



Chemical Weapons Convention Bulletin

Department of Commerce
Bureau of Industry and Security

Notice of Change in Inspection Status of Unscheduled Discrete Organic Chemical (UDOC) Plant Sites, and Amendments to Records Review and Recordkeeping Requirements

Summary

On March 28, 2007, the Bureau of Industry and Security (BIS) published in the *Federal Register* a final rule to amend 15 CFR Parts 715, 716, and 721 of the Chemical Weapons Convention Regulations (CWCR). These revisions expedite the collection of information concerning the inspection status of plant sites that produce unscheduled discrete organic chemicals (UDOCs) subject to the declaration requirements of the CWCR, and clarify the scope of the records review and recordkeeping requirements for scheduled chemicals and UDOCs.

Expediting the Collection of UDOC Information

The revised CWCR adds a new form and provides for early submission of the Annual Declaration of Past Activities (ADPA) for certain UDOC plant sites. These changes provide a means to determine whether UDOC plant sites are inspectable during the first 90 days of a calendar year before the ADPA is due to the Organization for the Prohibition of Chemical Weapons (OPCW). UDOC plant sites are subject to inspection based on the production quantities indicated in the ADPA. Each declarable UDOC plant site is required to submit an ADPA to BIS by February 28th of the year following the calendar year in which the activities took place. The United States then submits such declarations to the OPCW no later than 90 days after the beginning of each calendar year as required by the CWC (i.e., usually March 31).

“90-Day Gap.” The fact that UDOC plant sites are only subject to inspection based on the previous calendar year’s activities, coupled with the March 31 deadline for submitting UDOC ADPAs to the OPCW, created a 90-day gap at the beginning of each calendar year during which the inspection status of UDOC plant sites could not be determined by the OPCW. The OPCW regards plant sites previously subject to inspection as inspectable until a State Party submits its ADPAs. This created the possibility that a UDOC plant site in the United States could receive an inspection notification during the first 90 days of the next calendar year, even if it was not subject to inspection. Because the CWCR only impose inspection obligations on UDOC plant sites that produced by synthesis more than 200 MT aggregate during the previous calendar year, BIS was precluded during this 90-day period from authorizing

an inspection that would have conflicted with the CWCR. BIS recognized that universal application of such an approach would interfere with the conduct of UDOC inspections by the OPCW during the first 90 days of each calendar year, and possibly undermine the verification regime of the CWC.

New “Change In Inspection Status Form (CISF).” In order to eliminate the “90-day gap” problem, BIS has revised the annual declaration requirements for UDOCs to allow a declared plant site currently subject to inspection, that anticipates its production of UDOCs during the current calendar year will be below the inspection threshold level, to submit a newly created Change in Inspection Status Form (CISF) to BIS, so that BIS can inform the OPCW that the plant site will not be subject to inspection during the next calendar year. This new form must be submitted to BIS no later than December 15th of the current calendar year (i.e., the year in which UDOC production is anticipated to be below the inspection threshold level). The U.S. Government will then inform the OPCW that the plant site will not be subject to inspection during the next calendar year. A plant site that submits a CISF to BIS is still required to submit an ADPA by February 28th of the following year unless an ADPA is submitted early as described below.

Option for Early Submittal of the ADPA. Certain plant sites have the option of submitting their ADPA in lieu of the CISF. In choosing this alternative, these plant sites will have to submit their ADPA to BIS by December 15th of the current calendar year instead of February 28th of the following year, as is normally required under the CWCR. The only UDOC plant sites that will be eligible to use this option are those that: 1) are currently inspectable based on the previous year’s activities; and 2) anticipate producing by synthesis one or more PSF chemicals¹ during the current calendar year in quantities that would require them to submit an ADPA to BIS but that would be below the CWCR inspection threshold.² Such a plant site may submit an ADPA by December 15 rather than by February 28 of the following calendar year.

Failure to Submit CISF or Early ADPA. The U.S. Government will inform the OPCW of a change in inspection status by December 31 of a calendar year to

¹ PSF chemicals are UDOCs containing the elements phosphorus, sulfur or fluorine.

² These are plant sites that contain at least one plant that anticipates producing in excess of 30 metric tons of an individual PSF chemical, but that do not anticipate producing by synthesis in excess of 200 metric tons aggregate of all UDOCs during the current calendar year.



Chemical Weapons Convention Bulletin

Department of Commerce
Bureau of Industry and Security

ensure that an eligible plant site is not subject to inspection during the next calendar year. If no CISF or ADPA is submitted to BIS by December 15, the plant site will remain subject to inspection during the next calendar year regardless of its production levels. The annual declaration requirements of Part 715 of the CWCR will also apply.

Amending a CISF or Early ADPA. If a UDOC plant site determines subsequent to submitting a CISF that the production by synthesis of UDOCs at the plant site actually exceeded the UDOC inspection threshold level, the plant site must submit an ADPA by February 28 and explain on Form B why the plant site exceeded the UDOC inspection threshold. In addition, any UDOC plant site that chooses the option of submitting its ADPA to BIS by December 15th in lieu of a CISF and subsequently determines that the production by synthesis of UDOCs at the plant site actually exceeded the UDOC inspection threshold, must submit by February 28 an amendment to its ADPA indicating this fact and explaining on Form B why the plant site exceeded the UDOC inspection threshold.

Plant Sites That Ceased Production of UDOCs. The CWCR do not require declared plant sites to notify BIS or submit a declaration for cessation of production activities during the current or previous calendar year or production of less than 30 MT of an individual PSF chemical at a plant on the plant site. It is recommended, however, that such plant sites voluntarily inform BIS of such changes in status of plant sites. The CISF may be used for this purpose by indicating the status of the plant site in Question B.7. Plant sites may also voluntarily notify BIS via e-mail (cwcqa@bis.doc.gov), letter, or telephone.

Recordkeeping

The revised CWCR also clarify the scope of the records review requirements for inspections conducted during the first 90 days of a calendar year at a facility that has not yet submitted its current year ADPA. Section 716.4(e) is amended to clarify that a facility hosting an inspection must provide the inspection team with access to all supporting materials and documentation used by the facility to prepare declarations and to otherwise comply with the CWCR, including records related to activities that have taken place at the facility since the beginning of the previous calendar year (i.e., up to and including the date of the inspection), regardless of whether or not the facility has submitted its ADPA to BIS at the time of the inspection.

In addition, Section 716.4(e) of the CWCR is amended to ensure that the records review requirements for inspections

fully support achievement of the inspection aims described in Part 716 of the CWCR. Since BIS began hosting inspections, the standard practice has been for facilities to provide, as appropriate, records associated with the movement into, around, and from the facility of declared chemicals and their feedstock or product chemicals formed from such chemicals and feedstock. OPCW inspection teams require access to these types of records in order to accomplish the aims of the inspection, as described in Parts VI-IX of the Verification Annex of the CWC and in Part 716 of the CWCR. Parts VI-IX of the CWC Verification Annex establish the general and specific aims for inspections, including verification of the absence of Schedule 1 chemicals and the non-diversion of Schedule 1 and Schedule 2 chemicals. Part 716 of the CWCR describes these CWC inspection aims and establishes requirements for providing inspection teams with access to records in order to achieve these aims. Prior to the publication of the revised CWCR, Section 716.4(e) did not clearly indicate that facilities were required to make available to the inspection team all supporting materials and documentation associated with the movement into, around, and from the facility of declared chemicals and their feedstock or any product chemicals formed from such chemicals and feedstock. Therefore, Section 716.4(e) is amended to indicate that the facility must make all such records available to the inspection team.

Consistent with the clarification to Section 716.4(e) of the CWCR described above, the recordkeeping provisions in Section 721.2(a) of the CWCR are amended to specifically require that each facility subject to inspection under Part 716 retain all records associated with the movement into, around, and from the facility of declared chemicals and their feedstock or any product chemicals formed from such chemicals.

As a point of clarification, please note that UDOCs are not considered declared chemicals because they are not individually identified in declarations. Furthermore, demonstration of non-diversion is not an inspection aim during UDOC plant site inspections. Therefore, any inspector access to records during such inspections will be related to meeting the inspection aims of verifying activities are consistent with declarations and the absence of Schedule 1 chemicals.

Further Information

Please visit our website at www.cwc.gov or contact BIS's Treaty Compliance Division at (202) 482-1001 or fax (202) 482-1731.