

Bureau of Industry and Security, Commerce

§ 717.1

of costs separately if possible, such as personnel costs (production-line, administrative, legal), costs of producing records, and costs associated with shutting down chemical production or processing during inspections, if applicable. This information should be reported to BIS on company letterhead at the address given in § 716.6(d) of the CWCR, with the following notation: "Attn: Report of inspection-related costs."

comments on the final inspection report to BIS, within the time-frame specified by BIS (*i.e.*, at least 7 working days from receipt of the report), and BIS will consider them, to the extent possible, when commenting on the final report. BIS will also send facilities a post-inspection letter detailing the issues that require follow-up action, e.g., amended declaration requirement (see §§ 712.7(d), 713.5(d), 714.4(d), and 715.2(c) of the CWCR), information on the status of the draft facility agreement, if applicable, and the date on which the report on inspection-related costs (see § 716.9 of the CWCR) is due to BIS.

§ 716.10 Post-inspection activities.

BIS will forward a copy of the final inspection report to the inspected facility for their review upon receipt from the OPCW. Facilities may submit

SUPPLEMENT NO. 1 TO PART 716—NOTIFICATION, DURATION AND FREQUENCY OF INSPECTIONS

	Schedule 1	Schedule 2	Schedule 3	Unscheduled discrete organic chemicals
Notice of initial or routine inspection to USNA.	72 hours prior to arrival of Inspection Team at the point of entry (initial); 24 hours prior to arrival of Inspection Team at the point of entry (routine).	48 hours prior to arrival of Inspection Team at the plant site.	120 hours prior to arrival of Inspection Team at the plant site.	120 hours prior to arrival of Inspection Team at the plant site.
Duration of inspection ..	As specified in facility agreement.	96 hours	24 hours	24 hours.
Maximum number of inspections.	Determined by OPCW based on characteristics of facility and the nature of the activities carried out at the facility.	2 per calendar year per plant site.	2 per calendar year per plant site.	2 per calendar year per plant site.
Notification of challenge inspection to USNA*.	12 hours prior to arrival of inspection team at the point of entry.			
Duration of Challenge inspection*.	84 hours.			

* See part 717 of the CWCR.

**SUPPLEMENT NOS. 2-3 TO PART 716
[RESERVED]**

PART 717—CWC CLARIFICATION PROCEDURES (CONSULTATIONS AND CHALLENGE INSPECTIONS)

- Sec.
- 717.1 Clarification procedures; challenge inspection requests pursuant to Article IX of the Convention.
- 717.2 Challenge inspections.
- 717.3 Samples.
- 717.4 Report of inspection-related costs.
- 717.5 Post-inspection activities.

AUTHORITY: 22 U.S.C. 6701 *et seq.*, 2681; E.O. 13128, 64 FR 36703, 3 CFR 1999 Comp., p. 199.

SOURCE: 71 FR 24929, Apr. 27, 2006, unless otherwise noted.

§ 717.1 Clarification procedures; challenge inspection requests pursuant to Article IX of the Convention.

(a) Article IX of the Convention sets forth procedures for clarification, between States Parties, of issues about compliance with the Convention. States Parties may attempt to resolve

such issues through consultation between themselves or through the Organization for the Prohibition of Chemical Weapons (OPCW). A State Party may also request the OPCW to conduct an on-site challenge inspection of any facility or location in the territory or in any other place under the jurisdiction or control of any other State Party. Such an on-site challenge inspection request shall be for the sole purpose of clarifying and resolving any questions concerning possible non-compliance with the Convention.

(b) In the event that BIS receives a request for clarification, pursuant to Article IX of the Convention, concerning possible non-compliance with the CWC, any person or facility subject to the CWCR (parts 710 through 729 of this subchapter) that receives an official written request from BIS for clarification must, within five working days from receipt of such request, provide BIS with any relevant information required to respond to the OPCW or the State Party(ies) who requested clarification under Article IX. BIS will contact the person or facility subject to the Article IX clarification, as early as practicable, prior to issuing an official written request for clarification to the person or facility.

§717.2 Challenge inspections.

Persons or facilities, other than U.S. Government facilities as defined in §710.2(a) of the CWCR, may be subject to a challenge inspection by the OPCW concerning possible non-compliance with the requirements of the Convention, irrespective of whether or not they are required to submit declarations or reports under the CWCR. BIS will host and escort the international Inspection Team for challenge inspections in the United States of such persons or facilities.

(a) *Consent to challenge inspections; warrants for challenge inspections.* (1) The owner, operator, occupant or agent in charge of a facility may consent to a challenge inspection. The individual giving consent on behalf of the facility represents that he or she has the authority to make this decision for the facility. The facility must respond to the notice of inspection, which includes within it a request for consent to the

inspection, within four hours of the facility's receipt of the notice of inspection from BIS.

(2) In instances where the owner, operator, occupant or agent in charge of a facility does not consent to a challenge inspection, BIS will assist the Department of Justice in seeking a criminal warrant as provided by the Act. The existence of a facility agreement does not in any way limit the right of the operator of the facility to withhold consent to a challenge inspection request.

(b) *Notice of challenge inspection.* Challenge inspections may be made only upon issuance of written notice by the United States National Authority (USNA) to the owner and to the operator, occupant or agent in charge of the premises. BIS will provide notice of inspection to the inspection point of contact at such time that a person or facility has been clearly established, if possible, and when notification is deemed appropriate. If the United States is unable to provide actual written notice to the owner and to the operator, occupant or agent in charge, BIS (or another appropriate agency, if BIS is unable) may post notice prominently at the plant, plant site or other facility or location to be inspected.

(1) *Timing.* The OPCW will notify the USNA of a challenge inspection not less than 12 hours before the planned arrival of the Inspection Team at the U.S. point of entry. Written notice will be provided to the owner and to the operator, occupant, or agent in charge of the premises at any appropriate time determined by the USNA after receipt of notification from the OPCW Technical Secretariat.

(2)(i) *Content of notice.* The notice of inspection shall include all appropriate information provided by the OPCW to the United States National Authority concerning:

- (A) The type of inspection;
- (B) The basis for the selection of the facility or locations for the type of inspection sought;
- (C) The time and date that the inspection will begin and the period covered by the inspection;
- (D) The names and titles of the Inspection Team members; and

(E) All appropriate evidence or reasons provided by the requesting State Party for seeking the inspection.

(ii) In addition to appropriate information provided by the OPCW in its notification to the USNA, the notice of inspection that BIS delivers to the facility will request the facility to indicate whether it will consent to an inspection and will state whether an advance team is available to assist the site in preparation for the inspection. If an advance team is available, facilities that request advance team assistance are not required to reimburse the U.S. Government for costs associated with these activities. If a facility does not agree to provide consent to an inspection within four hours of receipt of the inspection notification, BIS will assist the Department of Justice in seeking a criminal warrant.

(c) *Period of inspection.* Challenge inspections will not exceed 84 hours, unless extended by agreement between the Inspection Team and the Host Team Leader.

(d) *Scope and conduct of inspections—*
(1) *General.* Each inspection shall be limited to the purposes described in this section and conducted in the least intrusive manner, consistent with the effective and timely accomplishment of its purpose as provided in the Convention.

(2) *Scope of inspections.* If an owner, operator, occupant, or agent in charge of a facility consents to a challenge inspection, the inspection will be conducted under the authority of the Act and in accordance with the provisions of Article IX and applicable provisions of the Verification Annex of the Convention. If consent is not granted, the inspection will be conducted pursuant to the terms of a criminal warrant issued under the authority of the Act.

(3) *Hours of inspections.* Consistent with the provisions of the Convention, the Host Team will ensure, to the extent possible, that each inspection is commenced, conducted, and concluded during ordinary working hours, but no inspection shall be prohibited or otherwise disrupted from commencing, continuing or concluding during other hours.

(4) *Health and safety regulations and requirements.* In carrying out their ac-

tivities, the Inspection Team and Host Team shall observe federal, state, and local health and safety regulations and health and safety requirements established at the inspection site, including those for the protection of controlled environments within a facility and for personal safety.

(5) *Pre-inspection briefing.* Upon arrival of the Inspection Team and the Host Team in the vicinity of the inspection site and before commencement of the inspection, facility representatives will provide the Inspection Team and the Host Team with a pre-inspection briefing concerning the facility, the activities carried out there, safety measures, and administrative and logistical arrangements necessary for the inspection, which may be aided with the use of maps and other documentation as deemed appropriate by the facility. The time spent for the briefing may not exceed three hours.

§ 717.3 Samples.

If requested by the Inspection Team, the owner, operator, occupant or agent in charge of a facility must provide a sample, as provided for in the Convention and the Act and consistent with requirements set forth by the Director of the United States National Authority in 22 CFR part 103. This may be done by providing a sample, taken in the presence of the Inspection Team, to the U.S. Host Team leader, who will then release it to the Inspection Team for analysis. Analysis of the sample may be restricted to verifying the presence or absence of Schedule 1, 2, or 3 chemicals, or appropriate degradation products, unless agreed otherwise.

§ 717.4 Report of inspection-related costs.

Pursuant to section 309(b)(5) of the Act, any facility that has undergone any inspections pursuant to the CWCR during a given calendar year must report to BIS within 90 days of an inspection on its total costs related to that inspection. Although not required, such reports should identify categories of costs separately if possible, such as personnel costs (production-line, administrative, legal), costs of producing records, and costs associated with shutting down chemical production or

§ 717.5

processing during inspections, if applicable. This information should be reported to BIS on company letterhead at the address given in § 716.6(d) of the CWCR, with the following notation: "AATTN: Report of Inspection-related Costs."

§ 717.5 Post-inspection activities.

BIS will forward a copy of the final inspection report to the inspected facility for their review upon receipt from the OPCW. Facilities may submit comments on the final inspection report to BIS, and BIS will consider them, to the extent possible, when commenting on the final report. BIS will also send facilities a post-inspection letter detailing the issues that require follow-up action and the date on which the report on inspection-related costs (see § 717.4 of the CWCR) is due to BIS.

PART 718—CONFIDENTIAL BUSINESS INFORMATION

Sec.

718.1 Definition.

718.2 Identification of confidential business information.

718.3 Disclosure of confidential business information.

SUPPLEMENT NO. 1 TO PART 718—CONFIDENTIAL BUSINESS INFORMATION DECLARED OR REPORTED

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

SOURCE: 71 FR 24929, Apr. 27, 2006, unless otherwise noted.

§ 718.1 Definition.

The Chemical Weapons Convention Implementation Act of 1998 ("the Act") defines confidential business information as information included in categories specifically identified in sections 103(g)(1) and 304(e)(2) of the Act and other trade secrets as follows:

- (a) Financial data;
- (b) Sales and marketing data (other than shipment data);
- (c) Pricing data;
- (d) Personnel data;
- (e) Research data;
- (f) Patent data;
- (g) Data maintained for compliance with environmental or occupational health and safety regulations;

15 CFR Ch. VII (1–1–09 Edition)

(h) Data on personnel and vehicles entering and personnel and personal passenger vehicles exiting the site;

(i) Any chemical structure;

(j) Any plant design, process, technology or operating method;

(k) Any operating requirement, input, or result that identifies any type or quantity of chemicals used, processed or produced;

(l) Any commercial sale, shipment or use of a chemical; or

(m) Information that qualifies as a trade secret under 5 U.S.C. 552(b)(4) (Freedom of Information Act), provided such trade secret is obtained from a U.S. person or through the U.S. Government.

718.2 Identification of confidential business information.

(a) *General.* Certain confidential business information submitted to BIS in declarations and reports does not need to be specifically identified and marked by the submitter, as described in paragraph (b) of this section. Other confidential business information submitted to BIS in declarations and reports and confidential business information provided to the Host Team during inspections must be identified by the inspected facility so that the Host Team can arrange appropriate marking and handling.

(b) *Confidential business information contained in declarations and reports.* (1) BIS has identified those data fields on the declaration and report forms that request "confidential business information" as defined by the Act. These data fields are identified in the table provided in supplement no. 1 to this part.

(2) You must specifically identify in a cover letter submitted with your declaration or report any additional information on a declaration or report form (i.e., information not provided in one of the data fields listed in the table included in supplement no. 1 to this part), including information provided in attachments to Form A or Form B, that you believe is confidential business information, as defined by the Act, and must describe how disclosure would likely result in competitive harm.