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1998B00383



Chemical Weapons (Prohibition) Amendment Regulations 1998 (No. 1)

Statutory Rules 1998 No. 1

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I, WILLIAM PATRICK DEANE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations under the *Chemical Weapons (Prohibition) Act 1994*.

Dated 17 DEC 1998 1998.

WILLIAM DEANE
Governor-General

By His Excellency's Command,

ALEXANDER DOWNER
Minister for Foreign Affairs



Chemical Weapons (Prohibition) Amendment Regulations 1998 (No. /)¹

Statutory Rules 1998 No. / ²

made under the

Chemical Weapons (Prohibition) Act 1994

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Regulation 1

1 Name of regulations

These regulations are the *Chemical Weapons (Prohibition) Amendment Regulations 1998 (No. 1)*.

2 Commencement

These regulations commence on gazettal.

3 Amendment of Chemical Weapons (Prohibition) Regulations

Schedule 1 amends the Chemical Weapons (Prohibition) Regulations.

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*Chemical Weapons (Prohibition) Amendment
Regulations 1998 (No. 1)*

1998,

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1

Schedule 1 Amendments of Chemical Weapons (Prohibition) Regulations

[1] **Regulation 1**

substitute

1 Name of regulations

These regulations are the *Chemical Weapons (Prohibition) Regulations 1997*.

[2] **Regulation 3, heading**

substitute

Definitions

[3] **Regulation 3, definition of *declarable Schedule 1 activity***

substitute

declarable Schedule 1 activity means a Schedule 1 activity, in a year, with either or both of the following characteristics:

- (a) over 100 grams of Schedule 1 chemicals are likely to be produced at the facility in the year for research, medical or pharmaceutical purposes;
- (b) a Schedule 1 chemical is likely to be produced at the facility in the year for protective purposes.

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*Chemical Weapons (Prohibition) Amendment
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[4] Regulation 3, definition of *Schedule 1 activity*

substitute

Schedule 1 activity means operating a facility as mentioned in subsection 16 (1) of the Act.

[5] Regulation 3

insert

non-declarable Schedule 1 activity means a Schedule 1 activity other than a declarable Schedule 1 activity.

permit year means a year for which there is or was a permit to operate a facility.

Schedule 2 activity means operating a facility as mentioned in subsection 16 (2) of the Act.

Schedule 3 activity means operating a facility as mentioned in subsection 16 (3) of the Act.

[6] After regulation 3

insert

3A Meaning of *consumption* — Schedule 2 chemicals

For the Act, ***consumption*** of a Schedule 2 chemical means its conversion to another chemical through a chemical reaction.

3B Meaning of *processing* — Schedule 2 chemicals

- (1) For the Act, ***processing*** of a Schedule 2 chemical means a physical process, including formulation, extraction and purification, in which the chemical is not converted to another chemical.

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- (2) However, *processing* of a Schedule 2 chemical does not include packaging or distributing the chemical.

3C Meaning of *production*

- (1) For the Act, *production* of a chemical means its formation through a chemical reaction as an intermediate (in a reaction sequence) or otherwise, only if the chemical can be isolated.
- (2) For the Act, *production* of saxitoxin and ricin also includes extracting and purifying saxitoxin or ricin (as the case requires).
- (3) However, *production* of a Schedule 2 chemical does not include its regeneration as part of a cycle of consumption and regeneration.

3D Meaning of *explosive* and *hydrocarbon* in section 28

For section 28 of the Act:

- (a) *explosive* means a chemical produced for use only as an explosive; and
- (b) *hydrocarbon* means a chemical containing carbon and hydrogen only.

3E Amount of Schedule 1 chemicals

For the Act, the method for working out the total amount of a Schedule 1 chemical produced, acquired, retained or used at, or transferred from, a facility in a year is set out in the following table.

Table

1	The amount of the chemical is the weight of the chemical.
2	The weight of the chemical is to be worked out as the less accurate of the following: (a) to within 5 percent; (b) to the nearest 0.1 grams.

3F Amount of Schedule 2 chemicals

For the Act, the method for working out the total amount of a Schedule 2 chemical produced, processed or consumed at a plant, comprising, or comprising part of, a facility in a year is set out in the following table.

Table

1	The amount of the chemical is the weight of the chemical.
2	The weight of a Schedule 2 chemical, mentioned in Part A of Schedule 2 to the Convention and designated with an '*', is to be worked out as accurate to the nearest 100 grams.
3	The weight of a Schedule 2 chemical, mentioned in Part A of Schedule 2 to the Convention but not designated with an '*', is to be worked out as accurate to the nearest kilogram.

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- 4 The weight of a Schedule 2 chemical, mentioned in Part B of Schedule 2 to the Convention, is to be worked out as accurate to the nearest 0.1 tonnes.
 - 5 However, for a mixture containing 30 percent or less by weight of the chemical, the amount of the chemical is zero.
 - 6 If the chemical is produced as part of a mixture — to work out the percentage of the chemical in the mixture by weight, the following components of the mixture are to be disregarded:
 - (a) any liquid or gas, the main function of which is to act as a carrier in a chemical reaction process that produces the chemical; and
 - (b) if a feedstock gas is incompletely reacted in a chemical reaction process that produces the chemical — the gas that did not react.
 - 7 In addition, for working out the total amount of the chemical that is consumed in a process, an amount of the chemical recovered from the process and recycled through it is to be included in the total amount only once.

3G Amount of Schedule 3 chemicals

For the Act, the method for working out the total amount of a Schedule 3 chemical produced at a plant comprising, or comprising part of, a facility in a year is set out in the following table.

Table

1	The amount of the chemical is the weight of the chemical.
2	The weight of the chemical is to be worked out accurate to within 5 percent.
3	However, for a mixture containing 30 percent or less by weight of the chemical, the amount of the chemical is zero.
4	For working out the percentage of the chemical in a mixture by weight, the following components of the mixture are to be disregarded: <ul style="list-style-type: none">(a) any liquid or gas, the main function of which is to act as a carrier in a chemical reaction process that produces the chemical;(b) if a feedstock gas is incompletely reacted in a chemical reaction process that produces the chemical — the gas that did not react.

3H Amount of unscheduled discrete organic chemicals

For paragraphs 28 (6) (a) and (b) of the Act, the method for working out the total amount of unscheduled discrete organic chemicals produced at a facility in a year is set out in the following table.

Table

1	The amount of the chemicals is the weight of the chemicals.
2	The weight of the chemicals is to be worked out accurate to within 5 percent.
3	In dealing with a discrete organic chemical: (a) the only oxides of carbon compounds that are to be disregarded are carbon monoxide, carbon dioxide and carbonyl sulfide; and (b) the only sulfides of carbon compounds that are to be disregarded are carbon disulfide and carbonyl sulfide.
4	For working out the weight of the chemicals, the following chemicals are to be disregarded: (a) oligomers and polymers; (b) chemicals containing carbon and metal only.

[7] Part 2*substitute***Part 2 Permits, renewals and notifications****4 Last day for permit applications**

- (1) For subsection 17 (1) of the Act, this regulation sets out the prescribed day, which is the last day on which a person may give a permit application to the Controller.
- (2) If the permit authorises a declarable Schedule 1 activity, the prescribed day is 200 days before the person intends to start the activity.
- (3) If the permit authorises a non-declarable Schedule 1 activity, the prescribed day is 7 days before the person intends to start the activity.
- (4) If the permit authorises a Schedule 2 activity or a Schedule 3 activity, the prescribed day is 21 days before the person intends to start the activity.

4A Last day for permit renewal applications

- (1) For subsection 20 (1) of the Act, this regulation sets out the prescribed day, which is the last day on which a holder of a permit may apply for renewal of the permit for a year.
- (2) If the permit authorises a declarable Schedule 1 activity, the prescribed day is 14 September before the year starts.
- (3) For any other permit, the prescribed day is 14 October before the year starts.

5 Manner of production of hydrocarbons or explosives

- (1) For subsection 28 (7) of the Act, this regulation sets out manners in which hydrocarbons or explosives may be produced, so that the notification arrangements in subsection 28 (6) will not apply.
- (2) The hydrocarbons or explosives may be produced in the following manner:
 - (a) they were produced at a facility in the year before the year in which the facility is notified;
 - (b) the manner must ensure that the hydrocarbons or explosives are the only unscheduled discrete organic chemicals produced at the facility in the year.
- (3) The hydrocarbons or explosives may also be produced in the following manner:
 - (a) they were produced at a facility in the year before the year in which the facility is notified;
 - (b) the production of the hydrocarbons or explosives must have happened at the facility where unscheduled discrete organic chemicals other than the hydrocarbons or explosives were also produced in the year;
 - (c) the production of the hydrocarbons or explosives must have happened at the facility where the amount of unscheduled discrete organic chemicals produced at the facility in the year, without the amount of the hydrocarbons or explosives, was 200 tonnes or less;
 - (d) the production of the hydrocarbons or explosives must have been part of operations at the facility where:
 - (i) other unscheduled discrete organic chemicals, containing 1 or more of the elements phosphorus, sulphur or fluorine may have been produced in the year at a plant comprising, or comprising part of, the facility; and

- (ii) the amount of each of those unscheduled discrete organic chemical produced at the plant in the year was 30 tonnes or less.

5A Last day for notifications

- (1) For subsection 29 (2) of the Act, this regulation sets out the prescribed day, which is the last day on which certain notifications must be given under section 28 of the Act in relation to a facility.
- (2) If the notification is required under subsection 28 (1) of the Act, in relation to a permit authorising a declarable Schedule 1 activity, the prescribed day is 14 September in the year for which the permit is or was held.
- (3) If the notification is required under subsection 28 (1) of the Act, in relation to a permit authorising a non-declarable Schedule 1 activity, the prescribed day is 14 October in the year for which the permit is or was held.
- (4) If the notification is required under paragraph 28 (2) (a) of the Act, in relation to a permit authorising a Schedule 2 activity, the prescribed day is 14 October in the year for which the permit is or was held.
- (5) If the notification is required under paragraph 28 (4) (a) of the Act, in relation to a permit authorising a Schedule 3 activity, the prescribed day is 14 October in the year for which the permit is or was held.
- (6) If the notification is required under subsection 28 (6) of the Act, in relation to activities at a facility in a year, the prescribed day is 28 February in the next year.

Part 2A Reports and records

6 Last day for giving reports

For paragraph 30 (2) (a) of the Act, the prescribed day by which an operator of a Schedule 1 facility, a Schedule 2 facility, or a Schedule 3 facility is to give the Director a report for a permit year for the facility is 28 February in the next year.

7 Records for Schedule 1 facilities

- (1) For paragraph 30 (2) (b) of the Act, the records to be kept by the operator of a Schedule 1 facility are records of the information mentioned in this regulation.
- (2) For each Schedule 1 chemical produced, acquired, used or stored at, or transferred from, the facility in a permit year for the facility, the information is:
 - (a) the identity of the chemical, including its Chemical Abstracts Service registry number, if assigned, and its common or trade name (if any); and
 - (b) the quantities produced, acquired, used or transferred; and
 - (c) the purpose or purposes of the production, acquisition or use.
- (3) For each Schedule 1 chemical produced at the facility in a permit year for the facility, the information is also the name and quantity of any precursors used that are listed in Schedule 1, 2 or 3 to the Convention.
- (4) For each Schedule 1 chemical stored at the facility in a permit year for the facility, the information is also:
 - (a) the maximum quantity stored at any time in the year; and
 - (b) the quantity stored at the end of the year.

- (5) For a facility at which declarable Schedule 1 activities occurred in a permit year for the facility, the information is:
- (a) for each Schedule 1 chemical transferred to another facility in Australia in the year:
 - (i) the total quantity transferred; and
 - (ii) the quantity, recipient and purpose of each shipment; and
 - (b) technical descriptions of any changes at the facility in the year including, for a single small-scale facility, inventories of equipment and detailed diagrams of the facility; and
 - (c) for a single small-scale facility and a protective facility — the production methods employed for each Schedule 1 chemical produced at the facility in the year; and
 - (d) for a single small-scale facility — in relation to each Schedule 1 chemical received from another facility in Australia in the year:
 - (i) the total quantity received; and
 - (ii) the quantity, origin and purpose of each shipment.

7A Keeping records for Schedule 1 facilities

For paragraph 30 (2) (b) of the Act, the period for which a record mentioned in regulation 7 is to be kept is:

- (a) the period, in the year to which the information in the record relates, when the record exists; and
- (b) the next 2 years.

7B Records for Schedule 2 facilities

- (1) For paragraph 30 (2) (b) of the Act, the records to be kept by the operator of a Schedule 2 facility are records of the information mentioned in this regulation.

-
- (2) For each plant comprising, or comprising part of, the facility in a permit year for the facility, the information is:
- (a) the chemicals produced in the year; and
 - (b) the processes in the year involving an amount of a Schedule 2 chemical exceeding the chemical's Schedule 2 permit threshold; and
 - (c) the processes in the year involving other chemicals; and
 - (d) any other main activities in the year; and
 - (e) if an amount of a Schedule 2 chemical exceeding, in the aggregate, the chemical's Schedule 2 permit threshold is produced, processed or consumed at the plant in the year — the production capacity of the plant for the chemical; and
 - (f) whether the plant's function is dedicated or multi-purpose.
- (3) If more than the Schedule 2 permit threshold of a Schedule 2 chemical is produced, processed or consumed at a plant comprising, or comprising part of, the facility in a permit year for the facility, the information for the chemical is also:
- (a) the identity of the chemical, including its Chemical Abstracts Service registry number, if assigned, and its common or trade name (if any); and
 - (b) the sum of:
 - (i) the total amount produced, processed or consumed; and
 - (ii) the total amount imported or exported by the operator.

- (4) If more than the Schedule 2 permit threshold of a Schedule 2 chemical is produced, processed or consumed at a plant comprising, or comprising part of, the facility in a permit year for the facility, the information is the purposes for which the chemical was produced, processed or consumed, including:
- (a) if the chemical was processed or consumed at the facility — a general description of the final product; and
 - (b) whether the chemical was produced for sale or transfer within Australia, direct export or other use; and
 - (c) if the chemical was transferred within Australia:
 - (i) whether it was to be transferred to another industry, a trader or another destination; and
 - (ii) if possible, a general description of the final product; and
 - (d) if the chemical was to be exported directly — a specification of the destination; and
 - (e) if the chemical was produced or processed for another use — an identification of that use.

7C Keeping records for a Schedule 2 facility

For paragraph 30 (2) (b) of the Act, the period for which a record mentioned in regulation 7B is to be kept is:

- (a) the period, in the year to which the information in the record relates, when the record exists; and
- (b) the next 4 years.

7D Records for a Schedule 3 facility

- (1) For paragraph 30 (2) (b) of the Act, the records to be kept by the operator of a Schedule 3 facility are records of the information mentioned in this regulation.

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- (2) For each plant comprising, or comprising part of, the facility in a permit year for the facility, the information is:
- (a) the chemicals produced in the year; and
 - (b) the processes in the year involving chemicals; and
 - (c) any other main activities in the year.
- (3) If more than 30 tonnes of a Schedule 3 chemical is produced at a plant comprising, or comprising part of, the facility in a permit year for the facility, the information for the chemical is:
- (a) the identity of the chemical, including its Chemical Abstracts Service registry number, if assigned, and its common or trade name (if any); and
 - (b) the total amount produced.
- (4) For each scheduled chemical imported or exported by the operator in a permit year for the facility, the information is:
- (a) the amount imported or exported; and
 - (b) the names of the countries from which the chemical was imported, or to which it was exported; and
 - (c) if the chemical was imported from or exported to more than 1 country — the amount imported from or exported to each country.

7E Keeping records for Schedule 3 facilities

For paragraph 30 (2) (b) of the Act, the period for which a record mentioned in regulation 7D is to be kept is:

- (a) the period, in the year to which the information in the record relates, when the record exists; and
- (b) the next 2 years.

7F Records for an OCP facility

For paragraph 30 (2) (b) of the Act, the records to be kept by the operator of an OCP facility are records of:

- (a) the amount of unscheduled discrete organic chemicals produced at the facility in a permit year for the facility; and
- (b) if more than 30 tonnes of a PSF chemical were produced at a plant in the facility in a permit year for the facility — the total amount of PSF chemicals produced at the plant in the year.

7G Keeping records of an OCP facility

For paragraph 30 (2) (b) of the Act, the period for which a record mentioned in regulation 7F is to be kept is:

- (a) the period, in the year to which the information in the record relates, when the record exists; and
- (b) the next 2 years.

[8] Regulation 8

omit everything before

(a)

insert

- (1) For subsection 49 (4) of the Act, this regulation sets out modifications of challenge inspection procedures applicable to an inspection of premises by consent.

Note Under subsection 49 (4), the Director may determine that 1 or more of the listed modifications are to apply to an inspection by consent.

(2) The modifications are to apply only to the extent that they do not reduce the rights, under the Act, of the occupier of the premises.

(3) The modifications are as follows:

[9] Regulation 9

omit everything before

(a)

insert

(1) For subsection 49 (10) of the Act, this regulation sets out modifications of challenge inspection procedures applicable to an inspection of premises by consent.

Note Under subsection 49 (10), the Director may determine that 1 or more of the listed modifications are to apply to an inspection.

(2) The modifications are to apply only to the extent that they do not reduce the rights, under the Act, of the occupier of the premises.

(3) The modifications are as follows:

[10] After regulation 9

insert

9A International compliance inspection period

(1) For section 53 of the Act, an international compliance inspection starts when the pre-inspection briefing, mentioned in paragraph 37 of Part II of the Verification Annex of the Convention, is completed.

- (2) The inspection ends when the review of the preliminary findings for the inspection starts, as mentioned in paragraph 60 of Part II of the Verification Annex of the Convention.

9B Challenge inspection period

- (1) For section 53 of the Act, a challenge inspection starts when the later of the following things happens:
- (a) the pre-inspection briefing, mentioned in paragraph 37 of Part II of the Verification Annex of the Convention, is completed;
 - (b) the inspection team first enters the inspection site for the inspection.
- (2) The inspection ends when the first of the following things happens:
- (a) the inspection team leaves the inspection site, and is not expecting to return as part of the inspection;
 - (b) post-inspection procedures begin at the inspection site.

[11] After regulation 14

insert

Part 4A Privileges and immunities of an observer

14A Application of Part

- (1) This Part applies to an observer who is in Australia:
- (a) to observe a challenge inspection under the Convention; or
 - (b) on the way to observing a challenge inspection outside Australia; or
 - (c) as part of returning from observing a challenge inspection outside Australia.

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- (2) This Part also applies to an observer who has left Australia, but only with respect to acts previously performed in the exercise of the observer's official duties.
 - (3) However, if the observer is an Australian citizen, this Part applies only with respect to acts performed in the exercise of the observer's official duties.

14B Privileges and immunities of an observer

- (1) For section 101A of the Act, an observer has the privileges and immunities mentioned in this regulation.
- (2) An observer is not liable to any form of arrest or detention.
- (3) An observer's living quarters and office premises (including any furnishings and other property in them), means of transport, records, papers and correspondence are not liable to search, requisition, attachment or execution.
- (4) An observer for a State Party has immunity from criminal and civil law, except for:
 - (a) a civil action relating to private immovable property in Australia, unless the observer holds it on behalf of the State Party for the purposes of the State Party; or
 - (b) a civil action relating to succession in which the observer is involved as an executor, administrator, heir or legatee as a private person and not on behalf of the State Party; or
 - (c) a civil action relating to a professional or commercial activity exercised by the observer in Australia outside his or her official functions.
- (5) An observer is not required to give evidence as a witness.
- (6) No measures of execution may be taken against an observer, except for matters referred to in paragraph (4) (a), (b) or (c).

- (7) An observer, for a State Party, carrying out activities under the Convention is exempt from all dues and taxes, whether personal or real, except:
- (a) indirect taxes of a kind which are normally incorporated in the price of goods or services; and
 - (b) dues and taxes on private immovable property in Australia, unless he or she holds the property on behalf of the State Party for the purposes of the State Party; and
 - (c) subject to subregulation (8) — estate, succession or inheritance duties; and
 - (d) dues and taxes on private income having its source in Australia in capital taxes on investments made in commercial undertakings in Australia; and
 - (e) charges levied for specific services; and
 - (f) registration, court or record fees, mortgage dues and stamp duty, with respect to immovable property.
- (8) Movable property that is in Australia solely due to the presence in Australia of an observer or a member of the family of an observer is not liable for estate, succession or death duties.
- (9) An observer may bring into Australia, without payment of customs duties or related charges, any article for personal use except an article the import or export of which is prohibited by law or controlled by quarantine laws.
- (10) An observer is exempt from currency and exchange restrictions to the same extent as a representative of a foreign government on a temporary mission on behalf of that government.

14C Application of the *Public Order (Protection of Persons and Property) Act 1971* to observers

- (1) For section 101A of the Act, the privileges and immunities applying to a protected person under the *Public Order (Protection of Persons and Property) Act 1971* apply to an observer.
- (2) For section 101A of the Act, the privileges and immunities applying to protected premises under the *Public Order (Protection of Persons and Property) Act 1971* apply to the living quarters and office premises of an observer.

Notes

1. These regulations amend Statutory Rules 1997 No. 84.
2. Made by the Governor-General on ^h 1998, and notified in ^{17 December}
the *Commonwealth of Australia Gazette* on ^h 1998. ^{22 December}
Administered by the Minister for Foreign Affairs.