

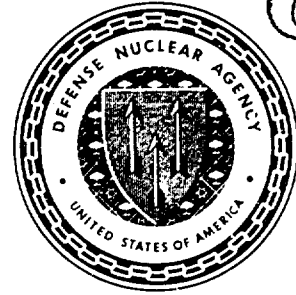
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DNA-TR-92-66

Domestic Reporting Requirements for Chemical Industry

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September 1992



Technical Report

CONTRACT No. DNA 001-90-C-0177

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13. ABSTRACT (Maximum 200 words) Existing federal and state government reporting requirements fail to provide the full, and detailed information on the chemical industry necessary to satisfy the annual data reporting requirements of the Chemical Weapons Convention (CWC). A wealth of information about the commercial chemical industry is collected by government. However, the legal authority to compel industry to report is specific and limited to each agency's legislative mandate. Statutory and administrative regulations limit access to primary manufacturing data on Confidential Business Information (CBI) grounds. The information collected under limited authority is often restricted for use solely within the collecting agency. Reporting under the Toxic Substances Control Act (TSCA) comes close to meeting CWC requirements. However, the Chemical Inventory list is compiled from pre-manufacturing notices and is only updated every four years. Other Environmental Protection Agency (EPA) reporting requirements focus on air and solid waste pollution, rather than on regulating specific chemical products. The International Trade Commission's Synthetic Organic Chemical Report, published annually, is compiled from				
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13. ABSTRACT (Continued)

responses to questionnaires, and fails to cover all chemicals subject to CWC provisions. Census Bureau information on the chemical industry is also collected by questionnaire, on a five-year basis, and is heavily protected by CBI restrictions.

14. SUBJECT TERMS (Continued)

Environmental Protection Agency
International Trade Commission

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SUMMARY

The purpose of this report is to identify Federal reporting requirements pertaining to the commercial chemical industry that may satisfy the annual data declaration, and on-site reporting provisions in the proposed Chemical Weapons Convention (CWC). Federal regulatory agencies collect a wide variety of industry data to satisfy requirements stipulated by the Congress in each agency's enabling legislation. The information collected is intended for the authorized purpose of carrying out each agency's specific legislative mandate. Figure 1 illustrates the relationship between Federal reporting requirements and the information required to satisfy the data declaration requirements of CWC. Although many agencies collect information that is applicable to CWC verification, no one agency collects all that is needed, nor is information collected on all chemicals listed in the CWC Schedules. Some items of information are either not collected on an annual basis, or simply are not collected at all (i.e., individual facility production capacity).

Requirements for reporting within each agency are by no means standard. Chemical manufacturers may find that they must report under Toxic Substance Control Act (TSCA) rules based on the EPA's Chemical Substance Inventory listing which covers some 60,000 chemicals, but no chemical mixtures, and also be required to report under the Comprehensive Assessment Information Rule (CAIR) regulation which lists 19 chemical substances, some which are mixtures. Reporting requirements under the TSCA Update rule is designed to produce a "snapshot" of the chemical industry every four years and only reflects chemical production (manufacture and imports) for the subject year. The last subject year was 1990. Most environmental reporting is concerned with pollution and its effects. Data collection focuses on the quantities of solid waste, waste water, and air emissions produced during chemical processing, storage and transport, rather than on the chemical products themselves. Reporting frequency also varies among the other regulatory agencies. Quarterly, annually, and biennially (every five years for the National Census) are the reporting frequencies most often specified in agency implementing regulations.

Agencies are permitted to share information, however, such sharing is usually limited to data in the aggregate, compilations of reports, or industry wide studies and analyses. Primary manufacturing data is heavily protected from public access by Confidential Business Information restrictions. In chemical industry cases where CBI is claimed, such information is often limited to use within the collecting agency itself.

The remainder of this report examines what information chemical manufacturers, transporters, importers and exporters are required by law to submit to the government. The reporting requirements examined include those for: 1) permits and licensing, 2) general regulatory compliance, and 3) statistical data collection.

CWC Requires Regulations	Chemical Name, CAS Number	*Amount Produced, Processed, or Consumed	Final Product, End Use	Company Name	Location	Facility Name	Production Capacity	Quantity of Product Stored	Facility Description	Projected Activity	Quantity Exported/Imported	Annual Report	Reference Section in Report
TSCA/Inventory (EPA) ¹	X	X	X	X	X	X		X			X		2.1
TSCA/Update (EPA) ²	X	X	X	X	X	X		X			X		2.1
RCRA (EPA) ³	X			X	X	X				X			2.2
CAA (EPA)	X			X	X	X				X			2.3
CWA (EPA)	X			X	X	X				X			2.4
SDWA (EPA)	X			X	X					X			2.5
CERCLA (EPA) (Superfund)	X			X	X	X				X			2.6
FIRFRA (EPA)	X			X	X	X							2.7
HMMA (DOT)	X			X	X	X		X					3.0
Title 15 U.S.C § 1516 (DOC)	X			X	X	X		X					4.0
Census (DOC) ⁴	X	X		X	X	X		X		X			4.1
Title 15 CFR § 730-799 (DOC/BXA)	X	X		X	X	X		X		X	X		4.2
ITC ⁵	X	X	X	X	X	X		X		X	X	X	5.0

*Subject to Confidential Business Information (CBI) claim when identified by chemical, with a producer, by company name.

¹ Lists existing and new chemicals (based on Premanufacture Notifications) in commerce in the United States

² Chemical Inventory updated every four years covering production only for the subject year; not all chemicals on the list are updated; contains CBI. Comprehensive Assessment Information Rule (CAIR) covers only 19 select chemicals.

³ Hazardous incidents reported immediately, manifests subject to periodic inspection

⁴ Reported every five years; contains CBI.

⁵ Reported by mailed questionnaire; annually for the Synthetic Organic Chemical Survey, periodically for other surveys; contains CBI.


 EPA Reports focusing on air, water, and waste pollution rather than chemicals produced for commerce.

Figure 1. CWC and domestic reporting matrix.

PREFACE

The author of this report is grateful to the numerous contributors to this effort :

- **Jonathan Fox, Esq., of the U.S. Defense Nuclear Agency for his leadership, enthusiasm and thoughtful contributions;**
- **Jerry R. Stockton, Director, Arms Control Policy and Verification Division, BDMESC, who contributed substantially to the editing and revision of the report;**
- **Scott Sherlock, Attorney Advisor, Information Branch, Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency for sharing his expert knowledge of EPA Chemical Substance Inventory reporting requirements;**
- **James Emanuel, Chief of the Organic and Inorganic Chemical Branch, U.S. International Trade Commission for providing information on chemical industry reporting under the Tariff Act of 1930 for the Synthetic Organic Chemicals Survey;**
- **Charles Hochman, Office of Hazardous Materials Standards, Department of Transportation for clarifying reporting requirements that apply to the interstate and intrastate transportation of hazardous materials in commerce under DOT Hazardous Materials Regulations; and**
- **last but not least, Debbie Hiner, Office of the Deputy Chief Counsel, Department of Commerce, Bureau of the Census for her patience in explaining the dire legal consequences of failing to answer truthfully and correctly questions asked in the five-year census of manufacturers and other businesses.**

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SECTION 1

INTRODUCTION

Chemical manufacturers, importers/exporters, transporters and those who store chemical substances are required to abide by a host of state and Federal rules and regulations. Whether the purpose is to foster greater environmental and transportation safety, or to improve fair trade practices, nearly every aspect of chemical industry activity is regulated by Federal law.

Recordkeeping and mandatory reporting requirements are major components of the federal regulatory process. Recordkeeping and reporting powers conferred on administrative agencies generally are derived from enabling legislation enacted by the Congress. Specific reporting requirements are contained in agency administrative regulations published periodically in the Federal Register and the Code of Federal Regulations (CFRs). The following sections of this paper detail the Federal reporting requirements specified by the Environmental Protection Agency (EPA), Department of Transportation (DoT), Department of Commerce (DoC), Bureau of the Census, and the International Trade Commission (ITC). Reporting requirements of these agencies directly affect the Chemical Industry and are the most instructive in light of anticipated data collection and reporting provisions of the proposed Chemical Weapons Convention.

SECTION 2

ENVIRONMENTAL PROTECTION AGENCY (EPA)

The Environmental Protection Agency was established in the executive branch as an independent agency pursuant to the Reorganization Plan No. 3 of 1970 (Title 5 U.S.C. app.), effective December 2, 1970. The EPA promulgates or administers Federal air, water, solid waste, pesticide, radiation and toxic substances regulations codified, generally, under Title 40 CFR, Chapter I; Title 41 CFR § 115; and Title 48 CFR § 15. Each of the statutes administered by EPA contain their own reporting authority. Figure 2 illustrates the relationship between the enabling statute (or Act), and the regulations promulgated to implement the act. EPA's concern is mainly with pollution, and its effects on human health and the environment. Only the Toxic Substances Control Act (TSCA) applies specifically to individual chemical substances produced for commerce.

2.1 TOXIC SUBSTANCES CONTROL ACT (TSCA).

EPA's Toxic Substance Control Act (TSCA) regulates existing and new chemical substances. The TSCA statute applies to manufacturers, distributors, processors and importers of chemicals. EPA maintains a listing of chemical substances in commerce in the United States. The TSCA Chemical Substance Inventory was originally compiled from reports submitted by manufacturers, importers and processors in 1978 and 1979. New chemical substances are added to the Inventory when companies who have submitted Premanufacturer Notifications or Polymer Exemption Applications to EPA notify the agency that manufacture or import of the chemical substance has commenced. Inventory contains more than 60,000 chemicals produced in commerce.

In 1986, EPA promulgated a rule for the partial updating of the Inventory. The Inventory Update Rule requires manufacturers and importers of selected chemical substances included on the TSCA Inventory to report current data on production volume, plant site, and site limited status of these substances. Reporting under the Inventory Update Rule takes place at four year intervals which began in 1986. Four categories of substances, though included on the Inventory, are largely excluded from reporting under the Inventory Update Rule. These categories are polymers, inorganic substances, microorganisms, and naturally occurring substances. Figure 3 is the front and back of the form used to update the Inventory Data Base. The form has blocks to indicate which information the respondent wants kept confidential. The back side of "FORM U" lists the criteria by which confidentiality will be judged and is based on procedures set forth in Title 40 CFR Part 2.

STATUTE	CITATION
Toxic Substances Control Act (TSCA)	TSCA 8 40 CFR 704, 710, 717.6, 720.78, 761, 761.180, 762.60, 763.144, 792.185-195
Clean Air Act (CAA)	CAA 114, 208 311 40 CFR 51, 60, 79
Clean Water Act (CWA)	CWA 306, 402 40 CFR 122.41, 122.48, 233.7, 233.11
Comprehensive Environmental Response Compensation and Liability Act (CERCLA)	CERCLA 103
Federal Insecticide, Fungicide and Rodenticide Act (FIFRA)	FIFRA 4, 6 40 CFR 160.63, 160.185-195, 171.11
Resource Conservation and Recovery Act (RCRA)	RCRA 3001, 3002, 3003, 3004, 9003 40 CFR 262.40 263.22, 264.74, 264.279, 264.309 265.74, 265.94, 270.30, 270.31
Safe Drinking Water Act (SDWA)	SDWA 1445 40 CFR 144.51 144.54, 141.31-33

Figure 2. Environmental Protection Agency reporting requirements.

EPA

US Environmental Protection Agency
Partial Updating of TSCA Inventory Data Base
Production and Site Report
(Section 6(a) Toxic Substances Control Act 15 USC 2607)

1990

REPORT NUMBER

61052320

FORM
U

Certification Statement: I hereby certify to the best of my knowledge and belief that (1) all information entered on this form is complete and accurate, and (2) the confidentiality statements on the back of this form are true as to the information for which I have asserted a confidentiality claim.

SIGNATURE DATE NAME/TITLE (Type or Print)

TECHNICAL CONTACT NAME		PLANT SITE NAME	
COMPANY NAME		DUN & BRADSTREET NUMBER	
COMPANY ADDRESS I		PLANT SITE STREET ADDRESS I	
COMPANY ADDRESS II		PLANT SITE STREET ADDRESS II	
CITY	STATE	CITY	STATE
ZIP CODE	TELEPHONE (w/Area Code)	ZIP CODE	

CHEMICAL SUBSTANCE IDENTITY/ACTIVITY/CONFIDENTIALITY

A	B. Identifying Number	C. ID CODE (See back of form)	D. Activity M or I	E. Site Unlisted	F. Production Volume in Pounds	G. Plant Chemical	Chemical
1							
	H. Specific Chemical Name						
2							
	H. Specific Chemical Name						
3							
	H. Specific Chemical Name						
4							
	H. Specific Chemical Name						
5							
	H. Specific Chemical Name						
6							
	H. Specific Chemical Name						
7							
	H. Specific Chemical Name						
8							
	H. Specific Chemical Name						
9							
	H. Specific Chemical Name						
10							
	H. Specific Chemical Name						

Figure 3. Environmental Protection Agency - partial updating of TSCA inventory data base production and site report (Front).

Where to Get Supplies and Send Completed Forms

TSCA Inventory Update Form U and a copy of the instruction booklet may be obtained from, and completed forms should be sent to:

Document Processing Center (TS-790)
Office of Toxic Substances
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, DC 20460
Room E-105
ATTN: Inventory Update Rule

Concerning EPA Disclosure of Information

If you submit information to EPA and claim any of it as confidential, EPA will publicly disclose that information only as allowed by the procedures set forth in 40 CFR Part 2. If no such claim accompanies the information when it is received, EPA may make that information public without further notice to you.

Confidentiality Statements

Chemical substance identity and other information reported to EPA on the front of this form may be claimed as confidential by checking the appropriate CBI boxes. The person signing the certification statement attests to the truth of the following four statements concerning all information claimed as confidential:

1. My company has taken measures to protect the confidentiality of the information, and intends to continue to take such measures.
2. The information is not, and has not been, reasonably obtainable without our consent by other persons (other than governmental bodies) by use of legitimate means (other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding).
3. The information is not publicly available elsewhere.
4. Disclosure of the information would cause substantial harm to our competitive position.

The person signing also attests to the truth of the appropriate statement(s) below concerning the information specifically claimed as confidential for the particular chemical substance. By checking the CBI box under:

Company Name: I assert that the linkage between my company identity (including the names of any persons appearing on the form) and the information submitted on the form is confidential.

Chemical Identity: I assert that the identities of the chemical substances so claimed are confidential.

Activity: I assert that the nature of my activity (manufacture vs. import) is confidential.

Site Limited: I assert that whether the chemical substance is distributed for a commercial purpose outside the plant site identified on this form is confidential.

Plant Site: I assert that the link of the chemical substance to the plant site identified on this form is confidential.

Production Volume: I assert that the production volume of the chemical substance at the plant site identified on this form is confidential.

When claiming the identity of a chemical substance as confidential, you must provide written substantiation for such claim (see reporting instructions). Failure to do so may result in EPA making that information public without further notice to you.

Codes for Block C

A = Accession Number
B = Bona Fide Number
C = CAS Registry Number
F = Original Inventory Form Number
P = PMN Number
T = TMEA Number

Paperwork Reduction Act Notice

Public reporting burden for this collection of information is estimated to average 11.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460; and to Office of Management and Budget, Paperwork Reduction Act Project (2070-0070), Washington, DC 20503.

Figure 3. Environmental Protection Agency - partial updating of TSCA inventory data base production and site report (Back) (Continued).

Chemical manufacturers, importers, and processors of 19 select chemical substances must comply with reporting requirements detailed in the "Comprehensive Assessment Information Rule" (CAIR) in Title 40 CFR 704 Subpart C. Examples of information to be reported on the CAIR reporting form are listed below:

- General Manufacturer, Importer, and Processor Information
 - Respondent Identification
 - Reporting Status
 - Certification Statements
 - Corporate Data
 - Mixture Identification
- Manufacturer, Importer, and Processor Volume, and Use
 - Respondent Activities
 - Quantity Manufactured, Imported and Processed
 - Quantity Exported
 - Quantity Stored on-site
 - Product Types
 - Transportation off-site
 - Customer Use

Violators of the requirements in PART 704 may be subject to civil administrative penalties, not exceeding, \$25,000 per day of violation, or criminal prosecution. EPA is also empowered to seek court action to compel submission of required information.

The usefulness of TSCA reporting to CWC is limited. The TSCA inventory is simply a listing of chemicals used in commerce in the United States. There is no annual reporting requirement, the four year update covers the subject year only, and not all chemicals listed in the Inventory are updated at the four year interval. The following schedule chemicals were not included in the four year update in the subject year 1990:

- Schedule 3 Chemicals
 - Cyanogen chloride
 - Phosphorus oxychloride
 - Phosphorus trichloride

With regard to TSCA information on the chemical industry held by EPA, while much of it is public there does remain a significant amount which is classified as CBI and is therefore not publicly available.

2.2 SOLID WASTE (RCRA).

The Resource Conservation and Recovery Act (RCRA) requires "generators" of waste to determine if their waste is hazardous, and comply with pre-transportation packaging, labeling and marking requirements. Transfer of waste to off-site facilities requires generators to submit reports on the transfer.

Federal and state requirements under RCRA also apply to facilities which treat, store or dispose of "Controlled Hazardous Substances". Specific data items that must be reported on the RCRA permit application include:

- Background data on the facility and the local area
- Descriptions of the facility
- Data on waste to be at the site, and a written waste analysis plan
- Procedures covering manifesting, recordkeeping, and reporting

Hazardous waste transporters must comply with the incorporated Department of Transportation (DoT) regulations concerning transportation of hazardous materials, and if necessary ensure remedial actions are accomplished. Recordkeeping requirements for transporters dictate compliance with the manifesting system and retention of records for three years. Examination of plant safety, transportation and storage records is likely to be part of any CWC challenge inspection. Depending on the final form of the CWC inspection protocols, the usefulness of information reported under RCRA for satisfying CWC data declaration requirements may be limited to facility descriptions, site diagrams, and off-site transfers.

2.3 CLEAN AIR ACT (CAA).

The Clean Air Act (CAA) authorized EPA to establish national ambient air standards for concentrations of hazardous air pollutants. EPA recordkeeping and reporting requirements pertaining to air emissions are aimed at determining whether National Ambient Air Quality Standards (NAAQS) are being met.

Chemical manufacturers, as either owner or operator of any "stationary source" of air pollution must comply with Title 40 CFR 60 which sets standards for new stationary sources. EPA must be furnished with written notification of any physical or operational change to an existing facility which might increase emission rates of any air pollutant to which standards apply. Additionally, any owner or operator required to install a continuous monitoring system must submit a written report of excess emissions to EPA for every calendar quarter. All quarterly reports must be postmarked by the 30th day following the end of each quarter. Information that must be submitted in the report includes the magnitude of excess emissions and specific identification of each period of excess emission that occurred during startups, shutdowns, and malfunctions at the affected facility.

CAA provides guidance on permits for air emissions from "National Emission Standards for Hazardous Air Pollutants (NESHAP) sources, and sources subject to "Prevention of Significant Deterioration" (PSD) of air quality program. CAA defines a hazardous air pollutant as:

"...an air pollutant to which no ambient air quality standard is applicable and causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness."

EPA publishes a list of hazardous air pollutant compounds and facilities which emit listed compounds that are subject to NESHAP permitting regulations. Information collected under CAA may be useful in CWC investigations where air sampling is important in determining compliance. Other environmental sampling may be supported by information collected under the Clean Water and Superfund statutes.

2.4 CLEAN WATER ACT (CWA).

Section 402 of the Clean Water Act (CWA) established the National Pollutant Discharge Elimination Standards (NPDES) program. Under this section the EPA, and approved state agencies, have issued more than 50,000 NPDES permits required for all point sources from which pollutants are discharged into navigable waters.

An NPDES permit is required for any direct discharge from new or existing sources (indirect discharges are regulated through another program). NPDES permits are issued by EPA or an authorized state agency to enforce Federal effluent limitations promulgated for industrial categories under Section 303 of the CWA. The Discharge Monitoring Report (DMR) gives a

summary of the dischargers' records on a monthly or quarterly basis for flow measurement, sample collection and laboratory analysis.

New Source Performance Standards (NSPS) permits require applicants to submit information on basic facility design (diagram/description), regulated activities, lists of current environmental permits, descriptions of all outfalls, drawings, flows, treatment, production, compliance schedules, effluent characteristics, use of toxins, potential discharges and bio-assay toxicity tests performed. Applicants must conduct analytical testing for pollutants including all toxic metals, cyanide and phenols. The applicant must also list hazardous substances believed to be present at the industrial plant, although testing is not required.

Amendments to the CWA in 1987 established a schedule for regulation of municipal and industrial storm water discharges under NPDES permits. Until October 1992, only major dischargers and those who were significant contributors to pollutants were required to obtain permits. Applicants are obligated under Title 40 CFR § 122.41(h) to provide information to EPA upon request to determine whether cause exists for modifying, revoking, reissuing, or terminating the permit and for determining compliance with the permit. Permittees are required to report any planned physical changes or alterations to the permitted facility, anticipated non-compliance, or new source discharges. Compliance or noncompliance reports are submitted every 14 days based on the compliance schedule enacted at the affected facility. In CWC investigations where non-compliance is suspected, examination of records kept in accordance with the CWA may prove useful. Reported physical changes at a permitted facility and new source discharges may satisfy compliance concerns over a suspect plant's current activities. For the purposes of CWC verification, examination of clean-up records may be useful in determining, and reporting the history of a plant's past activities.

2.5 DRINKING WATER (SDWA).

The Safe Drinking Water Act (SDWA) sets primary and secondary standards which apply to water after treatment by public drinking water systems. Reporting requirements pertain to public water systems operators, and the States. SDWA may be the least relevant of all the EPA statutes to CWC. However, information collected on public drinking water systems may be useful in challenge inspections, or in investigations of the hopefully rare possibility of alleged CW use against the United States.

2.6 SUPERFUND (CERCLA).

The Superfund Act or "Comprehensive Environmental Response, Compensation and Liability Act" (CERCLA) was enacted in 1980 to authorize the Federal government to clean up toxic or hazardous contaminants at closed and abandoned hazardous waste dumps. Regulatory provisions under Sections 102 and 103 of the act require that release of hazardous substances into the environment be reported unless the release is in accordance with an established permit. Spills of any "reportable quantity", established pursuant to regulations promulgated under the act, must be reported. Additionally, all owners or operators of any facility handling and disposing of hazardous substances or that has handled hazardous substances in the past are required to inform EPA of their facility activities unless they have a RCRA permit or have been accorded "interim status".

The Superfund Act was amended in 1986 under the Superfund Amendments and Reauthorization Act (SARA). Those amendments provide mandatory schedules for completion of various phases of clean up. An integral part of SARA, but not an amendment to the Superfund Act, is the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986. It addresses the handling of extremely hazardous chemicals and requires reporting on emergency planning and notification, community-right-to-know procedures, and emissions inventory.

2.7 PESTICIDES (FIRFRA).

The Federal Insecticide, Fungicide and Rodenticide Act (FIRFRA) requires registration of all pesticides, restricts the use of certain pesticides, authorizes experimental use permits and recommends standards for pesticide applicators and the disposal and transportation of pesticides. A few pesticides are also regulated as toxic pollutants under Section 307(a) of the CWA and by Primary Drinking Water Standards under SDWA.

Registration requirements under FIRFRA are set out in Section 136a. They require pesticide producers to register with EPA and provide information on the types and amounts of pesticides produce, and if applicable, information on the active ingredients used in producing pesticides. FIRFRA authorization to compel producers to maintain records with respect to their operations is specified in Section 136f. However, this section stipulates that no records need be kept or reports filed on financial data, sales data or other shipment data (other than that relating to registered pesticides or to a pesticide for which an application for registration has been filed).

Protection of confidential business information (CBI) is provided by Section 136h. This section not only specifies procedures for safeguarding product, plant site and production processes, but extends the definition of CBI to manufacturing, quality control, and testing procedures. Reporting of information on pesticide plants may be required under CWC depending on what has been or is currently being produced. However, CBI restrictions on release of primary manufacturing data may be difficult, or impossible under current law to avoid.

SECTION 3

DEPARTMENT OF TRANSPORTATION (DoT)

The Hazardous Materials Transportation Act of 1974 (as amended) was enacted to "protect the Nation adequately against the risks to life and property which are inherent in the transportation of Hazardous Materials (HM) in commerce." In administering this act, the Department of Commerce is charged with designating particular quantities and forms of materials as hazardous, issuing regulations for safe transport of HM in commerce, establishment of a register of hazardous materials transporters, and the enforcement of HM transportation safety regulations. Information collected under DoT regulations would be useful in satisfying CWC reporting requirements on chemical transfers.

The latest U.S. Department of Transportation (DoT) regulations pertinent to the transportation of hazardous materials are contained in DoT document HM-181. The DoT regulations on the transportation of hazardous materials were revised in 1991 to conform to international standards in packaging, labeling, and shipping of toxic substances including hazardous waste.

DoT regulations call for the immediate reporting of certain hazardous materials incidents. The report must be made by telephone to DoT (toll free) 800-424-8802, or to the Director, Center for Disease Control in Atlanta (404-633-5313) should the material involve etiologic agents. Under Title 49 CFR § 171.15 transporters of hazardous materials, including hazardous waste must report any incident involving hazardous material that results in loss of life, property damage over \$50,000, or the evacuation of the general public that last more than one hour. Information that must be included in the report include:

- Name of the reporter (transporter/carrier)
- Name and address of carrier represented by the report (when appropriate)
- Phone number where reporter can be contacted
- Date, time, and location of incident
- Extent of injuries, if any
- Classification, name and quantity of hazardous materials involved, if such information is available.
- Type of incident and nature of hazardous material involvement and whether a continuing danger to life exists at the scene.

Following immediate report of an hazardous incident during transport a detailed hazardous materials incident report must be made in writing. In addition to the information required for

immediate notification, a copy of the hazardous waste manifest for the waste must be attached to the report. An estimate of the quantity of waste removed from the scene, and the name and address of the facility that received the waste must also be reported. DoT authorization for mandating reporting of hazardous materials incidents is derived from Title 49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53, App. A to Part 1. DoT information collected on hazardous incidents during transfers may be useful in tracking chemical production and use of Schedule chemicals. Additionally, transporter manifests may be subject to CWC inspection at challenge sites.

SECTION 4

DEPARTMENT OF COMMERCE (DoC)

The Department of Commerce (DoC) was created through reorganization of the former Department of Commerce and Labor when all labor activities was transferred to a new, separate Department of Labor in 1913 (Title 15 U.S.C. § 1501). Commerce, through its various offices, and bureaus collects economic statistics and conducts analyses for business and government planners. Data collected by Commerce on the chemical industry may be useful in verifying compliance with non-diversion and export restrictions contained in the CWC.

The power of Commerce to compel business to reply to mandatory surveys is derived, in part, from Title 15 U.S.C. § 1512 which grants the Department broad authority in carrying out its legislative mandate.

"It shall be the province and duty of said Department to foster, promote, and develop the foreign and domestic commerce, the mining, manufacturing, and fishery industries of the United States; and to this end it shall be vested with jurisdiction and control of the departments, bureaus, offices, and branches of the public service hereinafter specified, and with such other powers and duties as may be prescribed by law."

Primary manufacturing data is collected by Commerce to enforce trade laws, export restrictions, and to support economic research and analysis. The Commerce Secretary's authority to collect information from manufactures is specified in Title 13 U.S.C. § 131:

"Collection and publication; five-year periods

The Secretary shall take, compile, and publish censuses of manufacturers, of mineral industries, and of other businesses, including the distributive trades, service establishments, and transportation..."

This section authorizes Commerce to conduct the census. Refusal or neglect to answer census questions or give false answers carries a civil fine of up to \$500. Manufacturers and businesses who intentionally give false answers, are subject to higher fines. (See: Section 3.1.) Congress clearly intended that Commerce have the fullest authority to collect and analyze business and economic data. The intent is reflected in the authorizing language contained in Title 15 U.S.C. § 1516:

"Statistical information

The Secretary of Commerce shall have control of the work of gathering and distributing statistical information naturally relating to the subjects confided to his department; and he shall have the power and authority to rearrange the statistical work of the bureaus and offices confided to the Department of Commerce, and to consolidate any of the statistical bureaus and offices above described. He shall have authority to call upon other departments of the Government for statistical data and results obtained by them; and he may collate, arrange, and publish such statistical information obtained in such manner as to him may seem wise."

However, use of the information collected by Commerce is not unrestricted as is made clear in Title 13 U.S.C. § 9:

"Information as confidential; exception

(a) Neither the Secretary, nor any other officer or employee of the Department of Commerce or bureau or agency thereof, may:

- (1) use the information furnished under the provisions of this title for any purpose other than the statistical purposes for which it is supplied, or
- (2) make any publication whereby the data furnished by any particular establishment or individual under this title can be identified; or
- (3) permit anyone other than the sworn officers and employees of the Department or bureau or agency thereof to examine the individual reports."

The concern for confidentiality is reiterated in Title 15 U.S.C. § 176a:

"Confidential nature of statistical information

Any statistical information furnished in confidence to the Bureau of Foreign and Domestic Commerce by individuals, corporations, and firms shall be held to be confidential, and shall be used only for the statistical purposes for which it is supplied."

Although Congress expects the Department to have the fullest access possible to the data it needs to carryout its legislative mandate, the intention of Congress to protect confidential business information is equally apparent. The concern over CBI may limit the usefulness of data collected by DoC for the purposes of CWC. Additionally, data gaps exist on the chemicals of most concern under CWC because of the lack of uniform, annual data collection on all chemicals by DoC.

4.1 BUREAU OF THE CENSUS.

The Bureau of Census is authorized to collect, analyze, and disseminate statistical information on a broad range of important social and economic matters pertaining to national life. The Bureau of the Census periodically collects information on individual manufacturers through distribution of questionnaires for the census. Failure of businesses to respond when queried carries a stiff penalty specified here in detail:

"Title 13 U.S.C. § 224 Failure to answer questions affecting companies, businesses, religious bodies, and other organizations; false answers

Whoever, being the owner, official, agent, person in charge, or assistant to the person in charge, or any company, business, institution, establishment, religious body, or organization of any nature whatsoever, neglects, or refuses, when requested by the Secretary or other authorized officer or employee of the Department of Commerce or bureau or agency thereof, to answer completely and correctly to the best of his knowledge all questioning relating to his company, business, institution, establishment, religious body, or other organization, or to records or statistics in his official custody, contained on any census or other schedule or questionnaire prepared and submitted to him under the authority of this title, shall be fined not more than \$500; and if he willfully gives a false answer to any question, he shall be fined not more than \$10,000."

The mandatory reporting requirement for manufacturers is largely derived from the language underlined in this section. Additionally, The Bureau of the Census is also granted the power to compel exporters to produce business documents on demand.

Under Title 15 CFR § 30.11:

"Authority to require production of documents

For purposes of verifying the completeness and accuracy of the information reported as required. Customs is authorized to require the owners and operators of exporting carriers, as well as the exporters or their agents, either at the time of exportation or within a period of 3 years subsequent thereto, to produce for inspection or copying shipping documents, invoices, orders, packing lists, correspondence, as well as any other relevant documents and to furnish other information bearing upon a particular exportation. The Bureau of the Census is similarly authorized to require the production of such documents."

"Subpart A-General Requirements-Exporters

§ 30.1 General statement of requirement for Shipper's Export Declarations.

(a) Shipper's Export Declarations shall be filed by exporters or their agents in accordance with the definitions, specifications, and requirements of these regulations for all commodities, gold and silver, except as specifically exempted herein..."

The declarations required of manufacturers who export are covered by a confidentiality clause.

"Subpart G-General Administrative Provisions

§ 30.91 Confidential information, Shipper's Export Declarations

(a) Confidential status. The Shipper's Export Declaration is an official Department of Commerce form, prescribed jointly by the Bureau of Census and the International Trade Administration. Information supplied therein is confidential, for use solely for official purposes authorized by the Secretary of Commerce."

CBI restrictions are not the only limitation to the usefulness of census information for CWC. Census reporting does not satisfy the annual declaration requirements specified in the proposed convention, nor does the current reporting cover all CWC Schedule chemicals.

4.2 BUREAU OF EXPORT ADMINISTRATION (BXA).

While the Bureau of the Census' interest in collecting information on exports is to satisfy economic statistical requirements, that of the Bureau of Export Administration (BXA) is enforcement of export control regulations. Under the direction of the Secretary of Commerce, BXA controls and licenses exports and reexports of dual use commodities and technical data from the United States, its territories and possessions. Under the legislative authority of the Export Administration Act of 1979, as amended, controls of these commodities are maintained for reasons of national security, foreign policy, and short supply.

BXA regulates exports through a licensing system set forth in the Export Administration Regulations (EAR) (Title 15 CFR Parts 730-799). The EAR provides specific instructions on the use and types of licenses required and the types of commodities and technical data under control. An exporter determines if a validated license is required by consulting the Commodity Control List (CCL). The CCL describes commodities and identifies the country groups to which controls apply. While no special certification or registration is required from DoC to engage in export trade,

specific exports must be authorized by either a general license or a validated license. Generally, individual licenses are valid for two years.

Title 15 CFR Part 770 outlines export licensing general policy and related information:

"§ 770.1 General Policy

(a) Purposes for controls over exports. Export controls administered by the U.S. Department of Commerce under the Export Administration Act are used to the extent necessary:

(1) To protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of foreign demand;

(2) To further significantly the foreign policy of the United States and to fulfill its international responsibilities and

(3) To exercise the necessary vigilance over exports from the stand point of their significance to the national security of the United States.

§ 770.3 Prohibited exports

(a) General provisions. Subject to the provisions of §§ 770.4, 770.5, and 770.6, the export from the United States of all commodities, and all technical data as defined in § 379.1, is hereby prohibited unless and until a general license authorizing such export shall have been established or a validated license or other authorization for such export shall have been granted by the Office of Export licensing..."

Reporting under EARs administered by BXA is likely to produce the best data for verifying compliance to CWC export restrictions. However, BXA data may not be particularly useful in detecting illegal or clandestine transfers.

SECTION 5

INTERNATIONAL TRADE COMMISSION (ITC)

The United States International Trade Commission is an independent agency created by act of September 8, 1916 (39 Stat. 795), and originally named the United States Tariff Commission. The name was changed to the United States International Trade Commission by the Trade Act of 1974 (Title 19 U.S.C. § 2231).

The International Trade Commission (ITC) is authorized to furnish studies, reports, and recommendations involving trade and tariffs to the President, the Congress, and other Government agencies. In carrying out its mission, the International Trade Commission conducts a variety of investigations, public hearings, and research projects pertaining to the international policies of the United States. Although manufacturers are not required to submit routine reports to the ITC, the Commission has the power to compel business to supply certain information to carry out its legislative mandate. The powers are specified below:

"39 Stat. 795 Title VII Tariff Commission

Sec. 700. That a commission is hereby created and established, to be known as the United States Tariff Commission (name was changed to the United States Trade Commission by the Trade Act of 1974) which shall be composed of six members, who shall be appointed by the President, by and with the advice and consent of the Senate...

Sec. 706. That for the purposes of carrying this title into effect the commission or its duly authorized agent or agents shall have access to and the right to copy any document, paper, or record, pertinent to the subject matter under investigation, in the possession of any person, firm, co-partnership, corporation, or association engaged in the production, importation, or distribution of any article under investigation, and shall have power to summon witnesses, take testimony, administer oaths, and to require any person, firm, co-partnership, corporation, or association to produce books or papers relating to any matter pertaining to such investigation. Any member of the commission may sign subpoenas, and members and agents of the commission, when authorized by the commission, may administer oaths and affirmations, examine witnesses, take testimony, and receive evidence."

This last sentence grants the ITC power to compel compliance for requests for information by way of the instrument of subpoena. The mandatory nature of reporting is reflected in the instructions to manufacturers that accompanies ITC's annual "Synthetic Organic Chemicals" questionnaire (Figure 4). In answering the questionnaire, respondents must include product, and production and sales information (Figure 5).

Return To:
UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C. 20436
By April 1, 1991

SYNTHETIC ORGANIC CHEMICALS

Production and Sales in 1990 by Original Manufacturers Only

Company name _____
General corporate telephone number _____
Office Address _____
City _____ State _____ ZIP Code _____
Plant _____ State _____ ZIP Code _____

If report covers more than one plant, please attach list of plant locations.

The information required in this questionnaire is being collected by the United States International Trade Commission under the authority of section 333 of the Tariff Act of 1930, as amended (19 U.S.C. 1333). The U.S. International Trade Commission is authorized to collect the data requested in this questionnaire under the provisions of section 332 (g) of the Tariff Act of 1930, as amended (19 U.S.C. 1332) (g). The data are being collected for the use of the U.S. International Trade Commission and for the use of the office of Industrial Mobilization of the Department of Commerce, which has the authority to collect such data in its own right under section 705 of the Defense Production Act of 1930, as amended (50 U.S.C. App. 2155), and to receive them from the U.S. International Trade Commission pursuant to 44 U.S.C. 3508 (b) (4).

This report is mandatory and failure to reply as directed can result in a subpoena or other order to compel the submission of records or information in your possession.

Information supplied by you in this questionnaire or in connection therewith that qualifies as confidential business information within the meaning of the Freedom of Information Act (5 U.S.C. 552(b) (4)) will be so treated by the Commission and not disclosed except as may be required by law. Such information will not be published by the Commission in a manner that will reveal the individual operations of your firm.

IMPORTANT NOTICE: Please enter the necessary data in each of the enclosed sections and return one copy of each to the U.S. International Trade Commission without delay. Be sure each section is clearly identified as the report from your company. Return This cover and the Directory of Manufacturers (Section XIX) with the last section you send in. The report must be signed by an official of the Company.

1990

Figure 4. Synthetic organic chemicals.

Section XVI

Report data for production and sales of each synthetic organic chemical produced by your company which is not specially provided for in other sections of the schedule. Name specifically all radicals such as aryl, alkyl, fatty, etc., according to the system of nomenclature used by *Chemical Abstracts* (if known to you). Chemicals manufactured or sold in a mixture should be reported in terms of the major constituents. Chemicals manufactured or sold in the form of a paste or a solution should be reported in terms of 100 percent material. Use estimates of composition where no actual data are available. Indicate the principal use for each item reported. Specify all compounds, whether produced for sale or for internal or for other consumption; however report data on only the chemicals or chemicals products you manufacture whose annual volume of production or sales is greater than 1,000 pounds or whose value of sales is greater than \$1,000. (If the volume of production or sales is greater than 450 kilograms or if the value of sales is greater than \$1,000, report data on both production and sales.) Give the chemical abstracts (CAS) registry number if possible.

[illegible]

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Respondents to ITC surveys are protected by CBI restrictions that may deny inspectors and the International Organization precisely the primary manufacturing information needed to satisfy CWC data declaration requirements. Chemical manufacturing information published in the "Synthetic Organic Chemicals" survey is reported in the aggregate. Although, many respondents allow their company names to appear in the report's list of manufacturers, they are not required to do so. In chemical industry markets where only a few producers are involved, the names of the manufacturers are not listed at all. How much of a particular chemical is produced by each manufacturer is then held in strictest confidence within the ITC. Additionally, only manufacturers that receive the mailed questionnaire are required to report. ITC statisticians believe they are getting an 80 to 90 percent response with their questionnaire. While the ITC considers the response adequate for its purposes, the figure may not satisfy CWC data declaration requirements. ITC lists only 13 Schedule chemicals as having been produced during 1988-90:

Dimethylmethylphosphonate
Diethylethanolamine
Choline (base)
Choline bicarbonate
choline bitartrate
Choline chloride
Choline citrate
2,2'-thiodiethanol
Chloropicrin
Trimethyl phosphite
Triethyl phosphite
Dimethyl phosphite
Diethyl phosphite

These may indeed be the only Schedule Chemicals produced in the United States between 1988 and 1990, but, there is no way of knowing for certain.

APPENDIX ABBREVIATIONS

BXA	Bureau of Export Administration
CAA	Clean Air Act
CAIR	Comprehensive Assessment Information Rule
CAS	Chemical Abstract Service
CBI	Confidential Business Information
CCL	Commodity Control List
CERCLA	Comprehensive Environmental Responses, Compensation and Liability Act
CFR	Code of Federal Regulations
CWA	Clean Water Act
CWC	Chemical Weapons Convention
DMR	Discharge Monitoring Report
DOC	Department of Commerce
DOT	Department of Transportation
EAA	Export Administration Act
EAR	Export Administration Regulations
EPA	Environmental Protection Agency
EPCRA	Emergency Planning and Community Right-to-know Act
FIRFRA	Federal Insecticide, Fungicide and Rodenticide Act
FWPCA	Federal Water Pollution Control Act
HM	Hazardous Materials
HMTA	Hazardous Materials Transportation Act
NAAQS	National Ambient Air Quality Standards
NESHAP	National Emission Standards for Hazardous Air Pollutants
NPDES	National Pollution Discharge Elimination System
NSPES	National Source Performance Standard
PL	Public Law
PSD	Prevention of Significant Deterioration
RCRA	Resource Conservation and Recovery Act
SARA	Superfund Amendments and Reauthorization Act
SDWA	Safe Drinking Water Act
ITC	International Trade Commission
U.S.C.	United States Code

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Defense Threat Reduction Agency

8725 John J Kingman Road MS 6201
Ft Belvoir, VA 22060-6201

TDANP-TRC

August 1, 2001

MEMORANDUM TO DEFENSE TECHNICAL INFORMATION CENTER
ATTN: OCQ/MR LARRY DOWNING

SUBJECT: DOCUMENT CHANGES

The Defense Threat Reduction Agency Security Office reviewed the following documents in accordance with the Deputy Secretary of Defense Memorandum entitled, "Department of Defense Initiatives on Persian Gulf War Veterans' Illnesses" dated 22 March 1995, and determined that the documents were unclassified and cleared for public release:

DNA-TR-93-84, AD-B244408, Acoustic Resonance Spectroscopy in CW Verification Tooele Field Trial (August 1992).
DNA-TR-93-129-V1, AD-B192045, Global Proliferation – Dynamics, Acquisition Strategies and Responses, Volume 1 – Overview.
DNA-TR-93-129-V2, AD-B192046, Global Proliferation – Dynamics, Acquisition Strategies and Responses, Volume 2 – Nuclear Proliferation.
DNA-TR-91-216, AD-B163637, Harmonizing the Chemical Weapons Convention with the United States Constitution.
DNA-TR-92-180, AD-B175230, Evaluation of the Concept of a List for the BWC.
DNA-TR-92-61, AD-B167663, Basic State Party Functions and Skills Under CWC.
DNA-TR-92-66, AD-B167357, Domestic Reporting Requirements for Chemical Industry.
DNA-TR-91-213, AD-B163260, Analysis of the Interactions Between Treaties.
DNA-TR-93-70, AD-B177262, Chemical Weapons Convention Inspections of Private Facilities Application of United States Environmental and Safety Laws.
DNA-TR-92-182, AD-B173450, Commercial Products from Demilitarization Operations.
DNA-TR-91-217-V3, AD-B169350, Chemical Weapons Process Parameters, Volume 3 – Users' Guide.
DNA-TR-92-116-SUP, AD-B175292, Technical Ramifications of Inclusion of Toxins in the Chemical Weapons Convention (CWC), Supplement.
DNA-TR-92-128, AD-B175452, Task 1 Report Target Vapor Identification and Database Development.
DNA-TR-92-196, AD-B174940, Task 2 Report Algorithm Development and Performance Analysis.
DNA-TR-93-68, AD-B178109, CW Detection Instrument R&D Design Evaluation.

Enclosed is a copy of the referenced memorandum. If you have any questions, please call me at 703-325-1034.

Arndith Jarrett

ARDITH JARRETT
Chief, Technical Resource Center