

## Export Administration Regulations

### PAPERWORK REDUCTION ACT ANALYSIS

#### Supporting Statement for Chemical Weapons Convention Provisions of the Export Administration Regulations

OMB Control No.0694-0117

---

**Approved: August 25, 2009**

**Expiration: August 31, 2012**

#### A. JUSTIFICATION

##### 1. Explain the circumstances that make the collection of information necessary.

The Chemical Weapons Convention (CWC) is a multilateral arms control treaty that seeks to achieve an international ban on chemical weapons (CW). The CWC prohibits the use, development, production, acquisition, stockpiling, retention, and direct or indirect transfer of chemical weapons. It entered into force on April 29 1997.

On October 21, 1998, the United States enacted the Chemical Weapons Convention Implementation Act (Pub. L. 105- 277, Division I) (the "Act" or CW CIA) to implement the CWC. This Act authorizes the collection of information on defined activities involving certain chemicals covered by the CWC, as well as hosting of on-site inspections by the Organization for the Prohibition of Chemical Weapons (OPCW), the organization responsible for administering and verifying CWC compliance worldwide. Executive Order 13128 delegates authority to the U.S. Department of Commerce (DOC) to promulgate regulations, obtain and execute warrants, provide assistance to certain facilities, and carry out appropriate functions to implement the CWC, consistent with the Act. DOC's CWC Regulations (15 C.F.R. 710, et seq.) require facilities involved in CWC-covered activities and chemicals at specific threshold amounts to submit advanced notifications, annual declarations and reports, and submit to on site inspections. The declarations and reports contain information on quantities produced, processed, consumed, exported, and/or imported by the facility.

The Bureau of Industry and Security (BIS) of the Department of Commerce is responsible for receiving industry notifications, declarations and reports and submitting them to the United States National Authority (USNA), the Department of State, which coordinates CWC implementation. The USNA forwards declarations received from the Department of Commerce, as well as from other U.S. agencies, to the OPCW.

The CWC requires the United States to impose *trade controls* on certain toxic and precursor

chemicals specified by category or ASchedule@ in its Annex on Chemicals. BIS amended the Export Administration Regulations (EAR) on May 18, 1999, to implement the export control provisions of the CWC. For additional background information on implementation of the export control provisions of the CWC, see the May 18, 1999, EAR amendment on our web site [www.cwc.gov](http://www.cwc.gov). States Parties to the CWC may only export Schedule 1 chemicals to other States Parties, must provide advance notification of exports of any quantity of a Schedule 1 chemical, and must submit annual reports of exports of such chemicals during the previous calendar year (CY). The CWC prohibits exports of Scheduled chemicals to non-States Parties, except exports of a Schedule 3 chemical to a non-State Party is not prohibited if an end-use certificate issued by the government of the importing country is obtained. Certain of these documents must be submitted to the OPCW. Additionally, the United States imposes unilateral export controls on technology to produce certain Schedule 2 and Schedule 3 chemicals for export to Non-States Parties, except to Israel and Taiwan.

**2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.**

**Schedule 1 notification and annual report:** Part VI of the CWC Verification Annex, requires the United States to notify the OPCW at least 30 days before any proposed transfer (export/import) of Schedule 1 chemicals to another State Party. The United States is also required to submit an annual declaration to the OPCW on all actual transfers of Schedule 1 chemicals.

Exporters are required to submit an advance notification at least 45 days prior to a proposed export of any amount of Schedule 1 chemicals, except for exports of 5 milligrams or less of Saxitoxin (ECCN 1C351(d)(6)), for medical/diagnostic purposes only, may be submitted to BIS at least 3 calendar days prior export. Exporters are also required to submit an annual report of actual exports that occurred during the previous year. BIS analyzes each Schedule 1 notification for completeness and accuracy, and transmits the notifications to the USNA for transmittal to the OPCW. BIS also analyzes the actual export data submitted by exporters and compiles an aggregate national declaration reflecting all exports from United States that occurred during the previous year. BIS reconciles the annual reports submitted by exporters with Schedule 1 advance notifications received to determine if all proposed exports were made. The annual aggregate national declaration is transmitted to the USNA for transmittal to the OPCW.

This advance notification and export report process permits the OPCW to monitor worldwide trade in Schedule 1 chemicals and also provides oversight to ensure that no State Party exceeds the treaty mandated one metric ton limit on possession of Schedule 1 chemicals.

**Schedule 3 End-use certificates:** Part VIII of the CWC Verification Annex, requires the

United States to obtain end-use certificates for the transfer of Schedule 3 chemicals to non-States Parties to ensure the chemicals are only used for purposes not prohibited under the Convention. The EAR requires exporters to submit an end-use certificate to BIS 7 days in advance of export to the issuing government: 1) certify that the chemicals being imported will not be used for purposes contrary to Article I of the Convention; 2) certify that the chemicals will not be re-transferred; 3) identify the types and quantities of chemicals to be imported; 4) identify the end-use(s) of the chemicals; and 5) identify the name(s) and address(es) of the end-user(s). BIS reviews each end-use certificate to verify the proposed export transaction is in compliance with our obligations under the Convention as well as export license and CWC transfer requirements.

**Unilateral technology control on certain Schedule 2 and Schedule 3 chemicals:** The United States imposes unilateral controls on production technology for certain Schedule 2 and Schedule 3 chemicals under Export Control Classification Number (ECCN) 1C355E for export to Non-States Parties, except to Israel and Taiwan. Application for export of this production technology will be considered on a case-by-case basis.

The Section 515 Information Quality Guidelines apply to this information collection and comply with all applicable information quality guidelines, i.e., OMB, Department of Commerce, and specific operating unit guidelines.

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.**

BIS developed Web Data Entry Software for Industry (Web-DESI), an internet-based application that allows industry to securely submit CWC declarations and reports for Schedule 1, 2, and 3 chemicals and unscheduled discrete organic chemicals (UDOCs) via the Internet. Web-DESI is a voluntary tool designed to reduce the burden on industry in complying with CWC declaration and report requirements. Web-DESI is located at URL: [http://www.cwc.gov/declarations\\_webdesi.html](http://www.cwc.gov/declarations_webdesi.html). Currently only Schedule 1 annual reports can be submitted via Web-DESI. The application will be updated in the near future to add the capability for submitting Schedule 1 advance notifications.

Schedule 1 advance notifications are initiated by the exporter (and importer) on their letterhead. Schedule 3 end-use certificates are either an official form or a letter issued by the importing government; therefore end-use certificates cannot be submitted electronically. The ultimate consignee receives the end-use certificate from the importing government and transmits it to the exporter for submission to BIS. Facsimile copies of the Schedule 1 advance notifications and Schedule 3 end-use certificates are accepted by BIS. License applications for the export of technology to produce Schedule 2 and 3 chemicals controlled under ECCN 1E355 may be submitted electronically via BIS's Simplified Network Application Process (SNAP).

**4. Describe efforts to identify duplication.**

The information required by this collection is specific to individual export transactions and is not duplicated or collected elsewhere.

**5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burdens.**

This collection will not have a significant impact on small entities.

**6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.**

The CWC requires advance notifications of exports of Schedule 1 chemicals, annual reports for exports of Schedule 1 chemicals, and end-use certificates for exports of Schedule 3 chemicals to a non-State Party. If collection was less frequent or not conducted at all, the United States would not be able to meet its treaty obligations and would place the United States in the position of non-compliance with relevant treaty provisions.

**7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.**

There are no special circumstances that will result in the collection of information in a manner inconsistent with the guidelines of 5 CFR 1320.6.

**8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

The notice requesting public comment was published in the Federal Register on March 3, 2009, Vol. 74, page 9217. No comments were received.

**9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.**

There will be no payment or gift to respondents.

**10. Describe any assurance of confidentiality provided to respondents and the basis for**

**assurance in statute, regulation, or agency policy.**

The Confidentiality Annex of the CWC protects confidential business information (CBI) by mandating that the OPCW requires only the minimum information and data necessary to carry out its CWC responsibilities, insuring its employees' integrity and specifying precisely the information to which it will give access to a State Party.

Additionally, the Director-General of the OPCW's Technical Secretariat is charged with primary responsibility for protecting CBI. The Technical Secretariat must evaluate data received for CBI. Furthermore, no information obtained by the OPCW is to be released without following safeguards, and CBI access must be strictly protected and regulated. Employees must obtain security clearances. States Parties may take measures they deem necessary to protect CBI during inspections. Finally, procedures have been established for measures to be taken in case of breaches of confidentiality.

The CWCIA also addresses confidentiality in which it exempts trade secrets and confidential commercial / financial information from the Freedom of Information Act (FOIA).

Further, pursuant to section 12(c) of the Export Administration Act (EAA), as amended, information obtained by this collection which is deemed confidential, or with reference to which a request for confidential treatment is made by the person furnishing such information, shall be exempt from disclosure under section 552 of title 5, United States Code, and such information shall not be published or disclosed unless the Secretary determines that the withholding thereof is contrary to the national interest. Although the Export Administration Act (EAA) has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p 783 (2002)), as extended most recently by the Notice of July 23, 2008 (73 FR 43603, July 25, 2008), has continued the EAR in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.**

There are no questions of a sensitive nature.

**12. Provide an estimate in hours of the burden of the collection of information.**

There are 17 burden hours associated with this collection. The burden hours have not changed. The hourly wage used for estimating the burden hours and cost is based on a GS-12/1 wage of \$32.40 per hour.

### **Schedule 1 Advance Notifications and Annual Reports:**

Schedule 1 advance notifications and annual reports on exports have a nominal impact on industry. BIS did not receive any Schedule 1 advance notifications or annual reports during CY 2008; therefore, BIS has used the Schedule 1 advance notifications and annual reports received during a three-year period (for reporting years 2006, 2007 and 2008), which were submitted by one company, to obtain the estimated burden estimate:  $0/0 + 2/2 + 0/0$ , respectively, = 4 Schedule 1 advance notifications and annual reports. BIS estimates it takes approximately 30 minutes to prepare and submit a Schedule 1 advance notification and a report. Accordingly, the estimated burden hours for completing these two documents are 2 hours ( $2 + 2 = 4 \times .5 = 2$ ). The estimated cost for completing these documents is \$64.80 (2 hour x \$32.40).

**Schedule 3 End-Use Certificates:** During calendar year 2008, BIS received 28 end-use certificates from 5 companies. End-use certificates are issued by the importing government and obtained by the ultimate consignee who transmits the certificate to the U.S. exporter for submission to BIS. This activity is estimated to take approximately 30 minutes. The estimated burden hour is 14 hours ( $28 \times .5 = 14$ ) and the cost is \$448.00 ( $14 \times \$ 32.40 = \$453.60$ ).

**Exports of technology to produce certain Schedule 2 and Schedule 3 chemicals.** The EAR imposes a unilateral license requirement for CW reasons for exports and reexports of certain technology controlled under ECCN 1E355 when destined to non-States Parties, except for Israel and Taiwan. Applications for such exports and reexports will be considered on a case-by-case basis. The EAR also imposes anti-terrorism (AT) controls on this technology controlled for exports and reexports to Cuba, Iran, North Korea, Sudan and Syria, consistent with the provisions of the EAA after consultation with the Secretary of State.

There has not been any export or reexport license applications received to date for technology to produce the Schedule 2 and Schedule 3 chemicals controlled under ECCN 1E355. However, for the purpose of this collection, BIS has estimated 1 hour to complete 1 export license application (under collection 0694-0088 for completing Form BIS-748 - Multi-Purpose Application – the standard estimated time is 58 minutes, which is rounded to 60 minutes for this collection only). The estimate is 1 hour burden time at a cost of \$32.40 ( $1 \times \$32.40 = \$32.40$ ).

### **13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).**

BIS estimates that companies will not incur additional costs (excluding the costs outlined in item 12) above their standard operating costs to comply with Schedule 1 advance notifications and annual reports and Schedule 3 end-use certificates.

### **14. Provide estimates of annualized cost to the Federal government.**

BIS estimates the annualized cost to process Schedule 1 advance notifications and annual export reports, Schedule 3 end-use certificates, and an export license application for technology to produce Schedule 2 and 3 chemicals is \$1211.23. This is based upon a GS-12/1 employee (\$32.40 per hour) performing these tasks and an overhead cost of 120%. The method used to calculate this cost estimate is as follows:

.5 hours x 2 Schedule 1 Advance Notification = 1 hour x \$32.40 = \$32.40 x 120% = \$71.28

.5 hours x 2 Annual Report = 1 hour x \$32.40 = \$32.40 x 120% = \$71.28

.5 hours x 28 End-User Certificates = 14 hours x \$32.40 = \$453.36 x 120% = \$997.39

1 hour x 1 BIS-748 Multi-Purpose Application for Schedule 2 and Schedule 3 production technology = 1 hour x \$32.40 = \$32.40 x 120% = \$71.28

**15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.**

The adjustment reported in Item 12 for Schedule 1 advance notifications and annual reports on exports is negligible. As in past years, trade in Schedule 1 chemicals is very limited due to the toxicity of these chemicals and their limited industrial use. The number of Schedule 3 end-use certificates received by BIS was marginally reduced due to the addition of new States Parties to the Convention, thereby decreasing the number of non-States Parties for which an end-use certificate would be required. And an additional 1 hour was added for the first time for applications to export technology to produce Schedule 2 and 3 chemicals.

**16. For collections whose results will be published, outline the plans for tabulation and publication.**

There are no plans to publish this collection.

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.**

Not applicable.

**18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.**

Not applicable.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

Not applicable.