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15 CFR Part 714

Impact of Reducing the Mixture Concentration Threshold for Commercial
Schedule 3 Chemical Activities Under the Chemical Weapons Convention
Regulations; Proposed Rule

DEPARTMENT OF COMMERCE**Bureau of Industry and Security****15 CFR Part 714**

[Docket No. 100817371-0505-01]

Impact of Reducing the Mixture Concentration Threshold for Commercial Schedule 3 Chemical Activities Under the Chemical Weapons Convention Regulations**AGENCY:** Bureau of Industry and Security, Commerce.**ACTION:** Notice of inquiry.

SUMMARY: The Bureau of Industry and Security (BIS) is seeking public comments on the impact of amending the Chemical Weapons Convention Regulations (CWCRCR) to reduce the concentration level at which the CWCRCR exempt certain mixtures containing Schedule 3 chemicals from the declaration requirements that apply to Schedule 3 chemical production and the reporting requirements that apply to exports and imports of Schedule 3 chemicals under the Chemical Weapons Convention (CWC).

BIS is considering amending the CWCRCR declaration requirements that apply to the production of Schedule 3 chemicals to conform with the low concentration exemption adopted by the Organization for the Prohibition of Chemical Weapons (OPCW) in 2003, which applies when the concentration of any single Schedule 3 chemical in a mixture is “30% or less,” by weight or volume (whichever yields the lesser percent). Currently, the CWCRCR do not require the quantity of a Schedule 3 chemical contained in a mixture to be counted for declaration or reporting purposes if the concentration of the Schedule 3 chemical in the mixture is “less than 80%” by volume or weight (whichever yields the lesser percent). The current low concentration level was implemented in accordance with requirements set forth in the Chemical Weapons Convention Implementation Act (CWCIA). Accordingly, publication and implementation of regulatory changes affecting this low concentration exemption level would be contingent upon amendment of the CWCIA by the Congress.

In addition, consistent with U.S. national discretion, BIS is considering amending the CWCRCR reporting requirements for exports and imports of Schedule 3 chemicals by reducing the low concentration exemption that applies to certain mixtures containing Schedule 3 chemicals from the current low concentration level of “less than

80%” of a Schedule 3 chemical by volume or weight (whichever yields the lesser percent) to a concentration of “30% or less.”

DATES: Comments are due August 12, 2011.**ADDRESSES:** You may submit comments by any of the following methods:

- *E-mail:* wfisher@bis.doc.gov.

Include the phrase “Schedule 3 Notice of Inquiry” in the subject line of the message.

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

- *Mail or Hand Delivery/Courier:*

Willard Fisher, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230.

Send comments regarding the collection of information identified in this notice of inquiry, including suggestions for reducing the burden, to Jasmeet Sehra, Office of Management and Budget (OMB), by e-mail to

Jasmeet.K.Sehra@omb.eop.gov, or by fax to (202) 395-7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Comments on this collection of information should be submitted separately from comments on the notice of inquiry—all comments on the latter should be submitted by one of the three methods outlined above.

FOR FURTHER INFORMATION CONTACT: For questions on the CWC requirements for Schedule 3 chemicals, contact Douglas Brown, Treaty Compliance Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, U.S. Department of Commerce, *Phone:* (202) 482-2163. For questions on the submission of comments, contact Willard Fisher, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce, *Phone:* (202) 482-2440.

SUPPLEMENTARY INFORMATION:**Background**

The Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and Their Destruction, commonly called the Chemical Weapons Convention (CWC or “the Convention”), is an international arms control and nonproliferation treaty that established the Organization for the Prohibition of Chemical Weapons

(OPCW) to implement the verification provisions of the treaty. The CWC imposes a number of obligations on countries that have ratified the Convention (States Parties), including enactment of legislation to prohibit the production, storage, and use of chemical weapons, and establishment of a National Authority to liaison with the OPCW and other States Parties. The CWC also requires States Parties to implement a comprehensive data declaration and inspection regime to provide transparency and to verify that both the public and private sectors of States Parties are not engaged in activities prohibited under the CWC.

Part VIII, paragraph 5 of the Verification Annex to the CWC (Schedule 3 Regime) provides that declarations “are generally not required for mixtures containing a low concentration of a Schedule 3 chemical” and that the Conference of the States Parties to the Convention would consider and approve guidelines to establish the appropriate “low concentration” exemption level. Schedule 3 chemicals, as set forth in the Convention’s “Annex on Chemicals,” include those chemicals and precursors identified in the Convention as posing a risk to the object and purpose of the Convention, but less than the “high” or “significant” risk identified in the Convention with regard to Schedule 1 and Schedule 2 chemicals, respectively.

The Department of Commerce, Bureau of Industry and Security (BIS) administers the Chemical Weapons Convention Regulations (CWCRCR) (15 CFR parts 710-722), which implement provisions of the Chemical Weapons Implementation Act of 1998 (CWCIA) (22 U.S.C. 6701 *et seq.*). At the time that the CWCIA was enacted, the OPCW had not yet established guidelines concerning low concentration limits for declarations of Schedule 3 chemicals. In section 402(a)(2) of the CWCIA (22 U.S.C. 6742(a)(2)), Congress set 80% as the concentration of any Schedule 3 chemical in a mixture, below which the CWC’s declaration, reporting and inspection requirements do not apply. Consistent with the CWCIA, the CWCRCR do not require that the quantity of a Schedule 3 chemical contained in a mixture be counted for declaration or reporting purposes if the concentration of the Schedule 3 chemical in the mixture is “less than 80%” by volume or weight, whichever yields the lesser percent.

The declaration and reporting requirements in the CWC that affect commercial activities involving Schedule 3 chemicals are described in

part 714 of the CWC. These CWC provisions:

(1) Require annual declarations by certain facilities (i.e., “declared” Schedule 3 “plant sites”) that were engaged in the production of a Schedule 3 chemical in excess of 30 metric tons during the previous calendar year, or which anticipate engaging in such production in the next calendar year (15 CFR 714.1(a)(1));

(2) Require that the calculation of the quantity of any Schedule 3 chemical that is produced must include the quantities produced in mixtures, if the concentration of the Schedule 3 chemical in the mixture is equal to or greater than 80% by volume or by weight, whichever yields the lesser percent (15 CFR 714.1(a)(3));

(3) Define Schedule 3 chemical production to include all steps in the production of a Schedule 3 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 (15 CFR 714.1(a)(2));

(4) Provide that all “declared Schedule 3” plant sites are subject to routine inspection by the OPCW (15 CFR 714.1(e)); and

(5) Require persons, plant sites, and trading companies to submit annual reports of exports and imports of any Schedule 3 chemical to, or from, other destinations if the total quantity that was exported or imported exceeded 30 metric tons of a Schedule 3 chemical (15 CFR 714.2(a)).

During the OPCW’s Fifth Session of the Conference of the States Parties to the Convention, which was held in The Hague, Netherlands, on May 19, 2000, the States Parties established guidelines concerning low concentration limits for declarations of Schedule 3 chemicals. Specifically, the States Parties agreed that the Convention’s declaration and reporting requirements would not apply to a chemical mixture in which the concentration of any single Schedule 3 chemical is “30% or less” by volume or weight, whichever yields the lesser percent. This agreement is documented in OPCW decision C-V/DEC.19 and can be obtained from the OPCW Web site (www.opcw.org). Accordingly, if U.S. requirements are to mirror the low concentration exemption level adopted by the OPCW after the enactment of the CWCIA, both statutory and regulatory changes must be implemented.

Discussion and Request for Comments

BIS is seeking public comments on the potential effects of amending the

CWC declaration requirements that apply to the production of Schedule 3 chemicals by reducing the exemption for mixtures containing low concentrations of Schedule 3 chemicals from the current level of “less than 80%” by volume or weight (whichever yields the lesser percent) to a concentration of “30% or less” by volume or weight (whichever yields the lesser percent). These comments will assist BIS in assessing the impact of this change on U.S. persons involved in the production of Schedule 3 chemicals.

Additionally, BIS is seeking public comments on the potential effects of amending the CWC reporting requirements that apply to certain exports and imports of Schedule 3 chemicals by reducing the exemption for mixtures containing low concentrations of Schedule 3 chemicals from the current level of “less than 80%” by volume or weight (whichever yields the lesser percent) to a concentration of “30% or less” by volume or weight (whichever yields the lesser percent).

In particular, BIS seeks comments on the potential impact of these changes on costs, operations, and trade.

Furthermore, BIS is seeking public comments on the anticipated impact of these changes with respect to an existing collection of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA). 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 PRA, unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. The changes that are being considered by BIS would revise an existing collection of information subject to the requirements of the PRA. This collection has been approved by OMB under Control Number 0694–0091 (Chemical Weapons Convention—Declaration and Report Forms), which carries burden hour estimates of 10.6 hours for Schedule 1 Chemicals, 11.9 hours for Schedule 2 chemicals, 2.5 hours for Schedule 3 chemicals, 5.3/5.1/5.1 hours for unscheduled discrete organic chemicals (includes Annual Declaration on Past Activities, No Changes Authorization Form, and Change in Inspection Status Form, respectively), and 0.17 hours for Schedule 1 notifications.

Specifically, these changes would affect this approved information collection with respect to information collection activities (e.g., declarations, reports, recordkeeping) involving CWC

Schedule 3 chemicals that are subject to declaration and/or reporting requirements under the CWC. In this regard, BIS is seeking comments that address the anticipated impact of the changes being considered by BIS on the burden hours and costs associated with Schedule 3 chemical activities under this approved information collection.

Send comments regarding this collection of information, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, as indicated in the **ADDRESSES** section of this notice.

Submission of Comments

All comments must be submitted to the address indicated in this notice. The Department requires that all comments be submitted in written form.

The Department encourages interested persons who wish to comment to do so at the earliest possible time. The period for submission of comments will close on August 12, 2011. The Department will consider all comments received before the close of the comment period. Comments received after the end of the comment period will be considered, if possible, but their consideration cannot be assured. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them. All comments submitted in response to this notice will be a matter of public record and will be available for public inspection and copying.

The Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce, displays public comments on the BIS Freedom of Information Act (FOIA) Web site at <http://www.bis.doc.gov/foia>. This office does not maintain a separate public inspection facility. If you have technical difficulties accessing this Web site, please call BIS’s Office of Administration, at (202) 482–2165, for assistance.

Dated: July 1, 2011.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

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