

[72 FR 14408, Mar. 28, 2007]

PART 716—INITIAL AND ROUTINE INSPECTIONS OF DECLARED FACILITIES

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

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

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.

§ 716.1 General information on the conduct of initial and routine inspections.

This part provides general information about the conduct of initial and routine inspections of declared facilities subject to inspection under CWC Verification Annex Part VI(E), Part VII(B), Part VIII(B) and Part IX(B). See part 717 of the CWCR for provisions concerning challenge inspections.

(a) *Overview.* Each State Party to the CWC, including the United States, has agreed to allow certain inspections of declared facilities by inspection teams employed by the Organization for the Prohibition of Chemical Weapons (OPCW) to ensure that activities are consistent with obligations under the Convention. BIS is responsible for leading, hosting and escorting inspections of all facilities subject to the provisions of the CWCR (see § 710.2 of the CWCR).

(b) *Declared facilities subject to initial and routine inspections—(1) Schedule 1 facilities.* (i) Your declared facility is subject to inspection if it produced in

excess of 100 grams aggregate of Schedule 1 chemicals in the previous calendar year or anticipates producing in excess of 100 grams aggregate of Schedule 1 chemicals during the next calendar year.

(ii) If you are a new Schedule 1 production facility pursuant to § 712.4 of the CWCR, your facility is subject to an initial inspection within 200 days of submitting an initial declaration.

NOTE TO § 716.1(b)(1): All Schedule 1 facilities submitting a declaration are subject to inspection.

(2) *Schedule 2 plant sites—(i) Inspection thresholds for Schedule 2 plant sites.* Your declared plant site is subject to inspection if at least one plant on your plant site produced, processed or consumed, in any of the three previous calendar years, or you anticipate that at least one plant on your plant site will produce, process or consume in the next calendar year, any Schedule 2 chemical in excess of the following:

(A) 10 kg of chemical BZ: 3-Quinuclidinyl benzilate (see Schedule 2, Part A, paragraph 3 in Supplement No. 1 to part 713 of the CWCR);

(B) 1 metric ton of chemical PFIB: 1,1,3,3,3-Pentafluoro-2(trifluoromethyl)-1-propene or any chemical belonging to the Amiton family (see Schedule 2, Part A, paragraphs 1 and 2 in Supplement No. 1 to part 713 of the CWCR); or

(C) 10 metric tons of any chemical listed in Schedule 2, Part B (see Supplement No. 1 to part 713 of the CWCR).

(ii) *Initial inspection for new Schedule 2 plant sites.* Your declared plant site is subject to an initial inspection within the first year after submitting a declaration, if at least one plant on your plant site produced, processed or consumed in any of the three previous years, or you anticipate that at least one plant on your plant site will produce, process or consume in the next calendar year, any Schedule 2 chemical in excess of the threshold quantities set forth in paragraphs (b)(2)(i)(A) through (C) of this section.

NOTE TO § 716.1(b)(2): The applicable inspection threshold for Schedule 2 plant sites is

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ten times higher than the applicable declaration threshold. Only declared plant sites, comprising at least one declared plant that exceeds the applicable inspection threshold, are subject to inspection.

(3) *Schedule 3 plant sites.* Your declared plant site is subject to inspection if the declared plants on your plant site produced during the previous calendar year, or you anticipate they will produce in the next calendar year, in excess of 200 metric tons aggregate of any Schedule 3 chemical.

NOTE TO §716.1(b)(3): The methodology for determining a declarable and inspectable plant site is different. A Schedule 3 plant site that submits a declaration is subject to inspection only if the aggregate production of a Schedule 3 chemical at all declared plants on the plant site exceeds 200 metric tons.

(4) *Unscheduled discrete organic chemical plant sites.* Your declared plant site is subject to inspection if it produced by synthesis more than 200 metric tons aggregate of unscheduled discrete organic chemicals (UDOC) during the previous calendar year.

NOTE 1 TO §716.1(b)(4): You must include amounts of unscheduled discrete organic chemicals containing phosphorus, sulfur or fluorine in the calculation of your plant site's aggregate production of unscheduled discrete organic chemicals.

NOTE 2 TO §716.1(b)(4): All UDOC plant sites that submit a declaration based on §715.1(a)(1)(i) of the CWCR are subject to a routine inspection.

NOTE 3 TO PARAGRAPH (b)(4): Any UDOC plant site that is eligible, in accordance with §715.1(d)(2) of the CWCR, to submit a Change in Inspection Status Form or an Annual Declaration on Past Activities by December 15th of the current calendar year (*i.e.*, a plant site that will be below the inspection threshold level indicated in paragraph (b)(4) of this section during the current calendar year), but that fails to do so, will remain subject to inspection through at least the 90-day period at the beginning of the next calendar year.

(c) *Responsibilities of the Department of Commerce.* As the host and escort for the international Inspection Team for all inspections of facilities subject to the provisions of the CWCR under this part, BIS will:

- (1) Lead on-site inspections;
- (2) Provide Host Team notification to the facility of an impending inspection;

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(3) Take appropriate action to obtain an administrative warrant in the event the facility does not consent to the inspection;

(4) Dispatch an advance team to the vicinity of the site to provide administrative and logistical support for the impending inspection and, upon request, to assist the facility with inspection preparation;

(5) Escort the Inspection Team on-site throughout the inspection process;

(6) Assist the Inspection Team with verification activities;

(7) Negotiate the development of a site-specific facility agreement, if appropriate (see §716.6); and

(8) Ensure that an inspection adheres to the Convention, the Act and any warrant issued thereunder, and a site-specific facility agreement, if concluded.

[71 FR 24929, Apr. 27, 2006, as amended at 72 FR 14409, Mar. 28, 2007]

§716.2 Purposes and types of inspections of declared facilities.

(a) *Schedule 1 facilities*—(1) *Purposes of inspections.* The aim of inspections of Schedule 1 facilities is to verify that:

(i) The facility is not used to produce any Schedule 1 chemical, except for the declared Schedule 1 chemicals;

(ii) The quantities of Schedule 1 chemicals produced, processed or consumed are correctly declared and consistent with needs for the declared purpose; and

(iii) The Schedule 1 chemical is not diverted or used for purposes other than those declared.

(2) *Types of inspections*—(i) *Initial inspections.* (A) During initial inspections of declared Schedule 1 facilities, in addition to the verification activities listed in paragraph (a)(1) of this section, the Host Team and the Inspection Team will draft site-specific facility agreements (see §716.6 of the CWCR) for the conduct of routine inspections.

(B) For new Schedule 1 production facilities declared pursuant to §712.4 of the CWCR, the U.S. National Authority, in coordination with BIS, will conclude a facility agreement with the OPCW before the facility begins producing above 100 grams aggregate of Schedule 1 chemicals.