

DEPARTMENT OF COMMERCE**Bureau of Industry and Security****15 CFR Parts 710, 715, 716, 719, and 721**

[Docket No. 060831231-7030-02]

RIN 0694-AD53

Chemical Weapons Convention Regulations: UDOC "Change in Inspection Status Form;" Amendments to Records Review and Recordkeeping Requirements; Additions to the List of States Parties to the Chemical Weapons Convention (CWC)

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is publishing this final rule to amend the Chemical Weapons Convention Regulations (CWCR) to expedite the collection of information concerning the inspection status of plant sites that produce unscheduled discrete organic chemicals (UDOCs) subject to the declaration requirements of the CWCR, to clarify the scope of the CWCR records review and recordkeeping requirements, and to update the maximum civil penalty that may be imposed for violations of the CWCR restrictions on imports of Chemical Weapons Convention (CWC) Schedule 1 and Schedule 2 chemicals. The CWCR include requirements to declare certain activities, involving scheduled chemicals and UDOCs, and to provide access for on-site verification by international inspectors of certain declared facilities in the United States.

Specifically, this final rule amends the CWCR by revising the annual declaration requirements for UDOCs to allow a "declared" plant site currently subject to inspection, which anticipates that its production of UDOCs during the current calendar year will be below the inspection threshold level indicated in the CWCR, to submit a Change in Inspection Status Form to BIS by December 15th of the current calendar year. In addition, any such UDOC plant site containing at least one plant that anticipates producing an individual PSF chemical (i.e., a UDOC containing the elements phosphorus, sulfur or fluorine) in quantities that exceed the *declaration* threshold for such chemicals will have the option of submitting its Annual Declaration on Past Activities, in lieu of a Change in Inspection Status Form, by December 15th of the current calendar year. Otherwise, the CWCR require that the Annual Declaration on Past

Activities be submitted by February 28th of the following year. The information provided to BIS, as a result of this change, will ensure that the plant site is not subject to inspection during the first 90 days of the next calendar year (i.e., the year after the UDOC activities took place), which is the period when the United States compiles its annual declaration on past activities for submission to the Organization for the Prohibition of Chemical Weapons (OPCW). In addition, this information will strengthen the verification regime of the CWC by allowing the OPCW to schedule inspections, on a year-round basis, of those UDOC facilities in the United States that meet or exceed the inspection threshold level indicated in the CWCR.

This rule also amends the CWCR by revising the records review provisions to clarify that a facility must provide the OPCW Inspection Team with access to all supporting materials and documentation used by the facility to prepare declarations and to otherwise comply with the CWCR, including records related to activities that have taken place at the facility since the beginning of the previous calendar year (i.e., up to and including the date of the inspection), even if the facility has not submitted its current year Annual Declaration on Past Activities to BIS at the time the inspection takes place.

In addition, this rule revises the CWCR records review and recordkeeping requirements to clarify that the types of records that are subject to these requirements include all supporting materials and documentation associated with the movement into, around, and from the facility of declared chemicals and their feedstock or any product chemicals formed from such chemicals and feedstock. The purpose of this clarification is to ensure that the CWCR records review and recordkeeping requirements fully conform with the inspection aims described in the inspection provisions of the CWCR, which include verifying the absence of Schedule 1 chemicals and the non-diversion of Schedule 1 and Schedule 2 chemicals.

This rule amends the enforcement provisions of the CWCR to increase the maximum civil penalty that may be imposed for violations of the CWCR restrictions on imports of CWC Schedule 1 or Schedule 2 chemicals from \$11,000 to \$50,000 to reflect amendments to the International Emergency Economic Powers Act (IEEPA) made by the USA PATRIOT Improvement and Reauthorization Act

of 2005, which was enacted on March 9, 2006.

Finally, this rule updates the list of countries that currently are States Parties to the CWC by adding the Central African Republic and Comoros, which recently became States Parties, and by replacing the listing for Serbia and Montenegro with a separate listing for each country.

DATES: This rule is effective March 28, 2007. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

ADDRESSES: You may submit comments on this rule, identified by RIN 0694-AD53, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *E-mail:* publiccomments@bis.doc.gov. Include "RIN 0694-AD53" 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 St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, ATTN: RIN 0694-AD53.

This rule contains a collection of information approved by OMB under Control Number 0694-0091 (Chemical Weapons Convention—Declaration and Report Forms). You may submit comments regarding this collection of information (identified by OMB Control No. 0694-0091), including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to 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. Comments on this collection of information should be submitted separately from comments on the final rule (i.e., RIN 0694-AD53)—all comments on the latter should be submitted by one of the four methods outlined above.

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 and reports, contact the Treaty Compliance Division, Office of Nonproliferation Controls 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

This final rule amends the Chemical Weapons Convention Regulations (CWCR) to expedite the collection of information concerning the inspection status of plant sites that produce unscheduled discrete organic chemicals (UDOCs) that are subject to the declaration requirements of the CWCR. This rule also clarifies the scope of the CWCR records review and recordkeeping requirements. In addition, this rule updates the maximum civil penalty that may be imposed for violations of the CWCR restrictions on imports of CWC Schedule 1 and Schedule 2 chemicals. These changes were included in a proposed rule and request for comment that BIS published on October 6, 2006 (71 FR 59032). BIS did not receive any public comments on the proposed rule and is publishing this final rule to implement these changes.

The CWCR include requirements to declare certain activities, involving scheduled chemicals and UDOCs, and to provide access for on-site verification by international inspectors of certain declared facilities in the United States. The CWCR implement the provisions of 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), affecting U.S. industry and U.S. persons, in accordance with the provisions of the Chemical Weapons Convention Implementation Act of 1998 (the Act or CWCIA) (22 U.S.C. 6701 et seq.). The Act 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 from the Organization for the Prohibition of Chemical Weapons (OPCW).

The CWC, which entered into force on April 29, 1997, is an arms control treaty with significant nonproliferation 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 nonproliferation 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 UDOCs, many of which have significant commercial applications.

Part IX of the Verification Annex of the CWC contains provisions that apply to declarations and inspection of "other chemical production facilities," which are referred to as UDOC plant sites in Part 715 of the CWCR. Plant sites that declare under Part 715 of the CWCR must submit an Annual Declaration on Past Activities describing UDOC activities subject to declaration during the previous calendar year. These annual declarations must be submitted to BIS no later than February 28th of the year that follows the calendar year in which the UDOC activities took place. The U.S. Government compiles these declarations into the annual U.S. declaration on past activities, which it submits to the OPCW within 90 days after the beginning of the calendar year in which the UDOC plant sites submit their individual declarations to BIS.

Part 716 of the CWCR states that a UDOC plant site is subject to inspection during a specific calendar year only if it produced in excess of 200 metric tons aggregate of UDOCs during the previous calendar year (see § 716.1(b)(4)). A plant site cannot be subject to inspection, for UDOC activities that took place during the previous calendar year, if: (1) A declaration is not required to be submitted to the OPCW or (2) a declaration is submitted to the OPCW with aggregate quantities of UDOCs below 200 metric tons. The due date for a UDOC plant site to submit its Annual Declaration on Past Activities to BIS is February 28th of the year following the calendar year in which the UDOC activities took place. Prior to the publication of this final rule, there was no mechanism in the CWCR that allowed the U.S. Government to determine which UDOC plant sites were subject to inspection and to notify the OPCW concerning the inspection status of such plant sites, prior to the due date for submitting the U.S. annual declaration on past activities to the OPCW (i.e., within 90 days after the beginning of the calendar year). Therefore, as a practical matter, UDOC plant sites in the United States did not become subject to inspection by the OPCW until the U.S. annual declaration on past activities had been submitted to the OPCW. BIS recognized that universal application of this approach would interfere with the conduct of UDOC inspections in States Parties for

the first 90 days of each calendar year (i.e., a "90-day gap"), which could have the long-term effect of undermining the verification regime of the CWC.

In order to eliminate this "90-day gap," BIS is amending the CWCR by revising the annual declaration requirements for UDOCs to allow a "declared" plant site currently subject to inspection, which anticipates that its production of UDOCs during the current calendar year will be below the inspection threshold level indicated in the CWCR, to submit a Change in Inspection Status Form to BIS, so that BIS can inform the OPCW that the plant site will not be subject to inspection during the next calendar year. This new form must be submitted to BIS no later than December 15th of the current calendar year (i.e., the year in which UDOC production is anticipated to be below the inspection threshold level). The U.S. Government will then inform the OPCW that the plant site will not be subject to inspection during the next calendar year.

Certain plant sites will be given the option of submitting their Annual Declaration on Past Activities in lieu of the Change in Inspection Status Form. In choosing this alternative, however, the plant sites will have to submit their Annual Declaration on Past Activities to BIS by December 15th of the current calendar year, instead of February 28th of the following year, as is normally required under the CWCR. The only UDOC plant sites that will be eligible to use this option are those that anticipate producing by synthesis one or more PSF chemicals (i.e., UDOCs containing the elements phosphorus, sulfur or fluorine) during the current calendar year, in quantities that would require them to submit an Annual Declaration on Past Activities to BIS, but that would be below the CWCR inspection threshold level for UDOCs (i.e., plant sites that contain at least one plant that anticipates producing in excess of 30 metric tons of an individual PSF chemical, but that do not anticipate producing by synthesis in excess of 200 metric tons aggregate of all UDOCs during the current calendar year).

If, subsequent to submitting its Change in Inspection Status Form to BIS, a UDOC plant site determines that the production by synthesis of UDOCs at the plant site actually exceeded the UDOC inspection threshold level specified in § 715.1(d)(1) of the CWCR, the plant site must indicate this fact when it submits its Annual Declaration on Past Activities to BIS and explain, on Form B, why the plant site exceeded the UDOC inspection threshold. In addition, any UDOC plant site that chooses the

option of submitting its Annual Declaration on Past Activities to BIS by December 15th, in lieu of a Change in Inspection Status Form, and subsequently determines that the production by synthesis of UDOCs at the plant site actually exceeded the UDOC inspection threshold level specified in § 715.1(d)(1) of the CWCR, must submit an amendment to its Annual Declaration on Past Activities (see § 715.2 of the CWCR) indicating this fact and explaining, on Form B, why the plant site exceeded the UDOC inspection threshold.

Currently inspectable UDOC plant sites that do not submit either a Change in Inspection Status Form or an Annual Declaration on Past Activities by December 15th of the current calendar year, as provided in this rule, will remain subject to inspection through at least the 90-day period at the beginning of the next calendar year.

This final rule also amends the CWCR to clarify the scope of the records review requirements for inspections. Prior to the publication of this rule, Section 716.4(e) of the CWCR was unclear concerning the extent to which an OPCW Inspection Team would have access to a facility's records that were related to activities that took place at the facility during the previous calendar year. This rule amends Section 716.4(e) of the CWCR to clarify that a facility undergoing inspection must provide the Inspection Team with access to all supporting materials and documentation used by the facility to prepare declarations and to otherwise comply with the CWCR, including records related to activities that have taken place at the facility since the beginning of the previous calendar year (i.e., up to and including the date of the inspection), regardless of whether or not the facility has submitted its Annual Declaration on Past Activities to BIS at the time of the inspection.

In addition, this final rule amends Section 716.4(e) of the CWCR to ensure that the CWCR records review requirements for inspections fully conform with the inspection aims described in Part 716 of the CWCR. Since BIS began hosting inspections under the CWCR, the standard practice has been for facilities to provide, as appropriate, records associated with the movement into, around, and from the facility of declared chemicals and their feedstock or product chemicals formed from such chemicals and feedstock. The OPCW Inspection Team requires access to these types of records in order to accomplish the aims of the inspections, as described in Parts VI–IX of the Verification Annex of the CWC and in

Part 716 of the CWCR. Parts VI–IX of the CWC Verification Annex establish the general and specific aims for inspections, including verification of the absence of Schedule 1 chemicals and the non-diversion of Schedule 1 and Schedule 2 chemicals. Part 716 of the CWCR describes these CWC inspection aims and establishes requirements for providing Inspection Teams with access to records in order to achieve these aims. Prior to the publication of this rule, Section 716.4(e) of the CWCR did not clearly indicate that facilities were required to make available to the Inspection Team all supporting materials and documentation associated with the movement into, around, and from the facility of declared chemicals and their feedstock or any product chemicals formed from such chemicals and feedstock. Therefore, this rule amends Section 716.4(e) to clearly indicate that the facility must make all such records available to the Inspection Team.

Consistent with the clarification to Section 716.4(e) of the CWCR described above, this final rule also amends the recordkeeping provisions in Section 721.2(a) of the CWCR to specifically require that each facility subject to inspection under Part 716 of the CWCR retain all records associated with the movement into, around, and from the facility of declared chemicals and their feedstock or any product chemicals formed from such chemicals.

This rule amends the enforcement provisions in Part 719 of the CWCR to increase the maximum civil penalty that may be imposed for violations of the CWCR restrictions on imports of CWC Schedule 1 or Schedule 2 chemicals from \$11,000 to \$50,000 to reflect amendments to Section 206 of the International Emergency Economic Powers Act (IEEPA) (50 U.S.C. 1705) made by the USA PATRIOT ACT Improvement and Reauthorization Act of 2005 (Public Law 109–177), which was enacted on March 9, 2006. Specifically, this rule amends Section 719.3(b) of the CWCR and the footnote thereto to increase the maximum civil penalty that BIS may impose under IEEPA. As a result of this amendment to the CWCR, any violations of the CWC Schedule 1 or Schedule 2 import restrictions described in Section 719.3(a) of the CWCR will be subject to the increased IEEPA maximum civil penalty of \$50,000.

Finally, this rule revises Supplement No. 1 to Part 710 of the CWCR (titled “States Parties to the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their

Destruction”) by adding the Central African Republic and Comoros, which recently became States Parties to the CWC. As a result of this change, the CWCR declaration and reporting requirements for these two countries will be the same as those that apply to other States Parties. In addition, the listing for Serbia and Montenegro is removed and both countries are now listed, separately. Each country is now a State Party to the CWC and the United States has recognized Montenegro as a sovereign state. See Press Release, U.S. Department of State, U.S. Recognizes Montenegro as Independent State (June 13, 2006), available at <http://www.state.gov/secretary/rm/2006/67839.htm>.

Rulemaking Requirements

1. This rule has been determined to be not 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 contains a 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, per respondent, of 10.6 hours for Schedule 1 Chemicals, 11.9 hours for Schedule 2 chemicals, 2.5 hours for Schedule 3 chemicals, 5.3 hours or 5.1 hours for unscheduled discrete organic chemicals (depending upon whether an Annual Declaration on Past Activities or a No Changes Authorization Form, respectively, is required), 0.17 hours for Schedule 1 notifications, and 1.7 hours for compliance review requests. These burden hour estimates also include all types of amendments required under the Chemical Weapons Convention Regulations (CWCR). The Declaration and Report Handbooks include a “Guide to Submission of Forms” which also identifies the specific forms that must be included in a declaration or report package. To calculate the number of hours it takes to complete a specific type of declaration or report, multiply the number of forms required for a specific declaration or report type by the number of hours estimated to complete each form. BIS will use the information contained in declarations and reports submitted by U.S. persons to compile

the U.S. National Industrial Declaration in order to meet our obligations under the Chemicals Weapons Convention. BIS will submit the U.S. National Industrial Declaration to the United States National Authority who will forward the Declaration to the Organization for the Prohibition of Chemical Weapons as required by the Convention.

This rule will increase the burden hours under the approved collection (i.e., Control Number 0694-0091) by amending Section 715.1(d) of the CWCR to add a new requirement for the submission of a Change in Inspection Status Form that applies to any "declared" unscheduled discrete organic chemical (UDOC) plant site currently subject to inspection, which anticipates that its production of UDOCs during the current calendar year will be below the inspection threshold level indicated in the CWCR. These UDOC plant sites are required to submit a Change in Inspection Status Form to BIS, by December 15th of the current calendar year, in order to ensure that they will not be subject to inspection during the first 90 days of the next calendar year. Prior to the publication of this rule, there was no mechanism in the CWCR that allowed the U.S. Government to determine which UDOC plant sites were subject to inspection and to notify the OPCW concerning the inspection status of such plant sites, before the due date for submitting the U.S. annual declaration on past activities to the OPCW (i.e., within 90 days after the beginning of the calendar year). Therefore, as a practical matter, UDOC plant sites in the United States did not become subject to inspection by the OPCW until the U.S. annual declaration on past activities had been submitted to the OPCW. Universal application of this approach would have interfered with the conduct of UDOC inspections in States Parties for the first 90 days of each calendar year (i.e., the "90-day gap"), which could have had the long-term effect of undermining the verification regime of the CWC.

BIS estimates that the burden hours for completion and submission of the Change in Inspection Status Form will be 5.1 hours per respondent. The total burden hours for this additional collection of information are estimated to be 30.6 hours (i.e., 5.1 burden hours × 6 respondents). The estimated total cost of this additional collection of information will be \$1,163 (30.6 burden hours × \$38/hour). As a result of the changes made by this rule, the total estimated annual burden hours under the approved collection (i.e., Control Number 0694-0091) will increase from

4,471 burden hours to 4,501.6 burden hours. This estimate takes into consideration the fact that this rule provides certain "declared" UDOC plant sites (i.e., plant sites that anticipate producing one or more PSF chemicals during the current calendar year, in quantities that would require them to submit an Annual Declaration on Past Activities to BIS, but that would be below the CWCR inspection threshold level for UDOCs) with the option of submitting their Annual Declaration on Past Activities earlier than normally required (i.e., December 15th of the year in which the UDOC activities take place, instead of February 28th of the following year), in lieu of submitting a Change in Inspection Status Form.

This rule also makes several amendments to the CWCR records review and recordkeeping requirements, none of which will affect the burden hours and associated costs under the approved collection (i.e., Control Number 0694-0091). This rule amends Section 716.4(e) of the CWCR to: (1) Clarify the extent to which an OPCW Inspection Team will have access to a facility's records that are related to activities that took place at the facility during the previous calendar year (by requiring facilities undergoing inspection to provide the Inspection Team with access to all supporting materials and documentation used by the facility to prepare declarations and to otherwise comply with the CWCR, including records related to activities that have taken place at the facility since the beginning of the previous calendar year, i.e., up to and including the date of the inspection) and (2) ensure that the CWCR records review requirements for inspections fully conform with the inspection aims described in Part 716 of the CWCR (by requiring facilities to make available to the Inspection Team all supporting materials and documentation associated with the movement into, around, and from the facility of declared chemicals and their feedstock or any product chemicals formed from such chemicals and feedstock). Consistent with the changes to Section 716.4(e) of the CWCR, this final rule amends the recordkeeping provisions in Section 721.2(a) of the CWCR to specifically require that each facility subject to inspection under Part 716 of the CWCR retain all records associated with the movement into, around, and from the facility of declared chemicals and their feedstock or any product chemicals formed from such chemicals.

In order to assess the extent to which requiring facilities to maintain and make available records to verify the

non-diversion of CWC Schedule 1 and Schedule 2 chemicals would affect the burden hours and associated costs under the approved collection (Control Number 0694-0091), BIS conducted a voluntary survey of nine facilities, requesting these facilities to estimate the time that would be required to prepare and maintain records used to determine non-diversion of CWC Schedule 1 and Schedule 2 chemicals (e.g., records on chemical production, processing, consumption, inventory, transfers, and other dispositions). All five of the facilities that responded to the voluntary survey indicated that they already use and maintain such records to prepare their declarations (in accordance with the requirements of the CWCR) and for other internal procedures. Based on the results of this survey, BIS determined that amending the CWCR to require declared chemical facilities to maintain and make available records for verifying the non-diversion of CWC Schedule 1 and Schedule 2 chemicals would not impose any additional burden or associated costs under the approved collection.

BIS also assessed the extent to which burden hours and associated costs under the approved collection (Control Number 0694-0091) would be affected by requiring facilities to provide the Inspection Team with access to all supporting materials and documentation used by the facility to prepare declarations and to otherwise comply with the CWCR, including records related to activities that have taken place at the facility since the beginning of the previous calendar year (i.e., up to and including the date of the inspection). BIS determined that there would be no additional burden or associated costs under the approved collection, as a result of this recordkeeping requirement, because facilities already maintained and provided access to such records in order to comply with the declaration, recordkeeping, and/or inspection requirements in the CWCR.

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, 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 final rule, if promulgated, would not have a significant economic impact on a substantial number of small entities for the reasons explained below. No comments were received on the economic impact of the rule. Consequently, BIS did not prepare a final regulatory flexibility analysis.

Small entities include small businesses, small organizations and small governmental jurisdictions. For purposes of assessing the impact of this final 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 final rule will 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 (CWCR). Although BIS estimates that the majority of these 297 companies are businesses that have 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 final rule, BIS assumes that the 297 companies are small entities.

The changes made by this final rule will not affect a substantial number of small entities. This final rule amends section 715.1(d) of the CWCR to add a new requirement for the submission of a Change in Inspection Status Form that applies to any "declared" UDOC plant site currently subject to inspection, which anticipates that its production of UDOCs during the current calendar year will be below the inspection threshold level indicated in the CWCR. These UDOC plant sites are required to submit a Change in Inspection Status Form to BIS, by December 15th of the current calendar year, in order to ensure that they will not be subject to inspection during the first 90 days of the next calendar year.

BIS estimates that, of the 691 facilities, plant sites, and trading companies that are affected by the declaration and reporting requirements of the CWCR per calendar year, 600 of these are unscheduled discrete organic chemical (UDOC) plant sites. Of these 600 UDOC plant sites, BIS estimates that no more than 6 UDOC plant sites per calendar year will be required to submit a Change in Inspection Status Form for the purpose of indicating that their annual UDOCs production will be below the inspection threshold level indicated in the CWCR. Since BIS can only estimate the total number of small entities per calendar year that are affected by the declaration and reporting requirements of the CWCR (i.e., 297 small entities, as indicated above), BIS must also estimate the number of small entities that own, operate, or otherwise control UDOC plant sites likely to be affected by this rule. Therefore, based on the estimate that only 6 UDOC plant sites (out of a total of 600 UDOC plant sites) will be required to submit a Change in Inspection Status Form each calendar year, BIS estimates, for the purpose of assessing the impact of this final rule, that no more than 6 small entities per calendar year will be affected by this new CWCR requirement. This estimate assumes that each UDOC

plant site that will be affected by this final rule will be owned, operated, or otherwise controlled by a small entity. Since BIS estimates that no more than 6 small entities per calendar year will be affected by this new CWCR requirement, the requirement will not affect a substantial number of small entities.

Furthermore, the additional recordkeeping and reporting requirements imposed by this final rule will not have a significant economic impact on small entities. BIS estimates that the burden hours for completion and submission of the Change in Inspection Status Form will be 5.1 hours per respondent. The total annual burden hours for this additional collection of information are estimated to be 30.6 hours (i.e., 5.1 burden hours \times 6 respondents). The estimated total annual cost of this additional collection of information for all affected entities will be \$1,163 (30.6 burden hours \times \$38/hour). This estimate takes into consideration the fact that this rule provides certain "declared" UDOC plant sites (i.e., plant sites that anticipate producing one or more PSF chemicals during the current calendar year, in quantities that would require them to submit an Annual Declaration on Past Activities to BIS, but that would be below the CWCR inspection threshold level for UDOCs) with the option of submitting their Annual Declaration on Past Activities earlier than normally required (i.e., December 15th of the year in which the UDOC activities take place, instead of February 28th of the following year), in lieu of submitting a Change in Inspection Status Form. Based on these estimates, the total cost of these additional recordkeeping and reporting requirements will represent only a small percentage of the revenues generated by the affected companies.

Therefore, this final rule will not affect a substantial number of small entities (no more than 6 UDOC plant sites of an estimated 600, per annum) and the total economic impact on the affected entities (i.e., \$1,163) will not be significant. Since the revisions that this rule makes to the CWCR will not impose a significant economic impact on a substantial number of small entities, BIS has not prepared a final regulatory flexibility analysis for this rule.

List of Subjects

15 CFR Part 710

Chemicals, Exports, Foreign Trade, Imports, Treaties.

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 719

Administrative practice and procedure, Chemicals, Exports, Imports, Penalties.

15 CFR Part 721

Reporting and recordkeeping requirements.

■ Accordingly, Parts 710, 715, 716, 719, and 721 of the Chemical Weapons Convention Regulations (15 CFR parts 710–729) are amended as follows:

PART 710—[AMENDED]

■ 1. The authority citation for 15 CFR part 710 continues to read as follows:

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

■ 2. Supplement No. 1 to Part 710 is amended by revising the undesignated center heading “List of States Parties as of March 25, 2006” to read “List of States Parties as of November 1, 2006”, by removing the country “Serbia and Montenegro”, and by adding in alphabetical order the countries “Central African Republic”, “Comoros”, “Montenegro”, and “Serbia”.

PART 715—[AMENDED]

■ 3. The authority citation for 15 CFR part 715 continues to read as follows:

Authority: 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703.

■ 4. Section 715.1 is amended by adding a Note immediately following paragraph (b)(1) and by revising paragraph (d) to read as follows:

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

* * * * *
(b) * * *
(1) * * *

Note to § 715.1(b)(1): If there is a change in the inspection status of your plant site, as described in paragraph (d)(2) of this section, you may submit an Annual Declaration on Past Activities, in lieu of a Change in Inspection Status Form, under the circumstances described in Note 3 to paragraph (d)(2). In this case, the due date for submitting the Annual Declaration on Past Activities to BIS, covering UDOC production

at your plant site during the *current* calendar year, would be December 15th of the *current* calendar year, instead of February 28th of the next calendar year (also see Supplement No. 3 to this part). If you choose to submit your Annual Declaration on Past Activities to BIS by December 15th and, subsequently, you determine that the production by synthesis of UDOCs at your plant site actually exceeded the UDOC inspection threshold level specified in paragraph (d)(1) of this section, you must submit an amendment to your Annual Declaration on Past Activities (see § 715.2 of the CWCR) and indicate, on Form B, the reason your plant site exceeded the UDOC inspection threshold.

* * * * *

(d) *Routine inspections of declared UDOC plant sites.* (1) *Inspection requirement.* A “declared” UDOC plant site is subject to routine inspection by the Organization for the Prohibition of Chemical Weapons (OPCW) (see part 716 of the CWCR) if it produced by synthesis more than 200 metric tons aggregate of UDOCs during the previous calendar year.

(2) *Change in inspection status.* You may complete the Change in Inspection Status Form, to ensure that your facility does not remain subject to inspection during the first 90 days of the next calendar year (i.e., prior to the submission of the U.S. declaration to the OPCW), if:

(i) Your plant site is currently subject to inspection, pursuant to paragraph (d)(1) of this section, based on your plant site’s production by synthesis of UDOCs during the *previous* calendar year; and

(ii) Your plant site’s production by synthesis of UDOCs in the *current* calendar year will be below the inspection threshold level specified in paragraph (d)(1) of this section by the deadline indicated in Supplement No. 3 to this part, and is anticipated to remain below that threshold level through the remainder of the *current* calendar year.

Note 1 to § 715.1(d)(2): Upon receipt of the Change in Inspection Status Form, BIS will inform the Organization for the Prohibition of Chemical Weapons (OPCW) that your plant site is not subject to inspection during the *next* calendar year.

Note 2 to § 715.1(d)(2): If, after submitting your Change in Inspection Status Form to BIS, you determine that the production by synthesis of UDOCs at your plant site actually exceeded the UDOC inspection threshold level specified in paragraph (d)(1) of this section, you must indicate this fact when you submit your Annual Declaration on Past Activities to BIS and indicate, on Form B, the reason your plant site exceeded the UDOC inspection threshold.

Note 3 to § 715.1(d)(2): You may submit the Annual Declaration on Past Activities described in paragraph (b)(1) of this section,

instead of the Change in Inspection Status Form, if you anticipate that UDOC production at your plant site during the *current* calendar year will be below the inspection threshold level specified in paragraph (d)(1) of this section, but you expect your plant site to remain subject to the UDOC declaration requirements in paragraph (a)(1) of this section. In this case, the due date for the Annual Declaration on Past Activities will be December 15th of the *current* calendar year, instead of February 28th of the *next* calendar year. Note that any changes to information contained in the Annual Declaration on Past Activities must be addressed in accordance with the amendment requirements in § 715.2 of the CWCR. For example, if subsequent to the submission of your Annual Declaration on Past Activities to BIS on December 15th, you determine that the production by synthesis of UDOCs at your plant site actually exceeded the UDOC inspection threshold level specified in paragraph (d)(1) of this section, you must submit an amendment to your Annual Declaration on Past Activities (see § 715.2 of the CWCR) and indicate, on Form B, the reason your plant site exceeded the UDOC inspection threshold.

Note 4 to § 715.1(d)(2): Currently inspectable UDOC plant sites that do not submit either a Change in Inspection Status Form or Annual Declaration of Past Activities by December 15th of the *current* calendar year, in accordance with paragraph (d)(2) of this section, will remain subject to inspection through at least the 90-day period at the beginning of the next calendar year.

■ 5. Section 715.4 is amended by revising the section heading and introductory text, by revising paragraph (c), and by adding a new paragraph (d) to read as follows:

§ 715.4 Deadlines for submitting UDOC declarations, No Changes Authorization Forms, Change in Inspection Status Forms, and amendments.

Declarations, No Changes Authorization Forms, Change in Inspection Status 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 CWCR. Required documents under this part include:

(c) *Change in Inspection Status Form*—May be completed and submitted to BIS if your plant site is currently subject to inspection, pursuant to § 715.1(d)(1) of the CWCR, and you anticipate that the production of UDOCs at your plant site during the *current* calendar year will remain below the inspection threshold level indicated therein (i.e., 200 metric tons aggregate); and

(d) Amended declaration.

■ 6. Supplement No. 3 to part 715 is revised to read as follows:

SUPPLEMENT NO. 3 TO PART 715

[Deadlines for Submission of Declarations, No Changes Authorization Forms, Amendments for Unscheduled Discrete Organic Chemical (UDOC) Facilities, and Change in Inspection Status Forms]

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 by synthesis of UDOCs exceeded the applicable declaration threshold in § 715.1(a)(1) of the CWCR.*
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 by synthesis of UDOCs exceeded the applicable declaration threshold in § 715.1(a)(1) of the CWCR.
—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.
Change in Inspection Status Form (applies only if your plant site is currently subject to inspection, pursuant to § 715.1(d)(1) of the CWCR, and you anticipate that the production by synthesis of UDOCs at your plant site during the current calendar year will remain below the inspection threshold level specified therein).	Change in Inspection Status Form.	December 15th of any calendar year in which the production by synthesis of UDOCs is anticipated to be below the inspection threshold level specified in § 715.1(d)(1) of the CWCR.*

* You may submit the Annual Declaration on Past Activities (ADPA) described in § 715.1(b)(1), instead of the Change in Inspection Status Form, if you anticipate that UDOC production at your plant site during the current calendar year will be below the inspection threshold level specified in § 715.1(d)(1), but you expect your plant site to remain subject to the UDOC declaration requirements in § 715.1(a)(1). In this case, the due date for the Annual Declaration on Past Activities will be December 15th of the current calendar year, instead of February 28th of the next calendar year.

PART 716—[AMENDED]

■ 7. The authority citation for 15 CFR part 716 continues to read as follows:

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

■ 8. Section 716.1 is amended by adding a new Note 3 to paragraph (b)(4) to read as follows:

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

* * * * *
(b) * * *
(4) * * *

Note 3 to paragraph (b)(4): Any UDOC plant site that is eligible, in accordance with § 715.1(d)(2) of the CWCR, to submit a Change in Inspection Status Form or an Annual Declaration on Past Activities by December 15th of the current calendar year (*i.e.*, a plant site that will be below the inspection threshold level indicated in paragraph (b)(4) of this section during the current calendar year), but that fails to do so, will remain subject to inspection through at least the 90-day period at the beginning of the next calendar year.

* * * * *

■ 9. Section 716.4 is amended by revising paragraph (e) to read as follows:

§ 716.4 Scope and conduct of inspections.

* * * * *

(e) *Records review.* (1) The facility must provide the Inspection Team with access to all supporting materials and documentation used by the facility to

prepare declarations and to otherwise comply with the requirements of the CWCR. These supporting materials and documentation shall include records related to activities that have taken place at the facility since the beginning of the previous calendar year, regardless of whether or not the facility has submitted its current year Annual Declaration on Past Activities to BIS at the time of the inspection. The facility shall also make available for inspection all records associated with the movement into, around, and from the facility of declared chemicals and their feedstock or any product chemicals formed from such chemicals and feedstock. All supporting materials and documentation subject to the requirements of this paragraph (e) must be retained by the facility in accordance with the requirements of § 721.2 of the CWCR. The facility also must permit access to and copying of these records, upon request by BIS or any other agency of competent jurisdiction, in accordance with the requirements of § 721.1 of the CWCR.

(2) The facility must provide access to these supporting materials and documentation 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.

(3) The facility must provide the Inspection Team with appropriate accommodations in which to review these supporting materials and documentation.

(4) If a facility does not have access to supporting materials and documentation for activities that took place under previous ownership, because such records were not transferred to the current owner of the facility by the previous owner (*e.g.*, as part of the contract involving the sale of the facility), 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. However, the current owner of a facility, upon receiving notification of an inspection (see § 716.5 of the CWCR), is responsible for informing BIS if the previous owner did not transfer records for activities that took place under the previous ownership—this will allow BIS to contact the previous owner of the facility, to arrange for access to such records, if BIS deems them relevant to the inspection activities.

PART 719—[AMENDED]

■ 10. The authority citation for 15 CFR part 719 continues to read as follows:

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.

§ 719.3 [Amended]

- 11. Section 719.3 is amended:
- a. By revising the dollar amount “\$11,000” to read “\$50,000” in paragraph (b) and in the footnote to paragraph (b); and
- b. By revising the parenthetical “(15 CFR 6.4(a)(3))” at the end of the footnote to paragraph (b) to read “(15 CFR 6.4(a)(5))”.

PART 721—[AMENDED]

- 12. The authority citation for 15 CFR part 721 continues to read as follows:

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

- 13. Section 721.2 is amended by revising paragraph (a) to read as follows:

§ 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 CWCR 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. Each facility subject to inspection under Part 716 of the CWCR must retain all supporting materials and documentation associated with the movement into, around, and from the facility of declared chemicals and their feedstock or any product chemicals formed from such chemicals and feedstock. In the event that a declared facility is sold, the previous owner of the facility must retain all such supporting materials and documentation that were not transferred to the current owner of the facility (*e.g.*, as part of the contract involving the sale of the facility)—otherwise, the current owner of the facility is responsible for retaining such supporting materials and documentation. Whenever the previous owner of a declared facility retains such supporting materials and documentation, the owner must inform BIS of any subsequent change in address or other contact information, so that BIS will be able to contact the previous owner of the facility, to arrange for access to such records, if BIS deems them relevant to inspection activities involving the facility (see § 716.4 of the CWCR).

* * * * *

Dated: March 21, 2007.
Christopher A. Padilla,
Assistant Secretary for Export Administration.
 [FR Doc. E7-5594 Filed 3-27-07; 8:45 am]
BILLING CODE 3510-33-P

FEDERAL TRADE COMMISSION

16 CFR Part 311

Test Procedures and Labeling Standards for Recycled Oil

AGENCY: Federal Trade Commission.
ACTION: Final rule.

SUMMARY: The Federal Trade Commission (“FTC” or “Commission”) has completed its regulatory review of the Test Procedures and Labeling Standards for Recycled Oil (“Recycled Oil Rule” or “Rule”), as part of the Commission’s systematic review of all current Commission regulations and guides. The Commission, with the exception of incorporating by reference American Petroleum Institute Publication 1509, Fifteenth Edition, and updating incorporation by reference approval language, has determined to retain the Recycled Oil Rule in its current form.

DATES: This action is effective as of March 28, 2007. The incorporation by reference of the American Petroleum Institute Publication 1509, Fifteenth Edition, listed in this Rule, is approved by the Director of the Federal Register as of March 28, 2007.

ADDRESSES: Requests for copies of this notice should be sent to the Consumer Response Center, Room 130, Federal Trade Commission, 600 Pennsylvania Ave., NW., Washington, DC 20580. The notice also is available on the Internet at the Commission’s Web site, <http://www.ftc.gov>.

FOR FURTHER INFORMATION CONTACT: Janice Podoll Frankle, (202) 326-3022, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580. E-mail: jfrankle@ftc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission has determined, as part of its oversight responsibilities, to review its rules and guides periodically to seek information about their costs and benefits, as well as their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission.

II. Background

Section 383 of the Energy Policy and Conservation Act of 1975 (“EPCA”), 42 U.S.C. 6363, mandated that the FTC promulgate a rule prescribing testing procedures and labeling standards for recycled oil. This section of EPCA is intended to encourage the recycling of used oil, promote the use of recycled oil, reduce consumption of new oil by promoting increased utilization of recycled oil, and reduce environmental hazards and wasteful practices associated with the disposal of used oil. 42 U.S.C. 6363(a).

EPCA also mandated that the National Institute of Standards and Technology (“NIST”) develop (and report to the FTC) test procedures to determine whether processed used oil is substantially equivalent to new oil for a particular end use. 42 U.S.C. 6363(c). Within 90 days after receiving NIST’s test procedures, EPCA required that the FTC prescribe, by rule, substantial equivalency test procedures, as well as labeling standards for recycled oil. 42 U.S.C. 6363(d)(1)(A). EPCA also required that the Commission’s rule permit any container of recycled oil to bear a label indicating any particular end use (*e.g.*, engine lubricating oil), for which a determination of “substantial equivalency” with new oil has been made in accordance with the NIST test procedures. 42 U.S.C. 6363(d)(1)(B).

On July 27, 1995, NIST reported to the FTC test procedures for determining the substantial equivalence of processed used engine oil with new engine oil. The NIST test procedures and performance standards are the same as those adopted by the American Petroleum Institute (“API”) for engine lubricating oils generally, regardless of origin. The Rule, 16 CFR part 311, which was issued on October 31, 1995 (60 FR 55421), implements EPCA’s requirements by permitting a manufacturer or other seller to “represent, * * * on a container of processed used oil, that such oil is substantially equivalent to new oil for use as engine oil only if the manufacturer has determined that the oil is substantially equivalent to new oil for use as engine oil” in accordance with the test procedures entitled “Engine Oil Licensing and Certification System,” American Petroleum Institute Publication 1509, Thirteenth Edition, January 1995.¹

¹ The Commission’s 1995 **Federal Register** notice explained that the Rule “does not require manufacturers to * * * explicitly state that their engine oil is substantially equivalent to new oil” and does not mandate any qualifiers or specific disclosures. (60 FR 55418-55419). Until NIST