

Export Administration Regulations

PAPERWORK REDUCTION ACT ANALYSIS

Supporting Statement for Chemical Weapons Convention Provisions of the Export Administration Regulations

OMB Control No. 0694-0117

Approved: September 10, 2012

Expiration: September 30, 2015

A. JUSTIFICATION

This request is to extend the Office of Management and Budget approval.

1. Explain the circumstances that make the collection of information necessary.

The Chemical Weapons Convention (CWC) is a multilateral arms control treaty that seeks to achieve an international ban on chemical weapons (CW). The CWC prohibits the use, development, production, acquisition, stockpiling, retention, and direct or indirect transfer of chemical weapons. It entered into force on April 29, 1997.

On October 21, 1998, the United States enacted the Chemical Weapons Convention Implementation Act (Pub. L. 105- 277, Division I) (the "Act" or CWCIA) to implement the CWC. This Act authorizes the collection of information on defined activities involving certain chemicals covered by the CWC, as well as hosting of on-site inspections by the Organization for the Prohibition of Chemical Weapons (OPCW), the organization responsible for administering and verifying CWC compliance worldwide. Executive Order 13128 delegates authority to the U.S. Department of Commerce (DOC) to promulgate regulations, obtain and execute warrants, provide assistance to certain facilities, and carry out appropriate functions to implement the CWC, consistent with the Act. DOC's CWC Regulations (15 C.F.R. 710, et seq.) require facilities involved in CWC-covered activities and chemicals at specific threshold amounts to submit advanced notifications, annual declarations and reports, and submit to on-site inspections. The declarations and reports contain information on quantities produced, processed, consumed, exported, and/or imported by the facility.

The Bureau of Industry and Security (BIS) of DOC is responsible for receiving industry advance notifications, declarations and reports and submitting them to the U.S. Department of State's United States National Authority (USNA), which coordinates CWC implementation. The USNA forwards advance notifications and declarations received from the Department of Commerce, as well as from other U.S. agencies, to the OPCW.

The CWC requires the United States to impose *trade controls* on certain toxic and precursor

chemicals specified by category or “Schedule” in its Annex on Chemicals. BIS amended the Export Administration Regulations (EAR) on May 18, 1999, to implement the export control provisions of the CWC. For additional background information on implementation of the export control provisions of the CWC, see the May 18, 1999, EAR amendment on BIS web site www.cwc.gov. States Parties (term for countries that have signed and ratified the CWC) may only export Schedule 1 chemicals to other States Parties, must provide advance notification of exports of any quantity of a Schedule 1 chemical, and must submit annual reports of exports of such chemicals that occurred during the previous calendar year. The CWC prohibits exports of Scheduled chemicals to States *not* Party to the CWC (non-States Parties), except exports of Schedule 3 chemicals are permitted if an end-use certificate issued by the government of a non-State Party is obtained. Certain of these documents must be submitted to the OPCW. Additionally, the United States imposes unilateral export controls on technology to produce certain Schedule 2 and Schedule 3 chemicals for export to non-States Parties, except to Israel and Taiwan.

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.

Schedule 1 advance notification and annual report: Part VI of the CWC Verification Annex, requires the United States to notify the OPCW at least 30 days prior to any proposed transfer (export/import) of Schedule 1 chemicals to another State Party. The United States is also required to submit to the OPCW an annual declaration on actual transfers of Schedule 1 chemicals that occurred in the previous calendar year.

Exporters are required to submit to BIS an advance notification at least 45 days prior to a proposed export of any amount of Schedule 1 chemical, except export of 5 milligrams or less of Saxitoxin (Export Control Classification Number (ECCN) 1C351(d)(6)), for medical/diagnostic purposes only, may be submitted at least 3 calendar days prior export. Exporters are also required to submit an annual report of actual exports that occurred during the previous year. BIS analyzes each Schedule 1 advance notification for completeness and accuracy, and transmits the notification to the USNA for submission to the OPCW. BIS also analyzes annual reports on exports and compiles an aggregate national data declaration reflecting all exports from United States that occurred during the previous year. BIS reconciles advance notifications and annual reports to determine if all proposed exports were actually shipped. The annual aggregate national data declaration is transmitted to the USNA for submission to the OPCW.

The Schedule 1 advance notification and annual report process allows the OPCW to monitor worldwide trade in Schedule 1 chemicals and provides additional oversight of the Schedule 1 one metric ton limit on possession at any given time by States Parties.

Schedule 3 End-use certificates: Part VIII of the CWC Verification Annex, requires the United

States to obtain end-use certificates for transfers of Schedule 3 chemicals to non-States Parties to ensure the chemicals are only used for purposes not prohibited under the CWC. If an end-use certificate cannot be obtained, an export license is required for 'CW' reasons and is subject to a general policy of denial.

The EAR requires exporters to obtain from the consignee an end-use certificate and submit it to BIS within 7 days after the date of the export. The end-use certificate must be issued or certified by the government of the importing country (non-State Party) and must state the following: 1) certify that the chemicals being imported will not be used for purposes contrary to Article I of the CWC; 2) certify that the chemicals will not be re-transferred to other end-user(s) or end-users(s); 3) identify the types and quantities of chemicals to be imported; 4) identify the specific end-use(s) of the chemicals; and 5) identify the name(s) and address(es) of the end-user(s). BIS reviews each end-use certificate to verify the proposed export transaction is in compliance with U.S. obligations under the CWC. Additionally, BIS verifies each shipment made against an end-use certificate, and any export license (required for other than CWC reasons) to ensure compliance with the CWC transfer provisions and EAR licensing requirements.

Unilateral technology control on certain Schedule 2 and Schedule 3 chemicals: The United States imposes unilateral controls on production technology for certain Schedule 2 and Schedule 3 chemicals controlled under ECCN 1E355 for export to non-States Parties, except Israel and Taiwan. Applications for export licenses of production technology are subject to case-by-case review.

Section 515 Information Quality Guidelines apply to this information collection and comply with all applicable information quality guidelines, i.e., OMB, Department of Commerce, and specific operating unit guidelines.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

BIS has an internet-based application, Web Data Entry Software for Industry (Web-DESI) that allows industry to securely submit CWC declarations and reports for Schedule 1, 2, and 3 chemicals and unscheduled discrete organic chemicals (UDOCs). Web-DESI is a voluntary tool designed to reduce the burden on industry to comply with CWC declaration and report requirements. Web-DESI is located at URL: http://www.cwc.gov/declarations_webdesi.html.

Schedule 1 annual reports may be submitted via Web-DESI, but not Schedule 1 advance notifications. Currently, Schedule 1 advance notifications are initiated by the exporter (and importer) on their letterhead. In the future, BIS will enhance Web-DESI to allow submission of Schedule 1 advanced notifications. Schedule 3 end-use certificates are either an official form or letter issued by a non-State Party (importing government) and are not an appropriate document for electronic submission. The ultimate consignee obtains an end-use certificate from the non-State Party (importing government) and transmits it to the exporter for submission to BIS. BIS

accepts facsimile copies of Schedule 1 advance notifications and Schedule 3 end-use certificates. License applications for export of production technology of Schedule 2 and 3 chemicals may be submitted electronically via BIS's Simplified Network Application Process (SNAP).

4. Describe efforts to identify duplication.

The information required by this collection is specific to individual export transactions and is not duplicated or collected elsewhere.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burdens.

This collection will not have a significant impact on small entities.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

The CWC requires advance notification of exports of Schedule 1 chemicals, annual reports for exports of Schedule 1 chemicals, and end-use certificates for exports of Schedule 3 chemicals to a non-State Party. If collection of this information was less frequent or not conducted at all, the United States would not be able to meet its CWC obligations and would place the United States in the position of non-compliance with relevant CWC provisions.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

There are no special circumstances that will result in the collection of information in a manner inconsistent with the guidelines of 5 CFR 1320.6.

8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

The notice requesting public comment was published in the Federal Register on April 16, 2012, Vol. 77, page 22539. No comments were received.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

There will be no payment or gift to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

The “Confidentiality Annex” of the CWC protects confidential business information (CBI) by mandating that the OPCW requires only the minimum information and data necessary to carry out its CWC responsibilities, insuring its employees’ integrity and specifying precisely the information to which it will give access to a State Party.

Additionally, the Director-General of the OPCW’s Technical Secretariat is charged with primary responsibility for protecting CBI. The Technical Secretariat must evaluate data received for CBI. Furthermore, no information obtained by the OPCW is to be released without following safeguards, and CBI access must be strictly protected and regulated. Employees must obtain security clearances. States Parties may take measures they deem necessary to protect CBI during inspections. Finally, procedures have been established for measures to be taken in case of breaches of confidentiality.

The CWCIA also addresses confidentiality in which it exempts trade secrets and confidential commercial/financial information from the Freedom of Information Act (FOIA).

Further, pursuant to section 12(c) of the Export Administration Act (EAA), as amended, information obtained by this collection which is deemed confidential, or with reference to which a request for confidential treatment is made by the person furnishing such information, shall be exempt from disclosure under section 552 of title 5, United States Code, and such information shall not be published or disclosed unless the Secretary determines that the withholding thereof is contrary to the national interest. Although the EAA has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p 783 (2002)), as extended most recently by the Notice of August 12, 2011 (76 FR 50661, August 16, 2011), has continued the EAR in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.). BIS continues to carry out the provisions of the EAA, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

There are no questions of a sensitive nature.

12. Provide an estimate in hours of the burden of the collection of information.

There are 36 burden hours associated with this collection. This renewal package represents an increase of 19 burden hours based on the number of Schedule 1 advance notifications and annual reports on exports, Schedule 3 end-use certificates, and applications to export technology to produce Schedule 2 and 3 chemicals, as described below. The hourly wage used for estimating the burden hours and cost is based on a GS-12/1 wage of \$35.88 per hour.

Schedule 1 Advance Notifications and Annual Reports:

Schedule 1 advance notifications and annual reports on exports have a nominal annual impact on industry; therefore, BIS used submissions received over a three year period (for calendar years 2009, 2010 and 2011) to more accurately estimate the burden hours for notifications and reports: $0/0 + 1/0 + 1/1 = 3$ advance notifications and annual reports. BIS estimates it takes approximately 30 minutes to prepare and submit each of the three documents. Accordingly, the estimated burden hours for completing these two documents are 1.5 hours ($2 + 1 = 3 \times 30$ minutes = 1.5 hrs).

Schedule 3 End-Use Certificates: During calendar year 2011, BIS received 67 end-use certificates from 7 companies. End-use certificates are issued by the non-State Party (importing government) and obtained by the ultimate consignee who transmits the certificate to the U.S. exporter for submission to BIS. This activity is estimated to take approximately 30 minutes. The estimated burden hours for end-use certificates are 33.5 hours (67×30 minutes = 33.5 hrs).

Exports of technology to produce certain Schedule 2 and Schedule 3 chemicals. The EAR imposes a unilateral license requirement for CW reasons for exports and reexports of certain production technology controlled under ECCN 1E355 when destined to non-States Parties, except Israel and Taiwan. License applications for exports and reexports are considered on a case-by-case basis. The EAR also imposes anti-terrorism (AT) controls on this production technology controlled for exports and reexports to Cuba, Iran, North Korea, Sudan and Syria, consistent with the provisions of the EAA after consultation with the Secretary of State.

There has not been any export or reexport license applications received to date for production technology for Schedule 2 and Schedule 3 chemicals controlled under ECCN 1E355. However, for the purpose of this collection, BIS has estimated 1 hour to complete 1 export license application (under collection 0694-0088 for completing Form BIS-748 - Multi-Purpose Application – the standard estimated time is 58 minutes (1 hour), which is rounded to 60 minutes for this collection only).

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in Question 12).

BIS estimates that companies will not incur additional costs (excluding the costs outlined in item 12) above their standard operating costs to comply with Schedule 1 advance notifications and annual reports, Schedule 3 end-use certificates, and applications for export licenses for production technology for Schedule 2 and 3 chemicals controlled under ECCN 1E355.

14. Provide estimates of annualized cost to the Federal government.

BIS estimates the annualized cost to process Schedule 1 advance notifications and annual export reports, Schedule 3 end-use certificates, and export license applications for production technology for Schedule 2 and 3 chemicals is \$2,841.70. This estimate is based on a GS-12/1 employee (\$35.88 per hour) performing these tasks and an overhead cost of 120%. The method used to calculate this cost estimate is as follows:

30 minutes x 2 Schedule 1 Advance Notifications = 1 hour x \$35.88 = \$35.88 x 120% = \$78.93

30 minutes x 1 Annual Report = .5 hour x \$35.88 = \$17.94 x 120% = \$39.47

30 minutes x 67 End-User Certificates = 33.5 hours x \$35.88 = \$1,201.98 x 120% = \$2644.37

1 hour x 1 BIS-748 Multi-Purpose Application for Schedule 2 and Schedule 3 production technology = 1 hour x \$35.88 = \$35.88 x 120% = \$78.93

15. Explain the reasons for any program changes or adjustments.

The adjustment reported in Question 12 for Schedule 1 advance notifications and annual reports on exports is negligible. As in past years, trade in Schedule 1 chemicals is very limited due to the toxicity of these chemicals and their limited industrial use. However, the number of Schedule 3 end-use certificates received by BIS increased more than 2 times (139%) because exporters are choosing to obtain end-use certificates issued for a single end-user instead of multiple end-users. It is easier to decrement shipments made against an end-use certificate for one end-user versus multiple end-users.

16. For collections whose results will be published, outline the plans for tabulation and publication.

There are no plans to publish this collection.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

Not applicable.

18. Explain each exception to the certification statement.

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.