

**DEPARTMENT OF COMMERCE****Bureau of Industry and Security**

**15 CFR Parts 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728 and 729**

[Docket No. 990611158-4077-03]

RIN 0694-AB06

**Chemical Weapons Convention Regulations**

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Proposed rule and request for comments.

**SUMMARY:** On April 25, 1997, the United States ratified the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, also known as the Chemical Weapons Convention (CWC or Convention). The Bureau of Industry and Security (BIS) published an interim rule, on December 30, 1999, that established the Chemical Weapons Convention Regulations (CWCR) to implement the provisions of the CWC affecting U.S. industry and other U.S. persons. The CWCR include requirements to report certain activities, involving scheduled chemicals and unscheduled discrete organic chemicals, and to provide access for on-site verification by international inspectors of certain facilities and locations in the United States. This proposed rule revises the CWCR by updating them to include additional requirements identified in the implementation of the CWC and to clarify other CWC requirements.

**DATES:** Comments on this rule must be received January 6, 2005.

**ADDRESSES:** You may submit comments, identified by RIN 0694-AB06, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- E-mail: [wfisher@bis.doc.gov](mailto:wfisher@bis.doc.gov). Include "RIN 0694-AB06" in the subject line of the message.

- Fax: (202) 482-3355. Please alert the Regulatory Policy Division, by calling (202) 482-2440, if you are faxing comments.

- Mail or Hand Delivery/Courier: Willard Fisher, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, ATTN: RIN 0694-AB06.

**FOR FURTHER INFORMATION CONTACT:** For questions of a general or regulatory nature, contact the Regulatory Policy Division, telephone: (202) 482-2440.

For program information on declarations, reports, advance notifications, chemical determinations, recordkeeping, inspections and facility agreements, contact the Treaty Compliance Division, Office of Nonproliferation and Treaty Compliance, telephone: (703) 605-4400; for legal questions, contact Rochelle Woodard, Office of the Chief Counsel for Industry and Security, telephone: (202) 482-5301.

**SUPPLEMENTARY INFORMATION:****Background****I. Summary of CWCR Changes Contained in This Proposed Rule**

On April 25, 1997, the United States ratified the Convention on the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, also known as the Chemical Weapons Convention (CWC or Convention). The CWC, which entered into force on April 29, 1997, is an arms control treaty with significant non-proliferation aspects. As such, the CWC bans the development, production, stockpiling or use of chemical weapons and prohibits States Parties to the CWC from assisting or encouraging anyone to engage in a prohibited activity. The CWC provides for declaration and inspection of all States Parties' chemical weapons and chemical weapon production facilities, and oversees the destruction of such weapons and facilities. To fulfill its arms control and non-proliferation objectives, the CWC also establishes a comprehensive verification scheme and requires the declaration and inspection of facilities that produce, process or consume certain "scheduled" chemicals and unscheduled discrete organic chemicals, many of which have significant commercial applications. The CWC also requires States Parties to report exports and imports and to impose export and import restrictions on certain chemicals. These requirements apply to all entities under the jurisdiction and control of States Parties, including commercial entities and individuals. States Parties to the CWC, including the United States, have agreed to this verification scheme in order to provide transparency and to ensure that no State Party to the CWC is engaging in prohibited activities.

The Chemical Weapons Convention Implementation Act of 1998 (the Act or CWCIA) (22 U.S.C. 6701 *et seq.*), enacted on October 21, 1998, authorizes the United States to require the U.S.

chemical industry and other private entities to submit declarations, notifications and other reports and also to provide access for on-site inspections conducted by inspectors sent by the Organization for the Prohibition of Chemical Weapons. Executive Order (E.O.) 13128 delegates authority to the Department of Commerce 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. The Department of Commerce implements CWC import restrictions under the authority of the International Emergency Economic Powers Act, the National Emergencies Act, and E.O. 12938, as amended by E.O. 13128. The Departments of State and Commerce have implemented the CWC export restrictions under their respective export control authorities. E.O. 13128 designates the Department of State as the United States National Authority (USNA) for purposes of the CWC and the Act.

On December 30, 1999, the Bureau of Industry and Security (BIS), U.S. Department of Commerce, published an interim rule that established the Chemical Weapons Convention Regulations (CWCR) (15 CFR Parts 710-722). The CWCR implemented the provisions of the CWC, affecting U.S. industry and U.S. persons, in accordance with the provisions of the Act. This proposed rule revises the CWCR by updating them to include additional requirements identified necessary for the implementation of the CWC provisions and to clarify other CWC requirements.

Specifically, this rule proposes to make the following revisions to the CWCR:

*A. Proposed Revisions to Section 710.1 of the CWCR (Definitions of Terms Used in the CWCR)*

This proposed rule revises § 710.1 of the CWCR by amending the definition of "domestic transfer" to clarify that the term, as applied to the declaration requirements for Schedule 2 or Schedule 3 chemicals under the CWCR, means the movement of a Schedule 2 or Schedule 3 chemical, in quantities and concentrations greater than the specified thresholds in the convention, outside the geographical boundary of a facility in the United States to another destination in the United States, for any purpose.

This proposed rule adds a definition for the term "intermediate" to § 710.1 of the CWCR in order to clarify the use of that term in § 712.5(c) and Supplement No. 2 to part 715 of the CWCR. Section

710.1 of the CWC would define "intermediate" as "a chemical formed through chemical reaction that is subsequently reacted to form another chemical." The term "intermediate" also clarifies its use in §§ 712.5(d), 713.2(a)(2)(ii) and 714.1(a)(2)(ii), whereby Schedule 1, Schedule 2 and Schedule 3 chemicals that are intermediates, but not transient intermediates, must be considered when determining if a chemical is subject to declaration. Lastly, Supplement No. 2 to part 715 of the CWC, which provides examples of unscheduled discrete organic chemicals (UDOCs) and UDOC production, indicates that intermediate UDOCs used in a single or multi-step process to produce another declared UDOC are not subject to declaration requirements under the CWC.

In addition, this proposed rule adds a definition of the term "advance notification" to § 710.1 of the CWC to clarify the use of that term in part 712 of the CWC. Section 710.1 of the CWC would define "advance notification" to mean "a notice informing BIS of a company's intention to export to or import from a State Party a Schedule 1 chemical." Advance notifications must be submitted to BIS at least 45 days prior to the proposed export or import, except for exports or imports of saxitoxin for medical/diagnostic purposes which may be submitted to BIS at least 3 days prior to export or import. The definition proposed by this rule also indicates that this notification requirement is in addition to any export license requirement under the Export Administration Regulations (EAR) (15 CFR Parts 730–799) or the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120–130), or import license requirement under the Alcohol, Tobacco, Firearms and Explosives Regulations (27 CFR part 447).

The definition of the term "production" in § 710.1 of the CWC is revised by adding certain notes that incorporate decisions by the Organization for the Prohibition of Chemical Weapons' Conference of the States Parties (OPCW/CSP) regarding the production of Schedule 1, 2, and 3 chemicals. The first note would clarify that the production of Schedule 1 chemicals includes "formation through chemical synthesis as well as processing to extract and isolate Schedule 1 chemicals." The second note would clarify that the "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."

This proposed rule adds a definition of the term "production by synthesis" in § 710.1 of the CWC to clarify the use of the term in § 715.1 of the CWC (i.e., declaration of production by synthesis of UDOCs for purposes not prohibited by the CWC) and Supplement No. 2 to part 715 of the CWC (i.e., examples of activities that are not considered to be production by synthesis under part 715 of the CWC). Section 710.1 of the CWC would define "production by synthesis" to mean "production of a chemical that is isolated for use or sale."

Finally, this proposed rule amends § 710.1 of the CWC by adding a definition of the term "transient intermediate" in order to clarify the scope of the declaration requirements that apply to the production of certain scheduled chemicals. Section 710.1 of the CWC would define the term "transient intermediate" to mean "any chemical that is produced in a chemical process, but that only exists for a very short period of time and cannot be isolated, even by modifying or dismantling the plant, altering the chemical production process operating conditions, or stopping the chemical production process altogether."

#### *B. Proposed Amendments to Section 710.2 of the CWC (Scope of the CWC)*

This proposed rule amends § 710.2(a) of the CWC by removing the phrase "The CWC declaration, reporting, and inspection requirements apply . . . ." from that paragraph. Removal of this phrase will clarify which persons and facilities are generally subject to the provisions of the CWC.

#### *C. Proposed Amendments to Section 710.6 of the CWC (Relationship Between the CWC and the Export Administration Regulations)*

This proposed rule amends § 710.6 of the CWC to include a reference to Export Control Classification Number (ECCN) 1C395 on the Commerce Control List (CCL), which is in Supplement No. 1 to part 774 of the EAR. ECCN 1C395 controls the following items: (i) Mixtures that contain more than 10 percent, but less than 30 percent, by weight of any single CWC Schedule 2 chemical identified in ECCN 1C350.b; and (ii) certain medical, analytical, diagnostic and food testing kits that contain CWC Schedule 2 or Schedule 3 chemicals controlled by ECCN 1C350.b

or .c, respectively, in an amount not exceeding 300 grams per chemical.

#### *D. Proposed Amendments to Supplement No. 1 to Part 710 of the CWC (List of States Parties to the CWC)*

This proposed rule amends Supplement No. 1 to part 710 of the CWC (States Parties to the Convention on The Prohibition of The Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction) by updating the list of States Parties to include the following recent additions: Afghanistan, Andorra, Azerbaijan, Cape Verde, Chad, Colombia, Dominica, Eritrea, Gabon, Guatemala, Jamaica, Kazakhstan, Kiribati, Kyrgyzstan, Malaysia, Marshall Islands, Micronesia (Federated States of), Mozambique, Nauru, Palau, Rwanda, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Samoa, San Marino, Sao Tome and Principe, Thailand, Timor Leste, Tonga, Uganda, United Arab Emirates, Yemen, and Zambia. As of June 20, 2004, 164 countries had become States Parties to the CWC.

#### *E. Proposed Amendments to Part 711 of the CWC (General Information Regarding Declaration, Reporting and Advance Notification Requirements)*

This proposed rule adds a new § 711.3 that establishes BIS's authority to contact any company to determine whether it is in compliance with the CWC. Information requested may relate to the production, processing, consumption, export, import, or other activities involving scheduled chemicals and UDOCs described in Parts 712 through 715 of this subchapter. Any person or facility subject to the CWC and receiving such a request for information will be required to provide a response to BIS within the time-frame specified in the request. However, this requirement does not, in itself, impose a requirement to create new records or maintain existing records.

This proposed rule amends § 711.3 of the CWC by moving it to § 711.4 and specifying a time period within which the BIS will respond to chemical determination requests. BIS will respond, in writing, to a chemical determination request within 10 working days of receipt of the request.

This proposed rule removes the declaration and reporting requirements in § 711.4 of the CWC concerning activities that occurred prior to December 30, 1999, since these requirements should already have been satisfied. A new § 711.7 is proposed to provide information on where to submit

declarations, advance notifications, and reports.

New § 711.8 is added with instructions for applying for authorization to submit electronic declarations and reports in order to fulfill requirements under the Government Paperwork Elimination Act (44 U.S.C. 3504).

*F. Proposed Amendments to Part 712 of the CWCR (Activities Involving Schedule 1 Chemicals)*

This proposed rule adds a new § 712.2(a) that prohibits production of Schedule 1 chemicals for protective purposes.

This proposed rule clarifies that initial declarations submitted in February 2000 remain valid until they are either amended or rescinded. If you plan to alter the technical layout of your declared facility, you must submit an amended declaration to BIS at least 200 calendar days prior to making any such change to your facility.

This proposed rule revises § 712.3 of the CWCR by moving the annual declaration requirements for Schedule 1 facilities to new § 712.5.

This proposed rule amends § 712.4 of the CWCR to clarify the declaration requirements that apply to the establishment of new Schedule 1 chemical production facilities. If a Schedule 1 chemical production facility has never been declared in a previous calendar year or its initial declaration has been withdrawn in accordance with the requirements of amended § 712.5(f) of this proposed rule, you must submit an initial declaration (including a current detailed technical description of the facility) to BIS at least 200 calendar days prior to commencing production of Schedule 1 chemicals at the facility in quantities greater than 100 grams aggregate per year. Such facilities are considered to be "new Schedule 1 chemical production facilities" and are subject to an initial inspection within 200 calendar days of the submission of the initial declaration to BIS.

This proposed rule revises the remainder of part 712 of the CWCR, as follows: (1) Advance notification and annual report requirements for Schedule 1 chemical exports and imports are proposed to be moved from § 712.5 of the CWCR to § 712.6; (2) provisions for Table 1 to § 712.6 of the CWCR are proposed to be moved to new Supplement No. 2 to part 712 of the CWCR; (3) procedures concerning declarations and reports returned without action by BIS are proposed to be described in new § 712.8 of the CWCR; and (4) the due date for Annual Declarations for Anticipated Activities

is changed from August 3 to September 3 thereby giving Schedule 1 facilities an additional 30 days in which to complete and submit their declarations.

This proposed rule amends the CWCR provisions that require advance notification of exports and imports of Schedule 1 chemicals by establishing an exception to the requirement that BIS must be notified at least 45 calendar days prior to the export or import of a Schedule 1 chemical to or from another State Party. Advance notification of the export or import of 5 milligrams or less of Saxitoxin-B (7), which is listed in Supplement No. 1 to part 712 of the CWCR, for medical or diagnostic purposes only, would have to be submitted to BIS at least 3 calendar days (rather than 45 calendar days) prior to the date of export or import.

This proposed rule amends the CWCR provisions concerning requirements for amending Schedule 1 declarations and reports. Section 712.7 of the CWCR is proposed to be amended by clarifying and specifying deadlines for: (i) The types of changes to information on Schedule 1 chemicals and activities in the Annual Declaration of Past Activities that would require submission of an amended declaration to BIS; (ii) the types of changes to export or import information in the Annual Reports on Exports and Imports from undeclared facilities, trading companies and U.S. persons that would require submission of an amended report to BIS; and (iii) the types of changes to Schedule 1 chemical facility information (e.g., change in company name, address, declaration point of contact, ownership) that would require submission of an amended declaration or report to BIS. In addition, this proposed rule adds a new § 712.7(d) to the CWCR that will provide guidance concerning the submission of inspection-related amendments. Amended declarations, based on the final inspection report, would have to be submitted to BIS within 45 calendar days of the date of BIS's post inspection letter.

This proposed rule adds a new § 712.8 to the CWCR that provides guidance concerning certain Schedule 1 declarations and reports that are returned without action. In these cases, BIS would return without action (RWA) any Schedule 1 declarations or reports that are determined to be not required by the CWCR. The returned declaration or report would be accompanied by a cover letter explaining why the declaration or report is being returned without action. BIS would retain a copy of the RWA letter, but would not maintain copies of any declarations or

reports that were returned without action.

Finally, the provisions in § 712.6 and Table 1 to § 712.6 of the CWCR, which contain information on the deadlines for submitting Schedule 1 declarations, reports, advance notifications and amendments to BIS, are updated and moved to § 712.9 and Supplement No. 2 to part 712 of the CWCR, respectively.

*G. Proposed Amendments to Part 713 of the CWCR (Activities Involving Schedule 2 Chemicals)*

This proposed rule adds a prohibition against exports of Schedule 2 chemicals to States not Party to the CWC in § 713.1(a). Currently, the CWCR prohibit imports of Schedule 2 chemicals from States not Party to the CWC, but do not prohibit Schedule 2 chemical exports to such countries. However, note that § 742.18 of the EAR currently requires a license for exports of Schedule 2 chemicals to States not Party to the CWC and BIS applies a general policy of denial to license applications for such exports. A license is also required for export of Schedule 2 chemicals controlled under the ITAR.

This proposed rule revises § 713.1(b), which exempts certain mixtures containing Schedule 2 chemicals from the export and import prohibitions contained in § 713.1(a) of the CWCR, as proposed by this rule. Currently, § 713.1(b) of the CWCR exempts mixtures containing 10 percent or less, by weight, of any single Schedule 2 chemical. This rule revises § 713.1(b) of the CWCR to exempt the following mixtures: (i) Mixtures containing 1 percent or less, by weight, of any single Schedule 2A or 2A\* chemical; (ii) mixtures containing 10 percent or less, by weight, of any single Schedule 2B chemical; and (iii) products identified as consumer goods packaged for retail sale for personal use or packaged for individual use. However, note that the consumer goods exemption for mixtures that contain Schedule 2 chemicals identified under ECCN 1C350 on the CCL (Supplement No. 1 to part 774 of the EAR) applies only to products identified as consumer goods not packaged for retail sale for personal use and not to products packaged for individual use (the latter are exempt only by the CWCR and not by the Australia Group controls under the EAR).

In addition, this proposed rule: (i) Removes the provisions concerning declarations on past production of Schedule 2 chemicals for chemical weapons purposes (currently found in § 713.2 of the CWCR); (ii) removes the provisions currently found in

§§ 713.3(a)(1)(i) and 713.4(c)(1) and (2) on Schedule 2 initial declarations and initial reports on exports and imports; (iii) amends the provisions providing guidance concerning amendments to declarations and reports (currently found in § 713.7 of the CWC); (iv) moves the provisions concerning the frequency and timing of declarations and reports (currently found in § 713.6 of the CWC) to § 713.7; and (v) provides a description of the procedures that BIS will follow concerning declarations and reports RWA'd in § 713.6 of the CWC.

This proposed rule moves and revises § 713.3 of the CWC to § 713.2 to clarify the scope of Schedule 2 production activities to include any associated processing steps of the Schedule 2 chemical and intermediates. Only transient intermediates are exempted. This will ensure that the CWC 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.

The provisions in § 713.6 and Table 1 to § 713.6 of the CWC, which contain information on the deadlines for submitting declarations, reports, advance notifications, and amendments to BIS, are proposed to be moved to § 713.7 and Supplement No. 2 to part 713 of the CWC, respectively. In addition, the CWC provisions on amended declarations and reports for Schedule 2 chemicals are proposed to be moved from § 713.7 of the CWC to § 713.5 and amended by clarifying and specifying deadlines for: (i) The types of changes to information on Schedule 2 chemicals and activities in the Annual Declaration of Past Activities or the combined declaration and report that would require submission of an amended declaration to BIS; (ii) the types of changes to export or import information in the Annual Reports on Exports and Imports from undeclared facilities, trading companies and U.S. persons that would require submission of an amended report to BIS; and (iii) the types of changes to Schedule 2 chemical facility information (e.g., change in company name, address, declaration point of contact, ownership) that would require submission of an amended declaration or report to BIS. In addition, this proposed rule moves and revises § 713.6(d) of the CWC to § 713.5(d) to provide guidance concerning the submission of inspection-related amendments. Amended declarations, based on the final inspection report, would have to be submitted to BIS within 45 calendar

days of the date of BIS's post inspection letter.

This proposed rule adds § 713.6 of the CWC to provide guidance concerning the return of certain Schedule 2 declarations and reports without action. BIS would RWA any Schedule 2 declarations or reports that are determined not required by the CWC. The returned declaration or report would be accompanied by a cover letter explaining why the declaration or report is being returned without action. BIS would retain a copy of the RWA letter, but would not maintain copies of any declarations or reports that were returned without action.

Finally, the provisions in § 713.6 and Table 1 to § 713.6 of the CWC, which contain information on the deadlines for submitting Schedule 2 declarations, reports, and amendments to BIS, are updated and moved to § 713.7 and Supplement No. 2 to part 713 of the CWC, respectively.

#### *H. Proposed Amendments to Part 714 of the CWC (Activities Involving Schedule 3 Chemicals)*

This proposed rule amends part 714 of the CWC by removing certain provisions concerning the past production of Schedule 3 chemicals in § 714.1. The requirements concerning when and how to amend declarations and reports for Schedule 3 chemicals, currently in § 714.6 of the CWC, are proposed to be revised by this rule and moved to § 714.4. This rule also proposes to revise § 714.5 of the CWC, which currently addresses the frequency and timing of Schedule 3 declarations, to describe the BIS procedures for returning declarations and reports without action. Section 714.5 is proposed to be moved to new § 714.6 and revised to address deadlines for submitting Schedule 3 declarations, reports, and amendments.

Section 714.2 of the CWC, as proposed to be moved to new § 714.1 by this rule, will clarify the scope of Schedule 3 production activities, as defined by the CWC, to include any associated processing steps of a Schedule 3 chemical and intermediates. Only transient intermediates are exempted. This will ensure that the CWC requirements will apply to Schedule 3 chemical production where Schedule 3 chemicals are below the applicable concentration threshold when reacted, but subsequently are concentrated above the threshold during processing.

In addition, this proposed rule moves and revises § 714.2 of the CWC to § 714.1 to clarify the procedures that must be followed when determining the

range of Schedule 3 chemical production for your plant site during the previous calendar year. Specifically, this rule proposes to include a statement in § 714.1(c)(1) of the CWC to indicate that you should not aggregate amounts of production from plants on your plant site that did not individually produce a Schedule 3 chemical in an amount exceeding the applicable declaration threshold (i.e., greater than 30 metric tons). In short, only the production amounts from those plants on your plant site that individually produced greater than 30 metric tons of a Schedule 3 chemical should be aggregated for the purpose of calculating the total amount of a Schedule 3 chemical produced at your plant site during the previous calendar year.

The CWC provisions on amended declarations and reports for Schedule 3 chemicals are proposed to be moved from § 714.6 of the CWC to § 714.4 and amended by clarifying and specifying deadlines for: (i) The types of changes to information on Schedule 3 chemicals and activities in the Annual Declaration of Past Activities or the combined declaration and report that would require submission of an amended declaration to BIS; (ii) the types of changes to export or import information in the Annual Reports on Exports and Imports from undeclared facilities, trading companies and U.S. persons that would require submission of an amended report to BIS; and (iii) the types of changes to Schedule 3 chemical facility information (e.g., change in company name, address, declaration point of contact, ownership) that would require submission of an amended declaration or report to BIS. In addition, this proposed rule amends the CWC to provide guidance in § 714.4(d) concerning the submission of inspection-related amendments. Amended declarations, based on the final inspection report, would have to be submitted to BIS within 45 calendar days of the date of BIS's post inspection letter.

This proposed rule revises adds § 714.5 of the CWC to provide guidance concerning the return of certain Schedule 3 declarations and reports without action. BIS would RWA any Schedule 3 declarations or reports that are determined not required by the CWC. The returned declaration or report would be accompanied by a cover letter explaining why the declaration or report is being returned without action. BIS would retain a copy of the RWA letter, but would not maintain copies of any declarations or reports that were returned without action.

Finally, the provisions in § 714.5 and Table 1 to § 714.5 of the CWC, which contain information on the deadlines for submitting Schedule 3 declarations, reports, and amendments to BIS, are proposed to be updated and moved to § 714.6 and Supplement No. 2 to part 714 of the CWC, respectively.

*I. Proposed Amendments to Part 715 of the CWC (Activities Involving Unscheduled Discrete Organic Chemicals (UDOCs))*

This proposed rule amends § 715.1(a)(1)(ii) (which describes the annual declaration requirements for the production of UDOCs containing the elements phosphorus, sulfur or fluorine, referred to as "PSF-chemicals") to clarify how to calculate the production by synthesis of PSF chemicals at your plant site during the previous calendar year. Specifically, this proposed rule indicates that when determining the quantity of each PSF-chemical produced by a PSF plant on your plant site, you should only aggregate the PSF chemical production quantities from plants that individually produced a PSF chemical in an amount exceeding 30 metric tons. However, note that § 715.1(a)(1)(i) indicates that when determining UDOC production by synthesis on your plant site, you should aggregate all quantities of UDOCs and PSF-chemicals produced regardless of the amount of PSF chemicals produced (*i.e.*, aggregate any PSF chemicals produced).

This proposed rule also revises § 715.1(b)(1) of the CWC by removing the initial declaration requirement and replacing it with the annual declaration requirement, and adding a new subsection that creates a new form called the "No Changes Authorization" form that may be submitted to BIS if there are no updates or changes to any information (other than the certifying official and dates signed and submitted) contained in the annual declaration on past activities previously submitted by your plant site. In addition, § 715.1(b)(1)(ii) of the CWC, as proposed by this rule, would include a statement indicating that your plant site's UDOC activities would continue to be declared to the OPCW and that your plant site would remain subject to inspection (if applicable) based upon the data reported in your previous (*i.e.*, most recent) annual declaration on past activities.

The CWC provisions on amended declarations for UDOCs are moved from § 715.3 of the CWC to § 715.2 and revised by clarifying and specifying deadlines for: (i) The types of changes to information on UDOCs and activities in the Annual Declaration of Past

Activities that would require submission of an amended declaration to BIS; and (ii) the types of changes to UDOC plant information (*e.g.*, change in company name, address, declaration point of contact, ownership) that would require submission of an amended declaration to BIS. In addition, this proposed rule amends the CWC to provide guidance in § 715.2(c) concerning the submission of inspection-related amendments. Amended declarations, based on the final inspection report, would have to be submitted to BIS within 45 calendar days of the receipt of BIS's post inspection letter.

This proposed rule adds § 715.3 of the CWC to provide guidance concerning the return of certain UDOC declarations without action. BIS would RWA any UDOC declarations that are determined not required by the CWC. The returned declaration would be accompanied by a cover letter explaining why the declaration is being returned without action. BIS would retain a copy of the RWA letter, but would not maintain copies of any declarations that were returned without action.

Finally, the provisions in the CWC that currently contain information on the deadlines for submitting UDOC declarations and amendments to BIS (§ 715.2 and Table 1 to § 715.2), are proposed to be updated and moved to § 715.4 and Supplement No. 3 to part 715 of the CWC, respectively.

*J. Proposed Amendments to Part 716 of the CWC (Initial and Routine Inspections of Declared Facilities)*

As part of their obligation under the Convention, each State Party to the CWC is subject to inspection of its chemical facilities engaged in certain activities involving scheduled chemicals. Part 716 of the CWC provides general information about the conduct of initial and routine inspections of declared facilities subject to inspection under CWC Verification Annex Part VI(E), Part VII(B), Part VIII(B), and Part IX(B).

This proposed rule amends § 716.2(a)(2)(i) of the CWC to clarify that a facility agreement will be concluded by the U.S. National Authority (in coordination with BIS) with the OPCW before a new Schedule 1 facility, declared pursuant to § 712.4 of the CWC, can produce above threshold.

This proposed rule amends § 716.4(b)(1) of the CWC to clarify the scope of inspections by specifying that inspections under part 716 of the CWC may include visual inspection of parts or areas of the plant site, in addition to

the facilities or plants producing scheduled chemicals, in order to address any ambiguity that might arise during the inspection. In addition, photographs may be taken and formal interviews of facility personnel may be conducted.

Section 716.4(b)(3) of the CWC is amended to indicate that: (i) Technology subject to the ITAR shall not be divulged to the Inspection Team without U.S. Government authorization; and (ii) each facility that is inspected is responsible for identifying ITAR-controlled technology to the BIS Host Team, if known.

This proposed rule also clarifies the pre-inspection briefing requirements described in § 716.4(c) of the CWC and the requirements in § 716.4(e) of the CWC concerning the availability of records. The U.S. facility must provide the 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 a previous ownership, the previous owner must make such records available to the Host Team (for provision to the Inspection Team).

Section 716.7 of the CWC, which describes requirements concerning the provision of samples by declared facilities, is revised to restrict the analysis of such samples to the verification of the absence of undeclared scheduled chemicals, unless otherwise agreed after consultation with the facility representative.

Finally, this proposed rule adds a new § 716.10 to clarify that, upon receipt of the final inspection report from the OPCW, BIS will send a copy of the final inspection report to the facility for its review. Facilities may submit comments on the final inspection report to BIS, and BIS will consider those comments, to the extent possible, when commenting on the final report. BIS will also send facilities a post-inspection letter with instructions based on decisions made during the inspection.

*K. Proposed Amendments to Part 717 of the CWC (Clarification of Possible Non-Compliance With the Convention; Challenge Inspection Procedures)*

Article IX of the CWC contains procedures for States Parties to clarify issues concerning compliance with the CWC. A State Party may request the OPCW to conduct an on-site challenge inspection of any facility or location in the territory or in any other place under

the jurisdiction or control of any other State Party. A challenge inspection may be conducted solely for the purpose of clarifying and resolving any questions concerning possible non-compliance with the CWC.

This proposed rule amends § 717.1(b) of the CWC to clarify that BIS will attempt to contact a person or facility that is subject to the Article IX clarification procedures as early as practical prior to the issuance of an official written request for clarification and that such person or facility must provide the information required by BIS, pursuant to an Article IX clarification request, within five working days of the receipt of BIS's written request for clarification.

In addition, this proposed rule amends § 717.2 (Challenge Inspections) by adding a new provision in § 717.2(b)(2)(ii) explaining that if consent is not granted within four hours of a facility's receipt of BIS's inspection notification, BIS will assist the Department of Justice in seeking a criminal warrant. A new provision, § 717.2(d)(5), also has been added that describes the requirements concerning pre-inspection briefings for challenge inspections. Section 717.2(d)(5) will require that, prior to the commencement of the challenge inspection, facility representatives must provide the Inspection Team and Host Team with a pre-inspection briefing on the facility that will include the following: (i) The types of activities being conducted at the facility (e.g., business and manufacturing operations); (ii) safety procedures that must be followed during the inspection; and (iii) administrative and logistical arrangements necessary to facilitate the inspection.

Section 717.3 of the CWC, which describes requirements concerning the provision of samples by declared facilities, is revised to restrict analysis of samples to verifying the presence or absence of scheduled chemicals or appropriate degradation products, unless agreed otherwise.

Finally, this proposed rule adds a new § 717.5 to clarify that, upon receipt of the final inspection report from the OPCW, BIS will forward a copy to the facility, for comment, and will give consideration to the facility's comments prior to responding to the OPCW via the U.S. National Authority. In addition, proposed § 717.5 will provide that, upon receipt of the final inspection report, BIS will send the facility a post inspection letter detailing the issues that require follow-up action.

## II. Summary of Public Comments on the December 30, 1999, Interim CWC Rule

On December 30, 1999, the Bureau of Industry and Security (BIS) published an interim rule in the **Federal Register** (64 FR 73744), with a request for comments, establishing the Chemical Weapons Convention Regulations (CWC) to implement provisions of the Chemical Weapons Convention (CWC) and the Chemical Weapons Convention Implementation Act of 1998 (the Act or CWCIA) (22 U.S.C. 6701 *et seq.*), which was enacted on October 21, 1998. BIS received comments from five respondents. Following is a summary of those comments, along with BIS's responses.

### A. Preamble to the December 30, 1999, Interim CWC Rule

*Comment:* One respondent is concerned about the statement in 64 FR 73754, Part II (Public Comments on the Proposed Rule) of the preamble stating that "the United States cannot withhold conclusion of a facility agreement with the OPCW because of facility concerns." The respondent suggests: (1) Because facility agreements are not required for Schedule 3 or unscheduled discrete organic chemical (UDOC) facilities, the United States could withhold conclusion of a facility agreement for such a facility because of facility concerns; (2) in the case of Schedule 1 or 2 facilities, the facility's legitimate concerns would become the U.S. Government's concerns; and (3) that these issues be addressed in the preamble.

*Response:* The CWC does not provide for facility approval of the facility agreement for any facility agreement concluded between the United States and Organization for the Prohibition of Chemical Weapons (OPCW). This includes facility agreements for Schedule 3 and UDOC facilities. Although Schedule 3 and UDOC facility agreements will only be pursued at the facility's request, the same negotiating procedures will apply as with Schedule 1 and 2 facility agreements.

The U.S. Government will provide facilities the opportunity to express concerns at several stages throughout the facility agreement process. However, as the facility agreement and inspection process is a U.S. government-led enterprise, it will ultimately be the decision of the U.S. Government whether to include reference to facility concerns and comments in the facility agreement.

### B. Supplement No. 1 to Part 710—States Parties to the Convention

*Comment:* One respondent is concerned that, unlike Hong Kong, which was identified as part of China, Taiwan's status has not been resolved. Due to the volume of legitimate trade (imports/exports) that occurs with Taiwan, the respondent believes Taiwan's status should be resolved and communicated. The respondent commented on this issue on the proposed rule, but BIS had not previously responded to this comment.

*Response:* BIS responded to this respondent's concern in the interim-final rule dated December 30, 1999, under Section III Public Comments on Declarations and Reporting Forms and Handbooks. Supplement 3 to the Declaration and Report Handbook was changed to add a new Destination Code "TAI" for Taiwan for declaring or reporting exports to or imports from Taiwan of Schedule 2 or Schedule 3 chemicals. Schedule 2 chemicals may no longer be exported to or imported from Taiwan, which is not a State Party. Schedule 3 chemicals require an End-Use Certificate for exports to Taiwan or a license is required. Additionally, Supplement 3 to the Declaration and Report Handbook indicates that transfers to Taiwan do not imply recognition of the Taiwan authorities or an official relationship with Taiwan.

### C. Part 711—General Information Regarding Declaration, Reporting and Advance Notification Requirements

*Comment:* Two respondents suggest that a new section (§ 711.7) be added to the final rule to specify the department and address for submittal of completed declarations and reports. Additionally, each declaration and report handbook should provide the same information in the "Introduction" section, and each declaration and report form should contain the information on where such form should be submitted.

*Response:* BIS created a new § 711.7 which provides the mailing address to which declarations and reports must be submitted. BIS also updated the Declaration and Report Handbook to include the applicable mailing address.

### D. Sections 712.6, 713.7 and 714.6—Amended Declarations

*Comment:* Three respondents request that BIS eliminate the requirement for an amended declaration for minor changes, such as a change in company name. The respondents assert that a change in company name is not substantive and has no impact on CWC verification activities, the object and

purpose of the CWC and/or plant site identification code, and results in a paperwork burden.

*Response:* See BIS's response to the following comment.

*Comment:* One respondent requests that deadlines be provided for submission of amended declarations. Currently the regulations only require that companies submit amended declarations. Given that accurate declarations are important for on-site verification, the respondent contends that amendments should be submitted within 90 days of the event that triggered a requirement for an amended declaration, the same amount of time given for annual declarations following the close of a calendar year.

*Response:* Based upon the experience gained in implementing the CWC, BIS has determined that certain amended information is necessary to assist in the timely processing of inspection notifications and in effective communication with company personnel subject to inspection. As currently written, the CWCR do not adequately explain the amendment procedures required of companies, or the reasons why BIS requires that information. Accordingly, BIS has clarified the requirements and timelines for submitting amended declarations. BIS has established different timelines for submitting an amendment based upon the type of change that is being made to a declaration and the time it will take for BIS to receive and process data in order to submit relevant changes to the OPCW. Any company changes to declaration or report information dealing with the chemicals, quantities, activities, end-use purposes, additions, deletions, or similar changes that are submitted, via the U.S. National Authority, to the OPCW must be received by BIS within 15 days of the change in information. Changes to internal company information that is not submitted to the OPCW, such as a declaration or inspection point of contact, telephone numbers, or changes in company ownership, must be received by BIS within 30 days of the change to the information. Additionally, amendments required based upon an inspection finding must be submitted to BIS within 45 days after the company is notified of the required amendments. Finally, in lieu of submitting an amended declaration or report form, you may submit your amended information to BIS in a letter on company letterhead.

#### *E. Section 713.3—Annual Declaration Requirements for Schedule 2 Plant Sites*

*Comment:* Two respondents state that the interim rule is unclear on the

requirements for annual declarations on past activities involving Schedule 2 chemicals. Specifically, the note to § 713.3(a)(1)(ii) creates confusion by basing the annual declaration requirement on three years of activity and conflicts with the CWC's and the CWCIA's time frame for annual declarations. Moreover, the CWCIA and CWC require annual declarations for a single year and not a series of years as presented in the note to § 713.3(a)(1)(ii). Since Section 401 of the CWCIA commits the U.S. government to require only the minimal information necessary to satisfy the requirements of the CWC and the CWCIA, these respondents oppose a three-year time frame for purposes of reporting on annual activities.

*Response:* BIS is upholding the CWCIA's commitment to require only minimum information necessary to satisfy the requirements of the treaty. The CWCR only require an annual Schedule 2 declaration on past activities for the previous calendar year. This declaration requirement is based upon the activities that occurred at the plant site during "any of the previous three calendar years" as provided in the note to § 713.2(a)(1)(i)(B). BIS refers to this CWC requirement as the "three-year lookback."

#### *F. Section 713.5—Advance Declaration Requirements for Additionally Planned Production, Processing, or Consumption of Schedule 2 Chemicals*

*Comment:* One respondent notes that this section states that facilities are allowed, but not required, to submit an amended declaration if they are merely listing additional countries for export. However, then the section goes on to state "not to exceed 10 countries." The respondent proposes that these provisions be clarified, perhaps in the preamble, to state whether this means a limit of ten additional countries or ten total countries, and how this amendment should be done.

*Response:* New § 713.4 (previously § 713.5) requires submission of a Declaration on Additionally Planned Activities if any additional activity is planned after submission of the Annual Declaration on Anticipated Activities. This requirement is not an amendment, but rather is a specific type of declaration that must be submitted to the OPCW. Section 713.4 has been changed in this proposed rule to eliminate the limit on the total number of destinations that may be declared in both the Annual Declaration on Anticipated Activities and the Declaration on Additionally Planned Activities, as well as for question 2–3.7,

on Form 2–3, on actual past exports. The forms required for submitting a Declaration on Additionally Planned Activities are identified in the new Supplement 2 to part 713 of the CWCR.

#### *G. Sections 714.2 and 715.1—Annual Declaration Requirements*

*Comment:* One respondent suggests that in some portions of the regulations it is not clear whether facilities are expected to aggregate quantities of chemicals among all the plants at the same plant site or whether each plant should be considered individually. This respondent proposes revisions to §§ 714.2(a)(1)(i) and (ii), 714.2(b)(1), (2), and (3), and 715.1(a)(1)(ii) that use the model in § 713.3(c)(1)(i) ("Do not aggregate amounts of production, processing or consumption among plants on the plant site that did not individually produce, process or consume a Schedule 2 chemical in amounts greater than the applicable threshold").

*Response:* The model paragraph identified by the respondent, new § 713.2(c)(1)(i) (previously § 713.3(c)(1)(i)), provides the specific requirements for "quantities to be declared" in a Schedule 2 declaration by determining if a Schedule 2 plant's activities must be aggregated with the quantities of other plants' activities that may have exceeded the specific declaration threshold. Similarly, § 714.1(c)(1) (previously § 714.2(c)(1)) provides the same requirements for "quantities to be declared" for a Schedule 3 plant thereby requiring that "\* \* \* you must aggregate the production quantities of all plants on the plant site that produced the Schedule 3 chemical in amounts greater than 30 metric tons." For purposes of clarity, however, BIS has added the following sentence to § 714.1(c)(1), which states: "Do not aggregate amounts of production from plants on the plant site that did not individually produce a Schedule 3 chemical in amounts greater than 30 metric tons." BIS also has clarified the requirements for unscheduled discrete organic chemicals in a note to § 715.1(a)(1)(ii) to state: "In calculating the aggregate production quantity of each individual PSF chemical produced by a PSF plant, do not include production of a PSF chemical that was produced in quantities less than 30 metric tons. Include only production quantities from those PSF plants that produced more than 30 metric tons of an individual PSF chemical."



*H. Section 715.1—Annual Declaration Requirements for Unscheduled Discrete Organic Chemicals (UDOCs)*

*Comment:* Two respondents interpret the exemption of UDOCs produced by synthesis that are ingredients or byproducts in foods and are designed for consumption by humans and/or animals to include dietary supplements, as defined under Section 201 of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. Section 321. One respondent encouraged BIS to reference the FFDCA in interpreting § 715.1(a)(2)(ii)(E). Additionally, in response to BIS's request for public comment on the impact of the CWCR on facilities that produce UDOCs solely as consumer goods packaged for retail sale, two respondents recommend that BIS exempt facilities that process edible oils and edible oil byproducts solely for use in packaged consumer goods other than those intended for consumption by humans or animals, such as soaps, shampoos, detergents and consumer personal care products. Respondents argue that the concentration, distribution and reaction of these constituents vary from lot to lot, resulting in an unnecessary and costly analysis of mixtures made in-house expressly for incorporation into consumer products. Respondents argue that reporting of basic processing of edible oils operations is not consistent with the intent and purposes of the CWC. Edible oils are not discrete chemical entities and trying to "force-fit" them into the CWC's definition of UDOCs creates additional workplace burdens on facility personnel and forces changes in plant equipment and operations. Given the noticeable absence of any direct threat to the object and purpose of the Convention, these respondents recommend that BIS adopt an exemption for facilities involved exclusively in the processing of indiscrete edible oils for use in packaged consumer products. They argue in favor of a similar exemption for facilities which conduct acid-base reactions as a normal consumer product formulation. This type of reaction is pervasive in product formulation, is formulation specific, and is not currently quantified by most manufacturers. Therefore, according to respondents, quantifying this type of reaction would be technically difficult, costly and provide little information pertinent to the scope and objectives of the CWC.

*Response:* BIS will review, on a case-by-case basis, requests for chemical determinations of dietary supplements, edible oil products, and consumer

products other than those intended for consumption by humans and animals. BIS has determined that only undifferentiated edible oils that are not discrete organic chemicals are exempt from the requirements of part 715 of the CWCR. Discrete organic chemicals are defined in part 710 of the CWCR.

*Comment:* One respondent suggests that the language for the exemption for polymers and oligomers in § 715.1(a)(2)(ii)(A) is confusing and that it need only say, "Polymers and oligomers consisting of two or more repeating units."

*Response:* BIS agrees with the recommendation and has changed 715.1(a)(2)(ii)(A) accordingly. BIS notes, however, that this change does not have any impact on those polymers and oligomers that are exempted.

*I. Section 716.1—General Information on the Conduct of Initial and Routine Inspections*

*Comment:* One respondent suggests that the list of responsibilities of BIS during inspections include: Assisting in the protection of confidential business information; consultation with facility representatives regarding facility concerns; serving as intermediary between the facility and the Inspection Team; and representing the interests of the facility, where appropriate.

*Response:* Part 716.1 is purposefully broad to allow for accommodation of the needs of the U.S. Government, the Inspection Team, and the facility during inspections.

*J. Section 716.3—Consent to Inspections; Warrants for Inspections*

*Comment:* One respondent states that the interim rule fails to expressly incorporate the following language from the CWCIA: "The owner or the operator, occupant, or agent in charge of the premises to be inspected may withhold consent for any reason or no reason." In comments to the interim rule, as captured in the preamble (64 FR 73755), it was suggested that this be incorporated in § 716.3.

*Response:* The facility's right to withhold consent is included in the general reference to the CWCIA in 716.3(b).

*Comment:* Further, this respondent states that the interim rule should be amended to state that the owner, occupant, or agent in charge of the premises to be inspected may withdraw consent at any time and that withdrawal of consent will not be a violation under § 719.2(a)(1) of the CWCR (as stated in the 64 FR 73755).

*Response:* The CWCIA explicitly states that consent may be withheld and

therefore no further regulation amendment is required. BIS does not see any need to further define who may withhold consent.

*Comment:* One respondent acknowledges that, if time passes without a facility expressing consent to an inspection, eventually BIS will need to make preparations for a warrant. However, there may be times when the facility voices its consent after BIS has initiated those preparations. BIS should clarify that it will not continue to seek (or serve) a warrant if the facility has consented to inspection and has not withdrawn its consent. The respondent suggests that this clarification does not require any change to the wording of the regulations, but it would be sufficient to provide a response to the public comment in the preamble of the final regulations.

*Response:* Whether BIS follows through with a warrant exercise is dependent upon at which stage a facility consents after not having consented to an inspection. If, for example, a facility has not consented and BIS initiates the warrant process, and is before a magistrate to obtain the warrant when a facility consents, it is highly likely that at that stage, BIS will obtain the warrant and the inspection will be continued under its terms. In certain instances, it may be more efficient for BIS to follow through with obtaining a warrant, and therefore, such circumstances will be reviewed on a case by case basis.

*Comment:* One respondent states that the requirement that the person who gives consent to an inspection "represents that he or she has authority to make this decision for the facility" serves no purpose and proposes that the applicable Declaration and/or Reporting forms have a place to designate (by name or job title) persons who are authorized to consent to inspections.

*Response:* As with a declaration made to BIS pursuant to the CWCR, an agreement to consent must be an official decision from the facility. Sections 304(b) and 305(a) of the CWCIA require that the owner, operator, occupant, or agent in charge of a facility be sent the notice of an inspection, and advise the U.S. Government of whether the facility consents to the inspection. It is for that reason that BIS requires that consent be made by a person with authority to speak on behalf of the company. In practice, BIS sends a written notice of inspection, including a request for consent via facsimile to the inspection point of contact (I-POC) listed on the declaration. If for some reason, the I-POC does not have authority to grant consent on behalf of the company, he or she would escalate the request to the



appropriate official. Because this procedure is in place, there is no need to change the existing CWCR.

**K. Section 716.4—Scope and Conduct of Inspections**

*Comment:* One respondent states that when an owner, occupant or agent in charge of the premises consents to an initial or routine inspection, he or she is not consenting to provide access to, and has the right to deny access to: (1) Research and development laboratories; (2) pilot plants; and (3) non-relevant production units, including, but not limited to, plants and production units that are exempted from UDOC declaration requirements and plants and production units producing chemicals by fermentation, extraction, purification, distillation, and/or filtration. The respondent references a presentation made by the U.S. Arms Control and Disarmament Agency to industry in 1993, during which these assurances were made under discussions on “industry rights” and “declared plants.”

*Response:* An inspected facility at any point may withhold consent during the inspection. Such a withholding of consent would require the U.S. Government to obtain a warrant to continue the inspection. However, when consent is granted to conduct the inspection, the boundary of that consent is understood to be the declared facility or plant site, which, in some cases, includes common infrastructure that support both the declared plant and other activities located within the definition of the plant site. BIS will consult with plant sites to determine the access appropriate to comply with the mandate of the inspection while protecting confidential business information to the extent practicable. However, the BIS Host Team Leader has the responsibility under the CWCR (§ 716.4(b)(2)) to determine the appropriate access.

*Comment:* One respondent suggests that § 716.4(b)(2) should either: (1) Be deleted because the paragraph serves no purpose when consent is not given or is withdrawn; or (2) revised to state that inspection activities apply only to areas of a facility subject to inspection and that consent does not constitute a waiver of rights provided by the Act or other law.

*Response:* Section 716.4(b)(2) is appropriately included to define the scope of consent and to clarify that the areas of the facility subject to inspection pursuant to consent will be consistent with those subject to inspection pursuant to Section 305 of the CWCIA. No further waiver of rights provided by

the CWCIA or law is implied by the consent provisions. Existing language to that effect is unnecessary and has therefore not been included.

*Comment:* One respondent suggests that § 716.4(c) (pre-inspection briefing (PIB)) should be revised to make the following items mandatory topics: (1) Plant, or plant site, health and safety and alarms; (2) protection of confidential business information; and (3) proposed inspection plan. The respondent also suggests that the term “process flow” be a “simplified block flow diagram of the process,” and that § 716.4(c)(1)(vii) should say “Units or plants specific to declared operations.” This respondent also suggests that BIS make a template for the PIB available on the Internet to let facilities do advance preparation.

*Response:* The regulations for PIB requirements have been amended to include plant site health and safety issues and requirements, and associated alarm systems in existing subparagraph 716.4(c)(1)(i). The CWCR already include as an optional topic discussion of confidential business information during pre-inspection briefings in 716.4(c)(2)(iii). Inclusion of this topic is at the discretion of the plant site and some plant sites may not wish to identify confidential business information. Therefore, it is not necessary to make this topic mandatory. As suggested by the respondent, the requirements of 716.4(c)(1)(vi) have been amended to require presentation of a block flow diagram or simplified process flow diagram as opposed to process flow in order to accurately reflect the intended detail of such presentations. Also, as suggested by the respondent, the requirements of 716.4(c)(1)(vii) have been amended to require presentation of units and plants specific to declared operations to more accurately reflect the intended scope of such presentation. The discussion of a proposed inspection plan remains optional in § 716.4(c)(2)(vi) (previously § 716.4(c)(2)(vii)) because it is not required by the CWC. BIS has developed a PIB template for downloading from its Web site at [www.cwc.gov](http://www.cwc.gov).

*Comment:* One respondent suggests that § 716.4(e) (Records review) is unnecessary because part 721 already deals with recordkeeping and should be deleted or substantially edited. If edited, the areas of concern are: (1) The idea that records must be provided “on the inspection site” as “paper copies or via electronic remote access by computer” is inconsistent with part 721 in several respects—“paper copies” implies duplicates, providing only two options (paper or electronic) disqualifies other

media such as microfilm or microfiche, “electronic remote access” seems to forbid local access by computer, and records must be provided “on the inspection site” which may distinguish it from the plant site; and (2) the wording says the Inspection Team and the Host Team leader may agree on other formats for records, not providing for consultation with the site.

*Response:* Section 716.4(e) is addressing an issue separate from the recordkeeping provisions of part 721. Specifically, § 716.4(e) is referring to the records to be made available during an inspection of a facility, and the ease with which such records may be made available. The recordkeeping requirements of part 721 of the CWCR separately address the obligation on how records should be maintained.

**L. Section 716.5—Notification, Duration and Frequency of Inspections**

*Comment:* One respondent suggests that, in order to ensure that facilities can express consent within four hours, inspection notification via telephone is also necessary to cover possible contingencies. To implement this, revisions to § 716.5(a)(1)(i) and the accompanying table are proposed.

*Response:* BIS generally provides inspection notification to facility inspection points of contact via telephone. However, we send written notification of inspection with the request for consent that is required by the CWCIA via facsimile. Because BIS has these notification procedures in place, there is no need to change the existing CWCR.

*Comment:* One respondent stated that, although §§ 716.5(a)(1)(i)(D) and 717.2(b)(2)(i)(D) state that a written inspection notice will tell the “names and titles” of each member of the Inspection Team, it would be useful to also know the nationality of each inspector. The respondent notes that this will perhaps become less important if the State Department revises the ITAR requirements. Facilities face the dilemma of possibly having to deny certain access in order to comply with ITAR requirements, although the CWC and the Act require sites to allow the Inspection Team into their facilities. Sites will need that information to make informed decisions.

*Response:* BIS forwards facilities the official OPCW inspection notification as part of its Host Team Notification requesting consent. The OPCW notification only contains inspector names and titles, which fulfills the relevant requirement under § 304(b)(3)(A)(iv) of the CWCIA. BIS provides facilities with the nationality

of inspectors during Advance Team activities upon request.

If technical data subject to the ITAR is present on an inspection site, its disclosure to any foreign person, regardless of nationality, would require a license from the Department of State. Since the Department of State has not instituted an ITAR license exception for purposes of CWC inspections, the policy of BIS is to deny access to any item or technology subject to ITAR to any inspector absent U.S. Government authorization (see § 716.4(b)(3)). Therefore, no change has been made to the existing CWCR.

#### *M. Sections 716.7 and 717.3—Samples*

*Comment:* One respondent states that the regulations are worded in a manner that could result in unfair “double penalties” for a single violation. For example, a failure to comply with the State Department’s regulations on samples would also constitute a violation of BIS’s regulations which require compliance with the State Department’s regulations. The respondent recommends that these provisions simply mention that the State Department’s regulations address the topic of samples, without the requirement of compliance.

*Response:* Sections 716.7 and 717.3 serve as cross-references to the applicable sampling provisions in the State Department regulations. They are properly included in the CWCR to identify the existence of obligations under the State Department regulations. Since they reference the State Department regulations, only the State Department penalties would apply—there is no risk of duplicative violations.

#### *N. Sections 716.9 and 717.4—Report of Inspection-Related Costs*

*Comment:* One respondent proposed that these sections be modified to allow facilities to report the cost of preparing the report on inspection-related costs, in addition to the other required information for the submission. This respondent contends that BIS could have met Congress’ needs in a manner that would have imposed fewer additional costs to facilities in compiling the information for the report. The respondent insists that BIS should have provided a mechanism through which facilities could supply Congress information related to the costs incurred in preparing the reference report.

*Response:* The provisions of the CWCIA require the Department of Commerce to submit a report to Congress on the costs incurred by U.S. industry as a result of CWC inspections. In order to compile this report, BIS has

required companies to submit information related to the costs incurred from the conduct of a CWC inspection. In the interest of reducing the burden of reporting on companies, the CWCR requests that only the minimum amount of information necessary to show these costs be submitted to BIS, which ordinarily is only an accounting of the total cost incurred by the facility as a result of the inspection. Companies can interpret this requirement in many ways, and they may include in this calculation all costs they feel are relevant to the inspection, which conceivably could include the costs associated with preparing the report. While BIS encourages facilities to provide additional detail as necessary, information beyond that relating to the costs of the inspection is not required by the CWCIA, and therefore, BIS is not obligated to include that information in its submission to Congress. However, BIS will consider all information submitted by companies when it prepares the cost report for submission.

*Comment:* One respondent suggested that BIS provide a written reminder a week or two after an inspection so that the facility would not forget to prepare the required cost report.

*Response:* Under the current regulations, BIS sends the Inspection Point of Contact a post-inspection letter (see new §§ 716.10 and 717.5). This letter is sent upon receipt of the Final Inspection Report from the Organization for the Prohibition of Chemical Weapons. The letter reminds the company of any declaration changes suggested and that its report of inspection-related costs is required. As a matter of policy, the companies are also contacted again if the report on inspection-related costs is not received within 90 days. Companies may also prepare the report during the inspection and provide it to the BIS Host Team Leader prior to BIS’s departure from the site.

#### *O. Section 717.1—Clarification Procedures; Challenge Inspection Requests Pursuant to Article IX of the Convention*

*Comment:* One respondent stated that a domestic company should have more than five working days to respond to an information request. Because the Convention requires the U.S. government to respond to the requesting State Party within ten days, the respondent proposes that there be advance communication to the extent practicable, so that the formal information request does not come as a surprise and documentation collection can begin in advance.

*Response:* BIS will contact any domestic company as early as practical in the clarification process (see amended § 717.1(b)). Section 717.1 applies to official requests made by BIS. All official requests require a compliance deadline. Companies have five days to respond to a request for information. This gives the U.S. Government time to review and possibly clarify with the facility any additional information that may need to be provided.

#### *P. Section 717.2—Challenge Inspections*

*Comment:* One respondent states that BIS should clarify that, if consent is granted after the government has begun seeking, or has obtained, a criminal warrant, the warrant will not be served while the consent remains in effect.

*Response:* As stated above, whether BIS follows through with a warrant exercise is dependent upon at which stage a facility consents after having not consented to an inspection. In certain instances, it may be more efficient for BIS to follow through with obtaining a warrant, and the circumstances of each case will be reviewed on a case by case basis.

*Comment:* One respondent states that notification of a challenge inspection should be given in every case, not simply “if such notification is deemed appropriate.”

*Response:* Section 304(b)(2) of the CWCIA provides the circumstances under which notice is provided for a challenge inspection. Specifically, it states that “[n]otice for a challenge inspection shall be provided at any appropriate time determined by the United States National Authority.” Therefore, it is true that a notice is required for routine inspections, but provision of notice of a challenge inspection is done at the decision of the USNA. Therefore, provision of notice in the instance of a challenge inspection is dependent upon a decision of the USNA. However, BIS recognizes that the CWCR is unclear on the timeline for notice in a challenge inspection, and therefore, Section 717.2(b) has been amended to include the phrase: “if possible, and when such notification is deemed appropriate.”

*Comment:* One respondent questioned the language of § 717.2(b)(2)(ii), indicating that the U.S. Government may make an “advance team” available to assist with preparation for a challenge inspection. The concern is that the Act provides that (in the absence of consent) challenge inspections will be conducted under a criminal warrant. Under this situation, it is not clear how the Advance Team should be treated. The

respondent requests that BIS clarify whether the U.S. Government will provide any immunity or other protection to enable sites to work freely with an Advance Team in conjunction with a challenge inspection.

*Response:* No change to the CWCR is required. Although BIS may provide an Advance Team for those inspections, it is not obliged to do so. Given the broad range of possible circumstances covered by the challenge provisions of the CWC, it may not always be appropriate for BIS to provide Advance Team services. Immunity or other comparable protection is not appropriate in the inspection contest and has therefore not been included.

*Comment:* One respondent notes that BIS added provisions in a number of locations saying the Host Team will consult with the site before making certain decisions about inspections. However, it appears that § 717.2(c) does not provide for consultation with the site before agreeing to extend a challenge inspection. This respondent feels this section should be revised to provide for consultation.

*Response:* The respondent is correct that in certain sections of the CWCR, there is explicit provision for BIS to consult with facility representatives, when appropriate, but that in the challenge inspection context, there are no similar provisions. Since this is a U.S. Government-led inspection, BIS has the decision-making authority to extend a challenge inspection and is under no obligation to consult with the facility before extending the timeline for a challenge inspection. BIS is acting on behalf of the U.S. Government in fulfilling its obligations under the CWC for the conduct of a challenge inspection. It is therefore the responsibility of BIS to take whatever measures are necessary, and reasonable, to ensure that the inspection is completed and the Inspection Team meets the goals of their mandate. BIS will make every effort to consult with facility representatives and to take facility concerns under consideration when making decisions during inspections.

#### *Q. Section 718.1—Definitions*

*Comment:* Two respondents state that the definition of Confidential Business Information (CBI) in § 718.1 of the interim rule must be revised to conform to the much broader definition of CBI set forth in Section 103(g) of the CWCIA (i.e., that no inspection shall extend to financial data, sales and marketing data, pricing data, personnel data, research data, patent data, data maintained for compliance with environmental or

occupational health and safety regulations, or personnel and vehicles entering and personnel and personal passenger vehicles exiting the facility).

*Response:* CBI, as defined in § 718.1, follows the definition in the CWCIA, and therefore that paragraph requires no revision. Not only are the relevant sections of the Act referenced in § 718.1, but the definition of CBI is also included in that paragraph.

*Comment:* In § 718.1(h), one respondent notes a reference to “personnel passenger vehicles” (64 FR 73803). The term used in the CWC Verification Annex is “personal passenger vehicles.” The CWCR should be changed to reflect the terminology used in the CWC.

*Response:* BIS notes the difference in terms and agrees with the respondent. Accordingly, § 718.1(h) has been amended to follow the CWC, which reads, in Part X, paragraph 30 of the Verification Annex, “\* \* \* personnel and personal passenger vehicles \* \* \*.”

#### *R. Section 718.2—Identification of Confidential Business Information*

*Comment:* One respondent suggests that there is a gap in this section because some confidential business information (CBI) may be disclosed directly to an international Inspection Team, rather than through the Host Team (e.g., visual access or employee interview). The respondent suggests that a new paragraph be added as follows: “(e) In any situation not addressed by paragraphs (b) through (d) of this section, where confidential business information is disclosed to the Inspection Team, the facility shall identify to the Host Team that the information is confidential. The Host Team shall then take appropriate steps to inform the Inspection Team of its obligation to safeguard the information from further disclosure.”

*Response:* Because the Host Team is the U.S. Government representative at the U.S. Government-led inspection, it will act as the intermediary between the facility and the Inspection Team. As such, any discussion, or any transfer of information, orally or in writing, should be reviewed and effectively cleared by the Host Team before being relayed to the Inspection Team. CBI relevant to inspection aims that is known to the facility must be identified to the Host Team, at best, before the inspection begins, or at the least, before disclosure to Inspection Teams. It is imperative that facilities and facility representatives be fully versed in the location of physical CBI on the facility and the presence of CBI in records or other documentation that could be

reviewed by the Inspection Team. BIS does not anticipate, or wish to promote, the possibility of disclosure of CBI to the Inspection Team without the Host Team’s knowledge, and therefore has not codified procedures in the CWCR whereby a facility would have opportunity to unilaterally release information to the Inspection Team. Nonetheless, in the unlikely event of CBI disclosure directly to the Inspection Team without prior disclosure to, or discussion with, the Host Team, facility representatives must immediately inform the Host Team so that appropriate measures contemplated by § 718.2(d) may be taken.

*Comment:* One respondent notes that the proposed rule indicates that companies could not shroud irrelevant confidential information unless the Host Team agreed to allow it, but that, in response to comments, BIS changed the language of § 718.2(d)(1) to say irrelevant confidential information may be shrouded “as determined by” the Host Team. The respondent argues that this change makes no real difference as it does not provide a role for the facility to express its legitimate concerns. Although the right to shroud irrelevant confidential information is a right granted to the State Party, the loss of confidential information is a harm to the facility. In order to be consistent with changes made elsewhere in the regulations, the respondent suggests that BIS provide for consultation with the facility before the Host Team makes its determination.

*Response:* BIS Host Teams are cognizant of facility concerns about protection of CBI and will work with facilities to protect the release of CBI that is unrelated to the inspection as much as possible. However, there are instances where release of CBI to the Inspection Team is unavoidable, and under those circumstances, the Inspection Team will be advised that the information is CBI and that it should be protected under the CWC’s confidentiality provisions. Shrouding is one of many means through which CBI is protected, but it is not always the most reasonable means of protection, particularly considering the obvious nature of the shroud. Frequently, there are other alternatives employed to protect release of CBI to the Inspection Team, such as revising their inspection route through the facility, or taping over the words or symbols on tanks or drums. The BIS Host Team will work with the company in deciding the most appropriate method for protecting unrelated CBI, but ultimately, since this is a U.S. Government-led inspection, the Host Team will be the final decision-

making authority on which protective method will be employed. Since prior consultation with the company, as appropriate, will generally be pursued, the recommended change to the regulatory text has not been made.

*S. Section 718.3—Disclosure of Confidential Business Information*

*Comment:* One respondent states that, although § 718.3(c)(4)(ii) provides for notice of disclosure to the owner of the confidential business information with certain exceptions, notice is of limited value unless the owner has an opportunity to be heard. Section 404(c)(2)(B) of the Act expressly provides a right to a hearing to object to disclosure and requires the United States National Authority (USNA) to provide its decision no later than 10 days before the scheduled or rescheduled date for the disclosure. However, the CWCR do not discuss this. Respondents suggest revising § 718.3(c)(4) to specify the right to a hearing, how and when to request a hearing, what the hearing generally will consist of, how and when the decision will be communicated, and what avenue of redress is available to the owner of the information if the USNA decides to disclose the information.

*Response:* The respondent has referenced the hearing requirements that relate to the domestic release of company CBI that is in the possession and control of BIS. Under the referenced circumstances (e.g., pending investigation, request of Congress, national interest, etc.) where CBI may be released, the company has a right to a hearing on the record prior to the release of such information. This hearing exercise is separate and distinct from the release of CBI during facility inspections. There is no right to a hearing during the inspection process, which is why all CBI must be identified to the Host Team prior to the start of the inspection in order for BIS to take measures to control access to CBI or prevent its release.

*Comment:* One respondent notes that because §§ 718.2(c) and 718.3(b) state that certain information is not subject to the CBI provisions of the Act, that this reference will therefore be misunderstood to mean that the information cannot be protected as confidential business information. Other provisions in the CWCR (such as §§ 718.3(b)(1) and (2)) indicate that this was not BIS's intent and that other laws will protect the information and provide the procedures to be followed. The respondent suggests that BIS clarify §§ 718.2(c) and 718.3(b) to say that the information, although not subject to the

CBI provisions of the Act, may be protected under other laws.

*Response:* The reference to protection by other laws is already included in the text of the CWCR in § 718.3(a). That section specifically states that confidentiality of all information will be maintained consistent with the Act and the other listed statutes and regulations. There is no need to repeat this reference elsewhere in part 718.

*T. Section 719.3—Violations of the IEEPA Subject to Judicial Enforcement Proceedings*

*Comment:* One respondent noted that the 45 calendar day reference in § 719.3(a)(1)(iv) could be taken literally to allow for advance notification on only a single day. The respondent proposes that the wording of § 719.3 be revised to provide that the notice is required "not less than 45 calendar days" before the import.

*Response:* As suggested by the respondent, § 719.3(a)(1)(iv) has been amended to provide that notice is required "not less than" 45 calendar days before the import.

*U. Section 719.6—Request for Hearing and Answer*

*Comment:* One respondent is concerned that this section allows only fifteen days from "the date of the Notice of Violation and Assessment (NOVA)" to request a hearing. If the regulations do not provide sufficient time, the site's attorney will have to file a request for hearing automatically, as a precautionary measure, even though ultimately the company may decide that no hearing was necessary. As the fifteen-day period is specified by statute, the respondent suggests one of the following: (a) Interpret the word "days" to mean "working days" to address weekends and holidays; (b) interpret the term "date of the NOVA" to mean the date of receipt of the NOVA to address any delays in the mail; or (c) commit to provide a telephone call to let the company know that a NOVA is coming, with a follow-up facsimile if requested.

*Response:* BIS agrees with the respondent regarding the 15-day time period and the "date" of the NOVA. Accordingly, BIS has amended § 719.6(a) to state "15 business days" and has inserted the words "from the postmarked date of the NOVA" in the relevant sections of the CWCR. As to the respondent's suggestion in (c), BIS cannot guarantee a phone-call in these circumstances, but will note that the recipients should contact BIS in the event an extension is required for response time to these provisions.

*V. Section 719.8—Filing and Service of Papers Other Than the NOVA*

*Comment:* One respondent suggests that the idea that all papers must be served "simultaneously" with their filing is not achievable and that the word "simultaneously" be changed to "contemporaneously."

*Response:* Simultaneously and contemporaneously are interpreted by BIS as synonyms. BIS expects all motions and supporting documentation be served at the same time, and therefore, BIS requires simultaneous filing. This represents normal legal procedure.

*W. Section 719.20—Record for Decision*

*Comment:* One respondent notes that this section allows the Administrative Law Judge (ALJ), after an enforcement case, to transfer documents from the closed portion to the open portion of the record if the information becomes unrestricted through the passage of time without expressly providing notice or an opportunity for the owner of the information to be heard. In the preamble to the interim rule, BIS defended this by saying that the ALJ would necessarily make some sort of inquiry before transferring the records. The respondent is concerned that the ALJ may not have all the necessary information without allowing for notice and an opportunity to be heard.

*Response:* BIS cannot impose additional requirements upon the ALJ other than those authorized by the Act. It is unnecessary to include additional direction for the ALJ in the CWCR, unless such direction is uniquely related to the CWC implementation process. The issue raised by the respondent is not CWC-specific, and therefore does not meet that test.

*X. Section 719.21—Payment of Final Assessment*

*Comment:* One respondent suggests that, in order to prevent an ALJ from requiring payment within an unreasonably short time, that § 719.21(a) be revised to say "or within a longer time specified in the order." This respondent commented on this provision in the proposal, but BIS has not addressed the comment.

*Response:* As suggested by the respondent, § 719.21(a) has been amended to provide that payment shall be made within 30 days of the effective date of the order or within such longer period of time as may be specified in the order.

*Y. Section 721.1—Inspection of Records*

*Comment:* One respondent suggests that this section begin, "Upon formal

request \* \* \* to avoid confusion over whether a request has been made and to assist in determining compliance.

*Response:* Requests made by the Department of Commerce may be made formally or informally, by telephone, in person, or through written correspondence. It is not necessary to distinguish between the types of requests that could be made. Therefore, no change has been made to the existing CWC language.

#### Z. Section 721.2—Recordkeeping

*Comment:* Two respondents propose that the recordkeeping requirements recognize industry's records management programs in the interest of additional costs to and interruption of ordinary business and as recognized under other statutes. Respondents request that they be able to use whatever type of records normally used in the ordinary course of business (originals or duplicates), be allowed to use any duplication system normally used in the ordinary course of business, be able to store records in logical locations that do not unduly impair inspections (on or off the declared plant site), and be allowed but not required to provide personnel and equipment to assist with records.

*Response:* The existing regulatory language is designed to allow for accessibility of records within the time limitations imposed by the CWC. That language is further designed to require retention only of those records (or copies thereof) necessary to verify compliance with the CWC. Unfortunately, based on the implementation of the CWC to date, certain required records may not be kept in the ordinary course of business and certain document retention and duplication policies that are used in the ordinary course of business may likewise not adequately protect necessary documentation. As a result, the existing regulatory language has been largely retained.

#### AA. Section 721.3—Destruction or Disposal of Records

*Comment:* Two respondents state that the requirements of this section undermine records management programs. Respondents argue that the CWC do not require that the governmental agency must justify requesting the record, that once a record has been provided to the government it should be of no concern whether the company retains its copy thereafter, that there is no ending date specified, that these requirements exceed BIS's authority, and that the regulations do not impose any standards on the agency's decision to grant or deny

permission to dispose of the records. For these reasons, § 721.3 should either be deleted or revised to allow disposal of records after they are provided to the government.

*Response:* Section 404 of the Act provides for the release of certain CWC-related records in the national interest to Congress, enforcement agencies, or other federal agencies, as necessary. The Act provides guidelines for requesting records, the protection of the information contained in the records, and hearings related to their release. As the Act specifically addresses the handling of records, and since the Act is applicable to all government agencies, there is no need for BIS to further delineate those requirements in its regulations.

#### BB. Miscellaneous Comments

*Comment:* It is one respondent's understanding that the OPCW recently amended the requirements relating to transfers of saxitoxin and recommended that these changes be incorporated into all parts of the regulations that relate to the reporting of saxitoxin transfers. In addition, the Handbook for Schedule 1 Declarations and Reports should be amended to reflect these changes. Furthermore, the respondent contends that such OPCW amendments should initiate notice and comment rulemaking to change the CWC where it does not conflict with the CWCIA.

*Response:* Based upon an OPCW Decision on transfers of the Schedule 1 chemical saxitoxin, BIS has changed the advance notification period for transfers of 5 milligrams or less of saxitoxin, only when the chemical will be used for medical/diagnostic purposes. The advance notification for these transfers must be submitted to BIS at least 3 calendar days prior to export or import.

#### CC. CWC Declaration Forms

*Comment:* Two respondents encourage BIS to allow another possible means of determining the latitude and longitude of a declarable plant site, namely Land View III Mapping Software. Respondents understand that various industries already rely on this software for such determinations and suggest BIS allow the use of this and similar software in the course of CWC inspections as a means to further minimize the CWC's compliance costs to industry.

*Response:* BIS has updated Supplement 1 to the Declaration and Report Handbook to clarify that the tools listed in the Handbook were only suggested options for industry to use in determining their facility's latitude and longitude coordinates. BIS did not

intend to limit industry's activities to only these listed tools. There are a wide variety of commercial products available that may be used. Upon request, BIS will also assist companies in identifying their geographical coordinates.

*Comment:* One respondent notes that "rounding rules" have been provided for Schedule 1, Schedule 2, and Schedule 3 substances in mixtures and that these rounding rules are necessary for UDOCs for the very same reasons, *i.e.*: Low concentrations do not pose a risk to the aims of the Convention; low concentrations are not readily amenable to diversion; the producer may not even know that a substance is present, if the concentration is very low; low concentrations may reflect inadvertent production of an impurity; and, minor fluctuations in very low concentrations may make it difficult to provide an accurate estimate of the annual quantity. In addition, UDOCs are farther removed from possible "chemical weapons" use than any of the scheduled chemicals and may be present in large numbers in a product stream in different concentrations that fluctuate. In the absence of any "rounding rule," additional Declarations and Reports will increase the cost of compliance without providing a corresponding benefit. The respondent proposes that any constituent less than 5% in a mixture be excluded; if not, perhaps the same "0.5% round down to zero" that applies to Schedule 1 substances could apply.

*Response:* BIS will review on a case-by-case basis requests for determinations of mixtures containing low concentrations of UDOCs.

*Comment:* According to § 718.2(b)(2) and a footnote to Supplement No. 1 to part 718, companies must submit an up-front, written rationale to claim certain information is confidential. One respondent suggests that this requirement be deleted to reduce the regulatory burden and require written substantiation only in cases where a challenge is raised to the confidentiality of the information. The respondent contends this was consistent with the reporting requirements of many different federal, state and local agencies.

*Response:* Due to the explicit definitional requirements provided in the Act pertaining to "confidential business information," BIS has included in the CWC the requirement that companies provide justification for why certain information should be considered CBI. BIS requests this "rationale" in writing in order to clearly ascertain that all elements of the Act's definition of CBI are met by the

company information. Additionally, this written justification assists BIS in keeping track of confidential business information identified by the company during the inspection process. As such, this requirement is an important tool that assists BIS in complying with the Act and meeting the needs of the companies.

*Comment:* One respondent suggests that BIS adopt a generic policy that no more than two significant digits are required. This will greatly reduce the rounding burdens, without harming the regulatory program in any way.

*Response:* This issue is currently under discussion at OPCW. Accordingly, BIS will not implement a policy until a final decision on this matter has been agreed upon by all States Parties.

*Comment:* One respondent contends that the choices for “purpose of production” leave a gap in reporting transfers to another company within the same industry. The respondent proposed revising the Schedule 3 import/export forms to say, “Transfer to other company or industry.”

*Response:* BIS has changed the “purpose(s) of production” question on Schedule 3 Form 3–3 as suggested by the respondent.

#### Rulemaking Requirements

1. This proposed rule has been determined to be significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule proposes to revise an existing collection of information subject to the requirements of the PRA. This collection has been approved by OMB under Control Number 0694–0091 (Chemical Weapons Convention—Declaration and Report Forms), which carries burden hour estimates of 10.6 hours for Schedule 1 Chemicals, 11.9 hours for Schedule 2 chemicals, 2.5 hours for Schedule 3 chemicals, 5.3/5.1 for unscheduled discrete organic chemicals, and 0.17 hours for Schedule 1 notifications. This rule proposes to add a new Section 711.3 to the Chemical Weapons Convention Regulations (CWCR) that would authorize BIS to contact any facility to request information concerning production, processing, consumption, export, import, or other activities

involving scheduled chemicals and UDOCs, described in Parts 712 through 715 of the CWCR, in order to determine whether or not the facility is in compliance with the CWCR. This new requirement would apply to all persons and facilities that are subject to the reporting or declaration provisions of the CWCR, as set forth in Part 721. The total estimated annual burden hours for the compliance reviews authorized under new Section 711.3 would be 85 hours and the total estimated annual cost would be \$3,236.46. This rule also proposes to add a new requirement for the submission of amendments (to previously submitted declarations and reports) resulting from inspection findings. The total estimated annual burden hours for this new amendment requirement would be 112 hours and the total estimated annual cost would be \$4,267. Note that the estimated burden hours and cost for inspection related amendments are already included in the information collection authorization from OMB. Therefore, to avoid double counting the information, it does not appear as a separate line item under the revision to the information collection for this proposed rule. Finally, this rule proposes to add a new reporting form, entitled “No Changes” Certification Form, for UDOC facilities to use, if appropriate, for certifying that there are no changes to the information declared in the facilities prior year’s annual declaration on past activities. This new form will reduce industry’s estimated annual burden by 15 hours and \$571.50. Note that, like the information related to inspection-related amendments, the estimated burden hours and cost for implementing the “No Changes” Certification Form are included in a prior information collection authorization from OMB. In conclusion, the total estimated annual burden hours for declarations, reports, amendments, and requests for compliance-related information under this proposed rule will increase from 4401 burden hours to 4471 burden hours. The changes proposed by this rule are addressed under two separate information collection submissions.

Comments are invited on: (i) Whether the collection of information is necessary for the functions of the agency, including whether the information shall have practical utility; (ii) the accuracy of the agency’s estimate of the burden of the proposed collection of information; (iii) ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) ways to minimize the burden of the collection on respondents, including

through the use of automated collection techniques or other forms of information technology.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Chief Counsel for Regulations, Department of Commerce, certified to the Chief Counsel for Advocacy, Small Business Administration, that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities for the reasons explained below. Consequently, BIS has not prepared a regulatory flexibility analysis.

Small entities include small businesses, small organizations and small governmental jurisdictions. For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) A small business according to RFA default definitions for small business (based on SBA size standards), (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000, and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. BIS has determined that this proposed rule would affect only the first category of small entities (*i.e.*, small businesses).

The President reported to the Congress, in December 2003, as required under Section 309 of the CWC Implementation Act, that 297 U.S. companies representing 691 facilities, plant sites, and trading companies were subject to the declaration and reporting requirements under the Chemical Weapons Convention Regulations (CWCRC). Although BIS estimates that the majority of these 297 companies are substantially sized businesses, having more than 500 employees, BIS does not have sufficient information on these companies to definitively characterize them as large entities. The Small Business Administration (SBA) has established standards for what constitutes a small business, with respect to each of the Standard Industrial Classification (SIC) code categories for "Chemicals and Allied Products." However, BIS is not able to determine which of these SIC code categories apply to the companies that are subject to the declaration, reporting, advance notification, recordkeeping or inspection requirements of this rule. Therefore, for the purpose of assessing the impact of this proposed rule, BIS will assume that the 297 companies are small entities.

Although this proposed rule would affect a substantial number of small entities (*i.e.*, 297 companies), if adopted, the additional recordkeeping and reporting requirements that would be imposed by this rule would not have a significant economic impact on these entities.

First, this rule proposes to add a new Section 711.3 that would authorize BIS to contact any facility to determine whether or not it is in compliance with the CWCRC. The information that BIS would be authorized to request would concern production, processing, consumption, export, import, or other activities involving scheduled chemicals and UDOCs described in Parts 712 through 715 of the CWCRC. This new requirement would apply to all persons and facilities subject to the reporting or declaration provisions of the CWCRC, as set forth in Part 721. The total estimated annual burden hours for the compliance reviews authorized under new Section 711.3 would be 85 hours and the total estimated annual cost would be \$3,236.46.

Second, this rule proposes to add a new requirement for the submission of amendments (to previously submitted declarations and reports) resulting from inspection findings. The total estimated annual burden hours for the new amendment requirement would be 112 hours and the total estimated annual cost would be \$4,267.

Finally, this rule proposes to add a new reporting form, entitled "No Changes" Certification Form, for UDOC facilities to use, if appropriate, for certifying that there are no changes to the information declared in the facilities prior year's annual declaration on past activities. This new form will reduce industry's estimated annual burden by 15 hours and \$571.50.

The total estimated increase in annual burden hours to implement the additional recordkeeping and reporting requirements described above would be 197 burden hours and the total estimated annual cost would be \$7,503.46. The total cost of these recordkeeping and reporting requirements would represent only a small percentage of the revenues generated by the affected companies. Although the proposed rule would affect a substantial number of small entities (*i.e.*, 297 companies), the total economic impact on the affected entities (*i.e.*, \$7,503.46) would not be significant. Since the proposed revisions to the CWCRC would not impose a significant economic impact on a substantial number of small entities, BIS did not prepare a regulatory flexibility analysis for this rule.

Finally, the changes proposed by this rule should be viewed in light of the fact that BIS's discretion in formulating the declaration, reporting and advance notification, and recordkeeping requirements of the CWCRC is limited by the Chemical Weapons Convention (the Convention). The Organization for the Prohibition of Chemical Weapons (OPCW) has issued forms for States Parties to use for declarations. In drafting the CWCRC requirements and the forms for U.S. persons to use, BIS has consistently interpreted the Convention's requirements as narrowly as possible to ensure that only information that the United States National Authority must declare to the OPCW is to be submitted to BIS. Other States Parties, such as Canada, have imposed much broader reporting requirements on their industries, with the government taking on the responsibility of determining which of the information collected must be declared to the OPCW. In addition, certain declaration requirements of the Convention are subject to interpretation by States Parties. Until the Conference of States Parties establishes clear rules for these requirements, States Parties may use their "national discretion" to implement them. "National discretion" generally means a reasonable interpretation of the requirement. For requirements currently subject to "national discretion," BIS has adopted

in this rule the minimum requirements consistent with a reasonable reading of the Convention, keeping in mind its purposes and objectives.

#### List of Subjects

##### 15 CFR Part 710

Chemicals, Exports, Foreign Trade, Imports, Treaties.

##### 15 CFR Part 711

Chemicals, Confidential business information, Reporting and recordkeeping requirements.

##### 15 CFR Part 712

Chemicals, Exports, Foreign Trade, Imports, Reporting and recordkeeping requirements.

##### 15 CFR Part 713

Chemicals, Exports, Foreign Trade, Imports, Reporting and recordkeeping requirements.

##### 15 CFR Part 714

Chemicals, Exports, Foreign Trade, Imports, Reporting and recordkeeping requirements.

##### 15 CFR Part 715

Chemicals, Exports, Foreign Trade, Imports, Reporting and recordkeeping requirements.

##### 15 CFR Part 716

Chemicals, Confidential business information, Reporting and recordkeeping requirements, Search warrant, Treaties.

##### 15 CFR Part 717

Chemicals, Confidential business information, Reporting and recordkeeping requirements, Search warrant, Treaties.

##### 15 CFR Part 718

Confidential business information, Reporting and recordkeeping requirements.

##### 15 CFR Part 719

Administrative proceedings, Exports, Imports, Penalties, Violations.

##### 15 CFR Part 720

Penalties, violations.

##### 15 CFR Part 721

Reporting and recordkeeping requirements.

Accordingly, the Chemical Weapons Convention Regulations (15 CFR, Chapter VII, Subchapter B, Parts 710–729) are proposed to be revised to read as follows:



# **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.

## **§ 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 shipment may occur under the advance notification procedure. Additionally, 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 799) 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 (CWC).** 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 CWC 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 CWC 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 CWC, 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 CWC, 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 799).

**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 this subchapter 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 this subchapter 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 (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 through 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).

**Notes:** 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 that is isolated for use or sale.

**Protective purposes in relation to Schedule 1 chemicals.** Means any purpose directly related to protection against toxic chemicals and to protection against chemicals 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 (see § 719.1) of this subchapter.

**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 this subchapter.

**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 this subchapter.

**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 they are in a transition state in terms of thermodynamics and kinetics, exist 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 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 this subchapter).

*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 this subchapter) and subject to the declaration requirements of part 715 of this subchapter. Unscheduled discrete organic chemicals subject to declaration under this subchapter 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 CWC, "you" refers to persons that have an obligation to report certain activities under the provisions of the CWC.

#### **§ 710.2 Scope of the CWC.**

The Chemical Weapons Convention Regulations (parts 710 through 729 of this subchapter), or CWC, 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 CWC.* (1) The CWC 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 CWC.

(2) For purposes of this subchapter, "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 CWC.* The activities subject to the CWC (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 this subchapter. 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 CWC.**

(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 and other States Parties to the Convention undertake never under any circumstances to:

- (i) Develop, produce, otherwise acquire, stockpile, or retain chemical weapons, or transfer, directly or indirectly, chemical weapons to anyone;
  - (ii) Use chemical weapons;
  - (iii) Engage in any military preparations to use chemical weapons;
- or

(iv) Assist, encourage or induce, in any way, anyone to engage in any activity prohibited by the Convention.

(2) One objective of the Convention is to assure States Parties that lawful activities of chemical producers and users are not converted to unlawful activities related to chemical weapons. To achieve this objective and to give States Parties a mechanism to verify compliance, the Convention requires the United States and all other States Parties to submit declarations concerning chemical production, consumption, processing and other activities, and to permit international inspections within their borders.

(b) *Purposes of the Chemical Weapons Convention Regulations.* To fulfill the United States' obligations under the Convention, the CWC (parts 710 through 729 of this subchapter) prohibit certain activities, and compel the submission of information from all facilities in the United States, except for Department of Defense and Department of Energy facilities and facilities of other U.S. Government agencies that notify the USNA of their decision to be excluded from the CWC on activities, including exports and imports of scheduled chemicals and certain information regarding unscheduled discrete organic chemicals as described in parts 712 through 715 of this

subchapter. U.S. Government facilities are those owned by or leased to the U.S. Government, including facilities that are contractor-operated. The CWC also require access for on-site inspections and monitoring by the OPCW, as described in parts 716 and 717 of this subchapter.

#### **§ 710.4 Overview of scheduled chemicals and examples of affected industries.**

The following provides examples of the types of industries that may be affected by the CWC (parts 710 through 729 of this subchapter). These examples are not exhaustive, and you should refer to parts 712 through 715 of this subchapter to determine your obligations.

(a) Schedule 1 chemicals are listed in Supplement No. 1 to part 712 of this subchapter. Schedule 1 chemicals have little or no use in industrial and agricultural industries, but may have limited use for research, pharmaceutical, medical, public health, or protective purposes.

(b) Schedule 2 chemicals are listed in Supplement No. 1 to part 713 of this subchapter. Although Schedule 2 chemicals may be useful in the production of chemical weapons, they also have legitimate uses in areas such as:

- (1) Flame retardant additives and research;
- (2) Dye and photographic industries (e.g., printing ink, ball point pen fluids, copy mediums, paints, etc.);
- (3) Medical and pharmaceutical preparation (e.g., anticholinergics, arsenicals, tranquilizer preparations);
- (4) Metal plating preparations;
- (5) Epoxy resins; and
- (6) Insecticides, herbicides, fungicides, defoliants, and rodenticides.

(c) Schedule 3 chemicals are listed in Supplement No. 1 to part 714 of this subchapter. Although Schedule 3 chemicals may be useful in the production of chemical weapons, they also have legitimate uses in areas such as:

- (1) The production of:
  - (i) Resins;
  - (ii) Plastics;
  - (iii) Pharmaceuticals;
  - (iv) Pesticides;
  - (v) Batteries;
  - (vi) Cyanic acid;
  - (vii) Toiletries, including perfumes and scents;
  - (viii) Organic phosphate esters (e.g., hydraulic fluids, flame retardants, surfactants, and sequestering agents); and
- (2) Leather tannery and finishing supplies.

(d) Unscheduled discrete organic chemicals are used in a wide variety of commercial industries, and include acetone, benzoyl peroxide and propylene glycol.

#### **§ 710.5 Authority.**

The CWC (parts 710 through 729 of this subchapter) implement certain provisions of the Chemical Weapons Convention under the authority of the Chemical Weapons Convention Implementation Act of 1998 (Act), the National Emergencies Act, the International Emergency Economic Powers Act (IEEPA), as amended, and the Export Administration Act of 1979, as amended, by extending verification and trade restriction requirements under Article VI and related parts of the Verification Annex of the Convention to U.S. persons. In Executive Order 13128 of June 25, 1999, the President delegated authority to the Department of Commerce to promulgate regulations to implement the Act, and consistent with the Act, to carry out appropriate functions not otherwise assigned in the Act but necessary to implement certain reporting, monitoring and inspection requirements of the Convention and the Act.

#### **§ 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.**

Certain obligations of the U.S. Government under the CWC pertain to exports and imports. The obligations on exports are implemented in the Export Administration Regulations (EAR) (15 CFR parts 730 through 799) and the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130). See in particular §§ 742.2 and 742.18 and part 745 of the EAR, and Export Control Classification Numbers 1C350, 1C351, 1C355 and 1C395 of the Commerce Control List (Supplement No. 1 to part 774 of the EAR). The obligations on imports are implemented in the Chemical Weapons Convention Regulations (§§ 712.2 and 713.1) and the Alcohol, Tobacco, Firearms and Explosives Regulations in 27 CFR part 447.

#### **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**

List of States Parties as of November 24, 2004  
 Afghanistan, Albania, Algeria, Andorra, Argentina, Armenia, Australia, Austria, Azerbaijan

Bahrain, Bangladesh, Belarus, Belgium, Belize, Benin, Bolivia, Bosnia-Herzegovina, Botswana, Brazil, Brunei Darussalam\*, Bulgaria, Burkina Faso, Burundi  
 Cameroon, Canada, Cape Verde, Chad, Chile, China\*\*, Colombia, Cook Islands\*, Costa Rica, Cote d'Ivoire (Ivory Coast), Croatia, Cuba, Cyprus, Czech Republic  
 Denmark, Dominica  
 Ecuador, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia  
 Fiji, Finland, France  
 Gabon, Gambia, Georgia, Germany, Ghana, Greece, Guatemala, Guinea, Guyana  
 Holy See\*, Hungary  
 Iceland, India, Indonesia, Iran (Islamic Republic of), Ireland, Italy  
 Jamaica, Japan, Jordan  
 Kazakhstan, Kenya, Kiribati, Korea (Republic of), Kyrgyzstan, Kuwait  
 Laos (P.D.R.)\*, Latvia, Lesotho, Libya, Liechtenstein, Lithuania, Luxembourg  
 Macedonia (The Former Yugoslav Republic of), Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Micronesia (Federated States of), Moldova (Republic of)\*, Monaco, Mongolia, Morocco, Mozambique  
 Namibia, Nauru, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway  
 Oman  
 Pakistan, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal  
 Qatar  
 Romania, Russian Federation, Rwanda  
 Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Sao Tome and Principe, Saudi Arabia, Senegal, Serbia and Montenegro\*, Seychelles, Sierra Leone, Singapore, Slovak Republic\*, Slovenia, Solomon Islands, South Africa, Spain, Sri Lanka, Sudan, Suriname\*, Swaziland, Sweden, Switzerland  
 Tajikistan, Tanzania (United Republic of), Thailand, Timor Leste (East Timor), Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Tuvalu  
 Uganda, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Uzbekistan  
 Venezuela, Vietnam  
 Yemen  
 Zambia, Zimbabwe

\* For export control purposes, these destinations are identified using a different nomenclature under the Commerce Country Chart in Supplement No. 1 to part 738 of the Export Administration Regulations (15 CFR Parts 730 through 799).

\*\* For CWC States Parties purposes, China includes Hong Kong and Macau.

## SUPPLEMENT NO. 2 TO PART 710—DEFINITIONS OF PRODUCTION

Schedule 1 chemicals	Schedule 2 and Schedule 3 chemicals	Unscheduled discrete organic chemicals (UDOCs)
Produced by a biochemical or biologically mediated reaction.		Produced by synthesis.*
Formation through chemical synthesis. Processing to extract and isolate Schedule 1 chemicals.	All production steps in any units within the same plant which includes associated processes—purification, separation, extraction distillation or refining.**	

\*Intermediates used in a single or multi-step process to produce another declared UDOC are not declarable.

\*\*Intermediates are subject to declaration, except "transient intermediates," which are those chemicals in a transition state in terms of thermodynamics and kinetics, that exist only for a very short period of time, and cannot be isolated, even by modifying or dismantling the plant, or by altering process operating conditions, or by stopping the process altogether are not subject to declaration.

## PART 711—GENERAL INFORMATION REGARDING REQUIREMENTS FOR DECLARATION, REPORT, ADVANCE NOTIFICATION, AND ELECTRONIC FILING OF DECLARATIONS AND REPORTS

### Sec.

- 711.1 Overviews of declaration, reporting, and advance notification requirements.
- 711.2 Who submits declarations, reports, and advance notifications?
- 711.3 Compliance review.
- 711.4 Assistance in determining your obligations.
- 711.5 Numerical precision of submitted data.
- 711.6 Where to obtain forms.
- 711.7 Where to submit declarations, reports, and advance notifications.
- 711.8 How to request authorization from BIS to make electronic submissions of declarations or reports.

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

### § 711.1 Overviews of declaration, reporting, and advance notification requirements.

Parts 712 through 715 of the CWCRC (parts 710 through 729 of this subchapter) describe the declaration, advance notification and reporting requirements for Schedule 1, 2 and 3 chemicals and for unscheduled discrete organic chemicals (UDOCs). For each type of chemical, the Convention requires annual declarations. If, after reviewing parts 712 through 715 of this subchapter, you determine that you have declaration, advance notification or reporting requirements, you may obtain the appropriate forms by contacting the Bureau of Industry and Security (BIS) (*see* § 711.6).

### § 711.2 Who submits declarations, reports, and advance notifications?

The owner, operator, or senior management official of a facility subject to declaration, report, or advance notification requirements under the CWCRC (parts 710 through 729 of this subchapter) is responsible for the

submission of all required documents in accordance with all applicable provisions of the CWCRC.

### § 711.3 Compliance review.

Periodically, BIS will request information from persons and facilities subject to the CWCRC to determine compliance with the reporting, declaration and notification requirements set forth herein. Information requested may relate to the production, processing, consumption, export, import, or other activities involving scheduled chemicals and unscheduled discrete organic chemicals described in parts 712 through 715 of this subchapter. Any person or facility subject to the CWCRC and receiving such a request for information will be required to provide a response to BIS 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. The recordkeeping requirements that apply to persons and facilities that are subject to the reporting or declaration provisions of the CWCRC are set forth in part 721.

### § 711.4 Assistance in determining your obligations.

(a) *Determining if your chemical is subject to declaration, reporting or advance notification requirements.* (1) If you need assistance in determining if your chemical is classified as a Schedule 1, Schedule 2, or Schedule 3 chemical, or is an unscheduled discrete organic chemical, submit your written request for a chemical determination to BIS. Such requests may be sent via facsimile to (703) 605-4425, e-mailed to [cdr@cwcr.gov](mailto:cdr@cwcr.gov), or mailed to the Treaty Compliance Division, Bureau of Industry and Security, U.S. Department of Commerce, 1555 Wilson Boulevard, Suite 700, Arlington, Virginia 22209-2405. Your request should include the information noted in paragraph (a)(2) of this section to ensure an accurate determination. Also include any

additional information that you feel is relevant to the chemical or process involved (*see* part 718 of this subchapter for provisions regarding treatment of confidential business information). If you are unable to provide all of the information required in paragraph (a)(2) of this section, you should include an explanation identifying the reasons or deficiencies that preclude you from supplying the information. If BIS cannot make a determination based upon the information submitted, BIS will return the request to you and identify the additional information that is necessary to complete a chemical determination. BIS will provide a written response to your chemical determination request within 10 working days of receipt of the request.

(2) Include the following information in each chemical determination request:

- (i) Date of request;
- (ii) Company name and complete street address;
- (iii) Point of contact;
- (iv) Phone and facsimile number of contact;
- (v) E-mail address of contact, if you want an acknowledgment of receipt sent via e-mail;
- (vi) Chemical Name;
- (vii) Structural formula of the chemical, if the chemical is not specifically identified by name and chemical abstract service registry number in Supplements No. 1 to parts 712 through 714 of the CWCRC; and
- (viii) Chemical Abstract Service registry number, if assigned.

(b) *Other inquiries.* If you need assistance in interpreting the provisions of this subchapter or need assistance with declaration, forms, reporting, advance notification, inspection or facility agreement issues, contact BIS's Treaty Compliance Division by phone at (703) 605-4400. If you require a response from BIS in writing, submit a detailed request to BIS that explains your question, issue, or request. Send the request to the address or facsimile

included in paragraph (a) of this section, or e-mail the request to [cwcqa@cwcr.gov](mailto:cwcqa@cwcr.gov).

#### **§ 711.5 Numerical precision of submitted data.**

Numerical information submitted in declarations and reports is to be provided per applicable rounding rules in each part (*i.e.*, parts 712 through 715 of this subchapter) with a precision equal to that which can be reasonably provided using existing documentation, equipment, and measurement techniques.

#### **§ 711.6 Where to obtain forms.**

(a) Forms to complete declarations and reports required by the CWCR may be obtained by contacting: Treaty Compliance Division, Bureau of Industry and Security, U.S. Department of Commerce, 1555 Wilson Blvd., Suite 700, Arlington, VA 22209-2405, Telephone: (703) 605-4400. Forms and forms software may also be downloaded from the Internet at <http://www.cwc.gov>.

(b) If the amount of information you are required to submit is greater than the given form will allow, multiple copies of forms may be submitted.

#### **§ 711.7 Where to submit declarations, reports and advanced notifications.**

Declarations, reports and advance notifications required by the CWCR must be sent to: Treaty Compliance Division, Bureau of Industry and Security, U.S. Department of Commerce, 1555 Wilson Blvd., Suite 700, Arlington, VA 22209-2405, Telephone: (703) 605-4400. Advanced notifications may also be facsimiled to (703) 235-1481. Specific types of declarations and reports and due dates are outlined in Supplement No. 2 to parts 712 through 715 of the CWCR.

#### **§ 711.8 How to request authorization from BIS to make electronic submissions of declarations or reports.**

(a) *Scope.* This section provides an optional method of submitting declarations or reports. Specifically, this section applies to the electronic submission of declarations and reports required under the CWCR. If you choose to submit declarations and reports by electronic means, all such electronic submissions must be made through the Web-Data Entry System for Industry (Web-DESI), which can be accessed on the CWC Web site at <http://www.cwc.gov>.

(b) *Authorization.* If you or your company has a facility, plant site, or trading company that has been assigned a U.S. Code Number (USC Number), you may submit declarations and reports electronically, once you have received authorization from BIS to do so. An

authorization to submit declarations and reports electronically may be limited or withdrawn by BIS at any time. There are no prerequisites for obtaining permission to submit electronically, nor are there any limitations with regard to the types of declarations or reports that are eligible for electronic submission. However, BIS may direct, for any reason, that any electronic declaration or report be resubmitted in writing, either in whole or in part.

(1) *Requesting approval to submit declarations and reports electronically.* To submit declarations and reports electronically, you or your company must submit a written request to BIS at the address identified in § 711.6 of the CWCR. Both the envelope and letter must be marked "Attn: Electronic Declaration or Report Request." Your request should be on company letterhead and must contain your name or the company's name, your mailing address at the company, the name of the facility, plant site or trading company and its U.S. Code Number, the address of the facility, plant site or trading company (this address may be different from the mailing address), the list of individuals who are authorized to view, edit, or edit and submit declarations and reports on behalf of your company, and the telephone number and name and title of the official responsible for certifying that each individual listed in the request is authorized to view, edit, or edit and submit declarations and reports on behalf of you or your company. Additional information required for submitting electronic declarations and reports may be found on BIS's Web site at <http://www.cwc.gov>. Once you have completed and submitted the necessary certifications, you may be authorized by BIS to view, edit, or edit and submit declarations and reports electronically.

**Note to § 711.8(b)(1):** You must submit a separate request for each facility, plant site or trading company owned by your company (*e.g.*, each site that is assigned a unique U.S. Code Number).

(2) *Assignment and use of passwords for facilities, plant sites and trading companies (USC password) and Web-DESI user accounts (user name and password).* (i) Each person, facility, plant site or trading company authorized to submit declarations and reports electronically will be assigned a password (USC password) that must be used in conjunction with the U.S.C. Number. Each individual authorized by BIS to view, edit, or edit and submit declarations and reports electronically for a facility, plant site or trading company will be assigned a Web-DESI

user account (user name and password) telephonically by BIS. A Web-DESI user account will be assigned to you only if your company has certified to BIS that you are authorized to act for it in viewing, editing, or editing and submitting electronic declarations and reports under the CWCR.

**Note to § 711.8(b)(2)(i):** When individuals must have access to multiple Web-DESI accounts, their companies must identify such individuals on the approval request for each of these Web-DESI accounts. BIS will coordinate with such individuals to ensure that the assigned user name and password is the same for each account.

(ii) Your company may reveal the facility, plant site or trading company password (USC password) only to Web-DESI users with valid passwords, their supervisors, and employees or agents of the company with a commercial justification for knowing the password.

(iii) If you are an authorized Web-DESI account user, you may not:

(A) Disclose your user name or password to anyone;

(B) Record your user name or password, either in writing or electronically;

(C) Authorize another person to use your user name or password; or

(D) Use your user name or password following termination, either by BIS or by your company, of your authorization or approval for Web-DESI use.

(iv) To prevent misuse of the Web-DESI account:

(A) If Web-DESI user account information (*i.e.*, user name and password) is lost, stolen or otherwise compromised, the company and the user must report the loss, theft or compromise of the user account information, immediately, by calling BIS at (703) 235-1335. Within two business days of making the report, the company and the user must submit written confirmation to BIS at the address provided in § 711.6 of the CWCR.

(B) Your company is responsible for immediately notifying BIS whenever a Web-DESI user leaves the employ of the company or otherwise ceases to be authorized by the company to submit declarations and reports electronically on its behalf.

(v) No person may use, copy, appropriate or otherwise compromise a Web-DESI account user name or password assigned to another person. No person, except a person authorized access by the company, may use or copy the facility, plant site or trading company password (USC password), nor may any person steal or otherwise compromise this password.

(c) *Electronic submission of declarations and reports.*

(1) *General instructions.* Upon submission of the required certifications and approval of the company's request to use electronic submission, BIS will provide instructions on both the method for transmitting declarations and reports electronically and the process for submitting required supporting documents, if any. These instructions may be modified by BIS from time to time.

(2) *Declarations and reports.* The electronic submission of a declaration or report will constitute an official document as required under parts 712 through 715 of the CWC. Such submissions must provide the same information as written declarations and reports and are subject to the recordkeeping provisions of part 720 of the CWC. The company and Web-DESI user submitting the declaration or report will be deemed to have made all representations and certifications as if the submission were made in writing by the company and signed by the certifying official. Electronic submission of a declaration or report will be considered complete upon transmittal to BIS.

(d) *Updating.* A company approved for electronic submission of declarations or reports under Web-DESI must promptly notify BIS of any change in its name, ownership or address. If your company wishes to have an individual added as a Web-DESI user, your company must inform BIS and follow the instructions provided by BIS. Your company should conduct periodic reviews to ensure that the company's designated certifying official and Web-DESI users are individuals whose current responsibilities make it necessary and appropriate that they act for the company in either capacity.

## PART 712—ACTIVITIES INVOLVING SCHEDULE 1 CHEMICALS

Sec.

712.1 Round to zero rule that applies to activities involving Schedule 1 chemicals.

712.2 Restrictions on the activities involving Schedule 1 chemicals.

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712.7 Amended declaration or report.

712.8 Declarations and reports returned without action by BIS.

712.9 Deadlines for submission of Schedule 1 declarations, reports, advance notifications, and amendments.

Supplement No. 1 to Part 712—Schedule 1 Chemicals

Supplement No. 2 to Part 712—Deadlines for Submission of Schedule 1 Declarations, Advance Notifications, 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.

### § 712.1 Round to zero rule that applies to activities involving Schedule 1 chemicals.

Facilities that produce, export or import mixtures containing less than 0.5% aggregate quantities of Schedule 1 chemicals (*see* Supplement No. 1 to this part) as unavoidable by-products or impurities may round to zero and are not subject to the provision of this part 712. Schedule 1 content may be calculated by volume or weight, whichever yields the lesser percent. Note that such mixtures may be subject to the regulatory requirements of other federal agencies.

### § 712.2 Restrictions on the activities involving Schedule 1 chemicals.

(a) You may *not* produce Schedule 1 chemicals for protective purposes.

(b) You may not import any Schedule 1 chemical unless:

(1) The import is from a State Party;

(2) The import is for research, medical, pharmaceutical, or protective purposes;

(3) The import is in types and quantities strictly limited to those that can be justified for such purposes; and

(4) You have notified BIS at least 45 calendar days prior to the import, pursuant to § 712.6 of the CWC.

**Note 1 to § 712.2:** Pursuant to § 712.6, advance notifications of import of saxitoxin of 5 milligrams or less for medical/diagnostic purposes must be submitted to BIS at least 3 days prior to import.

**Note 2 to § 712.2:** For specific provisions relating to the prior advance notification of exports of all Schedule 1 chemicals, *see* § 745.1 of the Export Administration Regulations (EAR) (15 CFR parts 730 through 799). For specific provisions relating to license requirements for exports of Schedule 1 chemicals, *see* § 742.2 and § 742.18 of the EAR for Schedule 1 chemicals subject to the jurisdiction of the Department of Commerce and *see* the International Traffic in Arms Regulations (22 CFR parts 120 through 130) for Schedule 1 chemicals subject to the jurisdiction of the Department of State.

(c)(1) The provisions of paragraphs (a) and (b) of this section do not apply to the retention, ownership, possession, transfer, or receipt of a Schedule 1 chemical by a department, agency, or other entity of the United States, or by a person described in paragraph (c)(2) of this section, pending destruction of the Schedule 1 chemical;

(2) A person referred to in paragraph (c)(1) of this section is:

(i) 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 retain, own, possess transfer, or receive the Schedule 1 chemical; or

(ii) In an emergency situation, any otherwise non-culpable person if the person is attempting to seize or destroy the Schedule 1 chemical.

### § 712.3 Initial declaration requirements for declared facilities which are engaged in the production of Schedule 1 chemicals for purposes not prohibited by the CWC.

Initial declarations submitted in February 2000 remain valid until amended or rescinded. If you plan to change/amend the technical description of your facility submitted with your initial declaration, you must submit an amended initial declaration to BIS 200 calendar days prior to implementing the change (*see* 712.5(b)(1)(ii)).

### § 712.4 New Schedule 1 production facility.

(a) *Establishment of a new Schedule 1 production facility.* (1) If your facility has never before been declared under § 712.5 of the CWC, or the initial declaration for your facility has been withdrawn pursuant to § 712.5(f) of the CWC, and you intend to begin production of Schedule 1 chemicals at your facility in quantities greater than 100 grams aggregate per year for research, medical, or pharmaceutical purposes, you must provide an initial declaration (with a current detailed technical description of your facility) to BIS in no less than 200 calendar days in advance of commencing such production. Such facilities are considered to be "new Schedule 1 production facilities" and are subject to an initial inspection within 200 calendar days of submitting an initial declaration.

(2) New Schedule 1 production facilities that submit an initial declaration pursuant to paragraph (a)(1) of this section are considered approved Schedule 1 production facilities for purposes of the CWC, unless otherwise notified by BIS within 30 days of receipt by BIS of that initial declaration.

(b) *Types of declaration forms required.* If your new Schedule 1



production facility will produce in excess of 100 grams aggregate of Schedule 1 chemicals, you must complete the Certification Form, Form 1-1 and Form A. You must also provide a detailed technical description of the new facility or its relevant parts, and a detailed diagram of the declared areas in the facility.

(c) Two hundred days after a new Schedule 1 production facility submits its initial declaration, it is subject to the declaration requirements of § 712.5(a)(1) and (a)(2), and § 712.5(b)(1)(ii).

**§ 712.5 Annual declaration requirements for facilities engaged in the production of Schedule 1 chemicals for purposes not prohibited by the CWC.**

(a) *Declaration requirements.* (1) *Annual declaration on past activities.* You must complete the forms specified in paragraph (b)(2) of this section if you produced at your facility in excess of 100 grams aggregate of Schedule 1 chemicals in the previous calendar year. As a declared Schedule 1 facility, in addition to declaring the production of each Schedule 1 chemical that comprises your aggregate production of Schedule 1 chemicals, you must also declare any Schedule 1, Schedule 2, or Schedule 3 precursor used to produce the declared Schedule 1 chemical. You must further declare each Schedule 1 chemical used (consumed) and stored at your facility, and domestically transferred from your facility during the previous calendar year, whether or not you produced that Schedule 1 chemical at your facility.

(2) *Annual declaration on anticipated activities.* You must complete the forms specified in paragraph (b)(3) of this section if you anticipate that you will produce at your facility more than 100 grams aggregate of Schedule 1 chemicals in the next calendar year. If you are not already a declared facility, you must complete an initial declaration (*see* § 712.4) 200 calendar days before commencing operations or increasing production which will result in production of more than 100 grams aggregate of Schedule 1 chemicals.

(b) *Declaration forms to be used.* (1) *Initial declaration.* (i) You must have completed the Certification Form, Form 1-1 and Form A if you produced at your facility in excess of 100 grams aggregate of Schedule 1 chemicals in calendar years 1997, 1998, or 1999. You must have provided a detailed current technical description of your facility or its relevant parts including a narrative statement, and a detailed diagram of the declared areas in the facility.

(ii) If you plan to change the technical description of your facility from your

initial declaration completed and submitted pursuant to § 712.3 or § 712.4, you must submit an amended initial declaration to BIS 200 calendar days prior to the change. Such amendments to your initial declaration must be made by completing a Certification Form, Form 1-1 and Form A, including the new description of the facility. *See* § 712.7 for additional instructions on amending Schedule 1 declarations.

(2) *Annual declaration on past activities.* If you are subject to the declaration requirement of paragraph (a)(1) of this section, you must complete the Certification Form and Forms 1-1, 1-2, 1-2A, 1-2B, and Form A if your facility was involved in the production of Schedule 1 chemicals in the previous calendar year. Form B is optional.

(3) *Annual declaration on anticipated activities.* If you anticipate that you will produce at your facility in excess of 100 grams aggregate of Schedule 1 chemicals in the next calendar year you must complete the Certification Form and Forms 1-1, 1-4, and Form A. Form B is optional.

(c) *Quantities to be declared.* If you produced in excess of 100 grams aggregate of Schedule 1 chemicals in the previous calendar year, you must declare the entire quantity of such production, rounded to the nearest gram. You must also declare the quantity of any Schedule 1, Schedule 2 or Schedule 3 precursor used to produce the declared Schedule 1 chemical, rounded to the nearest gram. You must further declare the quantity of each Schedule 1 chemical consumed or stored by, or domestically transferred from, your facility, whether or not the Schedule 1 chemical was produced by your facility, rounded to the nearest gram. In calculating the amount of Schedule 1 chemical you produced, consumed or stored, count only the amount of the Schedule 1 chemical(s) in a mixture, not the total weight of the mixture (*i.e.*, do not count the weight of the solution, solvent, or container).

(d) For the purpose of determining if a Schedule 1 chemical is subject to declaration, you must declare a Schedule 1 chemical that is an intermediate, but not a transient intermediate.

(e) *“Declared” Schedule 1 facilities and routine inspections.* Only facilities that submitted a declaration pursuant to paragraph (a)(1) or (a)(2) of this section or § 712.4 are considered “declared” Schedule 1 facilities. A “declared” Schedule 1 facility is subject to initial and routine inspection by the OPCW (*see* part 716 of this subchapter).

(f) *Approval of declared Schedule 1 production facilities.* Facilities that

submit declarations pursuant to this section are considered approved Schedule 1 production facilities for purposes of the CWC, unless otherwise notified by BIS within 30 days of receipt by BIS of an annual declaration on past activities or annual declaration on anticipated activities (*see* paragraphs (a)(1) and (a)(2) of this section). If your facility does not produce more than 100 grams aggregate of Schedule 1 chemicals, no approval by BIS is required.

(g) *Withdrawal of Schedule 1 initial declarations.* A facility subject to §§ 712.3, 712.4 and 712.5 of the CWC may withdraw its initial declaration at any time by notifying BIS in writing. A notification requesting the withdrawal of the initial declaration should be sent on company letterhead to the address in § 711.6 of the CWC. BIS will acknowledge receipt of the withdrawal of the initial declaration. Facilities withdrawing their initial declaration may not produce subsequently in excess of 100 grams aggregate of Schedule 1 chemicals within a calendar year unless pursuant to § 712.4.

**§ 712.6 Advance notification and annual report of all exports and imports of Schedule 1 chemicals to, or from, other States Parties.**

Pursuant to the Convention, the United States is required to notify the OPCW not less than 30 days in advance of every export or import of a Schedule 1 chemical, in any quantity, to or from another State Party. In addition, the United States is required to provide a report of all exports and imports of Schedule 1 chemicals to or from other States Parties during each calendar year. If you plan to export or import any quantity of a Schedule 1 chemical from or to your declared facility, undeclared facility or trading company, you must notify BIS in advance of the export or import and complete an annual report of exports and imports that actually occurred during the previous calendar year. The United States will transmit to the OPCW the advance notifications and a detailed annual declaration of each actual export or import of a Schedule 1 chemical from/to the United States. Note that the advance notification and annual report requirements of this section do not relieve you of any requirement to obtain a license for export of Schedule 1 chemicals subject to the EAR or ITAR or a license for import of Schedule 1 chemicals from the Department of Justice under the Alcohol, Tobacco, Firearms and Explosives Regulations in 27 CFR part 447. Only “declared” facilities as defined in § 712.5(d) are subject to

initial and routine inspections pursuant to part 716 of this subchapter.

(a) *Advance notification of exports and imports.* You must notify BIS at least 45 calendar days prior to exporting or importing any quantity of a Schedule 1 chemical, except for exports or imports of 5 milligrams or less of Saxitoxin—B (7)—for medical/diagnostic purposes, listed in Supplement No. 1 to this part to or from another State Party. Advance notification of export or import of 5 milligrams or less of Saxitoxin for medical/diagnostic purposes only, must be submitted to BIS at least 3 calendar days prior to export or import. Note that advance notifications for exports may be sent to BIS prior to or after submission of a license application to BIS for Schedule 1 chemicals subject to the EAR and controlled under ECCN 1C351 or to the Department of State for Schedule 1 chemicals controlled under the ITAR. Such advance notifications must be submitted separately from license applications.

(1) Advance notifications should be on company letterhead or must clearly identify the reporting entity by name of company, complete address, name of contact person and telephone and facsimile numbers, along with the following information:

- (i) Chemical name;
- (ii) Structural formula of the chemical;
- (iii) Chemical Abstract Service (CAS) Registry Number;
- (iv) Quantity involved in grams;
- (v) Planned date of export or import;
- (vi) Purpose (end-use) of export or import (*i.e.*, research, medical, pharmaceutical, or protective purposes);
- (vii) Name(s) of exporter and importer;
- (viii) Complete street address(es) of exporter and importer;
- (ix) U.S. export license or control number, if known; and
- (x) Company identification number, once assigned by BIS.

(2) Send the advance notification by facsimile to (703) 235-1481 or to the following address for mail and courier deliveries: Treaty Compliance Division, Bureau of Industry and Security, Department of Commerce, 1555 Wilson Boulevard, Suite 700, Arlington, VA 22209-2405, Attn: "Advance Notification of Schedule 1 Chemical [Export][Import]."

(3) Upon receipt of the advance notification, BIS will inform the exporter or importer of the earliest date after which the shipment may occur under the advance notification procedure. To export a Schedule 1 chemical subject to an export license

requirement either under the EAR or the ITAR, the exporter must have applied for and been granted a license (*see* § 742.2 and § 742.18 of the EAR, or the ITAR at 22 CFR parts 120 through 130).

(b) *Annual report requirements for exports and imports of Schedule 1 chemicals.* Any person subject to the CWCR that exported or imported any quantity of Schedule 1 chemical to or from another State Party during the previous calendar year has a reporting requirement under this section.

(1) *Annual report on exports and imports.* Declared and undeclared facilities, trading companies, and any other person subject to the CWCR that exported or imported any quantity of a Schedule 1 chemical to or from another State Party in a previous calendar year must submit an annual report on exports and imports.

(2) *Report forms to submit.* (i) *Declared Schedule 1 facilities.* (A) If your facility declared production of a Schedule 1 chemical and you also exported or imported any amount of that same Schedule 1 chemical, you must report the export or import by submitting either:

- (1) *Combined declaration and report.* Submit, along with your declaration, Form 1-3 for that same Schedule 1 chemical to be reported. Attach Form A, as appropriate; Form B is optional; or
- (2) *Report.* Submit, separately from your declaration, a Certification Form, Form 1-1, and a Form 1-3 for each Schedule 1 chemical to be reported. Attach Form A, as appropriate; Form B is optional.

(B) If your facility declared production of a Schedule 1 chemical and exported or imported any amount of a different Schedule 1 chemical, you must report the export or import by submitting either:

- (1) *Combined declaration and report.* Submit, along with your declaration, a Form 1-3 for each Schedule 1 chemical to be reported. Attach Form A, as appropriate; Form B is optional; or
- (2) *Report.* Submit, separately from your declaration, a Certification Form, Form 1-1, and a Form 1-3 for each Schedule 1 chemical to be reported. Attach Form A, as appropriate; Form B is optional.

(ii) If you are an undeclared facility, trading company, or any other person subject to the CWCR, and you exported or imported any amount of a Schedule 1 chemical, you must report the export or import by submitting a Certification Form, Form 1-1, and a Form 1-3 for each Schedule 1 chemical to be reported. Attach Form A, as appropriate; Form B is optional.

(c) Paragraph (a) of this section does not apply to the activities and persons set forth in § 712.2(b).

#### **§ 712.7 Amended declaration or report.**

In order for BIS to maintain accurate information on previously submitted facility declarations, including information necessary to facilitate inspection notifications and activities or to communicate declaration or report requirements, amended declarations or reports will be required under the following circumstances described in this section. This section applies only to annual declarations on past activities and annual reports on exports and imports submitted for the previous calendar year or annual declarations on anticipated activities covering the current calendar year, unless specified otherwise in a final inspection report.

(a) *Changes to information that directly affect inspection of a declared facility's Annual Declaration of Past Activities (ADPA) or Annual Declaration on Anticipated Activities (ADAA).* You must submit an amended declaration or report to BIS within 15 days of any change in the following information:

- (1) Types of Schedule 1 chemicals produced (*e.g.*, additional Schedule 1 chemicals);
- (2) Quantities of Schedule 1 chemicals produced;
- (3) Activities involving Schedule 1 chemicals; and
- (4) End-use of Schedule 1 chemicals (*e.g.*, additional end-use(s)).

(b) *Changes to export or import information submitted in Annual Reports on Exports and Imports from undeclared facilities, trading companies and U.S. persons.* You must submit an amended report or amended combined declaration and report for changes to export or import information within 15 days of any change in the following export or import information:

- (1) Types of Schedule 1 chemicals exported or imported (*e.g.*, additional Schedule 1 chemicals);
- (2) Quantities of Schedule 1 chemicals exported or imported;
- (3) Destination(s) of Schedule 1 chemicals exported;
- (4) Source(s) of Schedule 1 chemicals imported;
- (5) Activities involving exports and imports of Schedule 1 chemicals; and
- (6) End-use(s) of Schedule 1 chemicals exported or imported (*e.g.*, additional end-use(s)).

(c) *Changes to company and facility information previously submitted to BIS in the ADPA, the ADAA, and the Annual Report on Exports and Imports.*

(1) *Internal company changes.* You must

submit an amended declaration or report to BIS within 30 days of any change in the following information:

(i) Name of declaration/report point of contact (D-POC), including telephone number, facsimile number, and e-mail address;

(ii) Name(s) of inspection point(s) of contact (I-POC), including telephone number(s), and facsimile number(s);

(iii) Company name (*see* § 712.7(c)(2) of the CWCRC for other company changes);

(iv) Company mailing address;

(v) Facility name;

(vi) Facility owner, including telephone number, and facsimile number; and

(vii) Facility operator, including telephone number, and facsimile number.

(2) *Change in ownership of company or facility.* If you sold or purchased a declared facility or trading company, you must submit an amended declaration or report to BIS, either before the effective date of the change or within 30 days after the effective date of the change. The amended declaration or report must include the following information:

(i) Information that must be submitted to BIS by the company selling a declared facility:

(A) Name of seller (*i.e.*, name of the company selling a declared facility);

(B) Name of the declared facility and U.S. Code Number for that facility;

(C) Name of purchaser (*i.e.*, name of the new company purchasing a declared facility) and identity of contact person for the purchaser, if known;

(D) Date of ownership transfer or change;

(E) Additional details on sale of the declared facility relevant to ownership or operational control over any portion of that facility (*e.g.*, whether the entire facility or only a portion of the declared facility has been sold to a new owner); and

(F) Details regarding whether the new owner will submit the next declaration or report for the entire calendar year during which the ownership change occurred, or whether the previous owner and new owner will submit separate declarations or reports for the periods of the calendar year during which each owned the facility or trading company.

(1) If the new owner is responsible for submitting the declaration or report for the entire current year, it must have in its possession the records for the period of the year during which the previous owner owned the facility.

(2) If the previous owner and new owner will submit separate declarations

for the periods of the calendar year during which each owned the facility ("part-year declarations"), and if, at the time of transfer of ownership, the previous owner's activities are not above the declaration thresholds set forth in §§ 712.4 and 712.5 of the CWCRC, the previous owner and the new owner must still submit declarations to BIS with the below threshold quantities indicated.

(3) If the part-year declarations submitted by the previous owner and the new owner are not, when combined, above the declaration threshold set forth in §§ 712.4 and 712.5 of the CWCRC, BIS will return the declarations without action as set forth in § 712.8 of the CWCRC.

(4) If part-year reports are submitted by the previous owner and the new owner as required in § 712.5 of the CWCRC, BIS will submit both reports in the OPCW.

(ii) Information that must be submitted to BIS by the company purchasing a declared facility:

(A) Name of purchaser (*i.e.*, name of company purchasing a declared facility);

(B) Mailing address of purchaser;

(C) Name of declaration point of contact (D-POC) for the purchaser, including telephone number, facsimile number, and e-mail address;

(D) Name of inspection points of contact (I-POC) for the purchaser, including telephone number(s), facsimile number(s) and e-mail address(es);

(E) Name of the declared facility and U.S. Code Number for that facility;

(F) Location of the declared facility;

(G) Owner and operator of the declared facility, including telephone number, and facsimile number; and

(H) Details on the next declaration or report submission on whether the new owner will submit the declaration or report for the entire calendar year during which the ownership change occurred, or whether the previous owner and new owner will submit separate declarations or reports for the periods of the calendar year during which each owned the facility or trading company.

(1) If the new owner is taking responsibility for submitting the declaration or report for the entire current year, it must have in its possession the records for the period of the year during which the previous owner owned the facility.

(2) If the previous owner and new owner will submit separate declarations for the periods of the calendar year during which each owned the facility, and, at the time of transfer of ownership, the previous owner's

activities are not above the declaration thresholds set forth in §§ 712.4 and 712.5 of the CWCRC, the previous owner and the new owner must still submit declarations to BIS with the below threshold quantities indicated.

(3) If the part-year declarations submitted by the previous owner and the new owner are not, when combined, above the declaration threshold set forth in §§ 712.4 and 712.5 of the CWCRC, BIS will return the declarations without action as set forth in § 712.8 of the CWCRC.

(4) If part-year reports are submitted by the previous owner and the new owner as required in § 712.5 of the CWCRC, BIS will submit both reports to the OPCW.

**Note 1 to § 712.7(c):** You must submit an amendment to your most recently submitted declaration or report for declaring changes to internal company information (*e.g.*, company name change) or changes in ownership of a facility or trading company that have occurred since the submission of this declaration or report. BIS will process the amendment to ensure current information is on file regarding the facility or trading company (*e.g.*, for inspection notifications and correspondence) and will also forward the amended declaration to the OPCW to ensure that they also have current information on file regarding your facility or trading company.

**Note 2 to § 712.7(c):** You may notify BIS of change in ownership via a letter to the address given in § 711.6 of the CWCRC. If you are submitting an amended declaration or report, use Form B to address details regarding the sale of the declared facility or trading company.

**Note 3 to § 712.7(c):** For ownership changes, the declared facility or trading company will maintain its original U.S. Code Number, unless the facility or trading company is sold to multiple owners, at which time BIS will assign new U.S. Code Numbers for the new facilities.

(d) *Inspection-related amendments.* If, following completion of an inspection (*see* parts 716 and 717 of the CWCRC), you are required to submit an amended declaration based on the final inspection report, BIS will notify you in writing of the information that will be required pursuant to §§ 716.10 and 717.5 of the CWCRC. You must submit an amended declaration to BIS no later than 45 days following your receipt of the BIS post inspection letter.

(e) *Non-substantive changes.* If, subsequent to the submission of your declaration or report to BIS, you discover one or more non-substantive typographical errors in your declaration or report, you are not required to submit an amended declaration or report to BIS. Instead, you may correct these errors in a subsequent declaration or report.

(f) *Documentation required for amended declarations or reports.* If you are required to submit an amended declaration or report to BIS pursuant to paragraph (a), (b), (c), or (d) of this section, you must submit either:

(1) A letter containing all of the corrected information required, in accordance with the provisions of this section, to amend your declaration or report; or

(2) Both of the following:

(i) A new Certification Form (*i.e.*, Form 1–1); and

(ii) The specific forms (*e.g.*, annual declaration on past activities) containing the corrected information required, in accordance with the provisions of this part, to amend your declaration or report.

#### **§ 712.8 Declarations and reports returned without action by BIS.**

If you submit a declaration or report and BIS determines that the information

contained therein is not required by the CWCER, BIS will return the original declaration or report to you, without action, accompanied by a letter explaining BIS's decision. In order to protect your confidential business information, BIS will not maintain a copy of any declaration or report that is returned without action (RWA). However, BIS will maintain a copy of the RWA letter.

#### **§ 712.9 Deadlines for submission of Schedule 1 declarations, reports, advance notifications, and amendments.**

Declarations, reports, advance notifications, and amendments required under this part must be postmarked by the appropriate date identified in Supplement No. 2 to this part 712.

Required declarations, reports, advance notifications, and amendments include:

(a) Annual declaration on past activities (Schedule 1 chemical

production during the previous calendar year);

(b) Annual report on exports and imports of Schedule 1 chemicals from facilities, trading companies, and other persons (during the previous calendar year);

(c) Combined declaration and report (production of Schedule 1 chemicals, as well as exports or imports of the same or different Schedule 1 chemicals, by a declared facility during the previous calendar year);

(d) Annual declaration on anticipated activities (anticipated production of Schedule 1 chemicals in the next calendar year);

(e) Advance notification of any export to or import from another State Party;

(f) Initial declaration of a new Schedule 1 chemical production facility; and

(g) Amended declaration or report, including combined declaration and report.

### **SUPPLEMENT NO. 1 TO PART 712—SCHEDULE 1 CHEMICALS**

	(CAS registry number)
<b>A. Toxic Chemicals</b>	
(1) O-Alkyl ( $\leq C_{10}$ , incl. cycloalkyl) alkyl (Me, Et, n-Pr or i-Pr)-phosphonofluoridates: e.g. Sarin: O-Isopropyl methylphosphonofluoridate .....	(107–44–8)
Soman: O-Pinacolyl methylphosphonofluoridate .....	(96–64–0)
(2) O-Alkyl ( $\leq C_{10}$ , incl. cycloalkyl) N,N-dialkyl (Me, Et, n-Pr or i-Pr) phosphoramidocyanidates: e.g. Tabun: O-Ethyl N,N-dimethyl phosphoramidocyanidate .....	(77–81–6)
(3) O-Alkyl (H or $\leq C_{10}$ , incl. cycloalkyl) S-2-dialkyl (Me, Et, n-Pr or i-Pr)-aminoethyl alkyl (Me, Et, n-Pr or i-Pr) phosphonothiolates and corresponding alkylated or protonated salts: e.g. VX: O-Ethyl S-2-diisopropylaminoethyl methyl phosphonothiolate .....	(50782–69–9)
(4) Sulfur mustards: 2-Chloroethylchloromethylsulfide .....	(2625–76–5)
Mustard gas: Bis(2-chloroethyl)sulfide .....	(505–60–2)
Bis(2-chloroethylthio)methane .....	(63869–13–6)
Sesquimustard: 1,2-Bis(2-chloroethylthio)ethane .....	(3563–36–8)
1,3-Bis(2-chloroethylthio)-n-propane .....	(63905–10–2)
1,4-Bis(2-chloroethylthio)-n-butane .....	(142868–93–7)
1,5-Bis(2-chloroethylthio)-n-pentane .....	(142868–94–8)
Bis(2-chloroethylthiomethyl)ether .....	(63918–90–1)
O-Mustard: Bis(2-chloroethylthioethyl)ether .....	(63918–89–8)
(5) Lewisites: Lewisite 1: 2-Chlorovinylchloroarsine .....	(541–25–3)
Lewisite 2: Bis(2-chlorovinyl)chloroarsine .....	(40334–69–8)
Lewisite 3: Tris(2-chlorovinyl)arsine .....	(40334–70–1)
(6) Nitrogen mustards: HN1: Bis(2-chloroethyl)ethylamine .....	(538–07–8)
HN2: Bis(2-chloroethyl)methylamine .....	(51–75–2)
HN3: Tris(2-chloroethyl)amine .....	(555–77–1)
(7) Saxitoxin .....	(35523–89–8)
(8) Ricin .....	(9009–86–3)
<b>B. Precursors</b>	
(9) Alkyl (Me, Et, n-Pr or i-Pr) phosphonyldifluorides: e.g. DF: Methylphosphonyldifluoride .....	(676–99–3)
(10) O-Alkyl (H or $\leq C_{10}$ , incl. cycloalkyl) O-2-dialkyl (Me, Et, n-Pr or i-Pr)-aminoethyl alkyl (Me, Et, n-Pr or i-Pr) phosphonites and corresponding alkylated or protonated salts: e.g. QL: O-Ethyl O-2-diisopropylaminoethyl methylphosphonite .....	(57856–11–8)
(11) Chlorosarin: O-Isopropyl methylphosphonochloridate .....	(1445–76–7)
(12) Chlorosoman: O-Pinacolyl methylphosphonochloridate .....	(7040–57–5)

#### **Notes to Supplement No. 1:**

**Note 1:** Note that the following Schedule 1 chemicals are controlled for export purposes under the Export Administration Regulations (*see* part 774 of the EAR, the Commerce Control List): Saxitoxin (35523–89–8) and Ricin (9009–86–3).

**Note 2:** All Schedule 1 chemicals not listed in Note 1 to this Supplement are controlled for export purposes by the Office of Defense Trade Control of the Department of State under the International Traffic in Arms Regulations (22 CFR parts 120 through 130).

**SUPPLEMENT NO. 2 TO PART 712—DEADLINES FOR SUBMISSION OF SCHEDULE 1 DECLARATIONS, ADVANCE NOTIFICATIONS, REPORTS, AND AMENDMENTS**

Declarations, advance notifications and reports	Applicable forms	Due dates
Annual Declaration on Past Activities (previous calendar year)—Declared facility (past production) (optional).	Certification, 1–1, 1–2, 1–2A, 1–2B, A (as appropriate), B.	February 28th of the year following any calendar year in which more than 100 grams aggregate of Schedule 1 chemicals were produced.
Annual report on exports and imports (previous calendar year) (facility, trading company, other persons).	Certification, 1–1, 1–3, A (as appropriate), B (optional).	February 28th of the year following any calendar year in which Schedule 1 chemicals were exported or imported.
Combined Declaration and Report .....	Certification, 1–1, 1–2, 1–2A, 1–2B, 1–3, A (as appropriate), B (optional).	February 28th of the year following any calendar year in which Schedule 1 chemicals were produced, exported, or imported.
Annual Declaration on Anticipated Activities (next calendar year).	Certification, 1–1, 1–4, A (as appropriate), B (optional).	September 3rd of the year prior to any calendar year in which Schedule 1 activities are anticipated to occur.
Advance Notification of any export to or import from another State Party.	Notify on letterhead. See § 712.6 of the CWC.	45 calendar days prior to any export or import of Schedule 1 chemicals, except 3 days prior to export or import of 5 milligrams or less of saxitoxin for medical/diagnostic purposes.
Initial Declaration of a new Schedule 1 facility (technical description).	Certification, 1–1, A (as appropriate), B (optional).	200 calendar days prior to producing in excess of 100 grams aggregate of Schedule 1 chemicals.
Amended Declaration .....	Certification, 1–1, 1–2, 1–2A .....	—15 calendar days after change in information
—Chemicals/activities: § 712.7(a) .....		—30 calendar days after change in information
—Company information: § 712.7(c) .....		—45 calendar days after receipt of letter
—Post-inspection letter: § 712.7(d) .....		—15 calendar days after change in information
Amended Report § 712.7(b) .....	Certification, 1–1, 1–3, A (as appropriate), B (optional).	—15 calendar days after change in information
Combined Declaration & Report .....	Certification, 1–1, 1–2, 1–2A 1–3, (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.

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

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

713.4 Advance declaration requirements for additionally planned production, processing or consumption of Schedule 2 chemicals.

713.5 Amended declaration or report.

713.6 Declarations and reports returned without action by BIS.

713.7 Deadlines for submission of Schedule 2 declarations, reports, and amendments.

Supplement No. 1 To Part 713—Scedyke 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.

**§ 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 this subchapter for a list of States that are party to the Convention.

**Note to paragraph (a):** See § 742.18 of the Export Administration Regulations (15 CFR part 742) for prohibitions that apply to exports 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 paragraph (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 paragraph (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 CWCRC 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 CWCRC 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 this subchapter). 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 paragraphs (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 paragraph (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 paragraphs (a)(1) and (2):** Declared and undeclared plant sites must count, for declaration or report purposes, all exports from and imports to the entire plant site, not only from or to individual plants on the plant site.

(b) *Quantities of exports or imports that trigger a declaration or report requirement.* (1) You have a declaration or report requirement and must complete the forms specified in paragraph (d) of this section if you exported or imported a Schedule 2 chemical in excess of the following threshold quantities:

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

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

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

(2) *Mixtures containing a Schedule 2 chemical.* The quantity of each Schedule 2 chemical contained in a mixture must be counted for the declaration or reporting of an export or import only 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. You must declare separately each Schedule 2 chemical whose concentration in the mixture is 30% or more.

**Note 1 to paragraph (b)(2):** See § 713.2(a)(2)(ii) for information on counting amounts of Schedule 2 chemicals contained in mixtures and determining declaration and report requirements.

**Note 2 to paragraph (b)(2):** The "30% and above" mixtures rule applies only for declaration and report purposes. This rule does not apply for purposes of determining whether the export of your mixture to a non-State Party requires an End-Use Certificate or for determining whether you need an export license from BIS (see § 742.2, § 742.18 and § 745.2 of the Export Administration Regulations) or from the Department of State (see the International Traffic in Arms Regulations (22 CFR parts 120 through 130)).



(c) *Declaration and report requirements.* (1) *Annual declaration on past activities.* A plant site described in paragraph (a)(1) that has an annual declaration requirement for production, processing, or consumption of a Schedule 2 chemical for the previous calendar year also must declare the export and/or import of that same Schedule 2 chemical if the amount exceeded the applicable threshold set forth in paragraph (b) of this section. The plant site must declare such export or import information as part of its annual declaration of past activities.

(2) *Annual report on exports and imports.* Declared plant sites described in paragraph (a)(2)(i) of this section, and undeclared plant sites, trading companies or any other person (described in paragraphs (a)(2)(ii) through (iv) of this section) subject to the CWCR that exported or imported a Schedule 2 chemical in a previous calendar year in excess of the applicable thresholds set forth in paragraph (b) of this section must submit an annual report on such exports or imports.

(d) *Types of declaration and report forms to be used.* (1) *Annual declaration on past activities.* If you are a declared Schedule 2 plant site, as described in paragraph (a)(1) of this section, you must complete Form 2-3B, in addition to the forms required by § 713.2(b)(1) of the CWCR, for each declared Schedule 2 chemical exported or imported above the applicable threshold in the previous calendar year.

(2) *Annual report on exports and imports.* (i) If you are a declared plant site, as described in paragraph (a)(2)(i) of this section, you may fulfill your annual reporting requirements by:

(A) Submitting, with your annual declaration on past activities, a Form 2-3B for each Schedule 2 chemical you exported or imported above the applicable threshold. Attach Form A, as appropriate; Form B is optional; or

(B) Submitting, separately from your annual declaration on past activities, a Certification Form, Form 2-1, and Form 2-3B for each Schedule 2 chemical you exported or imported above the applicable threshold. Attach Form A, as appropriate; Form B is optional.

(ii) If you are an undeclared plant site, trading company or any other person subject to the CWCR, you must complete the Certification Form, Form 2-1, and Form 2-3B for each Schedule 2 chemical you exported or imported above the applicable threshold. Attach Form A, as appropriate; Form B is optional.

(e) *Quantities to be declared.* (1) *Calculations.* If you exported from or imported to your plant site, trading

company, or other location more than the applicable threshold of a Schedule 2 chemical in the previous calendar year, you must declare or report all exports and imports of that chemical by country of destination or country of origin, respectively, and indicate the total amount exported to or imported from each country.

(2) *Rounding.* For purposes of declaring or reporting exports and imports of a Schedule 2 chemical, you must total all exports and imports per calendar year per recipient or source and then round as follows: for the chemical BZ, the total quantity for each country of destination or country of origin (source) should be reported to the nearest hundredth of a kilogram (10 grams); for PFIB and Amiton and corresponding alkylated or protonated salts, the quantity for each destination or source should be reported to the nearest 1 kilogram; and for all other Schedule 2 chemicals, the total quantity for each destination or source should be reported to the nearest 10 kilograms.

#### **§ 713.4 Advance declaration requirements for additionally planned production, processing, or consumption of Schedule 2 chemicals.**

(a) *Declaration requirements for additionally planned activities.* (1) You must declare additionally planned production, processing, or consumption of Schedule 2 chemicals after the annual declaration on anticipated activities for the next calendar year has been delivered to BIS if:

(i) You plan that a previously undeclared plant on your plant site under § 713.2(a)(1)(ii) will produce, process, or consume a Schedule 2 chemical above the applicable declaration threshold;

(ii) You plan to produce, process, or consume at a plant declared under § 713.2(a)(1)(ii) an additional Schedule 2 chemical above the applicable declaration threshold;

(iii) You plan an additional activity (production, processing, or consumption) at your declared plant above the applicable declaration threshold for a chemical declared under § 713.2(a)(1)(ii);

(iv) You plan to increase the production, processing, or consumption of a Schedule 2 chemical by a plant declared under § 713.2(a)(1)(ii) from the amount exceeding the applicable declaration threshold to an amount exceeding the applicable inspection threshold (*see* § 716.1(b)(2) of the CWCR);

(v) You plan to change the starting or ending date of anticipated production, processing, or consumption declared

under § 713.2(a)(1)(ii) by more than three months; or

(vi) You plan to increase your production, processing, or consumption of a Schedule 2 chemical by a declared plant site by 20 percent or more above that declared under § 713.2(a)(1)(ii).

(2) If you must submit a declaration on additionally planned activities because you plan to engage in any of the activities listed in paragraphs (a)(1)(i) through (vi) of this section, you also should declare changes to your declaration relating to the following activities. You do not have to submit an additionally planned declaration if you are only changing the following non-quantitative activities:

(i) Changes to the plant's production capacity;

(ii) Changes or additions to the product group codes for the plant site or the plant(s);

(iii) Changes to the plant's activity status (*i.e.*, dedicated, multipurpose, or other status);

(iv) Changes to the plant's multipurpose activities;

(v) Changes to the plant site's status relating to domestic transfer of the chemical;

(vi) Changes to the plant site's purposes for which the chemical will be produced, processed or consumed; or

(vii) Changes to the plant site's status relating to exports of the chemical or the addition of new countries for export.

(b) *Declaration forms to be used.* If you are required to declare additionally planned activities pursuant to paragraph (a) of this part, you must complete the Certification Form and Forms 2-1, 2-2, 2-3, and 2-3C as appropriate. Such forms are due to BIS at least 15 days prior to beginning the additional activity.

#### **§ 713.5 Amended declaration or report.**

In order for BIS to maintain accurate information on previously submitted plant site declarations, including information necessary to facilitate inspection notifications and activities or to communicate declaration or report requirements, amended declarations or reports will be required under the circumstances described in this section. This section applies only to annual declarations on past activities submitted for the three previous calendar years, annual reports on exports and imports for the previous calendar year or annual declarations on anticipated activities covering the current calendar year, unless specified otherwise in a final inspection report.

(a) *Changes to information that directly affect inspection of a declared plant site's Annual Declaration of Past*

*Activities (ADPA) or Combined Annual Declaration and Report.* You must submit an amended declaration or report to BIS within 15 days of any change in the following information:

- (1) Types of Schedule 2 chemicals produced, processed, or consumed;
- (2) Quantities of Schedule 2 chemicals produced, processed, or consumed;
- (3) Activities involving Schedule 2 chemicals (production, processing, consumption);
- (4) End-use of Schedule 2 chemicals (e.g., additional end-use(s));
- (5) Product group codes for Schedule 2 chemicals produced, processed, or consumed;
- (6) Production capacity for manufacturing a specific Schedule 2 chemical at particular plant site;
- (7) Exports or imports (e.g., changes in the types of Schedule 2 chemicals exported or imported or in the quantity, recipients, or sources of such chemicals);
- (8) Domestic transfers (e.g., changes in the types of Schedule 2 chemicals, types of destinations, or product group codes); and

(9) Addition of new plant(s) for the production, processing, or consumption of Schedule 2 chemicals.

(b) *Changes to export or import information submitted in Annual Reports on Exports and Imports from undeclared plant sites, trading companies and U.S. persons.* You must submit an amended report or amended combined declaration and report to BIS within 15 days of any change in the following export or import information:

- (1) Types of Schedule 2 chemicals exported or imported (additional Schedule 2 chemicals);
- (2) Quantities of Schedule 2 chemicals exported or imported;
- (3) Destination(s) of Schedule 2 chemicals exported;
- (4) Source(s) of Schedule 2 chemicals imported; and
- (5) End-use(s) of Schedule 2 chemicals imported or exported (e.g., addition of new end-use(s)).

(c) *Changes to company and plant site information that must be maintained by BIS for the ADPA, Annual Declaration on Anticipated Activities (ADAA), and the Annual Report on Exports and Imports.* (1) *Internal company changes.* You must submit an amended declaration or report to BIS within 30 days of any change in the following information:

- (i) Name of declaration/report point of contact (D-POC), including telephone number, facsimile number, and e-mail address;
- (ii) Name(s) of inspection point(s) of contact (I-POC), including telephone

number(s), facsimile number(s) and e-mail address(es);

- (iii) Company name (see paragraph (c)(2) of this section for other company changes);
- (iv) Company mailing address;
- (v) Plant site name;
- (vi) Plant site owner, including telephone number, and facsimile number;
- (vii) Plant site operator, including telephone number, and facsimile number;
- (viii) Plant name;
- (ix) Plant owner, including telephone number, and facsimile number; and
- (x) Plant operator, including telephone number and facsimile number.

(2) Change in ownership of company, plant site, or plant. If you sold or purchased a declared plant site, plant, or trading company you must submit an amended declaration or report to BIS, either before the effective date of the change or within 30 days after the effective date of the change. The amended declaration or report must include the following information:

(i) Information that must be submitted to BIS by the company selling a declared plant site:

- (A) Name of seller (i.e., name of the company selling a declared plant site);
- (B) Name of the declared plant site and U.S. Code Number for that plant site;

(C) Name of purchaser (i.e., name of the new company/owner purchasing a declared plant site) and identity of contact person for the purchaser, if known;

(D) Date of ownership transfer or change;

(E) Additional (e.g., unique) details on the sale of the declared plant site relevant to ownership or operational control over any portion of the declared plant site (e.g., whether the entire plant site or only a portion of the declared plant site has been sold to a new owner); and

(F) Details regarding whether the new owner will submit the next declaration or report for the entire calendar year during which the ownership change occurred, or whether the previous owner and new owner will submit separate declarations or reports for the periods of the calendar year during which each owned the plant site or trading company.

(1) If the new owner is responsible for submitting the declaration or report for the entire current year, it must have in its possession the records for the period of the year during which the previous owner owned the plant site.

(2) If the previous owner and new owner will submit separate declarations

or reports for the periods of the calendar year during which each owned the plant site, and, if at the time of transfer of ownership, the previous owner's activities are not above the declaration or report thresholds set forth in § 713.2(a)(1)(i)(A)(1) through (3) and § 713.3(b)(1)(i) through (iii) of the CWCR, respectively, the previous owner and the new owner must still submit declarations to BIS with the below threshold quantities indicated.

(3) If the part-year declarations submitted by the previous owner and the new owner are not, when combined, above the declaration thresholds set forth in § 713.2(a)(1)(i)(A)(1) through (3) of the CWCR, BIS will return the declarations without action as set forth in § 713.6 of the CWCR.

(4) If part-year reports submitted by the previous owner and the new owner are not, when combined, above the thresholds in §§ 713.3(b)(1)(i) through (iii) of the CWCR, BIS will return the reports without action as set forth in § 713.6 of the CWCR.

(ii) Information that must be submitted to BIS by the company purchasing a declared plant site:

(A) Name of purchaser (i.e., name of individual or company purchasing a declared plant site);

(B) Mailing address of purchaser;

(C) Name of declaration point of contact (D-POC) for the purchaser, including telephone number, facsimile number, and e-mail address;

(D) Name of inspection point(s) of contact (I-POC) for the purchaser, including telephone number(s), facsimile number(s) and e-mail address(es);

(E) Name of the declared plant site and U.S. Code Number for that plant site;

(F) Location of the declared plant site;

(G) Owner of the declared plant site, including telephone number, and facsimile number;

(H) Operator of the declared plant site, including telephone number, and facsimile number;

(I) Name of plant(s) where Schedule 2 activities exceed the applicable declaration threshold;

(J) Owner and operator of plant(s) where Schedule 2 activities exceed the applicable declaration threshold, including telephone numbers, and facsimile numbers;

(K) Location of the plant where Schedule 2 activities exceed the applicable declaration threshold; and

(L) Details on the next declaration or report submission on whether the new owner will submit the declaration or report for the entire calendar year during which the ownership change

occurred, or whether the previous owner and new owner will submit separate declarations or reports for the periods of the calendar year during which each owned the plant site or trading company.

**Note 1 to § 713.5(c):** You must submit an amendment to your most recently submitted declaration or report for declaring changes to internal company information (e.g., company name change) or changes in ownership of a facility or trading company that have occurred since the submission of this declaration or report. BIS will process the amendment to ensure current information is on file regarding the facility or trading company (e.g., for inspection notifications and correspondence) and will also forward the amended declaration to the OPCW to ensure that they also have current information on file regarding your facility or trading company.

**Note 2 to § 713.5(c):** You may notify BIS of change in ownership via a letter to the address given in § 711.6 of the CWC. If you are submitting an amended declaration or report, use Form B to address details regarding the sale of the declared plant site or trading company.

**Note 3 to § 713.5(c):** For ownership changes, the declared facility or trading company will maintain its original U.S. Code Number, unless the plant site or trading company is sold to multiple owners, at which time BIS will assign new U.S. Code Numbers.

(d) *Inspection-related amendments.* If, following the completion of an inspection (see parts 716 and 717 of the CWC), you are required to submit an amended declaration based on the final inspection report, BIS will notify you in writing of the information that will be required pursuant to §§ 716.10 and

717.5 of the CWC. You must submit an amended declaration to BIS no later than 45 days following your receipt of BIS's post inspection letter.

(e) *Non-substantive changes.* If, subsequent to the submission of your declaration or report to BIS, you discover one or more non-substantive typographical errors in your declaration or report, you are not required to submit an amended declaration or report to BIS. Instead, you may correct these errors in a subsequent declaration or report.

(f) *Documentation required for amended declarations or reports.* If you are required to submit an amended declaration or report to BIS pursuant to paragraph (a), (b), (c), or (d) of this section, you must submit either:

- (1) A letter containing all of the corrected information required, in accordance with the provisions of this section, to amend your declaration or report; or
- (2) Both of the following:
  - (i) A new Certification Form; and
  - (ii) The specific forms required for the declaration or report type being amended (e.g., annual declaration on past activities) containing the corrected information required, in accordance with the requirements of this section, to amend your declaration or report.

#### **§ 713.6 Declarations and reports returned without action by BIS.**

If you submit a declaration or report and BIS determines that the information contained therein is not required by the CWC, BIS will return the original declaration or report to you, without action, accompanied by a letter explaining BIS's decision. In order to protect your confidential business

information, BIS will not maintain a copy of any declaration or report that is returned without action (RWA). However, BIS will maintain a copy of the RWA letter.

#### **§ 713.7 Deadlines for submission of Schedule 2 declarations, reports, and amendments.**

Declarations, reports, and amendments required under this part must be postmarked by the appropriate date identified in Supplement No. 2 to this part 713. Required declarations, reports, and amendments include:

- (a) Annual declaration on past activities (production, processing, or consumption) of Schedule 2 chemicals during the previous calendar year;
- (b) Annual report on exports and imports of Schedule 2 chemicals by plant sites, trading companies, and other persons subject to the CWC (during the previous calendar year);
- (c) Combined declaration and report (production, processing, or consumption of Schedule 2 chemicals, as well as exports or imports of the same or different Schedule 2 chemicals, by a declared plant site during the previous calendar year);
- (d) Annual declaration on anticipated activities (production, processing or consumption) involving Schedule 2 chemicals during the next calendar year;
- (e) Declaration on Additionally Planned Activities (production, processing or consumption) involving Schedule 2 chemicals; and
- (f) Amended declaration and report, including combined declaration and report.

### **SUPPLEMENT NO. 1 TO PART 713—SCHEDULE 2 CHEMICALS**

	(CAS registry number)
<b>A. Toxic Chemicals</b>	
(1) Amiton: O,O-Diethyl S-[2-(diethylamino)ethyl] phosphorothiolate .....	(78–53–5) and corresponding alkylated or protonated salts
(2) PFIB: 1,1,3,3,3-Pentafluoro-2-(trifluoromethyl)-1-propene .....	(382–21–8)
(3) BZ: 3-Quinuclidinyl benzilate .....	(6581–06–2)
<b>B. Precursors</b>	
(4) Chemicals, except for those listed in Schedule 1, containing a phosphorus atom to which is bonded one methyl, ethyl or propyl (normal or iso) group but not further carbon atoms: e.g. Methylphosphonyl dichloride .....	(676–97–1)
Dimethyl methylphosphonate .....	(756–79–6)
Exemption: Fonofos: O-Ethyl S-phenyl ethylphosphono-thiolothionate .....	(944–22–9)
(5) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) phosphoramidic dihalides.	
(6) Dialkyl (Me, Et, n-Pr or i-Pr) N,N-dialkyl (Me, Et, n-Pr or i-Pr)-phosphoramidates.	
(7) Arsenic trichloride .....	(7784–34–1)
(8) 2,2-Diphenyl-2-hydroxyacetic acid .....	(76–93–7)
(9) Quinuclidine-3-ol .....	(1619–34–7)
(10) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethyl-2-chlorides and corresponding protonated salts.	

## SUPPLEMENT NO. 1 TO PART 713—SCHEDULE 2 CHEMICALS—Continued

	(CAS registry number)
(11) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethane-2-ols and corresponding protonated salts. Exemptions: N,N-Dimethylaminoethanol and corresponding protonated salts ..... N,N-Diethylaminoethanol and corresponding protonated salts .....	(108-01-0) (100-37-8)
(12) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethane-2-thiols and corresponding protonated salts.	
(13) Thiodiglycol: Bis(2-hydroxyethyl)sulfide .....	(111-48-8)
(14) Pinacolyl alcohol: 3,3-Dimethylbutane-2-ol .....	(464-07-3)

**Notes to Supplement No. 1**

**Note 1:** Note that the following Schedule 2 chemicals are controlled for export purposes by the Office of Defense Trade Control of the Department of State under the International Traffic in Arms Regulations (22 CFR parts 120 through 130): Amiton: O,O-Diethyl S-[2-(diethylamino)ethyl] phosphorothiolate and corresponding alkylated or protonated salts (78-53-5); BZ: 3-Quinuclidinyl benzilate 6581-06-2; and Methylphosphonyl dichloride (676-97-1).

**Note 2:** All Schedule 2 chemicals not listed in Note 1 to this Supplement are controlled for export purposes under the Export Administration Regulations (see part 774 of the EAR, the Commerce Control List).

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

Declarations and reports	Applicable forms	Due dates
Annual Declaration on Past Activities (previous calendar year). Declared plant site (production, processing, or consumption).	Certification, 2-1, 2-2, 2-3, 2-3A, 2-3B (if also exported or imported), A (as appropriate), B (optional).	February 28 of the year following any calendar year in which the production, processing, or consumption of a Schedule 2 chemical exceeded the applicable declaration thresholds in § 713.2(a)(1)(i) of the CWCR.
Annual Report on Exports and Imports (previous calendar year). Plant site, trading company, other persons.	Certification, 2-1, 2-3B, A (as appropriate), B (optional).	February 28 of the year following any calendar year in which exports or imports of a Schedule 2 chemical by a plant site, trading company, or other person subject to the CWCR (as described in § 713.3(a)(2) of the CWCR) exceeded the applicable thresholds in § 713.3(b)(1) of the CWCR.
Combined Declaration & Report ..... Declared plant site (production, processing, or consumption; exports and imports).	Certification, 2-1, 2-2, 2-3, 2-3A, 2-3B, A (as appropriate), B (optional).	February 28 of the year following any calendar year in which the production, processing, or consumption of a Schedule 2 chemical and the export or import of the same or a different Schedule 2 chemical by a declared plant site exceeded the applicable thresholds in §§ 713.2(a)(1)(i) and 713.3(b)(1), respectively, of the CWCR.
Annual Declaration on Anticipated Activities (next calendar year).	Certification, 2-1, 2-2, 2-3, 2-3A, 2-3C, A (as appropriate), B (optional).	September 3 of the year prior to any calendar year in which Schedule 2 activities are anticipated to occur.
Declaration on Additionally Planned Activities (production, processing and consumption). Amended Declaration: —Declaration information ..... —Company information ..... —Post-inspection letter .....	Certification, 2-1, 2-2, 2-3, 2-3A, 2-3C, A (as appropriate), B (optional). Certification, 2-1, 2-2, 2-3, 2-3A, 2-3B (if also exported or imported), A (as appropriate), B (optional).	15 calendar days before the additionally planned activity begins. —15 calendar days after change in information —30 calendar days after change in information —45 calendar days after receipt of letter
Amended Report .....	Certification, 2-1, 2-3B, A (as appropriate), B (optional).	—15 calendar days after change in information
Amended Combined Declaration & Report .....	Certification, 2-1, 2-2, 2-3, 2-3A, 2-3B, A (as appropriate), B (optional).	—15 calendar days after change in information

**PART 714—ACTIVITIES INVOLVING SCHEDULE 3 CHEMICALS**

Sec.

714.1 Annual declaration requirements for plant sites that produce a Schedule 3 chemical in excess of 30 metric tons.

714.2 Annual reporting requirements for exports and imports in excess of 30 metric tons of Schedule 3 chemicals.

714.3 Advance declaration requirements for additionally planned production of Schedule 3 chemicals.

714.4 Amended declaration or report.

714.5 Declarations and reports returned without action by BIS.

714.6 Deadlines for submission of Schedule 3 declarations, reports, and amendments.  
Supplement No. 1 to Part 714—Schedule 3 Chemicals

Supplement No. 2 to Part 714—Deadlines for Submission of Schedule 3 Declarations, Reports, and Amendments

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

**§ 714.1 Annual declaration requirements for plant sites that produce a Schedule 3 chemical in excess of 30 metric tons.**

(a) Declaration of production of Schedule 3 chemicals for purposes not

prohibited by the CWC. (1) *Production quantities that trigger the declaration requirement.* You must complete the appropriate forms specified in paragraph (b) of this section if you have produced or anticipate producing a Schedule 3 chemical (see Supplement No. 1 to this part) as follows:

(i) *Annual declaration on past activities.* You produced at one or more plants on your plant site in excess of 30 metric tons of any single Schedule 3 chemical during the previous calendar year.

(ii) *Annual declaration on anticipated activities.* You anticipate that you will produce at one or more plants on your plant site in excess of 30 metric tons of any single Schedule 3 chemical in the next calendar year.

(2) *Schedule 3 chemical production.*

(i) For the purpose of determining Schedule 3 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 3 chemical is subject to declaration, you must declare an intermediate Schedule 3 chemical, but not a transient intermediate Schedule 3 chemical.

(3) *Mixtures containing a Schedule 3 chemical.* (i) *When you must count the quantity of a Schedule 3 chemical in a mixture for declaration purposes.* The quantity of each Schedule 3 chemical contained in a mixture must be counted for declaration purposes only if the concentration of each Schedule 3 chemical in the mixture is 80% or more by volume or by weight, whichever yields the lesser percent.

(ii) *How to count the amount of a Schedule 3 chemical in a mixture.* If your mixture contains 80% or more concentration of a Schedule 3 chemical, you must count only the amount (weight) of the Schedule 3 chemical in the mixture, not the total weight of the mixture.

(b) *Types of declaration forms to be used.* (1) *Annual declaration on past activities.* You must complete the Certification Form and Forms 3-1, 3-2, 3-3, and Form A if one or more plants on your plant site produced in excess of 30 metric tons of any single Schedule 3 chemical during the previous calendar year. Form B is optional.

(2) *Annual declaration on anticipated activities.* You must complete the

Certification Form, and Forms 3-1 and 3-3 if you anticipate that you will produce at one or more plants on your plant site in excess of 30 metric tons of any single Schedule 3 chemical in the next calendar year.

(c) *Quantities to be declared.* (1) *Production of a Schedule 3 chemical in excess of 30 metric tons.* If your plant site is subject to the declaration requirements of paragraph (a) of this section, you must declare the range within which the production at your plant site falls (30 to 200 metric tons, 200 to 1,000 metric tons, etc.) as specified on Form 3-3. When specifying the range of production for your plant site, you must aggregate the production quantities of all plants on the plant site that produced the Schedule 3 chemical in amounts greater than 30 metric tons. Do not aggregate amounts of production from plants on the plant site that did not individually produce a Schedule 3 chemical in amounts greater than 30 metric tons. You must complete a separate Form 3-3 for each Schedule 3 chemical for which production at your plant site exceeds 30 metric tons.

(2) *Rounding.* To determine the production range into which your plant site falls, add all the production of the declared Schedule 3 chemical during the calendar year from all plants on your plant site that produced the Schedule 3 chemical in amounts exceeding 30 metric tons, and round to the nearest ten metric tons.

(d) *“Declared” Schedule 3 plant site.* A plant site that submitted a declaration pursuant to paragraph (a)(1) of this section is a “declared” Schedule 3 plant site.

(e) *Routine inspections of declared Schedule 3 plant sites.* A “declared” Schedule 3 plant site is subject to routine inspection by the Organization for the Prohibition of Chemical Weapons (see part 716 of the CWC) if:

(1) The declared plants on your plant site produced in excess of 200 metric tons aggregate of any Schedule 3 chemical during the previous calendar year; or

(2) You anticipate that the declared plants on your plant site will produce in excess of 200 metric tons aggregate of any Schedule 3 chemical during the next calendar year.

**§ 714.2 Annual reporting requirements for exports and imports in excess of 30 metric tons of Schedule 3 chemicals.**

(a) Any person subject to the CWC that exported from or imported into the United States in excess of 30 metric tons of any single Schedule 3 chemical during the previous calendar year has a

reporting requirement under this section.

(1) *Annual report on exports and imports.* Declared plant sites, undeclared plant sites, trading companies, or any other person subject to the CWC that exported from or imported into the United States in excess of 30 metric tons of any single Schedule 3 chemical during the previous calendar year must submit an annual report on exports and imports.

**Note 1 to paragraph (a)(1):** Declared and undeclared plant sites must count, for report purposes, all exports from and imports to the entire plant site, not only from or to individual plants on the plant site.

**Note 2 to paragraph (a)(1):** The U.S. Government will not submit to the OPCW company-specific information relating to the export or import of Schedule 3 chemicals contained in reports. The U.S. Government will add all export and import information contained in reports to establish the U.S. national aggregate declaration on exports and imports.

(2) *Mixtures containing a Schedule 3 chemical.* The quantity of a Schedule 3 chemical contained in a mixture must be counted for reporting an export or import only if the concentration of the Schedule 3 chemical in the mixture is 80% or more by volume or by weight, whichever yields the lesser percent. For reporting purposes, only count the weight of the Schedule 3 chemical in the mixture, not the entire weight of the mixture.

**Note to paragraph (a)(2):** The “80% and above” mixtures rule applies only for report purposes. This rule does not apply for purposes of determining whether the export of your mixture to a non-State Party requires an End-Use Certificate or for determining whether you need an export license from BIS (see 15 CFR 742.2, 742.18 and 745.2 of the Export Administration Regulations) or from the Department of State (see the International Traffic in Arms Regulations (22 CFR parts 120 through 130)).

(b) *Types of forms to be used.* (1) *Declared Schedule 3 plant sites.* (i) If your plant site is declared for production of a Schedule 3 chemical (and has completed questions 3-3.1 and 3-3.2 on Form 3-3) and you also exported from or imported to your plant site in excess of 30 metric tons of that same Schedule 3 chemical, you must report the export or import by either:

(A) Completing question 3-3.3 on Form 3-3 on your declaration for that same Schedule 3 chemical; or

(B) Submitting, separately from your declaration, a Certification Form, Form 3-1, and a Form 3-3 for each Schedule 3 chemical to be reported, completing

only question 3-3.3. Attach Form A, as appropriate; Form B is optional.

(ii) If your plant site is declared for production of a Schedule 3 chemical and you exported or imported in excess of 30 metric tons of a different Schedule 3 chemical, you must report the export or import by either:

(A) Submitting, along with your declaration, a Form 3-3 for each Schedule 3 chemical to be reported, completing only question 3-3.3. Attach Form A, as appropriate; Form B is optional; or

(B) Submitting, separately from your declaration, a Certification Form, Form 3-1 and a Form 3.3 for each Schedule 3 chemical to be reported, completing only question 3-3.3. Attach Form A, as appropriate; Form B is optional.

(2) If you are an undeclared plant site, a trading company, or any other person subject to the CWCR, you must submit a Certification Form, Form 3-1, and a Form 3-3 for each Schedule 3 chemical to be reported, completing only question 3-3.3. Attach Form A, as appropriate; Form B is optional.

(c) *Quantities to be reported.* (1) *Calculations.* If you exported from or imported to your plant site or trading company more than 30 metric tons of a Schedule 3 chemical in the previous calendar year, you must report all exports and imports of that chemical by country of destination or country of origin, respectively, and indicate the total amount exported to or imported from each country.

(2) *Rounding.* For purposes of reporting exports and imports of a Schedule 3 chemical, you must total all exports and imports per calendar year per recipient or source and then round to the nearest 0.1 metric tons.

**Note to § 714.2(c):** Under the Convention, the United States is obligated to provide the OPCW a national aggregate annual declaration of the quantities of each Schedule 3 chemical exported and imported. The U.S. Government will *not* submit your company-specific information relating to the export or import of a Schedule 3 chemical reported under this § 714.2. The U.S. Government will add all export and import information submitted by various facilities under this section to produce a national aggregate annual declaration of destination-by-destination trade for each Schedule 3 chemical.

#### **§ 714.3 Advance declaration requirements for additionally planned production of Schedule 3 chemicals.**

(a) *Declaration requirements.* (1) You must declare additionally planned production of Schedule 3 chemicals after the annual declaration on anticipated activities for the next

calendar year has been delivered to BIS if:

(i) You plan that a previously undeclared plant on your plant site under § 714.1(a)(1)(ii) will produce a Schedule 3 chemical above the declaration threshold;

(ii) You plan to produce at a plant declared under § 714.1(a)(1)(ii) an additional Schedule 3 chemical above the declaration threshold;

(iii) You plan to increase the production of a Schedule 3 chemical by declared plants on your plant site from the amount exceeding the applicable declaration threshold to an amount exceeding the applicable inspection threshold (see § 716.1(b)(3) of the CWCR); or

(iv) You plan to increase the aggregate production of a Schedule 3 chemical at a declared plant site to an amount above the upper limit of the range previously declared under § 714.1(a)(1)(ii).

(2) If you must submit a declaration on additionally planned activities because you plan to engage in any of the activities listed in paragraphs (a)(1)(i) through (iv) of this section, you also should declare any changes to the anticipated purposes of production or product group codes. You do not have to submit a declaration on additionally planned activities if you are only changing your purposes of production or product group codes.

(b) *Declaration forms to be used.* If you are required to declare additionally planned activities pursuant to paragraph (a) of this section, you must complete the Certification Form and Forms 3-1, 3-2, and 3-3 as appropriate. Such forms are due to BIS at least 15 days in advance of the beginning of the additional or new activity.

#### **§ 714.4 Amended declaration or report.**

In order for BIS to maintain accurate information on previously submitted plant site declarations, including information necessary to facilitate inspection notifications and activities or to communicate declaration or report requirements, amended declarations or reports will be required under the following circumstances described in this section. This section applies only to annual declarations on past activities and annual reports on exports and imports submitted for the previous calendar year or annual declarations on anticipated activities covering the current calendar year, unless specified otherwise in a final inspection report.

(a) *Changes to information that directly affects a declared plant site's Annual Declaration of Past Activities (ADPA) or Combined Annual Declaration or Report which was*

*previously submitted to BIS.* You must submit an amended declaration or report to BIS within 15 days of any change in the following information:

(1) Types of Schedule 3 chemicals produced (e.g., production of additional Schedule 3 chemicals);

(2) Production range (e.g., from 30 to 200 metric tons to above 200 to 1000 metric tons) of Schedule 3 chemicals;

(3) Purpose of Schedule 3 chemical production (e.g., additional end-uses); and

(4) Addition of new plant(s) for production of Schedule 3 chemicals.

(b) *Changes to export or import information submitted in Annual Reports on Exports and Imports from undeclared plant sites, trading companies and U.S. persons.* You must submit an amended report or amended combined declaration and report to BIS within 15 days of any change in the following export or import information:

(1) Types of Schedule 3 chemicals exported or imported (additional Schedule 3 chemicals);

(2) Quantities of Schedule 3 chemicals exported or imported;

(3) Destination(s) of Schedule 3 chemicals exported;

(4) Source(s) of Schedule 3 chemicals imported; and

(5) End-use(s) of Schedule 3 chemicals exported or imported (e.g., addition of new end-use(s)).

(c) *Changes to company and plant site information submitted in the ADPA, the Annual Declaration of Anticipated Activities, and the Annual Report on Exports and Imports.* (1) *Internal company changes.* You must submit an amended declaration or report to BIS within 30 days of any change in the following information:

(i) Name of declaration/report point of contact (D-POC), including telephone number, facsimile number, and e-mail address;

(ii) Name(s) of inspection point(s) of contact (I-POC), including telephone number, and facsimile number, and e-mail address(es);

(iii) Company name (see 714.4(c)(2) for other company changes);

(iv) Company mailing address;

(v) Plant site name;

(vi) Plant site owner, including telephone number and facsimile number;

(vii) Plant site operator, including telephone number and facsimile number;

(viii) Plant name;

(xi) Plant owner, including telephone number and facsimile number; and

(x) Plant operator, including telephone number and facsimile number.

(2) *Change in ownership of company, plant site, or plant.* If you sold or purchased a declared company, plant site or plant, you must submit an amended declaration or report to BIS, either before the effective date of the change or within 30 days after the effective date of the change. The amended declaration or report must include the following information.

(i) Information that must be submitted to BIS by a company selling a declared plant site:

(A) Name of seller (*i.e.*, name of the company selling a declared plant site);

(B) Name of declared plant site and U.S. Code Number for that plant site;

(C) Name of purchaser (*i.e.*, name of company purchasing a declared plant site) and identity of the new owner and contact person for the purchaser, if known;

(D) Date of ownership transfer;

(E) Additional (*e.g.*, unique) details on the sale of the plant site relevant to ownership or operational control over any portion of the declared plant site (*e.g.*, whether the entire plant site or only a portion of the declared plant site has been sold to a new owner); and

(F) Details regarding whether the new owner will submit the declaration or report for the entire calendar year during which the ownership changed occurred, or whether the previous owner and the new owner will submit separate declarations or reports for the periods of the calendar year during which each owned the plant site or trading company.

(1) If the new owner is responsible for submitting the declaration or report for the entire current year, it must have in its possession the records for the period of the year during which the previous owner owned the plant site or trading company.

(2) If the previous owner and new owner will submit separate declarations or reports for the periods of the calendar year during which each owned the plant site or trading company, and, at the time of transfer of ownership, the previous owner's activities are not above the declaration or report thresholds set forth in § 714.1(a)(1) and § 714.2(a)(1) of the CWCR, respectively, the previous owner and the new owner must still submit declarations to BIS with the below threshold quantities indicated.

(3) If the part-year declarations submitted by the previous owner and the new owner are not, when combined, above the declaration threshold set forth in § 714.1(a)(1) of the CWCR, BIS will return the declarations without action as set forth in § 714.5 of the CWCR.

(4) If part-year reports are not, when combined, above the report threshold

set forth in § 714.2(a)(1) of the CWCR, BIS will return the reports without action as set forth in § 714.5 of the CWCR.

(ii) Information that must be submitted to BIS by the company purchasing a declared plant site:

(A) Name of purchaser (*i.e.*, name of individual or company purchasing a declared plant site);

(B) Mailing address of purchaser;

(C) Name of declaration point of contact (D-POC) for the purchaser, including telephone number, facsimile number, and e-mail address;

(D) Name(s) of inspection point(s) of contact (I-POC) for the purchaser, including telephone number, facsimile number, and e-mail address(es);

(E) Name of the declared plant site and U.S. Code Number for that plant site;

(F) Location of the declared plant site;

(G) Operator of the declared plant site, including telephone number, and facsimile number;

(H) Name of plant where Schedule 3 production exceeds the declaration threshold;

(I) Owner of plant where Schedule 3 production exceeds the declaration threshold;

(J) Operator of plant where Schedule 3 production exceeds the declaration threshold; and

(K) Details on the next declaration or report submission on whether the new owner will submit the declaration or report for the entire calendar year during which the ownership change occurred, or whether the previous owner and new owner will submit separate declarations or reports for the periods of the calendar year during which each owned the plant site or trading company.

**Note 1 to § 714.4(c):** You must submit an amendment to your most recently submitted declaration or report for declaring changes to internal company information (*e.g.*, company name change) or changes in ownership of a facility or trading company that have occurred since the submission of this declaration or report. BIS will process the amendment to ensure current information is on file regarding the facility or trading company (*e.g.*, for inspection notifications and correspondence) and will also forward the amended declaration to the OPCW to ensure that they also have current information on file regarding your facility or trading company.

**Note 2 to § 714.4(c):** You may notify BIS of change in ownership via a letter to the address given in § 711.6 of the CWCR. If you are submitting an amended declaration or report, use Form B to address details regarding the sale of the declared plant site or trading company.

**Note 3 to § 714.4(c):** For ownership changes, the declared plant site or trading company will maintain its original U.S. Code Number, unless the plant site or trading company is sold to multiple owners, at which time BIS will assign new U.S. Code Numbers.

(d) *Inspection-related amendments.* If, following the completion of an inspection (*see* parts 716 and 717 of the CWCR), you are required to submit an amended declaration based on the final inspection report, BIS will notify you in writing of the information to be amended pursuant to §§ 716.10 and 717.5(b) of the CWCR. Amended declarations must be submitted to BIS no later than 45 days following your receipt of BIS's post inspection letter.

(e) *Non-substantive changes.* If, subsequent to the submission of your declaration or report to BIS, you discover one or more non-substantive typographical errors in your declaration or report, you are not required to submit an amended declaration or report to BIS. Instead, you may correct these errors in a subsequent declaration or report.

(f) *Documentation required for amended declarations or reports.* If you are required to submit an amended declaration or report to BIS pursuant to paragraph (a), (b), (c), or (d) of this section, you must submit either:

(1) A letter containing all of the corrected information required, in accordance with the provisions of this section, to amend your declaration or report; or

(2) Both of the following:

(i) A new Certification Form; and

(ii) The specific forms required for the declaration or report type being amended (*e.g.*, annual declaration on past activities) containing the corrected information required, in accordance with the requirements of this section, to amend your declaration or report.

#### **§ 714.5 Declarations and reports returned without action by BIS.**

If you submit a declaration or report and BIS determines that the information contained therein is not required by the CWCR, BIS will return the original declaration or report to you, without action, accompanied by a letter explaining BIS's decision. In order to protect your confidential business information, BIS will not maintain a copy of the any declaration or report that is returned without action. However, BIS will maintain a copy of the RWA letter.

#### **§ 714.6 Deadlines for submission of Schedule 3 declarations, reports, and amendments.**

Declarations, reports, and amendments required under this part



must be postmarked by the appropriate date identified in Supplement No. 2 to this part 714 of the CWC. Required declarations, reports, and amendments include:

(a) Annual declaration on past activities (production of Schedule 3 chemicals during the previous calendar year);

(b) Annual report on exports and imports of Schedule 3 chemicals from

plant sites, trading companies, and other persons subject to the CWC (during the previous calendar year);

(c) Combined declaration and report (production of Schedule 3 chemicals, as well as exports or imports of the same or different Schedule 3 chemicals, by a declared plant site during the previous calendar year);

(d) Annual declaration on anticipated activities (anticipated production of

Schedule 3 chemicals during the next calendar year);

(e) Declaration on Additionally Planned Activities (additionally planned production of Schedule 3 chemicals); and

(f) Amended declaration and report, including combined declaration and report.

#### SUPPLEMENT NO. 1 TO PART 714—SCHEDULE 3 CHEMICALS

	(CAS registry number)
<b>A. Toxic chemicals</b>	
(1) Phosgene: Carbonyl dichloride .....	(75-44-5)
(2) Cyanogen chloride .....	(506-77-4)
(3) Hydrogen cyanide .....	(74-90-8)
(4) Chloropicrin: Trichloronitromethane .....	(76-06-2)
<b>B. Precursors</b>	
(5) Phosphorus oxychloride .....	(10025-87-3)
(6) Phosphorus trichloride .....	(7719-12-2)
(7) Phosphorus pentachloride .....	(10026-13-8)
(8) Trimethyl phosphite .....	(121-45-9)
(9) Triethyl phosphite .....	(122-52-1)
(10) Dimethyl phosphite .....	(868-85-9)
(11) Diethyl phosphite .....	(762-04-9)
(12) Sulfur monochloride .....	(10025-67-9)
(13) Sulfur dichloride .....	(10545-99-0)
(14) Thionyl chloride .....	(7719-09-7)
(15) Ethyldiethanolamine .....	(139-87-7)
(16) Methyldiethanolamine .....	(105-59-9)
(17) Triethanolamine .....	(102-71-6)

**Note to Supplement No. 1:** Refer to Supplement No. 1 to part 774 of the Export Administration Regulations (the Commerce Control List), ECCNs 1C350 and 1C355, for export controls related to Schedule 3 chemicals.

#### SUPPLEMENT NO. 2 TO PART 714—DEADLINES FOR SUBMISSION OF SCHEDULE 3 DECLARATIONS, REPORTS, AND AMENDMENTS

Declarations	Applicable forms	Due dates
Annual Declaration on Past Activities (previous calendar year). Declared plant site (production)	Certification, 3-1, 3-2, 3-3 (if also exported or imported), A (as appropriate), B (optional).	February 28 of the year following any calendar year in which the production of a Schedule 3 chemical exceeded the declaration threshold in § 714.1(a)(1)(i) of the CWC.
Annual Report on Exports and Imports (previous calendar year); Plant site, trading company, other persons.	Certification, 3-1, 3-3.3 and 3-3.4, A (as appropriate), B (optional).	February 28 of the year following any calendar year in which exports or imports of a Schedule 3 chemical by a plant site, trading company, or other person subject to the CWC (as described in § 714.2(a) of the CWC) exceeded the threshold in § 714.2(a) of the CWC.
Combined Declaration & Report .....	Certification, 3-1, 3-2, and 3-3, A (as appropriate), B (optional).	February 28 of the year following any calendar year in which the production of a Schedule 3 chemical and the export or import of the same or a different Schedule 3 chemical by a declared plant site exceeded the applicable thresholds in §§ 714.1(a)(1)(i) and 714.2(a), respectively, of the CWC.
Annual Declaration on Anticipated Activities (Production); (next calendar year).	Certification, 3-1, 3-2, 3-3.2, A (as appropriate), B (optional).	September 3 of the year prior to any calendar year in which Schedule 3 production is anticipated to occur.
Declaration on Additionally Planned Activities ...	Certification, 3-1, 3-3.1 and 3-3.2, A (as appropriate), B (optional).	15 calendar days before the additionally planned activity begins.
Amended Declaration: —Declaration information .....	Certification, 3-1, 3-2, 3-3 .....	—15 calendar days after change in information
—Company information .....		—30 calendar days after change in information
—Post-inspection letter.		—45 calendar days after receipt of letter
Amended Report .....	Certification, 3-1, 3-2, 3-3, A (as appropriate), B (optional).	—15 calendar days after change in information

Declarations	Applicable forms	Due dates
Combined Declaration & Report .....	Certification, 3–1,3–2, 3–3, A (as appropriate), B (optional).	—15 calendar days after change in information

## PART 715—ACTIVITIES INVOLVING UNSCHEDULED DISCRETE ORGANIC CHEMICALS (UDOCs)

Sec.

715.1 Annual declaration requirements for production by synthesis of unscheduled discrete organic chemicals (UDOCs).

715.2 Amended declaration.

715.3 Declarations returned without action by BIS.

715.4 Deadlines for submitting UDOC declarations, no changes authorization forms, and amendments.

Supplement No. 1 to part 715—Definition of an Unscheduled Discrete Organic Chemical.

Supplement No. 2 to Part 715—Examples of Unscheduled Discrete Organic Chemicals (UDOCs) and UDOC Production.

Supplement No. 3 to Part 715—Deadlines for Submission of Declarations, No Changes Authorization Forms, and Amendments for Unscheduled Discrete Organic Chemical (UDOC) Facilities.

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

### § 715.1 Annual declaration requirements for production by synthesis of unscheduled discrete organic chemicals (UDOCs).

(a) *Declaration of production by synthesis of UDOCs for purposes not prohibited by the CWC.* (1) *Production quantities that trigger the declaration requirement.* See § 711.6 of the CWC for information on obtaining the forms you will need to declare production of unscheduled discrete organic chemicals. You must complete the forms specified in paragraph (b) of this section if your plant site produced by synthesis:

(i) In excess of 200 metric tons aggregate of all UDOCs (including all UDOCs containing the elements phosphorus, sulfur or fluorine, referred to as “PSF-chemicals”) during the previous calendar year; or

(ii) In excess of 30 metric tons of an individual PSF-chemical at one or more plants at your plant site during the previous calendar year.

**Note to § 715.1(a)(1)(ii):** In calculating the aggregate production quantity of each individual PSF chemical produced by a PSF plant, do not include production of a PSF chemical that was produced in quantities less than 30 metric tons. Include only production quantities from those PSF plants that produced more than 30 metric tons of an individual PSF chemical.

(2) *UDOCs subject to declaration requirements under this part.* (i) UDOCs

subject to declaration requirements under this part are those produced by synthesis that have been isolated for:

(A) Use; or

(B) Sale as a specific end product.

(ii) *Exemptions.*

(A) Polymers and oligomers consisting of two or more repeating units;

(B) Chemicals and chemical mixtures produced through a biological or biomediated process;

(C) Products from the refining of crude oil, including sulfur-containing crude oil;

(D) Metal carbides (*i.e.*, chemicals consisting only of metal and carbon); and

(E) UDOCs produced by synthesis that are ingredients or by-products in foods designed for consumption by humans and/or animals.

**Note to paragraph (a)(2):** See Supplement No. 2 to this part for examples of UDOCs subject to the declaration requirements of this part, and for examples of activities that are not considered production by synthesis.

(3) *Exemptions for UDOC plant sites.* UDOC plant sites that exclusively produced hydrocarbons or explosives are exempt from UDOC declaration requirements. For the purposes of this part, the following definitions apply for hydrocarbons and explosives:

(i) *Hydrocarbon* means any organic compound that contains only carbon and hydrogen; and

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

(b) *Types of declaration forms to be used.* (1) *Annual declaration on past activities.* (i) You must complete the Certification Form and Form UDOC (consisting of two pages), unless there are no changes from the previous year's declaration and you submit a No Changes Authorization Form pursuant to paragraph (b)(1)(ii) of this section. Attach Form A as appropriate; Form B is optional.

(ii) You may complete the No Changes Authorization Form if there are no updates or changes to any information (except the certifying official and dates signed and submitted) in your plant site's previously submitted annual declaration on past activities. Your plant site's activities will be declared to the OPCW and subject to inspection, if

applicable, based upon the data reported in the most recent UDOC Declaration that you submitted to BIS.

**Note to § 715.1(b)(1)(ii):** If, after submitting the No Changes Authorization Form, you have changes to information, you must submit a complete amendment to the annual declaration on past activities. See § 715.2.

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

(d) *Routine inspections of declared UDOC plant sites.* A “declared” UDOC plant site is subject to routine inspection by the Organization for the Prohibition of Chemical Weapons (*see* part 716 of the CWC) if it produced by synthesis more than 200 metric tons aggregate of UDOCs during the previous calendar year.

### § 715.2 Amended declaration.

In order for BIS to maintain accurate information on previously submitted plant site declarations, including current information necessary to facilitate inspection notifications and activities or to communicate declaration requirements, amended declarations will be required under the following circumstances described in this section. This section applies only to annual declarations on past activities submitted for the previous calendar year, unless specified otherwise in a final inspection report.

(a) *Changes to information that directly affects a declared plant site's Annual Declaration of Past Activities (ADPA) which was previously submitted to BIS.* You must submit an amended declaration to BIS within 15 days of any change in the following information:

(1) Product group codes for UDOCs produced in quantities exceeding the applicable declaration threshold specified in § 715.1(a)(1);

(2) Approximate number of plants at the declared plant site that produced any amount of UDOCs (including all PSF chemicals);

(3) Aggregate amount of production (by production range) of UDOCs produced by all plants at the declared plant site;

(4) Exact number of plants at the declared plant site that individually produced more than 30 metric tons of a single PSF chemical; and

(5) Production range of each plant at the declared plant site that individually

produced more than 30 metric tons of a single PSF chemical.

(b) *Changes to company and plant site information submitted in the ADPA that must be maintained by BIS.* (1) Internal company changes. You must submit an amended declaration to BIS within 30 days of any change in the following information:

(i) Name of declaration point of contact (D-POC), including telephone number, facsimile number, and e-mail address;

(ii) Name(s) of inspection point(s) of contact (I-POC), including telephone number, facsimile number(s) and e-mail address(es);

(iii) Company name (*see* 715.2(b)(2) for other company changes);

(iv) Company mailing address;

(v) Plant site name;

(vi) Plant site owner, including telephone number and facsimile number; and

(vii) Plant site operator, including telephone number and facsimile number.

(2) *Change in ownership of company or plant site.* If you sold or purchased a declared plant site, you must submit an amended declaration to BIS, either before the effective date of the change or within 30 days after the effective date of the change. The amended declaration must include the following information.

(i) Information that must be submitted to BIS by the company selling a declared plant site:

(A) Name of seller (*i.e.*, name of company selling a declared plant site);

(B) Name of declared plant site name and U.S. Code Number for that plant site;

(C) Name of purchaser (*i.e.*, name of new company purchasing a declared plant site) and identity of contact person for the purchaser, if known;

(D) Date of ownership transfer or change;

(E) Additional details on the sale of the declared plant site relevant to ownership or operational control over any portion of the declared plant site (*e.g.*, whether the entire plant site or only a portion of the declared plant site has been sold to a new owner); and

(F) Details regarding whether the new owner will submit the declaration for the entire calendar year during which the ownership change occurred, or whether the previous owner and new owner will submit separate declarations for the periods of the calendar year during which each owned the plant site.

(1) If the new owner is responsible for submitting the declaration for the entire current year, it must have in its possession the records for the period of the year during which the previous owner owned the plant site.

(2) If the previous owner and new owner will submit separate declarations for the periods of the calendar year during which each owned the plant site, and, if at the time of transfer of ownership, the previous owner's activities are not above the declaration thresholds set forth in § 715.1(a)(1) of the CWCR, the previous owner and the new owner must still submit declarations to BIS with the below threshold quantities indicated.

(3) If the part-year declarations submitted by the previous owner and the new owner are not, when combined, above the declaration threshold set forth in § 715.1(a)(1) of the CWCR, BIS will return the declarations without action as set forth in § 715.3 of the CWCR.

(ii) Information that must be submitted to BIS by the company purchasing a declared plant site:

(A) Name of purchaser (*i.e.*, name of individual or company purchasing a declared plant site);

(B) Mailing address of purchaser;

(C) Name of declaration point of contact (D-POC) for the purchaser, including telephone number, facsimile number, and e-mail address;

(D) Name(s) of inspection point(s) of contact (I-POC) for the purchaser, including telephone number(s), facsimile number(s), and e-mail address(es);

(E) Name of the declared plant site and U.S. Code Number for that plant site;

(F) Location of the declared plant site;

(G) Name of plant site where the production of UDOCs exceeds the applicable declaration threshold;

(H) Owner of plant site where the production of UDOCs exceeds the applicable declaration threshold, including telephone number and facsimile number;

(I) Operator of plant site where the production of UDOCs exceeds the applicable declaration threshold, including telephone number and facsimile number; and

(J) Details on the next declaration or report submission on whether the new owner will submit the declaration or report for the entire calendar year during which the ownership change occurred, or whether the previous owner and new owner will submit separate declarations or report for the periods of the calendar year during which each owned the plant site.

**Note 1 to § 715.2(b):** You must submit an amendment to your most recently submitted declaration or report for declaring changes to internal company information (*e.g.*, company name change) or changes in ownership of a facility or trading company that have occurred since the submission of this

declaration or report. BIS will process the amendment to ensure current information is on file regarding the facility or trading company (*e.g.*, for inspection notifications and correspondence) and will also forward the amended declaration to the OPCW to ensure that they also have current information on file regarding your facility or trading company.

**Note 2 to § 715.2(b):** You may notify BIS of change in ownership via a letter to the address given in § 711.6 of the CWCR. If you are submitting an amended declaration, use Form B to address details regarding the sale of the declared plant site.

**Note 3 to § 715.2(b):** For ownership changes, the declared plant site will maintain its original U.S. Code Number, unless the plant site is sold to multiple owners, at which time BIS will assign new U.S. Code Numbers.

(c) *Inspection-related amendments.* If, following completion of an inspection (see parts 716 or 717 of the CWCR), you are required to submit an amended declaration based on the final inspection report, BIS will notify you in writing of the information that will be required pursuant to §§ 716.10 and 717.5 of the CWCR. You must submit an amended declaration to BIS no later than 45 days following your receipt of BIS's post inspection letter.

(d) *Non-substantive changes.* If, subsequent to the submission of your declaration to BIS, you discover one or more non-substantive typographical errors in your declaration, you are not required to submit an amended declaration to BIS. Instead, you may correct these errors in a subsequent declaration.

(e) *Documentation required for amended declarations.* If you are required to submit an amended declaration to BIS pursuant to paragraph (a), (b), or (c) of this section, you must submit either:

(1) A letter containing all of the corrected information required, in accordance with the provisions of this section, to amend your declaration; or

(2) Both of the following:

(i) A new Certification Form; and

(ii) The specific form required for the declaration containing the corrected information required, in accordance with the requirements of this section, to amend your declaration.

### **§ 715.3 Declarations returned without action by BIS.**

If you submit a declaration and BIS determines that the information contained therein is not required by the CWCR, BIS will return the original declaration to you, without action, accompanied by a letter explaining BIS's decision. In order to protect your

confidential business information, BIS will not maintain a copy of any declaration that is returned without action. However, BIS will maintain a copy of the RWA letter.

**§ 715.4 Deadlines for submitting UDOC declarations, no changes authorization forms, and amendments.**

Declarations, no changes authorization forms, and amendments required under this part must be postmarked by the appropriate dates identified in Supplement No. 3 to this part 715 of the CWC. Required declarations include:

(a) Annual declaration on past activities (UDOC production during the previous calendar year);

(b) No changes authorization form (may be completed and submitted to BIS when there are no changes to any information in your plant site's previously submitted annual declaration on past activities, except the certifying official and the dates signed and submitted); and

(c) Amended declaration.

**Supplement No. 1 to Part 715—Definition of an Unscheduled Discrete Organic Chemical**

Unscheduled discrete organic chemical means any chemical: (1) 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; and (2)

that is not contained in the Schedules of Chemicals (see Supplements No. 1 to parts 712 through 714 of this subchapter). Unscheduled discrete organic chemicals subject to declaration under this part are those produced by synthesis that are isolated for use or sale as a specific end-product.

**Note:** Carbon oxides consist of chemical compounds that contain only the elements carbon and oxygen and have the chemical formula  $C_xO_y$ , where x and y denote integers. The two most common carbon oxides are carbon monoxide (CO) and carbon dioxide (CO<sub>2</sub>). Carbon sulfides consist of chemical compounds that contain only the elements carbon and sulfur, and have the chemical formula  $C_aS_b$ , where a and b denote integers. The most common carbon sulfide is carbon disulfide (CS<sub>2</sub>). Metal carbonates consist of chemical compounds that contain a metal (*i.e.*, the Group I Alkalies, Groups II Alkaline Earths, the Transition Metals, or the elements aluminum, gallium, indium, thallium, tin, lead, bismuth or polonium), and the elements carbon and oxygen. Metal carbonates have the chemical formula  $M_d(CO_3)_e$ , where d and e denote integers and M represents a metal. Common metal carbonates are sodium carbonate (Na<sub>2</sub>CO<sub>3</sub>) and calcium carbonate (CaCO<sub>3</sub>). In addition, metal carbides or other compounds consisting of only a metal, as described in this Note, and carbon (*e.g.*, calcium carbide (CaC<sub>2</sub>)), are exempt from declaration requirements (see § 715.1(a)(2)(ii)(D)).

**Supplement No. 2 to Part 715—Examples of Unscheduled Discrete Organic Chemicals (UDOCs) and UDOC Production**

(1) Examples of UDOCs not subject to declaration include:

(i) UDOCs produced coincidentally as by-products that are not isolated for use or sale as a specific end product, and are routed to, or escape from, the waste stream of a stack, incinerator, or waste treatment system or any other waste stream;

(ii) UDOCs, contained in mixtures, which are produced coincidentally and not isolated for use or sale as a specific end-product;

(iii) UDOCs produced by recycling (*i.e.*, involving one of the processes listed in paragraph (3) of this supplement) of previously declared UDOCs;

(iv) UDOCs produced by the mixing (*i.e.*, the process of combining or blending into one mass) of previously declared UDOCs; and

(v) UDOCs that are intermediates and that are used in a single or multi-step process to produce another declared UDOC.

(2) Examples of UDOCs that you must declare under part 715 include, but are not limited to, the following, unless they are not isolated for use or sale as a specific end product:

(i) Acetophenone (CAS # 98–86–2);

(ii) 6-Chloro-2-methyl aniline (CAS # 87–63–8);

(iii) 2-Amino-3-hydroxybenzoic acid (CAS # 548–93–6); and

(iv) Acetone (CAS # 67–64–1).

(3) Examples of activities that are not considered production by synthesis under part 715 and, thus, the end products resulting from such activities would not be declared under part 715, are as follows:

(i) Fermentation;

(ii) Extraction;

(iii) Purification;

(iv) Distillation; and

(v) Filtration.

**SUPPLEMENT NO. 3 TO PART 715—DEADLINES FOR SUBMISSION OF DECLARATIONS, NO CHANGES AUTHORIZATION FORMS, AND AMENDMENTS FOR UNSCHEDULED DISCRETE ORGANIC CHEMICAL (UDOC) FACILITIES**

Declarations	Applicable forms	Due dates
Annual Declaration on Past Activities (previous calendar year). Declared plant site	Certification, UDOC, A (as appropriate), B (optional).	February 28 of the year following any calendar year in which the production of UDOCs exceeded the applicable declaration threshold in § 715.1(a)(1) of the CWC.
No Changes Authorization Form (declaration required, but no changes to data contained in previously submitted annual declaration on past activities (previous calendar year). Declared plant site Amended Declaration	No Changes Authorization Form .....	February 28 of the year following any calendar year in which the production of UDOCs exceeded the applicable declaration threshold in § 715.1(a)(1) of the CWC.
—Declaration information ..... —Company information —Post-inspection letter	Certification, UDOC, A (as appropriate), B (optional).	—15 calendar days after change in information. —30 calendar days after change in information. —45 calendar days after receipt of letter.

**PART 716—INITIAL AND ROUTINE INSPECTIONS OF DECLARED FACILITIES**

Sec.

716.1 General information on the conduct of initial and routine inspections.

716.2 Purposes and types of inspections of declared facilities.

716.3 Consent to inspections; warrants for inspections.

716.4 Scope and conduct of inspections.

716.5 Notification, duration and frequency of inspections.

716.6 Facility agreements.

716.7 Samples.

716.8 On-site monitoring of Schedule 1 facilities.

716.9 Report of inspection-related costs.

716.10 Post inspection activities.

Supplement No. 1 to Part 716—Notification, Duration, and Frequency of Inspections.

Supplement No. 2 to Part 716—[Reserved].

Supplement No. 3 to Part 716—[Reserved].

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

### § 716.1 General information on the conduct of initial and routine inspections.

This part provides general information about the conduct of initial and routine inspections of declared facilities subject to inspection under CWC Verification Annex Part VI (E), Part VII(B), Part VIII(B) and Part IX(B). See part 717 of this subchapter for provisions concerning challenge inspections.

(a) *Overview.* Each State Party to the CWC, including the United States, has agreed to allow certain inspections of declared facilities by inspection teams employed by the Organization for the Prohibition of Chemical Weapons (OPCW) to ensure that activities are consistent with obligations under the Convention. BIS is responsible for leading, hosting and escorting inspections of all facilities subject to the provisions of this subchapter (see § 710.2 of this subchapter).

(b) *Declared facilities subject to initial and routine inspections.* (1) *Schedule 1 facilities.* (i) Your declared facility is subject to inspection if it produced in excess of 100 grams aggregate of Schedule 1 chemicals in the previous calendar year or anticipates producing in excess of 100 grams aggregate of Schedule 1 chemicals during the next calendar year.

(ii) If you are a new Schedule 1 production facility pursuant to § 712.4 of the CWC, your facility is subject to an initial inspection within 200 days of submitting an initial declaration.

**Note to paragraph (b)(1):** All Schedule 1 facilities submitting a declaration are subject to inspection.

(2) *Schedule 2 plant sites.* (i) Your declared plant site is subject to inspection if at least one plant on your plant site produced, processed or consumed, in any of the three previous calendar years, or you anticipate that at least one plant on your plant site will produce, process or consume in the next calendar year, any Schedule 2 chemical in excess of the following:

(A) 10 kg of chemical BZ: 3-Quinuclidinyl benzilate (see Schedule 2, Part A, paragraph 3 in Supplement No. 1 to part 713 of this subchapter);

(B) 1 metric ton of chemical PFIB: 1,1,3,3,3-Pentafluoro-2-(trifluoromethyl)-1-propene or any chemical belonging to the Amiton family (see Schedule 2, Part A, paragraphs 1 and 2 in Supplement No. 1 to part 713 of this subchapter); or

(C) 10 metric tons of any chemical listed in Schedule 2, Part B (see Supplement No. 1 to part 713 of this subchapter).

(ii) *Initial inspection for new Schedule 2 plant sites.* Your declared

plant site is subject to an initial inspection within the first year after submitting a declaration, if at least one plant on your plant site produced, processed or consumed in any of the three previous years, or you anticipate that at least one plant on your plant site will produce, process or consume in the next calendar year, any Schedule 2 chemical in excess of the threshold quantities set forth in paragraphs (b)(2)(i)(A) through (C) of this section.

**Note to paragraph (b)(2):** The applicable inspection threshold for Schedule 2 plant sites is ten times higher than the applicable declaration threshold. Only declared plant sites, comprising at least one declared plant that exceeds the applicable inspection threshold, are subject to inspection.

(3) *Schedule 3 plant sites.* Your declared plant site is subject to inspection if the declared plants on your plant site produced during the previous calendar year, or you anticipate they will produce in the next calendar year, in excess of 200 metric tons aggregate of any Schedule 3 chemical.

**Note to paragraph (b)(3):** The methodology for determining a declarable and inspectable plant site is different. A Schedule 3 plant site that submits a declaration is subject to inspection only if the aggregate production of a Schedule 3 chemical at all declared plants on the plant site exceeds 200 metric tons.

(4) *Unscheduled discrete organic chemical plant sites.* Your declared plant site is subject to inspection if it produced by synthesis more than 200 metric tons aggregate of unscheduled discrete organic chemicals (UDOC) during the previous calendar year.

**Note 1 to paragraph (b)(4):** You must include amounts of unscheduled discrete organic chemicals containing phosphorus, sulfur or fluorine in the calculation of your plant site's aggregate production of unscheduled discrete organic chemicals.

**Note 2 to paragraph (b)(4):** All UDOC plant sites that submit a declaration based on § 715.1(a)(1)(i) of the CWC are subject to a routine inspection.

(c) *Responsibilities of the Department of Commerce.* As the host and escort for the international inspection team for all inspections of facilities subject to the provisions of the CWC under this part, BIS will:

- (1) Lead on-site inspections;
- (2) Provide Host Team notification to the facility of an impending inspection;
- (3) Take appropriate action to obtain an administrative warrant in the event the facility does not consent to the inspection;
- (4) Dispatch an advance team to the vicinity of the site to provide administrative and logistical support for

the impending inspection and, upon request, to assist the facility with inspection preparation;

(5) Escort the Inspection Team on-site throughout the inspection process;

(6) Assist the Inspection Team with verification activities;

(7) Negotiate the development of a site-specific facility agreement, if appropriate (see § 716.6); and

(8) Ensure that an inspection adheres to the Convention, the Act and any warrant issued thereunder, and a site-specific facility agreement, if concluded.

### § 716.2 Purposes and types of inspections of declared facilities.

(a) *Schedule 1 facilities.* (1) *Purposes of inspections.* The aim of inspections of Schedule 1 facilities is to verify that:

(i) The facility is not used to produce any Schedule 1 chemical, except for the declared Schedule 1 chemicals;

(ii) The quantities of Schedule 1 chemicals produced, processed or consumed are correctly declared and consistent with needs for the declared purpose; and

(iii) The Schedule 1 chemical is not diverted or used for purposes other than those declared.

(2) *Types of inspections.* (i) *Initial inspections.* (A) During initial inspections of declared Schedule 1 facilities, in addition to the verification activities listed in paragraph (a)(1) of this section, the Host Team and the Inspection Team will draft site-specific facility agreements (see § 716.6) for the conduct of routine inspections.

(B) For new Schedule 1 production facilities declared pursuant to § 712.4 of the CWC, the U.S. National Authority, in coordination with BIS, will conclude a facility agreement with the OPCW before the facility begins producing above 100 grams aggregate of Schedule 1 chemicals.

(ii) *Routine inspections.* During routine inspections of declared Schedule 1 facilities, the verification activities listed in paragraph (a)(1) of this section will be carried out pursuant to site-specific facility agreements (§ 716.6) developed during the initial inspections and concluded between the U.S. Government and the OPCW pursuant to the Convention.

(b) *Schedule 2 plant sites.* (1) *Purposes of inspections.* (i) The general aim of inspections of declared Schedule 2 plant sites is to verify that activities are in accordance with obligations under the Convention and consistent with the information provided in declarations. Particular aims of inspections of declared Schedule 2 plant sites are to verify:

(A) The absence of any Schedule 1 chemical, especially its production,

except in accordance with the provisions of the Convention;

(B) Consistency with declarations of production, processing or consumption of Schedule 2 chemicals; and

(C) Non-diversion of Schedule 2 chemicals for activities prohibited under the Convention.

(ii) During initial inspections, Inspection Teams shall collect information to determine the frequency and intensity of subsequent inspections by assessing the risk to the object and purpose of the Convention posed by the relevant chemicals, the characteristics of the plant site and the nature of the activities carried out there. The Inspection Team will take the following criteria into account, inter alia:

(A) The toxicity of the scheduled chemicals and of the end-products produced with them, if any;

(B) The quantity of the scheduled chemicals typically stored at the inspected site;

(C) The quantity of feedstock chemicals for the scheduled chemicals typically stored at the inspected site;

(D) The production capacity of the Schedule 2 plants; and

(E) The capability and convertibility for initiating production, storage and filling of toxic chemicals at the inspected site.

(2) *Types of inspections.* (i) *Initial inspections.* During initial inspections of declared Schedule 2 plant sites, in addition to the verification activities listed in paragraph (b)(1) of this section, the Host Team and the Inspection Team will generally draft site-specific facility agreements for the conduct of routine inspections (see § 716.6).

(ii) *Routine inspections.* During routine inspections of declared Schedule 2 plant sites, the verification activities listed in paragraph (b)(1) of this section will be carried out pursuant to any appropriate site-specific facility agreements developed during the initial inspections (see § 716.6), and concluded between the U.S. Government and the OPCW pursuant to the Convention and the Act.

(c) *Schedule 3 plant sites.* (1) *Purposes of inspections.* The general aim of inspections of declared Schedule 3 plant sites is to verify that activities are consistent with the information provided in declarations. The particular aim of inspections is to verify the absence of any Schedule 1 chemical, especially its production, except in accordance with the Convention.

(2) *Routine inspections.* During routine inspections of declared Schedule 3 plant sites, in addition to the verification activities listed in paragraph (c)(1) of this section, the Host Team and

the Inspection Team may draft site-specific facility agreements for the conduct of subsequent routine inspections (see § 716.6). Although the Convention does not require facility agreements for declared Schedule 3 plant sites, the owner, operator, occupant or agent in charge of a plant site may request one. The Host Team will not seek a facility agreement if the owner, operator, occupant or agent in charge of the plant site does not request one. Subsequent routine inspections will be carried out pursuant to site-specific facility agreements, if applicable.

(d) *Unscheduled discrete organic chemical plant sites.* (1) *Purposes of inspections.* The general aim of inspections of declared UDOC plant sites is to verify that activities are consistent with the information provided in declarations. The particular aim of inspections is to verify the absence of any Schedule 1 chemical, especially its production, except in accordance with the Convention.

(2) *Routine inspections.* During routine inspections of declared UDOC plant sites, in addition to the verification activities listed in paragraph (d)(1) of this section, the Host Team and the Inspection Team may develop draft site-specific facility agreements for the conduct of subsequent routine inspections (see § 716.6). Although the Convention does not require facility agreements for declared UDOC plant sites, the owner, operator, occupant or agent in charge of a plant site may request one. The Host Team will not seek a facility agreement if the owner, operator, occupant or agent in charge of the plant site does not request one. Subsequent routine inspections will be carried out pursuant to site-specific facility agreements, if applicable.

#### **§ 716.3 Consent to inspections; warrants for inspections.**

(a) The owner, operator, occupant or agent in charge of a facility may consent to an initial or routine inspection. The individual giving consent on behalf of the facility represents that he or she has the authority to make this decision for the facility.

(b) In instances where consent is not provided by the owner, operator, occupant or agent in charge for an initial or routine inspection, BIS will seek administrative warrants as provided by the Act.

#### **§ 716.4 Scope and conduct of inspections.**

(a) *General.* Each inspection shall be limited to the purposes described in § 716.2 and shall be conducted in the least intrusive manner, consistent with

the effective and timely accomplishment of its purpose as provided in the Convention.

(b) *Scope.* (1) *Description of inspections.* During inspections, the Inspection Team:

(i) Will receive a pre-inspection briefing from facility representatives;

(ii) Will visually inspect the facilities or plants producing scheduled chemicals or UDOCs, which may include storage areas, feed lines, reaction vessels and ancillary equipment, control equipment, associated laboratories, first aid or medical sections, and waste and effluent handling areas, as necessary to accomplish their inspection;

(iii) May visually inspect other parts or areas of the plant site to clarify an ambiguity that has arisen during the inspection;

(iv) May take photographs or conduct formal interviews of facility personnel;

(v) May examine relevant records; and

(vi) May take samples as provided by the Convention, the Act and consistent with the requirements set forth by the Director of the United States National Authority, at 22 CFR part 103, and the facility agreement, if applicable.

(2) *Scope of consent.* When an owner, operator, occupant, or agent in charge of a facility consents to an initial or routine inspection, he or she is consenting to provide access to the Inspection Team and Host Team to any area of the facility, any item located on the facility, interviews with facility personnel, and any records necessary for the Inspection Team to complete its mission pursuant to paragraph (a) of this section, except for information subject to export control under ITAR (22 CFR parts 120 through 130) (see paragraph (b)(3) of this section). When consent is granted for an inspection, the owner, operator, occupant, or agent in charge agrees to provide the same degree of access provided for under section 305 of the Act. The determination of whether the Inspection Team's request to inspect any area, building, item or record is reasonable is the responsibility of the Host Team Leader.

(3) *ITAR-controlled technology.* ITAR-controlled technology shall not be divulged to the Inspection Team without U.S. Government authorization. Facilities being inspected are responsible for the identification of ITAR-controlled technology to the BIS Host Team, if known.

(c) *Pre-inspection briefing.* Upon arrival of the Inspection Team and Host Team at the inspection site and before commencement of the inspection, facility representatives will provide the Inspection Team and Host Team with a

pre-inspection briefing on the facility, the activities carried out there, safety measures, and administrative and logistical arrangements necessary for the inspection, which may be aided with the use of maps and other documentation as deemed appropriate by the facility. The time spent for the briefing will be limited to the minimum necessary and may not exceed three hours.

(1) The pre-inspection briefing will address:

(i) Facility health and safety issues and requirements, and associated alarm systems;

(ii) Declared facility activities, business and manufacturing operations;

(iii) Physical layout;

(iv) Delimitation of declared facility;

(v) Scheduled chemicals on the facility (declared and undeclared);

(vi) Block flow diagram or simplified process flow diagram;

(vii) Plants and units specific to declared operations;

(viii) Administrative and logistic information; and

(ix) Data declaration updates/revisions.

(2) The pre-inspection briefing may also address, *inter alia*:

(i) Introduction of key facility personnel;

(ii) Management, organization and history;

(iii) Confidential business information concerns;

(iv) Types and location of records/documents;

(v) Draft facility agreement, if applicable; and

(vi) Proposed inspection plan.

(d) *Visual plant inspection.* The Inspection Team may visually inspect the declared plant or facility and other areas or parts of the plant site as agreed by the Host Team Leader after consulting with the facility representative.

(e) *Records review.* The facility must provide the Inspection Team with access to all supporting materials and documentation used by the facility to prepare declarations and to comply with the CWCR (see §§ 721.1 and 721.2 of the CWCR) and with appropriate accommodations in which the Inspection Team can review these

supporting materials and documentation. Such access will be provided in appropriate formats (*e.g.*, paper copies, electronic remote access by computer, microfilm, or microfiche) through the U.S. Government Host Team to Inspection Teams during the inspection period or as otherwise agreed upon by the Inspection Team and Host Team Leader. If a facility does not have access to records for activities that took place under previous ownership, the previous owner must make such records available to the Host Team for provision to the Inspection Team in accordance with section 305 of the Act.

(f) *Effect of facility agreements.* Routine inspections at facilities for which the United States has concluded a facility agreement with the OPCW will be conducted in accordance with the facility agreement. The existence of a facility agreement does not in any way limit the right of the owner, operator, occupant, or agent in charge of the facility to withhold consent to an inspection request.

(g) *Hours of inspections.* Consistent with the provisions of the Convention, the Host Team will ensure, to the extent possible, that each inspection is commenced, conducted, and concluded during ordinary working hours, but no inspection shall be prohibited or otherwise disrupted from commencing, continuing or concluding during other hours.

(h) *Health and safety regulations and requirements.* In carrying out their activities, the Inspection Team and Host Team shall observe federal, state, and local health and safety regulations and health and safety requirements established at the inspection site, including those for the protection of controlled environments within a facility and for personal safety. Such health and safety regulations and requirements will be set forth in, but will not necessarily be limited to, the facility agreement, if applicable.

(i) *Preliminary findings.* Upon completion of an inspection, the Inspection Team will meet with the Host Team and facility personnel to review the written preliminary findings of the Inspection Team and to clarify ambiguities. The Host Team will discuss the preliminary findings with the

facility, and the Host Team Leader will take into consideration the facility's input when providing official comments on the preliminary findings to the Inspection Team. This meeting will be completed not later than 24 hours after the completion of the inspection.

#### **§ 716.5 Notification, duration and frequency of inspections.**

(a) *Inspection notification.* (1)(i)

*Content of notice.* Inspections of facilities may be made only upon issuance of written notice by the United States National Authority (USNA) to the owner and to the operator, occupant or agent in charge of the premises to be inspected. BIS will also provide a separate inspection notification to the inspection point of contact identified in declarations submitted by the facility. If the United States is unable to provide actual written notice to the owner, operator, or agent in charge, BIS (or the Federal Bureau of Investigation, if BIS is unable) may post notice prominently at the facility to be inspected. The notice shall include all appropriate information provided by the OPCW to the USNA concerning:

(A) The type of inspection;

(B) The basis for the selection of the facility or location for the type of inspection sought;

(C) The time and date that the inspection will begin and the period covered by the inspection; and

(D) The names and titles of the Inspection Team members.

(ii) *Consent to inspection.* In addition to appropriate information provided by the OPCW in its notification to the USNA, BIS's inspection notification will request that the facility indicate whether it will consent to an inspection, and will state whether an advance team is available to assist the site in preparation for the inspection. If an advance team is available, facilities that request advance team assistance are not required to reimburse the U.S. Government for costs associated with these activities. If a facility does not agree to provide consent to an inspection within four hours of receipt of the inspection notification, BIS will seek an administrative warrant.

(iii) The following table sets forth the notification procedures for inspection:

TABLE TO § 716.5(a)(1)

Activity	Agency Action	Facility action
(A) OPCW notification of inspection.	(1) U.S. National Authority transmits actual written notice and inspection authorization to the owner and operator, occupant, or agent in charge via facsimile within 6 hours.	Acknowledges receipt of facsimile.



TABLE TO § 716.5(a)(1)—Continued

Activity	Agency Action	Facility action
(B) Preparation for inspection.	(2) Upon notification from the U.S. National Authority, BIS immediately transmits inspection notification via facsimile to the inspection point of contact to ascertain whether the facility (i) grants consent and (ii) requests assistance in preparing for the inspection. In absence of consent within four hours of facility receipt, BIS intends to seek an administrative warrant. BIS advance team generally arrives in the vicinity of the facility to be inspected 1–2 days after OPCW notification for logistical and administrative preparations.	(A) Indicates whether it grants consent. (B) May request advance team support. No requirement for reimbursement of U.S. Government services.  If advance team support is provided, facility works with the advance team on inspection-related issues.

(2) *Timing of notice.* (i) *Schedule 1 facilities.* For declared Schedule 1 facilities, the Technical Secretariat will notify the USNA of an initial inspection not less than 72 hours prior to arrival of the Inspection Team in the United States, and will notify the USNA of a routine inspection not less than 24 hours prior to arrival of the Inspection Team in the United States. The USNA will provide written notice to the owner and to the operator, occupant or agent in charge of the premises within six hours of receiving notification from the OPCW Technical Secretariat or as soon as possible thereafter. BIS will provide Host Team notice to the inspection point of contact of the facility as soon as possible after the OPCW notifies the USNA of the inspection.

(ii) *Schedule 2 plant sites.* For declared Schedule 2 plant sites, the Technical Secretariat will notify the USNA of an initial or routine inspection not less than 48 hours prior to arrival of the Inspection Team at the plant site to be inspected. The USNA will provide written notice to the owner and to the operator, occupant or agent in charge of the premises within six hours of receiving notification from the OPCW Technical Secretariat or as soon as possible thereafter. BIS will provide Host Team notice to the inspection point of contact at the plant site as soon as possible after the OPCW notifies the USNA of the inspection.

(iii) *Schedule 3 and UDOC plant sites.* For declared Schedule 3 and UDOC plant sites, the Technical Secretariat will notify the USNA of a routine inspection not less than 120 hours prior to arrival of the Inspection Team at the plant site to be inspected. The USNA will provide written notice to the owner and to the operator, occupant or agent in charge of the premises within six hours of receiving notification from the OPCW Technical Secretariat or as soon as possible thereafter. BIS will provide Host Team notice to the inspection point of contact of the plant site as soon

as possible after the OPCW notifies the USNA of the inspection.

(b) *Period of inspections.* (1) *Schedule 1 facilities.* For a declared Schedule 1 facility, the Convention does not specify a maximum duration for an initial inspection. The estimated period of routine inspections will be as stated in the facility agreement, unless extended by agreement between the Inspection Team and the Host Team Leader, and will be based on the risk to the object and purpose of the Convention posed by the quantities of chemicals produced, the characteristics of the facility and the nature of the activities carried out there. The Host Team Leader will consult with the inspected facility on any request for extension of an inspection prior to making an agreement with the Inspection Team. Activities involving the pre-inspection briefing and preliminary findings are in addition to inspection activities. See § 716.4(c) and (i) for a description of these activities.

(2) *Schedule 2 plant sites.* For declared Schedule 2 plant sites, the maximum duration of initial and routine inspections shall be 96 hours, unless extended by agreement between the Inspection Team and the Host Team Leader. The Host Team Leader will consult with the inspected plant site on any request for extension of an inspection prior to making an agreement with the Inspection Team. Activities involving the pre-inspection briefing and preliminary findings are in addition to inspection activities. See § 716.4(c) and (i) for a description of these activities.

(3) *Schedule 3 and UDOC plant sites.* For declared Schedule 3 or UDOC plant sites, the maximum duration of routine inspections shall be 24 hours, unless extended by agreement between the Inspection Team and the Host Team Leader. The Host Team Leader will consult with the inspected plant site on any request for extension of an inspection prior to making an agreement with the Inspection Team. Activities involving the pre-inspection briefing

and preliminary findings are in addition to inspection activities. See § 716.4(c) and (i) for a description of these activities.

(c) *Frequency of inspections.* The frequency of inspections is as follows:

(1) *Schedule 1 facilities.* As provided by the Convention, the frequency of inspections at declared Schedule 1 facilities is determined by the OPCW based on the risk to the object and purpose of the Convention posed by the quantities of chemicals produced, the characteristics of the facility and the nature of the activities carried out at the facility. The frequency of inspections will be stated in the facility agreement.

(2) *Schedule 2 plant sites.* As provided by the Convention and the Act, the maximum number of inspections at declared Schedule 2 plant sites is 2 per calendar year per plant site. The OPCW will determine the frequency of routine inspections for each declared Schedule 2 plant site based on the Inspection Team's assessment of the risk to the object and purpose of the Convention posed by the relevant chemicals, the characteristics of the plant site, and the nature of the activities carried out there. The frequency of inspections will be stated in the facility agreement, if applicable.

(3) *Schedule 3 plant sites.* As provided by the Convention, no declared Schedule 3 plant site may receive more than two inspections per calendar year and the combined number of inspections of Schedule 3 and UDOC plant sites in the United States may not exceed 20 per calendar year.

(4) *UDOC plant sites.* As provided by the Convention, no declared UDOC plant site may receive more than two inspections per calendar year and the combined number of inspections of Schedule 3 and UDOC plant sites in the United States may not exceed 20 per calendar year.

#### § 716.6 Facility agreements.

(a) *Description and requirements.* A facility agreement is a site-specific agreement between the U.S.

Government and the OPCW. Its purpose is to define procedures for inspections of a specific declared facility that is subject to inspection because of the type or amount of chemicals it produces, processes or consumes.

(1) *Schedule 1 facilities.* The Convention requires that facility agreements be concluded between the United States and the OPCW for all declared Schedule 1 facilities. For new Schedule 1 production facilities declared pursuant to § 712.4 of the CWC, the U.S. National Authority, in coordination with Department of Commerce, will conclude a facility agreement with the OPCW before the facility begins producing above 100 grams aggregate of Schedule 1 chemicals.

(2) *Schedule 2 plant sites.* The USNA will ensure that such facility agreements are concluded with the OPCW unless the owner, operator, occupant or agent in charge of the plant site and the OPCW Technical Secretariat agree that such a facility agreement is not necessary.

(3) *Schedule 3 and UDOC plant sites.* If the owner, operator, occupant or agent in charge of a declared Schedule 3 or UDOC plant site requests a facility agreement, the USNA will ensure that a facility agreement for such a plant site is concluded with the OPCW.

(b) *Notification; negotiation of draft and final facility agreements; and conclusion of facility agreements.* Prior to the development of a facility agreement, BIS shall notify the owner, operator, occupant, or agent in charge of the facility, and if the owner, operator, occupant or agent in charge so requests, the notified person may participate in preparations with BIS representatives for the negotiation of such an agreement. During the initial or routine inspection of a declared facility, the Inspection Team and the Host Team will negotiate a draft facility agreement or amendment to a facility agreement. To the maximum extent practicable consistent with the Convention, the owner and the operator, occupant or

agent in charge of the facility may observe facility agreement negotiations between the U.S. Government and OPCW. As a general rule, BIS will consult with the affected facility on the contents of the agreements and take facility's into consideration during negotiations. BIS will participate in the negotiation of, and approve, all final facility agreements with the OPCW. Facilities will be notified of and have the right to observe final facility agreement negotiations between the United States and OPCW to the maximum extent practicable, consistent with the Convention. Prior to the conclusion of a final facility agreement, the affected facility will have an opportunity to comment on the facility agreement. BIS will give consideration to such comments prior to approving final facility agreements with the OPCW. The United States National Authority shall ensure that facility agreements for Schedule 1, Schedule 2, Schedule 3 and UDOC facilities are concluded, as appropriate, with the OPCW in coordination with BIS.

(c) [Reserved]

(d) *Further information.* For further information about facility agreements, please write or call: Treaty Compliance Division, Bureau of Industry and Security, U.S. Department of Commerce, 1555 Wilson Boulevard, Suite 700, Arlington, VA 22209, Telephone: (703) 605-4400.

#### § 716.7 Samples.

The owner, operator, occupant or agent in charge of a facility must provide a sample as provided for in the Convention and consistent with requirements set forth by the Director of the United States National Authority in 22 CFR part 103. Analysis will be restricted to verifying the absence of undeclared scheduled chemicals, unless otherwise agreed after consultation with the facility representative.

#### § 716.8 On-site monitoring of Schedule 1 facilities.

Declared Schedule 1 facilities are subject to verification by monitoring

with on-site instruments as provided by the Convention. For facilities subject to the CWC, however, such monitoring is not anticipated. The U.S. Government will ensure that any monitoring that may be requested by the OPCW is carried out pursuant to the Convention and U.S. law.

#### § 716.9 Report of inspection-related costs.

Pursuant to section 309(b)(5) of the Act, any facility that has undergone any inspections pursuant to the CWC during a given calendar year must report to BIS within 90 days of an inspection on its total costs related to that inspection. Although not required, such reports should identify categories of costs separately if possible, such as personnel costs (production-line, administrative, legal), costs of producing records, and costs associated with shutting down chemical production or processing during inspections, if applicable. This information should be reported to BIS on company letterhead at the address given in § 716.6(d), with the following notation: "Attn: Report of inspection-related costs."

#### § 716.10 Post inspection activities.

BIS will forward a copy of the final inspection report to the inspected facility for their review upon receipt from the OPCW. Facilities may submit comments on the final inspection report to BIS, and BIS will consider them, to the extent possible, when commenting on the final report. BIS will also send facilities a post-inspection letter detailing the issues that require follow-up action, e.g., amended declaration requirement (see §§ 712.7(d), 713.5(d), 714.4(d), and 715.2(c) of the CWC), information on the status of the draft facility agreement, if applicable, and the date on which the report on inspection-related costs (see § 716.9 of the CWC) is due to BIS.

### SUPPLEMENT NO. 1 TO PART 716 NOTIFICATION, DURATION AND FREQUENCY OF INSPECTIONS

	Schedule 1	Schedule 2	Schedule 3	Unscheduled discrete organic chemicals
Notice of initial or routine inspection to USNA.	72 hours prior to arrival of Inspection Team at the point of entry (initial; 24 hours prior to arrival of Inspection Team at the point of entry (routine).	48 hours prior to arrival of Inspection Team at the plant site.	120 hours prior to arrival of Inspection Team at the plant site.	120 hours prior to arrival of Inspection Team at the plant site.
Duration of inspection .....	As specified in facility agreement.	96 hours .....	24 hours .....	24 hours.

## SUPPLEMENT NO. 1 TO PART 716 NOTIFICATION, DURATION AND FREQUENCY OF INSPECTIONS—Continued

	Schedule 1	Schedule 2	Schedule 3	Unscheduled discrete or organic chemicals
Maximum number of inspections.	Determined by OPCW based on characteristics of facility and the nature of the activities carried out at the facility.	2 per calendar year per plant site.	2 per calendar year per plant site.	2 per calendar year per plant site.
Notification of challenge inspection to USNA*.	12 hours prior to arrival of inspection team at the point of entry			
Duration of Challenge inspection*.	84 hours			

\* See part 717 of this subchapter

## Supplement No. 2 To Part 716—[RESERVED]

## Supplement No. 3 To Part 716—[RESERVED]

### PART 717—CLARIFICATION OF POSSIBLE NON-COMPLIANCE WITH THE CONVENTION; CHALLENGE INSPECTION PROCEDURES

Sec.

717.1 Clarification procedures; challenge inspection requests pursuant to Article IX of the Convention.

717.2 Challenge inspections.

717.3 Samples.

717.4 Report of inspection-related costs.

717.5 Post inspection activities.

**Authority:** 22 U.S.C. 6701 *et seq.*, 2681; E.O. 13128, 64 FR 36703, 3 CFR, 1999 Comp., p. 199.

#### § 717.1 Clarification procedures; challenge inspection requests pursuant to Article IX of the Convention.

(a) Article IX of the Convention sets forth procedures for clarification, between States Parties, of issues about compliance with the Convention. States Parties may attempt to resolve such issues through consultation between themselves or through the Organization for the Prohibition of Chemical Weapons (OPCW) or a State Party may request the OPCW to conduct an on-site challenge inspection of any facility or location in the territory or in any other place under the jurisdiction or control of any other State Party. Such an on-site challenge inspection request shall be for the sole purpose of clarifying and resolving any questions concerning possible non-compliance with the Convention.

(b) Any person or facility subject to the CWC (15 CFR parts 710 through 729) must, within five working days from receipt of an official written BIS request for clarification, provide information required by BIS pursuant to an Article IX clarification request from another State Party, or the OPCW, concerning possible non-compliance with the CWC. BIS will contact the

person or facility subject to the Article IX clarification as early as practical prior to the issuance of an official written request for clarification.

#### § 717.2 Challenge inspections.

Persons or facilities, whether or not they are required to submit declarations or reports, may be subject to a challenge inspection by the OPCW concerning possible non-compliance with the requirements of the Convention, other than U.S. Government facilities as defined in § 710.2(a). BIS will host and escort the international Inspection Team for challenge inspections in the United States of such persons or facilities.

(a) *Warrants.* In instances where consent is not provided by the owner, operator, occupant or agent in charge of the facility or location, BIS will assist the Department of Justice in seeking a criminal warrant as provided by the Act. The existence of a facility agreement does not in any way limit the right of the operator of the facility to withhold consent to a challenge inspection request.

(b) *Notification of challenge inspection.* Challenge inspections may be made only upon issuance of written notice by the United States National Authority (USNA) to the owner and to the operator, occupant or agent in charge of the premises. BIS will provide inspection notification to the inspection point of contact at such time that a person or facility has been clearly established, if possible, and when such notification is deemed appropriate. If the United States is unable to provide actual written notice to the owner, operator, or agent in charge, BIS (or another appropriate agency, if BIS is unable) may post notice prominently at the plant, plant site or other facility or location to be inspected.

(1) *Timing.* The OPCW will notify the USNA of a challenge inspection not less than 12 hours before the planned arrival of the Inspection Team at the U.S. point

of entry. Written notice will be provided to the owner and to the operator, occupant, or agent in charge of the premises at any appropriate time determined by the USNA after receipt of notification from the OPCW Technical Secretariat.

(2)(i) *Content of notice.* The notice shall include all appropriate information provided by the OPCW to the United States National Authority concerning:

(A) The type of inspection;

(B) The basis for the selection of the facility or locations for the type of inspection sought;

(C) The time and date that the inspection will begin and the period covered by the inspection;

(D) The names and titles of the Inspection Team members; and

(E) All appropriate evidence or reasons provided by the requesting State Party for seeking the inspection.

(ii) In addition to appropriate information provided by the OPCW in its notification to the USNA, BIS's inspection notification to the facility will state whether an advance team is available to assist the site in preparation for the inspection. If an advance team is available, facilities that request advance team assistance are not required to reimburse the U.S. Government for costs associated with these activities. If a facility does not agree to provide consent to an inspection within four hours of receipt of the inspection notification, BIS will assist the Department of Justice in seeking a criminal warrant.

(c) *Period of inspection.* Challenge inspections will not exceed 84 hours, unless extended by agreement between the Inspection Team and the Host Team Leader.

(d) *Scope and conduct of inspections.*

(1) *General.* Each inspection shall be limited to the purposes described in this section and conducted in the least intrusive manner, consistent with the

effective and timely accomplishment of its purpose as provided in the Convention.

(2) *Scope of inspections.* If an owner, operator, occupant, or agent in charge of a facility or location consents to a challenge inspection, the inspection will be conducted in accordance with the provisions of Article IX and applicable provisions of the Verification Annex of the Convention. If consent is not granted, the inspection will be conducted in accordance with a criminal warrant, as provided by the Act, and in accordance with the provisions of Article IX and applicable provisions of the Verification Annex of the Convention.

(3) *Hours of inspections.* Consistent with the provisions of the Convention, the Host Team will ensure, to the extent possible, that each inspection is commenced, conducted, and concluded during ordinary working hours, but no inspection shall be prohibited or otherwise disrupted from commencing, continuing or concluding during other hours.

(4) *Health and safety regulations and requirements.* In carrying out their activities, the Inspection Team and Host Team shall observe federal, state, and local health and safety regulations and health and safety requirements established at the inspection site, including those for the protection of controlled environments within a facility and for personal safety.

(5) *Pre-inspection briefing.* Upon arrival of the Inspection Team and the Host Team in the vicinity of the inspection site and before commencement of the inspection, facility representatives will provide the Inspection Team and the Host Team with a pre-inspection briefing concerning the facility, the activities carried out there, safety measures, and administrative and logistical arrangements necessary for the inspection, which may be aided with the use of maps and other documentation as deemed appropriate by the facility. The time spent for the briefing will be limited to the minimum necessary and may not exceed three hours.

#### **§ 717.3 Samples.**

The owner, operator, occupant or agent in charge of a facility or location must provide a sample, as provided for in the Convention and consistent with requirements set forth by the Director of the United States National Authority in 22 CFR part 103. Analysis may be restricted to verifying the presence or absence of Schedule 1, 2, or 3

chemicals, or appropriate degradation products, unless agreed otherwise.

#### **§ 717.4 Report of inspection-related costs.**

Pursuant to section 309(b)(5) of the Act, any facility that has undergone any inspections pursuant to this subchapter during a given calendar year must report to BIS within 90 days of an inspection on its total costs related to that inspection. Although not required, such reports should identify categories of costs separately if possible, such as personnel costs (production-line, administrative, legal), costs of producing records, and costs associated with shutting down chemical production or processing during inspections, if applicable. This information should be reported to BIS on company letterhead at the address given in § 716.6(d) of this subchapter, with the following notation: "ATTN: Report of Inspection-related Costs."

#### **§ 717.5 Post inspection activities.**

BIS will forward a copy of the final inspection report to the inspected facility for their review upon receipt from the OPCW. Facilities may submit comments on the final inspection report to BIS, and BIS will consider them, to the extent possible, when commenting on the final report. BIS will also send facilities a post-inspection letter detailing the issues that require follow-up action and the date on which the report on inspection-related costs (see § 717.4 of the CWCR) is due to BIS.

### **PART 718—CONFIDENTIAL BUSINESS INFORMATION**

Sec.

718.1 Definition.

718.2 Identification of confidential business information.

718.3 Disclosure of confidential business information.

Supplement No. 1 to Part 718—Confidential Business Information Declared or Reported

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

#### **§ 718.1 Definition.**

The Chemical Weapons Convention Implementation Act of 1998 ("the Act") defines confidential business information as information included in categories specifically identified in sections 103(g)(1) and 304(e)(2) of the Act and other trade secrets as follows:

- (a) Financial data;
- (b) Sales and marketing data (other than shipment data);
- (c) Pricing data;
- (d) Personnel data;
- (e) Research data;
- (f) Patent data;

(g) Data maintained for compliance with environmental or occupational health and safety regulations;

(h) Data on personnel and vehicles entering and personnel and personal passenger vehicles exiting the site;

(i) Any chemical structure;

(j) Any plant design, process, technology or operating method;

(k) Any operating requirement, input, or result that identifies any type or quantity of chemicals used, processed or produced;

(l) Any commercial sale, shipment or use of a chemical; or

(m) Information that qualifies as a trade secret under 5 U.S.C. 552(b)(4) (Freedom of Information Act), provided such trade secret is obtained from a U.S. person or through the U.S. Government.

#### **§ 718.2 Identification of confidential business information.**

(a) *General.* Certain confidential business information submitted to BIS in declarations and reports does not need to be specifically identified and marked by the submitter, as described in paragraph (b) of this section. Other confidential business information submitted to BIS in declarations and reports and confidential business information provided to the Host Team during inspections must be identified by the inspected facility so that the Host Team can arrange appropriate marking and handling.

(b) *Confidential business information contained in declarations and reports.*

(1) BIS has identified those data fields on the declaration and report forms that request "confidential business information" as defined by the Act. These data fields are identified in the table provided in Supplement No. 1 to this part.

(2) You must specifically identify in a cover letter submitted with your declaration or report any additional information on a declaration or report form (i.e., information not provided in one of the data fields listed in the table included in Supplement No. 1 to this part), including information provided in attachments to Form A or Form B, that you believe is confidential business information, as defined by the Act, and must describe how disclosure would likely result in competitive harm.

**Note to paragraph (b):** BIS has also determined that descriptions of Schedule 1 facilities submitted with Initial Declarations as attachments to Form A contain confidential business information, as defined by the Act.

(c) *Confidential business information contained in advance notifications.* Information contained in advance notifications of exports and imports of

Schedule 1 chemicals is not subject to the confidential business information provisions of the Act. You must identify information in your advance notifications of Schedule 1 imports that you consider to be privileged and confidential, and describe how disclosure would likely result in competitive harm. See § 718.3(b) for provisions on disclosure to the public of such information by the U.S. Government.

(d) *Confidential business information related to inspections disclosed to, reported to, or otherwise acquired by, the U.S. Government.* (1) During inspections, certain confidential business information, as defined by the Act, may be disclosed to the Host Team. Facilities being inspected are responsible for identifying confidential business information to the Host Team, so that if it is disclosed to the Inspection Team, appropriate marking and handling can be arranged, in accordance with the provisions of the Convention (see § 718.3(c)(1)(ii)). Confidential business information not related to the purpose of an inspection or not necessary for the accomplishment of an inspection, as determined by the Host Team, may be removed from sight, shrouded, or otherwise not disclosed.

(2) Before or after inspections, confidential business information related to an inspection that is contained in any documents or that is reported to, or otherwise acquired by, the U.S. Government, such as facility information for pre-inspection briefings, facility agreements, and inspection reports, must be identified by the facility so that it may be appropriately marked and handled. If the U.S. Government creates derivative documents from such documents or reported information, they will also be marked and handled as confidential business information.

#### **§ 718.3 Disclosure of confidential business information.**

(a) *General.* Confidentiality of information will be maintained by BIS consistent with the non-disclosure provisions of the Act, the Export Administration Regulations (15 CFR parts 730 through 799), the International Traffic in Arms Regulations (22 CFR parts 120 through 130), and applicable exemptions under the Freedom of Information Act, as appropriate.

(b) *Disclosure of confidential business information contained in advance notifications.* Information contained in advance notifications of exports and imports of Schedule 1 chemicals is not subject to the confidential business information provisions of the Act.

Disclosure of such information will be in accordance with the provisions of the relevant statutory and regulatory authorities as follows:

(1) *Exports of Schedule 1 chemicals.* Confidentiality of all information contained in these advance notifications will be maintained consistent with the non-disclosure provisions of the Export Administration Regulations (15 CFR parts 730 through 799), the International Traffic in Arms Regulations (22 CFR parts 120 through 130), and applicable exemptions under the Freedom of Information Act, as appropriate; and

(2) *Imports of Schedule 1 chemicals.* Confidentiality of information contained in these advance notifications will be maintained pursuant to applicable exemptions under the Freedom of Information Act.

(c) *Disclosure of confidential business information pursuant to § 404(b) of the Act.* (1) *Disclosure to the Organization for the Prohibition of Chemical Weapons (OPCW).*

(i) As provided by Section 404(b)(1) of the Act, the U.S. Government will disclose or otherwise provide confidential business information to the Technical Secretariat of the OPCW or to other States Parties to the Convention, in accordance with provisions of the Convention, particularly with the provisions of the Annex on the Protection of Confidential Information (Confidentiality Annex).

(ii) *Convention provisions.* (A) The Convention provides that States Parties may designate information submitted to the Technical Secretariat as confidential, and requires the OPCW to limit access to, and prevent disclosure of, information so designated, except that the OPCW may disclose certain confidential information submitted in declarations to other States Parties if requested. The OPCW has developed a classification system whereby States Parties may designate the information they submit in their declarations as “restricted,” “protected,” or “highly protected,” depending on the sensitivity of the information. Other States Parties are obligated, under the Convention, to store and restrict access to information which they receive from the OPCW in accordance with the level of confidentiality established for that information.

(B) OPCW Inspection Team members are prohibited, under the terms of their employment contracts and pursuant to the Confidentiality Annex of the Convention, from disclosing to any unauthorized persons, for five years after termination of their employment, any confidential information coming to their knowledge or into their possession

in the performance of their official duties.

(iii) *U.S. Government designation of information to the Technical Secretariat.* It is the policy of the U.S. Government to designate all facility information it provides to the Technical Secretariat in declarations, reports and Schedule 1 advance notifications as “protected.” It is the policy of the U.S. Government to designate confidential business information that it discloses to Inspection Teams during inspections as “protected” or “highly protected,” depending on the sensitivity of the information. The Technical Secretariat is responsible for storing and limiting access to any confidential business information contained in a document according to its established procedures.

(2) *Disclosure to Congress.* Section 404(b)(2) of the Act provides that the U.S. Government must disclose confidential business information to any committee or subcommittee of Congress with appropriate jurisdiction upon the written request of the chairman or ranking minority member of such committee or subcommittee. No such committee or subcommittee, and no member and no staff member of such committee or subcommittee, may disclose such information or material except as otherwise required or authorized by law.

(3) *Disclosure to other Federal agencies for law enforcement actions and disclosure in enforcement proceedings under the Act.* Section 404(b)(3) of the Act provides that the U.S. Government must disclose confidential business information to other Federal agencies for enforcement of the Act or any other law, and must disclose such information when relevant in any proceeding under the Act. Disclosure will be made in such manner as to preserve confidentiality to the extent practicable without impairing the proceeding. Section 719.14(b) of the CWC provides that all hearings will be closed, unless the Administrative Law Judge for good cause shown determines otherwise. Section 719.20 of the CWC provides that parties may request that the administrative law judge segregate and restrict access to confidential business information contained in material in the record of an enforcement proceeding.

(4) *Disclosure to the public; national interest determination.* Section 404(c) of the Act provides that confidential business information, as defined by the Act, that is in the possession of the U.S. Government, is exempt from public disclosure in response to a Freedom of Information Act request, except when

such disclosure is determined to be in the national interest.

(i) *National interest determination.* The United States National Authority (USNA), in coordination with the CWC interagency group, shall determine on a case-by-case basis if disclosure of confidential business information in response to a Freedom of Information Act request is in the national interest.

(ii) *Notification of intent to disclose pursuant to a national interest determination.* The Act provides for notification to the affected person of intent to disclose confidential business information based on the national interest, unless such notification of intent to disclose is contrary to national security or law enforcement needs. If, after coordination with the agencies that constitute the CWC interagency group, the USNA does not determine that such notification of intent to disclose is contrary to national security or law enforcement needs, the USNA will notify the person that submitted the information and the person to whom the information pertains of the intent to disclose the information.

#### SUPPLEMENT NO. 1 TO PART 718— CONFIDENTIAL BUSINESS INFORMATION DECLARED OR REPORTED\*

Schedule 1 forms:	Fields containing confidential business information
Certification Form .....	NONE
Form 1-1 .....	NONE
Form 1-2 .....	All fields
Form 1-2A .....	All fields
Form 1-2B .....	All fields
Form 1-3 .....	All fields
Form 1-4 .....	All fields
Schedule 2 Forms:	
Certification Form .....	NONE
Form 2-1 .....	NONE
Form 2-2 .....	Question 2-2.8
Form 2-3 .....	All fields
Form 2-3A .....	All fields
Form 2-3B .....	All fields
Form 2-3C .....	All fields
Form 2-4 .....	All fields
Schedule 3 Forms:	
Certification Form .....	NONE
Form 3-1 .....	NONE
Form 3-2 .....	NONE
Form 3-3 .....	All fields
Form 3-4 .....	All fields
Unscheduled Discrete Organic Chemicals Forms	
Certification Form .....	NONE
Form UDOC .....	NONE

#### SUPPLEMENT NO. 1 TO PART 718— CONFIDENTIAL BUSINESS INFORMATION DECLARED OR REPORTED\*— Continued

FORMS A and B and attachments (all Schedules and UDOCs).	Case-by-case; must be identified by submitter.
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\* This table lists those data fields on the Declaration and Report Forms that request "confidential business information" (CBI) as defined by the Act (sections 103(g) and 304(e)(2)). As provided by section 404(a) of the Act, CBI is exempt from disclosure in response to a Freedom of Information Act (FOIA) request under sections 552(b)(3) and 552(b)(4) (5 U.S.C.A. 552(b)(3)–(4)), unless a determination is made, pursuant to section 404(c) of the Act, that such disclosure is in the national interest. Other FOIA exemptions to disclosure may also apply. You must identify CBI provided in Form A and/or Form B attachments, and provide the reasons supporting your claim of confidentiality, except that Schedule 1 facility technical descriptions submitted with initial declarations are always considered to include CBI. If you believe that information you are submitting in a data field marked "none" in the Table is CBI, as defined by the Act, you must identify the specific information and provide the reasons supporting your claim of confidentiality in a cover letter.

#### PART 719—ENFORCEMENT

Sec.

- 719.1 Scope and definitions.
- 719.2 Violations of the Act subject to administrative and criminal enforcement proceedings.
- 719.3 Violations of the IEEPA subject to judicial enforcement proceedings.
- 719.4 Violations and sanctions under the Act not subject to proceedings under the CWCR.
- 719.5 Initiation of administrative proceedings.
- 719.6 Request for hearing and answer.
- 719.7 Representation.
- 719.8 Filing and service of papers other than the NOVA.
- 719.9 Summary decision.
- 719.10 Discovery.
- 719.11 Subpoenas.
- 719.12 Matters protected against disclosure.
- 719.13 Prehearing conference.
- 719.14 Hearings.
- 719.15 Procedural stipulations.
- 719.16 Extension of time.
- 719.17 Post-hearing submissions.
- 719.18 Decisions.
- 719.19 Settlement.
- 719.20 Record for decision.
- 719.21 Payment of final assessment.
- 719.22 Reporting a violation.

**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, E.O. 13128, 64 FR 36703, 3 CFR, 1999 Comp., p. 199.

#### § 719.1 Scope and definitions.

(a) *Scope.* This part 719 describes the various sanctions that apply to violations of the Act and the CWCR. It also establishes detailed administrative

procedures for certain violations of the Act. The three categories of violations are as follows:

(1) *Violations of the Act subject to administrative and criminal enforcement proceedings.* This CWCR sets forth in § 719.2 violations for which the statutory basis is the Act. BIS investigates these violations and, for administrative proceedings, prepares charges, provides legal representation to the U.S. Government, negotiates settlements, and makes recommendations to officials of the Department of State with respect to the initiation and resolution of proceedings. The administrative procedures applicable to these violations are found in §§ 719.5 through 719.22 of this part. The Department of State gives notice of initiation of administrative proceedings and issues orders imposing penalties pursuant to 22 CFR part 103, subpart C.

(2) *Violations of the International Emergency Economic Powers Act (IEEPA) subject to judicial enforcement proceedings.* Section 719.3 sets forth violations of the Chemical Weapons Convention for which the statutory basis is the IEEPA. BIS refers these violations to the Department of Justice for civil or criminal judicial enforcement.

(3) *Violations and sanctions under the Act not subject to proceedings under the CWCR.* Section 719.4 sets forth violations and sanctions under the Act that are not violations of the CWCR and that are not subject to proceedings under the CWCR. This section is included solely for informational purposes. BIS may assist in investigations of these violations, but has no authority to initiate any enforcement action under the CWCR.

**Note to paragraph (a):** This part 719 does not apply to violations of the export requirements imposed pursuant to the Chemical Weapons Convention and set forth in the Export Administration Regulations (EAR) (15 CFR parts 730 through 799) and in the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130).

(b) *Definitions.* The following are definitions of terms as used only in parts 719 and 720. For definitions of terms applicable to parts 710 through 722 of this subchapter, see part 710 of this subchapter.

*The Act.* The Chemical Weapons Convention Implementation Act of 1998 (22 U.S.C. 6701–6777).

*Assistant Secretary for Export Enforcement.* The Assistant Secretary for Export Enforcement, Bureau of Industry and Security, United States Department of Commerce.

*Final decision.* A decision or order assessing a civil penalty, or otherwise

disposing of or dismissing a case, which is not subject to further administrative review, but which may be subject to collection proceedings or judicial review in an appropriate Federal court as authorized by law.

**IEEPA.** The International Emergency Economic Powers Act, as amended (50 U.S.C. 1701–1706).

**Office of Chief Counsel.** The Office of Chief Counsel for Industry and Security, United States Department of Commerce.

**Report.** For purposes of parts 719 and 720 of the CWCR, the term “report” means any declaration, report, or advance notification required under parts 712 through 715 of the CWCR.

**Respondent.** Any person named as the subject of a letter of intent to charge, or a Notice of Violation and Assessment (NOVA) and proposed order.

**Under Secretary, Bureau of Industry and Security.** The Under Secretary, Bureau of Industry and Security, United States Department of Commerce.

**§ 719.2 Violations of the Act subject to administrative and criminal enforcement proceedings.**

(a) *Violations.* (1) *Refusal to permit entry or inspection.* No person may willfully fail or refuse to permit entry or inspection, or disrupt, delay or otherwise impede an inspection, authorized by the Act.

(2) *Failure to establish or maintain records.* No person may willfully fail or refuse:

(i) To establish or maintain any record required by the Act or this subchapter; or

(ii) To submit any report, notice, or other information to the United States Government in accordance with the Act or the CWCR; or

(iii) To permit access to or copying of any record that is exempt from disclosure under the Act or the CWCR.

(b) *Civil penalties.* (1) *Civil penalty for refusal to permit entry or inspection.* Any person that is determined to have willfully failed or refused to permit entry or inspection, or to have disrupted, delayed or otherwise impeded an authorized inspection, as set forth in paragraph (a)(1) of this section, shall pay a civil penalty in an amount not to exceed \$25,000 for each violation. Each day the violation continues constitutes a separate violation.

(2) *Civil penalty for failure to establish or maintain records.* Any person that is determined to have willfully failed or refused to establish or maintain any record or submit any report, notice, or other information required by the Act or the CWCR, or to permit access to or copying of any

record exempt from disclosure under the Act or this subchapter as set forth in paragraph (a)(2) of this section, shall pay a civil penalty in an amount not to exceed \$5,000 for each violation.

(c) *Criminal penalty.* Any person that knowingly violates the Act by willfully failing or refusing to permit entry or inspection authorized by the Act; or by willfully disrupting, delaying or otherwise impeding an inspection authorized by the Act; or by willfully failing or refusing to establish or maintain any required record, or to submit any required report, notice, or other information; or by willfully failing or refusing to permit access to or copying of any record exempt from disclosure under the Act or the CWCR, shall, in addition to or in lieu of any civil penalty that may be imposed, be fined under Title 18 of the United States Code, be imprisoned for not more than one year, or both.

(d) *Denial of export privileges.* Any person in the United States or any U.S. national may be subject to a denial of export privileges after notice and opportunity for hearing pursuant to part 720 of the CWCR if that person has been convicted under Title 18, section 229 of the United States Code.

**§ 719.3 Violations of the IEEPA subject to judicial enforcement proceedings.**

(a) *Violations.* (1) *Import restrictions involving Schedule 1 chemicals.* Except as otherwise provided in § 712.2 of the CWCR, no person may import any Schedule 1 chemical (See Supplement No. 1 to part 712 of the CWCR) unless:

(i) The import is from a State Party;

(ii) The import is for research, medical, pharmaceutical, or protective purposes;

(iii) The import is in types and quantities strictly limited to those that can be justified for such purposes; and

(iv) The importing person has notified BIS not less than 45 calendar days before the import pursuant to § 712.6 of the CWCR.

(2) *Import restrictions involving Schedule 2 chemicals.* Except as otherwise provided in § 713.1 of the CWCR, no person may, on or after April 29, 2000, import any Schedule 2 chemical (see Supplement No. 1 to part 713 of the CWCR) from any destination other than a State Party.

(b) *Civil penalty.* A civil penalty not to exceed \$11,000 may be imposed in accordance with this part on any person for each violation of this section.<sup>1</sup>

<sup>1</sup> The maximum civil penalty allowed under the International Emergency Economic Powers Act is \$11,000 for any violation committed on or after October 23, 1996 (15 CFR 6.4(a)(3)).

(c) *Criminal penalty.* Whoever willfully violates paragraph (a)(1) or (2) of this section shall, upon conviction, be fined not more than \$50,000, or, if a natural person, imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by like fine, imprisonment, or both.<sup>2</sup>

**§ 719.4 Violations and sanctions under the Act not subject to proceedings under the CWCR.**

(a) *Criminal penalties for development or use of a chemical weapon.* Any person who violates 18 U.S.C. 229 shall be fined, or imprisoned for any term of years, or both. Any person who violates 18 U.S.C. 299 and by whose action the death of another person is the result shall be punished by death or imprisoned for life.

(b) *Civil penalty for development or use of a chemical weapon.* The Attorney General may bring a civil action in the appropriate United States district court against any person who violates 18 U.S.C. 229 and, upon proof of such violation by a preponderance of the evidence, such person shall be subject to pay a civil penalty in an amount not to exceed \$100,000 for each such violation.

(c) *Criminal forfeiture.* (1) Any person convicted under section 229A(a) of Title 18 of the United States Code shall forfeit to the United States irrespective of any provision of State law:

(i) Any property, real or personal, owned, possessed, or used by a person involved in the offense;

(ii) Any property constituting, or derived from, and proceeds the person obtained, directly or indirectly, as the result of such violation; and

(iii) Any of the property used in any manner or part, to commit, or to facilitate the commission of, such violation.

(2) In lieu of a fine otherwise authorized by section 229A(a) of Title 18 of the United States Code, a defendant who derived profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

(d) *Injunction.* (1) The United States may, in a civil action, obtain an injunction against:

<sup>2</sup> Alternatively, sanctions may be imposed under 18 U.S.C. 3571, a criminal code provision that establishes a maximum criminal fine for a felony that is the greatest of: (1) The amount provided by the statute that was violated; (2) an amount not more than \$250,000 for an individual, or not more than \$500,000 for an organization; or (3) an amount based on gain or loss from the offense.



(i) The conduct prohibited under section 229 or 229C of Title 18 of the United States Code; or

(ii) The preparation or solicitation to engage in conduct prohibited under section 229 or 229D of Title 18 of the United States Code.

(2) In addition, the United States may, in a civil action, restrain any violation of section 306 or 405 of the Act, or compel the taking of any action required by or under the Act or the Convention.

#### **§ 719.5 Initiation of administrative proceedings.**

(a) *Request for Notice of Violation and Assessment (NOVA).* The Director of the Office of Export Enforcement, Bureau of Industry and Security, may request that the Secretary of State initiate an administrative enforcement proceeding under this § 719.5 and 22 CFR 103.7. If the request is in accordance with applicable law, the Secretary of State will initiate an administrative enforcement proceeding by issuing a NOVA. The Office of Chief Counsel shall serve the NOVA as directed by the Secretary of State.

(b) *Letter of intent to charge.* The Director of the Office of Export Enforcement, Bureau of Industry and Security, may notify a respondent by letter of the intent to charge. This letter of intent to charge will advise a respondent that BIS has conducted an investigation and intends to recommend that the Secretary of State issue a NOVA. The letter of intent to charge will be accompanied by a draft NOVA and proposed order, and will give the respondent a specified period of time to contact BIS to discuss settlement of the allegations set forth in the draft NOVA. An administrative enforcement proceeding is not initiated by a letter of intent to charge. If the respondent does not contact BIS within the specified time, or if the respondent requests it, BIS will make its request for initiation of an administrative enforcement proceeding to the Secretary of State in accordance with paragraph (a) of this section.

(c) *Content of NOVA.* The NOVA shall constitute a formal complaint, and will set forth the basis for the issuance of the proposed order. It will set forth the alleged violation(s) and the essential facts with respect to the alleged violation(s), reference the relevant statutory, regulatory or other provisions, and state the amount of the civil penalty to be assessed. The NOVA will inform the respondent of the right to request a hearing pursuant to § 719.6, inform the respondent that failure to request such a hearing shall result in the proposed order becoming final and unappealable

on signature of the Secretary of State, and provide payment instructions. A copy of the regulations that govern the administrative proceedings will accompany the NOVA.

(d) *Proposed order.* A proposed order shall accompany every NOVA, letter of intent to charge, and draft NOVA. It will briefly set forth the substance of the alleged violation(s) and the statutory, regulatory or other provisions violated. It will state the amount of the civil penalty to be assessed.

(e) *Notice.* Notice of the intent to charge or of the initiation of formal proceedings shall be given to the respondent (or respondent's agent for service of process, or attorney) by sending relevant documents, via first class mail, facsimile, or by personal delivery.

#### **§ 719.6 Request for hearing and answer.**

(a) *Time to answer.* If the respondent wishes to contest the NOVA and proposed order issued by the Secretary of State, the respondent must request a hearing in writing within 15 business days from the postmarked date of the NOVA. If the respondent requests a hearing, the respondent must answer the NOVA within 30 days from the date of the request for hearing. The request for hearing and answer must be filed with the Administrative Law Judge (ALJ), along with a copy of the NOVA and proposed order, and served on the Office of Chief Counsel, and any other address(es) specified in the NOVA, in accordance with § 719.8.

(b) *Content of answer.* The respondent's answer must be responsive to the NOVA and proposed order, and must fully set forth the nature of the respondent's defense(s). The answer must specifically admit or deny each separate allegation in the NOVA; if the respondent is without knowledge, the answer will so state and will operate as a denial. Failure to deny or controvert a particular allegation will be deemed an admission of that allegation. The answer must also set forth any additional or new matter the respondent contends supports a defense or claim of mitigation. Any defense or partial defense not specifically set forth in the answer shall be deemed waived, and evidence thereon may be refused, except for good cause shown.

(c) *English required.* The request for hearing, answer, and all other papers and documentary evidence must be submitted in English.

(d) *Waiver.* The failure of the respondent to file a request for a hearing and an answer within the times provided constitutes a waiver of the respondent's right to appear and contest

the allegations set forth in the NOVA and proposed order. If no hearing is requested and no answer is provided, the proposed order will be signed and become final and unappealable.

#### **§ 719.7 Representation.**

A respondent individual may appear and participate in person, a corporation by a duly authorized officer or employee, and a partnership by a partner. If a respondent is represented by counsel, counsel shall be a member in good standing of the bar of any State, Commonwealth or Territory of the United States, or of the District of Columbia, or be licensed to practice law in the country in which counsel resides, if not the United States. The U.S. Government will be represented by the Office of Chief Counsel. A respondent personally, or through counsel or other representative who has the power of attorney to represent the respondent, shall file a notice of appearance with the ALJ, or, in cases where settlement negotiations occur before any filing with the ALJ, with the Office of Chief Counsel.

#### **§ 719.8 Filing and service of papers other than the NOVA.**

(a) *Filing.* All papers to be filed with the ALJ shall be addressed to "CWC Administrative Enforcement Proceedings" at the address set forth in the NOVA, or such other place as the ALJ may designate. Filing by United States mail (first class postage prepaid), by express or equivalent parcel delivery service, via facsimile, or by hand delivery, is acceptable. Filing from a foreign country shall be by airmail or via facsimile. A copy of each paper filed shall be simultaneously served on all parties.

(b) *Service.* Service shall be made by United States mail (first class postage prepaid), by express or equivalent parcel delivery service, via facsimile, or by hand delivery of one copy of each paper to each party in the proceeding. The Department of State is a party to cases under the CWC, but will be represented by the Office of Chief Counsel. Therefore, service on the government party in all proceedings shall be addressed to Office of Chief Counsel for Industry and Security, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room H-3839, Washington, DC 20230, or sent via facsimile to (202) 482-0085. Service on a respondent shall be to the address to which the NOVA and proposed order was sent, or to such other address as the respondent may provide. When a party has appeared by counsel or other representative, service on counsel or

other representative shall constitute service on that party.

(c) *Date.* The date of filing or service is the day when the papers are deposited in the mail or are delivered in person, by delivery service, or by facsimile. Refusal by the person to be served, or by the person's agent or attorney, of service of a document or other paper will be considered effective service of the document or other paper as of the date of such refusal.

(d) *Certificate of service.* A certificate of service signed by the party making service, stating the date and manner of service, shall accompany every paper, other than the NOVA and proposed order, filed and served on the parties.

(e) *Computation of time.* In computing any period of time prescribed or allowed by this part, the day of the act, event, or default from which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, a Sunday, or a legal holiday (as defined in Rule 6(a) of the Federal Rules of Civil Procedure), in which case the period runs until the end of the next day which is neither a Saturday, a Sunday, nor a legal holiday. Intermediate Saturdays, Sundays, and legal holidays are excluded from the computation when the period of time prescribed or allowed is 7 days or less.

#### **§ 719.9 Summary decision.**

The ALJ may render a summary decision disposing of all or part of a proceeding on the motion of any party to the proceeding, provided that there is no genuine issue as to any material fact and the party is entitled to summary decision as a matter of law.

#### **§ 719.10 Discovery.**

(a) *General.* The parties are encouraged to engage in voluntary discovery regarding any matter, not privileged, which is relevant to the subject matter of the pending proceeding. The provisions of the Federal Rules of Civil Procedure relating to discovery apply to the extent consistent with this part and except as otherwise provided by the ALJ or by waiver or agreement of the parties. The ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. These orders may include limitations on the scope, method, time and place of discovery, and provisions for protecting the confidentiality of classified or otherwise sensitive information, including Confidential Business Information (CBI) as defined by the Act.

(b) *Interrogatories and requests for admission or production of documents.*

A party may serve on any party interrogatories, requests for admission, or requests for production of documents for inspection and copying, and a party concerned may apply to the ALJ for such enforcement or protective order as that party deems warranted with respect to such discovery. The service of a discovery request shall be made at least 20 days before the scheduled date of the hearing unless the ALJ specifies a shorter time period. Copies of interrogatories, requests for admission and requests for production of documents and responses thereto shall be served on all parties and a copy of the certificate of service shall be filed with the ALJ. Matters of fact or law of which admission is requested shall be deemed admitted unless, within a period designated in the request (at least 10 days after service, or within such additional time as the ALJ may allow), the party to whom the request is directed serves upon the requesting party a sworn statement either denying specifically the matters of which admission is requested or setting forth in detail the reasons why the party to whom the request is directed cannot truthfully either admit or deny such matters.

(c) *Depositions.* Upon application of a party and for good cause shown, the ALJ may order the taking of the testimony of any person by deposition and the production of specified documents or materials by the person at the deposition. The application shall state the purpose of the deposition and set forth the facts sought to be established through the deposition.

(d) *Enforcement.* The ALJ may order a party to answer designated questions, to produce specified documents or things or to take any other action in response to a proper discovery request. If a party does not comply with such an order, the ALJ may make a determination or enter any order in the proceeding as the ALJ deems reasonable and appropriate. The ALJ may strike related charges or defenses in whole or in part or may take particular facts relating to the discovery request to which the party failed or refused to respond as being established for purposes of the proceeding in accordance with the contentions of the party seeking discovery. In addition, enforcement by any district court of the United States in which venue is proper may be sought as appropriate.

#### **§ 719.11 Subpoenas.**

(a) *Issuance.* Upon the application of any party, supported by a satisfactory

showing that there is substantial reason to believe that the evidence would not otherwise be available, the ALJ may issue subpoenas to any person requiring the attendance and testimony of witnesses and the production of such books, records or other documentary or physical evidence for the purpose of the hearing, as the ALJ deems relevant and material to the proceedings, and reasonable in scope. Witnesses shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt, challenge or refusal to obey a subpoena served upon any person pursuant to this paragraph, any district court of the United States, in which venue is proper, has jurisdiction to issue an order requiring any such person to comply with such subpoena. Any failure to obey such order of the court is punishable by the court as a contempt thereof.

(b) *Service.* Subpoenas issued by the ALJ may be served by any of the methods set forth in § 719.8(b).

(c) *Timing.* Applications for subpoenas must be submitted at least 10 days before the scheduled hearing or deposition, unless the ALJ determines, for good cause shown, that extraordinary circumstances warrant a shorter time.

#### **§ 719.12 Matters protected against disclosure.**

(a) *Protective measures.* The ALJ may limit discovery or introduction of evidence or issue such protective or other orders as in the ALJ's judgment may be needed to prevent undue disclosure of classified or sensitive documents or information, including Confidential Business Information as defined by the Act. Where the ALJ determines that documents containing classified or sensitive matter must be made available to a party in order to avoid prejudice, the ALJ may direct the other party to prepare an unclassified and nonsensitive summary or extract of the documents. The ALJ may compare the extract or summary with the original to ensure that it is supported by the source document and that it omits only so much as must remain undisclosed. The summary or extract may be admitted as evidence in the record.

(b) *Arrangements for access.* If the ALJ determines that the summary procedure outlined in paragraph (a) of this section is unsatisfactory, and that classified or otherwise sensitive matter must form part of the record in order to avoid prejudice to a party, the ALJ may provide the parties opportunity to make arrangements that permit a party or a representative to have access to such matter without compromising sensitive

information. Such arrangements may include obtaining security clearances or giving counsel for a party access to sensitive information and documents subject to assurances against further disclosure, including a protective order, if necessary.

#### **§ 719.13 Prehearing conference.**

(a) On the ALJ's own motion, or on request of a party, the ALJ may direct the parties to participate in a prehearing conference, either in person or by telephone, to consider:

(1) Simplification of issues;

(2) The necessity or desirability of amendments to pleadings;

(3) Obtaining stipulations of fact and of documents to avoid unnecessary proof; or

(4) Such other matters as may expedite the disposition of the proceedings.

(b) The ALJ may order the conference proceedings to be recorded electronically or taken by a reporter, transcribed and filed with the ALJ.

(c) If a prehearing conference is impracticable, the ALJ may direct the parties to correspond with the ALJ to achieve the purposes of such a conference.

(d) The ALJ will prepare a summary of any actions agreed on or taken pursuant to this section. The summary will include any written stipulations or agreements made by the parties.

#### **§ 719.14 Hearings.**

(a) *Scheduling.* Upon receipt of a written and dated request for a hearing, the ALJ shall, by agreement with all the parties or upon notice to all parties of at least 30 days, schedule a hearing. All hearings will be held in Washington, D.C., unless the ALJ determines, for good cause shown, that another location would better serve the interest of justice.

(b) *Hearing procedure.* Hearings will be conducted in a fair and impartial manner by the ALJ. All hearings will be closed, unless the ALJ for good cause shown determines otherwise. The rules of evidence prevailing in courts of law do not apply, and all evidentiary material deemed by the ALJ to be relevant and material to the proceeding and not unduly repetitious will be received and given appropriate weight, except that any evidence of settlement which would be excluded under Rule 408 of the Federal Rules of Evidence is not admissible. Witnesses will testify under oath or affirmation, and shall be subject to cross-examination.

(c) *Testimony and record.* (1) A verbatim record of the hearing and of any other oral proceedings will be taken by reporter or by electronic recording,

and filed with the ALJ. If any party wishes to obtain a written copy of the transcript, that party shall pay the costs of transcription. The parties may share the costs if both wish a transcript.

(2) Upon such terms as the ALJ deems just, the ALJ may direct that the testimony of any person be taken by deposition and may admit an affidavit or declaration as evidence, provided that any affidavits or declarations have been filed and served on the parties sufficiently in advance of the hearing to permit a party to file and serve an objection thereto on the grounds that it is necessary that the affiant or declarant testify at the hearing and be subject to cross-examination.

(d) *Failure to appear.* If a party fails to appear in person or by counsel at a scheduled hearing, the hearing may nevertheless proceed. The party's failure to appear will not affect the validity of the hearing or any proceeding or action taken thereafter.

#### **§ 719.15 Procedural stipulations.**

Unless otherwise ordered and subject to § 719.16, a written stipulation agreed to by all parties and filed with the ALJ will modify the procedures established by this part.

#### **§ 719.16 Extension of time.**

The parties may extend any applicable time limitation by stipulation filed with the ALJ before the time limitation expires, or the ALJ may, on the ALJ's own initiative or upon application by any party, either before or after the expiration of any applicable time limitation, extend the time, except that the requirement that a hearing be demanded within 15 days, and the requirement that a final agency decision be made within 30 days, may not be modified.

#### **§ 719.17 Post-hearing submissions.**

All parties shall have the opportunity to file post-hearing submissions that may include findings of fact and conclusions of law, supporting evidence and legal arguments, exceptions to the ALJ's rulings or to the admissibility of evidence, and proposed orders and settlements.

#### **§ 719.18 Decisions.**

(a) *Initial decision.* After considering the entire record in the case, the ALJ will issue an initial decision based on a preponderance of the evidence. The decision will include findings of fact, conclusions of law, and a decision based thereon as to whether the respondent has violated the Act. If the ALJ finds that the evidence of record is insufficient to sustain a finding that a

violation has occurred with respect to one or more allegations, the ALJ shall order dismissal of the allegation(s) in whole or in part, as appropriate. If the ALJ finds that one or more violations have been committed, the ALJ shall issue an order imposing administrative sanctions.

(b) *Factors considered in assessing penalties.* In determining the amount of a civil penalty, the ALJ shall take into account the nature, circumstances, extent and gravity of the violation(s), and, with respect to the respondent, the respondent's ability to pay the penalty, the effect of a civil penalty on the respondent's ability to continue to do business, the respondent's history of prior violations, the respondent's degree of culpability, the existence of an internal compliance program, and such other matters as justice may require.

(c) *Certification of initial decision.* The ALJ shall immediately certify the initial decision and order to the Executive Director of the Office of Legal Adviser, U.S. Department of State, 2201 C Street, NW., Room 5519, Washington, DC 20520, to the Office of Chief Counsel at the address in § 719.8, and to the respondent, by personal delivery or overnight mail.

(d) *Review of initial decision.* The initial decision shall become the final agency decision and order unless, within 30 days, the Secretary of State modifies or vacates it, with or without conditions, in accordance with 22 CFR 103.8.

#### **§ 719.19 Settlement.**

(a) *Settlements before issuance of a NOVA.* When the parties have agreed to a settlement of the case, the Director of the Office of Export Enforcement will recommend the settlement to the Secretary of State, forwarding a proposed settlement agreement and order, which, in accordance with 22 CFR 103.9(a), the Secretary of State will approve and sign if the recommended settlement is in accordance with applicable law.

(b) *Settlements following issuance of a NOVA.* The parties may enter into settlement negotiations at any time during the time a case is pending before the ALJ. If necessary, the parties may extend applicable time limitations or otherwise request that the ALJ stay the proceedings while settlement negotiations continue. When the parties have agreed to a settlement of the case, the Office of Chief Counsel will recommend the settlement to the Secretary of State, forwarding a proposed settlement agreement and order, which, in accordance with 22 CFR 103.9(b), the Secretary will approve

and sign if the recommended settlement is in accordance with applicable law.

(c) *Settlement scope.* Any respondent who agrees to an order imposing any administrative sanction does so solely for the purpose of resolving the claims in the administrative enforcement proceeding brought under this part. This reflects the fact that the government officials involved have neither the authority nor the responsibility for initiating, conducting, settling, or otherwise disposing of criminal proceedings. That authority and responsibility are vested in the Attorney General and the Department of Justice.

(d) *Finality.* Cases that are settled may not be reopened or appealed.

#### **§ 719.20 Record for decision.**

(a) *The record.* The transcript of hearings, exhibits, rulings, orders, all papers and requests filed in the proceedings, and, for purposes of any appeal under § 719.18 or under 22 CFR 103.8, the decision of the ALJ and such submissions as are provided for under § 719.18 or 22 CFR 103.8 will constitute the record and the exclusive basis for decision. When a case is settled, the record will consist of any and all of the foregoing, as well as the NOVA or draft NOVA, settlement agreement, and order.

(b) *Restricted access.* On the ALJ's own motion, or on the motion of any party, the ALJ may direct that there be a restricted access portion of the record for any material in the record to which public access is restricted by law or by the terms of a protective order entered in the proceedings. A party seeking to restrict access to any portion of the record is responsible, prior to the close of the proceeding, for submitting a version of the document(s) proposed for public availability that reflects the requested deletion. The restricted access portion of the record will be placed in a separate file and the file will be clearly marked to avoid improper disclosure and to identify it as a portion of the official record in the proceedings. The ALJ may act at any time to permit material that becomes declassified or unrestricted through passage of time to be transferred to the unrestricted access portion of the record.

(c) *Availability of documents.* (1) *Scope.* All NOVAs and draft NOVAs, answers, settlement agreements, decisions and orders disposing of a case will be displayed on the BIS Freedom of Information Act (FOIA) Web site, at <http://www.bis.doc.gov/foia>, which is maintained by the Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce. This office does not maintain a separate inspection facility. The complete record

for decision, as defined in paragraphs (a) and (b) of this section will be made available on request.

(2) *Timing.* The record for decision will be available only after the final administrative disposition of a case. Parties may seek to restrict access to any portion of the record under paragraph (b) of this section.

#### **§ 719.21 Payment of final assessment.**

(a) *Time for payment.* Full payment of the civil penalty must be made within 30 days of the effective date of the order or within such longer period of time as may be specified in the order. Payment shall be made in the manner specified in the NOVA.

(b) *Enforcement of order.* The government party may, through the Attorney General, file suit in an appropriate district court if necessary to enforce compliance with a final order issued under the CWCR. This suit will include a claim for interest at current prevailing rates from the date payment was due or ordered.

(c) *Offsets.* The amount of any civil penalty imposed by a final order may be deducted from any sum(s) owed by the United States to a respondent.

#### **§ 719.22 Reporting a violation.**

If a person learns that a violation of the Convention, the Act, or the CWCR has occurred or may occur, that person may notify: Office of Export Enforcement, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room H-4520, Washington, DC 20230; Tel: (202) 482-1208; Facsimile: (202) 482-0964.

### **PART 720—DENIAL OF EXPORT PRIVILEGES**

#### **Sec.**

720.1 Denial of export privileges for convictions under 18 U.S.C. 229.

720.2 Initiation of administrative action denying export privileges.

720.3 Final decision on administrative action denying export privileges.

720.4 Effect of denial.

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

#### **§ 720.1 Denial of export privileges for convictions under 18 U.S.C. 229.**

Any person in the United States or any U.S. national may be denied export privileges after notice and opportunity for hearing if that person has been convicted under Title 18, Section 229 of the United States Code of knowingly:

(a) Developing, producing, otherwise acquiring, transferring directly or indirectly, receiving, stockpiling, retaining, owning, possessing, or using,

or threatening to use, a chemical weapon; or

(b) Assisting or inducing, in any way, any person to violate paragraph (a) of this section, or attempting or conspiring to violate paragraph (a) of this section.

#### **§ 720.2 Initiation of administrative action denying export privileges.**

(a) *Notice.* BIS will notify any person convicted of Section 229, Title 18, United States Code, of BIS's intent to deny that person's export privileges. The notification letter shall reference the person's conviction, specify the number of years for which BIS intends to deny export privileges, set forth the statutory and regulatory authority for the action, state whether the denial order will be standard or non-standard pursuant to Supplement No. 1 to part 764 of the Export Administration Regulations (15 CFR parts 730 through 799), and provide that the person may request a hearing before the Administrative Law Judge within 30 days from the date of the notification letter.

(b) *Waiver.* The failure of the notified person to file a request for a hearing within the time provided constitutes a waiver of the person's right to contest the denial of export privileges that BIS intends to impose.

(c) *Order of Assistant Secretary.* If no hearing is requested, the Assistant Secretary for Export Enforcement will order that export privileges be denied as indicated in the notification letter.

#### **§ 720.3 Final decision on administrative action denying export privileges.**

(a) *Hearing.* Any hearing that is granted by the ALJ shall be conducted in accordance with the procedures set forth in § 719.14 of the CWCR.

(b) *Initial decision and order.* After considering the entire record in the proceeding, the ALJ will issue an initial decision and order, based on a preponderance of the evidence. The ALJ may consider factors such as the seriousness of the criminal offense that is the basis for conviction, the nature and duration of the criminal sanctions imposed, and whether the person has undertaken any corrective measures. The ALJ may dismiss the proceeding if the evidence is insufficient to sustain a denial of export privileges, or may issue an order imposing a denial of export privileges for the length of time the ALJ deems appropriate. An order denying export privileges may be standard or non-standard, as provided in Supplement No. 1 to part 764 of the Export Administration Regulations (15 CFR parts 730 through 799). The initial decision and order will be served on

each party, and will be published in the **Federal Register** as the final decision of BIS 30 days after service, unless an appeal is filed in accordance with paragraph (c) of this section.

(c) *Grounds for appeal.* (1) A party may, within 30 days of the ALJ's initial decision and order, petition the Under Secretary, Bureau of Industry and Security, for review of the initial decision and order. A petition for review must be filed with the Office of Under Secretary, Bureau of Industry and Security, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, and shall be served on the Office of Chief Counsel for Industry and Security or on the respondent. Petitions for review may be filed only on one or more of the following grounds:

(i) That a necessary finding of fact is omitted, erroneous or unsupported by substantial evidence of record;

(ii) That a necessary legal conclusion or finding is contrary to law;

(iii) That prejudicial procedural error occurred; or

(iv) That the decision or the extent of sanctions is arbitrary, capricious or an abuse of discretion.

(2) The appeal must specify the grounds on which the appeal is based and the provisions of the order from which the appeal was taken.

(d) *Appeal procedure.* The Under Secretary, Bureau of Industry and Security, normally will not hold hearings or entertain oral arguments on appeals. A full written statement in support of the appeal must be filed with the appeal and be simultaneously served on all parties, who shall have 30 days from service to file a reply. At his/her discretion, the Under Secretary may accept new submissions, but will not ordinarily accept those submissions filed more than 30 days after the filing of the reply to the appellant's first submission.

(e) *Decisions.* The Under Secretary's decision will be in writing and will be accompanied by an order signed by the Under Secretary, Bureau of Industry and Security, giving effect to the decision. The order may either dispose of the case by affirming, modifying or reversing the order of the ALJ, or may refer the case back to the ALJ for further proceedings. Any order that imposes a denial of export privileges will be published in the **Federal Register**.

#### **§ 720.4 Effect of denial.**

Any person denied export privileges pursuant to this part shall be considered a "person denied export privileges" for purposes of the Export Administration Regulations (15 CFR parts 730 through

799). The name and address of the denied person will be published on the Denied Persons List found in Supplement 2 to part 764 of the Export Administration Regulations (15 CFR parts 730 through 799).

### **PART 721—INSPECTION OF RECORDS AND RECORDKEEPING**

Sec.

721.1 Inspection of records.

721.2 Recordkeeping.

721.3 Destruction or disposal of records.

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

#### **§ 721.1 Inspection of records.**

Upon request by BIS or any other agency of competent jurisdiction, you must permit access to and copying of any record relating to compliance with the requirements of the CWC. This requires that you make available the equipment and, if necessary, knowledgeable personnel for locating, reading, and reproducing any record.

#### **§ 721.2 Recordkeeping.**

(a) *Requirements.* Each person, facility, plant site or trading company required to submit a declaration, report, or advance notification under parts 712 through 715 of the CWC must retain all supporting materials and documentation used by a unit, plant, facility, plant site or trading company to prepare such declaration, report, or advance notification to determine production processing, consumption, export or import of chemicals.

(b) *Five year retention period.* All supporting materials and documentation required to be kept under paragraph (a) of this section must be retained for five years from the due date of the applicable declaration, report, or advance notification, or for five years from the date of submission of the applicable declaration, report or advance notification, whichever is later. Due dates for declarations, reports and advance notifications are provided in parts 712 through 715 of the CWC.

(c) *Location of records.* If a facility is subject to inspection under part 716 of the CWC, records retained under this section must be maintained at the facility or must be accessible electronically at the facility for purposes of inspection of the facility by Inspection Teams. If a facility is *not* subject to inspection under part 716 of the CWC, records retained under this section may be maintained either at the facility subject to a declaration, report, or advance notification requirement, or at a remote location, but all records must be accessible to any authorized

agent, official or employee of the U.S. Government under § 721.1.

(d) *Reproduction of original records.*

(1) You may maintain reproductions instead of the original records provided all of the requirements of paragraph (b) of this section are met.

(2) If you must maintain records under this part, you may use any photostatic, miniature photographic, micrographic, automated archival storage, or other process that completely, accurately, legibly and durably reproduces the original records (whether on paper, microfilm, or through electronic digital storage techniques). The process must meet all of the following requirements, which are applicable to all systems:

(i) The system must be capable of reproducing all records on paper.

(ii) The system must record and be able to reproduce all marks, information, and other characteristics of the original record, including both obverse and reverse sides (unless blank) of paper documents in legible form.

(iii) When displayed on a viewer, monitor, or reproduced on paper, the records must exhibit a high degree of legibility and readability. For purposes of this section, legible and legibility mean the quality of a letter or numeral that enable the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readable and readability mean the quality of a group of letters or numerals being recognized as complete words or numbers.

(iv) The system must preserve the initial image (including both obverse and reverse sides, unless blank, of paper documents) and record all changes, who made them and when they were made. This information must be stored in such a manner that none of it may be altered once it is initially recorded.

(v) You must establish written procedures to identify the individuals who are responsible for the operation, use and maintenance of the system.

(vi) You must keep a record of where, when, by whom, and on what equipment the records and other information were entered into the system.

(3) *Requirements applicable to a system based on digital images.* For systems based on the storage of digital images, the system must provide accessibility to any digital image in the system. The system must be able to locate and reproduce all records according to the same criteria that would have been used to organize the records had they been maintained in original form.

(4) *Requirements applicable to a system based on photographic processes.* For systems based on photographic, photostatic, or miniature photographic processes, the records must be maintained according to an index of all records in the system following the same criteria that would have been used to organize the records had they been maintained in original form.

**§ 721.3 Destruction or disposal of records.**

If BIS or other authorized U.S. government agency makes a formal or informal request for a certain record or records, such record or records may not be destroyed or disposed of without the written authorization of the requesting entity.

**PART 722—INTERPRETATIONS  
[RESERVED]**

**Note:** This part is reserved for interpretations of parts 710 through 721 and

also for applicability of decisions by the Organization for the Prohibition of Chemical Weapons (OPCW).

**PARTS 723–729—[RESERVED]**

Dated: November 26, 2004.

**Matthew S. Borman,**

*Deputy Assistant Secretary for Export Administration.*

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