

**PART 712—ACTIVITIES INVOLVING
SCHEDULE 1 CHEMICALS**

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**SUPPLEMENT NO. 1 TO PART 712—SCHEDULE 1
CHEMICALS**

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.

SOURCE: 64 FR 73769, Dec. 30, 1999, unless otherwise noted.

§ 712.1 Round to zero rule that applies to activities involving Schedule 1 chemicals.

(a) See § 711.6 of this subchapter for information on obtaining the forms you will need to declare and report activities involving Schedule 1 chemicals.

(b) Facilities that produce, export or import mixtures containing less than 0.5% aggregate quantities of Schedule 1 chemicals as unavoidable by-products or impurities may round to zero and are not subject to the provisions of this part 712. Schedule 1 content may be calculated by volume or weight, whichever yields the lesser percent. Note that such mixtures may be subject to regulatory requirements of other federal agencies.

§ 712.2 Prohibitions involving imports of Schedule 1 chemicals.

(a) You may not import any Schedule 1 chemical unless:

- (1) The import is from a State Party;
- (2) The import is for research, medical, pharmaceutical, or protective purposes;

(3) The import is in types and quantities strictly limited to those that can be justified for such purposes; and

(4) You have notified BIS 45 calendar days prior to the import pursuant to § 712.5.

(b)(1) The provisions of paragraph (a) of this section do not apply to the retention, ownership, possession, transfer, or receipt of a Schedule 1 chemical by a department, agency, or other entity of the United States, or by a person described in paragraph (b)(2) of this section, pending destruction of the Schedule 1 chemical;

(2) A person referred to in paragraph (b)(1) of this section is:

(i) Any person, including a member of the Armed Forces of the United States, who is authorized by law or by an appropriate officer of the United States to retain, own, possess transfer, or receive the Schedule 1 chemical; or

(ii) In an emergency situation, any otherwise non-culpable person if the person is attempting to seize or destroy the Schedule 1 chemical.

NOTE TO § 712.2: For specific provisions relating to the prior notification of exports of all Schedule 1 chemicals, see § 742.18 of the Export Administration Regulations (EAR) (15 CFR parts 730 through 799). For specific provisions relating to license requirements for exports of Schedule 1 chemicals, see §§ 742.2 and 742.18 of the EAR for Schedule 1 chemicals subject to the jurisdiction of the Department of Commerce and see the International Traffic in Arms Regulations (22 CFR parts 120 through 130) for Schedule 1 chemicals subject to the jurisdiction of the Department of State.

§ 712.3 Initial and annual declaration requirements for facilities engaged in the production of Schedule 1 chemicals for purposes not prohibited by the CWC.

(a) *Declaration requirements*—(1) *Initial declaration*. You must complete the forms specified in paragraph (b)(1) of this section, providing a current technical description of your facility or its relevant parts, if you produced Schedule 1 chemicals at your facility in excess of 100 grams aggregate in any one of the calendar years 1997, 1998, or 1999. Note: Do not include production data in your initial declaration. Such information should be included in your annual declaration on past activities. See paragraph (a)(2) of this section.

(2) *Annual declaration on past activities.* You must complete the forms specified in paragraph (b)(2) of this section if you produced at your facility in excess of 100 grams aggregate of Schedule 1 chemicals in the previous calendar year, beginning with calendar year 1997. As a declared Schedule 1 facility, in addition to declaring the production of each Schedule 1 chemical that comprises your aggregate production of Schedule 1 chemicals, you must also declare the total amount of each Schedule 1 chemical used (consumed) and stored at your facility, and domestically transferred from your facility during the previous calendar year, whether or not you produced that Schedule 1 chemical at your facility.

(3) *Annual declaration on anticipated activities.* You must complete the forms specified in paragraph (b)(3) of this section if you anticipate that you will produce at your facility more than 100 grams aggregate of Schedule 1 chemicals in the next calendar year. If you are not already a declared facility, you must complete an initial declaration (see paragraph (a)(1) of this section) 200 calendar days before commencing operations or increasing production which will result in production of more than 100 grams aggregate of Schedule 1 chemicals (see § 712.4).

(b) *Declaration forms to be used—(1) Initial declaration.* (i) You must complete the Certification Form, Form 1-1 and Form A if you produced at your facility in excess of 100 grams aggregate of Schedule 1 chemicals in calendar year 1997, 1998, or 1999. You must provide a detailed current technical description of your facility or its relevant parts including a narrative statement, a detailed diagram of the declared areas in the facility, and an inventory of equipment in the declared area.

(ii) If you plan to change the technical description of your facility from your initial declaration completed and submitted pursuant to paragraph (a)(1) of this section and § 712.6, you must notify BIS 200 calendar days prior to the change. Such notifications must be made through an amended declaration by completing a Certification Form, Form 1-1 and Form A, including the new description of the facility. See

§ 712.7 for additional instructions on amending Schedule 1 declarations.

(2) *Annual declaration on past activities.* If you are subject to the declaration requirement of paragraph (a)(2) of this section, you must complete the Certification Form and Forms 1-1, 1-2, 1-2A, 1-2B, and Form A if your facility was involved in the production of Schedule 1 chemicals in the previous calendar year, beginning with calendar year 1997. Form B is optional.

(3) *Annual declaration on anticipated activities.* If you anticipate that you will produce at your facility in excess of 100 grams aggregate of Schedule 1 chemicals in the next calendar year you must complete the Certification Form and Forms 1-1, 1-4, and Form A. Form B is optional.

(c) *Quantities to be declared.* If you produced in excess of 100 grams aggregate of Schedule 1 chemicals in the previous calendar year, you must declare the entire quantity of such production, rounded to the nearest gram. You must also declare the quantity of any Schedule 1, Schedule 2 or Schedule 3 precursor chemical used to produce the declared Schedule 1 chemical, rounded to the nearest gram. You must further declare the quantity of each Schedule 1 chemical consumed or stored by, or domestically transferred from, your facility, whether or not the Schedule 1 chemical was produced by your facility, rounded to the nearest gram. In calculating the amount of Schedule 1 chemical you produced, consumed or stored, count only the amount of the Schedule 1 chemical(s) in a mixture, not the total weight of the mixture (i.e., do not count the weight of the solution, solvent, or container).

NOTE TO § 712.3(c): Schedule 1 reaction intermediates which exist or might exist during the course of synthesis to produce non-scheduled chemicals and which cannot be isolated using available technology should not be declared if the reaction is allowed to go to completion, completely consuming the real or hypothetical intermediates.

(d) *“Declared” Schedule 1 facilities and routine inspections.* Only facilities that produced in excess of 100 grams aggregate of Schedule 1 chemicals in calendar year 1997 or 1998, or during the

previous calendar year, or that anticipate producing in excess of 100 grams aggregate of Schedule 1 chemicals during the next calendar year are considered “declared” Schedule 1 facilities for the years declared. A “declared” Schedule 1 facility is subject to initial and routine inspection by the OPCW (see part 716 of this subchapter).

(e) *Approval of declared Schedule 1 production facilities.* Facilities that submit declarations pursuant to this section are considered approved Schedule 1 production facilities for purposes of the CWC, unless otherwise notified by BIS within 30 days of receipt by BIS of an annual declaration on past activities or annual declaration on anticipated activities (see paragraphs (a)(2) and (a)(3) of this section). If your facility does not produce more than 100 grams aggregate of Schedule 1 chemicals, no approval by BIS is required.

§ 712.4 New Schedule 1 production facility.

(a) *Establishment of a new Schedule 1 production facility.* (1) If your facility was not declared under § 712.3 in a previous calendar year, and you intend to begin production of Schedule 1 chemicals at your facility in quantities greater than 100 grams aggregate per year for research, medical, or pharmaceutical purposes, you must provide an initial declaration (a current detailed technical description of your facility) to BIS at least 200 calendar days in advance of commencing such production. Such facilities are considered “new Schedule 1 production facilities” and are subject to an initial inspection within 200 calendar days of submitting an initial declaration.

(2) New Schedule 1 production facilities that submit an initial declaration pursuant to paragraph (a)(1) of this section are considered approved Schedule 1 production facilities for purposes of the CWC, unless otherwise notified by BIS within 30 days of receipt by BIS of that initial declaration.

(b) *Types of declaration forms required.* If your new Schedule 1 production facility will produce in excess of 100 grams aggregate of Schedule 1 chemicals, you must complete the Certification Form, Form 1-1 and Form A. You must also provide a detailed technical

description of the new facility or its relevant parts, including a detailed diagram of the declared areas in the facility, and an inventory of equipment in the declared areas.

(c) Two hundred days after a new Schedule 1 production facility submits its initial declaration, it is subject to the annual declaration requirements of § 712.3(a)(2) and (a)(3).

§ 712.5 Advance notification and annual report of all exports¹ and imports of Schedule 1 chemicals to, or from, other States Parties.

Pursuant to the Convention, the United States is required to notify the OPCW not less than 30 days in advance of every export or import of a Schedule 1 chemical, in any quantity, to or from another State Party. In addition, the United States is required to provide a report of all exports and imports of Schedule 1 chemicals to or from other States Parties during each calendar year. If you plan to export or import any quantity of a Schedule 1 chemical from or to your declared facility, undeclared facility or trading company, you must notify BIS in advance of the export or import and complete an annual report of exports and imports that actually occurred during the previous calendar year. The United States will transmit to the OPCW the advance notifications and a detailed annual declaration of each actual export or import of a Schedule 1 chemical from/to the United States. Note that the notification and annual report requirements of this section do not relieve you of any requirement to obtain a license from the Department of Commerce for the export of Schedule 1 chemicals subject to the Export Administration Regulations (15 CFR parts 730 through 799) or from the Department of State for the export of Schedule 1 chemicals subject to the International Traffic in Arms Regulations (22 CFR parts 120 through 130). Only facilities that produce in excess of 100 grams aggregate of Schedule 1 chemicals annually are “declared” facilities

¹Effective May 18, 1999, these advance notification and annual report requirements for exports are set forth in parts 742 and 745 of the Export Administration Regulations (EAR) (15 CFR parts 742 and 745).

and are subject to routine inspections pursuant to part 716 of this subchapter.

(a) *Advance notification of exports and imports.* (1) You must notify BIS at least 45 calendar days prior to exporting or importing any quantity of a Schedule 1 chemical listed in Supplement No. 1 to this part to or from another State Party. Note that notifications for exports may be sent to BIS prior to or after submission of a license application to BIS for Schedule 1 chemicals subject to the EAR and controlled under ECCNs 1C350 or 1C351 or to the Department of State for Schedule 1 chemicals controlled under the ITAR. Such notices must be submitted separately from license applications.

(i) Notifications should be on company letterhead or must clearly identify the reporting entity by name of company, complete address, name of contact person and telephone and fax numbers, along with the following information:

- (A) Chemical name;
- (B) Structural formula of the chemical;
- (C) Chemical Abstract Service (CAS) Registry Number;
- (D) Quantity involved in grams;
- (E) Planned date of export or import;
- (F) Purpose (end-use) of export or import (i.e., research, medical, pharmaceutical, or protective purpose);
- (G) Name(s) of exporter and importer;
- (H) Complete street address(es) of exporter and importer;
- (I) U.S. export license or control number, if known; and
- (J) Company identification number, once assigned by BIS.

(ii) Send the notification by fax to (703) 235-1481 or to the following address for mail and courier deliveries:

Information Technology Team, Bureau of Industry and Security, Department of Commerce, 1555 Wilson Boulevard, Suite 710, Arlington, VA 22209-2405, Attn: "Advance Notification of Schedule 1 Chemical [Export] [Import]."

(iii) Upon receipt of the notification, BIS will inform the exporter of the earliest date the shipment may occur under the notification procedure. To export the Schedule 1 chemical subject to an export license requirement either under the EAR or the ITAR, the ex-

porter must have applied for and been granted a license (see §§ 742.2 and 742.18 of the EAR, or the ITAR at 22 CFR parts 120 through 130).

(b) *Annual report requirements for exports and imports of Schedule 1 chemicals.* Any person subject to the CWC that exported or imported any quantity of Schedule 1 chemical to or from another State Party during the previous calendar year, beginning with calendar year 1997, has a reporting requirement under this section.

(1) *Annual report on exports and imports.* Declared and undeclared facilities, trading companies, and any other person subject to the CWC that exported or imported any quantity of a Schedule 1 chemical to or from another State Party in a previous calendar year, beginning with calendar year 1997, must submit an annual report on exports and imports.

NOTE TO PARAGRAPH (b)(1): The U.S. Government will not submit to the OPCW company-specific information relating to the export or import of Schedule 1 chemicals contained in *reports*. The U.S. Government will add all export and import information contained in *reports* to establish the U.S. national aggregate declaration on exports and imports.

(2) *Report forms to submit.* (i) *Declared Schedule 1 facilities.* (A) If your facility declared production of a Schedule 1 chemical and you also exported or imported any amount of that *same* Schedule 1 chemical, you may report the export or import by:

(1) Submitting, along with your declaration, Form 1-3 for that same Schedule 1 chemical to be reported. Attach Form A, as appropriate; Form B is optional; or

(2) Submitting, separately from your declaration, a Certification, Form 1-1, and a Form 1-3 for each Schedule 1 chemical to be reported. Attach Form A, as appropriate; Form B is optional.

(B) If your facility declared production of a Schedule 1 chemical and exported or imported any amount of a different Schedule 1 chemical, you may report the export or import by:

(1) Submitting, along with your declaration, a Form 1-3 for each Schedule 1 chemical to be reported. Attach Form A, as appropriate; Form B is optional; or

(2) Submitting, separately from your declaration, a Certification Form, Form 1-1, and a Form 1-3 for each Schedule 1 chemical to be reported. Attach Form A, as appropriate; Form B is optional.

(ii) If you are an undeclared facility, trading company, or any other person subject to the CWCR, and you exported or imported any amount of a Schedule 1 chemical, you must submit a Certification Form, Form 1-1, and a Form 1-3 for each Schedule 1 chemical to be reported. Attach Form A, as appropriate; Form B is optional.

(c) Paragraph (a) of this section does not apply to the activities and persons set forth in § 712.2(b).

§ 712.6 Frequency and timing of declarations, reports and notifications.

Declarations, reports and notifications required under this part must be postmarked by the appropriate date

identified in Table 1 of this section. Required declarations, reports and notifications include:

(a) Initial declaration (technical description);

(b) Annual declaration on past activities (production during the previous calendar year, beginning with 1997);

(c) Annual report on exports and imports from trading companies, facilities and other persons (during the previous calendar year, beginning with 1997);

(d) Annual declaration on anticipated activities (production in the next calendar year, beginning in calendar year 2000 for production anticipated for calendar year 2001);

(e) Advance notification of any export to or import from another State Party; and

(f) Initial declaration of a new Schedule 1 production facility.

TABLE 1 TO § 712.6—DEADLINES FOR SUBMISSION OF SCHEDULE 1 DECLARATIONS

Declarations and notifications	Applicable forms	Due dates
Initial Declaration—Declared facility (technical description).	Certification, 1-1, A, B (optional)	March 30, 2000.
Annual Declaration on Past Activities (previous calendar year, starting with 1997)—Declared facility (past production).	Certification, 1-1, 1-2, 1-2A, 1-2B, 1-3 (if also exported or imported), A (as appropriate), B (optional).	For 1997, 1998, and 1999 March 30, 2000. Thereafter, February 28.
Annual report on exports and imports (previous calendar year, starting with 1997) (facility, trading company, other persons).	Certification, 1-1, 1-3, A (as appropriate), B (optional).	For 1997, 1998, and 1999 March 30, 2000. Thereafter, February 28.
Annual Declaration on Anticipated Activities (next calendar year).	Certification, 1-1, 1-4, A (as appropriate), B (optional).	August 3 of each year prior to the calendar year in which anticipated activities will take place, beginning in calendar year 2000.
Advance Notification of any export to or import from another State Party.	Notify on letterhead. See § 712.5 of this subchapter.	45 calendar days prior to the export or import.
Initial Declaration of a new Schedule 1 facility.	Certification, 1-1, A (as appropriate), B (optional).	200 calendar days before commencing such production.

§ 712.7 Amended declaration or report.

(a) You must submit an amended declaration or report for changes to previously submitted information on chemicals, activities and end-use purposes or the addition of new chemicals, activities and end-use purposes.

(b) For declared Schedule 1 facilities, changes that may affect verification activities, such as changes of owner or operator, company name, address, or inspection point of contact, require an amended declaration. Non-substantive typographical errors and changes to

the declaration point of contact do not require submission of an amended declaration or report and may be corrected in subsequent declarations or reports.

(c) For undeclared Schedule 1 facilities, trading companies and other persons, changes that do not directly affect the purpose of the Convention, such as changes to a company name, address, point of contact, or non-substantive typographical errors, do not require submission of an amended report and may be corrected in subsequent reports.

(d) If you are required to submit an amended declaration or report pursuant to paragraph (a) or (b) of this section, you must complete and submit a new Certification Form and the specific form(s) being amended (e.g., an-

annual declaration on past activities, annual declaration on anticipated activities). Only complete that portion of each form that corrects the previously submitted information.

SUPPLEMENT NO. 1 TO PART 712—SCHEDULE 1 CHEMICALS

	(CAS registry number)
A. Toxic chemicals:	
(1) O-Alkyl ($\leq C_{10}$, incl. cycloalkyl) alkyl (Me, Et, n-Pr or i-Pr)-phosphonofluoridates e.g. Sarin: O-Isopropyl methylphosphonofluoridate	(107–44–8)
Soman: O-Pinacolyl methylphosphonofluoridate	(96–64–0)
(2) O-Alkyl ($\leq C_{10}$, incl. cycloalkyl) N,N-dialkyl (Me, Et, n-Pr or i-Pr) phosphoramidocyanidates e.g. Tabun: O-Ethyl N,N-dimethyl phosphoramidocyanidate	(77–81–6)
(3) 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 e.g. VX: O-Ethyl S–2-diisopropylaminoethyl methyl phosphonothiolate	(50782–69–9)
(4) Sulfur mustards: 2-Chloroethylchloromethylsulfide	(2625–76–5)
Mustard gas: Bis(2-chloroethyl)sulfide	(505–60–2)
Bis(2-chloroethylthio)methane	(63869–13–6)
Sesquimustard: 1,2-Bis(2-chloroethylthio)ethane	(3563–36–8)
1,3-Bis(2-chloroethylthio)-n-propane	(63905–10–2)
1,4-Bis(2-chloroethylthio)-n-butane	(142868–93–7)
1,5-Bis(2-chloroethylthio)-n-pentane	(142868–94–8)
Bis(2-chloroethylthiomethyl)ether	(63918–90–1)
O-Mustard: Bis(2-chloroethylthioethyl)ether	(63918–89–8)
(5) Lewisites: Lewisite 1: 2-Chlorovinylchloroarsine	(541–25–3)
Lewisite 2: Bis(2-chlorovinyl)chloroarsine	(40334–69–8)
Lewisite 3: Tris(2-chlorovinyl)arsine	(40334–70–1)
(6) Nitrogen mustards: HN1: Bis(2-chloroethyl)ethylamine	(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)
B. Precursors:	
(9) Alkyl (Me, Et, n-Pr or i-Pr) phosphonyldifluorides e.g. DF: Methylphosphonyldifluoride	(676–99–3)
(10) 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 e.g. 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 1: Note that the following Schedule 1 chemicals are controlled for export purposes under the Export Administration Regulations (see part 774 of the EAR, the Commerce Control List): O-Ethyl-2-diisopropylaminoethyl methylphosphonite (QL) (C.A.S. #57856–11–8), Ethylphosphonyl difluoride (C.A.S. #753–98–0), Methylphosphonyl difluoride (C.A.S. #676–99–3), Saxitoxin (35523–89–8), Ricin (9009–86–3).

Note 2: All Schedule 1 chemicals not listed in Note 1 to this Supplement are controlled for export purposes by the Office of Defense Trade Control of the Department of State under the International Traffic in Arms Regulations (22 CFR parts 120 through 130).

PART 713—ACTIVITIES INVOLVING SCHEDULE 2 CHEMICALS

Sec.

713.1 Prohibition on imports of Schedule 2 chemicals from non-States Parties.

713.2 Declaration on past production of Schedule 2 chemicals for chemical weapons purposes.

713.3 Initial and annual declaration requirements for plant sites that produce, proc-

ess or consume Schedule 2 chemicals in excess of specified thresholds.

713.4 Initial and annual declaration and reporting requirements for exports and imports of Schedule 2 chemicals.

713.5 Advance declaration requirements for additionally planned production, processing or consumption of Schedule 2 chemicals.

713.6 Frequency and timing of declarations and reports.

713.7 Amended declaration or report.