

Broad Chemical Reporting Rules Under the Chemical Weapons Convention Effective March 30, 2000

Companies that use, process, consume, import, or export a wide range of organic chemicals may be required to notify the United States Department of Commerce of their activities under new rules promulgated to implement the United States' commitments under the Chemical Weapons Convention (CWC), ratified by the U.S. in 1997. The rules were published in the Federal Register on December 30, 1999 at 64 Fed. Reg. 73744. The United States has agreed to allow international inspectors to inspect a limited number of facilities each year to check compliance with the treaty. Inspections would be conducted under the supervision of the United States Department of State.

The CWC rules were promulgated by the Commerce Department's Bureau of Export Administration (BXA) at 15 C.F.R. Parts 710 - 721. Under the CWC, participating countries agreed to share certain information on activities involving large quantities of most organic chemicals and small quantities of certain scheduled chemicals based on degree of toxicity or potential for use in chemical warfare. Chemicals as commonplace as acetone and vinyl chloride may be reportable depending upon quantities produced.

Determining Whether the CWC Rules Apply to a Facility:

The CWC rules provide three schedules of chemicals, plus a catch-all category of "unscheduled discrete organic chemicals" (UDOCs), each having different notice and reporting requirements. The rule gives numerous examples of the types of industries that may be affected by the CWC rules:

- Flame retardant additives
- Dye and photographic industries (e.g. printing inks, ball-point pen fluids, copy mediums, paints, etc.)
- Medical and pharmaceutical preparations
- Metal plating preparations
- Epoxy resins, resins, and plastics
- Insecticides, herbicides, fungicides, defoliants, and rodenticides
- Batteries
- Toiletries, including perfumes and scents
- Organic phosphates used in hydraulic fluids, flame retardants, and surfactants
- Leather tannery and finishing supplies

- Ketones, glycols, and organic peroxides

The types of activities and thresholds for notifications and declarations are as follows:

Reportable Chemicals and Activities

<u>Chemical Category</u>	<u>15 CFR Part</u>	<u>Reportable Activities</u>	<u>Threshold Reporting Amounts</u>
Schedule 1	712	production, export, or import after 1996	100 grams aggregate, 0.5% or higher concentration
Schedule 2	713	<ul style="list-style-type: none"> • Historical production after 1945; • Recent activities: production, processing, consumption, export, or import (including trading companies) after 1993 	1 kg, 100 kg, or 1 metric tons, (depending on chemical), 30% or greater concentration
Schedule 3	714	<ul style="list-style-type: none"> • Historical production after 1945; • Recent activities: Production, export, or import (including trading companies) after 1995 	30 metric tons, 80% or greater concentration
UDOC	715	<ul style="list-style-type: none"> • Production by “synthesis” for sale or use • <u>All carbon compounds</u> except oxides, sulfates and carbonates • Exemptions for certain polymers, biological processes, oil refining, metal carbides, food ingredients, explosives, carbon-hydrogen only chemicals, coincidental production products, non-chemical reaction processes 	200 metric tons aggregate; 30 tons of any chemical containing phosphorus, sulfur, or fluorine

Initial requirements involve notifications regarding historical (i.e., pre-1999) activities. However, follow-up reports may be required annually. For scheduled chemicals, advance notifications of exports and imports may also be required. Certain chemicals have very small (gram or kilogram) threshold reportable quantities. Activities involving chemicals used for chemical weapons purposes have no thresholds for reporting. Penalties for willfully failing to maintain records, submit reports, or allow inspections include civil and criminal penalties and denial or export privileges.

The CWC rules have numerous exclusions that may apply in certain circumstances, and make provisions for business confidentiality. For example, chemicals produced by certain natural or biological processes, extraction, and purification may be excluded if no chemical

transformations are involved. Each chemical or process must be evaluated on a case-by-case basis to determine applicability.

This article does not summarize all of the requirements under the CWC rules. Because the CWC rules are detailed and complex, they should be carefully reviewed for additional requirements that may apply to individual facilities. Detailed information on the BXA CWC rules and necessary forms may be obtained by visiting BXA's website at www.cwc.gov.

This article was prepared by Stuart J. Weiss, an associate in our Environmental Department, and previously appeared in the June, 2000 edition of the Michigan Environmental Compliance Update, a monthly newsletter prepared by the Environmental Department and published by M. Lee Smith Publishers.