



DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 710, 712, and 745

[Docket No. 201211-0336]

RIN 0694-AH94

Chemical Weapons Convention Regulations and the Export Administration Regulations: Additions to Schedule 1(A) of the Annex on Chemicals to the Chemical Weapons Convention

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) and the Export Administration Regulations (EAR) to reflect recent additions to Schedule 1(A) of the Annex on Chemicals to 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). This final rule also amends the definition of “production” in the CWCR to clarify the scope of

this term as it applies to declarations regarding the production of “Schedule 1,” “Schedule 2,” or “Schedule 3” chemicals.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: For questions on the CWCR requirements for “Schedule 1” chemicals, contact Erica Sunyog, Treaty Compliance Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, U.S. Department of Commerce, Phone: (202) 482-6237.

SUPPLEMENTARY INFORMATION:

Background

The Chemical Weapons Convention (hereinafter, “CWC” or “Convention”), which entered into force on April 29, 1997, is an international arms control treaty whose object and purpose is to eliminate an entire category of weapons of mass destruction by prohibiting the development, production, acquisition, stockpiling, retention, transfer or use of chemical weapons by States Parties. The CWC States Parties have agreed to destroy any stockpiles of chemical weapons they may hold and any facilities that produced them, as well as any chemical weapons they have abandoned on the territory of other States Parties. The CWC States Parties also have agreed to implement a comprehensive data declaration, notification, and inspection regime for those toxic chemicals and their precursors listed in Schedule 1, 2 or 3 in the CWC Annex on Chemicals to provide transparency and to verify that their public and private sectors are not engaged in activities prohibited under the CWC.

In addition, each State Party has agreed to adopt domestic legislation to implement its obligations under the Convention and to designate or establish a National Authority to serve as the national focal point for effective liaison with the Organization for the Prohibition of Chemical Weapons (OPCW) and other States Parties. The designated U.S. National Authority is the Bureau of Arms Control, Verification and Compliance, U.S. Department of State. The OPCW was established by the States Parties to achieve the object and purpose of the Convention, to ensure the implementation of its provisions (including those pertaining to international verification of compliance), and to provide a forum for consultation and cooperation among the States Parties. All CWC States Parties are members of the OPCW, which includes the Conference of the States Parties, the Executive Council, and the Technical Secretariat.

The provisions of the CWC that affect commercial activities involving scheduled chemicals (including “Schedule 1” chemicals) are implemented, pursuant to the Chemical Weapons Convention Implementation Act of 1998 (CWCIA) (22 U.S.C. 6701 *et seq.*) and Executive Order 13128 (64 FR 34703, June 28, 1999), by the Chemical Weapons Convention Regulations (CWCR) (see 15 CFR parts 710-722) and the Export Administration Regulations (EAR) (see 15 CFR 742.18 and 15 CFR part 745), both of which are administered by the Bureau of Industry and Security (BIS). Specifically, BIS maintains the list of “Schedule 1” chemicals identified in the CWC Annex on Chemicals in Supplement No. 1 to part 712 of the CWCR and as part of Supplement No. 1 to part 745 of the EAR. BIS also administers the CWC “Schedule 1” chemical declaration, reporting, notification, and verification requirements that are described in part 712 of the CWCR. In addition, § 745.1 of the EAR describes the advance notification and annual report requirements that apply to exports of “Schedule 1” chemicals.

The CWC identifies the toxic chemicals and immediate precursors listed under “Schedule 1” in the CWC Annex on Chemicals as posing a high risk to the object and purpose of the Convention. Consistent with Part VI of the CWC Verification Annex, the CWCR restrict commercial production of “Schedule 1” chemicals to research, medical, or pharmaceutical purposes only. See 15 CFR 710.1, at definition of *Purposes not prohibited by the CWC*, and 15 CFR 710.2(b), *Activities subject to the CWCR*. The CWCR prohibit commercial production of “Schedule 1” chemicals for “protective purposes” (see 15 CFR 712.2(a)) consistent with Presidential Decision Directive (PDD) 70 (December 17, 1999), which effectively limits production for such purposes to facilities operated by the Department of Defense. These CWCR restrictions and prohibitions apply to all persons and facilities located in the United States, except certain U.S. Government facilities – see 15 CFR 710.2(a). In addition to these general requirements and prohibitions pertaining to “Schedule 1” chemicals, the CWCR:

(1) Prohibit the import of “Schedule 1” chemicals from States not Party to the CWC (15 CFR 712.2(b));

(2) Require annual declarations by facilities engaged in the production of “Schedule 1” chemicals in excess of 100 grams aggregate per calendar year (i.e., declared “Schedule 1” facilities) for purposes not prohibited by the CWC (15 CFR 712.5(a)(1) and (a)(2));

(3) Provide for government approval of declared “Schedule 1” facilities (15 CFR 712.5(f));

(4) Provide that declared “Schedule 1” facilities are subject to initial and routine inspection by the OPCW (15 CFR 712.5(e) and 716.1(b)(1));

(5) Require 200 days advance notification of establishment of new “Schedule 1” production facilities producing greater than 100 grams aggregate of “Schedule 1” chemicals per calendar year (15 CFR 712.4);

(6) Require advance notification and annual reporting to the Technical Secretariat of the OPCW of all imports and exports of “Schedule 1” chemicals to, or from, other States Parties to

the CWC (15 CFR 712.6, 742.18(a)(1) and 745.1); and

(7) Prohibit the export of “Schedule 1” chemicals to States not Party to the CWC (15 CFR 742.18(a)(1) and (b)(1)(ii)).

This final rule amends part 712 of the CWCR and part 745 of the EAR to reflect recent additions to Schedule 1(A) of the CWC Annex on Chemicals, as described below. In addition, this rule amends the definition of “production” in part 710 of the CWCR to clarify the scope of this term as it applies to declarations regarding the production of “Schedule 1,” “Schedule 2,” or “Schedule 3” chemicals.

This rule amends part 712 of the CWCR and part 745 of the EAR to add three “Schedule 1” chemical families and one individual “Schedule 1” chemical to both sets of regulations, consistent with two decisions adopted by the States Parties to the CWC during the OPCW’s 24th Conference of the States Parties, held in The Hague, the Netherlands, from November 25 – 29, 2019. Based on two separate proposals submitted to the Director-General of the OPCW, one by the United States, Canada and the Netherlands, and the other by the Russian Federation, these decisions added three chemical families and one individual chemical to “Schedule 1” in the CWC Annex on Chemicals. The OPCW agreements are documented in OPCW Decisions C-24/DEC.4 and C-24/DEC.5 and may be obtained from the OPCW Web site (<http://www.opcw.org>). On December 10, 2019, the Director-General notified all States Parties and the Depositary of the CWC (i.e., the Secretary-General of the United Nations) of the adoption of these decisions by the Conference of the States Parties. Pursuant to subparagraph 5(g) of Article XV of the CWC, these changes to the Annex on Chemicals entered into force for all States Parties 180 days after the date of this notification, that is, on June 7, 2020.

The additions to “Schedule 1” of the CWC Annex on Chemicals are as follows:

Schedule 1

A. Toxic chemicals:

- 1) P-alkyl (H or $\leq C_{10}$, incl. cycloalkyl) N-(1-(dialkyl($\leq C_{10}$, incl. cycloalkyl)amino))alkylidene(H or $\leq C_{10}$, incl. cycloalkyl) phosphoramidic fluorides and corresponding alkylated or protonated salts
e.g. N-(1-(di-n-decylamino)-n-decylidene)-P-decylphosphoramidic fluoride (CAS No. 2387495-99-8)
Methyl-(1-(diethylamino)ethylidene)phosphoramidofluoridate (CAS No. 2387496-12-8)
- 2) O-alkyl (H or $\leq C_{10}$, incl. cycloalkyl) N-(1-(dialkyl($\leq C_{10}$, incl. cycloalkyl)amino))alkylidene(H or $\leq C_{10}$, incl. cycloalkyl) phosphoramidofluoridates and corresponding alkylated or protonated salts
e.g. O-n-Decyl N-(1-(di-n-decylamino)-n-decylidene)phosphoramidofluoridate (CAS No. 2387496-00-4)
Methyl (1-(diethylamino)ethylidene)phosphoramidofluoridate (CAS No. 2387496-04-8)
Ethyl (1-(diethylamino)ethylidene)phosphoramidofluoridate (CAS No. 2387496-06-0)
- 3) Methyl-(bis(diethylamino)methylene)phosphoramidofluoridate (CAS No. 2387496-14-0)
- 4) Carbamates (quaternaries and bisquaternaries of dimethylcarbamoyloxypyridines)
Quaternaries of dimethylcarbamoyloxypyridines:
1-[N,N-dialkyl($\leq C_{10}$)-N-(n-(hydroxyl, cyano, acetoxy)alkyl($\leq C_{10}$)) ammonio]-n-[N-(3-dimethylcarbamoyl- α -picolinyl)-N,N-dialkyl($\leq C_{10}$) ammonio]decane dibromide (n=1-8)
e.g. 1-[N,N-dimethyl-N-(2-hydroxy)ethylammonio]-10-[N-(3-dimethylcarbamoyl- α -picolinyl)-N,N-dimethylammonio]decane dibromide (CAS No. 77104-62-2)

Bisquaternaries of dimethylcarbamoyloxypyridines:

1,n-Bis[N-(3-dimethylcarbamoyl- α -picolyl)-N,N-dialkyl($\leq C_{10}$) ammonio]-alkane-(2,(n-1)-dione) dibromide (n=2-12)

e.g. 1,10-Bis[N-(3-dimethylcarbamoyl- α -picolyl)-N-ethyl-N-methylammonio]decane-2,9-dione dibromide (CAS No. 77104-00-8).

Notice of Inquiry on the Impact of Proposed Additions to CWC “Schedule 1”

Pursuant to Condition 23 to Senate Resolution 75 (S. Res. 75, April 24, 1997), and as delegated from the President, the Secretary of State, in coordination with other U.S. Government departments and agencies, including the Department of Commerce, must submit a report to the Senate Committee on Foreign Relations detailing, *inter alia*, the likely impact on United States industry of the proposed addition of a chemical or biological substance to a schedule in the CWC Annex on Chemicals. Consistent with Condition 23, on August 14, 2019, BIS published a notice of inquiry (84 FR 40389) that requested public comments as to whether the legitimate commercial activities and interests of chemical, biotechnology, and pharmaceutical firms in the United States would be significantly harmed by the limitations that would be imposed on access to, and production of, the compounds included in certain chemical families that had been proposed for addition to “Schedule 1” in the CWC Annex on Chemicals.

BIS did not receive any public comments in response to this notice of inquiry. Of the chemical families at issue, three families of chemicals and one individual chemical from a fourth family, as described above, were added to “Schedule 1” by the decisions adopted at the Conference of the States Parties in November 2019. These additions to “Schedule 1” are reflected in the amendments to the CWCR and the EAR described below.

Amendments to Supplement No. 1 to part 712 of the CWCR (Schedule 1 Chemicals)

Supplement No. 1 to part 712 of the CWCR identifies “Schedule 1” chemicals listed in the CWC Annex on Chemicals. This rule amends Supplement No. 1 to: (1) include the three chemical families and one individual chemical that were added to “Schedule 1;” and (2) add a Note 3 following the list of chemicals to explain that the numerical sequence of the “Schedule 1” Toxic Chemicals and Precursors specified therein is not consecutive so as to align with the December 23, 2019, consolidated textual changes to the Annex on Chemicals, which reflect the decisions adopted by the CWC Conference of the States Parties in November 2019. Specifically, the chemicals listed in “Schedule 1(A),” Toxic Chemicals, are numbered 1-8 and 13-16 (the latter includes 16.1 and 16.2), while the chemicals listed in “Schedule 1(B),” Precursors, are numbered 9-12.

This rule does not amend any of the declaration, advance notification, reporting or verification requirements in part 712 of the CWCR that apply to “Schedule 1” chemicals or facilities involved in the production of such chemicals. Although the newly added “Schedule 1” chemicals are now subject to these requirements, BIS estimates that the amendments made by this rule will not significantly affect the public burden imposed by these requirements because very few (if any) commercial facilities in the United States produce these chemicals. Consistent with this estimate, BIS did not receive any responses to its August 2019 notice of inquiry requesting public comments on the impact on U.S. industry of the proposed addition of the families of chemicals at issue to “Schedule 1” of the CWC Annex on Chemicals. As further evidence of the limited scope of any potential commercial applications, these chemicals are defense articles subject to the export licensing jurisdiction of the U.S. Department of State (as described below).

Amendments to Supplement No. 1 to part 745 of the EAR (Schedules of Chemicals)

Supplement No. 1 to part 745 of the EAR includes the three schedules of Chemicals (Schedules 1, 2 and 3) contained in the CWC Annex on Chemicals. This rule amends “Schedule 1” in Supplement No. 1 to reflect the decisions adopted at the November 2019 CWC Conference of the States Parties to add three chemical families and one individual chemical to “Schedule 1” in the CWC Annex on Chemicals. In addition, this rule revises the formats of “Schedule 2 and “Schedule 3” for consistency with the format of “Schedule 1,” as amended by this rule. This rule also adds a Note following the list of chemicals in Supplement No. 1 to explain that the numerical sequence of the “Schedule 1” Toxic Chemicals and Precursors specified therein is not consecutive so as to align with the December 23, 2019, consolidated textual changes to the Annex on Chemicals, which reflect the decisions adopted by the CWC Conference of the States Parties in November 2019. Specifically, the chemicals listed in “Schedule 1(A),” Toxic Chemicals, are numbered 1-8 and 13-16 (the latter includes 16.1 and 16.2), while the chemicals listed in “Schedule 1(B),” Precursors, are numbered 9-12.

This rule does not amend the advance notification and reporting requirements for exports of “Schedule 1” chemicals described in § 745.1 of the EAR, which are, for all practical purposes, a cross-reference to (or general restatement of) the requirements in § 712.6 of the CWCR (except that the CWCR requirements also apply to imports of “Schedule 1” chemicals). Furthermore, these newly added “Schedule 1” chemicals are not subject to the export licensing jurisdiction of BIS under the EAR. All “Schedule 1” chemicals, except ricin and saxitoxin (which are controlled under Export Control Classification Number 1C351 on the Commerce Control List in Supplement No. 1 to part

774 of the EAR), are subject to the export licensing jurisdiction of the Directorate of Defense Trade Controls, Department of State, under the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120-130). Consequently, the conforming amendments made by this rule will not affect the burden imposed on the public by the “Schedule 1” chemical advance notification and reporting requirements described in § 745.1 of the EAR.

Clarification of the definition of “production” in part 710 of the CWCR.

This final rule amends the definition of “production” in § 710.1 of the CWCR to clarify its application to the CWCR’s declaration requirements concerning the production of “Schedule 1,” “Schedule 2,” or “Schedule 3” chemicals. Specifically, this rule clarifies the definition consistent with §§ 712.5(d), 713.2(a)(2)(ii) and 714.1(a)(2)(ii) of the CWCR (as amended by the April 27, 2006, CWCR final rule (81 FR 24918)), whereby “Schedule 1,” “Schedule 2,” or “Schedule 3” chemicals that are intermediates, but not transient intermediates, must be considered when determining if a chemical is subject to the declaration requirements in the CWCR. (See the OPCW Conference of the States Parties Decisions that form the basis of this treatment of such intermediates: C-10/DEC.12, November 10, 2005, “Understanding Relating to the Concept of ‘Captive Use’ in Connection with Declarations of Production and Consumption Under Part VI of the Verification Annex to the Convention;” and C-9/DEC.6, November 30, 2004, “Understanding of the Concept of ‘Captive Use’ in Connection with Declarations of Production and Consumption Under Parts VII and VIII of the Verification Annex to the Chemical Weapons Convention.”)

As amended by this rule, the definition of “production” in § 710.1 of the CWCR is understood (for purposes of the “Schedule 1,” “Schedule 2,” and “Schedule 3” chemical

declaration requirements in the CWCR) to include intermediates, by-products, or waste products that are produced and consumed within a defined chemical manufacturing sequence, where such intermediates, by-products, or waste products are chemically stable and therefore exist for a sufficient time to make isolation from the manufacturing stream possible, but where, under normal or design operating conditions, isolation does not occur.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including: potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits and of reducing costs, harmonizing rules, and promoting flexibility. This final rule has been determined to be not significant for purposes of Executive Order 12866. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 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 requirements of 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 the following collections of information subject to the requirements of the PRA. These collections have been approved by OMB under control numbers 0694-0091 (Chemical Weapons Convention Declaration and Report Handbook and Forms & Chemical Weapons Convention Regulations (CWCR)) and 0694-0117 (Chemical Weapons Convention Provisions of the Export Administration Regulations

(EAR)). The approved information collection under OMB control number 0694-0091 includes CWCR declarations, reports, notifications, and on-site inspections of chemical facilities and carries a total burden estimate of 14,813 hours. The approved information collection under OMB control number 0694-0117 includes Schedule 1 chemical advance notifications and annual reports, Schedule 3 chemical End-Use Certificates, and exports of “technology” to produce certain Schedule 2 and Schedule 3 chemicals and carries a total burden estimate of 42 burden hours.

BIS estimates that the overall increase in costs and burdens due to the implementation of the changes made by this final rule will be minimal, based on the fact that there are very few, if any, commercial applications for the “Schedule 1” chemicals added by this rule to Supplement No. 1 to part 712 of the CWCR and Supplement No. 1 to part 745 of the EAR. Consistent with this estimate, BIS did not receive any responses to its August 2019 notice of inquiry described herein. Additional evidence of the limited scope of potential commercial applications is that the chemicals at issue are defense articles subject to the export licensing jurisdiction of the Department of State. Also, pursuant to § 710.2(a) of the CWCR, certain U.S. Government facilities (e.g., Department of Defense and Department of Energy facilities) are not subject to the CWCR and, consequently, the costs and burdens of the requirements described therein do not apply to such facilities.

In addition, although the newly added “Schedule 1” chemicals are subject to the declaration, advance notification, reporting or verification requirements in part 712 of the CWCR, the fact that these chemicals have few potential commercial applications will, as a practical matter, limit the impact of these requirements. Consequently, the amendments made by this rule will not significantly alter the costs and burdens imposed on the public by such CWCR requirements. Furthermore, because these newly added “Schedule 1” chemicals are defense

articles subject to the export licensing jurisdiction of the Department of State under the ITAR, the conforming amendments made by this rule do not add to, or otherwise affect, any export licensing requirements in the EAR; nor, as a practical matter, will they significantly alter the costs and burdens imposed on the public by the reporting and advance notification requirements described in § 745.1 of the EAR.

Written comments and recommendations for the information collections referenced above should be sent within 30 days of the publication of this final rule to:

www.reginfo.gov/public/do/PRAMain. The public may locate these particular information collections by selecting "Currently under 30-day Review - Open for Public Comments" or by using the search function.

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

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (see 5 U.S.C. 553(a)(1)). Immediate implementation of these amendments is non-discretionary and fulfills the United States' international obligations under the CWC. The CWC is an international arms control treaty prohibiting the development, production, acquisition, stockpiling, retention, transfer or use of chemical weapons by States Parties in order to eliminate an entire category of weapons of mass destruction. The 193 CWC States Parties have agreed to, among other things, implement a comprehensive data declaration, notification, and inspection regime for those toxic chemicals and their precursors listed in Schedules 1, 2 or 3 in the CWC Annex on Chemicals (the Annex). The amendments set forth in this rule

implement two decisions adopted by the States Parties during the OPCW's 24th Conference of the States Parties, held in The Hague, the Netherlands, from November 25 – 29, 2019, and clarify a definition in the CWCR to ensure consistency with the CWCR's declaration requirements regarding the production of "Schedule 1," "Schedule 2," or "Schedule 3" chemicals.

These provisions of the Administrative Procedure Act also are waived for good cause, as unnecessary and contrary to the public interest (see 5 U.S.C. 553(b)(B)). This rule brings the CWCR and the EAR into conformity with recent updates to "Schedule 1" in the Annex by amending Supplement No. 1 to part 712 of the CWCR and Supplement No. 1 to part 745 of the EAR. These changes to the Annex entered into force, with respect to all States Parties to the CWC, on June 7, 2020. As a State Party, the United States became obligated to apply the declaration, advance notification, reporting and verification requirements in part 712 of the CWCR to these newly added "Schedule 1" chemicals as of that date.

Because these obligations will have already come into effect by the time this rule is published, a delay of this rulemaking to allow for notice and opportunity for public comment would be unnecessary. As indicated above, the U.S. has no discretion in this matter – it must implement these changes as a State Party.

Even if these changes were discretionary, a delay of this rulemaking to allow for notice and opportunity for public comment would be unnecessary. Based on the lack of any responses to BIS's August 14, 2019, notice of inquiry requesting public comments on the impact of the addition of these chemicals (together with others) to the Annex, it does not appear that there any many (if any) chemical, biotechnology, or pharmaceutical firms in the U.S. that would be adversely affected by the substance of this rule. Moreover, these chemicals are defense articles

subject to the export licensing jurisdiction of the Department of State under the ITAR and, consequently, have few potential commercial applications.

Similarly, a delay of this rulemaking to provide notice and opportunity for public comment would be contrary to the public interest, as would a 30-day delay in effective date, given the fact that the restrictions associated with the addition of these chemicals to the Annex have already come into force for CWC States Parties as of June 7, 2020. Providing notice and opportunity for public comment and a 30-day delay in effectiveness would not only impair the ability of the United States to fulfill its obligations as a State Party in a timely manner, it also might lead the public to mistakenly assume that these changes are discretionary. Such measures might also have a significant adverse impact upon the ability of U.S. companies to comply in a timely fashion with the declaration, advance notification, reporting, and other requirements that apply to these newly added “Schedule 1” chemicals, as they would have to wait until the amendments adding these chemicals to the CWCR and the EAR have taken effect.

Consequently, any further delay in implementation would adversely impact the ability of the United States to meet its “Schedule 1” chemical declaration, notification, and reporting obligations to the OPCW with respect to these newly added “Schedule 1” chemicals.

Conversely, timely publication of these regulatory changes, with immediate effectiveness, would provide U.S. companies with adequate time to adjust their recordkeeping and other activities in advance of any deadlines that would apply to the submission of declarations, advance notifications, or reports associated with the newly added “Schedule 1” chemicals, thereby making it possible for the U.S. to meet its CWC obligations in this regard.

For similar reasons, application of the APA’s notice and comment and 30-day delay in effectiveness requirements to the clarification to the definition of “production” set forth in § 710.1 of the CWCIA made as part of this rule would be unnecessary and contrary to the public

interest. The clarification merely conforms the definition to language already set forth in the CWCIA's declaration requirements that apply to "Schedule 1," "Schedule 2," and "Schedule 3" chemicals.

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by the APA or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

List of Subjects

15 CFR Part 710

Chemicals, Exports, Foreign trade, Imports, Treaties.

15 CFR Part 712

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

15 CFR Part 745

Administrative practice and procedure, Chemicals, Exports, Foreign trade, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, parts 710 and 712 of the Chemical Weapons Convention Regulations (15 CFR parts 710-722) and part 745 of the Export Administration

Regulations (15 CFR parts 730-774) are amended as follows:

PART 710 – GENERAL INFORMATION AND OVERVIEW OF THE CHEMICAL WEAPONS CONVENTION REGULATIONS (CWCR)

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. In § 710.1, the definition of “Production” is revised to read as follows:

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

* * * * *

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

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

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

(3) Production of a Schedule 1, Schedule 2 or Schedule 3 chemical is understood, for declaration purposes, to include intermediates, by-products, or waste products that are produced and consumed within a defined chemical manufacturing sequence, where such intermediates, by-products, or waste products are chemically stable and therefore exist for a sufficient time to make isolation from the manufacturing stream possible, but where, under normal or design operating conditions, isolation does not occur.

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PART 712 -ACTIVITIES INVOLVING SCHEDULE 1 CHEMICALS

3. The authority citation for 15 CFR part 712 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, 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.

4. Supplement No. 1 to part 712 is amended by revising the table and adding a Note 3 to the Notes to Supplement No. 1 to read as follows:

SUPPLEMENT NO. 1 to PART 712—SCHEDULE 1 CHEMICALS

| A. Toxic Chemicals: | | CAS Registry Number |
|----------------------------|--|----------------------------|
| 1 | <p>FAMILY: O-Alkyl($\leq C_{10}$, incl. cycloalkyl) alkyl (Me, Et, n-Pr or i-Pr)-phosphonofluoridates</p> <p>Not limited to the following examples:</p> <p>Sarin: O-Isopropyl methylphosphonofluoridate</p> | 107-44-8 |

| | | |
|----------|---|--|
| | Soman: O-Pinacolyl methylphosphonofluoridate | 96-64-0 |
| 2 | FAMILY: O-Alkyl ($\leq C_{10}$, incl. cycloalkyl) N,N-dialkyl (Me, Et, n-Pr or i-Pr) phosphoramidocyanidates Not limited to the following example: Tabun: O-Ethyl N,N-dimethyl phosphoramidocyanidate | 77-81-6 |
| 3 | FAMILY: 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 Not limited to the following example: VX: O-Ethyl S-2-diisopropylaminoethyl methyl phosphonothiolate | 50782-69-9 |
| 4 | Sulfur mustards: 2-Chloroethylchloromethylsulfide Mustard gas: Bis(2-chloroethyl)sulfide Bis(2-chloroethylthio)methane Sesquimustard: 1,2-Bis(2-chloroethylthio)ethane 1,3-Bis(2-chloroethylthio)-n-propane 1,4-Bis(2-chloroethylthio)-n-butane 1,5-Bis(2-chloroethylthio)-n-pentane Bis(2-chloroethylthiomethyl)ether O-Mustard: Bis(2-chloroethylthioethyl)ether | 2625-76-5 505-60-2 63869-13-6 3563-36-8 63905-10-2 142868-93-7 142868-94-8 63918-90-1 63918-89-8 |
| 5 | Lewisites: Lewisite 1: 2-Chlorovinylchloroarsine Lewisite 2: Bis(2-chlorovinyl)chloroarsine Lewisite 3: Tris(2-chlorovinyl)arsine | 541-25-3 40334-69-8 40334-70-1 |
| 6 | Nitrogen mustards: HN1: Bis(2-chloroethyl)ethylamine HN2: Bis(2-chloroethyl)methylamine HN3: Tris(2-chloroethyl)amine | 538-07-8 51-75-2 555-77-1 |

| | | |
|-------------|---|---|
| 7 | Saxitoxin | 35523-89-8 |
| 8 | Ricin | 9009-86-3 |
| 13 | <p>FAMILY: P-alkyl (H or $\leq C_{10}$, incl. cycloalkyl) N-(1-(dialkyl($\leq C_{10}$, incl. cycloalkyl)amino))alkylidene(H or $\leq C_{10}$, incl. cycloalkyl) phosphonamidic fluorides and corresponding alkylated or protonated salts</p> <p>Not limited to the following examples:</p> <p>N-(1-(di-n-decylamino)-n-decylidene)-P-decylphosphonamidic fluoride</p> <p>Methyl-(1-(diethylamino)ethylidene)phosphonamidofluoridate</p> | <p>2387495-99-8</p> <p>2387496-12-8</p> |
| 14 | <p>FAMILY: O-alkyl (H or $\leq C_{10}$, incl. cycloalkyl) N-(1-(dialkyl($\leq C_{10}$, incl. cycloalkyl)amino))alkylidene(H or $\leq C_{10}$, incl. cycloalkyl) phosphoramidofluoridates and corresponding alkylated or protonated salts</p> <p>Not limited to the following examples:</p> <p>O-n-Decyl N-(1-(di-n-decylamino)-n-decylidene)phosphoramidofluoridate</p> <p>Methyl (1-(diethylamino)ethylidene)phosphoramidofluoridate</p> <p>Ethyl (1-(diethylamino)ethylidene)phosphoramidofluoridate</p> | <p>2387496-00-4</p> <p>2387496-04-8</p> <p>2387496-06-0</p> |
| 15 | Methyl-(bis(diethylamino)methylene)phosphonamidofluoridate | 2387496-14-0 |
| 16 | Carbamates (quaternaries and bisquaternaries of dimethylcarbamoyloxyppyridines) | |
| 16.1 | <p>FAMILY: Quaternaries of dimethylcarbamoyloxyppyridines: 1-[N,N-dialkyl($\leq C_{10}$)-N-(n-(hydroxyl, cyano, acetoxy)alkyl($\leq C_{10}$)) ammonio]-n-[N-(3-dimethylcarbamoxy-α-picolinyl)-N,N-dialkyl($\leq C_{10}$) ammonio]decane dibromide (n=1-8)</p> <p>Not limited to the following example:</p> <p>1-[N,N-dimethyl-N-(2-hydroxy)ethylammonio]-10-[N-(3-dimethylcarbamoxy-α-picolinyl)-N,N-dimethylammonio]decane dibromide</p> | 77104-62-2 |
| 16.2 | <p>FAMILY: Bisquaternaries of dimethylcarbamoyloxyppyridines: 1,n-Bis[N-(3-dimethylcarbamoxy-α-picolyl)-N,N-dialkyl($\leq C_{10}$) ammonio]-alkane-(2,(n-1)-dione) dibromide (n=2-12)</p> <p>Not limited to the following example:</p> | |

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| | 1,10-Bis[N-(3-dimethylcarbamoy- α -picoyl)-N-ethyl-N-methylammonio]decane-2,9-dione dibromide | 77104-00-8 |
| B. Precursors: | | CAS Registry Number |
| 9 | FAMILY: Alkyl (Me, Et, n-Pr or i-Pr) phosphonyldifluorides Not limited to the following example: DF: Methylphosphonyldifluoride | 676-99-3 |
| 10 | FAMILY: 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 Not limited to the following example: 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 3: The numerical sequence of the “Schedule 1” Toxic Chemicals and Precursors is not consecutive so as to align with the December 23, 2019, consolidated textual changes to “Schedule 1” of the Annex on Chemicals to the Chemical Weapons Convention (CWC), which reflect the decisions adopted by the CWC Conference of the States Parties in November 2019.

PART 745 -CHEMICAL WEAPONS CONVENTION REQUIREMENTS

5. The authority citation for 15 CFR part 745 is revised to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950); 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703, 3 CFR 1999 Comp., p. 199; 50 U.S.C. 4801-4852; Notice of November 12, 2019, 84 FR 61817 (November 13, 2019).

6. Supplement No. 1 to part 745 is revised to read as follows:

SUPPLEMENT NO. 1 to PART 745—SCHEDULES OF CHEMICALS

| Schedule 1 | | |
|----------------------------|---|---|
| A. Toxic Chemicals: | | CAS Registry Number |
| 1 | <p>FAMILY: O-Alkyl($\leq C_{10}$, incl. cycloalkyl) alkyl (Me, Et, n-Pr or i-Pr)-phosphonofluoridates</p> <p>Not limited to the following examples:</p> <p style="padding-left: 40px;">Sarin: O-Isopropyl methylphosphonofluoridate</p> <p style="padding-left: 40px;">Soman: O-Pinacolyl methylphosphonofluoridate</p> | <p>107-44-8</p> <p>96-64-0</p> |
| 2 | <p>FAMILY: O-Alkyl ($\leq C_{10}$, incl. cycloalkyl) N,N-dialkyl (Me, Et, n-Pr or i-Pr) phosphoramidocyanidates</p> <p>Not limited to the following example:</p> <p style="padding-left: 40px;">Tabun: O-Ethyl N,N-dimethyl phosphoramidocyanidate</p> | <p>77-81-6</p> |
| 3 | <p>FAMILY: 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</p> <p>Not limited to the following example:</p> <p style="padding-left: 40px;">VX: O-Ethyl S-2-diisopropylaminoethyl methyl phosphonothiolate</p> | <p>50782-69-9</p> |
| 4 | <p>Sulfur mustards:</p> <p style="padding-left: 40px;">2-Chloroethylchloromethylsulfide</p> <p style="padding-left: 40px;">Mustard gas: Bis(2-chloroethyl)sulfide</p> <p style="padding-left: 40px;">Bis(2-chloroethylthio)methane</p> <p style="padding-left: 40px;">Sesquimustard: 1,2-Bis(2-chloroethylthio)ethane</p> <p style="padding-left: 40px;">1,3-Bis(2-chloroethylthio)-n-propane</p> <p style="padding-left: 40px;">1,4-Bis(2-chloroethylthio)-n-butane</p> <p style="padding-left: 40px;">1,5-Bis(2-chloroethylthio)-n-pentane</p> <p style="padding-left: 40px;">Bis(2-chloroethylthiomethyl)ether</p> | <p>2625-76-5</p> <p>505-60-2</p> <p>63869-13-6</p> <p>3563-36-8</p> <p>63905-10-2</p> <p>142868-93-7</p> <p>142868-94-8</p> <p>63918-90-1</p> |

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| | O-Mustard: Bis(2-chloroethylthioethyl)ether | 63918-89-8 |
| 5 | <p>Lewisites:</p> <p>Lewisite 1: 2-Chlorovinylchloroarsine</p> | 541-25-3 |
| | Lewisite 2: Bis(2-chlorovinyl)chloroarsine | 40334-69-8 |
| | Lewisite 3: Tris(2-chlorovinyl)arsine | 40334-70-1 |
| 6 | <p>Nitrogen mustards:</p> <p>HN1: Bis(2-chloroethyl)ethylamine</p> | 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 |
| 13 | <p>FAMILY: P-alkyl (H or $\leq C_{10}$, incl. cycloalkyl) N-(1-(dialkyl($\leq C_{10}$, incl. cycloalkyl)amino))alkylidene(H or $\leq C_{10}$, incl. cycloalkyl) phosphonamidic fluorides and corresponding alkylated or protonated salts</p> <p>Not limited to the following examples:</p> <p>N-(1-(di-n-decylamino)-n-decylidene)-P-decylphosphonamidic fluoride</p> | 2387495-99-8 |
| | Methyl-(1-(diethylamino)ethylidene)phosphonamidofluoridate | 2387496-12-8 |
| 14 | <p>FAMILY: O-alkyl (H or $\leq C_{10}$, incl. cycloalkyl) N-(1-(dialkyl($\leq C_{10}$, incl. cycloalkyl)amino))alkylidene(H or $\leq C_{10}$, incl. cycloalkyl) phosphoramidofluoridates and corresponding alkylated or protonated salts</p> <p>Not limited to the following examples:</p> <p>O-n-Decyl N-(1-(di-n-decylamino)-n-decylidene)phosphoramidofluoridate</p> | 2387496-00-4 |
| | Methyl (1-(diethylamino)ethylidene)phosphoramidofluoridate | 2387496-04-8 |
| | Ethyl (1-(diethylamino)ethylidene)phosphoramidofluoridate | 2387496-06-0 |
| 15 | Methyl-(bis(diethylamino)methylene)phosphonamidofluoridate | 2387496-14-0 |
| 16 | Carbamates (quaternaries and bisquaternaries of dimethylcarbamoyloxypyridines) | |

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| 16.1 | <p>FAMILY: Quaternaries of dimethylcarbamoyloxy pyridines: 1-[N,N-dialkyl($\leq C_{10}$)-N-(n-(hydroxyl, cyano, acetoxy)alkyl($\leq C_{10}$)) ammonio]-n-[N-(3-dimethylcarbamoxy-α-picolinyl)-N,N-dialkyl($\leq C_{10}$) ammonio]decane dibromide (n=1-8)</p> <p>Not limited to the following example:</p> <p>1-[N,N-dimethyl-N-(2-hydroxy)ethylammonio]-10-[N-(3-dimethylcarbamoxy-α-picolinyl)-N,N-dimethylammonio]decane dibromide</p> | 77104-62-2 |
| 16.2 | <p>FAMILY: Bisquaternaries of dimethylcarbamoyloxy pyridines: 1,n-Bis[N-(3-dimethylcarbamoxy-α-picolyl)-N,N-dialkyl($\leq C_{10}$) ammonio]-alkane-(2,(n-1)-dione) dibromide (n=2-12)</p> <p>Not limited to the following example:</p> <p>1,10-Bis[N-(3-dimethylcarbamoxy-α-picolyl)-N-ethyl-N-methylammonio]decane-2,9-dione dibromide</p> | 77104-00-8 |
| B. Precursors: | | CAS Registry Number |
| 9 | <p>FAMILY: Alkyl (Me, Et, n-Pr or i-Pr) phosphonyldifluorides</p> <p>Not limited to the following example:</p> <p>DF: Methylphosphonyldifluoride</p> | 676-99-3 |
| 10 | <p>FAMILY: 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</p> <p>Not limited to the following example:</p> <p>QL: O-Ethyl O-2-diisopropylaminoethyl methylphosphonite</p> | 57856-11-8 |
| 11 | Chlorosarin: O-Isopropyl methylphosphonochloridate | 1445-76-7 |
| 12 | Chlorosoman: O-Pinacolyl methylphosphonochloridate | 7040-57-5 |
| SCHEDULE 2 | | |
| A. Toxic Chemicals: | | CAS Registry Number |
| 1 | Amiton: O,O-Diethyl S-[2-(diethylamino)ethyl] phosphorothiolate and corresponding alkylated or protonated salts | 78-53-5 |
| 2 | PFIB: 1,1,3,3,3-Pentafluoro-2-(trifluoromethyl)-1-propene | 382-21-8 |

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| 3 | BZ: 3-Quinuclidinyl benzilate | 6581-06-2 |
| B. Precursors: | | CAS Registry Number |
| 4 | FAMILY: 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, Not limited to the following examples: Methylphosphonyl dichloride Dimethyl methylphosphonate Exemption: Fonofos: O-Ethyl S-phenyl ethylphosphonothiolothionate | 676-97-1 756-79-6 944-22-9 |
| 5 | FAMILY: N,N-Dialkyl (Me, Et, n-Pr or i-Pr) phosphoramidic dihalides | |
| 6 | FAMILY: 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 | FAMILY: N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethyl-2-chlorides and corresponding protonated salts | |
| 11 | FAMILY: 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 | FAMILY: 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 |
| SCHEDULE 3 | | |
| A. Toxic Chemicals: | | CAS Registry Number |

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| 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. Precursors | | CAS Registry Number |
| 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 1: The numerical sequence of the “Schedule 1” Toxic Chemicals and Precursors is not consecutive so as to align with the December 23, 2019, consolidated textual changes to “Schedule 1” of the Annex on Chemicals to the Chemical Weapons Convention (CWC), which reflect the decisions adopted by the CWC Conference of the States Parties in November 2019.

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