that if this exemption did no longer apply, it would be inconsistent with both current EPA and CBP requirements, as well as guidance issued by EPA that summarizes the filing exemptions for OEMs.

CBP Response: The statement in the NPRM simply pointed out that the current regulations at 19 CFR 12.73 do not specifically refer to EPA Declaration Form 3520–1, but require all the data elements listed in that form. 19 CFR 12.73(i)(3) (A)–(K) currently provides a list of the information that must be included in an importer’s declaration. This information mirrors the information that is required to be filled in the EPA Declaration Form 3520–1 itself. CBP is only updating the regulations to specifically reference EPA Declaration

Form 3520–1 and is not changing the provision that exempts OEMs who import products for which they hold a valid EPA COC from filing the form.

Comment: A commenter stated that it supported CBP’s plan to harmonize the filing requirements. However, it pointed out that EPA must update the existing EPA guidance document titled “Procedures for Importing Vehicles and Engines into the U.S.” which states the following on Page 3, related to importers currently subject to the requirements of EPA Declaration Form 3520–21: “As with vehicles, OEMs importing new certified engines do not need to submit EPA Declaration Form 3520–21 to U.S. Customs.” The commenter further noted that EPA must also update Declaration Form 3520–21 to reflect the change of the filing requirements.

CBP Response: CBP agrees that certain statements in certain EPA guidance documents contradict each other regarding when OEMs currently need to file EPA Declaration Form 3520–21. In consultation with CBP, EPA will ensure that all of EPA’s documentation regarding the amended regulations accurately reflects that OEMs importing their own certified engines do not need to file EPA Declaration Form 3520–21.

Comment: The fourth commenter wrote that she had no objection to the proposed changes as long as the compliance with anti-pollution emission standards was not compromised for the sake of efficiency. The commenter further stated that accurate records for vehicle and engine imports must be maintained in order to ensure compliance with the CAA.

CBP Response: CBP believes that electronic filing of EPA Declaration Forms will support key modernization initiatives, expedite the entry and clearance process, enhance targeting and enforcement objectives, and connect CBP with PGAs and the trade community through a single-window access point.

Conclusion

After review of the comments, CBP has decided to adopt as final the proposed rule published in the **Federal Register** on August 17, 2016 with the changes described above.

Executive Orders 12866 and 13563

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if a regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and ben-

efits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a “significant regulatory action,” under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has not reviewed this regulation.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires agencies to assess the impact of regulations on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people). This final rule would modify the requirements for the submission of EPA Declaration Form 3520–21. Currently, importers are required to fill out the form, but are only required to submit it to CBP upon request. This final rule would require importers to file EPA Declaration Form 3520–21 with CBP with the filing of entry information, and no later than the filing of entry summary, unless the importer is a manufacturer of nonroad or stationary engines, including engines incorporated into vehicles and equipment, and holds a valid EPA certificate of conformity for those engines and the engines are labeled to show compliance with applicable emission requirements. As this form has already been completed by the filer by the time the filing is required under this rule, the cost of actually submitting it to CBP is negligible. This rule would also explicitly add electronic filing as an accepted method of form submission. Importers will still be able to file the form by paper if they so choose. This change will affect all importers who are covered by EPA Declaration Form 3520–21, including small importers. Therefore, it is likely to have an impact on a substantial number of small entities. However, the only costs incurred are the negligible costs of submitting the already completed form to CBP along with other required entry documents. These costs do not rise to the level of significance. Therefore, CBP certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collection of information contained in this final rule was previously reviewed and approved by OMB in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control numbers OMB 2060–0104 (EPA Declaration Form 3520–1, “Importation of Motor Vehicles and Motor Vehicle Engines

Subject to Federal Air Pollution Standards”), OMB 2060–0320 (EPA Declaration Form 3520–21, “Importation of Engines, Vehicles and Equipment Subject to Federal Air Pollution Standards”), and OMB 1405–0105 (Department of State form DS–11504, “Request for Customs Clearance of Merchandise”). As importers are already required under existing regulations to complete the EPA Declaration Forms and either submit them to CBP or retain them in their records, and the burden estimates in the above-identified OMB approved information collection requests presume the forms are submitted to CBP, there are no new collections of information stated in this document. In this regard, it is noted that although existing 19 CFR 12.73 does not expressly require the submission of EPA Declaration Form 3520–1 by name, it does require that the same information captured by that form be submitted to CBP. Similarly, shipments sent from abroad to foreign diplomatic or consular missions in the U.S., or their personnel, currently must be cleared by respondents submitting to CBP a Department of State-approved form DS–1504; therefore, this document does not impose any new collections of information by requiring the DS–1504 to be presented to CBP for purposes of claiming an exemption from emission documentation requirements.

Signing Authority

This document is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the Secretary of the Treasury’s authority (or that of his delegate) to approve regulations related to certain customs revenue functions.

List of Subjects in 19 CFR Part 12

Customs duties and inspection, Reporting and recordkeeping requirements.

Amendments to the CBP Regulations

For the reasons set forth above, part 12 of title 19 of the Code of Federal Regulations (19 CFR part 12) is amended as set forth below.

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general authority citation for part 12, and the specific authority citation for sections 12.73 and 12.74, continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624.

* * * * *

Sections 12.73 and 12.74 also issued under 19 U.S.C. 1484, 42 U.S.C. 7522, 7601;

* * * * *

■ 2. The undesignated center heading preceding § 12.73 is revised to read as follows:

Entry of Motor Vehicles, Engines, and Equipment Containing Engines Under the Clean Air Act, as Amended

■ 3. In § 12.73:

■ a. The section heading is revised;

■ b. Paragraph (a) is revised;

■ c. Paragraph (b)(1) is amended by removing the word “shall” and adding in its place the word “will”; removing the word “Customs” and adding in its place the term “CBP”, and; removing the term “ICI’s” and adding in its place the language, “Independent Commercial Importers”;

■ d. Paragraph (b)(2) is amended by removing the word “Customs” and adding in its place the term “CBP”;

■ e. Paragraphs (c)(3) and (4) are removed;

■ f. Paragraphs (d), (e) introductory text, (e)(4), and (f) are revised;

■ g. Paragraph (g)(2) is amended by removing the reference to “(i)(4)” and adding in its place a reference to “(i)(6)”;

■ h. Paragraph (h) introductory text is revised;

■ i. Paragraph (h)(1) is amended, in the first sentence, by removing the word “Any” and adding in its place the following language, “A motor vehicle imported for repairs is any”;

■ j. Paragraph (h)(2) is amended, in the first sentence, by removing the word “Any” and adding in its place the following language, “A test vehicle is any”;

■ k. Paragraph (h)(3) is amended, in the first sentence, by removing the word “Any” and adding in its place the following language, “A prototype vehicle is any”, and in the second sentence, by removing the word “shall” and adding in its place the word “will”, and by removing the parenthetical reference “(1)” and adding in its place the parenthetical reference “(1)”;

■ l. Paragraph (h)(4) is amended, in the first sentence, by removing the word “Any” and adding in its place the following language, “A display vehicle is any”;

■ m. Paragraphs (h)(5) through (7) are revised;

■ n. Paragraphs (i) through (k) are revised;

■ o. Paragraph (l) is amended by removing the word “shall” and adding in its place the word “will” and removing the word “Customs” and adding in its place the term “CBP”; and

■ p. Paragraph (m) is revised. The revisions read as follows:

§ 12.73 Importation of motor vehicles and motor vehicle engines.

(a) *Applicability of EPA requirements.* This section is ancillary to the regulations of the U.S. Environmental Protection Agency (EPA) issued under the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*), and found in 40 CFR parts 85, 86, 1036, 1037, and 1068. The EPA regulations should be consulted for more detailed information concerning EPA emission requirements. This section applies to imported motor vehicles; this section also applies to separately imported engines only if they will be installed in highway motorcycles or heavy-duty motor vehicles. All references in this section to “motor vehicles” include these highway motorcycles and heavy-duty engines. Nothing in this section should be construed as limiting or changing in any way the applicability of the EPA regulations.

* * * * *

(d) *Importation of vehicles by an Independent Commercial Importer (ICI).* An ICI is generally an importer that does not have a contract with a foreign or domestic motor vehicle manufacturer for distributing products into the United States market (*see* 40 CFR 85.1502). ICIs act independently of motor vehicle manufacturers, but are required to bring motor vehicles into compliance with all applicable emissions requirements found in 40 CFR part 86 and any other applicable requirements of the Clean Air Act. Before the vehicle is deemed to be in compliance with applicable emission requirements and finally admitted into the United States, the ICI must keep the vehicle in storage for a 15-business day period. This period follows notice to EPA of completion of the compliance work to give EPA the opportunity to conduct confirmatory testing and inspect the vehicle and records. The 15-business day period is part of the 120-day period in which an ICI must bring the vehicle into compliance with applicable emission requirements. A motor vehicle may also be conditionally admitted by an ICI if it meets the requirements in 40 CFR 85.1505 or 85.1509. Individuals and businesses not entitled to enter nonconforming motor vehicles may arrange for their importation through an ICI certificate holder. In these circumstances, the ICI will not act as an agent or broker for CBP transaction purposes unless it is otherwise licensed or authorized to do so.

(e) *Exemptions and exclusions from emission requirements based on age of vehicle.* The following motor vehicles may be imported by any person and do not have to be shown to be in compliance with emission requirements before they are entitled to admissibility:

* * * * *

(4) Highway motorcycles manufactured before January 1, 1978;

* * * * *

(f) *Exemption for exports.* A new motor vehicle intended solely for export to a country not having the same emission standards applicable in the United States is not required to be covered by an EPA certificate of conformity if both the vehicle and its container bear a label or tag indicating that it is intended solely for export. 40 CFR 85.1709.

* * * * *

(h) *Other exemptions and exclusions.* EPA regulations in 40 CFR parts 85, 86 and 1068 allow for exempting or excluding vehicles from certification requirements. The following scenarios illustrate several examples of exemptions or exclusions that apply only if prior approval has been obtained in writing from EPA:

* * * * *

(5) *Racing cars.* A racing car is any vehicle that meets one or more of the criteria found at 40 CFR 85.1703(a), and that will not be registered or licensed for use on or operated on public roads or highways in the United States. *See also* 40 CFR 85.1511(e).

(6) *National security importations.* A national security importation includes any motor vehicle imported for purposes of national security by a manufacturer. 40 CFR 85.1511(c)(1), 85.1702(a)(2) and 85.1708; and

(7) *Hardship exemption.* A hardship exemption includes any motor vehicle imported by anyone qualifying for a hardship exemption. 40 CFR 85.1511(c)(2).

(i) *Documentation requirements—(1) Exception for certain companies that manufacture and import motor vehicles.* The special documentation requirements of this paragraph do not apply to the importation of motor vehicles by the company that manufactures the motor vehicles if the motor vehicles are covered by a valid EPA Certificate of Conformity (COC) held by the manufacturer and the motor vehicles are labeled to show compliance with applicable emission requirements pursuant to paragraph (b)(1) of this section.

(2) *Release.* CBP will not release a motor vehicle from custody unless the importer has submitted all documents necessary to demonstrate compliance with all applicable laws and regulations.

(3) *Required EPA documentation.* Unless otherwise exempt, importers of motor vehicles must submit one of the following EPA declaration forms to CBP at the time of entry, or when filing a weekly entry from an FTZ in accordance with § 146.63(c)(1) of this chapter at the time of entry summary:

(i) For heavy-duty motor vehicle engines, whether they are installed in a vehicle or separately imported as loose engines, submit

EPA Declaration Form 3520–21, “Importation of Engines, Vehicles, and Equipment Subject to Federal Air Pollution Regulations;”

(ii) For all other motor vehicles, submit EPA Declaration Form 3520–1, “Importation of Motor Vehicles and Motor Vehicle Engines Subject to Federal Air Pollution Regulations.”

(4) *Filing method.* The EPA declaration forms required to be submitted to CBP pursuant to paragraph (i)(3) of this section must be filed with CBP electronically in the Automated Commercial Environment (ACE) or via any other CBP-authorized electronic data interchange system, or as a paper filing, at the time of entry, or when filing a weekly entry from an FTZ in accordance with § 146.63(c)(1) of this chapter at the time of entry summary.

(5) *Recordkeeping.* Documents supporting the information required in EPA Declaration Form 3520–1 must be retained by the importer for a period of at least five (5) years in accordance with § 163.4 of this chapter and must be provided to CBP upon request.

(6) *Documentation for diplomatic or foreign military personnel exemption.* In order for a diplomat or foreign military personnel to claim an exemption pursuant to paragraph (g)(2) of this section, CBP must receive a Department of State-approved form DS–1504 (“Request for Customs Clearance of Merchandise”) or its electronic equivalent.

(j) *Release under bond.* If an EPA declaration form filed in accordance with paragraph (i)(3) of this section states that the entry is being filed under one or more of the exemptions and exclusions identified in paragraph (h)(1), (2), (3), or (4) of this section, the entry will be accepted only if the importer, consignee, or surety, as appropriate, files a basic importation and entry bond containing the bond conditions set forth in § 113.62 of this chapter, or files electronically in ACE or via any other CBP-authorized electronic data interchange system. The importer or consignee must deliver to CBP, either at the port of entry or electronically, documentation of EPA approval before the exemption or exclusion indicated on the EPA declaration form expires, or before some later deadline specified by the Center director based on good cause. If the EPA approval is not delivered to the port director within the specified period, the importer or consignee must deliver or cause to be delivered to the port director those vehicles which were released under a bond required by this paragraph. In the event that the vehicle or engine is not redelivered within five (5) days following the date the exemption or exclusion indicated on the EPA declaration form expires, or any later deadline specified by the port director, whichever is later, liquidated damages will be assessed in

the full amount of the bond, if it is a single entry bond, or if a continuous bond is used, in the amount that would have been assessed under a single entry bond.

(k) *Notices of inadmissibility or detention.* If a motor vehicle is determined to be inadmissible before or after release from CBP custody, the importer or consignee will be notified in writing of the inadmissibility determination and/or redelivery requirement. However, if a motor vehicle cannot be released from CBP custody merely because the importer has failed to attach to the entry the documentation required by paragraph (i) of this section, the vehicle will be held in detention by the port director for a period not to exceed 30-calendar days after filing of the entry at the risk and expense of the importer pending submission of the missing documentation. An additional 30-calendar day extension may be granted by the port director upon application for good cause shown. If the requisite EPA declaration form required pursuant to paragraph (i)(3) of this section has not been filed within this deadline, which must not exceed 60 days from the date of entry, CBP will issue a notice of inadmissibility.

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(m) *Prohibited importations.* The importation of motor vehicles other than in accordance with this section and the EPA regulations in 40 CFR parts 85, 86, 600, 1036, 1037, and 1068 is prohibited.

■ 4. In 12.74:

■ a. The section heading and paragraphs (a) through (d) are revised; and

■ b. Paragraph (e) is amended by removing the word “shall” and adding in its place the word “must”.

The revisions read as follows:

§ 12.74 Importation of nonroad and stationary engines, vehicles, and equipment.

(a) *Applicability of EPA regulations.* The requirements governing the importation of nonroad and stationary engines subject to conformance with applicable emission standards of the U.S. Environmental Protection Agency (EPA) are contained in 40 CFR parts 1033 through 1068. These EPA regulations should be consulted for detailed information as to the admission requirements for subject nonroad and stationary engines. EPA emission regulations also apply to vehicles and equipment with installed engines and all references in this section to nonroad or stationary engines include the vehicles and equipment in which the engines are installed. Nothing in this section may be construed as limiting or changing in any way the applicability of the EPA regulations.

(b) *Documentation requirements*—(1) *Exception for certain companies that manufacture and import nonroad or stationary engines, including engines incorporated into vehicles and equipment.* The special documentation requirements of this paragraph (b) do not apply to the importation of nonroad or stationary engines, including engines incorporated into vehicles or equipment, by the company that manufactures the engines, provided that the engines are covered by a valid EPA Certificate of Conformity (COC) held by the importing manufacturer and bear the manufacturer's label showing such conformity and other EPA-required information.

(2) *Release.* CBP will not release engines, vehicles, or equipment from custody unless the importer has submitted all required documents to demonstrate that the engines, vehicles, or equipment meet all applicable requirements.

(3) *Required EPA documentation.* Importers of nonroad or stationary engines, including engines incorporated into vehicles and equipment, must submit EPA Declaration Form 3520–21, “Importation of Engines, Vehicles, and Equipment Subject to Federal Air Pollution Regulations,” to CBP at the time of entry, or when filing a weekly entry from an FTZ in accordance with § 146.63(c)(1) of this chapter at the time of entry summary.

(4) *Filing method.* EPA Declaration Form 3520–21 may be filed with CBP electronically in the Automated Commercial Environment (ACE) or via any other CBP-authorized electronic data interchange system, or as a paper filing, at the time of entry, or when filing a weekly entry from an FTZ in accordance with § 146.63(c)(1) of this chapter at the time of entry summary.

(5) *Recordkeeping.* Documents supporting the information required in EPA Declaration Form 3520–21 must be retained by the importer for a period of at least five (5) years in accordance with § 163.4 of this chapter and must be provided to CBP upon request.

(c) *Release under bond*—(1) *Conditional admission.* If the EPA declaration form states that the entry for a nonconforming nonroad engine is being filed under one of the exemptions described in paragraph (c)(3) of this section, under which the engine may be conditionally admitted under bond, the entry will be accepted only if the importer, consignee, or surety, as appropriate, files a basic importation and entry bond containing the bond conditions set forth in § 113.62(c) of this chapter, or files electronically in ACE or via any other CBP-authorized electronic data interchange system.

(2) *Final admission.* Should final admission be sought and granted pursuant to EPA regulations for an engine conditionally admitted initially under one of the exemptions described in paragraph (c)(3) of

this section, the importer or consignee must deliver to the port director the prescribed statement. The statement must be delivered within the period authorized by EPA for the specific exemption, or such additional period as the port director of CBP may allow for good cause shown. Otherwise, the importer or consignee must deliver or cause to be delivered to the port director the subject engine, either for export or other disposition under applicable CBP laws and regulations (*see* paragraph (e) of this section). If such engine is not redelivered within five (5) days following the allotted period, liquidated damages will be assessed in the full amount of the bond, if a single entry bond, or if a continuous bond, the amount that would have been assessed under a single entry bond (*see* 40 CFR 1068.335).

(3) *Exemptions.* EPA regulations in 40 CFR parts 60 and 1033 through 1068 allow for exempting or excluding imported engines from certification requirements (*see* especially 40 CFR part 1068, subpart D). The specific exemptions under which a nonconforming nonroad engine may be conditionally admitted, and for which a CBP bond is required, are as follows:

- (i) Repairs or alterations (*see* 40 CFR 1068.325(a)).
- (ii) Testing (*see* 40 CFR 1068.325(b)).
- (iii) Display (*see* 40 CFR 1068.325(c)).
- (iv) Export (*see* 40 CFR 1068.325(d)).
- (v) Diplomatic or military (*see* 40 CFR 1068.325(e)).
- (vi) Delegated assembly (*see* 40 CFR 1068.325(f)).
- (vii) Partially complete engines, vehicles, or equipment (*see* 40 CFR 1068.325(g)).

(d) *Notice of inadmissibility or detention.* If an engine is found to be inadmissible either before or after release from CBP custody, the importer or consignee will be notified in writing of the inadmissibility determination and/or redelivery requirement. If the inadmissibility is due to the fact that the importer or consignee did not file the EPA Declaration Form 3520–21 at the time of entry, or when filing a weekly entry from an FTZ in accordance with § 146.63(c)(1) of this chapter at the time of entry summary, the port director may hold the subject engine in detention at the importer’s risk and expense for up to 30 days from the entry filing date. The port director may grant the importer’s request for a 30-day extension for good cause. The port director will issue a notice of inadmissibility if documentation is still incomplete after this deadline, which must not exceed 60 days from the filing date for importation.

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Dated: December 20, 2016.

R. GIL KERLIKOWSKA,
Commissioner,
U.S. Customs and Border Protection.

TIMOTHY E. SKUD,
Deputy Assistant
Secretary of the Treasury.

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