



Summary of Proposed Changes to the Chemical Weapons Convention Regulations

Department of Commerce
Bureau of Industry and Security

Proposed Rulemaking:

Summary of CWCR Changes

On December 7, 2004, the Bureau of Industry and Security (BIS) proposed revisions to the CWC Regulations (CWCR) (15 CFR 710 et seq.). The following is a summary of the proposed amendments:

Part 710 - General Information and Overview of the Chemical Weapons Convention Regulations

Definitions – The proposed rule adds definitions for the following terms. The terms denoted with an asterisk (*) are treaty specific; the other terms are used for general CWCR implementation.

- advanced notifications of Schedule 1 chemicals*
- inspection notification
- inspection site
- intermediate and transient intermediate chemicals*
- International Traffic in Arms Regulations (ITAR)
- production of Schedule 1, 2 and 3 chemicals *
- production by synthesis*
- protective purposes in relation to Schedule 1 chemicals

Scope – The proposed rule clarifies in §710.2 that all persons and facilities located in the United States, except the noted U.S. Government facilities, are subject to the CWCR. The current CWCR state the scope of the CWCR in terms of those persons or facilities required to submit declarations, reports or advanced notifications.

List of States Parties – The proposed rule updates Supplement No. 1, List of States Parties to the CWC, to add new countries that have acceded to the treaty.

Definitions of Production – The proposed rule adds a new Supplement No. 2, Definitions of Production, in which the different treaty definitions of production in relation to Schedule 1, 2 and 3 chemicals and unscheduled discrete organic chemicals (UDOCs) are provided in table format.

Part 711 - General Information Regarding Requirements for Declaration, Report, Advance Notifications and

Electronic Filing of Declarations and Reports

Compliance Review – The proposed rule adds a new §711.3 to clarify that BIS may request information from persons and facilities subject to the CWCR (see §710.2) to determine their compliance with the production, processing, consumption, export, and import requirements of the CWCR. Any person or facility subject to the CWCR and receiving such a request for information will be required to provide a response to the Department of Commerce within the time-frame specified in the request. This requirement does not, in itself, impose a requirement to create new records or maintain existing records. However, BIS may request such persons or facilities to submit records in support of such compliance reviews.

Submission of Electronic Declarations and Reports – The proposed rule adds new §711.7 to provide addresses for submission of declarations, reports and notifications. The current §711.7 is renumbered to §711.8 (electronic submissions of declarations or reports). Electronic submission was implemented on January 16, 2004 (69 Fed. Reg. 2501, January 16, 2004) to allow persons and facilities to submit declarations, reports, and amendments over the internet through Web-Data Entry Software for Industry (Web-DESI). BIS will also maintain at least until December 31, 2004, its current electronic tool, DESI, which is a software product that facilities download onto their personal computers for use in completing declarations, reports and amendments. In addition, facilities may submit paper declarations, reports and amendments. Paper forms are available for downloading from the internet or facilities may contact BIS to request a mailing of the forms.

Part 712 -- Activities Involving Schedule 1 Chemicals

Protective Purposes – The proposed rule adds a new restriction clarifying that Schedule 1 chemicals may not be produced for protective purposes in accordance with the CWC. (A definition for protective purposes is also proposed to be added to Part 710.) Currently, the CWCR do not specify for which activities a Schedule 1 chemical may be produced.

Advanced Notifications for Exports and Imports of Schedule 1 Chemicals – The proposed rule clarifies that advanced



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notifications for proposed exports or imports of 5 milligrams or less of saxitoxin for medical/diagnostic purposes must be submitted to BIS at least 3 days prior to transfer in accordance with an Organization for the Prohibition of Chemical Weapons (OPCW) decision. Currently, the CWCR require a 45 day advance notification for export or import of all Schedule 1 chemicals.

Schedule 1 Initial Declarations – The proposed rule clarifies that Initial Declarations submitted in February 2000 remain valid until rescinded. The proposed rule further clarifies that new facilities intending to produce more than 100 grams aggregate must submit an initial declaration at least 200 days in advance of commencing such activity.

Amendments – The proposed rule clarifies the requirements and deadlines for submission of amendments to declarations and reports when there are changes to: 1) chemicals and activities; 2) export and import information; 3) ownership of a company or facility; and 4) internal company information, such as the declaration or inspection points of contact. Additionally, the proposed rule adds a new requirement and deadline for submission of amendments resulting from an inspection finding. These changes also are made in Parts 713 (Schedule 2), 714 (Schedule 3), and 715 (UDOCs).

Declarations and Reports Returned Without Action – The proposed rule adds a new provision for returning without action (RWA) declarations and reports that BIS determines are not required under the CWCR. This provision codifies BIS's practice of returning such declarations and reports in order to protect confidential business information. These changes also are made in Parts 713 (Schedule 2), 714 (Schedule 3), and 715 (UDOCs).

Supplement No. 2 to Part 712 - Table on Deadlines for Submission of Declarations, Advanced Notifications, Reports, and Amendments – The proposed rule adds a new Supplement 2 in which updated due dates for submission of declarations, advanced notifications, reports and amendments are outlined in table format. The current CWCR contain this same information under a different provision. Additionally, the due date for Schedule 1 Annual Declarations on Anticipated Activities (ADAA) is changed from August 3^d to September 3^d thereby increasing the

reporting time period by 30 calendar days and aligning with the ADAA deadlines for Schedule 2 and 3. Corresponding changes also are made to address Parts 713 (Schedule 2), 714 (Schedule 3), and 715 (UDOCs).

Part 713 -- Activities Involving Schedule 2 Chemicals

Prohibition on Exports and Imports – The proposed rule updates the prohibition against exports of Schedule 2 chemicals to States not Party to the CWC, by removing the effective date for the prohibition (April 27, 2000).

Exemption on Exports and Imports of Schedule 2 Mixtures – The proposed rule implements an OPCW decision by clarifying that mixtures containing 1% or less by weight of a Schedule 2A chemical or 10% or less by weight of a Schedule 2B chemical are exempt from the Schedule 2 export/import prohibition (above) and may be exported to or imported from a State not Party to the CWC. The proposed rule also adds a clarification that products containing Schedule 2 chemicals that are identified as consumer goods packaged for retail sale for personal use or packaged for individual use are exempt from the prohibition on export to or import from a State not Party to the CWC.

Initial Declarations and Reports and Declarations on Past Production for Chemical Weapons Purposes – The proposed rule removes the reporting requirement for: 1) Initial Declarations; 2) Initial Reports on Exports and Imports; and 3) Declaration on Chemicals Produced for Chemical Weapons Purposes. These declarations and reports involved a one-time reporting requirement that has been completed and is, therefore, no longer applicable. These changes are also made in Parts 714 (Schedule 3) and 715 (UDOCs).

Production – The proposed rule implements an OPCW decision by clarifying the scope of production activities to include 1) any associated processing steps of the Schedule 2 chemical and 2) intermediates. Only transient intermediates are exempted. This will ensure that the CWCR requirements will apply to Schedule 2 chemical production where Schedule 2 chemicals are below the applicable concentration threshold when reacted, but subsequently are concentrated above the threshold during in-line processing.



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Part 714 -- Activities Involving Schedule 3 Chemicals

Production – Same clarifications as identified above under Part 713 - Activities Involving Schedule 2 Chemicals.

Part 715 – Activities Involving Unscheduled Discrete Organic Chemical (UDOCs)

UDOC “No Changes” Certification Form – The proposed rule creates a new form called the “No Changes” Certification Form that may be submitted by a plant site to declare no updates or changes to information declared in the previous Annual Declaration on Past Activities. The plant site’s activities would continue to be declared to the OPCW and would remain subject to inspection (if applicable) based upon the data reported in the previous annual declaration on past activities. The “no changes” form is intended to reduce paperwork burdens.

Part 716 - Initial and Routine Inspections of Declared Facilities

Inspections – The proposed rule clarifies that an initial inspection is required for a new Schedule 2 plant site within the first year after submitting a declaration if at least one plant on the plant site produced, processed or consumed or anticipates to produce, process or consume above the applicable threshold quantity in accordance with the CWC.

The proposed rule clarifies that the scope of inspections may include visual inspection of parts or areas of the plant site (e.g., reaction vessels and ancillary equipment, control equipment), in addition to the facilities or plants producing scheduled chemicals, in order to address any ambiguity that might arise during the inspection. The proposed rule also clarifies that photographs may be taken and formal interviews of facilities of facility personnel may be conducted.

Further, the proposed rule clarifies that technical data subject to the International Traffic in Arms Regulations (ITAR) shall not be divulged to the OPCW Inspection Team without U.S. Government authorization. Facilities being inspected are responsible for identifying ITAR-controlled technology to the BIS Host team, if known.

Facility Agreements – The proposed rule clarifies that a Schedule 1 facility agreement should, to the extent

possible, be concluded by the U.S. National Authority (in coordination with BIS) with the OPCW before a new Schedule 1 facility produces more than 100 grams aggregate of Schedule 1 chemicals.

Records Review – The proposed rule clarifies that the facility must provide the OPCW Inspection Team and the U.S. Government Host Team with appropriate accommodations in which to review relevant documents and must ensure that all relevant information will be available to the teams. In addition, this rule provides that, whenever a facility does not have access to records for activities that took place under previous ownership, the Host Team will contact the previous owner of the facility to request that such records be made available for verification (for provision to the Inspection Team).

Sample Taking – The proposed rule clarifies that the analysis of samples provided by the owner, operator, occupant or agency in charge of a facility will be restricted to verifying the absence of undeclared scheduled chemicals unless agreed otherwise.

Final Inspection Report – The proposed rule adds a new provision to clarify that, upon receipt of the final inspection report from the OPCW, BIS will send a copy to the facility for its review. Facilities may submit comments on the inspection report to BIS, and BIS will consider those comments, to the extent possible, when commenting on the final report with the OPCW. BIS will also send facilities a post-inspection letter with instructions based on decisions made during the inspection (e.g., require submission of an amended declaration).

Part 717 – Clarification of Possible non-Compliance with the Convention; Challenge Inspection Procedures

Clarification Requests – The proposed rule clarifies that BIS will contact a person or facility subject to an Article IX clarification request as early as practical prior to the issuance of an official written request for clarification. The rule further clarifies that a response to a clarification request should be submitted within five working days from receipt of an official written request from BIS.

Consent to Challenge Inspection – The proposed rule adds a new provision to limit the time within which a person or



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facility must respond to a challenge inspection notification to four hours. If consent is not granted within four hours, BIS will seek a criminal warrant.

Pre-Inspection Briefing – The proposed rule adds a new provision that describes the requirement for a pre-inspection briefing for challenge inspections. Specifically, the proposed rule will require that, prior to the commencement of the challenge inspection, facility representatives must provide the OPCW Inspection Team and Host team with a pre-inspection briefing on the facility to include: 1) the types of activities being conducted at the facility; 2) safety procedures that must be followed during the inspection; and 3) administrative and logistical arrangements necessary to facilitate the inspection.

Sample Taking – The proposed rule revises the provision to restrict analysis of samples to verifying the presence or absence of scheduled chemicals or appropriate degradation products unless agreed otherwise.

Post-Inspection Activities – Addition of the same provision as identified under Part 716, Initial and Routine Inspections of Declared Facilities.

Further Information

To learn more about the CWCR, please visit our website at www.cwc.gov or contact BIS's Treaty Compliance Division at (703) 605-4400 or fax (703) 605-4424.