

§712.2

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.

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§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