



THE CHEMICAL WEAPONS CONVENTION REGULATIONS

Frequently Asked Questions and Answers on Industry Compliance



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THE CHEMICAL WEAPONS CONVENTION

The Chemical Weapons Convention (CWC) is an international arms control, disarmament and non-proliferation treaty that affects companies involved in the production, processing, consumption, import, and export of a range of commercial chemicals and related precursors. The Convention entered into force on April 29, 1997.

The Bureau of Industry and Security (BIS), U.S. Department of Commerce, which administers the Chemical Weapons Convention Regulations (CWCR) (15 CFR 710 et seq.) and CWC Amendment to the Export Administration Regulations (EAR) (15 CFR 734 et seq.), prepared this publication to provide general information to U.S. industry about its obligations under these two regulations.

INDUSTRY OBLIGATIONS UNDER THE CWCR

The U.S. chemical industry is dynamic and broad-based, encompassing over 12,000 plants that employ an estimated 1 million people. Chemical manufacturing facilities are located in every state. At \$90 billion annually, the U.S. chemical industry is the United States' largest exporting sector and has maintained a significant positive trade balance during the last decade. Given the importance of the chemical industry to U.S. industrial competitiveness, BIS recognizes the need to minimize cost burdens on industry and to prevent unauthorized disclosure of confidential business information (CBI) provided in declarations and reports, and during on-site inspections.

The Convention includes three lists, or "schedules," of toxic chemicals and their precursors that have legitimate medical, commercial and industrial uses, but may also be used as CW agents or as CW precursors. The Convention obligates States Parties to declare certain activities related to these scheduled chemicals. In addition, States Parties must declare activities related to unscheduled discrete organic chemicals (UDOCs). U.S. companies submit declarations on production, consumption, processing, imports, and exports, and reports on imports and exports to BIS. Individual declarations and aggregated reports are forwarded to the OPCW as part of the United States' national declaration.

The declaration and reporting requirements vary for

different chemicals. For example, UDOC declarations, which comprise the majority of declarations submitted to BIS, require the submission of only production ranges and plant site information. Inspection requirements also vary by chemical. Because declarations, reports, and inspections are site-specific, large companies with several facilities may submit information on more than one site.

The following paragraphs address some of the most frequently asked questions about the Convention and industry's obligations under the CWCR and CWC Amendment to the EAR.

Q: When did the CWC enter into force?

A: The CWC entered into force on April 29, 1997, exactly 180 days after the 65th country deposited its instrument of ratification with the United Nations. The States Parties to the CWC established the OPCW to administer the treaty and to ensure the international implementation of its provisions.

On May 18, 1999 BIS published revisions to the EAR that implement the export requirements of the CWC. BIS published an amended final CWCR, which implements the declaration, reporting, and inspection provisions of the CWC and CWCIA, on April 27, 2006.

Q: What is the role of the Department of Commerce?

A: The Department of Commerce is the Lead Agency responsible for industry compliance with the CWC. BIS handles CWC compliance issues for Commerce.

BIS's implementation objectives are to collect all necessary information from non-USG owned or leased entities for the United States to comply with its treaty obligations while minimizing the burdens on industry and maximizing the protection of CBI to the extent permitted by the CWCIA. BIS recognizes that the U.S. chemical industry is engaged in legitimate commerce and **NOT** in the CW business.

BIS's role includes a range of industry liaison

responsibilities, including the following:

- implementing the CWC Amendment to the EAR that specifies industry export obligations under the Convention.
- implementing the CWCR that specify industry's declaration, reporting, and inspection obligations in accordance with the CWCIA.
- implementing an industry outreach program to educate industry on its obligations under the CWC, CWCIA, CWCR, and CWC Amendment to the EAR.
- advising industry on regulatory requirements in declaration and report preparation.
- collecting data from U.S. industry via user-friendly data declaration and report forms, and software (i.e., Web Data Entry Software for Industry) that allows companies to submit responses electronically over the internet.
- advising industry of its obligations regarding possible on-site inspection.
- assisting U.S. companies with site assistance visits and advance teams prior to initial and routine inspections to minimize the disruption of legitimate company activities and to maximize the protection of CBI to the extent permitted by the CWCIA.
- representing U.S. industry in interagency and international fora to ensure that companies' equities are protected.

Q: What chemicals are subject to declaration and reporting requirements under the CWCR?

A: Chemicals covered by the CWCR are divided into three "schedules" based on

their possible utility in developing chemical weapons:

Schedule 1 covers known CW agents and their immediate precursors. These have very limited industrial and medical applications.

Schedule 2 covers chemicals and precursors that have some industrial uses.

Schedule 3 covers chemicals and precursors with broader commercial applications, some of which were formerly weaponized.

The CWC also covers "other relevant facilities" that produce **UDOCs**. UDOCs are discrete organic chemicals that contain the element carbon and that are not included in the Schedules of Chemicals.

Q: What is the estimated total number of declarable facilities (i.e., sites subject to declaration requirements)?

A: There are approximately 600 U.S. facilities that are declared and "inspectable," including about 75 facilities involved with scheduled chemicals.

Q: What are the thresholds that trigger declaration and reporting requirements and on-site inspections?

A: Companies must submit initial and annual declarations or reports to BIS if their activities exceed certain thresholds. The declaration or report thresholds may differ from inspection thresholds.

Facilities or trading companies that only submit reports to BIS on imports or exports are not "declared," and therefore, are not subject to inspection. Annual reports are used to prepare a national aggregate declaration; company-specific information is not forwarded to the OPCW.

The following are the thresholds for data declarations or reports, and on-site inspections:

Schedule 1 facilities that produced during the previous calendar year or anticipate producing in the next calendar year in excess of 100 grams aggregate of Schedule 1 chemicals must submit a data declaration and are subject to initial and routine inspections. Under the CWC Amendment to the EAR, any person or company exporting any quantity of a Schedule 1 chemical must notify BIS 45 days in advance of each shipment (with the exception of saxitoxin, which must be submitted at least three days in advance), and submit an annual report of all exports. Similar requirements for imports are contained in the CWCRC.

- **Schedule 2** plant sites that comprise one or more plants which produced, processed, or consumed a Schedule 2 chemical during any of the three previous calendar years or anticipate doing so in the next calendar year, have varying thresholds based on the chemical:

BZ: declaration threshold of 1 kg; inspection threshold of 10 kgs;

Amiton or PFIB: declaration threshold of 100 kgs; inspection threshold of 1 metric ton; or

All other Schedule 2 chemicals: declaration threshold of 1 metric ton; inspection threshold of 10 metric tons.

Schedule 2 plant sites declared for production, processing or consumption of a Schedule 2 chemical must also include in their declaration, inter alia, data on (i) domestic transfers of the declared chemical, and (ii) exports and imports of the declared chemical if the quantity of that chemical exported or imported was above the applicable declaration threshold.

Plant sites or trading companies that did not produce, process, or consume a Schedule 2 chemical above the declaration threshold, but exported or imported a Schedule 2 chemical above this threshold must submit an Annual Report on Exports and Imports to BIS.

- **Schedule 3** plant sites that comprise one or more plants which produced during the previous calendar year or anticipate producing in the next calendar year more than 30 metric tons of a Schedule 3 chemical must submit a data declaration. The inspection threshold is 200 metric tons aggregate of any Schedule 3 chemical. Declared Schedule 3 plant sites must also submit data on exports and imports of Schedule 3 chemicals if the quantity of a chemical exported or imported was above the declaration threshold.

Plant sites or trading companies that did not produce a Schedule 3 chemical above the declaration threshold, but exported or imported a Schedule 3 chemical above this threshold must submit an Annual Report on Exports and Imports to BIS.

- **Other Chemical Production Plant Sites** that produced during the previous year more than 200 metric tons aggregate of UDOCs, or a plant site that comprises one or more plants that produced more than 30 metric tons of a single UDOC containing phosphorus, sulfur, or fluorine (PSF-chemical) must submit a data declaration. Plant sites producing in excess of 200 metric tons aggregate of UDOCs or plant sites consisting of one or more plants producing in excess of 200 metric tons of a PSF chemical may be subject to routine inspections.

Q: The declaration instructions for UDOCs

indicate that plant sites should aggregate production of all UDOCs, including PSF chemicals. The declaration instructions also request specific information on the production of PSF chemicals. Does this procedure double-count PSF chemicals?

A: Yes. Under the CWCR, the definition of a UDOC includes PSF chemicals. Therefore, an aggregate of UDOC chemicals includes PSF chemicals. The CWCR require UDOC plant sites to declare:

- the aggregate amount of production of all UDOC chemicals (including all PSF chemicals) in excess of 200 metric tons;
- the number of plants (including all PSF plants) on the plant site involved in the production of all UDOCs;
- the number of plants that produced an individual PSF chemical in excess of 30 metric tons on the plant site; and
- the aggregate amount of production of PSF chemicals by each plant that produced an individual PSF chemical in excess of 30 metric tons.

The CWCR require this information because UDOC plant sites are capable of producing CWC scheduled chemicals that have been closely associated with CW agents.

Q: Are there exemptions from the declaration and reporting requirements?

A: The CWCR include a number of declaration and reporting exemptions:

UDOC plant sites are exempt from declaration requirements if they:

- produce hydrocarbons exclusively;
- produce explosives exclusively;
- produce oligomers and polymers

exclusively, whether or not containing PSF chemicals;

- produce inorganic chemicals such as carbon oxides, carbon sulfides, metal carbonates, and metal carbides;
- produce UDOCs via a biological or biomediated process; or
- produce UDOCs only as coincidental byproducts of a manufacturing or production process that are not isolated or captured for use or sale during the process and are routed to, or escape, from the waste stream of a stack, incinerator, or wastewater treatment system or any other waste stream.

Certain mixtures containing **Schedule 2 and 3** chemicals are exempt from declaration and reporting requirements if they contain less than (the lesser of volume or total weight):

- 30 percent concentration of a Schedule 2 chemical.
- 80 percent concentration of a Schedule 3 chemical.

Q: How can I determine if my chemical is a scheduled chemical or an UDOC, and if I have a declaration and/or reporting requirement?

A: You may call BIS's Treaty Compliance Division at 703-605-4400. A BIS specialist will assist companies in determining if their chemical(s) is listed on the CWCR's Schedules of Chemicals or is a UDOC. Specialists will answer questions regarding procedures for obtaining a chemical determination, completing declaration and report forms, and identifying exemptions from declaration or reporting requirements.

Q: On a declaration form, a facility must fill in the exact location (longitude and latitude in degrees, minutes, and seconds) of the plant or plant site. How

can the company get this information?

A: The facility can call the Treaty Compliance Division at 703-605-4400 and BIS will assist you in developing this information. A company may also gain this information from other sources: (1) reading a detailed U.S. Geological Survey topographical map; (2) using a Global Positioning System instrument; (3) using mapping software; or (4) consulting a local surveyor.

Q: How does industry submit declarations and report to BIS?

A: BIS has developed a user-friendly system that allows companies to submit declarations and report via the internet using the Web-Data Entry Software for Industry (Web-DESI) application on www.cwc.gov, or in written format. Further, BIS is committed to ensuring that the forms are easy to comprehend and are minimally burdensome. You may visit www.cwc.gov or call the Treaty Compliance Division at 703-605-4400 to learn more about Web-DESI and the forms, including how to obtain copies for your use.

Q: What declarations or reports need to be submitted to BIS annually?

A: **Schedule 1:** initial declaration (only if new facility) -- technical description of the facility; annual declarations on past activities and annual report on exports and imports for the previous calendar year by February 28; annual declarations on anticipated activities for the next calendar year by September 3.

Schedule 2: annual declarations on past activities and annual reports on exports and imports for the previous calendar year by February 28; annual declarations on anticipated activities for the next calendar year by September 3.

Schedule 3: annual declarations on past activities and annual reports on exports and imports for the previous calendar year by February 28; annual declarations on anticipated activities for the next calendar

year by September 3.

UDOCs: annual declarations on past activities for the previous calendar year by February 28.

Q: Are there any trade restrictions?

A: In accordance with the CWC Amendment to the EAR for exports and CWCR for imports (upon final publication), Schedule 1 chemicals may only be exported to or imported from countries that are States Parties to the CWC, and only for research, pharmaceutical, medical, or protective purposes. You must notify BIS at least 45 days before you export or import any Schedule 1 chemical (with the exception of saxitoxin, which must be submitted at least three days in advance). Retransfers of Schedule 1 chemicals to any destination are prohibited.

Transfers of Schedule 2 chemicals to and from non-CWC members are prohibited. Exports of Schedule 3 chemicals are permitted to CWC non-States Parties provided that an end-use certificate is obtained from the government of the importing country.

CWC restrictions on exports are in addition to any other EAR requirements.

Q: Are all companies subject to inspection?

A: No, only certain declared facilities are subject to initial/routine inspections. While all declared Schedule 1 facilities are subject to initial and routine inspections, the thresholds that trigger inspections for declared Schedule 2 and 3 and UDOC plant sites may be higher than the declaration thresholds by a factor of approximately seven to ten.

Q: What are the inspection team's objectives on an initial and routine inspection?

A: An initial inspection is conducted to assess the risk of the facility to the object and

purpose of the CWC and to develop a draft facility agreement between the United States and the OPCW, if the United States and TS agree that a facility agreement is necessary. Facility agreements guide the conduct of routine inspections.

In addition, initial and routine inspections are conducted to verify:

- the consistency of the levels of production, processing, or consumption with the declaration;
- the absence of undeclared Schedule 1 chemicals; and
- for Schedule 1 and 2 facilities, the non-diversion of scheduled chemicals for activities prohibited by the CWC.

Routine inspections of facilities that have facility agreements will be conducted in accordance with the provisions of such agreements.

An initial or routine inspection does not suggest that a firm may be violating the provisions of the CWC.

Q: How will a company know that it will be inspected?

A: BIS will provide a host team notification of impending inspection to the declared facility, which will:

- contain the OPCW notification;
- ask whether the site will grant voluntary consent; and
- include information on the availability of a BIS advance team to help prepare the site for inspection.

The Department of State will provide a written notification and inspection authorization to the owner and operator, occupant, or agent in charge of the facility to be inspected within six hours, or as soon as possible thereafter, of receiving an

inspection notification from the OPCW. If the United States is unable to provide actual written notice, BIS, or the Federal Bureau of Investigation, if BIS is unable, will post notice at the facility.

Q: Will warrants be obtained for inspections?

A: If the facility does not provide voluntary consent for an inspection, BIS will seek an administrative warrant in accordance with the CWCIA to permit OPCW inspection team access to the site.

Q: Are facility agreements mandatory for all CWC inspections?

A: Facility agreements are required for Schedule 1 facilities and Schedule 2 plant sites (unless the site and OPCW agree one is not necessary) subject to inspection. They are optional for Schedule 3 and UDOC plant sites subject to inspection.

The CWCR contain model facility agreements for Schedule 1 facilities and Schedule 2 plant sites.

Q: How can I protect proprietary information during CWC inspections?

A: The CWCIA and CWCR contain rules for the disclosure of CBI, including certain exemptions from Freedom of Information Act requests and protections against unauthorized disclosure.

Moreover, the CWC includes comprehensive provisions in the Confidentiality Annex, developed in consultation with international chemical trade associations from the United States, Western Europe and Japan, that enable industry to protect CBI unrelated to CW.

- First, the CWC limits the aims of an inspection to verifying treaty compliance and allows the inspected State Party to control access for reasons of safety, security, or confidentiality. To this end, a company may provide input into its

facility agreement which will specify in advance the areas of the facility subject to inspection, the records that may be reviewed, points where samples can be taken, etc.

- Secondly, a company can use techniques to protect CBI not related to the CWC inspection through such measures as shrouding or covering control panels and other sensitive equipment, or logging off computers.
- Finally, information provided to the OPCW that is identified as CBI will be subject to strict classification and handling procedures, and may be exempt from public disclosure under the CWCIA.

For information on industry obligations under the CWCR contact:

**Treaty Compliance Division
Office of Nonproliferation Controls
and Treaty Compliance
Bureau of Industry and Security
U.S. Department of Commerce
1555 Wilson Boulevard
Suite 700
Arlington, VA 22209**

**Tel: 703-605-4400
Fax: 703-605-4424**

Or visit our CWC-dedicated website at www.cwc.gov.

	SCHEDULE 1	SCHEDULE 2	SCHEDULE 3	Unscheduled Discrete Organic Chemicals (UDOCs)
CHEMICALS	CW agents; key final-stage CW precursors.	Potential CW agents; other CW precursors; and certain dual-use chemicals.	Old CW agents; other CW precursors; and certain dual-use chemicals.	UDOCs and UDOCs containing phosphorus, sulfur, or fluorine, (PSF chemicals).
COMMERCIAL USES	Low or none	Low or moderate	High	High
ANNUAL THRESHOLD FOR DECLARATIONS AND REPORTS	>100 grams (<10 kg) aggregate production of all Schedule 1 chemicals.	Production, consumption, or processing > 1kg (for BZ); 100kg (for other Part A chemicals); 1 metric ton (for Part B chemicals).	Production > 30 metric tons.	Production > 200 metric tons aggregate for UDOCs. Production > 30 metric tons for each PSF chemical.
THRESHOLD FOR INSPECTION	>100 grams (<10 kg) aggregate production.	Production, consumption, or processing > 10kg BZ; 1 metric ton other Part A chemicals; 10 metric tons Part B chemicals.	Production > 200 metric tons.	Production > 200 metric tons aggregate UDOCs. Production > 200 metric tons of a PSF-chemical.