

SUBCHAPTER B—CHEMICAL WEAPONS CONVENTION REGULATIONS

PART 710—GENERAL INFORMATION AND OVERVIEW OF THE CHEMICAL WEAPONS CONVENTION REGULATIONS (CWC)

Sec.

710.1 Definitions of terms used in the Chemical Weapons Convention Regulations (CWC).

710.2 Scope of the CWC.

710.3 Purposes of the Convention and CWC.

710.4 Overview of scheduled chemicals and examples of affected industries.

710.5 Authority.

710.6 Relationship between the Chemical Weapons Convention Regulations and the Export Administration Regulations, the International Traffic in Arms Regulations, and the Alcohol, Tobacco, Firearms, and Explosives Regulations.

SUPPLEMENT NO. 1 TO PART 710—STATES PARTIES TO THE CONVENTION ON THE PROHIBITION OF THE DEVELOPMENT, PRODUCTION, STOCKPILING AND USE OF CHEMICAL WEAPONS AND ON THEIR DESTRUCTION

SUPPLEMENT NO. 2 TO PART 710—DEFINITIONS OF PRODUCTION

AUTHORITY: 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703, 3 CFR 1999 Comp., p. 199.

SOURCE: 71 FR 24929, Apr. 27, 2006, unless otherwise noted.

§ 710.1 Definitions of terms used in the Chemical Weapons Convention Regulations (CWC).

The following are definitions of terms used in the CWC (parts 710 through 729 of this subchapter, unless otherwise noted):

Act (The). Means the Chemical Weapons Convention Implementation Act of 1998 (22 U.S.C. 6701 *et seq.*).

Advance Notification. Means a notice informing BIS of a company's intention to export to or import from a State Party a Schedule 1 chemical. This advance notification must be submitted to BIS at least 45 days prior to the date of export or import (except for transfers of 5 milligrams or less of saxitoxin for medical/diagnostic purposes, which must be submitted to BIS at least 3 days prior to export or import). BIS will inform the company in writing of the earliest date the ship-

ment may occur under the advance notification procedure. This advance notification requirement is imposed in addition to any export license requirements under the Department of Commerce's Export Administration Regulations (15 CFR parts 730 through 774) or the Department of State's International Traffic in Arms Regulations (22 CFR parts 120 through 130) or any import license requirements under the Department of Justice's Bureau of Alcohol, Tobacco, Firearms and Explosives Regulations (27 CFR part 447).

Bureau of Industry and Security (BIS). Means the Bureau of Industry and Security of the United States Department of Commerce, including Export Administration and Export Enforcement.

By-product. Means any chemical substance or mixture produced without a separate commercial intent during the manufacture, processing, use or disposal of another chemical substance or mixture.

Chemical Weapon. Means the following, together or separately:

(1) Toxic chemicals and their precursors, except where intended for purposes not prohibited under the Chemical Weapons Convention (CWC), provided that the type and quantity are consistent with such purposes;

(2) Munitions and devices, specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in paragraph (1) of this definition, which would be released as a result of the employment of such munitions and devices;

(3) Any equipment specifically designed for use directly in connection with the employment of munitions or devices specified in paragraph (2) of this definition.

Chemical Weapons Convention (CWC or Convention). Means the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, and its annexes opened for signature on January 13, 1993.

Chemical Weapons Convention Regulations (CWCR). Means the regulations contained in 15 CFR parts 710 through 729.

Consumption. Consumption of a chemical means its conversion into another chemical via a chemical reaction. Unreacted material must be accounted for as either waste or as recycled starting material.

Declaration or report form. Means a multi-purpose form to be submitted to BIS regarding activities involving Schedule 1, Schedule 2, Schedule 3, or unscheduled discrete organic chemicals. Declaration forms will be used by facilities that have data declaration obligations under the CWCR and are "declared" facilities whose facility-specific information will be transmitted to the OPCW. Report forms will be used by entities that are "undeclared" facilities or trading companies that have limited reporting requirements for only export and import activities under the CWCR and whose facility-specific information will not be transmitted to the OPCW. Information from declared facilities, undeclared facilities and trading companies will also be used to compile U.S. national aggregate figures on the production, processing, consumption, export and import of specific chemicals. See also related definitions of declared facility, undeclared facility and report.

Declared facility or plant site. Means a facility or plant site that submits declarations of activities involving Schedule 1, Schedule 2, Schedule 3, or unscheduled discrete organic chemicals above specified threshold quantities.

Discrete organic chemical. Means any chemical belonging to the class of chemical compounds consisting of all compounds of carbon, except for its oxides, sulfides, and metal carbonates, identifiable by chemical name, by structural formula, if known, and by Chemical Abstract Service registry number, if assigned. (Also see the definition for unscheduled discrete organic chemical.)

Domestic transfer. Means, with regard to declaration requirements for Schedule 1 chemicals under the CWCR, any movement of any amount of a Schedule 1 chemical outside the geographical boundary of a facility in the United

States to another destination in the United States, for any purpose. Also means, with regard to declaration requirements for Schedule 2 and Schedule 3 chemicals under the CWCR, movement of a Schedule 2 or Schedule 3 chemical in quantities and concentrations greater than specified thresholds, outside the geographical boundary of a facility in the United States, to another destination in the United States, for any purpose. Domestic transfer includes movement between two divisions of one company or a sale from one company to another. Note that any movement to or from a facility outside the United States is considered an export or import for reporting purposes, not a domestic transfer. (Also see definition of United States.)

EAR. Means the Export Administration Regulations (15 CFR parts 730 through 774).

Explosive. Means a chemical (or a mixture of chemicals) that is included in Class 1 of the United Nations Organization hazard classification system.

Facility. Means any plant site, plant or unit.

Facility Agreement. Means a written agreement or arrangement between a State Party and the Organization relating to a specific facility subject to on-site verification pursuant to Articles IV, V, and VI of the Convention.

Host Team. Means the U.S. Government team that accompanies the inspection team from the Organization for the Prohibition of Chemical Weapons during a CWC inspection for which the regulations in the CWCR apply.

Host Team Leader. Means the representative from the Department of Commerce who heads the U.S. Government team that accompanies the Inspection Team during a CWC inspection for which the regulations in the CWCR apply.

Hydrocarbon. Means any organic compound that contains only carbon and hydrogen.

Impurity. Means a chemical substance unintentionally present with another chemical substance or mixture.

Inspection Notification. Means a written announcement to a plant site by the United States National Authority

§710.1

15 CFR Ch. VII (1–1–10 Edition)

(USNA) or the BIS Host Team of an impending inspection under the Convention.

Inspection Site. Means any facility or area at which an inspection is carried out and which is specifically defined in the respective facility agreement or inspection request or mandate or inspection request as expanded by the alternative or final perimeter.

Inspection Team. Means the group of inspectors and inspection assistants assigned by the Director-General of the Technical Secretariat to conduct a particular inspection.

Intermediate. Means a chemical formed through chemical reaction that is subsequently reacted to form another chemical.

ITAR. Means the International Traffic in Arms Regulations (22 CFR parts 120–130).

Organization for the Prohibition of Chemical Weapons (OPCW). Means the international organization, located in The Hague, the Netherlands, that administers the CWC.

Person. Means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, any State or any political subdivision thereof, or any political entity within a State, any foreign government or nation or any agency, instrumentality or political subdivision of any such government or nation, or other entity located in the United States.

Plant. Means a relatively self-contained area, structure or building containing one or more units with auxiliary and associated infrastructure, such as:

- (1) Small administrative area;
- (2) Storage/handling areas for feedstock and products;
- (3) Effluent/waste handling/treatment area;
- (4) Control/analytical laboratory;
- (5) First aid service/related medical section; and
- (6) Records associated with the movement into, around, and from the site, of declared chemicals and their feedstock or product chemicals formed from them, as appropriate.

Plant site. Means the local integration of one or more plants, with any intermediate administrative levels,

which are under one operational control, and includes common infrastructure, such as:

- (1) Administration and other offices;
- (2) Repair and maintenance shops;
- (3) Medical center;
- (4) Utilities;
- (5) Central analytical laboratory;
- (6) Research and development laboratories;
- (7) Central effluent and waste treatment area; and
- (8) Warehouse storage.

Precursor. Means any chemical reactant which takes part, at any stage in the production, by whatever method, of a toxic chemical. The term includes any key component of a binary or multicomponent chemical system.

Processing. Means a physical process such as formulation, extraction and purification in which a chemical is not converted into another chemical.

Production. Means the formation of a chemical through chemical reaction, including biochemical or biologically mediated reaction (see Supplement No. 2 to this part).

(1) Production of Schedule 1 chemicals means formation through chemical synthesis as well as processing to extract and isolate Schedule 1 chemicals.

(2) Production of a Schedule 2 or Schedule 3 chemical means all steps in the production of a chemical in any units within the same plant through chemical reaction, including any associated processes (e.g., purification, separation, extraction, distillation, or refining) in which the chemical is not converted into another chemical. The exact nature of any associated process (e.g., purification, etc.) is not required to be declared.

Production by synthesis. Means production of a chemical from its reactants.

Protective purposes in relation to Schedule 1 chemicals. Means any purpose directly related to protection against toxic chemicals and to protection against chemical weapons. Further means the Schedule 1 chemical is used for determining the adequacy of defense equipment and measures.

Purposes not prohibited by the CWC. Means the following:

(1) Any peaceful purpose related to an industrial, agricultural, research, medical or pharmaceutical activity or other activity;

(2) Any purpose directly related to protection against toxic chemicals and to protection against chemical weapons;

(3) Any military purpose of the United States that is not connected with the use of a chemical weapon and that is not dependent on the use of the toxic or poisonous properties of the chemical weapon to cause death or other harm; or

(4) Any law enforcement purpose, including any domestic riot control purpose and including imposition of capital punishment.

Report. Means information due to BIS on exports and imports of Schedule 1, Schedule 2 or Schedule 3 chemicals above applicable thresholds. Such information is included in the national aggregate declaration transmitted to the OPCW. Facility-specific information is not included in the national aggregate declaration. Note: This definition does not apply to parts 719 and 720 of the CWC (see the definition of "report" in § 719.1(b) of the CWC).

Schedules of Chemicals. Means specific lists of toxic chemicals, groups of chemicals, and precursors contained in the CWC. See Supplements No. 1 to parts 712 through 714 of the CWC.

State Party. Means a country for which the CWC is in force. See Supplement No. 1 to this part.

Storage. For purposes of Schedule 1 chemical reporting, means any quantity that is not accounted for under the categories of production, export, import, consumption or domestic transfer.

Technical Secretariat. Means the organ of the OPCW charged with carrying out administrative and technical support functions for the OPCW, including carrying out the verification measures delineated in the CWC.

Toxic Chemical. Means any chemical which, through its chemical action on life processes, can cause death, temporary incapacitation, or permanent harm to humans or animals. The term includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether

they are produced in facilities, in munitions, or elsewhere. Toxic chemicals that have been identified for the application of verification measures are in schedules contained in Supplements No. 1 to parts 712 through 714 of the CWC.

Trading company. Means any person involved in the export and/or import of scheduled chemicals in amounts greater than specified thresholds, but not in the production, processing or consumption of such chemicals in amounts greater than threshold amounts requiring declaration. If such persons exclusively export or import scheduled chemicals in amounts greater than specified thresholds, they are subject to reporting requirements but are not subject to routine inspections. Such persons must be the principal party in interest of the exports or imports and may not delegate CWC reporting responsibilities to a forwarding or other agent.

Transfer. See domestic transfer.

Transient intermediate. Means any chemical which is produced in a chemical process but, because it is in a transition state in terms of thermodynamics and kinetics, exists only for a very short period of time, and cannot be isolated, even by modifying or dismantling the plant, or altering process operating conditions, or by stopping the process altogether.

Undeclared facility or plant site. Means a facility or plant site that is not subject to declaration requirements because of past or anticipated production, processing or consumption involving scheduled or unscheduled discrete organic chemicals above specified threshold quantities. However, such facilities and plant sites may have a reporting requirement for exports or imports of such chemicals.

Unit. Means the combination of those items of equipment, including vessels and vessel set up, necessary for the production, processing or consumption of a chemical.

United States. Means the several States of the United States, the District of Columbia, and the commonwealths, territories, and possessions of the United States, and includes all places under the jurisdiction or control of the United States, including any of

§710.2

the places within the provisions of paragraph (41) of section 40102 of Title 49 of the United States Code, any civil aircraft of the United States or public aircraft, as such terms are defined in paragraphs (1) and (37), respectively, of section 40102 of Title 49 of the United States Code, and any vessel of the United States, as such term is defined in section 3(b) of the Maritime Drug Enforcement Act, as amended (section 1903(b) of Title 46 App. of the United States Code).

United States National Authority (USNA). Means the Department of State serving as the national focal point for the effective liaison with the Organization for the Prohibition of Chemical Weapons and other States Parties to the Convention and implementing the provisions of the Chemical Weapons Convention Implementation Act of 1998 in coordination with an interagency group designated by the President consisting of the Secretary of Commerce, Secretary of Defense, Secretary of Energy, the Attorney General, and the heads of other agencies considered necessary or advisable by the President, or their designees. The Secretary of State is the Director of the USNA.

Unscheduled chemical. Means a chemical that is not contained in Schedule 1, Schedule 2, or Schedule 3 (see Supplements No. 1 to parts 712 through 714 of the CWCR).

Unscheduled Discrete Organic Chemical (UDOC). Means any "discrete organic chemical" that is not contained in the Schedules of Chemicals (see Supplements No. 1 to parts 712 through 714 of the CWCR) and subject to the declaration requirements of part 715 of the CWCR. Unscheduled discrete organic chemicals subject to declaration under the CWCR are those produced by synthesis that are isolated for use or sale as a specific end-product.

You. The term "you" or "your" means any person (see also definition of "person"). With regard to the declaration and reporting requirements of the CWCR, "you" refers to persons that have an obligation to report certain activities under the provisions of the CWCR.

[71 FR 24929, Apr. 27, 2006, as amended at 73 FR 78182, Dec. 22, 2008]

15 CFR Ch. VII (1-1-10 Edition)

§710.2 Scope of the CWCR.

The Chemical Weapons Convention Regulations (parts 710 through 729 of this subchapter), or CWCR, implement certain obligations of the United States under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, known as the CWC or Convention.

(a) *Persons and facilities subject to the CWCR*. (1) The CWCR apply to all persons and facilities located in the United States, except the following U.S. Government facilities:

- (i) Department of Defense facilities;
- (ii) Department of Energy facilities; and
- (iii) Facilities of other U.S. Government agencies that notify the USNA of their decision to be excluded from the CWCR.

(2) For purposes of the CWCR, "United States Government facilities" are those facilities owned and operated by a U.S. Government agency (including those operated by contractors to the agency), and those facilities leased to and operated by a U.S. Government agency (including those operated by contractors to the agency). "United States Government facilities" do not include facilities owned by a U.S. Government agency and leased to a private company or other entity such that the private company or entity may independently decide for what purposes to use the facilities.

(b) *Activities subject to the CWCR*. The activities subject to the CWCR (parts 710 through 729 of this subchapter) are activities, including production, processing, consumption, exports and imports, involving chemicals further described in parts 712 through 715 of the CWCR. These do not include activities involving inorganic chemicals other than those listed in the Schedules of Chemicals, or other specifically exempted unscheduled discrete organic chemicals.

§710.3 Purposes of the Convention and CWCR.

(a) *Purposes of the Convention*. (1) The Convention imposes upon the United States, as a State Party, certain declaration, inspection, and other obligations. In addition, the United States