



Webcast: Proposed Changes to the CWCR

Treaty Compliance Division
Bureau of Industry and Security
U.S. Department of Commerce



Webcast Overview

- Regulations/statistics
- General information
- Declaration issues
- Inspection issues
- Current activities



Welcome!

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Regulatory Chronology

- The Bureau of Industry and Security (BIS) published the export related provisions of the Chemical Weapons Convention (CWC) in the Export Administration Regulations on May 18, 1999.
- BIS published interim CWC Regulations (CWCR) implementing the CWC on December 30, 1999.
- Amendment permitting electronic submission of declarations/reports published on January 16, 2004.
 - I.e., implemented Web-Data Entry Software for Industry.
- Proposed amendments to the CWCR published on December 7, 2004.
 - 30 day public comment period expires on January 6, 2005.



Statistics

Chemical Regime	CY 2004 Declared/Inspectable Plant Sites (includes CY03 ADPA & CY05 ADAA)	Inspections Since May 2000 (initial/routine)
Schedule 1	1/1	2/1
Schedule 2	27/18	26/11
Schedule 3	58/56	11
UDOC	605/595	4
Totals	691/670	55



Statistics

- Nine inspections conducted in the United States during CY 2004
 - 1 Schedule 1 (Routine)
 - 3 Schedule 2 (Routine)
 - 1 Schedule 2 (Initial)
 - 4 Schedule 3 (Routine)
- Anticipate conducting 10 inspections in CY 2005, including several unscheduled discrete organic chemical (UDOC) plant sites.



General Information



Part 710 - General Information and Overview of the CWCR

Added definitions

- advance notifications of Schedule 1 chemicals
- protective purposes in relation to Schedule 1 chemicals
- inspection notification
- inspection site
- intermediate and transient intermediate chemicals
- International Traffic in Arms Regulations (ITAR)
- production of Schedule 1, 2 and 3 chemicals
- production by synthesis



Part 710 – Definitions of Production

- The proposed rule adds a new **Supplement No. 2**, Definitions of Production, in which the different treaty definitions of production in relation to Schedule 1, 2 and 3 chemicals and UDOCs are provided in table format.

Schedule 1	Schedule 2 and 3	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	



Part 710 - General Information and Overview of the CWCR

- ***List of States Parties*** – The proposed rule updates Supplement No. 1, List of States Parties to the CWC, to add new countries that have ratified the treaty.
 - Currently 167 States Parties



Scope & Compliance Reviews

§710.2(a) Scope

- Clarified to clearly delineate the CWC Regulations apply to all persons and facilities in the United States.



§711.3 Compliance

- Added to authorize BIS to contact facilities or persons to determine compliance with the CWC Regulations.



Part 710 - Scope

- Clarified Scope of the CWCR
- All persons and facilities located in the United States, except the noted U.S. Government facilities, will be subject to the CWCR.
 - Currently, the CWCR limits the scope to only those persons or facilities that submit declarations, reports or advanced notifications.

§710.2



Part 711 – Compliance Review

- BIS may request information from persons and facilities subject to the CWCR to determine their compliance with the reporting, declaration and advanced notification requirements.
- Any person or facility receiving such a request will be required to provide a response within a specified time-frame.
- This does **not** impose a requirement to create new records or maintain existing records.
- However, BIS may request such persons or facilities to submit supporting records.

§711.3



Declaration Issues



Part 711 - Electronic Filing

Submission of Electronic Declarations and Reports Web-DESI

- Incorporates amendments to CWCR published on January 16, 2004.
- Allows persons and facilities to submit declarations, reports, and amendments over the Internet through Web-Data Entry Software for Industry (Web-DESI).
 - Web-DESI is a voluntary electronic tool.
- To receive authorization to use Web-DESI, submit a Certification Letter
 - See Web-DESI certification procedure at www.cwc.gov
 - Authorization generally granted within 48 hours of receipt



Part 711 - Electronic Filing

- Current Web-DESI users include:
 - 87 plant sites
 - 122 users
 - Represents only 12.5% of plant sites
- Remember to submit your Web-DESI Certification Letter as soon as possible.



Part 711 – Declarations

- Facilities may still submit paper declarations, reports and amendments:
 - Available on website: www.cwc.gov
 - Version January 2004
 - Web-DESI produces January 2004 forms
- Where to submit declarations, reports, amendments:

Treaty Compliance Division
Bureau of Industry and Security
U.S. Department of Commerce
1555 Wilson Blvd., Suite 700
Arlington, VA 22209-2405

§711.7



Part 711 – Declarations

NOTE: Effective December 31, 2004, BIS will no longer:

- Maintain the electronic tool, DESI (PC based system)
- Accept forms dated January 2001



Parts 712-715: Amendments

- ***Deadlines*** for submission of amendments to declarations and reports have been codified to implement BIS's current operational practices.
- New requirement and deadline for submission of amendments resulting from an ***inspection finding***.

§§712.7, 713.5, 714.4, 715.2



Parts 712– 715: Amendment Deadlines

TYPE OF CHANGE	DUE DATE
Chemical and activities	15 days
Export and import information	15 days
Ownership of a company, plant site or plant	30 days
Internal company information (e.g., name change, personnel change)	30 days
Inspection finding	45 days

§§712.7, 713.5, 714.4, 715.2



Parts 712– 715: Amendments

- Ownership changes – sale of company, plant site or certain plants on a plant site:
 - Seller Information
 - Buyer Information
 - Who will submit declaration/part year declaration
 - Records
 - Plant Site Codes (USC Codes)
- Amendments for ownership changes are required because the new owner of the plant site is responsible for hosting an inspection, not the original owner that submitted the declaration(s) that will be verified.

§§712.7, 713.5, 714.4, 715.2



Parts 712-715: RWA

Declarations and Reports Returned Without Action (RWA)

- New provision for RWA'ing declarations and reports that BIS determines are not required under the CWCR.
 - codifies BIS's practice in order to protect proprietary information from release under Freedom of Information Act requests.

§§712.8, 713.6, 714.5, 715.3



Part 712 -- Activities Involving Schedule 1 Chemicals

- ***Initial Declarations***

- Clarifies that Initial Declarations submitted in February 2000 remain valid until rescinded.
- New facilities intending to produce more than 100 grams aggregate must submit an initial declaration at least 200 days in advance of commencing such activity.



Part 712 -- Activities Involving Schedule 1 Chemicals

- ***Protective Purposes*** – Clarification that Schedule 1 chemicals may not be produced for protective purposes. (A definition for protective purposes is also proposed in Part 710.) **§712.2(a)**
- ***Advance Notifications for Exports and Imports*** – Advanced notifications for proposed exports or imports of 5 milligrams or less of saxitoxin for medical/ diagnostic purposes must be submitted to BIS at least 3 days prior to transfer, in accordance with an OPCW decision.
 - Currently, the CWCR require a general 45 day advance notification.**§712.6**



Parts 713 & 714 – Activities Involving Schedule 2 & 3 Chemicals

- ***Initial Declarations and Reports, & Declarations on Past Production for Chemical Weapons Purposes:*** Removes one-time reporting requirements for:
 - Initial Declarations.
 - Initial Reports on Exports and Imports.
 - Declaration on Chemical Produced for Chemical Weapons Purposes.



Part 713 -- Activities Involving Schedule 2 Chemicals

- ***Prohibition on Exports and Imports*** – Prohibition against exports to and imports from States not Party to the CWC.
- ***Exemptions on Exports and Imports of Mixtures*** **§713.1(a)**
 - Implementation of an OPCW decision that mixtures containing $\leq 1\%$ by weight of a Schedule 2A/2A* or $\leq 10\%$ by weight of a Schedule 2B are exempt from the transfers prohibition.
 - Products identified as consumer goods packaged for retail sale for personal use or packaged for individual use are exempt from the prohibition.

§713.1(b)(2)-(4)



Part 713 -- Activities Involving Schedule 2 Chemicals

- ***Additionally Planned Activities:*** Declaration form limitation (“not to exceed 10 countries”):
 - Section 713.4 has been amended to eliminate the limit on destinations.
 - Form 2-3 has been corrected. **§713.4**
- ***Production*** – Implements an OPCW decision clarifying the scope of production activities to include any associated processing steps of the Schedule 2 chemical and intermediates.
 - Only transient intermediates are exempted.

§713.2(a)(2)



Part 714 -- Activities Involving Schedule 3 Chemicals

- ***Aggregating*** – Added clarification: “Do not aggregate amounts of production from plants on the plant site that did not individually produce a Schedule 3 in amounts greater than 30 metric tons.”
§714.1(c)(1)
- ***Purposes of Production*** – Clarified the categories on Schedule 3 Form 3-3.



Part 715 – Activities involving UDOCs

- ***Initial Declarations Past Production*** -- Removes one-time reporting requirements for Initial Declarations.
- ***UDOC “No Changes” Certification Form*** – Adds new form that may be submitted by a plant site to declare no updates or changes to information declared in the previous Annual Declaration on Past Activities.
 - The plant site’s activities continue to be declared to the OPCW and remain subject to inspection (if applicable).

§715.1(b)(1)(ii)



Part 715 – Activities involving UDOCs

- ***Aggregating*** – Added a clarification note: “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....”
- ***Polymers and Oligomers*** – Based on a public comment, clarifies that polymers and oligomers consist of two or more repeating units.

§715.1(a)(1)(ii)

§715.1(a)(2)(ii)(A)



Parts 712-715 – Deadlines

Supplements No. 2 and 3

Table on Deadlines

- Updates the due dates by removing the requirement for initial declarations and declarations for CW purposes.
- The due date for Schedule 1 Annual Declarations on Anticipated Activities changed from August 3rd to September 3rd.



Inspection Issues



Part 716 - Initial and Routine Inspections of Declared Facilities

- ***Initial inspection*** is required for a new Schedule 2 plant site within the first year after submitting a declaration if at least one plant on the plant site exceeds the applicable threshold quantity.
- ***Facility Agreements*** – Schedule 1 facility agreements, to the extent possible, will be concluded by the U.S. National Authority (in coordination with BIS) with the OPCW before a new facility can produce more than 100 grams aggregate of Schedule 1 chemicals.

§716.1(b)(2)(ii)

§716.2(a)(2)(i)(B)



Part 716 - Initial and Routine Inspections of Declared Facilities

- **Scope** of inspections may include visual inspection of parts or areas of the *plant site* in order to address any ambiguity that might arise. **§716.4(b)(1)(iii)**
- **Photographs** may be taken and **formal interviews** of facility personnel may be conducted. **§716.4(b)(1)(iv)**
- **ITAR*-controlled information** shall not be divulged to the OPCW Inspection Team without U.S. Government authorization. **§716.4(b)(3)**

*International Traffic in Arms Regulations (ITAR), 22 CFR 120 et seq.



Part 716 - Initial and Routine Inspections of Declared Facilities

- ***Pre-Inspection Briefing topics*** – Based on public comments, the following topics are now mandatory: site health and safety, flow diagram, and declared operations units. **§716.4(c)**
- ***Records Review***
 - Facility must provide the inspection team appropriate accommodations to review relevant documents and must ensure that all relevant information will be available.
 - Whenever a facility does not have access to records for activities that took place under a previous ownership, the Host Team will contact the previous owner of the facility to request such records. **§716.4(e)**



Part 716 - Initial and Routine Inspections of Declared Facilities

- ***Samples*** – Analysis of samples provided by the facility will be restricted to verifying the absence of undeclared scheduled chemicals.

§716.7

- ***Post-Inspection Activities***

- BIS will send facilities a post-inspection letter with instructions based on decisions made during the inspection (i.e., amendments).
- With the letter, BIS will send a copy of the final inspection report to the facility for its review.
 - Facilities may submit comments to BIS, and BIS will consider those comments, to the extent possible, when commenting on the final report with the OPCW.

§716.10



Part 717 – Challenge Inspection Procedures

- **Clarification Requests** – BIS will contact a person or facility subject to an Article IX clarification request as early as practical prior to the issuance of an official written request for clarification.
 - A response to a clarification request should be submitted within five working days from receipt. **§717.1(b)**
- **Consent to Challenge Inspection** – Establishes four (4) hour time limit within which a person or facility must respond to a challenge inspection notification.
 - If consent is not granted within four hours, BIS will seek a criminal warrant. **§717.2(b)(2)(ii)**



Part 717 – Challenge Inspection Procedures

- ***Notification*** – In light of public comments, BIS has amended §717.2(b) to clarify that notification for a challenge inspection will occur “if possible and when such notification is deemed appropriate.”

§717.2(b)



Part 717 – Challenge Inspection Procedures

- ***Pre-Inspection Briefing*** – New requirement for facility representatives to provide a pre-inspection briefing prior to the commencement of the challenge inspection that includes:
 - the types of activities being conducted at the facility;
 - safety procedures that must be followed during the inspection; and
 - administrative and logistical arrangements necessary to facilitate the inspection.

Limited to three (3) hours.

§717.2(d)(5)



Part 717 – Challenge Inspection Procedures

- ***Samples*** – Restrict analysis of samples to verifying the presence or absence of scheduled chemicals or appropriate degradation products. **§717.3**
- ***Post-Inspection Activities***
 - BIS will send facilities a post-inspection letter with instructions based on decisions made during the inspection (i.e., amendments).
 - With the letter, BIS will send a copy of the final inspection report to the facility for its review.
 - Facilities may submit comments to BIS, and BIS will consider those comments, to the extent possible, when commenting on the final report with the OPCW. **§717.5**



Current Activities



What's New?

- OPCW issues
 - Outstanding Industry issues
 - Production
 - Mixture Rules for Schedule 2A/2A*
 - UDOC Selection Methodology
 - Transfer Regime Harmonization
 - Personnel Issues
 - Schedule 2 facility agreements



What's New?

- Challenge inspection field trial exercise
 - Held at an active commercial industrial facility
 - Served as a test for Government procedures and policies
 - Included a criminal warrant procedure with the local magistrate
- Enhancing effectiveness of OPCW
 - Article VII Implementation by all States Parties
 - Implementation Assistance Programme – IAP
- Compliance Activities



Implementation of Plan of Action Provisions

	Established a National Authority	Enacted Legislation	Submitted Initial Article VI Declarations
States Parties in compliance	136	68	71 ²
Percentage of States Parties in compliance ¹	81%	41%	43%

1 Based on a total of 167 States Parties to the CWC (as of November 15, 2004)

2 As of August 31, 2004. It is unclear how many of the States Parties that have not submitted a declaration have nothing to declare.



Conclusion

- Public comment period on the CWCR proposed amendments closes on January 6, 2005.
- Additional questions?

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