

§713.2

NOTE TO PARAGRAPH (a). See §742.18 of the Export Administration Regulations (15 CFR part 742) for prohibitions that apply to exports of Schedule 2 chemicals on or after April 29, 2000 to non-States Parties and for End-Use Certificate requirements for exports of Schedule 2 chemicals prior to April 29, 2000 to such destinations.

(b) Paragraph (a) of this section does not apply to:

(1) The transfer or receipt of a Schedule 2 chemical from a non-State Party by a department, agency, or other entity of the United States, or by 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 transfer or receive the Schedule 2 chemical; or

(2) Mixtures containing Schedule 2 chemicals, if the concentration of each Schedule 2 chemical in the mixture is 10% or less by weight. Note, however, that such mixtures may be subject to regulatory requirements of other federal agencies.

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

You must complete the Certification Form and Forms 2-1, 2-2, 2-4, Form A, if you produced at your plant site any quantity of a Schedule 2 chemical at any time since January 1, 1946, for chemical weapons purposes. Form B is optional. You must declare the total quantity of such a chemical produced, rounded to the nearest kilogram. Note that you are not subject to routine inspection unless you are a declared facility pursuant to §713.3.

§713.3 Initial and annual declaration requirements for plant sites that produce, process or consume Schedule 2 chemicals in excess of specified thresholds.

(a) *Declaration of production, processing or consumption of Schedule 2 chemicals for purposes not prohibited by the CWC.*

(1) *Quantities of production, processing or consumption that trigger declaration requirements.* You must complete the forms specified in paragraph (b) of this section if you have been or will be involved in the following activities:

(i) *Initial declaration.* You produced, processed or consumed at one or more

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plants on your plant site during any of the calendar years 1994, 1995, or 1996, a Schedule 2 chemical in excess of the following declaration threshold quantities:

(A) 1 kilogram of chemical BZ: 3-Quinuclidinyl benzilate (see Schedule 2, paragraph A.3 included in Supplement No. 1 to this part);

(B) 100 kilograms of chemical PFIB: 1,1,3,3,3-Pentafluoro-2(trifluoromethyl)-1-propene or 100 kilograms of chemical Amiton: 0,0-Diethyl S-[2-(diethylamino) ethyl] phosphorothiolate and corresponding alkylated or protonated salts (see Schedule 2, paragraphs A.1 and A.2 included in Supplement No. 1 to this part); or

(C) 1 metric ton of any chemical listed in Schedule 2, Part B (see Supplement No. 1 to this part).

NOTE TO PARAGRAPH (a)(1)(i). To determine whether you have an initial declaration requirement for Schedule 2 activities, you must determine whether you produced, processed or consumed a Schedule 2 chemical above the applicable threshold quantity at one or more plants on your plant site in calendar years 1994, 1995, or 1996. For example, if you determine that one plant on your plant site produced greater than 1 kilogram of the chemical BZ in calendar year 1995, and no plants on your plant site produced, processed or consumed any Schedule 2 chemical above the applicable threshold quantity in calendar years 1994 or 1996, you have an initial declaration requirement under this paragraph. You must submit three Forms 2-3—one for each of the calendar years 1994, 1995, and 1996—and complete question 2-3.1 on each of the forms to declare production data on BZ for calendar years 1994, 1995 and 1996. For calendar year 1995, you would declare the quantity of BZ actually produced. For calendar years 1994 and 1996, you would declare “0” production quantity. Since the plant site did not engage in any other declarable activity (i.e., consumption, processing), you would leave blank questions 2-3.2 and 2-3.3 on Form 2-3 for calendar years 1994, 1995, and 1996. Note that declaring a “0” quantity for production in 1994 and 1996, as opposed to leaving the question blank, permits BXA to distinguish the activity that triggered the initial declaration requirement for each year from activities that were not declarable during that period.

(ii) *Annual declaration on past activities.* You produced, processed or consumed at one or more plants on your plant site during any of the previous

three calendar years, a Schedule 2 chemical in excess of the applicable declaration threshold quantity specified in paragraphs (a)(1)(i)(A) through (C) of this section.

NOTE TO PARAGRAPH (a)(1)(ii). To determine whether you have an annual declaration on past activities requirement for Schedule 2 chemicals, you must determine whether you produced, processed or consumed a Schedule 2 chemical above the applicable threshold quantity at one or more plants on your plant site in any one of the three previous calendar years. For example, for the 1997 declaration period, if you determine that one plant on your plant site produced greater than 1 kilogram of the chemical BZ in calendar year 1995, and no plants on your plant site produced, processed or consumed any Schedule 2 chemical above the applicable threshold quantity in calendar years 1996 or 1997, you still have a declaration requirement under this paragraph for the previous calendar year (1997). However, you must only declare on Form 2-3 (question 2-3.1), production data for calendar year 1997. You would declare "0" production quantity because you did not produce BZ above the applicable threshold quantity in calendar year 1997. Since the plant site did not engage in any other declarable activity (i.e., consumption, processing) in the 1995-1997 declaration period, you would leave blank questions 2-3.2 and 2-3.3 on Form 2-3. Note that declaring a "0" production quantity for 1997, as opposed to leaving the question blank, permits BXA to distinguish the activity that triggered the declaration requirement from activities that were not declarable during that period.

(iii) *Annual declaration on anticipated activities.* You anticipate that you will produce, process or consume at one or more plants on your plant site during the next calendar year, starting with activities anticipated for calendar year 2001, a Schedule 2 chemical in excess of the applicable declaration threshold quantity set forth in paragraphs (a)(1)(i)(A) through (C) of this section.

(2) *Mixtures containing a Schedule 2 chemical.* (i) The quantity of a Schedule 2 chemical contained in a mixture must be counted when determining the total quantity of a Schedule 2 chemical produced, processed, or consumed at your plant only if the concentration of the Schedule 2 chemical in the mixture is 30% or more by volume or by weight, whichever yields the lesser percent.

(ii) *Counting the amount of the Schedule 2 chemical in a mixture.* If your mixture contains 30% or more concentra-

tion of a Schedule 2 chemical, you must count only the amount (weight) of the Schedule 2 chemical in the mixture, not the total weight of the mixture.

(iii) *Determining declaration requirements for production, processing and consumption.* You must include the amount (weight) of a Schedule 2 chemical in a mixture when determining the total production, total processing, or total consumption of that Schedule 2 chemical at a plant on your plant site. If the total amount of the produced, processed or consumed Schedule 2 chemical exceeds the applicable declaration threshold set forth in paragraphs (a)(1)(i)(A) through (C) of this section, you have a declaration requirement. For example, if during calendar year 1997, a plant on your plant site produced a mixture containing 300 kilograms of thiodiglycol in a concentration of 32% and also produced 800 kilograms of thiodiglycol, that plant produced 1100 kilograms and exceeded the declaration threshold of 1 metric ton for that Schedule 2 chemical. You must declare past production of thiodiglycol at that plant site for calendar year 1997. If, on the other hand, a plant on your plant site processed a mixture containing 300 kilograms of thiodiglycol in a concentration of 25% and also processed 800 kilograms of thiodiglycol in other than mixture form, the total amount of thiodiglycol processed at that plant for CWCR purposes would be 800 kilograms and would not trigger a declaration requirement. This is because the concentration of thiodiglycol in the mixture is less than 30% and therefore did not have to be "counted" and added to the other 800 kilograms of processed thiodiglycol at that plant.

(b) *Types of declaration forms to be used.* (1) *Initial declaration.* You must complete the Certification Form and Forms 2-1, 2-2, 2-3, 2-3A, and Form A if you produced, processed or consumed at one or more plants on your plant site a Schedule 2 chemical in excess of the applicable declaration threshold quantity specified in paragraphs (a)(1)(i)(A) through (C) of this section during any of the three calendar years 1994, 1995, or 1996. Form B is optional. If you are subject to initial declaration

requirements, you must include data for each of the calendar years 1994, 1995, and 1996.

(2) *Annual declaration on past activities.* You must complete the Certification Form and Forms 2-1, 2-2, 2-3, 2-3A, and Form A if one or more plants on your plant site produced, processed or consumed more than the applicable threshold quantity of a Schedule 2 chemical described in paragraphs (a)(1)(i)(A) through (C) of this section in any of the three previous calendar years. Form B is optional. If you are subject to annual declaration requirements, you must include data for the previous calendar year only.

(3) *Annual declaration on anticipated activities.* You must complete the Certification Form and Forms 2-1, 2-2, 2-3, 2-3A, 2-3C, and Form A if you plan to produce, process, or consume at any plant on your plant site a Schedule 2 chemical above the applicable threshold quantity set forth in paragraphs (a)(1)(i)(A) through (C) of this section during the following calendar year, beginning with activities planned for calendar year 2001. Form B is optional.

(c) *Quantities to be declared.* (1) *Production, processing and consumption of a Schedule 2 chemical above the declaration threshold—(i) Initial declaration.* If you are required to complete forms pursuant to paragraph (a)(1)(i) of this section, you must declare the aggregate quantity resulting from each type of activity (production, processing or consumption) from each plant on your plant site that exceeds the applicable threshold quantity for that Schedule 2 chemical for each of the calendar years 1994, 1995, and 1996. Do not aggregate amounts of production, processing or consumption from plants on the plant site that did not individually produce, process or consume a Schedule 2 chemical in amounts greater than the applicable threshold levels. For those years in which you produced, processed or consumed the declared chemical below the declaration threshold, you declare “0” only for the declared activities.

(ii) *Annual declaration on past activities.* If you are required to complete forms pursuant to paragraph (a)(1)(ii) of this section, you must declare the aggregate quantity resulting from each type of activity (production, processing

or consumption) from each plant on your plant site that exceeds the applicable threshold quantity for that Schedule 2 chemical. Do not aggregate amounts of production, processing or consumption from plants on the plant site that did not individually produce, process or consume a Schedule 2 chemical in amounts greater than the applicable threshold levels. If in the previous calendar year you produced, processed or consumed below the declaration threshold, but your declaration requirement is triggered because of activities occurring in an earlier year, you declare “0” only for the declared activities.

(2) *Rounding.* For the chemical BZ, report quantities to the nearest hundredth of a kilogram (10 grams). For PFIB and the Amiton family, report quantities to the nearest 1 kilogram. For all other Schedule 2 chemicals, report quantities to the nearest 10 kilograms.

(d) *“Declared” Schedule 2 plant sites.* A plant site that comprises at least one plant that produced, processed or consumed a Schedule 2 chemical above the applicable threshold quantity set forth in paragraphs (a)(1)(i)(A) through (C) of this section during any of the previous three calendar years or is anticipated to produce, process or consume a Schedule 2 chemical above the applicable threshold quantity in the next calendar year is a “declared” plant site. A plant site that submitted an initial declaration for activities that occurred in 1994, 1995, or 1996 is a “declared” Schedule 2 plant site for those years.

(e) *Declared Schedule 2 plant sites subject to routine inspections.* A “declared” Schedule 2 plant site is subject to initial and routine inspection by the Organization for the Prohibition of Chemical Weapons if it produced, processed or consumed in any of the three previous calendar years, or is anticipated to produce, process or consume in the next calendar year, in excess of ten times the applicable declaration threshold quantity set forth in paragraphs (a)(1)(i)(A) through (C) of this section (see part 716 of this subchapter). A plant site that submitted an initial declaration for calendar years 1994, 1995, and 1996, and exceeded

the applicable inspection threshold is also subject to an initial inspection.

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

(a) *Declarations and reports of exports and imports of Schedule 2 chemicals.*

(1) *Declarations.* A Schedule 2 plant site that is declared because it produced, processed or consumed a Schedule 2 chemical above the applicable threshold quantity, and also exported from or imported to the plant site that same Schedule 2 chemical above the applicable threshold quantity, must submit export and import information as part of its declaration.

NOTE TO PARAGRAPH (a)(1): A declared Schedule 2 plant site may need to declare exports or imports of Schedule 2 chemicals that it produced, processed or consumed above the applicable threshold quantity and also report exports or imports of different Schedule 2 chemicals that it did not produce, process or consume above the applicable threshold quantities.

(2) *Reports.* A declared plant site that does not meet the description of paragraph (a)(1) of this section, and an undeclared plant site or a trading company or any other person subject to the CWCER must submit a report if it exported or imported a Schedule 2 chemical above the applicable threshold quantity.

NOTE TO PARAGRAPH (a)(2): The U.S. Government will not submit to the OPCW company-specific information relating to the export or import of Schedule 2 chemicals contained in reports. The U.S. Government will add all export and import information contained in reports to export and import information contained in declarations to establish the U.S. national aggregate declaration on exports and imports.

NOTE TO PARAGRAPHS (a)(1) AND (2): Declared and undeclared plant sites must count, for declaration or report purposes, all exports from and imports to the *entire* plant site, not only from or to individual plants on the plant site.

(b) *Quantities of exports or imports that trigger a declaration or report requirement.* (1) You have a declaration or report requirement and must complete the forms specified in paragraph (d) of this section if you exported or im-

ported a Schedule 2 chemical in excess of the following threshold quantities:

(i) 1 kilogram of chemical BZ: 3-Quinuclidinyl benzilate (See Schedule 2, paragraph A.3 included in Supplement No. 1 to this part);

(ii) 100 kilograms of chemical PFIB: 1,1,3,3,3-Pentafluoro-2-(trifluoromethyl)-1-propene or 100 kilograms of Amiton : O,O Diethyl S-[2(diethylamino)ethyl] phosphorothiolate *and* corresponding alkylated or protonated salts (see Schedule 2, paragraphs A.1 and A.2 included in Supplement No.1 to this part);

(iii) 1 metric ton of any chemical listed in Schedule 2, Part B (see Supplement No.1 to this part).

(2) *Mixtures containing a Schedule 2 chemical.* The quantity of a Schedule 2 chemical contained in a mixture must be counted for the declaration or reporting of an export or import only if the concentration of the Schedule 2 chemical in the mixture is 30% or more by volume or by weight, whichever yields the lesser percent.

NOTE 1 TO PARAGRAPH (b)(2). See § 713.3(a)(2)(ii) for information on counting amounts of Schedule 2 chemicals contained in mixtures and determining declaration and report requirements.

NOTE 2 TO PARAGRAPH (b)(2). The "30% and above" mixtures rule applies only for declaration and report purposes. This rule does not apply for purposes of determining whether the export of your mixture to a non-State Party requires an End-Use Certificate or for determining whether you need an export license from the Department of Commerce (see §§ 742.2, 742.18 and 745.2 of the Export Administration Regulations) or from the Department of State (see the International Traffic in Arms Regulations (22 CFR parts 120 through 130)).

(c) *Declaration and report requirements.*

(1) *Initial declaration.* A plant site described in paragraph (a)(1) of this section that has an initial declaration requirement for production, processing, or consumption of a Schedule 2 chemical must also declare the export or import of that same Schedule 2 chemical if the amount exported or imported in 1994, 1995 or 1996 exceeded the applicable threshold quantity set forth in paragraph (b)(1)(i) through (iii) of this section. For the initial declaration, the plant site must only declare the export