

## Fecc Model Agreement

### **MODEL AGREEMENT ON VOLUNTARY MEASURES ON SUBSTANCES SUBJECT TO TRADE CONTROLS** to supplement the Responsible Care® Security Code to help chemical companies achieve continuous improvement in security performance.

#### **Introduction**

This agreement, produced by the Fecc Precursors Committee and reviewed by CBA (Chemical Business Association), is designed to help personnel in chemical manufacturing and distributor companies to adopt a voluntary, risk-based approach to security to identify and address vulnerabilities, improve vigilance, prevent or mitigate incidents, enhance training and response capabilities, and establish and maintain reporting relationships with key stakeholders.

**This voluntary agreement is not an instruction manual; it is a best practice procedural tool for companies to use when selling substances that are subject to trade controls.**

#### **Scope**

This voluntary agreement has been prepared as part of a number of EU-wide security measures to reduce the opportunity for diversion of substances into illicit uses. It contains general guidance for companies involved in handling and/or selling the substances subject to trade controls under the legislation referenced at the end of the agreement.

Any suspicious transactions involving substances on their own or in mixtures should be reported.

The agreement incorporates a “Know your Customer” concept and “Reporting Suspicious Transactions” guidance that is relevant for enquiries from customers that may or may not be registered businesses seeking to acquire any quantity or concentration of listed substances.

#### **Commitment**

Companies should regularly reassess these security-related practices in the spirit of continuous performance improvement.

For manufacturers, the corresponding activity will include all or as many of the seven management practices identified in the “Responsible Care Security Code” that are relevant to the legitimate storage and distribution of chemicals in the industrial supply chain.

For distributors, this will include all aspects of their Responsible Care® programme and any associated Codes or Guidance.

These activities should be considered by companies in both sectors in conjunction with other risk-based security management system for people, property, products, processes information and information systems throughout the chemical industry value chain.

The process should start with leadership commitment. This element calls for each company's leadership to demonstrate through their words and actions a clear commitment to security within their company, from corporate headquarters to individual facilities.

Company leaders should consider the nomination of an individual member of staff to implement vigilance procedures for substances that are subject to trade controls. Where appropriate, this activity will include the promotion of security best practice throughout the company and provide for the full integration of security best practice into quality management and Responsible Care® systems. Duties of such a contact point will vary from company to company – the purpose of this voluntary agreement is to help companies decide how they might best implement control measures that will help prevent the illicit use of chemicals.

This voluntary agreement contains guidance on the following aspects of controlling sales and distribution of substances subject to trade controls:

- Section A: The role of the contact point
- Section B: Organisational arrangements
- Section C: Administrative systems
- Section D: Security of premises/storage/usage
- Section Z: Checklist for the contact point

## SECTION A: THE ROLE OF CONTACT POINT(S)

Each company should decide for itself how best to establish staff responsibilities.

Whenever possible, companies should endeavour to nominate at least one specific person to deal with internal and external control measures for ensuring the security of substances that are subject to trade controls. Ideally, the person selected should already have a certain status or position within the company, so as to be in a position to act as a representative of the company and to make the decisions that are required for the fulfilment of their task. In many cases, personnel selected as the contact point(s) might also be the same liaison officer responsible for dealing with other sales controls for substances, such as drug precursors.

The contact point(s) does not necessarily have to be a chemist. One of the main skills required from this person is the ability to recognise suspicious transactions, which requires “commercial alertness”, tact and prudence. In large multi-site businesses, a contact point(s) should nominate a deputy.

A contact point(s) should be nominated who should produce a control inventory that identifies, by name, the substances manufactured or traded that is the responsibility of each contact point.

Management should clearly define the position, tasks and powers of the contact point(s) whom they nominate within the company. The information relating to the tasks and power of contact point(s) should be widely disseminated throughout the company.

The role of the contact point(s) might include the main following tasks:

- Ensure proper implementation of procedures within the company
- Ensure compliance with relevant aspects of this voluntary agreement and any national laws that may apply
- Set up the internal procedures necessary to identify and notify suspicious transactions and to prevent diversion

The role will involve tracking any changes in products containing controlled chemicals, organisational structures and IT equipment to ensure that company security procedures are not compromised.

Exchange information with the competent authorities and disclose suspicious enquiries and transactions.

Raise awareness of the relevant staff dealing with substances that are subject to trade controls:

- Identify the appropriate personnel
- Train and instruct these personnel on a regular basis
- Make sure that the information provided by competent authorities as regards new trends and developments, as well as information that is specific to the company, is made known to relevant personnel.

Maintaining open and effective lines of communication will include steps such as sharing effective security practices with established customers, others throughout industry and

maintaining interaction with law enforcement officials. At the same time, companies understand that their role is to protect employees and communities where they operate, while safeguarding information that would pose a threat in the wrong hands.

In a small company the contact point may be a single person. However, within a large multinational organisation there may be a central contact point, to set companywide policies and procedures, supported by a number of subsidiary contact points based at specific sites.

Section Z provides a comprehensive job checklist that might be useful to develop a contact point(s) duty list that suits individual company circumstances.

## **SECTION B: ORGANISATIONAL ARRANGEMENTS**

Management is advised to put in place internal procedures in order to ensure that the contact point(s) and all other involved personnel (particularly sales staff) share relevant information and consistently apply appropriate company procedures on a day-to-day basis.

In particular, the existence and application of a robust management system based on written procedures should help ensure that the checks to be carried out in order to identify suspicious transactions and orders are actually applied, and that once qualified as suspicious, transactions are notified to the authorities with the provision of appropriate information. Such procedures will also help the company demonstrate to their national security services that they have control measures in place. Written procedures are all the more important where the number of staff members dealing with chemicals of concern within the company are large and/or changeable.

Companies need to keep site compliance records for not less than 4 years. They must be transferred if site ownership changes, either to the purchasing company or to the receiver if the site closes.

The following list should neither be taken as an exhaustive set nor as a minimal requirement, but are suggestions that companies may wish to take into account, keeping in mind that their procedures have to be proportionate to their trade activities and specific to their own organisation and needs. Companies should have:

- Procedures aiming at identifying suspicious transactions:
  - Definition of the responsibilities of the different functions within the company in identifying a suspicious transaction (not only the contact point)
  - Definition of the set of criteria to be used to check the suspicious character of the transactions
  - Flagging of substances of concern in the order processing system, requiring checks to be completed before the order is accepted. This should cover also websites, which should not allow orders to be automatically accepted without prior checks by competent staff.
  - Procedures managing the relationship with a customer requiring a delivery of substances of concern (questions to be asked, supporting documents to be required, arrangements specific to new clients, etc)

- New clients deserve special attention, but all clients have to be checked on a systematic basis
- Procedures to follow when a suspicious transaction is identified:
  - In relation to the customer
  - In relation to the authorities (keeping of evidence, information to be provided...)

Physical and procedural measures aiming at preventing and detecting theft (periodic checking of monitoring systems, frequent auditing of stocks...).

- Training and information:
  - Procedures managing the information flow within the company with regard to the risks of illicit diversion (in particular with regard to the information received from the competent authorities). These procedures should help ensure that the access to sensitive information (e.g. any list(s) of substances that are subject to controls and other elements of these guidelines) is restricted to the relevant personnel only.
  - Training programmes for the relevant personnel. These arrangements can comprise internal certification schemes for staff members with other trade control responsibilities.

Procedures governing the keeping of records should be in a format that makes the backtracking investigations and collection of data for the annual reporting as easy as possible. In particular, purchase and sales records should be retained for not less than 4 years.

- Internal periodic audit and review within the companies in pursuit of continuous improvement and adjustment of internal procedures and practices, taking due account of the experience gained by the company and the information provided by the competent authorities.

Section Z provides a comprehensive checklist that might be useful to develop internal procedures to suit individual company circumstances.

## **SECTION C: ADMINISTRATIVE SYSTEMS**

Companies should have pre-defined questions prepared for new customers no matter whether it is an over-the-counter sale, a sale via a call centre or whether chemicals are offered and sold via the Internet.

The sales person/administrator will have to use their discretion and draw upon their experience to assess whether an order or enquiry is 'suspicious'.

A robust client screening process involves asking for end-use statements. These are required for certain regulations but this practice should also be adopted for substances subject to trade controls. Major customers will grudgingly accept their necessity; law-abiding but knowledgeable customers will welcome the "warning"; unscrupulous customers often withdraw their order.

To assist the contact point(s) and companies further along the chemical supply chain to identify suspect enquiries, orders and transactions, the following may be helpful in identifying potential suspicious transactions:

### **Client identification**

- Is the enquirer a new customer? If so, use Internet business directory searches, company registration data, Google Earth and national postal services to check address and postcode listings.
- Is the enquirer a walk-in customer arriving unannounced?
- Is the enquirer evasive?
- Is the enquirer's profile or appearance as you would expect?
- Is there a reluctance or refusal to give a 'landline' telephone number or address?
- Does the enquirer lack proper business acumen or refuse to give trade & bank references?
- Does the enquirer use proper business stationery? Does stationery have company and VAT registration numbers.
- Is there a reluctance or refusal to provide an order in writing?
- Is the order destined for a company which is not known and does not have a company website and which cannot be traced in trade directories?
- The client is not a member of a professional or trade association
- The client is based at a university or institute but is not buying through official channels.

### **Business practices**

- Delivery address or address from which the order was made appears to be a private residence or a PO Box
- Is the customer ordering at irregular intervals?
- Is the enquirer willing to pay an excessive price for a product or for rapid delivery?
- Is the enquirer willing to pay cash for the goods, even large purchases?
- Is the enquirer willing to pay the going rate without negotiating a better price?
- Is the order for a university/college or well-known company made by the usual procedures but delivery is requested to a specific individual?
- Is the enquirer trying to purchase on your website with a credit card?
- Is the enquirer registered with credit rating agencies?
- Flag all scheduled and watched chemicals on your sales order system.
- Is delivery requested to a third person whose activities or position are unconnected with the supposed activities of the end-user?
- Has the customer given the name of a different forwarding agent or dealer/distributor as the ultimate recipient of the goods?
- Is the order from abroad where the method of proposed payment is not consistent with financial transactions relating to that part of the world?
- Use of the Internet?
- Keep a watch on new customers as illicit purchases may start with innocent orders and then switch to substances subject to trade controls or watched chemicals after a few months.

### **Delivery methods**

- Does the enquirer wish to collect the goods and/or use a private vehicle?

- Does the enquirer request purchase in small containers where goods are said to be for industrial use?
- Is there a request for delivery by airfreight?
- Does the delivery or transport cost exceed the cost of the goods themselves?
- Is there a request for delivery via a dubious or complicated transit route?
- Asking for delivery in non-trade or unlabelled packages?
- Are taxes paid where export is claimed?

### **Use of the products**

- Does the client lack competence in understanding storage and handling requirements associated with substances that are subject to trade controls?
- Is the order for unusual products or abnormal quantities?
- Has the enquirer indicated the intended use of the chemicals to be ordered? Is the declared use consistent with the chemicals to be ordered?
- Is the order for more than one substance of concern or an essential chemical?
- Is the order for glassware or laboratory equipment sufficient to set up a laboratory?
- Is the order for export to a country where there are no real manufacturing or use requirements for the goods ordered?
- Is the order or purchase from companies with no obvious need for the products?
- Is the order for a combination of chemicals, which can be used, together in the manufacture of illicit products or items?
- Does the order consist of substances of concern included in any list(s) of substances that are subject to trade controls?

### **Record keeping**

The following information for all transactions involving monitored substances shall be made available to appropriate government authorities upon request:

1. Name and address of the buyer and consignee if different
2. Name and address of any other persons involved in the transaction (i.e. the physical movement of the goods) where such information is available.
3. Name of the substance of concern
4. Quantity of the substance of concern
5. Date of supply (ex premises)

### **Notification of suspicious orders or enquiries**

The requirement to report suspicious enquiries should extend to any transaction, regardless of whether the goods are intended for export or domestic sale, and should also cover mixtures and compounds that contain substances that are subject to trade controls which can be extracted for illicit purposes. This includes instances when a client refuses to make end use statements and/or abruptly withdraws their order.

If the order or enquiry is suspicious, obtain as much detail as possible i.e.

- Description of individuals if face-to-face contact is made.
- Details of vehicles used, including make, model, colour and registration number.
- If the customer makes a telephone enquiry, ask them to support it with a fax.

If possible, delay the enquiry and make arrangements to re-contact the customer. In the interim period, and as soon as possible, contact the appropriate police or security authorities. Write the name and contact details of the official security contact here for future reference:

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**Points to note**

- Automatic compliance screening is not a substitute for prudent, vigilant Staff.
- If an enquiry or order doesn't feel right, it probably is not right and needs investigation
- Only sell if you KNOW YOUR CUSTOMER

**SECTION D: SECURITY OF PREMISES / STORAGE / USAGE**

**Companies involved in activities involving substances that are subject to trade controls should control access to their premises.**

The object of this element of the agreement is to ensure that access by other persons (visitors and contractors) to a company premises is restricted and monitored, in relation to controlled substances. A company should ensure that they have a written policy and procedures in place that has relevance to the types of chemicals encompassed by this agreement.

Companies should undertake checks on persons/companies receiving training on your premises. Keep records of visitors (foreign and local) to your company's premises where controlled activities take place or where controlled chemicals are manufactured or stored.

Although diversion of chemicals generally occurs after sale, companies should be aware of the potential for diversion or theft from within their own sites and take adequate measures to secure business premises against theft. Companies concerned by this risk are operating along the whole supply chain:

- Manufacturers
- Distributors
- Logistic Service Providers



Consideration should be given to an increased level of security in areas where substances that are subject to trade controls are stored, as appropriate and practical. Such security can take the form of:

- Access restricted area
- Secure rooms or cages
- Frequent auditing of stocks to identify quickly any shortfalls
- Increased vigilance in such storage areas and/or Closed Circuit Television (CCTV)

The contact point is encouraged to seek advice from the most appropriate security agency. At facilities, actions can include measures such as installation of physical barriers, modified production processes or materials substitution. In product sales and distribution, actions can include measures such as storage cages or additional screening of transportation providers.

In cases where a theft occurs, the operator is advised to inform not only the police but also their competent authorities, without delay. If appropriate (for example, if similar cases happened repeatedly or if the methodology used by the criminals is new), the competent authorities can provide information relating to this event to other companies and security agencies.

Companies should also be mindful of the risks of theft during transportation when selecting a carrier company. The selected carrier must be trustworthy and able to apply sufficient security measures for the transportation of sensitive chemicals. This must be taken into account especially for long distance movement with breaks in the journey.

## **SECTION 2: CHECKLIST FOR THE CONTACT POINT(S)**

It is good practice to carry out a regular audit to ensure that standards for the control of compliance to international conventions, relevant regulations and changes in industry practice are being maintained.

The following checklist of points is provided as an aid to assist internal auditing for compliance and to help put in place the right procedures for your company. It is recommended that the contact point evaluate their internal compliance programmes at least once every year. Not all the questions listed below will be relevant to your particular business situation.

1. Commitment to Compliance
  - Has the Chief Executive Officer of your Company signed the Responsible Care® Commitment?
  - Are Directors of the Company aware of their legal responsibilities in complying with security controls on chemicals?
2. Control Inventory
  - With what frequency do you ascertain?
    - which chemicals are subject to international conventions and national control requirements?
    - that relevant requirements for each control measure are in place?
    - that a control matrix for any controlled chemicals is in place?
    - that appropriate staff keep an 'up to date' inventory of substances that are subject to trade controls?
3. Awareness raising

- Has management accountability for internal compliance programmes for substances that are subject to trade controls been assigned, e.g. is this indicated in the Company's latest organisational chart, has the delegation of responsibilities been clearly defined?
  - Has adequate awareness raising and training for all employees and customers been undertaken to a level for them to reach and maintain proficiency and to develop the skills and knowledge necessary to perform their responsibilities in regard to controlled chemicals? (see Section 5 below on the scope of training)
  - Have internal compliance performance goals / targets / objectives been included into employee's performance evaluations?
  - Has provision has been made in written policy, plans, programmes and procedures for achieving continuous improvement of the internal compliance regime for controlled chemicals?
  - Has provision been made to ensure the identification and dissemination of all legislation and requirements applicable to controlled chemicals?
  - Is the Company striving for performance beyond legal compliance?
  - Have all employees who have taken on control responsibilities received the necessary induction training and periodic retraining?
  - Do staff and customers have access to:
    - This agreement?
    - Regulatory websites?
    - Relevant officials?
4. Information Management
- How does the Company keep up-to-date with the requirements in respect of each of the controlled substance?
  - Does it ensure the identification and dissemination of all applicable policies, legislation and guidelines on relevant control measures?
  - Does it maintain a reference list of sources of information and contacts and distribute changes/updates to relevant personnel?
  - Does it provide resources (e.g. access to documentation) on controlled chemicals to the contact point?
5. **Staff Training** (This commitment extends beyond employees to include others, where appropriate under Product Stewardship, such as product distributors and carriers.)
- Has the Company Identified the skills and knowledge necessary to perform internal compliance programmes for controlling sales of substances that are subject to trade controls?
  - Are adequate compliance training programmes in place, which fulfil the skills and knowledge, required of responsible officers and other relevant employees?
  - Does the Company conduct induction and refresher awareness raising and training programmes for staff at all levels to reach and maintain proficiency and to develop the skills and knowledge necessary to perform their compliance responsibilities? Does the Company extend this commitment beyond employees to include others, when appropriate, such as product distributors and carriers?
  - Do all the relevant employees receive on an annual basis (or more frequently if required) a general update on the general provisions of the Company's policy on maintaining sales controls?
6. Customer Information
- Companies should assess customers and orders that may be unusual and carry possible risks.

- Is the following basic customer information being collected, assessed and acted on when selling substances that are subject to trade controls:
- Is relevant information obtained from a reliable source(s) about the potential customers' bona fides, location, and activities?

If sales are being made to non-manufacturers are appropriate licences held? Have they been inspected and verified?

- Is the final end-user as well as the final end-use of the chemical established?
- Does the company establish if there are any national or international restrictions or prohibitions on trade with the potential customer or the end-user, or that it is not on one of various lists of entities of concern published by the different government agencies?
- Do the company's freight forwarders, transporters, agents, brokers, distributors know which substances are substances that are subject to trade controls? Do they have copies of this voluntary agreement and/or relevant national guidance?
- Who ensures that the route and mode of transport will not lead to their diversion for prohibited use?
- Does the sales department alert customers at an early stage of the need for end-use information e.g. when providing them with a quotation
- Does the sales department have a List of Advisory Questions for Customers (see Section C) and makes marketing, sales, order processing and procurement staff aware of these questions so that they can play their part in spotting any dubious business? Does it let them know how to proceed if they do sense something suspicious, e.g. consult the relevant security authority.

#### 7. Record Keeping

- Are traceable records of activities and goods maintained for period of at least four years so that queries about any activity or goods subject to control may be readily checked and an adequate audit trail maintained?
- Has the Company established a policy for maintaining and storing of records, which addresses the minimum time that records are to be kept, the mode of safe keeping, as well as where records are kept?
- Is the record processing system regularly reviewed to ensure a logical sequence for recording of controlled activities?
- Are the records easily accessible?
- Are all related documents filed together or accessible through common filing fields?

#### 8. Access to Premises

- Are checks undertaken on persons/companies visiting or receiving training on the company premises?
- Are records kept of visitors (foreign and local) to the company's premises where substances that are subject to trade controls are manufactured or stored?

#### 9. Provision for Audits

- Does the company audit its internal compliance programmes against the recommendations in this agreement?
- Is this part of its normal internal auditing programme?

## REFERENCES / APPLICABLE LEGISLATION

1. **EU CBRN Action Plan:** Adopted in December 2009 by the EU Council and aims to strengthen CBRN (Chemical, Biological, Radio-Nuclear) security throughout EU.
2. Proposal for a Regulation of the EP and the EC on the marketing and use of explosive precursors (20.09.2010)  
<http://eur-lex.europa.eu/lexuriserv/lexuriserv.do?Uri=COM:2010:0473:FIN:EN:PDF>
3. COUNCIL REGULATION (EC) No 111/2005 of 22 December 2004 laying down rules for the monitoring of trade between the Community and third countries in drug precursors  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:022:0001:0010:en:PDF>
4. REGULATION (EC) No 273/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 February 2004 on drug precursors  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:047:0001:0010:EN:PDF>
5. COMMISSION REGULATION (EC) No 1277/2005 of 27 July 2005 laying down implementing rules for Regulation (EC) No 273/2004 of the European Parliament and of the Council on drug precursors and for Council Regulation (EC) No 111/2005 laying down rules for the monitoring of trade between the Community and third countries in drug precursors  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:202:0007:0033:EN:PDF>
6. Regulation (EC) No 649/2012 of the EP and the EC of 4 July 2012 concerning the export and import of dangerous chemicals  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:201:0060:0106:EN:PDF>
7. Rotterdam Convention - Prior Informed Consent (PIC)  
<http://www.pic.int/>
8. Stockholm Convention – Persistent Organic Pollutants (POPs)  
<http://chm.pops.int/>
9. COUNCIL REGULATION (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items.  
<http://ec.europa.eu/trade/creating-opportunities/trade-topics/dual-use/>
10. Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (Chemical Weapons Convention)  
<http://www.opcw.org/chemical-weapons-convention/about-the-convention/>