

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporated by reference, Navigation (air).

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

**PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS**

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 16, 2005, is amended as follows:

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*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

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**AGL WI E5 Hayward, WI [Revised]**

Sawyer County Airport, WI

(Lat. 46°01'31" N., long. 91°26'39" W.)

Hayward VOR/DME

(Lat. 46°01'08" N., long. 91°26'47" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Sawyer County Airport, and within 4.0 miles each side of the Hayward VOR/DME 025° radial extending from the 6.5-mile radius to 11.8 miles northeast of the VOR/DME

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Issued in Ft. Worth, Texas on September 14, 2006.

**Donald R. Smith,**

*Manager, System Support Group, ATO Central Service Area.*

[FR Doc. 06–8314 Filed 10–5–06; 8:45 am]

**BILLING CODE 4910–13–M**

**DEPARTMENT OF COMMERCE****Bureau of Industry and Security****15 CFR Parts 715, 716, and 721**

[Docket No. 060831231–6231–01]

RIN 0694–AD53

**Chemical Weapons Convention Regulations: UDOC “Change in Inspection Status Form;” Amendments to Records Review and Recordkeeping Requirements**

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Proposed rule and request for comments.

**SUMMARY:** The Bureau of Industry and Security (BIS) is publishing this proposed rule to amend the Chemical Weapons Convention Regulations (CWC) to expedite the collection of information concerning the inspection status of plant sites that produce unscheduled discrete organic chemicals (UDOCs) subject to the declaration requirements of the CWC, to clarify the scope of the CWC records review and recordkeeping requirements, and to update the maximum civil penalty that may be imposed for violations of the CWC restrictions on imports of CWC Schedule 1 and Schedule 2 chemicals. The CWC include requirements to declare certain activities, involving scheduled chemicals and UDOCs, and to provide access for on-site verification by international inspectors of certain declared facilities in the United States.

Specifically, this proposed rule would amend the CWC by revising the annual declaration requirements for UDOCs to allow a “declared” plant site currently subject to inspection, which anticipates that its production of UDOCs during the current calendar year will be below the inspection threshold level indicated in the CWC, to submit a Change in Inspection Status Form to BIS by December 15th of the current calendar year. In addition, any such UDOC plant site containing at least one plant that anticipates producing an individual PSF chemical (*i.e.*, a UDOC containing the elements phosphorus, sulfur or fluorine) in quantities that exceed the *declaration* threshold for such chemicals would have the option of submitting its Annual Declaration on Past Activities, in lieu of a Change in Inspection Status Form, by December 15th of the current calendar year. Otherwise, the CWC require that the Annual Declaration on Past Activities be submitted by February 28th of the following year. The information provided to BIS, as a result

of this change, would ensure that the plant site would not be subject to inspection during the first 90 days of the next calendar year (*i.e.*, the year after the UDOC activities took place), which is the period when the United States compiles its annual declaration on past activities for submission to the Organization for the Prohibition of Chemical Weapons (OPCW). In addition, this information would strengthen the verification regime of the CWC by allowing the OPCW to schedule inspections, on a year-round basis, of those UDOC facilities in the United States that meet or exceed the inspection threshold level indicated in the CWC.

This proposed rule would also amend the CWC by revising the records review provisions to clarify that a facility must provide the OPCW Inspection Team with access to all supporting materials and documentation used by the facility to prepare declarations and to otherwise comply with the CWC, including records related to activities that have taken place at the facility since the beginning of the previous calendar year (*i.e.*, up to and including the date of the inspection), even if the facility has not submitted its current year Annual Declaration on Past Activities to BIS at the time the inspection takes place.

In addition, this rule would revise the CWC records review and recordkeeping requirements to clarify that the types of records that are subject to these requirements include all supporting materials and documentation associated with the movement into, around, and from the facility of declared chemicals and their feedstock or any product chemicals formed from such chemicals and feedstock. The purpose of this clarification would be to ensure that the CWC records review and recordkeeping requirements fully conform with the inspection aims described in the inspection provisions of the CWC, which include verifying the absence of Schedule 1 chemicals and the non-diversion of Schedule 1 and Schedule 2 chemicals.

Finally, this rule would amend the enforcement provisions of the CWC to increase the maximum civil penalty that may be imposed for violations of the CWC restrictions on imports of CWC Schedule 1 or Schedule 2 chemicals from \$11,000 to \$50,000 to reflect amendments to the International Emergency Economic Powers Act (IEEPA) made by the USA PATRIOT Improvement and Reauthorization Act of 2005, which was enacted on March 9, 2006.

**DATES:** Comments on this rule must be received November 6, 2006.

**ADDRESSES:** You may submit comments on this rule, identified by RIN 0694-AD53, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:*

[public.comments@bis.doc.gov](mailto:public.comments@bis.doc.gov). Include "RIN 0694-AD53" in the subject line of the message.

- *Fax:* (202) 482-3355. 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 St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, ATTN: RIN 0694-AD53.

This rule contains a collection of information approved by OMB under Control Number 0694-0091 (Chemical Weapons Convention—Declaration and Report Forms). You may submit comments regarding this collection of information (identified by OMB Control No. 0694-0091), including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to [David.Rostker@omb.eop.gov](mailto:David.Rostker@omb.eop.gov), or by fax to (202) 395-7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044. Comments on this collection of information should be submitted separately from comments on the proposed rule (*i.e.*, RIN 0694-AD53)—all comments on the latter should be submitted by one of the four methods outlined above.

**FOR FURTHER INFORMATION CONTACT:** For questions of a general or regulatory nature, contact the Regulatory Policy Division, telephone: (202) 482-2440. For program information on declarations and reports, contact the Treaty Compliance Division, Office of Nonproliferation Controls and Treaty Compliance, telephone: (703) 605-4400; for legal questions, contact Rochelle Woodard, Office of the Chief Counsel for Industry and Security, telephone: (202) 482-5301.

#### SUPPLEMENTARY INFORMATION:

##### Background

This proposed rule would amend the Chemical Weapons Convention Regulations (CWCRC) to expedite the collection of information concerning the inspection status of plant sites that produce unscheduled discrete organic

chemicals (UDOCs) that are subject to the declaration requirements of the CWCRC. This proposed rule would also clarify the scope of the CWCRC records review and recordkeeping requirements. In addition, this rule would update the maximum civil penalty that may be imposed for violations of the CWCRC restrictions on imports of CWC Schedule 1 and Schedule 2 chemicals. The CWCRC include requirements to declare certain activities, involving scheduled chemicals and UDOCs, and to provide access for on-site verification by international inspectors of certain declared facilities in the United States.

The CWCRC implement the provisions of the Convention on the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, also known as the Chemical Weapons Convention (CWC or Convention), affecting U.S. industry and U.S. persons, in accordance with the provisions of the Chemical Weapons Convention Implementation Act of 1998 (the Act or CWCIA) (22 U.S.C. 6701 *et seq.*). The Act authorizes the United States to require the U.S. chemical industry and other private entities to submit declarations, notifications and other reports and also to provide access for on-site inspections conducted by inspectors from the Organization for the Prohibition of Chemical Weapons (OPCW).

The CWC, which entered into force on April 29, 1997, is an arms control treaty with significant nonproliferation aspects. As such, the CWC bans the development, production, stockpiling or use of chemical weapons and prohibits States Parties to the CWC from assisting or encouraging anyone to engage in a prohibited activity. The CWC provides for declaration and inspection of all States Parties' chemical weapons and chemical weapon production facilities, and oversees the destruction of such weapons and facilities. To fulfill its arms control and nonproliferation objectives, the CWC also establishes a comprehensive verification scheme and requires the declaration and inspection of facilities that produce, process or consume certain "scheduled" chemicals and UDOCs, many of which have significant commercial applications.

Part IX of the Verification Annex of the CWC contains provisions that apply to declarations and inspection of "other chemical production facilities," which are referred to as UDOC plant sites in Part 715 of the CWCRC. Plant sites that declare under Part 715 of the CWCRC must submit an Annual Declaration on Past Activities describing UDOC activities subject to declaration during the previous calendar year. These

annual declarations must be submitted to BIS no later than February 28th of the year that follows the calendar year in which the UDOC activities took place. The U.S. Government compiles these declarations into the annual U.S. declaration on past activities, which it submits to the OPCW within 90 days after the beginning of the calendar year in which the UDOC plant sites submit their individual declarations to BIS.

Part 716 of the CWCRC states that a UDOC plant site is subject to inspection during a specific calendar year only if it produced in excess of 200 metric tons aggregate of UDOCs during the previous calendar year (*see* § 716.1(b)(4)). A plant site cannot be subject to inspection, for UDOC activities that took place during the previous calendar year, if: (1) A declaration is not required to be submitted to the OPCW or (2) a declaration is submitted to the OPCW with aggregate quantities of UDOCs below 200 metric tons. Since the due date for a UDOC plant site to submit its Annual Declaration on Past Activities to BIS is February 28th of the year following the calendar year in which the UDOC activities took place, there is no mechanism in the CWCRC that allows the U.S. Government to determine which UDOC plant sites are subject to inspection and to notify the OPCW concerning the inspection status of such plant sites, prior to the due date for submitting the U.S. annual declaration on past activities to the OPCW (*i.e.*, within 90 days after the beginning of the calendar year). Therefore, as a practical matter, UDOC plant sites in the United States do not become subject to inspection by the OPCW until the U.S. annual declaration on past activities has been submitted to the OPCW. Universal application of this approach would interfere with the conduct of UDOC inspections in States Parties for the first 90 days of each calendar year (*i.e.*, a "90-day gap"), which would have the long-term effect of undermining the verification regime of the CWC.

In order to eliminate this "90-day gap," BIS proposes to amend the CWCRC by revising the annual declaration requirements for UDOCs to allow a "declared" plant site currently subject to inspection, which anticipates that its production of UDOCs during the current calendar year will be below the inspection threshold level indicated in the CWCRC, to submit a Change in Inspection Status Form to BIS, so that BIS can inform the OPCW that the plant site will not be subject to inspection during the next calendar year. This new form must be submitted to BIS no later than December 15th of the current calendar year (*i.e.*, the year in which

UDOC production is anticipated to be below the inspection threshold level). The U.S. Government would then inform the OPCW that the plant site will not be subject to inspection during the next calendar year.

Certain plant sites would be given the option of submitting their Annual Declaration on Past Activities in lieu of the Change in Inspection Status Form. In choosing this alternative, however, the plant sites would have to submit their Annual Declaration on Past Activities to BIS by December 15th of the current calendar year, instead of February 28th of the following year, as is normally required under the CWC. The only UDOC plant sites that would be eligible to use this option would be those that anticipate producing by synthesis one or more PSF chemicals (*i.e.*, UDOCs containing the elements phosphorus, sulfur or fluorine) during the current calendar year, in quantities that would require them to submit an Annual Declaration on Past Activities to BIS, but that would be below the CWC inspection threshold level for UDOCs (*i.e.*, plant sites that contain at least one plant that anticipates producing in excess of 30 metric tons of an individual PSF chemical, but that do not anticipate producing by synthesis in excess of 200 metric tons aggregate of all UDOCs during the current calendar year).

If, subsequent to submitting its Change in Inspection Status Form to BIS, a UDOC plant site determines that the production by synthesis of UDOCs at the plant site actually exceeded the UDOC inspection threshold level specified in § 715.1(d)(1) of the CWC, the plant site must indicate this fact when it submits its Annual Declaration on Past Activities to BIS and explain, on Form B, why the plant site exceeded the UDOC inspection threshold. In addition, any UDOC plant site that chooses the option of submitting its Annual Declaration on Past Activities to BIS by December 15th, in lieu of a Change in Inspection Status Form, and subsequently determines that the production by synthesis of UDOCs at the plant site actually exceeded the UDOC inspection threshold level specified in § 715.1(d)(1) of the CWC, must submit an amendment to its Annual Declaration on Past Activities (*see* § 715.2 of the CWC) indicating this fact and explaining, on Form B, why the plant site exceeded the UDOC inspection threshold. Currently inspectable UDOC plant sites that do not submit either a Change in Inspection Status Form or an Annual Declaration on Past Activities by December 15th of the current calendar year, as provided in this rule, will remain subject to

inspection through at least the 90-day period at the beginning of the next calendar year.

This proposed rule would also amend the CWC to clarify the scope of the records review requirements for inspections. Currently, § 716.4(e) of the CWC is unclear concerning the extent to which an OPCW Inspection Team will have access to a facility's records that are related to activities that took place at the facility during the previous calendar year. This proposed rule would amend § 716.4(e) of the CWC to clarify that a facility undergoing inspection must provide the Inspection Team with access to all supporting materials and documentation used by the facility to prepare declarations and to otherwise comply with the CWC, including records related to activities that have taken place at the facility since the beginning of the previous calendar year (*i.e.*, up to and including the date of the inspection), regardless of whether or not the facility has submitted its Annual Declaration on Past Activities to BIS at the time of the inspection.

In addition, this proposed rule would amend § 716.4(e) of the CWC to ensure that the CWC records review requirements for inspections fully conform with the inspection aims described in Part 716 of the CWC. Since BIS began hosting inspections under the CWC, the standard practice has been for facilities to provide, as appropriate, records associated with the movement into, around, and from the facility of declared chemicals and their feedstock or product chemicals formed from such chemicals and feedstock. The OPCW Inspection Team requires access to these types of records in order to accomplish the aims of the inspections, as described in Parts VI-IX of the Verification Annex of the CWC and in Part 716 of the CWC. Parts VI-IX of the CWC Verification Annex establish the general and specific aims for inspections, including verification of the absence of Schedule 1 chemicals and the non-diversion of Schedule 1 and Schedule 2 chemicals. Part 716 of the CWC describes these CWC inspection aims and establishes requirements for providing Inspection Teams with access to records in order to achieve these aims. Currently, § 716.4(e) of the CWC does not clearly indicate that facilities are required to make available to the Inspection Team all supporting materials and documentation associated with the movement into, around, and from the facility of declared chemicals and their feedstock or any product chemicals formed from such chemicals and feedstock. Therefore, this proposed rule

would amend § 716.4(e) to clearly indicate that the facility must make all such records available to the Inspection Team.

Consistent with the clarification to § 716.4(e) of the CWC described above, this proposed rule would also amend the recordkeeping provisions in § 721.2(a) of the CWC to specifically require that each facility subject to inspection under Part 716 of the CWC retain all records associated with the movement into, around, and from the facility of declared chemicals and their feedstock or any product chemicals formed from such chemicals.

Finally, this rule would amend the enforcement provisions in Part 719 of the CWC to increase the maximum civil penalty that may be imposed for violations of the CWC restrictions on imports of CWC Schedule 1 or Schedule 2 chemicals from \$11,000 to \$50,000 to reflect amendments to Section 206 of the International Emergency Economic Powers Act (IEEPA) (50 U.S.C. 1705) made by the USA PATRIOT ACT Improvement and Reauthorization Act of 2005 (Public Law 109-177), which was enacted on March 9, 2006. Specifically, this rule would amend Section 719.3(b) of the CWC and the footnote thereto to increase the maximum civil penalty that BIS may impose under IEEPA. As a result of this amendment to the CWC, any violations of the CWC Schedule 1 or Schedule 2 import restrictions described in Section 719.3(a) of the CWC will be subject to the increased IEEPA maximum civil penalty of \$50,000.

#### Rulemaking Requirements

1. This proposed rule has been determined to be not significant for purposes of E.O. 12866.

2. 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 Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule contains a 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, per respondent, of 10.6 hours for Schedule 1 Chemicals, 11.9 hours for Schedule 2 chemicals, 2.5 hours for Schedule 3 chemicals, 5.3 hours or 5.1 hours for unscheduled discrete organic chemicals (depending upon whether an

*Annual Declaration on Past Activities* or a *No Changes Authorization Form*, respectively, is required), 0.17 hours for Schedule 1 notifications, and 1.7 hours for compliance review requests. These burden hour estimates also include all types of amendments required under the Chemical Weapons Convention Regulations (CWCRC). The Declaration and Report Handbooks include a "Guide to Submission of Forms" which also identifies the specific forms that must be included in a declaration or report package. To calculate the number of hours it takes to complete a specific type of declaration or report, multiply the number of forms required for a specific declaration or report type by the number of hours estimated to complete each form. BIS will use the information contained in declarations and reports submitted by U.S. persons to compile the U.S. National Industrial Declaration in order to meet our obligations under the Chemical Weapons Convention. BIS will submit the U.S. National Industrial Declaration to the United States National Authority who will forward the Declaration to the Organization for the Prohibition of Chemical Weapons as required by the Convention.

This rule would increase the burden hours under the approved collection (*i.e.*, Control Number 0694-0091) by amending § 715.1(d) of the CWCRC to add a new requirement for the submission of a Change in Inspection Status Form that applies to any "declared" unscheduled discrete organic chemical (UDOC) plant site currently subject to inspection, which anticipates that its production of UDOCs during the current calendar year will be below the inspection threshold level indicated in the CWCRC. These UDOC plant sites would be required to submit a Change in Inspection Status Form to BIS, by December 15th of the current calendar year, in order to ensure that they would not be subject to inspection during the first 90 days of the next calendar year. Currently, there is no mechanism in the CWCRC that allows the U.S. Government to determine which UDOC plant sites are subject to inspection and to notify the OPCW concerning the inspection status of such plant sites, prior to the due date for submitting the U.S. annual declaration on past activities to the OPCW (*i.e.*, within 90 days after the beginning of the calendar year). Therefore, as a practical matter, UDOC plant sites in the United States do not become subject to inspection by the OPCW until the U.S. annual declaration on past activities has been submitted to the OPCW. Universal application of this approach would

interfere with the conduct of UDOC inspections in States Parties for the first 90 days of each calendar year (*i.e.*, the "90-day gap"), which would have the long-term effect of undermining the verification regime of the CWC.

BIS estimates that the burden hours for completion and submission of the Change in Inspection Status Form will be 5.1 hours per respondent. The total burden hours for this additional collection of information are estimated to be 30.6 hours (*i.e.*, 5.1 burden hours x 6 respondents). The estimated total cost of this additional collection of information will be \$1,163 (30.6 burden hours x \$38/hour). As a result of the changes made by this rule, the total estimated annual burden hours under the approved collection (*i.e.*, Control Number 0694-0091) would increase from 4,471 burden hours to 4,501.6 burden hours. This estimate takes into consideration the fact that this rule provides certain "declared" UDOC plant sites (*i.e.*, plant sites that anticipate producing one or more PSF chemicals during the current calendar year, in quantities that would require them to submit an Annual Declaration on Past Activities to BIS, but that would be below the CWCRC inspection threshold level for UDOCs) with the option of submitting their Annual Declaration on Past Activities earlier than normally required (*i.e.*, December 15th of the year in which the UDOC activities take place, instead of February 28th of the following year), in lieu of submitting a Change in Inspection Status Form.

This rule also proposes to make several amendments to the CWCRC records review and recordkeeping requirements, none of which would affect the burden hours and associated costs under the approved collection (*i.e.*, Control Number 0694-0091). This rule would amend § 716.4(e) of the CWCRC to: (1) Clarify the extent to which an OPCW Inspection Team will have access to a facility's records that are related to activities that took place at the facility during the previous calendar year (by requiring facilities undergoing inspection to provide the Inspection Team with access to all supporting materials and documentation used by the facility to prepare declarations and to otherwise comply with the CWCRC, including records related to activities that have taken place at the facility since the beginning of the previous calendar year, *i.e.*, up to and including the date of the inspection) and (2) ensure that the CWCRC records review requirements for inspections fully conform with the inspection aims described in Part 716 of the CWCRC (by requiring facilities to make available to

the Inspection Team all supporting materials and documentation associated with the movement into, around, and from the facility of declared chemicals and their feedstock or any product chemicals formed from such chemicals and feedstock). Consistent with the changes to § 716.4(e) of the CWCRC, this proposed rule would amend the recordkeeping provisions in § 721.2(a) of the CWCRC to specifically require that each facility subject to inspection under Part 716 of the CWCRC retain all records associated with the movement into, around, and from the facility of declared chemicals and their feedstock or any product chemicals formed from such chemicals.

In order to assess the extent to which requiring facilities to maintain and make available records to verify the non-diversion of CWC Schedule 1 and Schedule 2 chemicals would affect the burden hours and associated costs under the approved collection (Control Number 0694-0091), BIS conducted a voluntary survey of nine facilities, requesting these facilities to estimate the time that would be required to prepare and maintain records used to determine non-diversion of CWC Schedule 1 and Schedule 2 chemicals (*e.g.*, records on chemical production, processing, consumption, inventory, transfers, and other dispositions). All five of the facilities that responded to the voluntary survey indicated that they already use and maintain such records to prepare their declarations (in accordance with the requirements of the CWCRC) and for other internal procedures. Based on the results of this survey, BIS determined that the proposed amendments to the CWCRC to require declared chemical facilities to maintain and make available records for verifying the non-diversion of CWC Schedule 1 and Schedule 2 chemicals would not impose any additional burden or associated costs under the approved collection.

BIS also assessed the extent to which burden hours and associated costs under the approved collection (Control Number 0694-0091) would be affected by requiring facilities to provide the Inspection Team with access to all supporting materials and documentation used by the facility to prepare declarations and to otherwise comply with the CWCRC, including records related to activities that have taken place at the facility since the beginning of the previous calendar year (*i.e.*, up to and including the date of the inspection). BIS determined that there would be no additional burden or associated costs under the approved collection, as a result of this

recordkeeping requirement, because facilities currently maintain and provide access to such records in order to comply with the existing declaration, recordkeeping, and/or inspection requirements in the CWCRC.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to [David.Rostker@omb.eop.gov](mailto:David.Rostker@omb.eop.gov), or by fax to (202)395-7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Chief Counsel for Regulations, Department of Commerce, certified to the Chief Counsel for Advocacy, Small Business Administration, that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities for the reasons explained below. Consequently, BIS has not prepared a regulatory flexibility analysis.

Small entities include small businesses, small organizations and small governmental jurisdictions. For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) A small business according to RFA default definitions for small business (based on SBA size standards), (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000, and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. BIS has

determined that this proposed rule would affect only the first category of small entities (*i.e.*, small businesses). The President reported to the Congress, in December 2003, as required under Section 309 of the CWC Implementation Act, that 297 U.S. companies representing 691 facilities, plant sites, and trading companies were subject to the declaration and reporting requirements under the Chemical Weapons Convention Regulations (CWCRC). Although BIS estimates that the majority of these 297 companies are businesses that have more than 500 employees, BIS does not have sufficient information on these companies to definitively characterize them as large entities. The Small Business Administration (SBA) has established standards for what constitutes a small business, with respect to each of the Standard Industrial Classification (SIC) code categories for "Chemicals and Allied Products." However, BIS is not able to determine which of these SIC code categories apply to the companies that are subject to the declaration, reporting, advance notification, recordkeeping or inspection requirements of this rule. Therefore, for the purpose of assessing the impact of this final rule, BIS assumes that the 297 companies are small entities.

This proposed rule would not affect a substantial number of small entities, since BIS estimates that no more than six unscheduled discrete organic chemical (UDOC) plant sites per calendar year will be required to submit a *Change in Inspection Status Form* for their UDOC activities. Furthermore, the additional recordkeeping and reporting requirements imposed by this rule would not have a significant economic impact on these entities.

First, this proposed rule would amend § 715.1(d) of the CWCRC to add a new requirement for the submission of a *Change in Inspection Status Form* that applies to any "declared" UDOC plant site currently subject to inspection, which anticipates that its production of UDOCs during the current calendar year will be below the inspection threshold level indicated in the CWCRC. These UDOC plant sites would be required to submit a *Change in Inspection Status Form* to BIS, by December 15th of the current calendar year, in order to ensure that they would not be subject to inspection during the first 90 days of the next calendar year. Since BIS estimates that no more than six UDOC plant sites would be affected by this new CWCRC requirement, the requirement would not affect a substantial number of small entities.

Second, BIS estimates that the burden hours for completion and submission of the *Change in Inspection Status Form* would be 5.1 hours per respondent. The total annual burden hours for this additional collection of information are estimated to be 30.6 hours (*i.e.*, 5.1 burden hours × 6 respondents). Furthermore, the estimated total annual cost of this additional collection of information for all affected entities would be \$1,163 (30.6 burden hours × \$38/hour). This estimate takes into consideration the fact that this rule would provide certain "declared" UDOC plant sites (*i.e.*, plant sites that anticipate producing one or more PSF chemicals during the current calendar year, in quantities that would require them to submit an *Annual Declaration on Past Activities* to BIS, but that would be below the CWCRC inspection threshold level for UDOCs) with the option of submitting their *Annual Declaration on Past Activities* earlier than normally required (*i.e.*, December 15th of the year in which the UDOC activities take place, instead of February 28th of the following year), in lieu of submitting a *Change in Inspection Status Form*. Based on these estimates, the total cost of these additional recordkeeping and reporting requirements would represent only a small percentage of the revenues generated by the affected companies.

Therefore, this proposed rule would not affect a substantial number of small entities (no more than 6 UDOC plant sites, per annum) and the total economic impact on the affected entities (*i.e.*, \$1,163) would not be significant. Since the revisions that this rule proposes to make to the CWCRC would not impose a significant economic impact on a substantial number of small entities, BIS did not prepare a regulatory flexibility analysis for this rule.

#### List of Subjects

##### 15 CFR Part 715

Chemicals, Exports, Foreign Trade, Imports, Reporting and recordkeeping requirements.

##### 15 CFR Part 716

Chemicals, Confidential business information, Reporting and recordkeeping requirements, Search warrant, Treaties.

##### 15 CFR Part 721

Reporting and recordkeeping requirements.

Accordingly, parts 715, 716, and 721 of the Chemical Weapons Convention Regulations (15 CFR parts 710–729) are proposed to be amended as follows:

**PART 715—[AMENDED]**

1. The authority citation for 15 CFR part 715 continues to read as follows:

**Authority:** 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703.

2. Section 715.1 is amended by adding a Note immediately following paragraph (b)(1) and by revising paragraph (d) to read as follows:

**§ 715.1 Annual declaration requirements for production by synthesis of unscheduled discrete organic chemicals (UDOCs).**

\* \* \* \* \*

(b) \* \* \*  
(1) \* \* \*

**Note to § 715.1(b)(1):** If there is a change in the inspection status of your plant site, as described in paragraph (d)(2) of this section, you may have the option of substituting the *Annual Declaration on Past Activities*, for the *Change in Inspection Status Form* (see Note 3 to paragraph (d)(2) of this section). In this case, the due date for submitting the *Annual Declaration on Past Activities* to BIS, covering UDOC production at your plant site during the current calendar year, would be December 15th of the current calendar year, instead of February 28th of the next calendar year (also see Supplement No. 3 to this part). If you choose to submit your *Annual Declaration on Past Activities* to BIS by December 15th and, subsequently, you determine that the production by synthesis of UDOCs at your plant site actually exceeded the UDOC inspection threshold level specified in paragraph (d)(1) of this section, you must submit an amendment to your *Annual Declaration on Past Activities* (see § 715.2 of the CWC) and indicate, on Form B, the reason your plant site exceeded the UDOC inspection threshold.

\* \* \* \* \*

(d) *Routine inspections of declared UDOC plant sites*—(1) *Inspection requirement.* A “declared” UDOC plant site is subject to routine inspection by the Organization for the Prohibition of Chemical Weapons (OPCW) (see part 716 of the CWC) if it produced by synthesis more than 200 metric tons aggregate of UDOCs during the previous calendar year.

(2) *Change in inspection status.* You may complete the *Change in Inspection Status Form*, to ensure that your facility does not remain subject to inspection during the first 90 days of next calendar

year (*i.e.*, prior to the submission of the U.S. declaration to the OPCW), if:

(i) Your plant site is currently subject to inspection, pursuant to paragraph (d)(1) of this section, based on your plant site’s production by synthesis of UDOCs during the previous calendar year; and

(ii) Your plant site’s production by synthesis of UDOCs in the current calendar year will be below the inspection threshold level specified in paragraph (d)(1) of this section by the deadline indicated in Supplement No. 3 to this part, and is anticipated to remain below that threshold level through the remainder of the current calendar year.

**Note 1 to § 715.1(d)(2):** Upon receipt of the *Change in Inspection Status Form*, BIS will inform the Organization for the Prohibition of Chemical Weapons (OPCW) that your plant site is not subject to inspection during the next calendar year.

**Note 2 to § 715.1(d)(2):** If, after submitting your *Change in Inspection Status Form* to BIS, you determine that the production by synthesis of UDOCs at your plant site actually exceeded the UDOC inspection threshold level specified in paragraph (d)(1) of this section, you must indicate this fact when you submit your *Annual Declaration on Past Activities* to BIS and indicate, on Form B, the reason your plant site exceeded the UDOC inspection threshold.

**Note 3 to § 715.1(d)(2):** You may submit the *Annual Declaration on Past Activities* described in paragraph (b)(1) of this section, instead of the *Change in Inspection Status Form*, if you anticipate that UDOC production at your plant site during the current calendar year will be below the inspection threshold level specified in paragraph (d)(1) of this section, but you expect your plant site to remain subject to the UDOC declaration requirements in paragraph (a)(1) of this section. In this case, the due date for the *Annual Declaration on Past Activities* will be December 15th of the current calendar year, instead of February 28th of the next calendar year. Note that any changes to information contained in the *Annual Declaration on Past Activities* must be addressed in accordance with the amendment requirements in § 715.2 of the CWC. For example, if subsequent to the submission of your *Annual Declaration on Past Activities* to BIS on December 15th, you determine that the production by synthesis of UDOCs at your plant site actually exceeded

the UDOC inspection threshold level specified in paragraph (d)(1) of this section, you must submit an amendment to your *Annual Declaration on Past Activities* (see § 715.2 of the CWC) and indicate, on Form B, the reason your plant site exceeded the UDOC inspection threshold.

**Note 4 to § 715.1(d)(2):** Currently inspectable UDOC plant sites that do not submit either a *Change in Inspection Status Form* or *Annual Declaration on Past Activities* by December 15th of the current calendar year, in accordance with paragraph (d)(2) of this section, will remain subject to inspection through at least the 90-day period at the beginning of the next calendar year.

3. Section 715.4 is amended by revising the section heading and introductory text, by revising paragraph (c), and by adding a new paragraph (d) to read as follows:

**§ 715.4 Deadlines for submitting UDOC declarations, No Changes Authorization Forms, Change in Inspection Status Forms, and amendments.**

*Declarations, No Changes Authorization Forms, Change in Inspection Status Forms, and amendments* required under this part must be postmarked by the appropriate dates identified in Supplement No. 3 to this part 715 of the CWC. Required documents under this part include:

\* \* \* \* \*

(c) *Change in Inspection Status Form*—May be completed and submitted to BIS if your plant site is currently subject to inspection, pursuant to § 715.1(d)(1) of the CWC, and you anticipate that the production of UDOCs at your plant site during the current calendar year will remain below the inspection threshold level indicated therein (*i.e.*, 200 metric tons aggregate); and

(d) Amended declaration.

4. Supplement No. 3 to part 715 is revised to read as follows:

**Supplement No. 3 to Part 715—Deadlines for Submission of Declarations, No Changes Authorization Forms, Amendments for Unscheduled Discrete Organic Chemical (UDOC) Facilities, and Change in Inspection Status Forms**

Declarations	Applicable forms	Due dates
<i>Annual Declaration on Past Activities</i> : (previous calendar year). Declared plant site	Certification, UDOC, A (as appropriate), B (optional).	February 28 of the year following any calendar year in which the production by synthesis of UDOCs exceeded the applicable declaration threshold in § 715.1(a)(1) of the CWC.*

Declarations	Applicable forms	Due dates
<i>No Changes Authorization Form:</i> (declaration required, but no changes to data contained in previously submitted annual declaration on past activities (previous calendar year). Declared plant site <i>Amended Declaration:</i> —Declaration information —Company information —Post-inspection letter <i>Change in Inspection Status Form:</i> (applies only if your plant site is currently subject to inspection, pursuant to § 715.1(d)(1) of the CWCR, and you anticipate that the production by synthesis of UDOCs at your plant site during the current calendar year will remain below the inspection threshold level specified therein).	No Changes Authorization Form.  Certification, UDOC, A (as appropriate), B (optional).  Change in Inspection Status Form.	February 28 of the year following any calendar year in which the production by synthesis of UDOCs exceeded the applicable declaration threshold in § 715.1(a)(1) of the CWCR.  —15 calendar days after change in information. —30 calendar days after change in information. —45 calendar days after receipt of letter.  December 15th of any calendar year in which the production by synthesis of UDOCs is anticipated to be below the inspection threshold level specified in § 715.1(d)(1) of the CWCR.*

\*You may submit the *Annual Declaration on Past Activities (ADPA)* described in § 715.1(b)(1), instead of the *Change in Inspection Status Form*, if you anticipate that UDOC production at your plant site during the current calendar year will be below the inspection threshold level specified in § 715.1(d)(1), but you expect your plant site to remain subject to the UDOC declaration requirements in § 715.1(a)(1). In this case, the due date for the *Annual Declaration on Past Activities* will be December 15th of the current calendar year, instead of February 28th of the next calendar year.

## PART 716—[AMENDED]

5. The authority citation for 15 CFR Part 716 continues to read as follows:

**Authority:** 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703, 3 CFR 1999 Comp., p. 199.

6. Section 716.1 is amended by adding a new Note 3 to paragraph (b)(4) to read as follows:

### § 716.1 General information on the conduct of initial and routine inspections.

\* \* \* \* \*

- (b) \* \* \*  
(4) \* \* \*

**Note 3 to § 716.1 (b)(4):** Any UDOC plant site that is eligible, in accordance with § 715.1(d)(2) of the CWCR, to submit a *Change in Inspection Status Form* or an *Annual Declaration on Past Activities* by December 15th of the current calendar year (*i.e.*, a plant site that will be below the inspection threshold level indicated in paragraph (b)(4) of this section during the current calendar year), but that fails to do so, will remain subject to inspection through at least the 90-day period at the beginning of the next calendar year.

\* \* \* \* \*

7. Section 716.4 is amended by revising paragraph (e) to read as follows:

### § 716.4 Scope and conduct of inspections.

\* \* \* \* \*

(e) *Records review.* (1) The facility must provide the Inspection Team with access to all supporting materials and documentation used by the facility to prepare declarations and to otherwise comply with the requirements of the CWCR. These supporting materials and documentation shall include records related to activities that have taken place at the facility since the beginning of the previous calendar year, regardless

of whether or not the facility has submitted its current year *Annual Declaration on Past Activities* to BIS at the time of the inspection. The facility shall also make available for inspection all records associated with the movement into, around, and from the facility of declared chemicals and their feedstock or any product chemicals formed from such chemicals and feedstock. All supporting materials and documentation subject to the requirements of this paragraph (e) must be retained by the facility in accordance with the requirements of § 721.2 of the CWCR. The facility also must permit access to and copying of these records, upon request by BIS or any other agency of competent jurisdiction, in accordance with the requirements of § 721.1 of the CWCR.

(2) The facility must provide access to these supporting materials and documentation in appropriate formats (*e.g.*, paper copies, electronic remote access by computer, microfilm, or microfiche), through the U.S. Government Host Team to Inspection Teams, during the inspection period or as otherwise agreed upon by the Inspection Team and Host Team Leader.

(3) The facility must provide the Inspection Team with appropriate accommodations in which to review these supporting materials and documentation.

(4) If a facility does not have access to supporting materials and documentation for activities that took place under previous ownership, because such records were not transferred to the current owner of the facility by the previous owner (*e.g.*, as part of the contract involving the sale of the facility), the previous owner must

make such records available to the Host Team for provision to the Inspection Team in accordance with section 305 of the Act. However, the current owner of a facility, upon receiving notification of an inspection (*see* § 716.5 of the CWCR), is responsible for informing BIS if the previous owner did not transfer records for activities that took place under the previous ownership—this will allow BIS to contact the previous owner of the facility, to arrange for access to such records, if BIS deems them relevant to the inspection activities.

\* \* \* \* \*

## PART 719—[AMENDED]

8. The authority citation for 15 CFR Part 719 continues to read as follows:

**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; E.O. 13128, 64 FR 36703, 3 CFR 1999 Comp., p. 199.

9. Section 719.3 is amended:

a. By revising the dollar amount “\$11,000” to read “\$50,000” in paragraph (b) and in the footnote to paragraph (b); and

b. By revising the parenthetical “(15 CFR 6.4(a)(3))” at the end of the footnote to paragraph (b) to read “(15 CFR 6.4(a)(5))”.

## PART 721—[AMENDED]

10. The authority citation for 15 CFR Part 721 continues to read as follows:

**Authority:** 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703, 3 CFR 1999 Comp., p. 199.

11. Section 721.2 is amended by revising paragraph (a) to read as follows:



**§ 721.2 Recordkeeping.**

(a) *Requirements.* Each person, facility, plant site or trading company required to submit a declaration, report, or advance notification under parts 712 through 715 of the CWCRC must retain all supporting materials and documentation used by a unit, plant, facility, plant site or trading company to prepare such declaration, report, or advance notification to determine production, processing, consumption, export or import of chemicals. Each facility subject to inspection under part 716 of the CWCRC must retain all supporting materials and documentation associated with the movement into, around, and from the facility of declared chemicals and their feedstock or any product chemicals formed from such chemicals and feedstock. In the event that a declared facility is sold, the previous owner of the facility must retain all such supporting materials and documentation that were not transferred to the current owner of the facility (*e.g.*, as part of the contract involving the sale of the facility)—otherwise, the current owner of the facility is responsible for retaining such supporting materials and documentation. Whenever the previous owner of a declared facility retains such supporting materials and documentation, the owner must inform BIS of any subsequent change in address or other contact information, so that BIS will be able to contact the previous owner of the facility, to arrange for access to such records, if BIS deems them relevant to inspection activities involving the facility (*see* § 716.4 of the CWCRC).

\* \* \* \* \*

Dated: October 2, 2006.

**Matthew S. Borman,**  
Deputy Assistant Secretary for Export  
Administration.

[FR Doc. E6-16597 Filed 10-5-06; 8:45 am]

BILLING CODE 3510-33-P

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric  
Administration****15 CFR Part 922**

[Docket No. 0648-AT16: 060810216-6216-01]

RIN 0648-AT16

**Cordell Bank National Marine  
Sanctuary Regulations**

**AGENCY:** National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and

Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Proposed rule; notice of public availability of draft management plan/draft environmental impact statement.

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA) is proposing a draft revised management plan and revised regulations for Cordell Bank National Marine Sanctuary (CBNMS or Sanctuary). The proposed set of regulations includes new regulations as well as changes to existing regulations.

The NMSP is also proposing certain revisions to the Sanctuary's Designation Document.

**DATES:** Public hearings will be held as detailed in the **SUPPLEMENTARY INFORMATION** section.

Comments will be considered if received by January 5, 2007, 2006.

**ADDRESSES:** Written comments should be sent by mail to Brady Phillips, Jmpr Management Plan Coordinator, NOAA National Marine Sanctuary Program, 1305 East-West Highway, N/ORM-6, Silver Spring, MD 20910, by e-mail to [jointplancomments@noaa.gov](mailto:jointplancomments@noaa.gov), or by fax to (301) 713-0404. Copies of the DMP/DEIS are available from the same address and on the Web at <http://www.sanctuaries.nos.noaa.gov/jointplan>. Comments can also be submitted to the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to David Bizot, National Permit Coordinator, National Marine Sanctuary Program, 1305 East-West Highway, N/ORM-6, Silver Spring, Maryland 20910, by e-mail to [David.Bizot@noaa.gov](mailto:David.Bizot@noaa.gov), or by fax to 301-713-0404; and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to (202) 395-7285.

**FOR FURTHER INFORMATION CONTACT:** Dan Howard at (415) 663-0314, Extension 102 or [Dan.Howard@noaa.gov](mailto:Dan.Howard@noaa.gov).

**SUPPLEMENTARY INFORMATION:****Introduction**

Pursuant to section 304(e) of the National Marine Sanctuaries Act (16 U.S.C. 1434 (e)), the National Marine Sanctuary Program (NMSP) has completed its review of the management plan for Cordell Bank National Marine Sanctuary (CBNMS or Sanctuary), located off the coast of northern California. The review has resulted in a proposed new management plan for the

Sanctuary, several proposed revisions to existing regulations and several proposed new regulations. The proposed new regulations include prohibitions on:

- Discharging or depositing from within or into the Sanctuary any material or matter from a cruise ship, except vessel engine cooling water;
- Drilling, dredging or otherwise altering the submerged lands on or within the line representing the 50-fathom isobath surrounding the Bank, except incidental and necessary to lawful use of any fishing gear during normal fishing operations;
- Drilling, dredging or otherwise altering the submerged lands beyond the line representing the 50-fathom isobath surrounding the Bank, except for anchoring a vessel or as incidental and necessary to lawful use of any fishing gear during normal fishing operations;
- Taking or possessing marine mammals, birds and sea turtles, except as authorized by the Marine Mammal Protection Act, as amended (16 U.S.C. 1361 *et seq.*), the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*), the Migratory Bird Treaty Act, as amended (16 U.S.C. 703 *et seq.*), and any regulations, as amended, promulgated under these acts; and
- Introducing or otherwise releasing from within or into the Sanctuary an introduced species except striped bass (*Morone saxatilis*) released during catch and release fishing activity.

These measures would afford better protection to the nationally significant natural resources at CBNMS.

Existing regulations would also be revised to:

- Clarify that the Sanctuary includes the submerged lands within the Sanctuary boundary;
- Correct inaccuracies in the coordinates and description of the Sanctuary's boundary;
- Clarify that discharges allowed from marine sanitation devices apply only to Type I and Type II marine sanitation devices and that all vessel operators are required to lock all marine sanitation devices in a manner that prevents discharge of untreated sewage;
- Specify that the existing exception for discharging or depositing fish, fish parts, or chumming materials (bait) applies only to lawful fishing activities within the Sanctuary;
- Remove an exception for discharging or depositing food waste resulting from meals on board vessels;
- Revise language for discharging and depositing from beyond the boundary of the Sanctuary.

The permit regulations for the Sanctuary are also being revised and