

§717.3

(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-

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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

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;

(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.