

Declarations, advance notifications and reports	Applicable forms	Due dates
Amended Report § 712.7(b)	Certification, 1–1, 1–3, A (as appropriate), B (optional).	—15 calendar days after change in information.
Amended Combined Declaration & Report.	Certification, 1–1, 1–2, 1–2A, 1–3, A (as appropriate), B (optional).	—15 calendar days after change in information.

PART 713—ACTIVITIES INVOLVING SCHEDULE 2 CHEMICALS

Sec.

713.1 Prohibition on exports and imports of Schedule 2 chemicals to and from States not Party to the CWC.

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SUPPLEMENT NO. 1 TO PART 713—SCHEDULE 2 CHEMICALS

SUPPLEMENT NO. 2 TO PART 713—DEADLINES FOR SUBMISSION OF SCHEDULE 2 DECLARATIONS, REPORTS, AND AMENDMENTS

AUTHORITY: 22 U.S.C. 6701 *et seq.*; 50 U.S.C. 1601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938 59 FR 59099, 3 CFR, 1994 Comp., p. 950, as amended by E.O. 13094, 63 FR 40803, 3 CFR, 1998 Comp., p. 200; E.O. 13128, 64 FR 36703, 3 CFR 1999 Comp., p. 199.

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

§ 713.1 Prohibition on exports and imports of Schedule 2 chemicals to and from States not Party to the CWC.

(a) You may not export any Schedule 2 chemical (see supplement no. 1 to this part) to any destination or import any Schedule 2 chemical from any destination other than a State Party to the Convention. See supplement no. 1 to part 710 of the CWC for a list of States that are party to the Convention.

NOTE TO § 713.1(a): See § 742.18 of the Export Administration Regulations (EAR) (15 CFR part 742) for prohibitions that apply to ex-

ports of Schedule 2 chemicals to States not Party to the CWC.

(b) Paragraph (a) of this section does not apply to:

(1) The export or import of a Schedule 2 chemical to or from a State not Party to the CWC by a department, agency, or other entity of the United States, or by any person, including a member of the Armed Forces of the United States, who is authorized by law, or by an appropriate officer of the United States to transfer or receive the Schedule 2 chemical;

(2) Mixtures containing Schedule 2A chemicals, if the concentration of each Schedule 2A chemical in the mixture is 1% or less by weight (note, however, that such mixtures may be subject to the regulatory requirements of other federal agencies);

(3) Mixtures containing Schedule 2B chemicals if the concentration of each Schedule 2B chemical in the mixture is 10% or less by weight (note, however, that such mixtures may be subject to the regulatory requirements of other federal agencies); or

(4) Products identified as consumer goods packaged for retail sale for personal use or packaged for individual use.

§ 713.2 Annual declaration requirements for plant sites that produce, process or consume Schedule 2 chemicals in excess of specified thresholds.

(a) *Declaration of production, processing or consumption of Schedule 2 chemicals for purposes not prohibited by the CWC*—(1) *Quantities of production, processing or consumption that trigger declaration requirements.* You must complete the forms specified in paragraph (b) of this section if you have been or will be involved in the following activities:

(i) *Annual declaration on past activities.* (A) You produced, processed or consumed at one or more plants on

your plant site during any of the previous three calendar years, a Schedule 2 chemical in excess of any of the following declaration threshold quantities:

(1) 1 kilogram of chemical BZ: 3-Quinuclidinyl benzilate (see Schedule 2, paragraph A.3 in Supplement No. 1 to this part);

(2) 100 kilograms of chemical PFIB: 1,1,3,3,3-Pentafluoro-2(trifluoromethyl)-1-propene or 100 kilograms of chemical Amiton: 0,0-Diethyl S-[2-(diethylamino) ethyl] phosphorothiolate and corresponding alkylated or protonated salts (see Schedule 2, paragraphs A.1 and A.2 in Supplement No. 1 to this part); or

(3) 1 metric ton of any chemical listed in Schedule 2, Part B (see Supplement No. 1 to this part).

(B) In order to trigger a declaration requirement for a past activity (i.e., production, processing or consumption) involving a Schedule 2 chemical, a plant on your plant site must have exceeded the applicable declaration threshold for that particular activity during one or more of the previous three calendar years. For example, if a plant on your plant site produced 800 kilograms of thiodiglycol and consumed 300 kilograms of the same Schedule 2 chemical, during the previous calendar year, you would not have a declaration requirement based on these activities, because neither activity at your plant would have exceeded the declaration threshold of 1 metric ton for that Schedule 2 chemical. However, a declaration requirement would apply if an activity involving a Schedule 2 chemical at the plant exceeded the declaration threshold in an earlier year (i.e., during the course of any other calendar year within the past three calendar years), as indicated in the example provided in the note to this paragraph.

NOTE TO §713.2(a)(1)(i)(B): To determine whether or not you have an annual declaration on past activities requirement for Schedule 2 chemicals, you must determine whether you produced, processed or consumed a Schedule 2 chemical above the applicable threshold at one or more plants on your plant site in any one of the three previous calendar years. For example, for the 2004 annual declaration on past activities period, if you determine that one plant on your

plant site produced greater than 1 kilogram of the chemical BZ in calendar year 2002, and no plants on your plant site produced, processed or consumed any Schedule 2 chemical above the applicable threshold in calendar years 2003 or 2004, you still have a declaration requirement under this paragraph for the previous calendar year (2004). However, you must only declare on Form 2-3 (question 2-3.1), production data for calendar year 2004. You would declare "0" production because you did not produce BZ above the applicable threshold in calendar year 2004. Since the plant site did not engage in any other declarable activity (i.e., consumption, processing) in the 2002-2004 declaration period, you would leave blank questions 2-3.2 and 2-3.3 on Form 2-3. Note that declaring a "0" production quantity for 2004, as opposed to leaving the question blank, permits BIS to distinguish the activity that triggered the declaration requirement from activities that were not declarable during that period.

(ii) *Annual declaration on anticipated activities.* You anticipate that you will produce, process or consume at one or more plants on your plant site during the next calendar year, a Schedule 2 chemical in excess of the applicable declaration threshold set forth in paragraphs (a)(1)(i)(A)(1) through (3) of this section.

NOTE TO §713.2(a)(1)(ii): A null "0" declaration is not required if you do not plan to produce, process or consume a Schedule 2 chemical in the next calendar year.

(2) *Schedule 2 chemical production.* (i) For the purpose of determining Schedule 2 production, you must include 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.

(ii) For the purpose of determining if a Schedule 2 chemical is subject to declaration, you must declare an intermediate Schedule 2 chemical, but not a transient intermediate Schedule 2 chemical.

(3) *Mixtures containing a Schedule 2 chemical.* (i) *Mixtures that must be counted.* You must count the quantity of each Schedule 2 chemical in a mixture, when determining the total quantity of

a Schedule 2 chemical produced, processed, or consumed at a plant on your plant site, if the concentration of each Schedule 2 chemical in the mixture is 30% or more by volume or by weight, whichever yields the lesser percent. Do not count a Schedule 2 chemical in the mixture that represents less than 30% by volume or by weight.

(ii) *How to count the quantity of each Schedule 2 chemical in a mixture.* If your mixture contains 30% or more concentration of a Schedule 2 chemical, you must count the quantity (weight) of each Schedule 2 chemical in the mixture, not the total weight of the mixture. You must separately declare each Schedule 2 chemical with a concentration in the mixture that is 30% or more and exceeds the quantity threshold detailed in paragraphs (a)(1)(i)(A)(1) through (3) of this section.

(iii) *Determining declaration requirements for production, processing and consumption.* If the total quantity of a Schedule 2 chemical produced, processed or consumed at a plant on your plant site, including mixtures that contain 30% or more concentration of a Schedule 2 chemical, exceeds the applicable declaration threshold set forth in paragraphs (a)(1)(i)(A)(1) through (3) of this section, you have a declaration requirement. For example, if during calendar year 2001, a plant on your plant site produced a mixture containing 300 kilograms of thiodiglycol in a concentration of 32% and also produced 800 kilograms of thiodiglycol, the total amount of thiodiglycol produced at that plant for CWCR purposes would be 1100 kilograms, which exceeds the declaration threshold of 1 metric ton for that Schedule 2 chemical. You must declare past production of thiodiglycol at that plant site for calendar year 2001. If, on the other hand, a plant on your plant site processed a mixture containing 300 kilograms of thiodiglycol in a concentration of 25% and also processed 800 kilograms of thiodiglycol in other than mixture form, the total amount of thiodiglycol processed at that plant for CWCR purposes would be 800 kilograms and would not trigger a declaration requirement. This is because the concentration of thiodiglycol in the mixture is less than 30% and therefore did not have to be “counted”

and added to the other 800 kilograms of processed thiodiglycol at that plant.

(b) *Types of declaration forms to be used—(1) Annual declaration on past activities.* You must complete the Certification Form and Forms 2-1, 2-2, 2-3, 2-3A, and Form A if one or more plants on your plant site produced, processed or consumed more than the applicable threshold quantity of a Schedule 2 chemical described in paragraphs (a)(1)(i)(A)(1) through (3) of this section in any of the three previous calendar years. Form B is optional. If you are subject to annual declaration requirements, you must include data for the previous calendar year only.

(2) *Annual declaration on anticipated activities.* You must complete the Certification Form and Forms 2-1, 2-2, 2-3, 2-3A, 2-3C, and Form A if you plan to produce, process, or consume at any plant on your plant site a Schedule 2 chemical above the applicable threshold set forth in paragraphs (a)(1)(i)(A)(1) through (3) of this section during the following calendar year. Form B is optional.

(c) *Quantities to be declared—(1) Production, processing and consumption of a Schedule 2 chemical above the declaration threshold—(i) Annual declaration on past activities.* If you are required to complete forms pursuant to paragraph (a)(1)(i) of this section, you must declare the aggregate quantity resulting from each type of activity (production, processing or consumption) from each plant on your plant site that exceeds the applicable threshold for that Schedule 2 chemical. Do not include in these aggregate production, processing, and consumption quantities any data from plants on the plant site that did not individually produce, process or consume a Schedule 2 chemical in amounts greater than the applicable threshold. For example, if a plant on your plant site produced a Schedule 2 chemical in an amount greater than the applicable declaration threshold during the previous calendar year, you would have to declare only the production quantity from that plant, provided that the total amount of the Schedule 2 chemical processed or consumed at the plant did not exceed the applicable declaration threshold during any one of the previous three calendar years. If in

the previous calendar year your production, processing and consumption activities all were below the applicable declaration threshold, but your declaration requirement is triggered because of production activities occurring in an earlier year, you would declare “0” only for the declared production activities.

(ii) *Annual declaration on anticipated activities.* If you are required to complete forms pursuant to paragraph (a)(1)(ii) of this section, you must declare the aggregate quantity of any Schedule 2 chemical that you plan to produce, process or consume at any plant(s) on your plant site above the applicable thresholds set forth in paragraphs (a)(1)(i)(A)(1) through (3) of this section during the next calendar year. Do not include in these anticipated aggregate production, processing, and consumption quantities any data from plants on the plant site that you do not anticipate will individually produce, process or consume a Schedule 2 chemical in amounts greater than the applicable thresholds.

(2) *Rounding.* For the chemical BZ, report quantities to the nearest hundredth of a kilogram (10 grams). For PFIB and the Amiton family, report quantities to the nearest 1 kilogram. For all other Schedule 2 chemicals, report quantities to the nearest 10 kilograms.

(d) *“Declared” Schedule 2 plant site.* A plant site that submitted a declaration pursuant to paragraph (a)(1) of this section is a “declared” plant site.

(e) *Declared Schedule 2 plant sites subject to initial and routine inspections.* A “declared” Schedule 2 plant site is subject to initial and routine inspection by the Organization for the Prohibition of Chemical Weapons if it produced, processed or consumed in any of the three previous calendar years, or is anticipated to produce, process or consume in the next calendar year, in excess of ten times the applicable declaration threshold set forth in paragraphs (a)(1)(i)(A)(1) through (3) of this section (see part 716 of the CWCR). A “declared” Schedule 2 plant site that has received an initial inspection is subject to routine inspection.

§ 713.3 Annual declaration and reporting requirements for exports and imports of Schedule 2 chemicals.

(a) *Declarations and reports of exports and imports of Schedule 2 chemicals—(1) Declarations.* A Schedule 2 plant site that is declared because it produced, processed or consumed a Schedule 2 chemical at one or more plants above the applicable threshold set forth in paragraph (b) of this section, and also exported from or imported to the plant site that same Schedule 2 chemical above the applicable threshold, must submit export and import information as part of its declaration.

(2) *Reports.* The following persons must submit a report if they individually exported or imported a Schedule 2 chemical above the applicable threshold indicated in paragraph (b) of this section:

(i) A declared plant site that exported or imported a Schedule 2 chemical that was different than the Schedule 2 chemical produced, processed or consumed at one or more plants at the plant site above the applicable declaration threshold;

(ii) An undeclared plant site;

(iii) A trading company; or

(iv) Any other person subject to the CWCR.

NOTE TO § 713.3(a)(1) AND (a)(2)(i): A declared Schedule 2 plant site may need to declare exports or imports of Schedule 2 chemicals that it produced, processed or consumed above the applicable threshold and also report exports or imports of different Schedule 2 chemicals that it did not produce, process or consume above the applicable threshold quantities. The report may be submitted to BIS either with or separately from the annual declaration on past activities (see § 713.3(d) of the CWCR).

NOTE TO § 713.3(a)(2): The U.S. Government will not submit to the OPCW company-specific information relating to the export or import of Schedule 2 chemicals contained in reports. The U.S. Government will add all export and import information contained in reports to export and import information contained in declarations to establish the U.S. national aggregate declaration on exports and imports.

NOTE TO § 713.3(a)(1) AND (2): Declared and undeclared plant sites must count, for declaration or reporting purposes, all exports from and imports to the *entire* plant site, not only from or to individual plants on the plant site.