

Ordinance on the control of chemicals for civil and military applications

Unofficial translation

of 3 September 1997 (state of 13 February 2001)

The Swiss Federal Council

Pursuant to Articles 4, 1, and 22 paragraph 1 of the Law on the control of goods of 13 December 1996¹,

decrees:

Section 1: General Provisions

Article 1 Aim

The present Ordinance regulates the implementation of the Chemical Weapons Convention (CWC)², of 13 January 1993. Its aim is to prevent the use of chemicals for the production of chemical weapons.

Article 2 Definitions

For the purposes of the present Ordinance, the terms below are defined as follows:

- a. *Production*: the formation of a chemical through chemical or biochemical reaction;
- b. *Processing*: a physical process, such as formulation, extraction, or purification, in which a chemical is not converted into another chemical;
- c. *Consumption*: the conversion of a chemical into another chemical, via a chemical or biochemical reaction;
- d. *Plant site*: the local integration of one or more plant;
- e. *Plant*: a relatively self-contained area containing one or more units with auxiliary and associated infrastructure;
- f. *Unit*: the combination of those items of equipment, including vessels and vessel set up, necessary for the production, processing or consumption of a chemical product;
- g. *Organic chemicals*: all organic chemicals according to the current definition, which reflects the current state of knowledge in chemistry, except for polymeric of a molecular weight superior to 1000;
- h. *PSF chemicals*: organic chemicals which contain the elements phosphorous, sulphur, or fluoride, and are not mentioned in the Schedules;
- i. *CAS number*: the registration number of chemicals according to the “Chemical Abstracts System”;
- j. *Organisation*: the Organisation for the Prohibition of Chemical Weapons in The Hague, established by Article VIII of the CWC³;
- k. *State Party to the Convention*: a state which has ratified the CWC.

Article 3 Publication and update of the Schedules

The Federal Department of Economic Affairs (FDEA) draws up the lists of Scheduled chemicals in an Ordinance after consulting the Federal Department of Foreign Affairs (FDFA) and the Federal Department for Defence; Population Protection and Sports (DDPS)⁴. It updates them when Switzerland's international obligations relative to chemicals control require it.

¹ SR 946.202

² SR 0.515.08

³ SR 0.515.08

⁴ Designation pursuant to a unpublished Federal Order of 19 December 1997. This change has been accounted for throughout the Ordinance.

Section 2: Production, processing, consumption and stockpiling

Article 4 Licensing requirements for Schedule 1 chemicals

¹ The production, processing, consumption, or stockpiling of Schedule 1 chemicals require a license, except for a quantity of less than 100 g/yr to be used for research, medical, or pharmaceutical purposes.

² In an overall quantity of over 10 kg/yr, Schedule 1 chemicals may be produced, processed or consumed only in a single federally licensed small-scale unit, unless these chemicals are unavoidable by-products or impurities resulting from a production process and do not exceed 3 percent of the total production quantity.

³ The application for a license shall be filed 200 days prior to the initial start-up of the activity subject to licensing at the latest.

⁴ The application shall at least specify: the name, location and a detailed technical description of the unit and the relevant parts, as well a description of the planned activity.

Article 5 Declaration requirements for Schedule 1 chemicals

¹ Holders of a license pursuant to Article 4 are subject to the following annual obligatory declarations:

- a. 60 days after the end of the year at the latest, they shall declare their activities of the past calendar year, specifying in detail the quantities produced, consumed, processed and stockpiled, and any modifications of the unit against the description previously submitted;
- b. 120 days before the beginning of the year at the latest, they shall declare the activities they plan for the coming calendar year.

² Holders of a license pursuant to Article 4 shall declare planned modifications of the unit against the specifications featured in the license at least 200 days before such modifications are made.

Article 6 Schedule 1 chemicals in mixtures and by-products

The licensing and declaration regime pursuant to Articles 4 and 5 also apply to chemicals:

- a. in mixtures, regardless of their concentration;
- b. which are only by-products or impurities, and if necessary are destroyed immediately.

Article 7 Declaration requirements for Schedule 2 chemicals

¹ The production, processing and consumption of Schedule 2 chemicals shall be declared annually if a plant site exceeded the following quantities during one of the past three calendar years, or if it plans to do so in the coming calendar year:

- a. 1 kg of a Schedule 2A chemical marked with an *;
- b. 100 kg of any other Schedule 2A chemical;
- c. 1 tonne of a Schedule 2B chemical.

² Annual declarations shall specify:

- a. 60 days after the end of the year at the latest, the activities of the previous calendar year;
- b. 90 days before the year at the latest, the activities planned for the coming calendar year;

³ Annual declarations shall include at least:

- a. information on the plant site, its exact location, address, and the company which operates it;
- b. information on all plant(s) on the plant site that undertook or anticipates to undertake activities subject to obligatory declarations pursuant to paragraph 1, including their exact location and the companies which operate them, their main activities and production capacity for the declared chemicals;
- c. the exact designation of the chemicals, their respective quantities, and uses;
- d. for declarations of anticipated activities, the period they will last.

⁴ An additional activity planned after the declaration pursuant to paragraph 2 letter b has been submitted shall be declared at least 10 days before its start-up.

Article 8⁵ Schedule 2 chemicals in mixtures or by-products

The obligation to declare pursuant to Article 7 also applies to chemicals:

- a. listed in Schedule 2A:
 1. in mixtures with a concentration of over 1 % by weight,
 2. which are only by-products, and if necessary may be destroyed immediately, if their concentration at any time exceeds 1 % by weight;
- b. listed in Schedule 2B:
 1. in mixtures with a concentration of over 30 % by weight,
 2. which are only by-products, and if necessary may be destroyed immediately, if their concentration at any time exceeds 30 % by weight.

Article 9 Declaration requirements for Schedule 3 chemicals

¹ The production of Schedule 3 chemicals shall be declared annually if a plant site has produced in excess of 30 t of such a chemical during the previous calendar year, or if it plans to do so during the coming calendar year.

² Annual declarations must specify:

- a. 60 days after the end of the year at the latest, the activities of the previous calendar year;
- b. 120 days before the beginning of the year at the latest, the activities planned for the coming calendar year.

³ Annual declarations shall include at least:

- a. information on the plant site, its exact location, its address, and the name of the company which operates it;
- b. information on all the plant(s) on the plant site which produced in excess of 30 t of a Schedule 3 chemical, including their exact location and the companies which operate them, and their main activities;
- c. the exact designation of the chemicals, with the approximate quantities produced, and their uses.

⁴ An additional activity planned after the declaration pursuant to paragraph 2 letter b has been submitted shall be declared at least 10 days before its start-up.

Article 10⁶ Schedule 3 chemicals in mixtures and by-products

The obligation to declare pursuant to Article 9 also applies to chemicals:

- a. in mixtures with a concentration of over 30 % by weight;
- b. which are only by-products, and if necessary may be destroyed immediately, if their concentration at any time exceeds 30 % by weight.

Article 11 Declaration requirements for plant sites that produce organic chemicals

¹ Plant sites shall be declared annually if during the previous calendar year:

- a. they produced a total of over 200 t of unscheduled organic chemicals; or
- b. one of their plants produced over 30 t of a PSF chemical.

² Plant sites that only produce explosives or hydrocarbons are not subject to the declaration requirement.

⁵ Version according to Num. I of V of 20 December 2000, in force since 1 February 2001 (AS 2001 316).

⁶ Version according to Num. I of V of 20 December 2000, in force as of 1 February 2001 (AS 2001 316).

³ Declarations shall be submitted 60 days after the end of a calendar year at the latest, and shall specify at least:

- a. information on the plant site, its exact location and address, the name of the company that operates it and its main activities;
- b. the number of plant(s) on the plant site that produced organic chemicals, and the overall quantities of organic chemicals produced on the plant site;
- c. The number of plant(s) on the plant site that produced over 30 t of a PSF chemical, with the quantities produced.

Article 12 Declaration requirements for riot control agents

¹ The acquisition of riot control agents, i.e. agents containing chemicals which may spontaneously irritate or physically incapacitate human beings for a short period of time (“tear gas”) shall be declared within 10 days at the latest, specifying the chemical designation of the active component(s), and the corresponding CAS number(s).

² Agents which contain only the following substances as active component(s) are not subject to the obligation to declare:

- a. CS (o-chlorobenzal melononitrile), CAS No. 2698-41-1;
- b. CN (chloroacetophenone), CAS No. 532-27-4;
- c. Capsaicin, CAS No. 404-86-4;
- d. Synthetic capsaicin, vanillic amide of pelargonic acid, CAS No. 2444-46-4.

Section 3: Import, export and transit

Article 12a⁷ Prohibition on the import and export of Schedule 1 chemicals from and to States not Party

The import and export of Schedule 1 chemicals from and to States not Party is prohibited. This prohibition also applies to mixtures containing Schedule 1 chemicals, regardless of their concentration.

Article 13 Licensing and declaration requirements for Schedule 1 chemicals

¹ The import and export of Schedule 1 chemicals from and to States not Party is subject to a licensing requirement. This also applies to mixtures containing Schedule 1 chemicals, regardless of their concentration.⁸

² The application for a license shall be submitted 40 days before import or export at the latest, and shall specify:

- a. the chemical designation with the CAS number, and the exact quantity of the chemical;
- b. the name(s) and address(es) of the end user(s);
- c. a detailed description of the chemical’s intended use;
- d. confirmation that the chemical will be used only for research, medical, pharmaceutical, or protective purposes;
- e. confirmation that the chemical will not be re-exported.

³ For export, the exporter shall have the information in paragraph 2 certified by the recipient State.

⁴ The licensee shall declare the quantities of chemicals effectively imported and exported to each country of origin or destination, 60 days after the end of the year at the latest. For mixtures, the proportion of the chemical subject to licensing shall be declared.

⁷ Incorporated by Num. I of V of 20 December 2000, in force as of 1 February 2001 (AS 2001 316).

⁸ Version according to Num. I of V of 20 December 2000, in force as of 1 February 2001 (AS 2001 316).

Article 13a⁹ Prohibition of the re-export of Schedule 1 chemicals

Re-exporting Schedule 1 chemicals to third countries, even when these are States Parties, is prohibited.

Article 14¹⁰ Prohibition of the import and export of Schedule 2 chemicals from and to States not Party

¹ The import and export of Schedule 2 chemicals from and to States not Party is prohibited.

² This ban also applies to mixtures containing Schedule 2 chemicals except for:

- a. products containing less than 1 % by weight of a Schedule 2A chemical;
- b. products containing less than 10 % by weight of a Schedule 2B chemical;
- c. products containing these chemicals as standard ingredients and are packaged for retail sale for personal use.

Article 14a¹¹ Licensing requirements for the export of Schedule 2 chemicals to States Parties

¹ The export of Schedule 2 chemicals to States Parties shall be licensed.

² The licensing requirements also applies to:

- a. Schedule 2A chemicals in mixtures with a concentration of over 1 % by weight;
- b. Schedule 2B chemicals in mixtures with a concentration of over 30 % by weight

Article 14b¹² Licensing requirements for the export of Schedule 3 chemicals

¹ The export of Schedule 3 chemicals shall be licensed.

² The licensing requirements also applies to Schedule 3 chemicals in mixtures with a concentration of over 30 % by weight.

³ For the export of Schedule 3 chemicals to non-States Parties, the applicant shall enclose a certificate from the recipient State with the application form, specifying:

- a. the chemical designation with the CAS number, and the quantity of the chemical;
- b. the name(s) and address(es) of the end user(s);
- c. a detailed description of the planned use of the chemical;
- d. confirmation that the chemical will not be used for purposes prohibited by the CWC¹³;
- e. confirmation that the chemical will not be re-exported.

Article 14c¹⁴ Declarations requirements for the import and export of Schedule 2 and 3 chemicals

¹ The licensee shall declare the effectively exported quantities of Schedule 2 and 3 chemicals per recipient State 60 days after the end of the year at the latest. For mixtures, the proportion of the chemical subject to the obligation to declare shall be specified.

² The import of Schedule 2 and 3 chemicals is subject to the obligation to declare. The importer shall declare the effectively imported quantities of Schedule 2 and 3 chemicals per country of origin 60 days after the end of the year at the latest. The provision also applies to mixtures listed in Article 14a paragraph 2 and 14b paragraph 2. For mixtures, the proportion of the chemical subject to the obligation to declare shall be stated.

⁹ Incorporated by Num. I of V of 20 December 2000, in force as of 1 February 2001 (AS 2001 316).

¹⁰ Version according to Num. I of V of 20 December 2000, in force as of 1 February 2001 (AS 2001 316).

¹¹ Incorporated by Num. I of V of 20 December 2000, in force as of 1 February 2001 (AS 2001 316).

¹² Incorporated by Num. I of V of 20 December 2000, in force as of 1 February 2001 (AS 2001 316).

¹³ SR 0.515.08

¹⁴ Incorporated by Num. I of V of 20 December 2000, in force as of 1 February 2001 (AS 2001 316).

Article 15 Diplomatic and consular missions and international organisations

Deliveries from and to diplomatic and consular missions, or international organisations, in Switzerland and in the Principality of Liechtenstein, are considered imports and exports and are subject to the same licensing and declaration requirements.

Article 16 Evidence of licensing exemption for export

¹ Whoever exports chemicals listed in the H.S. chapters¹⁵ 28, 29, 30 (only tariff numbers 3002.2000/9000), 34, 36 to 40 and 81, the export of which is not subject to a licensing requirement, must specify “licensing exemption” on the export declaration.

² On request from the State Secretariat for Economic Affairs (seco)¹⁶, the exporter must be able to provide evidence and relevant documents showing licensing exemption for export. This obligation expires five years after customs clearing.

Article 17 Transit

¹ Customs authorities may hold transiting chemicals listed in Schedules 1 through 3 for clarification purposes.

² When the country of origin limits the export of chemicals listed in Schedules 1 through 3, their transit is prohibited if the party with the power to dispose is unable to certify dispatch in compliance with the legal provisions of the country of origin to the new country of destination.

³ Evidence of lawful dispatch to the new country of destination shall be produced when the chemical enters Swiss customs territory. A delay may be granted when justified.

⁴ Seco prohibits transit if there is reason to presume that it contravenes the CWC.

⁵ Release from a customs warehouse is equated with transit.

Section 4: Procedure in regard to licensing and declaration

Article 18 Service entitled to issue licenses

The seco in the FDEA is entitled to issue licenses.

Article 19 Recourse to experts for technical consultation

¹ Seco may call upon other federal bodies, in particular the Spiez Laboratory, the Swiss Society of Chemical Industries (SSCI), other specialised organisations, or experts, for technical consultation.

² The staff of these specialised organisations and experts are bound by professional secrecy under Article 320 of the Swiss Penal Code¹⁷.

Article 20 License applications of fundamental scope

¹ Seco decides on license applications of fundamental, particularly political scope, together with the competent services of the FDFA and the DDPS, after consulting the Federal Department of Justice and Police.

¹⁵ SR 632.10 Annex

¹⁶ Expression pursuant to Article 21 Paragraph 12 of the V of 17 November 1999, in force as of 1 July 1999 (AS 2000 187). This change has been accounted for throughout the Ordinance.

¹⁷ SR 311.0

² If no agreement is reached, the FDEA submits a proposal to the Federal Council, which ultimately decides.

Article 21 Service entitled to receive declarations

Seco has charged the Spiez Laboratory with the collection, verification, and compilation of declarations pursuant to the CWC¹⁸.

Article 22 General export license

A general export license may be issued for the export of chemicals listed in Schedules 2 and 3. Procedural details are settled by the FDEA.

Article 23 Submitting license applications and declarations

¹ Applications shall be submitted on the appropriate form provided by the competent service.

² Declarations shall be submitted on the appropriate form provided for by the competent service.

³ Certificates issued by recipient States pursuant to Article 13 paragraph 3 and Article 14b paragraph 3 shall be worded in German, French, Italian, or English. Translated documents shall be legalised.¹⁹

Article 24 Conditions and charges

Licensing may be subject to special conditions and charges.

Article 25 Denied licenses

¹ The license is denied if the planned activity does not comply with the CWC²⁰.

² In particular, a license to produce, process, consume, or stockpile Schedule 1 chemicals is denied when:

- a. the planned activity does not serve research, medical or pharmaceutical purposes;
- b. the type and the quantity of the chemicals used is not strictly limited to what can be justified for such purposes;
- c. the total quantity of chemicals used for such purposes in Switzerland exceeds one tonne;
- d. the total quantity of chemicals produced or imported for such purposes in Switzerland exceeds one tonne.

³ Import licenses are denied in particular if the import would cause the overall quantity of Schedule 1 chemicals in Switzerland to exceed one tonne.

⁴ Export licenses are denied in particular when:

- a. Schedule 1 chemicals are destined for purposes other than research, medical, pharmaceutical, or protection, or if they are to be re-exported towards a third country;
- b. Chemicals listed in Schedules 2 and 3 are destined for other purposes than industrial, agricultural, research-related, medical, pharmaceutical, or other peaceful purposes;
- c. Schedule 3 chemicals are to be exported to a non-State Party without adequate attestation that they will be used only for the purposes listed under letter b.²¹

Article 26 Prohibition of transfer, period of validity

¹ Licenses are not transferable.

¹⁸ SR 0.515.08

¹⁹ Version according to Num. I of V of 20 December 2000, in force as of 1 February 2001 (AS 2001 316).

²⁰ SR 0.515.08

²¹ Version according to Num. I of V of 20 December 2000, in force as of 1 February 2001 (AS 2001 316).

² Individual import and export licenses are valid twelve months, and may be prolonged at the most for a six-month period.

Article 27 License withdrawal

¹ A license is withdrawn when the conditions for its issue are no longer given.

² A license is withdrawn when circumstances since its issue have changed to a degree justifying refusal pursuant to Article 25.

³ A license may be withdrawn if the conditions and charges it is subject to are not honoured.

Section 5: Verification and obligation to cooperate

Article 28 Inspections

¹ Declarations may be verified by on-site inspections.

² Declarations on the production of Schedule 1 chemicals may be verified by instruments specially installed on-site, besides inspections.

Article 29 Inspection team and accompanying team

Inspections by representatives of the Organisation (inspection team) are carried out in the presence of an accompanying team, made up of representatives of the Federal authorities. The accompanying team cooperates closely with the representatives of the site being inspected. Seco heads the accompanying team, except when inspections come under the competence of the DDPS or lie within the perimeter of military facilities. In such cases, the accompanying team is headed by the DDPS General Staff.

Article 30 Facility agreements

¹ Routine inspections of plant sites, plant and units, which are the object of an agreement between Switzerland and the Organisation, are conducted in compliance with that agreement.

² Facility agreements are concluded with regard to:

- a. units that undertake licensed production of Schedule 1 chemicals;
- b. plant sites declared pursuant to Article 7, unless Switzerland and the Organisation agree that such an agreement is not necessary;
- c. plant sites declared pursuant to Articles 9 and 11, if the company operating the site(s) requests it.

³ A first draft of the facility agreement is negotiated during the initial inspection by the inspection and accompanying teams, in cooperation with representatives of the site under inspection. The agreement is finalised by the persons(s) in charge of the accompanying team.

Article 31 Compliance with inspection and cooperation

¹ The persons with the power to dispose of grounds or premises of all kinds (subjects) shall comply with inspections and cooperate. They shall in particular:

- a. designate a person authorised to give all internal instructions necessary for the appropriate conduct of the inspection, make decisions in the name of the subject, and ensure compliance with the inspection and cooperation;
- b. provide the inspection team with information on the inspection site, the activities undertaken there, safety measures required for the inspection, and relevant administrative and logistical measures;
- c. provide the inspection team and the accompanying team with telecom equipment, work premises with electric connections, and on-site transportation, where these are required to conduct the inspection properly;
- d. provide on-site support necessary to conduct the inspection;

- e. on request from the inspection team, take samples or assist the team in sampling, and provide it with photographs of objects or buildings on the site;
- f. on request from the inspection team and in its presence, analyse or assist in analysing samples, if inspection requires it and it poses no threat to safety;
- g. for inspections pursuant to Article IX of the CWC²², and on request from the person(s) in charge of the accompanying team, collect information on all exits of vehicles, by land, water, or air, or assist the team in doing so;
- h. present the inspection team with appropriate documents, or other evidence relating to parts of or objects on the inspection site to which access was denied them during the inspection or investigation, that they have not been and will not be used for purposes prohibited by the CWC;
- i. contribute to a review of the inspection's provisional results and to the clarification of pending questions;
- j. provide the Federal authorities with all the information required to negotiate and conclude facility agreements.

² All expenses for telecommunications, translation, transportation, work premises, room and board, and medical services that arise for the subject from the Organisation's verification measures will be reimbursed by it. Requests for reimbursement can be submitted to the seco.

Article 32 Inspection competencies

¹ Where inspections pursuant to Articles VI and IX of the CWC²³ require it, the inspection team has the competence to:

- a. enter and visit grounds and premises during normal operating hours;
- b. use equipment approved under the terms of the CWC, in compliance with the safety regulations in force on the inspection site;
- c. interview staff employed by the subject;
- d. inspect documents, files, and other records;
- e. take samples, with the consent of the subject or of the person(s) in charge of the accompanying team;
- f. analyse samples on the inspection site using approved equipment, or have them analysed off-site in a laboratory designated by the Organisation;
- g. install permanent surveillance instruments in plants licensed for the production of Schedule 1 chemicals, insofar as they do not disrupt production, and store containers for photographs, plans, and other documents.

² If an inspection pursuant to Article IX of the CWC requires it, the inspection team is further authorised to:

- a. enter and visit grounds and premises outside of normal operating hours;
- b. request information on all vehicles leaving the inspection site;
- c. monitor and inspect all vehicles leaving the site, except private motor vehicles.

Article 33 Accompanying an inspection

¹ The person(s) in charge of the accompanying team issue(s) the necessary instructions for the inspection to be carried out effectively and on time, and keeping the subject's legitimate interests in mind. This includes in particular:

- a. creating conditions under which the inspection will cause the least possible on-site disruption;
- b. ensuring the protection of proprietary information and installations;
- c. enforcing the unambiguous classification of information made available;
- d. deciding, in agreement with the subject, of the availability of proprietary information to the inspection team;
- e. on request by the subject, ensuring that certain information do not leave the inspection site;

²² SR 0.515.08

²³ SR 0.515.08

- f. negotiating special dispositions and procedures with the inspection team in order to protect sensitive unit parts and objects;
- g. deciding on possible complaints, and granting or denying them suspensive effect;
- h. acknowledging receipt of the inspection team's provisional report, and transmitting a copy to the subject.

² Liability for damages caused by unlawful behaviour of Federal representatives in the accompanying team is subject to the provisions of liability legislation²⁴.

Article 34 Cooperation

¹ The Federal authorities immediately advise the subject of an inspection announced by the Organisation, including time and location, the constitution of the inspection team, and the names of the persons in the accompanying team.

² Should a subject suffer damages caused by a third party during an inspection, the Confederation shall assist said subject in enforcing claims to the extent of its legal competence.

Section 6:²⁵ Penalty provisions

Article 34a

Pursuant to Article 15 of the Law on the control of goods of 13 December 1996²⁶, detention or a fine of up to CHF 100 000 may be imposed upon whoever:

- a. infringes the obligation to declare pursuant to Articles 5, 7, 9, 11, 12, 13, 14c and 15 of the present Ordinance, with malice afterthought or by negligence, by failing to declare, declaring falsely or incompletely the production, processing, consumption or stockpiling, as well as the import and export of controlled chemicals;
- b. obstructs an inspection pursuant to Article 31 of the present Ordinance, or refuses to comply with the obligation to cooperate in such inspections.

Section 7: Final provisions²⁷

Article 35 Abrogation of previous legislation

The *Ordinance on the control of chemicals of 25 November 199²⁸6* is abrogated.

Article 36 Transitory provision

¹ Annual declarations pursuant to Articles 5, 7, 9, and 11 of activities undertaken during the past calendar year have to be made as of 1997.

² Annual declarations pursuant to Articles 5, 7, and 9 of activities anticipated for the next calendar year have to be made as of 1999.

Article 37 Entry into force

The present Ordinance enters into force on 1 October 1997.

²⁴ SR 170.32

²⁵ Incorporated by Num. I of V of 20 December 2000, in force as of 1 February 2001 (AS 2001 316).

²⁶ SR 946.202

²⁷ Formerly Section 6

²⁸ [AS 1997 17 916]