

DEPARTMENT OF COMMERCE**Bureau of Export Administration****15 CFR Parts 710 Through 721**

[Docket No. 990611158-9158-01]

RIN 0694-AB06

Chemical Weapons Convention Regulations**AGENCY:** Bureau of Export Administration, Commerce.**ACTION:** Proposed rule; request for comments.

SUMMARY: On April 25, 1997, the United States ratified the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, also known as the Chemical Weapons Convention (CWC or Convention). The Bureau of Export Administration is proposing to establish the Chemical Weapons Convention Regulations (CWCR) to implement provisions of the Convention affecting U.S. industry and other U.S. persons. The proposed CWCR include requirements to report certain activities involving Scheduled chemicals and Unscheduled Discrete Organic Chemicals, and to provide access for on-site verification by international inspectors of certain facilities and locations in the United States.

DATES: Comments must be received by August 20, 1999.

ADDRESSES: Written comments should be sent to Nancy Crowe, Regulatory Policy Division, Office of Exporter Services, Bureau of Export Administration, Room 2705, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: For questions of a general or regulatory nature, contact Nancy Crowe, Regulatory Policy Division, telephone: (202) 482-2440 or e-mail: Ncrowe@BXA.DOC.GOV. For program information, contact Charles Guernieri, Director, Treaty Compliance Division, Office of Chemical and Biological Controls and Treaty Compliance, telephone: (202) 501-7876; for legal questions, contact Cecil Hunt, Deputy Chief Counsel, Office of the Chief Counsel for Export Administration, telephone (202) 482-5301.

SUPPLEMENTARY INFORMATION:**Background***Chemical Weapons Convention*

On April 25, 1997, the United States ratified the Convention on the

Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, also known as the Chemical Weapons Convention (CWC or Convention). The Convention, which entered into force on April 29, 1997, is an arms control treaty with significant non-proliferation aspects. As such, the Convention bans the development, production, stockpiling or use of chemical weapons and prohibits States Parties from assisting or encouraging anyone to engage in a prohibited activity. The Convention provides for declaration and inspection of all States Parties' chemical weapons and chemical weapon production facilities and oversees the destruction of such weapons and facilities.

To fulfill its arms control and non-proliferation objectives, the Convention also establishes a comprehensive verification scheme and requires the declaration and inspection of facilities that produce, process or consume certain listed or "Scheduled" chemicals, many of which have significant commercial applications. The Convention also requires States Parties to report imports and exports and to impose import and export restrictions on certain chemicals. These requirements apply to all entities under the jurisdiction and control of States Parties, including commercial entities and individuals. States Parties to the Convention, including the United States, have agreed to this verification scheme to provide transparency and to ensure that no State Party to the Convention is engaging in prohibited activities.

Specifically, the Convention requires States Parties to declare all facilities that produce Schedule 1 or Schedule 3 chemicals in quantities exceeding specified declaration thresholds, or that produce, process or consume Schedule 2 chemicals in quantities exceeding specified declaration thresholds. Schedule 1, 2 and 3 chemicals are set forth in the Convention's Schedules of Chemicals and have been selected for these Schedules based on degree of toxicity, history of use in chemical warfare and commercial utility. The Convention also requires States Parties to declare facilities that produce "Unscheduled Discrete Organic Chemicals" ("UDOCs") in quantities exceeding specified thresholds. The requirement to declare UDOC facilities is intended to identify facilities capable of producing chemical warfare agents or precursors.

Certain "declared" facilities will also be subject to routine on-site inspections by international inspectors from the

Convention's implementing body, the Organization for the Prohibition of Chemical Weapons (OPCW). All declared Schedule 1 facilities are subject to routine inspection. Declared Schedule 2 facilities are subject to inspection if they produce, process or consume Schedule 2 chemicals in quantities exceeding specified inspection thresholds. Declared Schedule 3 facilities are subject to inspection if they produce Schedule 3 chemicals in quantities exceeding a specified inspection threshold. Facilities producing UDOCs in quantities exceeding a specified threshold will be subject to inspection, beginning in 2001, unless the Conference of States Parties decides otherwise. With a few exceptions, inspection thresholds are higher than declaration thresholds.

The Convention also provides for challenge inspections of any facility or location under the jurisdiction of any State Party. Challenge inspections are intended to resolve questions of possible non-compliance with the Convention.

Finally, the Convention requires States Parties to provide data on imports and exports of Scheduled chemicals. States Parties must also, among other things, prohibit exports of Schedule 1 chemicals to non-States Parties, require advance notification of imports and exports of Schedule 1 chemicals, require End-Use Certificates for exports of Schedule 2 and 3 chemicals to non-States Parties, and ban the import from or export to non-States Parties of Schedule 2 chemicals after April 28, 2000.

Application of CWC Requirements to U.S. Commercial Entities and Individuals

The Chemical Weapons Convention Implementation Act of 1998 ("Act") (Pub. L. 105-277, Division I), enacted on October 21, 1998, authorizes the United States to require the U.S. chemical industry and other private entities to submit declarations, notifications and other reports and also to provide access for on-site inspections. Executive Order No. 13128, among other things, delegates authority to the Department of Commerce to promulgate regulations, obtain and execute warrants, provide assistance to certain facilities, and carry out appropriate functions to implement the Convention, consistent with the Act. The Department of Commerce will carry out CWC import restrictions under the authority of the International Emergency Economic Powers Act, the National Emergencies Act and Executive Order 12938, as revised by E.O. No. 13128.

The Departments of State and Commerce are implementing CWC export restrictions under their respective export control authorities.

Other State and Commerce Department Regulations Implementing Requirements of the Chemical Weapons Convention

In addition to these proposed Chemical Weapons Convention Regulations, the Department of State is publishing a separate proposed rule on the taking of samples during on-site inspections in the United States and the enforcement provisions for violations of the reporting and inspection requirements set forth in the Act, and also maintains the International Traffic in Arms Regulations (22 CFR 120–130).

Further, on May 18, 1999, BXA published an interim rule (64 FR 27138) that implemented the following export control provisions of the CWC:

- Annual reporting of all exports of Schedule 1 chemicals;
- Advance notification of all exports of Schedule 1 chemicals;
- Prohibition on exports of Schedule 1 chemicals subject to Commerce Department jurisdiction to non-States Parties;
- Prohibition on all reexports of Schedule 1 chemicals subject to Commerce Department jurisdiction;
- Prohibition on exports of Schedule 2 chemicals subject to Commerce Department jurisdiction to non-States Parties after April 28, 2000;
- Requirement that exporters obtain an End-Use Certificate prior to exporting any Schedule 2 or 3 chemicals to a non-State Party; and
- License requirements for the export of Schedule 1 chemicals under Commerce Department jurisdiction to all destinations, including Canada.

Note that all existing export license requirements that apply to CWC Scheduled chemicals and UDOCs subject to Commerce Department jurisdiction continue in effect. Further, the new CWC reporting requirements, such as the End-Use Certificate and prior notification requirements, are in addition to existing export license and supporting documentation requirements for exports of chemicals subject to Commerce Department or State Department export licensing jurisdiction.

The Chemical Weapons Convention Regulations (CWCRC)

This proposed rule implements reporting and inspection requirements and import restrictions. The CWCRC:

- Apply to all U.S. persons and facilities in the United States, except

for Department of Defense and Department of Energy facilities and other U.S. Government agencies that notify the United States National Authority of their decision to be excluded from the CWCRC (Such entities are referred to as “persons and facilities subject to the CWCRC”). United States Government facilities are those owned by or leased to the U.S. Government, including facilities that are contractor-operated.

- Set forth the declaration and other reporting requirements that affect persons and facilities subject to the CWCRC. The reporting requirements of this proposed rule are consistent with the procedural provisions of section 401(a) of the Act. Section 401(a) of the Act requires submission to the Director of the USNA such reports as the USNA may reasonably require to provide to the OPCW, pursuant to subparagraph 1(a) of the Convention’s Annex on Confidentiality. Subparagraph 1(a) of the Confidentiality Annex provides that the OPCW shall require only the minimum amount of information and data necessary for the timely and efficient conduct by the OPCW of its responsibilities under the Convention. As required by Section 401(a) of the Act, the USNA, in coordination with the CWC interagency group, has determined that the reports required by the CWCRC are those reasonably required to be provided to the OPCW. Declarations, notifications and other reports required under the CWCRC will be due to the Department of Commerce at specified dates or within specified time frames for verification, aggregation and submission to the Director of the USNA. The USNA will transmit United States declarations, reports and notifications to the OPCW located in the Hague, Netherlands.
- Require access for on-site inspections.
- Prohibit imports of Schedule 2 chemicals from non-States Parties after April 28, 2000.
- Contain recordkeeping requirements and administrative procedures and penalties related to violations of reporting and inspection requirements and importation restrictions.
- Implement section 211 of the Act, which authorizes revocation of the export privileges of any person determined to have violated the chemical weapons provisions of 18 U.S.C. § 229.

Reporting Requirements

Declaration Requirements

Facilities required to submit “declarations” are those that produce,

process or consume certain chemicals in quantities that exceed specified thresholds. Four types of declarations are due to BXA when required by parts 712 through 715 of the CWCRC: initial declarations, annual declarations on past activities, annual declarations on anticipated activities, and a one-time declaration of facilities that produced Schedule 2 or 3 chemicals for chemical weapons purposes at any time since January 1, 1946. Declared Schedule 1, 2 and 3 facilities will provide import and export data on declared chemicals as part of their annual declarations. The United States will transmit data on declared facilities to the OPCW. Such data will also be compiled to establish the U.S. national aggregate on production, processing and consumption of relevant chemicals. Import and export data contained in declarations will also be compiled and added to import and export information obtained from other reports to establish the U.S. national aggregate declaration on imports and exports of certain chemicals.

Initial declarations. Initial declarations are one-time declarations that will be due to BXA within 90 days after the date of publication of the CWCRC as a final rule. Facilities that produced more than 100 grams aggregate of Schedule 1 chemicals in calendar year 1997 must provide a technical description of their facilities. Facilities that produced, processed or consumed more than specified quantities of a Schedule 2 chemical in any of calendar years 1994, 1995 or 1996 must provide data on activities involving this Schedule 2 chemical that occurred in each of calendar years 1994, 1995, and 1996. Facilities that produced more than 30 metric tons of a Schedule 3 chemical in calendar year 1996 must provide data on activities involving this Schedule 3 chemical that occurred in 1996. Facilities that produced more than specified quantities of UDOCs in calendar year 1996 must provide ranges of production for 1996.

Annual declarations on past activities. Facilities that produced more than 100 grams aggregate of Schedule 1 chemicals, more than 30 metric tons of a Schedule 3 chemical, or more than specified quantities of UDOCs in the previous calendar year, must submit an annual declaration on past activities. Facilities that produced, processed or consumed more than specified quantities of a Schedule 2 chemical in any of the three previous calendar years must submit an annual declaration on past activities for activities during the previous year. Annual declarations on past activities for calendar years 1997

and 1998 will be due to the Department of Commerce within 90 days of the publication of the CWC as a final rule.

Annual declarations on anticipated activities. Facilities that anticipate engaging in production of Schedule 1 or Schedule 3 chemicals or production, processing or consumption of Schedule 2 chemicals above specified thresholds during the next calendar year must submit an annual declaration on anticipated activities. The due date for annual declarations on anticipated activities will be determined when the CWC is published as a final rule.

One time declaration of past production for chemical weapons purposes. Facilities that have produced Schedule 2 or Schedule 3 chemicals anytime since January 1, 1946, for chemical weapons purposes must submit a declaration within 90 days after publication of the CWC as a final rule.

Amended declarations. The CWC also provide for submission of "amended declarations" to correct errors and to declare additionally planned activities after the submission of the annual declarations of anticipated activities.

Notification Requirements. Facilities that intend to import or export Schedule 1 chemicals to States Parties or to begin production of Schedule 1 chemicals in excess of 100 grams aggregate per year must submit prior notifications of these activities. These notifications will be forwarded to the OPCW.

Other Reporting Requirements

U.S. persons and facilities subject to the CWC that have imported or exported a Scheduled chemical but have not produced, processed, or consumed declarable quantities of that chemical may nevertheless have an import or export reporting requirement. The United States National Authority will NOT forward facility-specific information contained in these reports to the OPCW. BXA will include the import and export data in the compilation of the U.S. national aggregate declaration on imports and exports of relevant chemicals.

Initial reports on imports and exports. Initial reports for imports and exports are required for imports and exports of Schedule 2 and Schedule 3 chemicals above certain threshold quantities during calendar year 1996.

Annual reports on imports and exports. Annual reports for imports and exports are required for all imports and exports of Schedule 1 chemicals during the previous calendar year, and for imports and exports of Schedule 2 and 3 chemicals above certain threshold

quantities during the previous calendar year, beginning with 1997.

The first declaration and report package due to the Department of Commerce will include the initial declaration plus the annual declarations for calendar years 1997 and 1998 activities, and may also include the annual declaration on activities anticipated for calendar year 2000. Certain facilities may also need to submit the one-time declaration on past production of Schedule 2 or Schedule 3 chemicals for chemical weapons purposes. Handbooks containing necessary multipurpose forms for declarations and reports will be available by mail and through the Internet. If there are discrepancies between the CWC and the handbook (including instructions and forms), the CWC prevail.

On-Site Inspection Requirements

This proposed rule also sets forth the requirements and procedures for on-site inspections of U.S. facilities subject to the CWC, consistent with sections 301 to 309 of the Act. On-site inspections will be conducted by inspectors from the OPCW's Technical Secretariat. The Department of Commerce will lead the U.S. host team accompanying and escorting the inspectors during inspections.

Types of inspections. There are two major kinds of inspections: (1) initial and subsequent ("routine," under the Act) inspections of declared facilities whose level of production, processing or consumption of specified chemicals makes them subject to such verification as a routine matter; and (2) "challenge" inspections of any facility or location in the United States based on a request made by another State Party to clarify and resolve any questions concerning possible non-compliance with the Convention.

Notification and consent procedures. Pursuant to section 304 of the Act, before an inspection may take place, the USNA must authorize each inspection of a facility or location in the United States and provide actual written notification of each inspection to the owner and operator or other person in charge of the facility. For routine or challenge inspections of declared facilities, the USNA will provide such written notification within 6 hours of receiving notification from the OPCW Technical Secretariat or as soon as possible thereafter. The Department of Commerce will provide preliminary notice to facilities to be inspected. The Department of Commerce will also obtain an administrative warrant, as provided for by section 305 of the Act

and in Executive Order No. 13128, if the owner or person in charge of the facility does not consent to the inspection.

Part-by-Part Analysis

The Chemical Weapons Convention Regulations will include 21 parts, as follows:

Part 710—General Information and Overview of the CWC

This part includes general information about the Convention, definitions of terms used in the CWC, an overview of Scheduled chemicals and examples of affected industries. States Parties to the Convention are listed in Supplement No. 1 to part 710 of the CWC. This part also briefly describes the declaration and inspection provisions of the Convention.

Part 711—General Information Regarding Reporting Requirements

This part provides an overview of declaration and other reporting requirements, who is responsible for declarations and reports, and where to get assistance, forms and handbooks. The Convention requires an initial declaration and report and subsequent annual declarations and reports for activities involving specified amounts of certain chemicals. If, after reviewing parts 712 through 715, you determine that you have declaration and/or reporting requirements, you may obtain the appropriate forms by contacting the Bureau of Export Administration (BXA). Note that in instances where a declaration or report is required, the operator of a facility required to declare or report under the CWC is responsible for the submission of all required forms in accordance with all applicable provisions of the CWC. Also note that the Act defines and provides for the protection of confidential business information obtained pursuant to the CWC. A supplement to this part includes information on protection of confidential business information.

Part 712—Activities Involving Schedule 1 Chemicals

This part prohibits imports of Schedule 1 chemicals from non-States Parties and imports from States Parties for purposes other than research, medical, pharmaceutical, or protective purposes. (Part 712 also cross-references similar export restrictions on Schedule 1 chemicals set forth in the Export Administration Regulations.) This part also describes declaration and other reporting requirements for activities involving Schedule 1 chemicals, including production, use (consumption), imports, exports,

domestic transfers and storage of any quantity of Schedule 1 chemicals. This part provides that facilities that produce more than 100 grams of Schedule 1 chemicals in a calendar year are considered Schedule 1 "declared" facilities. Facility-specific information on "declared facilities" will be forwarded to the Organization for the Prohibition of Chemical Weapons (OPCW) and all Schedule 1 "declared" facilities will be subject to routine on-site inspection by the OPCW. Finally, this part requires advance notification of all exports and imports of Schedule 1 chemicals to or from other States Parties and changes in production of Schedule 1 chemicals. Note that BXA published an interim rule in the **Federal Register** on May 18, 1999 (64 FR 27138), amending the Export Administration Regulations (EAR) to implement the export control provisions of the CWC that are subject to Department of Commerce jurisdiction. The EAR also requires prior notification of all exports of Schedule 1 chemicals and annual reports of exports of such chemicals. Upon publication of the CWC as a final rule, the EAR will be amended to remove the duplicate advance notification and other reporting provisions for exports of Schedule 1 chemicals. The export license requirements pertaining to Schedule 1 chemicals, and other scheduled chemicals, will continue to be set forth in the EAR. Schedule 1 chemicals are included in Supplement No. 1 to this part.

Part 713—Activities Involving Schedule 2 Chemicals

This part prohibits imports of any Schedule 2 chemical on or after April 29, 2000, from any country that is not a party to the Convention. (Part 713 cross-references similar export restrictions on Schedule 2 chemicals in the EAR.) This part also describes declaration and other reporting requirements for activities involving Schedule 2 chemicals, including production of any amount of a Schedule 2 chemical at any time since January 1, 1946, for chemical weapons purposes; production, processing, or consumption of Schedule 2 chemicals in excess of specified quantities; and imports and exports of a Schedule 2 chemical in excess of specified quantities. Further, this part requires declarations on anticipated production, processing, or consumption in the next calendar year of a Schedule 2 chemical in excess of specified quantities as well as any changes to the declarations on anticipated activities that results in an increase of anticipated production,

processing or consumption by 20% or more. Declaration requirements apply also to Schedule 2 chemicals contained in mixtures. Note, however, that the quantity of a Schedule 2 chemical contained in a mixture must be counted for declaration purposes only if the concentration of the Schedule 2 chemical in the mixture is:

- 10% or more by volume or by weight, whichever yields the lesser percent, for activities involving either production or consumption of a mixture containing a Schedule 2 chemical; or
- 30% or more by volume or by weight, whichever yields the lesser percent, for activities involving the processing of a mixture containing a Schedule 2 chemical.

If the mixture contains more than the stated percentage concentration for the activity (*i.e.*, more than 10% for production or consumption activities or more than 30% for processing activities), you must count only the amount (weight) of the Schedule 2 chemical in the mixture, not the total weight of the mixture. Schedule 2 chemicals are included in Supplement No. 1 to this part.

Part 714—Activities Involving Schedule 3 Chemicals

This part describes declaration and other reporting requirements for activities involving Schedule 3 chemicals, including production of any amount of a Schedule 3 chemical at any time since January 1, 1946, for chemical weapons purposes; production of Schedule 3 chemical in excess of specified quantities; and imports and exports of a Schedule 3 chemical in excess of specified quantities. Further, this part requires declaration of anticipated production in the next calendar year of a Schedule 3 chemical in excess of specified quantities as well as any changes to the declaration of anticipated activities that result in an increase of anticipated production by 20% or more. Declaration requirements apply also to Schedule 3 chemicals contained in mixtures. Note, however, that the quantity of a Schedule 3 chemical contained in a mixture must be counted for declaration purposes only if the concentration of the Schedule 3 chemical in the mixture is 80% or more by volume or by weight, whichever yields the lesser percent. Schedule 3 chemicals are included in Supplement No. 1 to this part.

Part 715—Activities Involving Unscheduled Discrete Organic Chemicals (UDOCs)

This part describes declaration requirements for the production of UDOCs in excess of specified quantities. However, note that declarations are not required for chemicals and chemical mixtures produced through a biological or bio-mediated process; polymers and oligomers; certain synthetic mixtures of organic chemicals; unscheduled discrete organic chemicals produced coincidentally as byproducts of a manufacturing or production process that are not isolated or captured for use or sale during the process and are routed to, or escape from, the waste stream of a stack, incinerator, or wastewater treatment system or any other waste stream; hydrocarbons; or explosives.

Part 716—Inspections

This part implements the inspection provisions of the Convention, consistent with the Act. It describes notification procedures, the responsibilities of the Department of Commerce as host and escort for inspections, types of inspections, and scope and conduct of inspections. The USNA will provide written notification to the owner and operator, occupant or agent in charge of the premises to be inspected. The Department of Commerce will provide preliminary notice to the point of contact identified in declaration forms submitted by the facility. This part also describes the duration and frequency of inspections, and the role of a facility agreement. A facility agreement is a site-specific agreement between the U.S. Government and the Organization for the Prohibition of Chemical Weapons. The purpose for a facility agreement is to define the inspection scope and procedures for a given facility under the Convention and to facilitate future inspections of the facility by enhancing efficiency and predictability and reducing preparation costs for the facility. The U.S. Government and the OPCW will begin negotiating such facility agreements during the initial inspections of facilities that require facility agreements pursuant to the Convention. Supplement Nos. 2 and 3 include model facility agreements for Schedule 1 and Schedule 2 facilities, respectively.

Part 717—Clarification and Challenge Inspection Procedures

This part describes clarification procedures under the Convention and the scope and purpose of on-site challenge inspections. On-site challenge

inspections may be conducted at any facility or location in the United States for the sole purpose of clarifying and resolving any questions concerning possible non-compliance with the provisions of the CWC. The USNA will provide written notification of a challenge inspection to the owner and operator, occupant or agent in charge of the premises. The Department of Commerce will provide preliminary notification to the point of contact of a declared facility, or to the owner or occupant of a facility that has not been declared under the declaration requirements of the Convention.

Part 718—Interpretations

This part is reserved for future use. It will provide explanations and examples for declaration requirements and other interpretations to guide industry and other U.S. persons in determining obligations under the CWC.

Part 719—Enforcement

This part sets forth the civil and criminal penalties and enforcement procedures that apply to violations of the reporting and inspections requirements and provisions relating to the importation of Schedule 1 and 2 chemicals.

Part 720—Denial of Export Privileges

This part sets forth the penalties and enforcement procedures that apply to violations of 18 U.S.C. 229.

Part 721—Recordkeeping Requirements

This part includes the recordkeeping requirements of the CWC, including retention and reproduction requirements.

Comments on this proposed rule must be submitted to BXA by August 20, 1999. To aid in discussions between interested persons and the U.S. Government on the requirements of this proposed rule, BXA will conduct a seminar in Washington, D.C. prior to the expiration of the comment period. Interested persons should contact the Office of Chemical and Biological Controls and Treaty Compliance on (202) 501-7876 for information concerning the seminar.

Rulemaking Requirements

1. This proposed rule has been determined to be significant for purposes of E.O. 12866. BXA invites the public to comment on the extent to which this rule complies with the principle stated in section (1)(b)(12) of E.O. 12866 that agencies draft regulations that are simple and easy to understand, with the goal of minimizing the potential for uncertainty and

litigation arising from such uncertainty. Comments should be submitted to BXA by August 20, 1999, and sent to Nancy Crowe, Regulatory Policy Division, Office of Exporter Services, Bureau of Export Administration, Room 2705, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20230.

2. Notwithstanding any other provision of law, no person is required to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule revises an existing collection of information requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), which we have submitted for approval to the Office of Management and Budget. The public reporting burdens for the new collections of information are estimated to average 9 hours for Schedule 1 Chemicals, 7.2 hours for Schedule 2 chemicals, 2.5 hours for Schedule 3 chemicals, 5.3 for Unscheduled Discrete Organic Chemicals, and .17 hours for Schedule 1 notifications. These estimates include the time required to complete the required forms.

Comments are invited on (a) whether the collection of information is necessary for the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarify of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments regarding these or any other aspects of the collection of information to: Nancy Crowe, Regulatory Policy Division, Bureau of Export Administration, U.S. Department of Commerce Room 2705, 14th Street and Pennsylvania Ave., NW, Washington, DC 20230.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. BXA has completed a Cost Benefit Analysis (CBA) pursuant to Executive Order 12866 and an Initial Regulatory Flexibility Analysis (IRFA) pursuant to 5 U.S.C. 603 for this proposed rule. A summary of this IRFA follows. Copies of the CBA and the complete IRFA may be obtained from Henry Gaston, Bureau of Export Administration Freedom of

Information Officer, Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 6883, Department of Commerce, 14th Street and Pennsylvania Avenue, NW, Washington, DC 20230 or by calling (202) 482-0500. BXA invites the public to comment on the CBA and the IRFA. Send comments to Nancy Crowe, Regulatory Policy Division, Office of Exporter Services, Bureau of Export Administration, Room 2705, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20230.

The IRFA identifies the Small Business Administration's (SBA) small business size standards, in terms of number of employees, for "Chemicals and Allied Products" by four-digit Standard Industrial Classification (SIC) codes. These SBA standards indicate that a "small business" in the chemical industry can cover a range of sizes, from up to 500 employees to up to 1,000 employees. The IRFA states that BXA does not have information on which SIC code categories will include companies that will be subject to the reporting, declaration or inspection requirements of this proposed rule, and therefore, BXA is unable to estimate with certainty the number of small businesses that will be affected by the proposed rule. BXA anticipates some 2,000 firms will be affected by the CWC, and many of them may have no more than 500 employees, thus falling under the SBA generic definition of "small business". However, BXA invites and encourages affected companies commenting on this proposed rule to inform BXA of their size and their SIC codes.

The IRFA reports BXA's estimate that compliance with the requirements of this proposed rule will total approximately \$377,654 to gather and maintain relevant data and to fill out declarations, and approximately \$2,166,880 for inspections. The average cost of an inspection, based on the assumption that 40 facilities will undergo inspections each year, is \$54,150. The IRFA describes the expected benefits to the United States of implementing the requirements of the Convention, including increased national and economic security.

The IRFA explains that BXA's discretion in drafting the declaration forms and formulating the reporting requirements is limited by the Convention requirements. The OPCW has issued forms for States Parties to use in submitting declarations. In drafting the declaration forms for U.S. persons to use in drafting the CWC, BXA has consistently made the reporting requirements as narrow as possible to ensure that only information required to

be "declared" to the OPCW set forth in the Convention is to be reported to BXA. Other States Parties, such as Canada, have imposed much broader reporting requirements on their industries, with the government taking on the responsibility of determining which information must be forwarded to the OPCW. In addition, there are certain declaration requirements of the Convention that are subject to interpretation. Until the Conference of States Parties establishes clear rules for these requirements, States Parties may use their "national discretion" to implement them. "National discretion" generally means a reasonable interpretation of the requirement. For such reporting requirements currently subject to "national discretion", BXA has adopted the minimum requirements consistent with a reasonable reading of the Convention, keeping in mind its purposes and objectives.

5. Comments will be considered on provisions included in the regulations as well as provisions or guidance which commenters believe should be included in the regulations. The Department encourages interested persons who wish to comment to do so at the earliest possible time.

The period for submission of comments will close August 20, 1999. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered, if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form.

Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records

Inspection Facility, Room 6883, Department of Commerce, 14th Street and Pennsylvania Avenue, N.W., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Henry Gaston, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 482-0500.

List of Subjects

Part 710

Chemicals, Exports, Foreign Trade, Imports, Treaties.

Part 711

Chemicals, Confidential business information, Reporting and recordkeeping requirements.

Part 712

Chemicals, Exports, Foreign Trade, Imports, Reporting and recordkeeping requirements.

Part 713

Chemicals, Exports, Foreign Trade, Imports, Reporting and recordkeeping requirements.

Part 714

Chemicals, Exports, Foreign Trade, Imports, Reporting and recordkeeping requirements.

Part 715

Chemicals, Exports, Foreign Trade, Imports, Reporting and recordkeeping requirements.

Part 716

Chemicals, Confidential business information, Reporting and recordkeeping requirements, Search warrant, Treaties.

Part 717

Chemicals, Confidential business information, Reporting and recordkeeping requirements, Search warrant, Treaties.

Part 719

Administrative proceedings, Exports, Imports, Penalties, Violations.

Part 720

Penalties, violations.

Part 721

Reporting and recordkeeping requirements.

1. In 15 CFR, Chapter VII, Subchapter B is designated as Chemical Weapons Convention Regulations.

2. In 15 CFR, Subchapter B, Parts 710 through 721 are added to read as follows:

PART 710—GENERAL INFORMATION AND OVERVIEW OF THE CHEMICAL WEAPONS CONVENTION REGULATIONS (CWCR)

Sec.

710.1 Definitions of terms used in the Chemical Weapons Convention Regulations (CWCR).

710.2 Scope of the CWCR.

710.3 Purposes of the Convention and CWCR.

710.4 Overview of Scheduled chemicals and examples of affected industries.

710.5 Authority.

710.6 Relationship between the Chemical Weapons Convention Regulations and the Export Administration Regulations.

Supplement No. 1 To Part 710—States Parties To The Convention On The Prohibition of The Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction

Authority: Pub. L. 105-277, 112 Stat. 2681; E.O. 13128, 64 FR 36703.

§ 710.1 Definitions of terms used in the Chemical Weapons Convention Regulations (CWCR).

The following are definitions of terms used in the CWCR (parts 710 through 721 of this subchapter):

Bureau of Export Administration (BXA). Means the Bureau of Export Administration of the United States Department of Commerce, including the Office of Export Administration and the Office of Export Enforcement.

Chemical Weapon. Means the following, together or separately:

(a) A toxic chemical and its precursors, except where intended for purposes not prohibited under the Chemical Weapons Convention (CWC), provided that the type and quantity are consistent with such purposes;

(b) A munition or device, specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in paragraph (a) of this definition, which would be released as a result of the employment of such munition or device; or (c) Any equipment specifically designed for use directly in connection with the employment of munitions or devices specified in paragraph (b) of this definition.

Chemical Weapons Convention (CWC or Convention). Means the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their

Destruction, and its annexes opened for signature on January 13, 1993, and entered into force on April 29, 1997.

Chemical Weapons Convention Regulations (CWCRC). Means the regulations contained in 15 CFR parts 710 through 721.

Consumption. Consumption of a chemical means its conversion into another chemical via a chemical reaction.

Declaration form. Means a multi-purpose form due to BXA regarding activities involving Schedule 1, Schedule 2, Schedule 3, or unscheduled discrete organic chemicals. Declaration forms will be used by facilities that have data declaration obligations under the CWCRC and are "declared" facilities whose facility-specific information will be transmitted to the OPCW. Certain declaration forms will also be used by entities that are not "declared" facilities, but that have limited reporting requirements under the CWCRC. Information from such facilities will be used to compile U.S. national aggregate figures on the production, processing, consumption, import and export of specific chemicals. See also definition of "declared facility."

Declared facility or plant site. Means a facility or plant site required to complete data declarations of activities involving Schedule 1, Schedule 2, Schedule 3, or unscheduled discrete organic chemicals above specified threshold quantities. Only certain declared facilities and plant sites are subject to routine inspections under the CWCRC. Plant sites that produced either Schedule 2 or Schedule 3 chemicals for CW purposes at any time since January 1, 1946, are also "declared" plant sites. However, such plant sites are not subject to routine inspection if they are not subject to declaration requirements because of past production, processing or consumption of Scheduled or unscheduled discrete organic chemicals above specified threshold quantities.

Discrete organic chemical. Means any chemical belonging to the class of chemical compounds consisting of all compounds of carbon except for its oxides, sulfides, metal carbonates and metal carbides identifiable by chemical name, by structural formula, if known, and by Chemical Abstract Service registry number, if assigned.

Domestic transfer (of Schedule 1 chemicals). Means, with regard to reporting requirements for Schedule 1 chemicals under the CWCRC, any movement of any amount of Schedule 1 chemical outside the geographical boundary of a facility in the U.S. to another destination in the U.S. for any purpose. Domestic transfer includes

movement between two divisions of one company or a sale from one company to another. Note that any movement to or from a facility outside the United States is considered an import or export for reporting purposes, not a domestic transfer.

EAR. Means the Export Administration Regulations (15 CFR parts 730 through 799).

Facility. Means any plant site, plant or unit.

Facility agreement. Means an agreement or arrangement between a State Party and the Organization relating to a specific facility subject to on-site verification pursuant to Article IV, V, and VI of the Convention.

Host Team. The United States Government team that accompanies the inspection team from the Organization for the Prohibition of Chemical Weapons during a CWC inspection for which the regulations in this subchapter apply.

Host Team Leader. Means the representative from the Department of Commerce who heads the U.S. Government team that accompanies the inspection team during a CWC inspection for which the regulations in this subchapter apply.

ITAR. Means the International Traffic in Arms Regulations (22 CFR parts 120 through 130).

Organization for the Prohibition of Chemical Weapons (OPCW). Means the international organization, located in The Hague, Netherlands, that administers the CWC.

Person. Means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, any State or any political subdivision thereof, or any political entity within a State, any foreign government or nation or any agency, instrumentality or political subdivision of any such government or nation, or other entity located in the United States.

Plant. Means a relatively self-contained area, structure or building containing one or more units with auxiliary and associated infrastructure, such as:

- (a) Small administrative area;
- (b) Storage/handling areas for feedstock and products;
- (c) Effluent/waste handling/treatment area;
- (d) Control/analytical laboratory;
- (e) First aid service/related medical section; and
- (f) Records associated with the movement into, around, and from the site, of declared chemicals and their feedstock or product chemicals formed from them, as appropriate.

Plant site. Means the local integration of one or more plants, with any intermediate administrative levels, which are under one operational control, and includes common infrastructure, such as:

- (a) Administration and other offices;
- (b) Repair and maintenance shops;
- (c) Medical center;
- (d) Utilities;
- (e) Central analytical laboratory;
- (f) Research and development laboratories;
- (g) Central effluent and waste treatment area; and
- (h) Warehouse storage.

Processing. Means a physical process such as formulation, extraction and purification in which a chemical is not converted into another chemical.

Purposes not prohibited by the CWC. Means the following:

- (a) Any peaceful purpose related to an industrial, agricultural, research, medical or pharmaceutical activity or other activity;
- (b) Any purpose directly related to protection against toxic chemicals and to protection against chemical weapons;
- (c) Any military purpose of the United States that is not connected with the use of a chemical weapon and that is not dependent on the use of the toxic or poisonous properties of the chemical weapon to cause death or other harm; or
- (d) Any law enforcement purpose, including any domestic riot control purpose and including imposition of capital punishment.

Report. Means information due to BXA on imports and exports of Schedule 1, Schedule 2 or Schedule 3 chemicals. Such information is included in the national aggregate prior to transmittal to the OPCW.

Schedules of Chemicals. Means specific lists of toxic chemicals, groups of chemicals, and precursors contained in the CWC. See Supplements No. 1 to parts 712, 713 and 714 of this subchapter.

State Party. Means a country for which the CWC is in force. See Supplement No. 1 to this part.

Storage. For purposes of Schedule 1 chemical reporting, means any quantity that is not accounted for under the categories of production, import, export, consumption or domestic transfer.

Synthesis. Means production of a chemical from its reactants.

Technical Secretariat. Means the organ of the OPCW charged with carrying out administrative and technical support functions for the OPCW, including carrying out the verification measures delineated in the CWC.

Trading company. Means any entity involved in the export or import of

chemicals in amounts greater than specified thresholds, but not in the production, processing or consumption of chemicals in amounts greater than threshold amounts requiring declaration. Such companies are not subject to routine inspections.

Transfer. See domestic transfer.

Undeclared facility. Means a facility that is not subject to declaration requirements because of past or anticipated production, processing or consumption involving Scheduled or unscheduled discrete organic chemicals above specified threshold quantities. However, such facilities may have a reporting requirement for imports or exports of such chemicals.

Unit. Means the combination of those items of equipment, including vessels and vessel set up, necessary for the production, processing or consumption of a chemical.

United States. Means the several States of the United States, the District of Columbia, and the commonwealths, territories, and possessions of the United States, and includes all places under the jurisdiction or control of the United States, including any of the places within the provisions of paragraph (41) of section 40102 of Title 49 of the United States Code, any civil aircraft of the United States or public aircraft, as such terms are defined in paragraphs (1) and (37), respectively, of section 40102 of Title 49 of the United States Code, and any vessel of the United States, as such term is defined in section 3(b) of the Maritime Drug Enforcement Act, as amended (section 1903(b) of Title 46 App. of the United States Code).

United States National Authority (USNA). Means the State Department serving as the national focal point for the effective liaison with the Organization for the Prohibition of Chemical Weapons and other States Parties to the Convention and implementing the provisions of the Chemical Weapons Convention Implementation Act of 1998 in coordination with an interagency group designated by the President consisting of the Secretary of Commerce, Secretary of Defense, Secretary of Energy, the Attorney General, and the heads of other agencies considered necessary or advisable by the President, or their designees. The Secretary of State is the Director of the USNA.

Unscheduled chemical. Means a chemical that is not contained in Schedule 1, Schedule 2, or Schedule 3 (see Supplement No. 1 to parts 712, 713 and 714 of this subchapter).

Unsheduled Discrete Organic Chemical (UDOC). Means any chemical:

(a) Belonging to the class of chemical compounds consisting of all compounds of carbon except for its oxides, sulfides, metal carbonates and metal carbides identifiable by chemical name, by structural formula, if known, and by Chemical Abstract Service registry number, is assigned, and

(b) That is not contained in the Schedules of Chemicals (see Supplements No. 1 to parts 712, 713 and 714 of this subchapter). Unscheduled discrete organic chemicals subject to declaration under this subchapter are those produced by synthesis that were isolated for use or sale as a specific end-product.

You. The term "you" or "your" means any person (See also definition of "person"). With regard to the declaration and reporting requirements of the CWC, "you" refers to persons that have an obligation to report certain activities under the provisions of the CWC.

§ 710.2 Scope of the CWC.

The Chemical Weapons Convention Regulations (parts 710 through 721 of this subchapter), or CWC, implement certain obligations of the United States under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, known as the CWC or Convention.

(a) *Persons and facilities subject to the CWC.* The CWC reporting and inspection requirements apply to all facilities in the United States, except for Department of Defense and Department of Energy facilities and other United States Government agencies that notify the USNA of their decision to be excluded from the CWC. The CWC also apply to all U.S. persons and facilities, wherever located, for imports of Scheduled chemicals and activities involving Schedule 1 chemicals, except for Department of Defense and Department of Energy facilities and other United States Government facilities that notify the USNA of their decision to be excluded from the CWC. United States Government facilities are those owned by or leased to the U.S. Government, including facilities that are contractor-operated.

(b) *Activities subject to the CWC.* The CWC compel data declarations and reports from facilities subject to the CWC (parts 710 through 721 of this subchapter) on activities including production, processing, consumption, imports and exports, involving organic chemicals further described in parts 712 through 715 of this subchapter. Those regulations do not apply to activities

involving inorganic chemicals other than those listed in the Schedule of Chemicals or to other specifically exempted organic chemicals. In addition, those regulations set forth procedures for routine inspections of "declared" facilities by teams of international inspectors in part 716 of this subchapter, and set forth clarification procedures and procedures for challenge inspections that could be requested at any facility or location in the United States. Finally, the CWC restrict imports of Schedule 1 and 2 chemicals, limit production of Schedule 1 chemicals to specified annual amounts and prohibit other activities involving Schedule 1 chemicals except for research, medical, pharmaceutical or protective purposes.

§ 710.3 Purposes of the Convention and CWC.

(a) *Purposes of the Convention.* (1) The Convention imposes upon the United States Government (USG), as a State Party, certain declaration, inspection, and other obligations. In addition, the USG and each other State Party to the Convention undertake never under any circumstances to:

(i) Develop, produce, otherwise acquire, stockpile, or retain chemical weapons, or transfer, directly or indirectly, chemical weapons to anyone;

(ii) Use chemical weapons;

(iii) Engage in any military preparations to use chemical weapons; or

(iv) Assist, encourage or induce, in any way, anyone to engage in any activity prohibited by the Convention.

(2) One objective of the Convention is to assure State Parties that lawful activities of the chemical producers and users are not converted to unlawful activities related to chemical weapons. To achieve this objective and to give States Parties a mechanism to verify compliance, the Convention requires the United States and all other States Parties to submit declarations concerning chemical production, consumption, processing and other activities, and to permit international inspections within their borders.

(b) *Purposes of the Chemical Weapons Convention Regulations.* To fulfill the United States obligations under the Convention, the CWC (parts 710 through 721 of this subchapter) prohibit certain activities, and compel the submission of information from all facilities in the United States, except for Department of Defense and Department of Energy facilities and other United States Government agencies that notify the USNA of their decision to be excluded from the CWC on activities,

including imports and exports, involving Scheduled chemicals and unscheduled Discrete Organic Chemicals as described in parts 712 through 715 of this subchapter. United States Government facilities are those owned by or leased to the U.S. Government, including facilities that are contractor-operated. The CWC also require access for on-site inspections and monitoring by the OPCW, as described in parts 716 and 717 of this subchapter.

§ 710.4 Overview of Scheduled chemicals and examples of affected industries.

The following provides examples of the types of industries that may be affected by the CWC (parts 710 through 721 of this subchapter). These examples are not exhaustive, and you should refer to parts 712 through 715 of this subchapter to determine your obligations.

(a) Schedule 1 chemicals are listed in Supplement No. 1 to part 712 of this subchapter. Schedule 1 chemicals have little or no use in industrial and agricultural industries, but may have limited use in the pharmaceutical or medical industries.

(b) Schedule 2 chemicals are listed in Supplement No. 1 to part 713 of this subchapter. Although Schedule 2 chemicals may be useful in the production of chemical weapons, they also have legitimate uses in areas such as:

- (1) Flame retardant additives and research;
- (2) Dye and photographic industries (e.g., printing ink, ball point pen fluids, copy mediums, paints, etc.);
- (3) Medical and pharmaceutical preparation (e.g., anticholinergics, arsenicals, tranquilizer preparations);
- (4) Metal plating preparations;
- (5) Epoxy resins; and
- (6) Insecticides, herbicides, fungicides, defoliants, and rodenticides.

(c) Schedule 3 chemicals are listed in Supplement No. 1 to part 714 of this subchapter. Although Schedule 3 chemicals may be useful in the production of chemical weapons, they also have legitimate uses in areas such as:

- (1) The production of:
 - (i) Resins;
 - (ii) Plastics;
 - (iii) Pharmaceuticals;
 - (iv) Pesticides;
 - (v) Batteries;
 - (vi) Cyanic acid;
 - (vii) Toiletries, including perfumes and scents;
 - (viii) Organic phosphate esters (e.g., hydraulic fluids, flame retardants, surfactants, and sequestering agents); and

(2) Leather tannery and finishing supplies.

(d) Unscheduled discrete organic chemicals are used in a wide variety of commercial industries, and include acetone, benzoyl peroxide and propylene glycol.

§ 710.5 Authority.

The CWC (parts 710 through 721 of this subchapter) implement certain provisions of the Chemical Weapons Convention under the authority of the Chemical Weapons Convention Implementation Act of 1998 (CWCIA), the National Emergencies Act, the International Emergency Economic Powers Act of 1997 (IEEPA), as amended, and the Export Administration Act of 1979, as amended, by extending verification and trade restriction requirements under Article VI and related parts of the Verification Annex of the Convention to U.S. persons. In Executive Order 13128 of June 25, 1999, the President delegated authority to the Department of Commerce to promulgate regulations to implement the CWCIA, and consistent with the CWCIA, to carry out appropriate functions not otherwise assigned in the CWCIA but necessary to implement certain reporting, monitoring and inspection requirements of the Convention and the CWCIA.

§ 710.6 Relationship between the Chemical Weapons Convention Regulations and the Export Administration Regulations.

Certain obligations of the U.S. Government under the CWC pertain to exports, including the transfer of technology during an on-site inspection. These obligations are implemented in the Export Administration Regulations (EAR) (15 CFR parts 730 through 799) and the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130). See in particular §§ 740.11 and 742.18 and part 745 of the EAR, and Export Control Classification Numbers 1C350, 1C351 and 1C355 of the Commerce Control List (Supplement No. 1 to part 774 of the EAR).

Supplement No. 1 To Part 710—States Parties to the convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction

List of States Parties as of [EFFECTIVE DATE OF THE FINAL RULE].

Albania
Algeria
Argentina
Armenia
Australia
Austria

Bahrain
Bangladesh
Belarus
Belgium
Benin
Bolivia
Bosnia-Herzegovina
Botswana
Brazil
Brunei Darussalam
Bulgaria
Burkina Faso
Burundi
Cameroon
Canada
Chile
China *
Cook Islands
Costa Rica
Cote d'Ivoire (Ivory Coast)
Croatia
Cuba
Cyprus
Czech Republic
Denmark
Ecuador
El Salvador
Equatorial Guinea
Ethiopia
Estonia
Fiji
Finland
France
Gambia
Georgia
Germany
Ghana
Greece
Guinea
Guyana
Holy See
Hungary
Iceland
India
Indonesia
Iran
Ireland
Italy
Japan
Jordan
Kenya
Korea (Republic of)
Kuwait
Laos (P.D.R.)
Latvia
Lesotho
Lithuania
Luxembourg
Macedonia
Malawi
Maldives
Mali
Malta
Mauritius
Mauritania
Mexico

* For CWC States Parties purposes, China includes Hong Kong.

Moldova (Republic of)
 Monaco
 Mongolia
 Morocco
 Namibia
 Nepal
 Netherlands
 New Zealand
 Niger
 Nigeria
 Norway
 Oman
 Pakistan
 Panama
 Papua New Guinea
 Paraguay
 Peru
 Philippines
 Poland
 Portugal
 Qatar
 Romania
 Russian Federation
 Saint Lucia
 Saudi Arabia
 Senegal
 Seychelles
 Singapore
 Slovak Republic
 Slovenia
 South Africa
 Spain
 Sri Lanka
 Sudan
 Suriname
 Swaziland
 Sweden
 Switzerland
 Tajikistan
 Tanzania, United
 Republic of Togo
 Trinidad and Tobago
 Tunisia
 Turkey
 Turkmenistan
 Ukraine
 United Kingdom
 United States
 Uruguay
 Uzbekistan
 Venezuela
 Vietnam
 Zimbabwe

PART 711—GENERAL INFORMATION REGARDING DECLARATION REQUIREMENTS

- Sec.
 711.1 Overview of declaration, notification and reporting requirements.
 711.2 Confidential business information.
 711.3 Who submits declarations, notifications and reports.
 711.4 Assistance in determining your obligations and classifications.
 711.5 Where to obtain forms.

Supplement No. 1 to Part 711—Confidential Business Information To Be Declared or Reported

Authority: Pub. L. 105-277, 112 Stat. 2681; E.O. 13128, 64 FR 36703.

§ 711.1 Overview of declaration, notification and reporting requirements.

Parts 712 through 715 of the CWC (parts 710 through 721 of this subchapter) describe the declaration, notification and reporting requirements for Schedule 1, 2 and 3 chemicals and for unscheduled discrete organic chemicals (UDOCs). For each type of chemical, the Convention requires an initial declaration and subsequent annual declarations. If, after reviewing parts 712 through 715 of this subchapter, you determine that you have declaration, notification or reporting requirements, you may obtain the appropriate forms by contacting the Bureau of Export Administration (see § 711.4).

§ 711.2 Confidential business information.

(a) *Provisions of the Act relating to confidential business information.* (1) The Act provides a statutory exemption from disclosure in response to a Freedom of Information Act request for information submitted to the U.S. National Authority by private entities in declarations and reports for:

- (i) Information included in categories specifically enumerated in sections 103(g)(1) and 304(e)(2) of the Act:
 - (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 passenger vehicles exiting the facility;
 - (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; or
 - (L) Any commercial sale, shipment or use of a chemical, or
- (ii) 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.

Note to paragraph (a)(1): See §§ 716.4(e) and 717.2(e)(5) of this subchapter for related provisions dealing with information obtained through the conduct of inspections in the United States under the Convention.

(2) The Act provides for disclosure of confidential business information to the OPCW, to federal law enforcement agencies, and, upon written request, to Congressional committees of appropriate jurisdiction.

(3) The United States Government must also disclose confidential business information when such disclosure is deemed to be in the national interest. The USNA, in coordination with the CWC interagency group shall determine if disclosure of such confidential business information is in the national interest. The Act provides for notification to the affected person of intent to disclose confidential business information, unless such notification of intent to disclose is contrary to national security or law enforcement needs. If, after coordination with the agencies that constitute the CWC interagency group, the USNA determines that such notification of intent to disclose is not contrary to national security or law enforcement needs, the USNA will notify the person that submitted the information or the person to whom the information pertains of the intent to disclose the information.

(b) *Provisions of the Convention relating to confidential business information.* The Convention provides that States Parties may designate information submitted to the Organization for the Prohibition of Chemical Weapons (OPCW) as confidential, and requires the OPCW to limit access to, and prevent disclosure of, information so designated, except that the OPCW may disclose certain confidential information submitted in declarations to other States Parties if requested. The OPCW has developed a classification system whereby States Parties may designate the information they submit in their declarations as "restricted," "protected," or "highly protected," depending on the sensitivity of the information. Other States Parties are obligated, under the Convention, to store and allow access to information which it receives from the OPCW in accordance with the level of confidentiality established for that information.

§ 711.3 Who submits declarations, notifications and reports.

The operator of a facility required to submit declarations, notifications or reports under the CWC (parts 710 through 721 of this subchapter) is responsible for the submission of all required documents in accordance with all applicable provisions of the CWC.

§ 711.4 Assistance in determining your obligations and classifications.

(a) If you need assistance in determining your obligations under the CWC (parts 710 through 721 of this subchapter), including whether a chemical is classified as a Schedule 1, Schedule 2, or Schedule 3 chemical, or

is an unscheduled discrete organic chemical, submit your request to the Bureau of Export Administration. BXA will only review properly submitted requests, which must include the following information:

- (1) Date of request;
- (2) Company name and complete street address;
- (3) Point of contact;
- (4) Phone and fax number of contact;
- (5) Chemical name;
- (6) Structural formula;
- (7) Chemical abstract registry number, if assigned.

(b) Requests for chemical determinations may be faxed to (703) 235-1481 or mailed to the following address: Information Technology Team, Bureau of Export Administration, U.S. Department of Commerce, 1555 Wilson Boulevard, Suite 710, Arlington, Virginia 22209-2405.

(c) BXA will respond to properly submitted requests within 10 calendar days of receipt.

§ 711.5 Where to obtain forms.

U.S. Department of Commerce, Information Technology Team, 1555 Wilson Blvd., Suite 710 Arlington, VA 22209-2405, Telephone: (703) 235-1335.

SUPPLEMENT NO. 1 TO PART 711.— CONFIDENTIAL BUSINESS INFORMATION TO BE DECLARED OR REPORTED¹

	Fields containing confidential business information
Schedule 1 Forms:	
Certification Form ..	None.
Form 1-1	None.
Form 1-2	All fields.
Form 1-2A	All fields.
Form 1-2B	All fields.
Form 1-3	All fields.
Schedule 2 Forms:	
Certification	None.
Form 2-1	None.
Form 2-2	Question 2-2.9.
Form 2-3	All fields.
Form 2-3A	All fields.
Form 2-3B	All fields.
Form 2-3C	All fields.
Form 2-4	All fields.
Schedule 3 Forms:	
Certification Form ..	None.
Form 3-1	None.
Form 3-2	None.
Form 3-3	All fields.
Form 3-4	All fields.
Unscheduled Discrete Organic Chemicals Forms:	
Certification Form ..	None.

SUPPLEMENT NO. 1 TO PART 711.— CONFIDENTIAL BUSINESS INFORMATION TO BE DECLARED OR REPORTED¹—Continued

	Fields containing confidential business information
Form UDOC	None.

Note: Information contained in Form A attachments will be evaluated on a case-by-case basis, except that Schedule 1 facility technical descriptions submitted with initial declarations are confidential business information.

¹This table lists those data fields on the Declaration and Report forms that request "confidential business information" (CBI) as defined by the CWCIA (sections 103(g) and 304(e)(2)). As provided by section 404(a) of the CWCIA, CBI is exempt from disclosure in response to a Freedom of Information Act (FOIA) request under sections 552(b)(3) and 552(b)(4) (5 U.S.C.A. 552(b)(3)-(4)), unless a determination is made, pursuant to section 404(c) of the CWCIA, that such disclosure is in the national interest. Other FOIA exemptions to disclosure may also apply. CBI may be disclosed to the Technical Secretariat of the OPCW, and certain CBI may be disclosed to other States Parties to the Convention.

PART 712—ACTIVITIES INVOLVING SCHEDULE 1 CHEMICALS

Sec.

- 712.1 Prohibitions involving imports of Schedule 1 chemicals.
- 712.2 Initial and annual declaration requirements for facilities engaged in the production of Schedule 1 chemicals.
- 712.3 New Schedule 1 production facility.
- 712.4 Advance notification and annual report of all exports and imports of Schedule 1 chemicals to, or from, other States Parties.
- 712.5 Frequency and timing of declarations, reports and notifications.
- 712.6 Amended declaration or report.

Supplement No. 1 To Part 712—Schedule 1 Chemicals

Authority: Pub. L. 105-277, 112 Stat. 2681; 50 U.S.C. 1601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938 (59 FR 59099; 3 CFR, 1994 Comp., p. 950), as amended by E.O. 13094 (63 FR 40803; 3 CFR, 1998 Comp., p. 200); E.O. 13128, 64 FR 36703.

§ 712.1 Prohibitions involving imports of Schedule 1 chemicals.

See § 711.5 of this subchapter for information on obtaining the forms you will need to declare and report activities involving Schedule 1 chemicals. See § 711.2 and Supplement No. 1 to part 711 of this subchapter for information pertaining to the protection of confidential business information.

(a) You may not import any Schedule 1 chemical unless:

- (1) The import is from a State Party;

(2) The import is for research, medical, pharmaceutical, or protective purposes;

(3) The import is in types and quantities strictly limited to those that can be justified for such purposes; and

(4) You have notified the Department of Commerce 45 calendar days prior to the import pursuant to § 712.4.

(b) The provisions of paragraph (a) of this section do not apply to:

(1) The retention, ownership, possession, transfer, or receipt of a Schedule 1 chemical by a department, agency, or other entity of the United States, or by a person described in paragraph (b)(2) of this section, pending destruction of the Schedule 1 chemical;

(2) A person referred to in paragraph (b)(1) of this section means:

(i) Any person, including a member of the Armed Forces of the United States, who is authorized by law or by an appropriate officer of the United States to retain, own, possess, transfer, or receive the Schedule 1 chemical; or

(ii) In an emergency situation, any otherwise non-culpable person if the person is attempting to seize or destroy the Schedule 1 chemical.

Note to § 712.1: For specific provisions relating to the prior notification of exports of all Schedule 1 chemicals, see § 742.18 of the Export Administration Regulations (EAR) (15 CFR parts 730 through 799). For specific provisions relating to license requirements for exports of Schedule 1 chemicals, see §§ 742.2 and 742.18 of the EAR for Schedule 1 chemicals subject to the jurisdiction of the Department of Commerce and of the International Traffic in Arms Regulations (22 CFR parts 120 through 130) for Schedule 1 chemicals subject to the jurisdiction of the Department of State.

§ 712.2 Initial and annual declaration requirements for facilities engaged in the production of Schedule 1 chemicals.

(a) *Declaration requirements.* (1) *Initial declaration.* You must complete the forms specified in paragraph (b)(1) of this section, providing a current technical description of your facility or its relevant parts, if you produced Schedule 1 chemicals at your facility in excess of 100 grams aggregate in calendar year 1997, 1998 or 1999.

(2) *Annual declaration on past activities.* You must complete the forms specified in paragraph (b)(2) of this section if you produced at your facility in excess of 100 grams aggregate of Schedule 1 chemicals in the previous calendar year, beginning with calendar year 1997. Note that as part of this declaration, in addition to declaring the production of each Schedule 1 chemical that comprises your aggregate production of Schedule 1 chemicals, you must also declare the total amount

of each Schedule 1 chemical used (consumed) and stored at your facility, and domestically transferred from your facility during the previous calendar year, whether or not you produced that Schedule 1 chemical at your facility.

(3) *Annual declaration on anticipated activities.* You must complete the forms specified in paragraph (b)(3) of this section if you anticipate that you will produce at your facility more than 100 grams aggregate of Schedule 1 chemicals in the next calendar year. If you are not already a declared facility, you must complete an initial declaration (see paragraph (a)(1) of this section), and wait 200 calendar days before commencing operations or increasing production that will result in production of more than 100 grams aggregate of Schedule 1 chemicals (see § 712.4).

(b) *Declaration forms to be used.* (1) *Initial declaration.* (i) You must complete the Certification Form, Form 1-1 and Form A if you produced at your facility in excess of 100 grams aggregate of Schedule 1 chemicals in calendar year 1997, 1998 or 1999. You must provide a detailed current technical description of your facility or its relevant parts including a narrative statement, a detailed diagram of the declared areas in the facility, and an inventory of equipment in the declared area.

(ii) If you plan to change the technical description of your facility from your initial declaration completed and submitted pursuant to paragraph (a)(1) of this section and § 712.5, you must notify BXA 200 calendar days prior to the change. Such notifications must be made through an amended declaration by completing a Certification Form, Form 1-1 and Form A, including the new description of the facility. See § 712.7 for additional instructions on amending Schedule 1 declarations.

(2) *Annual declaration on past activities.* If you are subject to the declaration requirement of paragraph (a)(2) of this section, you must complete the Certification Form and Forms 1-1, 1-2, 1-2A, 1-2B, and Form A if your facility was involved in the production of Schedule 1 chemicals in the previous calendar year, beginning with calendar year 1997. Form B is optional.

(3) *Annual declaration on anticipated activities.* If you anticipate that you will produce at your facility in excess of 100 grams aggregate of Schedule 1 chemicals in the next calendar year you must complete the Certification Form and Forms 1-1, 1-4, and Form A. Form B is optional.

(c) *Quantities to be declared or reported.* If you produced in excess of

100 grams aggregate of Schedule 1 chemicals in the previous calendar year, you must declare the entire quantity of such production, rounded to the nearest gram. You must also declare for each Schedule 1 chemical produced the quantity consumed and stored, and the quantity of any Schedule 1, Schedule 2 or Schedule 3 chemical precursor used to produce the declared Schedule 1 chemicals, rounded to the nearest gram.

(d) *"Declared" Schedule 1 facilities and routine inspections.* Only facilities that produced in excess of 100 grams aggregate of Schedule 1 chemicals during the previous calendar year, or that anticipate producing in excess of 100 grams aggregate of Schedule 1 chemicals during the next calendar year are considered Schedule 1 "declared" facilities. A "declared" Schedule 1 facility is subject to routine inspection by the OPCW (see part 716 of this subchapter).

(e) *Approval of declared Schedule 1 production facilities.* Facilities that submit declarations pursuant to this section are considered approved Schedule 1 production facilities for purposes of the CWC, unless otherwise notified by BXA within 30 days of receipt by BXA of an annual declaration on past activities (see paragraph (a)(2) of this section). If your facility does not produce more than 100 grams aggregate of Schedule 1 chemicals, no approval by BXA is required.

§ 712.3 New Schedule 1 production facility.

(a) *Establishment of a new Schedule 1 production facility.* If your facility was not declared under § 712.2 in the previous calendar year, but you intend to begin production of Schedule 1 chemicals at your facility in quantities greater than 100 grams aggregate per year for research, medical, or pharmaceutical purposes, you must notify BXA at least 200 calendar days in advance of commencing such production. Such facilities are considered "new Schedule 1 production facilities" and cannot begin operation or be used until the United States and the OPCW have concluded a facility agreement for the new facility.

(b) *Types of declaration forms required.* If your new Schedule 1 production facility will produce in excess of 100 grams aggregate of Schedule 1 chemicals, you must complete the Certification Form, Form 1-1 and Form A. You must also provide a detailed technical description of the new facility or its relevant parts, including a detailed diagram of the declared areas in the facility, and an

inventory of equipment in the declared area.

§ 712.4 Advance notification and annual report of all exports¹ and imports of Schedule 1 chemicals to, or from, other States Parties.

Pursuant to the Convention, the United States is required to notify the OPCW not less than 30 days in advance of every export or import of a Schedule 1 chemical, in any quantity, to or from another State Party. In addition, the United States is required to provide a report of all exports and imports of Schedule 1 chemicals to or from other States Parties during each calendar year. If you plan to export or import any quantity of a Schedule 1 chemical from or to your declared facility, undeclared facility or trading company, you must notify BXA in advance of the export or import, and complete an annual report of exports and imports that actually occurred during the previous calendar year. The United States will transmit the advance notifications and a detailed annual declaration of each actual export or import of a Schedule 1 chemical from/to the United States. Note that company-specific information relating to export and import transactions, including the names and addresses of all declared facilities, undeclared facilities and trading companies, is submitted to the OPCW as part of the U.S. annual declaration on exports and imports. Also note that the notification and annual report requirements of this section do not relieve you of any requirement to obtain a license from the Department of Commerce for the export of Schedule 1 chemicals subject to the Export Administration Regulations (15 CFR parts 730 through 799) or from the Department of State for the export of Schedule 1 chemicals subject to the International Traffic in Arms Regulations (22 CFR parts 120 through 130). Only facilities that produce in excess of 100 grams aggregate of Schedule 1 chemicals annually are "declared" facilities and are subject to routine inspections pursuant to part 716 of this subchapter.

(a) *Advance notification of exports and imports.* (1) You must notify BXA at least 45 calendar days prior to exporting or importing any quantity of a Schedule 1 chemical listed in Supplement No. 1 to this part to or from another State Party. Note that notifications for exports may be sent to BXA prior to or after submission of a

¹ Effective May 18, 1999, these advance notification and annual report requirements for exports are set forth in parts 742 and 745 of the Export Administration Regulations (EAR) (15 CFR parts 742 and 745).

license application to BXA for Schedule 1 chemicals subject to the EAR and controlled under ECCNs 1C350 or 1C351 or to the Department of State for Schedule 1 chemicals controlled on the ITAR. Such notices must be submitted separately from license applications.

(i) Notifications should be on company letterhead or must clearly identify the reporting entity by name of company, complete address, name of contact person and telephone and fax numbers, along with the following information:

- (A) Chemical name;
- (B) Structural formula of the chemical;
- (C) Chemical Abstract Service (CAS) Registry Number;
- (D) Quantity involved in grams;
- (E) Planned date of export or import;
- (F) Purpose (end-use) of export or import (i.e., research, medical, pharmaceutical, or protective purpose)
- (G) Name(s) of recipient and exporter;
- (H) Complete street address(es) of recipient and exporter;
- (I) Export license or control number, if known; and
- (J) Company identification number, once assigned by BXA.

(ii) Send the notification by fax to (703) 235-1481 or to the following address:

For mail and courier deliveries:
Information Technology Team, Bureau

of Export Administration, Department of Commerce, 1555 Wilson Boulevard, Suite 710, Arlington, VA 22209-2405, Attn: "Advance Notification of Schedule 1 Chemical [Export][Import]".

(iii) Upon receipt of the notification, BXA will inform the exporter of the earliest date the shipment may occur under the notification procedure. To export the Schedule 1 chemical, the exporter must have applied for and been granted a license (see §§ 742.2 and 742.18 of the EAR, or the ITAR at 22 CFR parts 120 through 130).

(b) *Annual declaration or report on exports and imports.* (1) *Declaration or report requirements.* You must complete the forms specified in paragraph (b)(2) of this section if you exported to or imported from another State Party any quantity of a Schedule 1 chemical during the previous calendar year.

(2) *Forms to be used.* (i) *Facilities declared pursuant to § 712.2(d).* If you are a Schedule 1 declared facility because you produced in excess of 100 grams aggregate of Schedule 1 chemicals in the previous calendar year, you must complete Form 1-3 as part of the annual declaration on past activities. (See § 712.2(b)(2)).

(ii) *Undeclared facilities and trading companies.* If your facility is not a "declared" facility because it did not produce over 100 grams aggregate of

Schedule 1 chemicals, and you exported or imported any quantity of a Schedule 1 chemical to or from another State Party, you must complete the Certification Form, Form 1-1, and Form 1-3. Form B is optional.

(c) Paragraph (a) of this section does not apply to the activities and persons set forth in paragraph 712.1(c).

§ 712.5 Frequency and timing of declarations, reports and notifications.

Declarations, reports and notifications required under this part are due to BXA according to the dates identified in Table 1 of this section. Required declarations, reports and notifications include:

- (a) Initial declarations;
- (b) Annual declarations or reports on activities, including exports and imports, during the previous calendar year, beginning with activities in calendar year 1997;
- (c) Annual declarations on anticipated production in the next calendar year, beginning in calendar year 1999 for production anticipated for calendar year 2000;
- (d) Advance notification of any export to or import from another State Party; and
- (e) Advance notification of new Schedule 1 production facility.

TABLE 1 TO § 712.5.—DEADLINES FOR SUBMISSION OF SCHEDULE 1 DECLARATIONS

Declarations and notifications	Applicable forms	Due dates
Initial Declaration: Declared facility (technical description)	Certification, 1-1, A	See Note to Table 1.
Annual Declaration on Past Activities (previous calendar year): Declared facility (past production, exports and imports).	Certification, 1-1, 1-2, 1-2A, 1-2B, 1-3 (if also exported or imported), A, and B (optional).	See Note to Table 1.
Annual report of exports and imports (undeclared facility, trading company).	Certification, 1-1, 1-3, B (optional)	See Note to Table 1.
Annual Declaration on Anticipated Production for a Facility (next calendar year).	Certification, 1-1, 1-4, A, B (optional)	August 3 of each year prior to the calendar year in which anticipated activities will take place.
Advance Notification of any export to or import from another State Party.	Notify on letterhead. See § 712.4 of this subchapter.	45 calendar days prior to the import or export.
Advance Notification of new Schedule 1 production facility.	Certification, 1-1, A	200 calendar days before commencing such production.

Note to Table 1: Initial declarations and annual reports of past production, exports and imports pursuant to the provisions of this part are due [90 days after the publication of a final rule]. Declared facilities must provide annual declarations on past production of Schedule 1 chemicals in aggregate quantities exceeding 100 grams for both calendar years 1997 and 1998. Thereafter, annual declarations and reports of past Schedule 1 activities will be due to the Department of Commerce by February 13th of each year.

§ 712.6 Amended declaration or report.

If, after submitting the original declaration or report, you discover that the previously submitted information is not accurate (e.g., change of quantity,

addition of a new chemical, relocation of facility, etc.), you must complete a new Certification Form and the specific form being amended (e.g. annual declaration on past activities, annual

declaration on anticipated activities). Only complete that portion of each form that corrects the previously submitted information that changed.

SUPPLEMENT NO. 1 TO PART 712—SCHEDULE 1 CHEMICALS

	(CAS registry No.)
A. Toxic chemicals:	
(1) O-Alkyl ($\leq C_{10}$, incl. cycloalkyl) alkyl (Me, Et, n-Pr or i-Pr)-phosphonofluoridates e.g. Sarin: O-Isopropyl methylphosphonofluoridate	(107-44-8)
Soman: O-Pinacolyl methylphosphonofluoridate	(96-64-0)
(2) O-Alkyl ($\leq C_{10}$, incl. cycloalkyl) N,N-dialkyl (Me, Et, n-Pr or i-Pr) phosphoramidocyanidates e.g. Tabun: O-Ethyl N,N-dimethyl phosphoramidocyanidate	(77-81-6)
(3) O-Alkyl (H or $\leq C_{10}$, incl. cycloalkyl) S-2-dialkyl (Me, Et, n-Pr or i-Pr)-aminoethyl alkyl (Me, Et, n-Pr or i-Pr) phosphonothiolates and corresponding alkylated or protonated salts e.g. VX: O-Ethyl S-2-diisopropylaminoethyl methyl phosphonothiolate	(50782-69-9)
(4) Sulfur mustards:	
2-Chloroethylchloromethylsulfide	(2625-76-5)
Mustard gas: Bis(2-chloroethyl)sulfide	(505-60-2)
Bis(2-chloroethylthio)methane	(63869-13-6)
Sesquimustard: 1,2-Bis(2-chloroethylthio)ethane	(3563-36-8)
1,3-Bis(2-chloroethylthio)-n-propane	(63905-10-2)
1,4-Bis(2-chloroethylthio)-n-butane	(142868-93-7)
1,5-Bis(2-chloroethylthio)-n-pentane	(142868-94-8)
Bis(2-chloroethylthiomethyl)ether	(63918-90-1)
O-Mustard: Bis(2-chloroethylthioethyl)ether	(63918-89-8)
(5) Lewisites:	
Lewisite 1: 2-Chlorovinylchloroarsine	(541-25-3)
Lewisite 2: Bis(2-chlorovinyl)chloroarsine	(40334-69-8)
Lewisite 3: Tris(2-chlorovinyl)arsine	(40334-70-1)
(6) Nitrogen mustards:	
HN1: Bis(2-chloroethyl)ethylamine	(538-07-8)
HN2: Bis(2-chloroethyl)methylamine	(51-75-2)
HN3: Tris(2-chloroethyl)amine	(555-77-1)
(7) Saxitoxin	(35523-89-8)
(8) Ricin	(9009-86-3)
B. Precursors:	
(9) Alkyl (Me, Et, n-Pr or i-Pr) phosphonyldifluorides. e.g. DF: Methylphosphonyldifluoride	(676-99-3)
(10) O-Alkyl (H or $\leq C_{10}$, incl. cycloalkyl) O-2-dialkyl (Me, Et, n-Pr or i-Pr)-aminoethyl alkyl (Me, Et, N-Pr or i-Pr) phosphonites and corresponding alkylated or protonated salts e.g. QL: O-Ethyl O-2-diisopropylaminoethyl methylphosphonite	(57856-11-8)
(11) Chlorosarin: O-Isopropyl methylphosphonochloridate	(1445-76-7)
(12) Chlorosoman: O-Pinacolyl methylphosphonochloridate	(7040-57-5)

Notes to Supplement No. 1:

Note 1: Note that the following Schedule 1 chemicals are controlled for export purposes under the Export Administration Regulations (see part 774 of the EAR, the Commerce Control List): O-Ethyl-2-diisopropylaminoethyl methylphosphonite (QL) (C.A.S. #57856-11-8), Ethylphosphonyl difluoride (C.A.S. #753-98-0), Methylphosphonyl difluoride (C.A.S. #676-99-3), Saxitoxin (35523-89-8), Ricin (9009-86-3).

Note 2: All Schedule 1 chemicals not listed in Note 1 to this Supplement are controlled for export purposes by the Office of Defense Trade Control of the Department of State under the International Traffic in Arms Regulations (22 CFR parts 120 through 130).

PART 713—ACTIVITIES INVOLVING SCHEDULE 2 CHEMICALS

Sec.

713.1 Prohibition on imports of Schedule 2 chemicals from non-States Parties.

713.2 Declaration of past production of Schedule 2 chemicals for chemical weapons purposes.

713.3 Initial and annual declaration and reporting requirements for plant sites that produce, process or consume Schedule 2 chemicals in excess of specified thresholds.

713.4 Initial and annual declaration and reporting requirements for exports and imports of Schedule 2 chemicals.

713.5 Advance declaration requirements for additionally planned production, processing or consumption of a Schedule 2 chemical.

713.6 Frequency and timing of declarations and reports.

713.7 Amended declaration or report.

Supplement No. 1 to Part 713—Schedule 2 Chemicals

Authority: Pub. L. 105-277, 112 Stat. 2681; 50 U.S.C. 1601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938 (59 FR 59099; 3 CFR, 1994 Comp., p. 950), as amended by E.O. 13094 (63 FR 40803; 3 CFR, 1998 Comp., p. 200); E.O. 13128, 64 FR 36703.

§ 713.1 Prohibition on imports of Schedule 2 chemicals from non-States Parties.

See § 711.4 of this subchapter for information on obtaining the forms you will need to declare and report activities involving Schedule 2 chemicals.

(a) You may not import any Schedule 2 chemical (see Supplement No. 1 to this part) on or after April 29, 2000, from any country other than a State Party to the Convention. See Supplement No. 1 to part 710 of this subchapter for a list of States that are party to the Convention.

Note to paragraph (a). See § 742.18 of the EAR for prohibitions that apply to exports of Schedule 2 chemicals on or after April 29, 2000 to non-States Parties and for End-Use Certificate requirements for exports of Schedule 2 chemicals prior to April 29, 2000 to such destinations.

(b) Paragraph (a) of this section does not apply to the activities and persons set forth in paragraph 712.1(c) of this subchapter.

§ 713.2 Declaration of past production of Schedule 2 chemicals for chemical weapons purposes.

You must complete the Certification Form and Forms 2-1, 2-2, 2-4, Form A and Form B (which is optional), if you produced at your plant site any quantity of a Schedule 2 chemical at any time since January 1, 1946, for chemical weapons purposes. You must declare the total quantity of such a chemical produced, rounded to the nearest

kilogram. Note that you are not subject to routine inspection unless you are a declared facility pursuant to § 713.3.

§ 713.3 Initial and annual declaration and reporting requirements for plant sites that produce, process or consume Schedule 2 chemicals in excess of specified thresholds.

See Supplement No. 1 to part 711 of this subchapter for information pertaining to the protection of confidential business information.

(a) *Production, processing or consumption of Schedule 2 chemicals for purposes not prohibited by the CWC.*

(i) *Quantities of production, processing or consumption that trigger declaration requirements.* You must complete the forms specified in paragraph (c) of this section if you have been or will be involved in the following activities:

(i) *Initial declaration.* You produced, processed or consumed at one or more plants on your plant site during any of the calendar years 1994, 1995 or 1996, a Schedule 2 chemical in excess of the following declaration threshold quantities:

(A) 1 kilogram of chemical BZ: 3-Quinuclidinyl benzilate (see Schedule 2, paragraph A.3 included in Supplement No. 1 to this part);

(B) 100 kilograms of chemical PFIB: 1,1,3,3,3-Pentafluoro-2(trifluoromethyl)-1-propene or any chemical belonging to Amiton and corresponding alkylated or protonated salts (see Schedule 2, paragraph A.1 and A.2 A.3 included in Supplement No. 1 to this part); or

(C) 1 metric ton of any chemical listed in Schedule 2, Part B (see Supplement No. 1 to this part).

Note to paragraph (a)(1)(i). To determine whether you have an initial declaration requirement for Schedule 2 activities, you must determine whether you produced, processed or consumed a Schedule 2 chemical above the applicable threshold at one or more plants on your plant site in calendar years 1994, 1995 or 1996. For example, if you are preparing your initial declaration, and you determine that one plant on your plant site produced greater than 1 kilogram of the chemical BZ: 3-Quinuclidinyl benzilate in calendar year 1995, and no plants on your plant site produced, processed or consumed any Schedule 2 chemical above the declaration threshold in calendar years 1994 or 1996, you still have a declaration requirement under this paragraph, and you must declare on the required forms production, processing and consumption data for calendar years 1994, 1995 and 1996.

(ii) *Annual declaration on past activities.* You produced, processed or consumed at one or more plants on your plant site during any of the previous three calendar years, a Schedule 2

chemical in excess of the applicable declaration threshold quantity specified in paragraphs (a)(1)(i)(A) through (C) of this section; or

Note to paragraph (a)(1)(ii). To determine whether you have an annual declaration requirement of Schedule 2 activities, you must determine whether you produced, processed or consumed a Schedule 2 chemical above the applicable threshold at one or more plants on your plant site in any one of the previous three calendar years. For example, if you are preparing your annual declaration on past activities for 1997, and you determine that one plant on your plant site produced greater than 1 kilogram of the chemical BZ: 3-Quinuclidinyl benzilate in calendar year 1995, and no plants on your plant site produced, processed or consumed any Schedule 2 chemical above the declaration threshold in calendar years 1996 or 1997, you still have a declaration requirement under this paragraph. However, you must only declare on the required forms production, processing and consumption data for calendar year 1997.

(iii) *Annual declaration on anticipated activities.* You anticipate you will produce, process or consume at one or more plants on your plant site during the next calendar year, starting with activities anticipated for calendar year 2000, a Schedule 2 chemical in excess of the applicable declaration threshold quantity set forth in paragraphs (a)(1)(i)(A) through (C) of this section.

(2) *Mixtures containing Schedule 2 chemicals.* (i) The quantity of a Schedule 2 chemical contained in a mixture must be counted for declaration purposes only if the concentration of the Schedule 2 chemical in the mixture is;

(A) 10% or more by volume or by weight, whichever yields the lesser percent, for activities involving either production or consumption of a mixture containing a Schedule 2 chemical; or

(B) 30% or more by volume or by weight, whichever yields the lesser percent, for activities involving the processing of a mixture containing a Schedule 2 chemical.

(ii) *Counting the amount of the Schedule 2 chemical in a mixture.* If your mixture contains more than the stated percentage concentration of a Schedule 2 chemical for the activity (i.e., more than 10% for production or consumption activities or more than 30% for processing activities), you must count only the amount (weight) of the Schedule 2 chemical in the mixture, not the total weight of the mixture. Only count amounts for activities for which you meet the applicable percentage threshold. For example, if a plant at your plant site produces and/or consumes a Schedule 2 chemical at a concentration over 10% but does not

process that chemical at a concentration over 30%, only count the amount of the Schedule 2 chemical involved in the production and/or consumption activity or activities. Likewise, if a plant on your plant site processes a Schedule 2 chemical at a concentration in excess of 30% but does not produce or consume that chemical at a concentration in excess of 10%, only count the amount of that Schedule 2 chemical involved in the processing activity.

(iii) *Determining declaration requirements for production, processing and consumption.* You must include the amount (weight) of a Schedule 2 chemical in a produced, processed or consumed mixture when determining the total production, total processing, or total consumption of that Schedule 2 chemical at a plant on your plant site. If the total amount of the produced, processed or consumed Schedule 2 chemical exceeds the applicable declaration threshold set forth in paragraphs (a)(1)(i)(A) through (C) of this section, you have a declaration requirement. For example, if during calendar year 1997, a plant on your plant site produced a mixture containing 300 kilograms of thiodiglycol in a concentration of 12% and also produced 800 kilograms of thiodiglycol, that plant produced 1100 kilograms and, exceeded the declaration threshold of 1 metric ton for that Schedule 2 chemical. You must declare past production of thiodiglycol at that plant site for calendar year 1997. If, on the other hand, a plant on your plant site processed a mixture containing 300 kilograms of thiodiglycol in a concentration of 25% and also processed 800 kilograms of thiodiglycol in other than mixture form, the total amount of thiodiglycol processed at that plant for CWC purposes would be 800 kilograms and would not trigger a declaration requirement. This is because the concentration of thiodiglycol in the mixture did not exceed 30% and therefore did not have to be "counted" and added to the other 800 kilograms of processed thiodiglycol at that plant.

(b) *Types of declaration forms to be used.* (1) *Initial declaration.* You must complete the Certification Form and Forms 2-1, 2-2, 2-3, 2-3A, and Form A if you produced, processed or consumed at one or more plants on your plant site a Schedule 2 chemical in excess of the applicable declaration threshold quantity specified in paragraphs (a)(1)(i)(A) through (C) of this section during any of the three calendar years 1994, 1995 or 1996. Form B is optional. If you are subject to initial declaration requirements, you must included data

for each of the calendar years 1994, 1995 and 1996.

(2) *Annual declaration on past activities.* You must complete the Certification Form and Forms 2-1, 2-2, 2-3, 2-3A, and Form A if one or more plants on your plant site produced, processed or consumed more than the applicable threshold quantity of a Schedule 2 chemical described in paragraphs (a)(1)(i)(A) through (C) of this section in any of the three previous calendar years. Form B is optional. If you are subject to annual declaration requirements, you must include data for the previous calendar year only.

(3) *Annual declaration on anticipated activities.* You must complete the Certification Form and Forms 2-1, 2-2, 2-3, 2-3A, 2-3C, and Form A if you plan to produce, process, or consume at any plant on your plant site a Schedule 2 chemical above the applicable threshold quantity set forth in paragraphs (a)(1)(i)(A) through (C) of this section during the following calendar year, beginning with activities planned for calendar year 2000. Form B is optional.

(c) *Quantities to be declared.*

(1) *Production, processing and consumption of a Schedule 2 chemical above the declaration threshold.*

(i) *Initial declaration.* If you are required to complete forms pursuant to paragraph (a)(1)(i) of this section, you must declare the aggregate quantity resulting from each type of activity (production, processing or consumption) from each plant on your plant site that exceeds the applicable threshold quantity for that Schedule 2 chemical for each of the calendar years 1994, 1995 and 1996. Do not aggregate amounts of production, processing or consumption from plants on the plant site that did not individually produce, process or consume Schedule 2 chemicals in amounts greater than the applicable threshold levels.

(ii) *Annual declaration on past activities.* If you are required to complete forms pursuant to paragraph (a)(1)(ii) of this section, you must declare the aggregate quantity resulting from each type of activity (production, processing or consumption) from each plant on your plant site that exceeds the applicable threshold quantity for that Schedule 2 chemical. Do not aggregate amounts of production, processing or consumption from plants on the plant site that did not individually produce, process or consume Schedule 2 chemicals in amounts greater than the applicable threshold levels.

(2) *Rounding.* For the chemical BZ, report quantities to the nearest hundredth of a kilogram. For PFIB and

the Amiton family, report quantities to the nearest 1 kg. For all other Schedule 2 chemicals, report quantities to the nearest 10 kg.

(d) *"Declared" Schedule 2 plant sites.* A plant site that comprises one or more plants that produced, processed or consumed a Schedule 2 chemical above the applicable threshold quantity set forth in paragraphs (a)(1)(i)(A) through (C) of this section during any of the previous three calendar years or is anticipated to produce, process or consume a Schedule 2 chemical above the applicable threshold quantity in the next calendar year is a "declared plant site."

(e) *Declared Schedule 2 plant sites subject to routine inspections.* A "declared" Schedule 2 plant site is subject to routine inspection by the OPCW if it produced, processed or consumed in any of the three previous calendar years or is anticipated to produce, process or consume in the next calendar year in excess of ten times the applicable declaration threshold quantity set forth in paragraphs (a)(1)(i)(A) through (C) of this section (see part 716 of this subchapter).

§ 713.4 Initial and annual declaration and reporting requirements for exports and imports of Schedule 2 chemicals.

(a) *Quantities of exports and imports that must be declared or reported.* You must complete the forms specified in paragraph (c) of this section if you have been or will be involved in any of the following activities.

(1) *Initial declaration or report.* (i) *Initial declaration from a declared plant site.* Your plant site is declared pursuant to § 713.3 and you exported from and/or imported to your plant site during any of calendar years 1994, 1995 or 1996, a Schedule 2 chemical in excess of the following declaration threshold quantities:

(A) 1 kilogram of chemical BZ: 3-Quinuclidinyl benzilate (see Schedule 2, paragraph A.3);

(B) 100 kilograms of chemical PFIB: 1,1,3,3,3-Pentafluoro-2(trifluoromethyl)-1-propene or any chemical belonging to Amiton and corresponding alkylated or protonated salts (see Schedule 2, paragraph A.1 and A.2);

(C) 1 metric ton of any chemical listed in Schedule 2, Part B.

(ii) *Initial report on exports and imports from undeclared plant site or trading company.* You exported from and/or imported to your undeclared plant site or trading company during calendar year 1996 a Schedule 2 chemical in excess of the threshold quantity specified in paragraphs (a)(1)(i)(A) through (C) of this section.

(2) *Annual declaration or report on past activities.* (i) *Declared plant site.* You exported from and/or imported to your plant site during the previous calendar year a Schedule 2 chemical in excess of the applicable declaration threshold quantity specified in paragraphs (a)(1)(i)(A) through (C) of this section; or

(ii) *Annual report of exports and imports from undeclared plant site or trading company.* You exported from and/or imported to your undeclared plant site trading company during the previous calendar year a Schedule 2 chemical in excess of the threshold quantity specified in paragraphs (a)(1)(i)(A) through (C) of this section. (See part 710 of this subchapter for a definition of trading company.)

Notes to paragraph (a): **Note 1:** You must obtain an End-Use Certificate to export any Schedule 2 chemical to a non-State Party prior to April 29, 2000. (See §§ 742.18, 745.2 and 748.8 of the EAR.) Exports of Schedule 2 chemicals to non-States Parties are prohibited beginning April 29, 2000.

Note 2: You may need a license to export a Schedule 2 chemical. (See §§ 742.2 and 742.18 of the EAR for chemicals under the jurisdiction of the Department of Commerce and the ITAR (22 CFR parts 120 through 130) for chemicals under the jurisdiction of the Department of State.)

(b) *Mixtures.* Note that the quantity of a Schedule 2 chemical contained in a mixture must be counted for declaration purposes only if the concentration of the Schedule 2 chemical in the mixture is:

- (1) 10% or more by volume or by weight, whichever yields the lesser percent, for activities involving either production or consumption of a mixture containing a Schedule 2 chemical, or
- (2) 30% or more by volume or by weight, whichever yields the lesser percent, for activities involving the processing of a mixture containing a Schedule 2 chemical.

Note to paragraph (b): See § 713.3(a)(2) for information on counting amounts of Schedule 2 chemicals contained in mixtures and determining declaration requirements.

(c) *Types of declarations and declaration forms to be used.* (1) *Initial declaration.* (i) *Declared plant sites.* If your plant site is subject to the declaration requirements of § 713.3 for a specific Schedule 2 chemical, and if your plant site also exported or imported that Schedule 2 chemical in excess of the applicable threshold quantity set forth in paragraph (a) of this section in calendar years 1994, 1995 or 1996, you must also complete Form 2-3B in addition to the forms required by § 713.3(b)(1). You must declare exports from or imports to your plant site of that Schedule 2 chemical for each of

calendar years 1994, 1995, and 1996 during which the imports or exports exceeded the applicable threshold quantity.

(ii) *Undeclared plant sites and trading companies.* If your plant site is not subject to the declaration requirements of § 713.2 for a specific Schedule 2 chemical and if your plant site exported or imported more than the applicable threshold quantity of that Schedule 2 chemical during calendar year 1996, or if your trading company as that term in defined in part 710 of this subchapter exported or imported more than the applicable threshold quantity of a Schedule 2 chemical during calendar year 1996, you must complete the Certification Form, Forms 2-1 and 2-3B, and Form A. Form B is optional.

Note to paragraph (c)(1)(ii): Under the Convention, the United States is obligated to provide the OPCW an aggregate annual report of the quantities of each Schedule 2 chemical exported and imported. The U.S. Government will not submit your company-specific information relating to the export or import of a Schedule 2 chemical reported under this paragraph (c)(1)(ii). The U.S. Government will add all export and import information submitted by various undeclared plant sites and trading companies under this paragraph (c)(1)(ii) to export and import information submitted by declared plant sites under paragraph (c)(1)(i) of this section to produce a national aggregate initial declaration of country-by-country trade for each Schedule 2 chemical.

(2) *Annual declaration or report on past activities exports and imports.* (i) *Declared plant sites.* If your plant site is subject to the declaration requirements of § 713.3 for a specific Schedule 2 chemical and your plant site also exported or imported more than the applicable threshold quantity of that Schedule 2 chemical in the previous calendar year, you must also complete Form 2-3B in addition to the forms required by § 713.3(b)(2).

(ii) *Undeclared plant sites and trading companies.* If your plant site is not subject to the declaration requirements of § 713.3 for a specific Schedule 2 chemical and your plant site exported or imported more than the applicable threshold quantity of that chemical in the previous calendar year, or if you are a trading company as that term is defined in part 710 of this subchapter and your trading company imported or exported more than the applicable threshold quantity of a Schedule 2 chemical in the previous calendar year,

you must complete the Certification Form, Forms 2-1 and 2-3B. Form B is optional.

Note to (c)(2)(ii): Under the Convention, the United States is obligated to provide the OPCW an aggregate annual report of the quantities of each Schedule 2 chemical exported and imported. The U.S. Government will not submit your company-specific information relating to the export or import of a Schedule 2 chemical reported under this paragraph (c)(2)(ii). The U.S. Government will add all export and import information submitted by various undeclared plant sites and trading companies under this paragraph (c)(2)(ii) to export and import information submitted by declared plant sites under paragraph (c)(2)(i) of this section to produce a national aggregate annual declaration of country-by-country trade for each Schedule 2 chemical.

(d) *Quantities to be declared.* (1) *Country-by-country reporting.* If you exported from or imported to your plant site or trading company more than the applicable threshold quantity of a Schedule 2 chemical, you must report all exports and imports by country, and indicate the total amount exported to or imported from each country. Only indicate the total annual quantity exported to or imported from a specific country if the total annual quantity to or from that country is more than 1% of the applicable threshold (i.e., more than 10 grams of BZ, 1 kilogram of PFIB and Amiton and corresponding alkylated or protonated salts, or 10 kilograms of all other Schedule 2 chemicals). However, in determining whether your total exports and imports worldwide for the year in question trigger declaration or reporting requirements, you must include all exports and imports, including exports and imports falling within the 1% exemption in your calculation.

(2) *Rounding.* For purposes of reporting exports and imports of a Schedule 2 chemical, you must total all exports and imports per calendar year per recipient or source country and then round as follows: for the chemical BZ, the total quantity for each country should be reported to the nearest hundredth of a kilogram (10 grams); for PFIB and Amiton and corresponding alkylated or protonated salts, the total quantity for each country should be reported to the nearest 1 kg; for all other Schedule 2 chemicals, the total quantity for each country should be reported to the nearest 10 kg.

§ 713.5 Advance declaration requirements for additionally planned production, processing or consumption of a Schedule 2 chemical.

(a) *Declaration requirements.* You must declare additionally planned production, processing or consumption of a Schedule 2 chemical after the annual declaration on anticipated activities has been delivered to BXA if:

(1) You plan to increase production, processing or consumption of a previously declared Schedule 2 chemical at any plant on your plant site by 20% or more of the originally declared amount; or

(2) You plan to begin new production, processing or consumption of an additional Schedule 2 chemical in amounts greater than the applicable threshold quantities set forth in § 713.3(a)(1)(i)(A) through (C).

(b) *Declaration forms to be used.* If you are required to declare additionally planned activities pursuant to paragraph (a) of this section, you must complete the Certification Form and Form 2-1 and 2-3C. Such forms are due to BXA at least 21 days in advance of the beginning of the additional or new production, processing or consumption.

§ 713.6 Frequency and timing of declarations and reports.

Declarations and reports required under this part are due to BXA according to the dates identified in Table 1 of this section. Required declarations and reports include:

(a) Declaration on past production of Schedule 2 chemicals for CW purposes since January 1, 1946;

(b) Initial declaration on past production, processing, consumption, import or export of Schedule 2 chemicals (activities in calendar years 1994, 1995 and 1996);

(c) Annual declaration on past production, processing, consumption, export or import of Schedule 2 chemicals (activities during the previous calendar year);

(d) Annual declaration on anticipated activities (production, processing or consumption) beginning in calendar year 1999 for activities anticipated for calendar year 2000; and

(e) Annual reports on exports and imports from trading companies and plant sites that do not have declaration requirements for a specific Schedule 2 chemical (exports and imports during the previous calendar year).

TABLE 1 TO § 713.6.—DEADLINES FOR SUBMISSION OF SCHEDULE 2 DECLARATIONS

Declarations	Applicable forms	Due dates
Initial Declaration:		

TABLE 1 TO § 713.6.—DEADLINES FOR SUBMISSION OF SCHEDULE 2 DECLARATIONS—Continued

Declarations	Applicable forms	Due dates
Declared Plant Site (1994, 1995 and 1996 for production, processing and consumption; and exports and imports for 1996).	Certification, 2-1, 2-2, 2-3, 2-3A, 2-3B (if also exported or imported), A, B (optional).	See note to Table 1.
Initial Report on Exports and Imports: Undeclared Plant Site and Trading Company (previous year exports and imports).	Certification, 2-1, 2-3B, B (optional)	See note to Table 1.
Annual Declaration on Past Activities: Declared Plant Site production, processing, consumption, exports and imports (previous calendar year only).	Certification, 2-1, 2-2, 2-3, 2-3A, 2-3B (if also exported or imported), A, B (optional).	See note to Table 1.
Annual Report of Exports and Imports: Undeclared Plant Site and Trading Company (exports and imports).	Certification, 2-1, 2-3B, B (optional)	See note to Table 1.
Annual Declaration on Anticipated Activities (next calendar year).	Certification, 2-1, 2-2, 2-3, 2-3A, 2-3C, A, B (optional).	September 3 of each year prior to the calendar year in which anticipated activities will take place.
Declaration of additionally planned production, processing and consumption.	Certification, 2-1, 2-3C	21 calendar days before the additionally planned activity begins.
Declaration on Past Production of Schedule 2 Chemicals for CW Purposes.	Certification, 2-1, 2-2, 2-4 A, B (optional)	See note to Table 1.

Note to Table 1: The declaration of past production for CW purposes, initial declaration of production, processing and consumption, export and imports and annual declarations for calendar years 1997 and 1998 of past production, processing, consumption, exports and imports pursuant to the provisions of this part will be due [90 days after the effective date of the final rule]. Thereafter, annual declarations of past Schedule 2 activities will be due to BXA by February 13th of each year.

§ 713.7 Amended declaration or report.

If, after submitting the original declaration or report, you discover that the previously submitted information is not accurate (e.g., change of quantity,

addition of a new chemical, relocation of facility, etc.), you must complete a new Certification Form and the specific form being amended (e.g. annual declaration on past activities, annual

declaration on anticipated activities). Only complete that portion of each form that corrects the previously submitted information that changed.

SUPPLEMENT NO. 1 TO PART 713—SCHEDULE 2 CHEMICALS

A. Toxic chemicals:	
(1) Amiton: O,O-Diethyl S-[2-(diethylamino)ethyl] phosphorothiolate and corresponding alkylated or protonated salts	(78-53-5)
(2) PFIB: 1,1,3,3,3-Pentafluoro-2-(trifluoromethyl)-1-propene	(382-21-8)
(3) BZ: 3-Quinuclidinyl benzilate	(6581-06-2)
B. Precursors:	
(4) Chemicals, except for those listed in Schedule 1, containing a phosphorus atom to which is bonded one methyl, ethyl or propyl (normal or iso) group but not further carbon atoms, e.g. Methylphosphonyl dichloride	(676-97-1)
Dimethyl methylphosphonate	(756-79-6)
Exemption: Fonofos: O-Ethyl S-phenyl ethylphosphono-thiolothionate	(944-22-9)
(5) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) phosphoramidic dihalides	
(6) Dialkyl (Me, Et, n-Pr or i-Pr) N,N-dialkyl (Me, Et, n-Pr or i-Pr)-phosphoramidates	
(7) Arsenic trichloride	(7784-34-1)
(8) 2,2-Diphenyl-2-hydroxyacetic acid	(76-93-7)
(9) Quinuclidine-3-ol	(1619-34-7)
(10) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethyl-2-chlorides and corresponding protonated salts	
(11) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethane-2-ols and corresponding protonated salts	
Exemptions: N,N-Dimethylaminoethanol and corresponding protonated salts	(108-01-0)
N,N-Diethylaminoethanol and corresponding protonated salts	(100-37-8)
(12) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethane-2-thiols and corresponding protonated salts	
(13) Thiodiglycol: Bis(2-hydroxyethyl)sulfide	(111-48-8)
(14) Pinacolyl alcohol: 3,3-Dimethylbutane-2-ol	(464-07-3)

PART 714—ACTIVITIES INVOLVING SCHEDULE 3 CHEMICALS

Sec.

714.1 Declaration of past production of Schedule 3 chemicals for chemical weapons purposes.

714.2 Initial and annual declaration requirements for production of Schedule 3 chemicals.

714.3 Initial and annual declaration and reporting requirements for exports and imports of Schedule 3 chemicals.

714.4 Advance declaration requirements for additionally planned production of a Schedule 3 chemical.

714.5 Frequency and timing of declarations.

714.6 Amended declaration or report.

Supplement No. 1 to Part 714—Schedule 3 Chemicals

Authority: Pub. L. 105-277, 112 Stat. 2681; E.O. 13128, 64 FR 36703.

§ 714.1 Declaration of past production of Schedule 3 chemicals for chemical weapons purposes.

See § 711.5 of this subchapter for information on obtaining the forms you will need to declare and report activities

involving Schedule 3 chemicals. You must complete the Certification Form, Forms 3-1, 3-2, 3-4, Form A and Form B (which is optional) if you produced at one or more plants on your plant site any quantity of a Schedule 3 chemical at any time since January 1, 1946, for chemical weapons purposes. You must declare the total quantity of such chemical produced, rounded to the nearest tenth of a metric ton (or 100 kg). Note that you are not subject to routine inspection unless you are a declared facility pursuant to § 714.2.

§ 714.2 Initial and annual declaration requirements for production of Schedule 3 chemicals.

(a) *Declaration of production of Schedule 3 chemicals for purposes not prohibited by the CWC.* (1) *Production quantities that trigger the declaration requirement.* You must complete the appropriate forms specified in paragraph (c) of this section if you have been or anticipate being involved in the following activities:

(i) *Initial declaration.* You produced at one or more plants on your plant site in excess of 30 metric tons of any single Schedule 3 chemical during calendar year 1996; or

(ii) *Annual declaration on past activities.* You produced at your plant site in excess of 30 metric tons of any single Schedule 3 chemical during the previous calendar year, beginning with figures for calendar year 1997.

(iii) *Annual declaration on anticipated activities.* You anticipate that you will produce at one or more plants on your plant site in excess of 30 metric tons of any single Schedule 3 chemical in the next calendar year.

(2) *Mixtures.* The quantity of a Schedule 3 chemical contained in a mixture must be counted for declaration purposes only if the concentration of the Schedule 3 chemical in the mixture is 80% or more by volume or by weight, whichever yields the lesser percent.

(b) *Types of declarations and declaration forms to be used.* (1) *Initial declaration.* You must complete the Certification Form and Forms 3-1, 3-2, 3-3, and Form A if you produced at one or more plants on your plant site in excess of 30 metric tons of any single Schedule 3 chemical during calendar year 1996. Form B is optional.

(2) *Annual declaration on past activities.* You must complete the Certification Form and Forms 3-1, 3-2, 3-3, and Form A if one or more plants on your plant site produced in excess of 30 metric tons of any single Schedule 3 chemical during the previous calendar year, beginning with production during calendar year 1997. Form B is optional.

(3) *Annual declaration on anticipated activities.* You must complete the Certification Form, and Forms 3-1 and 3-3 if you anticipate that you will produce at one or more plants on your plant site in excess of 30 metric tons of any single Schedule 3 chemical in the next calendar year.

(c) *Quantities to be declared.*

(1) *Production of a Schedule 3 chemical in excess of 30 metric tons.* If your plant site is subject to the declaration requirements of paragraph (a) of this section, you must declare the range within which the production at your plant site falls (30 to 200 metric tons, 200 to 1,000 metric tons, etc.) as specified on Form 3-3. When specifying the range of production for your plant site, you must aggregate the production quantities of all plants on the plant site that produced the Schedule 3 chemical in amounts greater than 30 metric tons. You must complete a separate Form 3-3 for each Schedule 3 chemical for which production at your plant site exceeds 30 metric tons.

(2) *Rounding.* To determine the production range into which your plant site falls, add all the production of the declared Schedule 3 chemical during the calendar year from all plants on your plant site and round to the nearest ten metric tons.

(3) *Mixtures.* The quantity of a Schedule 3 chemical contained in a mixture must be counted when determining the total quantity of a Schedule 3 chemical produced at your plant site only if the concentration of the Schedule 3 chemical in the mixture is 80% or more by volume or by weight, whichever yields the lesser percent.

(d) *"Declared" Schedule 3 plant sites.* A plant site that comprises one or more plants that produced in excess of 30 metric tons of a single Schedule 3 chemical during the previous calendar year, or that you anticipate will produce more than 30 metric tons of a single Schedule 3 chemical in the next calendar year, is a Schedule 3 "declared" plant site.

(e) *Routine inspections of declared Schedule 3 plant sites.* A "declared" Schedule 3 plant site is subject to routine inspection by the OPCW (see part 716 of this subchapter) if it produced during the previous calendar year or you anticipate it will produce during the next calendar year in excess of 200 metric tons aggregate of any Schedule 3 chemical.

§ 714.3 Initial and annual declaration and reporting requirements for exports and imports of Schedule 3 chemicals.

(a) *Quantities of exports and imports that must be declared or reported.* You

must complete the forms specified in paragraph (c) of this section if you have been or will be involved in any of the following activities:

(1) You exported from or imported to your declared plant site, during calendar year 1996 (for the initial declaration) or the previous calendar year (for all annual declarations starting with calendar year 1997) a Schedule 3 chemical in excess of 30 metric tons; or

(2) You exported from or imported to your undeclared plant site or trading company (see part 710 of this subchapter for a definition of a trading company) a Schedule 3 chemical in excess of 30 metric tons.

Notes to paragraph (a): **Note 1:** You must obtain an End-Use Certificate before exporting a Schedule 3 chemical to a non-State Party. See §§ 742.18, 745.2 and 748.8 of the EAR.

Note 2: You may need a license to export a Schedule 2 chemical. See §§ 742.2 and 742.18 of the EAR for Schedule 3 chemicals under the jurisdiction of the Department of Commerce and the ITAR (22 CFR parts 120 through 130) for chemicals under the jurisdiction of the Department of State.

(b) *Mixtures.* Note that the quantity of a Schedule 3 chemical contained in a mixture must be counted for declaration purposes only if the concentration of the Schedule 3 chemical in the mixture is 80% or more by volume or by weight, whichever yields the lesser percent. This requirement applies to each Schedule 3 chemical imported or exported in a previous calendar year.

(c) *Types of declarations and declaration forms to be used.*

(1) *Initial declaration.* (i) *Declared plant sites.* If you are subject to the declaration requirements of § 714.2 because one or more plants at your plant site produced more than 30 metric tons of a specific Schedule 3 chemical, and you also exported from or imported to your plant site that Schedule 3 chemical in excess of 30 metric tons in 1996, you must also report the total quantity of exports or imports of that Schedule 3 chemical, specifying the quantity associated with each country, by completing additional parts of Form 3-3.

(ii) *Undeclared plant sites and trading companies.* If your plant site is not subject to the declaration requirements of § 714.2 for a specific Schedule 3 chemical, and if you exported from or imported to your plant site more than 30 metric tons of that Schedule 3 chemical during calendar year 1996, or if you are a trading company and you exported or imported more than 30 metric tons of a Schedule 3 chemical during calendar year 1996, you must complete the

Certification Form, Forms 3-1, 3-3.3 and/or 3-3.4.

(2) *Annual declaration for a specific chemical.* (i) *Declared plant sites.* If you are subject to the declaration requirements of § 714.2 because one or more plants at your plant site produced more than 30 metric tons of a specific Schedule 3 chemical, and you also exported from or imported to any plant on your plant site that Schedule 3 chemical in excess of 30 metric tons in the previous calendar year beginning with exports and imports during calendar year 1997, you must also declare the total quantity of such exports or imports, specifying the quantity associated with each country, by completing additional parts of Form 3-3.

(ii) *Undeclared plant sites and trading companies.* If your plant site is not subject to the declaration requirements of § 714.2 for a specific Schedule 3 chemical and if you exported from or imported to your plant site more than 30 metric tons of that Schedule 3 chemical during the previous calendar year starting with calendar year 1997, or if you are a trading company and you exported or imported more than 30 metric tons of a Schedule 3 chemical during the previous calendar year starting with exports and imports during calendar year 1997, you must complete the Certification Form, Form 3-1 and relevant parts of Form 3-3.

(d) *Quantities to be declared or reported.*

(1) *Country-by-country reporting.* If you exported or imported more than 30 metric tons of any one Schedule 3 chemical in the previous calendar year, you must report all exports and imports

of that Schedule 3 chemical by country, and indicate the total amount exported to or imported from that country. Only indicate the total annual quantity exported to or imported from a specific country if the total annual quantity to or from that country is more than 1% of the applicable threshold (i.e., more than 0.3 metric tons) of all other Schedule 3 chemicals). However, in determining whether your total exports and imports worldwide for the year in question trigger declaration or reporting requirements, you must include all exports and imports, including exports and imports falling within the 1% exemption in your calculation.

(2) *Rounding.* For purposes of reporting exports and imports of a Schedule 3 chemical, you must total all exports or imports per calendar year per recipient country or source country, and round to the nearest 10 metric tons.

Note to § 714.3: Under the Convention, the United States is obligated to provide the OPCW an aggregate annual report of the quantities of each Schedule 3 chemical imported and exported. The U.S. Government will not submit your company-specific information relating to the export or import of a Schedule 3 chemical declared under this § 714.3. The U.S. Government will add all import and export information submitted by various facilities under this section to produce a national aggregate annual report of country-by-country trade for each Schedule 3 chemical.

§ 714.4 Advance declaration requirements for additionally planned production of a Schedule 3 chemical.

You must notify BXA of any additional Schedule 3 production planned after the annual declaration on anticipated activities has been delivered

to BXA. Only anticipated increases in production that will increase production by an amount that changes the production range originally declared in Block 3-3.1 on Form 3-3 must be declared. For example, if you submitted a declaration on planned production that indicated you anticipate producing between 200 and 1,000 metric tons of a Schedule 3 chemical, and you now plan to produce between 1,000 and 10,000 metric tons of that same Schedule 3 chemical, you must notify BXA of the additional planned production. You must notify BXA by completing the Certification Form and Forms 3-1 and 3-3, and submitting them to BXA no later than 21 days before the additional activity begins.

§ 714.5 Frequency and timing of declarations.

Declarations and reports required under this part are due to BXA according to the dates identified in Table 1 of this section. Required declarations and reports include:

(a) Initial declarations on past production of any amount of Schedule 3 chemicals for CW purposes since January 1, 1946;

(b) Initial declarations and reports on past production, imports and exports during calendar year 1996;

(c) Annual declarations and reports on production, imports and exports during the previous calendar year, beginning with declarations for calendar year 1997; and

(d) Annual declarations on anticipated production during the next calendar year beginning in calendar year 1999 for activities anticipated for calendar year 2000.

TABLE 1 TO § 714.5.—DEADLINES FOR SUBMISSION OF SCHEDULE 3 DECLARATIONS

Declarations	Applicable forms	Due dates
Initial Declaration (for calendar year 1996): Declared Plant Site (production)	Certification, 3-1, 3-2, 3-3 (if also exported or imported), A, B (optional).	See note to this table.
Initial Report on Exports and Imports: Undeclared Plant Site, Trading Company ..	Certification, 3-1, 3-3.3 and 3-3.4	See note to this table.
Annual Declaration on Past Activities (previous calendar year, starting with 1997): Declared plant site (production)	Certification, 3-1, 3-2, 3-3 (if also exported or imported), A, B (optional).	See note to this table.
Annual Report on Exports and Imports: Undeclared Plant Site and Trading Company.	Certification, 3-1, 3-3.3 and 3-3.4	See note to this table.
Annual Declaration on Anticipated Production (next calendar year).	Certification, 3-1, 3-3.1 and 3-3.2	September 3 of each year prior to the calendar year in which anticipated activities will take place.
Declaration of Additionally Planned Activities	Certification, 3-1, 3-3.1 and 3-3.2	21 calendar days before the additionally planned activity begins.

TABLE 1 TO § 714.5.—DEADLINES FOR SUBMISSION OF SCHEDULE 3 DECLARATIONS—Continued

Declarations	Applicable forms	Due dates
Initial Declaration on Past Production of Schedule 3 Chemicals for CW Purposes.	Certification, 3-1, 3-2, 3-4, A, B (optional)	See note to this table.

Note to Table 1: The declaration of past production for CW purposes, the initial declaration of past production, exports and imports during calendar year 1996 and annual declarations and reports for production, exports and imports during calendar years 1997 and 1998 pursuant to the provisions of this part will be due [90 days after the effective date of the final rule]. Thereafter, annual declarations and reports of past Schedule 3 activities will be due to BXA by February 13th of each year.

§ 714.6 Amended declaration or report.

If, after submitting the original declaration or report, you discover that the previously submitted information is not accurate (e.g., change of quantity,

addition of a new chemical, relocation of facility, etc.), you must complete a new Certification Form and the specific form being amended (e.g., annual declaration on past activities, annual

declaration on anticipated activities). Only complete that portion of each form that corrects the previously submitted information.

SUPPLEMENT NO. 1 TO PART 714—SCHEDULE 3 CHEMICALS

A. Toxic chemicals:	
(1) Phosgene: Carbonyl dichloride	(75-44-5)
(2) Cyanogen chloride	(506-77-4)
(3) Hydrogen cyanide	(74-90-8)
(4) Chloropicrin: Trichloronitromethane	(76-06-2)
B. Precursors:	
(5) Phosphorus oxychloride	(10025-87-3)
(6) Phosphorus trichloride	(7719-12-2)
(7) Phosphorus pentachloride	(10026-13-8)
(8) Trimethyl	(121-45-9)
(9) Triethyl phosphite	(122-52-1)
(10) Dimethyl phosphite	(868-85-9)
(11) Diethyl phosphite	(762-04-9)
(12) Sulfur monochloride	(10025-67-9)
(13) Sulfur dichloride	(10545-99-0)
(14) Thionyl chloride	(7719-09-7)
(15) Ethyldiethanolamine	(139-87-7)
(16) Methyl diethanolamine	(105-59-9)
(17) Triethanolamine	(102-71-6)

Note to Supplement No. 1: Refer to Supplement No. 1 to part 774 of the Export Administration Regulations (the Commerce Control List), ECCN 1C355, Related Controls for chemicals controlled under the International Traffic in Arms Regulations (22 CFR parts 120 through 130).

PART 715—ACTIVITIES INVOLVING UNSCHEDULED DISCRETE ORGANIC CHEMICALS

Sec.

715.1 Declaration requirements for the production of unscheduled discrete organic chemicals (i.e. discrete organic chemicals not declared under parts 712 through 714 of this subchapter).

715.2 Amended declaration.

715.3 Frequency and timing of declarations.

Supplement No. 1 to Part 715—Examples of Unscheduled Discrete Organic Chemicals and Production Processes

Authority: Pub. L. 105-277, 112 Stat. 2681; E.O. 13128, 64 FR 36703.

§ 715.1 Declaration requirements for the production of unscheduled discrete organic chemicals (i.e., discrete organic chemicals not declared under parts 712 through 714 of this subchapter).

See § 711.6 of this subchapter for information on obtaining the forms you will need to declare production of unscheduled discrete organic chemicals. See Supplement No. 1 to part 711 of this subchapter for information pertaining to

the protection of certain confidential business information.

(a) *Unscheduled discrete organic chemicals (UDOCs) subject to declaration requirements under this part.* Unscheduled discrete organic chemicals (UDOCs) subject to declaration requirements under this part are all chemicals containing carbon, except for the following:

(1) Those listed in Schedule 1, Schedule 2 or Schedule 3 (Supplement No. 1 to part 712, Supplement No. 1 to part 713 or Supplement No. 1 to part 714 of this subchapter);

(2) Inorganic chemicals (e.g., carbon oxides, carbon sulfides, metal carbonates, metal carbides or compounds of only a metal and carbon);

Note to paragraph (a): Carbon oxides consist of chemical compounds that contain only the elements carbon and oxygen and have the chemical formula C_xO_y , where x and y denote integers. The two most common carbon oxides are carbon monoxide (CO) and carbon dioxide (CO₂). Carbon sulfides consist of chemical compounds that contain only the elements carbon and sulfur, and have the chemical formula C_aS_b , where a and b denote

integers. The most common carbon sulfide is carbon disulfide (CS₂). Metal carbonates consist of chemical compounds that contain a metal (i.e., the Group I Alkalies, Groups II Alkaline Earths, the Transition Metals, or the elements aluminum, gallium, indium, thallium, tin, lead, bismuth or polonium), and the elements carbon and oxygen. Metal carbonates have the chemical formula $M_d(CO_3)_e$, where d and e denote integers and M represents a metal. Common metal carbonates are sodium carbonate (Na₂CO₃) and calcium carbonate (CaCO₃). Metal carbides or other compounds consisting of only a metal as described above, and carbon, (e.g., calcium carbide (CaC₂)).

(3) Chemicals and chemical mixtures produced through a biological or bio-mediated process;

(4) Polymer substances and oligomers consisting of two or more repeating units, and formed by the chemical reaction of monomeric or polymeric substances;

(b) *Declaration of production of unscheduled discrete organic chemicals.* (1)(i) *Production quantities that trigger declaration requirements.* You must complete the Certification

Form, Form UDOC (consisting of 2 pages), and Form A if:

(A) One or more plants at your plant site produced by synthesis in calendar year 1996 (for the initial declaration) or in the previous calendar year (for an annual declaration) in excess of 30 metric tons of an individual unscheduled discrete organic chemical containing phosphorus, sulfur or fluorine ("PSF-chemicals") that was, isolated for:

(1) Use; or

(2) sale as a specific end product; or

(B) Your plant site produced by synthesis in calendar year 1996 (for the initial declaration) or the previous calendar year (for an annual declaration) in excess of 200 metric tons aggregate of all unscheduled discrete organic chemicals (including PSF-chemicals) that were, isolated or captured for:

(1) Use; or

(2) Sale as a specific end product.

(ii) Completion of Form B is optional.

(2) *Exception.* You are not required to complete declarations under this paragraph if your plant site exclusively produced hydrocarbons or explosives.

(3) *Examples.* See Supplement No. 1 to this part for examples of UDOCs subject to the declaration requirements of this part, examples of chemicals not produced by synthesis and therefore not subject to declaration requirements of this part, and for examples of processes that are not considered production by synthesis.

(c) If you are exempt from declaration requirements under the provisions of paragraph (a)(1) through (a)(4) of this section, you need not complete and submit forms. If you need assistance on chemical determinations or other CWC-related matters, contact the Office of Chemical & Biological Controls and Treaty Compliance, Treaty Compliance Division at (703) 235-1335.

§ 715.2 Amended declaration.

If, after submitting the original declaration, you discover that the previously submitted information is not accurate (e.g., change of quantity, addition of a new chemical, relocation of facility, etc.), you must complete a new Certification Form and the specific form being amended. Only complete that portion of each form that corrects the previously submitted information.

§ 715.3 Frequency and timing of declarations.

Declarations required under this part are due to BXA according to the dates identified in Table 1 of this section. Required declarations include:

(a) Initial declarations for production of unscheduled discrete organic chemicals during calendar year 1996.

(b) Annual declarations on past production of unscheduled discrete organic chemicals beginning with production figures for calendar year 1997.

TABLE 1 TO § 715.3.—DEADLINES FOR SUBMISSION OF DECLARATIONS FOR UNSCHEDULED DISCRETE ORGANIC CHEMICALS FACILITIES

Declarations	Applicable forms	Due dates
Initial Declaration (calendar year 1996): Plant Site	Certification, UDOC, A, B (optional)	See note to this table.
Annual Declaration on Past Activities (previous calendar year, starting with 1997): Plant Site	Certification, UDOC, A, B (optional)	See note to this table. February 13 of each year following past activities requiring declaration.

Note to Table 1: The initial declaration and annual declaration of past production for calendar years 1997 and 1998 pursuant to the provisions of this part will be due [90 days after the effective date of the final rule]. Thereafter, annual reports of past unscheduled discrete organic chemical activities will be due to BXA by February 13th of each year.

Supplement No. 1 to Part 715—Examples of Unscheduled Discrete Organic Chemicals (UDOCs) and Production Processes

(1) Examples of UDOCs that you must report under the provisions of this part include, but are not limited to, the following, unless they are involved in processes other than "production" (i.e. chemical synthesis), or were not isolated for:

(i) Use; or

(ii) Sale as a specific end product:

(A) Acetophenone (CAS #98-86-2);

(B) 6-Chloro-2-Methyl Aniline (CAS #87-63-8);

(C) 2-Amino-3-Hydroxy benzoic Acid (CAS #548-93-6); and

(D) Acetone (CAS #67-64-1).

(2) The following examples illustrate those chemicals not produced by synthesis and therefore not subject to declaration requirements:

(i) UDOCs produced coincidentally as byproducts of a manufacturing, production or waste treatment process that are not isolated or captured for:

(A) Use; or

(B) Sale as a specific end product during the process and are routed to, or escape from,

the waste stream of a stack, incinerator, or waste treatment system or any other waste stream;

(ii) Mixtures of UDOCs produced coincidentally and not isolated for:

(A) Use; or

(B) Sale as a specific end-product;

(iii) UDOCs produced by recycling (i.e. involving one of the processes listed in paragraph (3) of this supplement) of previously reported unscheduled UDOCs;

(iv) UDOCs produced by the mixing (i.e. the process of combining or blending into one mass) of previously reported UDOCs; and

(v) Intermediate UDOCs in transient form completely converted to another reportable UDOC in the same process, whether batch or continuous, and not isolated for:

(A) Use; or

(B) Sale as a specific end product.

(3) Following are examples of processes that involve chemicals or mixtures of chemicals that are not considered production by synthesis, and, thus, the end products would not be reported under the provisions of this part:

(i) Fermentation;

(ii) Extraction;

(iii) Purification;

(iv) Distillation; and

(v) Filtration.

PART 716—INITIAL AND ROUTINE INSPECTIONS OF DECLARED FACILITIES

Sec.

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

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Supplement No. 1 To Part 716—Notification, Duration, and Frequency of Inspections**Supplement No. 2 To Part 716—Schedule 1 Model Facility Agreement****Supplement No. 3 To Part 716—Schedule 2 Model Facility Agreement**

Authority: Pub. L. 105-277, 112 Stat. 2681; E.O. 13128, 64 FR 36703.

§ 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).

(a) *Overview.* Each State Party to the CWC, including the United States Government, has agreed to allow certain inspections of declared facilities by inspectors employed by the Organization for the Prohibition of Chemical Weapons (OPCW) to ensure that activities are consistent with obligations under the CWC. The Department of Commerce is responsible for leading, hosting and escorting inspections of all facilities in the United States, except Department of Defense and Department of Energy facilities and other United States Government facilities that notify the USNA of their decision to be excluded from the CWC. United States Government facilities are those owned by or leased to the U.S. Government, including facilities that are contractor-operated.

(b) *Declared facilities subject to initial and routine inspections.* (1) *Schedule 1 facilities.* 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.

(2) *Schedule 2 facilities.* Your declared plant site is subject to inspection if one or more plants on your plant site produced, processed or consumed, in any of the three previous calendar years, or you anticipate it will produce, process or consume in the next calendar year, any Schedule 2 chemical in excess of the following:

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

(ii) 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 this subchapter); or

(iii) 10 metric tons of any chemical listed in Schedule 2, Part B in Supplement No. 1 to part 713 of this subchapter.

(3) *Schedule 3 facilities.* Your declared plant site is subject to inspection if one or more plants on your plant site produced during the previous calendar year, or you anticipate it will produce in the next calendar year, in excess of 200 metric tons aggregate of any Schedule 3 chemical (see Supplement No. 1 to part 714 of this subchapter).

(4) *Unscheduled discrete organic chemical facilities.* Your declared plant site is subject to inspection if your plant site produced by synthesis during the previous calendar year:

(i) More than 200 metric tons of unscheduled discrete organic chemicals; or

(ii) More than 200 tons of an unscheduled discrete organic chemical containing the elements phosphorus, sulfur or fluorine.

(c) *Responsibilities of the Department of Commerce.* As the host and escort for the international inspector team for all industry inspections, the Department of Commerce will lead on-site inspections, provide preliminary notification to the operator of the industry site of an impending inspection, dispatch an advance team to the site to assist with inspection preparation, secure an appropriate warrant in the event the facility does not consent to the inspection, escort the inspection team on-site throughout the inspection process, assist the inspection team with verification activities, during the initial inspection, negotiate the development of a site-specific facility agreement, if appropriate (see § 716.6), and ensure that a routine inspection adheres to the Convention, the Act, and any site-specific facility agreement.

§ 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.* During initial inspections of declared Schedule 1 facilities, in addition to the verification activities listed in paragraph (a)(1) of this section, the U. S. Government team, led by the Department of Commerce, and the OPCW Technical Secretariat inspection

team will develop draft site-specific facility agreements (see § 716.6) for the conduct of subsequent, routine inspections.

(ii) *Routine inspections.* During routine inspections of declared Schedule 1 facilities, the verification activities listed in paragraph (a)(1) of this section will be carried out pursuant to site-specific facility agreements (§ 716.6) developed during the initial inspections and concluded between the United States Government and the OPCW pursuant to the Convention.

(3) *On-site monitoring.* Declared Schedule 1 facilities are subject to monitoring by on-site instruments.

(b) *Schedule 2 facilities.* (1) *Purposes of inspections.*

(i) The general aim of inspections of declared Schedule 2 plant sites is to verify that activities are in accordance with obligations under the Convention and consistent with the information provided in declarations. Particular aims of inspections of declared Schedule 2 facilities are to verify:

(A) The absence of any Schedule 1 chemical, especially its production, except if in accordance with the provisions of the Convention;

(B) Consistency with declarations of levels of production, processing or consumption of Schedule 2 chemicals; and

(C) That Schedule 2 chemicals are not diverted to activities prohibited under the Convention.

(ii) During initial inspections, inspectors shall collect data to determine the frequency and intensity of subsequent inspections by assessing the risk to the object and purpose of the Convention posed by the relevant chemicals, the characteristics of the plant site and the nature of the activities carried out there, taking into account, *inter alia*, the following criteria:

(A) The toxicity of the scheduled chemicals and of the end-products produced with it, if any;

(B) The quantity of the scheduled chemicals typically stored at the inspected site;

(C) The quantity of feedstock chemicals for the scheduled chemicals typically stored at the inspected site;

(D) The production capacity of the Schedule 2 plants; and

(E) The capability and convertibility for initiating production, storage and filling of toxic chemicals at the inspected site.

(2) *Types of inspections.* (i) *Initial inspections.* During initial inspections of declared Schedule 2 facilities, in addition to the verification activities listed in paragraph (b)(1) of this section, the U.S. Government team, led by the

Department of Commerce, and the OPCW Technical Secretariat inspection team will develop draft site-specific facility agreements for the conduct of subsequent, routine inspections (see § 716.6).

(ii) *Routine inspections.* During routine inspections of declared Schedule 2 facilities, the verification activities listed in paragraph (b)(1) of this section will be carried out pursuant to site-specific facility agreements developed during the initial inspections (see § 716.6), and concluded between the United States Government and the OPCW pursuant to the Convention and the Act.

(c) *Schedule 3 facilities.* (1) *Purposes of inspections.* The general aim of inspections of declared Schedule 3 facilities is to verify that activities are consistent with the information provided in declarations. The particular aim of inspections is to verify the absence of any Schedule 1 chemical, especially its production, except in accordance with the Convention.

(2) *Types of inspections.* (i) *Initial inspections.* During initial inspections of declared Schedule 3 facilities, in addition to the verification activities listed in paragraph (c)(1) of this section, the U.S. Government team, led by the Department of Commerce, and the OPCW Technical Secretariat inspection team may develop draft site-specific facility agreements for the conduct of subsequent, routine inspections (see § 716.6). Although the Convention does not require facility agreements for declared Schedule 3 facilities, the owner, operator, occupant or agent in charge of a facility or plant site may request one.

(ii) *Routine inspections.* During routine inspections of declared Schedule 3 facilities, the verification activities listed in paragraph (c)(1) of this section will be carried out pursuant to site-specific facility agreements developed during the initial inspections, if applicable (see § 716.6) and concluded between the United States Government and the OPCW pursuant to the Convention and the Act.

(d) *Unscheduled Discrete Organic Chemicals Facilities.* Unscheduled discrete organic chemical (UDOC) facilities will be subject to inspection beginning April 29, 2000, (i.e., the fourth year after entry into force of the Convention), unless the OPCW decides otherwise.

(1) *Purposes of inspections.* The general aim of inspections of declared UDOC facilities is to verify that activities are consistent with the information provided in declarations. The particular aim of inspections is to

verify the absence of any Schedule 1 chemical, especially its production, except in accordance with the Convention.

(2) *Types of inspections.* (i) *Initial inspections.* During initial inspections of declared UDOC facilities, in addition to the verification activities listed in paragraph (d)(1) of this section, the U.S. Government team, led by the Department of Commerce, and the OPCW Technical Secretariat inspection team may develop draft site-specific facility agreements for the conduct of subsequent, routine inspections (see § 716.6). Although the Convention does not require facility agreements for declared UDOC facilities, the owner, operator, occupant or agent in charge of a facility or plant site may request one.

(ii) *Routine inspections.* During routine inspections of declared UDOC facilities, the verification activities listed in paragraph (d)(1) of this section will be carried out pursuant to site-specific facility agreements developed during the initial inspections, if applicable (see § 716.6), and concluded between the United States Government and the OPCW pursuant to the Convention and the Act.

§ 716.3 Warrants for inspections.

In instances where consent is not provided by the owner, operator, occupant or agent in charge for an initial or routine inspection, the Department of Commerce will obtain administrative warrants as provided by the Act.

§ 716.4 Scope and conduct of inspections.

(a) *General.* Each inspection shall be limited to the purposes described in § 716.2 and conducted in the least intrusive manner, consistent with the effective and timely accomplishment of its purpose as provided in the Convention. During inspections, inspectors will: tour the plants producing scheduled chemicals, including storage areas, feed lines, reaction vessels and ancillary equipment, control equipment, and waste and effluent handling areas; will examine relevant records; and may take samples as provided by the Convention and the Act, and the facility agreement, if applicable.

(b) *Effect of Facility Agreements.* Routine inspections at facilities or plant sites for which the United States has concluded a facility agreement with the OPCW will be conducted in accordance with the facility agreement. The existence of a facility agreement does not in any way limit the right of the operator of the facility to withhold consent to an inspection request.

(c) *Hours of inspections.* Consistent with the provisions of the Convention, the Department of Commerce 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.

(d) *Health and safety regulations.* In carrying out their activities, inspectors and U.S. Government representatives accompanying the inspectors shall observe health and safety regulations established at the inspection site, including those for the protection of controlled environments within a facility and for personal safety. Such health and safety regulations will be set forth in the facility agreement for Schedule 1 and Schedule 2 facilities, and for Schedule 3 and UDOC facilities, if applicable.

(e) *Confidential business information.* (1) *Provisions of the Act relating to confidential business information.* The Act provides a statutory exemption from disclosure in response to a Freedom of Information Act request for certain information related to initial and routine inspections reported to, or otherwise acquired by, the U. S. Government as follows:

(i) Information included in categories specifically enumerated in sections 103(g)(1) and 304(e)(2) of the Act:

- (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 passenger vehicles exiting the facility.
- (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

(ii) Information that qualifies as a trade secret under 5 U.S.C. 552(b)(4) (Freedom of Information Act) that is obtained:

- (A) From a U.S. person; or
- (B) Through the U.S. Government or the conduct of an inspection on U.S. territory under the Convention.

(2) *Exceptions to the Freedom of Information Act exemption.* The Act

provides that the United States Government may disclose confidential business information to the OPCW, to federal law enforcement agencies, and, upon written request, to Congressional committees of appropriate jurisdiction.

(3) *Provisions of the Convention relating to confidential business information.* The Convention provides that States Parties may designate information submitted to the Organization for the Prohibition of Chemical Weapons (OPCW) as confidential, and requires the OPCW to limit access to and to prevent disclosure of information so designated, including specific information on inspections. The OPCW has developed a classification system whereby States Parties may designate the information they submit in their declarations as "restricted," "protected," or "highly protected," depending on the sensitivity of the information.

(4) *Disclosure of confidential business information during inspections.* During inspections, certain confidential business information, as defined by the Act, may be disclosed to OPCW inspectors and U.S. Government representatives hosting and escorting the inspectors. Facilities being inspected are responsible for identifying confidential business information to the U.S. Government before it is disclosed to inspectors, so that appropriate marking and handling can be arranged, in accordance with the provisions of the Convention, to prevent further, unauthorized disclosure. Confidential business information not related to the purpose of an inspection or not necessary to the accomplishment of an inspection, as agreed by the U.S. Government, may be removed from sight, shrouded, or otherwise not disclosed.

(5) *Disclosure of confidential business information following inspections.*

(i) Inspection-related confidential business information, as defined by the Act, contained in inspection reports or otherwise in the possession of the U.S. Government, is exempt from disclosure in response to a Freedom of Information Act request.

(ii) The U.S. Government must disclose confidential business information when such disclosure is deemed to be in the national interest. The USNA, in coordination with the CWC interagency group, will determine if disclosure of the confidential business information is in the national interest. The Act provides for notification to the affected person of intent to disclose confidential business information, unless such notification of intent to disclose is contrary to national security

or law enforcement needs. If, after coordination with the agencies that comprise the CWC interagency group, the USNA determines that such disclosure is not contrary to national security or law enforcement needs, the USNA will notify the person that submitted the information or the person to whom the information pertains of the intent to disclose the information.

(iii) OPCW inspectors are prohibited, under the terms of their employment contracts and pursuant to the Confidentiality Annex of the Convention, from disclosing to any unauthorized persons any confidential information coming to their knowledge in the performance of their official duties, even after termination of their employment.

§ 716.5 Notification, duration and frequency of inspections.

(a) *Notification.* (1)(i) *Content of notice.* Inspections of facilities or plant sites may be made only upon issuance of written notice by the U.S. National Authority to the owner and to the operator, occupant or agent in charge of the premises to be inspected. The Department of Commerce will provide preliminary notification to the point of contact identified in declarations submitted by the facility. If the United States is unable to provide actual written notice to the inspection point of contact, the Department of Commerce, or if the Department of Commerce is unable, the Federal Bureau of Investigation may post notice prominently at the plant, plant site or other facility or location to be inspected. The notice shall include all appropriate information provided by the OPCW to the United States National Authority concerning:

- (i) The type of inspection;
- (ii) the basis for the selection of the facility or locations for the type of inspection sought;
- (iii) the time and date that the inspection will begin and the period covered by the inspection; and
- (iv) the names and titles of the inspectors.

(ii) In addition to appropriate information provided by the OPCW in its notification to the United States National Authority, the Department of Commerce's preliminary notification will state whether an advance team is available to assist the site in preparation for the inspection.

(2) *Timing of notice.* (i) *Schedule 1 facilities.* For declared Schedule 1 facilities, the Technical Secretariat will notify the USNA of an initial inspection not less than 72 hours prior to arrival of the inspection team in the United

States, and will notify the U.S. National Authority of a subsequent ("routine") inspection not less than 24 hours prior to arrival of the inspection team in the United States. The USNA will provide written notice to the owner and to the operator, occupant or agent in charge of the premises within six hours of receiving notification from the OPCW Technical Secretariat or as soon as possible thereafter. The Department of Commerce will provide preliminary notice to the inspection point of contact of the facility as soon as possible after the OPCW notifies the United States of the inspection.

(ii) *Schedule 2 facilities.* For declared Schedule 2 facilities, the Technical Secretariat will notify the USNA of an initial or routine inspection not less than 48 hours prior to arrival of the inspection team at the plant site to be inspected. The USNA will provide written notice to the owner and to the operator, occupant or agent in charge of the premises within six hours of receiving notification from the OPCW Technical Secretariat or as soon as possible thereafter and the Department of Commerce will provide preliminary notice to the inspection point of contact of the facility as soon as possible after the OPCW notifies the United States of the inspection.

(iii) *Schedule 3 and unscheduled discrete organic chemical facilities.* For declared Schedule 3 and discrete organic chemical facilities, the Technical Secretariat will notify the USNA of an initial or routine inspection not less than 120 hours prior to arrival of the inspection team at the plant site to be inspected. The USNA will provide written notice to the owner and to the operator, occupant or agent in charge of the premises within six hours of receiving notification from the OPCW Technical Secretariat or as soon as possible thereafter. The Department of Commerce will provide preliminary notice to the inspection point of contact of the facility as soon as possible after the OPCW notifies the United States of the inspection.

(b) *Duration of inspections.* (1) *Schedule 1 facilities.* For a declared Schedule 1 facility, the Convention does not specify a maximum duration for an initial inspection. The maximum duration of routine inspections will be as stated in the facility agreement, unless extended by agreement between the inspection team and the Department of Commerce.

(2) *Schedule 2 facilities.* For declared Schedule 2 facilities, the maximum duration of initial and routine inspections shall be 96 hours, unless extended by agreement between the

inspection team and the Department of Commerce.

(3) *Schedule 3 and discrete organic chemical facilities.* For declared Schedule 3 or discrete organic chemical facilities, the maximum duration of initial and routine inspections shall be 24 hours, unless extended by agreement between the inspection team and the Department of Commerce.

(c) *Frequency of inspections.* The frequency of initial and routine inspections are as follows:

(1) *Schedule 1 facilities.* As provided by the Convention, the frequency of routine inspections at declared Schedule 1 facilities is determined by the OPCW based on the risk to the object and purpose of the Convention posed by the quantities of chemicals produced, the characteristics of the facility and the nature of the activities carried out at the facility. The frequency of inspections will be stated in the facility agreement.

(2) *Schedule 2 facilities.* As provided by the Convention and the Act, the maximum number of routine inspections at Schedule 2 plant sites is 2 per calendar year per plant site. The OPCW will determine the frequency of routine inspections for each declared Schedule 2 plant site based on the inspectors' assessment of the risk to the object and purpose of the Convention posed by the relevant chemicals, the characteristics of the plant site, and the nature of the activities carried out there. The frequency of inspections will be stated in the facility agreement.

(3) *Schedule 3 facilities.* As provided by the Convention, no plant site may receive more than two inspections per calendar year and the combined number of inspections of Schedule 3 and unscheduled discrete organic chemical facilities in the United State may not exceed 20 per calendar year. If a facility agreement is developed for a declared Schedule 3 plant site, the frequency of inspections will be stated in any facility agreement.

(4) *Unscheduled Discrete Organic Chemicals.* As provided by the Convention, no plant site may receive more than two inspections per calendar year and the combined number of inspections of Schedule 3 and unscheduled discrete organic chemical facilities in the United State may not exceed 20 per calendar year. If a facility agreement is developed for a declared unscheduled discrete organic chemical plant site, the frequency of inspections will be stated in any facility agreement.

§ 716.6 Facility agreements.

(a) *Description and requirements.* A facility agreement is a site-specific

agreement between the U.S. Government and the OPCW. Its purpose is to define procedures for inspections of a specific declared facility that is subject to inspection because of the type or amount of chemicals it produces, processes or consumes.

(1) *Schedule 1 facilities.* The Convention requires that facility agreements be concluded between the United States and the OPCW for all declared Schedule 1 facilities. For Schedule 1 facilities required to complete an initial declaration pursuant to part 713 of this subchapter, the USNA will ensure that facility agreements between the United States and the OPCW will be concluded within 180 days after submission of data declarations to the OPCW. However, for any new Schedule 1 facility, a facility agreement must be concluded before the new Schedule 1 facility begins operations.

(2) *Schedule 2 facilities.* The Convention requires that a facility agreement be concluded by the United States and the OPCW not later than 90 days after completion of the initial inspection of a Schedule 2 facility that is subject to on-site inspection. The USNA will ensure that such facility agreements are concluded with the OPCW unless the owner, operator, occupant or agent in charge of the facility and the OPCW Technical Secretariat agree that such a facility agreement is not necessary.

(3) *Schedule 3 and unscheduled discrete organic chemical facilities.* If the owner, operator, occupant or agent in charge of a Schedule 3 or unscheduled discrete organic chemical facility that is subject to inspection requests a facility agreement prior to the first routine inspection, the USNA will ensure that a facility agreement for such a facility is concluded with the OPCW.

(b) *Notification; negotiation of draft and final facility agreements; and conclusion of facility agreements.* Prior to the development of a facility agreement, the Department of Commerce shall notify the owner, operator, occupant, or agent in charge of the facility, and if the owner, operator, occupant or agent in charge so requests, the notified person may participate in preparations with Department of Commerce representatives for the negotiation of such an agreement. During the initial inspection of a declared facility, inspectors from the OPCW Technical Secretariat and the United States Government team, led by the Department of Commerce accompanying such inspectors, will negotiate a draft facility agreement. The Department of Commerce will

participate in the negotiation of, and approve, all final facility agreements with the OPCW. The United States National Authority shall ensure that facility agreements for Schedule 1, Schedule 2, Schedule 3 and unscheduled discrete organic chemical plant sites are concluded with the OPCW in coordination with the Department of Commerce.

(c) *Format and content.* Schedule 1 and Schedule 2 model facility agreements are included in Supplement No. 2 and Supplement No. 3 to this part. These model facility agreements implement the general provisions of the Convention pertaining to inspections, including health and safety procedures, confidentiality of information, media and public relations, information about the plant site, inspection equipment, pre-inspection activities, conduct of the inspection (including access to and inspection of areas, buildings and structures, access to and inspection of records and documentation, arrangements for interviews of facility personnel, photographs, sampling, and measurements), and logistical arrangements for the inspectors, such as communications and lodging. Attachments to the facility agreements will provide site-specific information such as working hours, special safety and health procedures, as well as site-specific agreement as to documents and records to be provided, specific areas of a facility to be inspected, site diagrams, sampling, photography, and interview procedures, use of inspection equipment, procedures for protection of confidential business information, and administrative arrangements.

(d) *Further information.* For further information about facility agreements, please write or call: U.S. Department of Commerce, Bureau of Export Administration, Treaty Compliance Division, 14th Street and Pennsylvania Avenue, N.W., Room 2705, Washington, D.C. 20230-0001, Telephone: (202) 501-7876.

§ 716.7 Requirements for provisions of samples.

The owner, operator, occupant or agent in charge of a facility must provide a sample, as provided for in the Convention and consistent with requirements set forth by the Director of the United States National Authority in 22 CFR part 103, if the leader from the U.S. Department of Commerce of the U.S. host team accompanying the OPCW Inspection Team notifies the owner, operator, occupant or agent in charge of the inspected facility that a sample is required. The owner, operator, occupant or agent in charge of the premises shall

determine whether the sample shall be taken by representatives of the premises or the inspection team or other individuals present during the inspection.

§ 716.8 Report of inspection-related costs.

Pursuant to section 309(b)(5) of the Act, any facility that has undergone any

inspections pursuant to this subchapter during a given calendar year must report to BXA 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. This information should be reported to BXA on company letterhead at the address given in § 716.6(c), with the following notation: "ATTN: Report of Inspection-related Costs."

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

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

*See part 717 of this subchapter.

Supplement No. 2 to Part 716—Schedule 1 Model Facility Agreement

Draft Model Agreement Specifying the General Form and Content for Facility Agreements to be Concluded Pursuant to Verification Annex, Part VI, Paragraph 31 (Other Facilities)

Facility Agreement Between the Organization for the Prohibition of Chemical Weapons and the Government of the United States of America Regarding On-Site Inspections at the Facility Located at the _____

The Organization for the Prohibition of Chemical Weapons, hereinafter referred to as "Organization", and the Government of the United States of America, hereinafter referred to as "inspected State Party", both constituting the Parties to this Agreement, have agreed on the following arrangements in relation to the conduct of inspections pursuant to paragraph 3 of Article VI of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, hereinafter referred to as "Convention", at _____ (insert name of the facility, its precise location, including the address), declared under paragraphs 7 and 8 of Article VI, hereinafter referred to as "facility".

Section 1. General Provisions

1. The purpose of this Agreement is to facilitate the implementation of the provisions of the Convention in relation to inspections conducted at the facility pursuant to paragraph 3 of Article VI of the Convention and in accordance with the obligations of the inspected State Party and the Organization under the Convention.

2. Nothing in this Agreement shall be applied or interpreted in a way that is

contradictory to the provisions of the Convention, including paragraph 1 of Article VII.¹ In case of inconsistency between this Agreement and the Convention, the Convention shall prevail.

3. The Parties have agreed to apply for planning purposes the general factors contained in Attachment 1.

4. The frequency and intensity of inspections at the facility are given in Part B of Attachment 1 and reflect the risk assessment of the Organization conducted pursuant to paragraphs 23 or 30 of Part VI of the Verification Annex, whichever applies.

5. The inspection team shall consist of no more than ____ persons.

6. The language for communication between the inspection team and the inspected State Party during inspections shall be English.

7. In case of any development due to circumstances brought about by unforeseen events or acts of nature, which could affect inspection activities at the facility, the inspected State Party shall notify the Organization and the inspection team as soon as practically possible.

8. In case of need for the urgent departure, emergency evacuation or urgent travel of inspector(s) from the territory of the inspected State Party, the inspection team leader shall inform the inspected State Party of such a need. The inspected State Party shall arrange without undue delay such departure, evacuation or travel. In all cases, the inspected State Party shall determine the means of transportation and routes to be taken. The costs of such departure,

¹ Each State Party shall, in accordance with its constitutional processes, adopt the necessary measures to implement its obligations under this Convention.

evacuation or travel of inspectors shall be borne by the Organization.

9. Inspectors shall wear identification badges at all times when on the premises of the facility.

Section 2. Health and Safety

1. Health and safety matters during inspections are governed by the Convention, the Organization's Health and Safety Policy and Regulations, and applicable national, local and facility safety and environmental regulations. The specific arrangements for implementing the relevant provisions of the Convention and the Organization's Health and Safety Policy in relation to inspections at the facility are contained in Attachment 2.

2. Pursuant to paragraph 1 of this section, all applicable health and safety regulations relevant to the conduct of the inspection at the facility are listed in Attachment 2 and shall be made available for use by the inspection team at the facility.

3. In case of the need to modify any health- and safety-related arrangements at the facility contained in Attachment 2 to this Agreement bearing on the conduct of inspections, the inspected State Party shall notify the Organization. Any such modification shall apply provisionally until the inspected State Party and the Organization have reached agreement on this issue. In case no agreement has been reached by the time of the completion of the inspection, the relevant information may be included in the preliminary factual findings. Any agreed modification shall be recorded in Attachment 2 to this Agreement in accordance with paragraph 2 of Section 13 of this Agreement.

4. In the course of the pre-inspection briefing the inspection team shall be briefed by the representatives of the facility on all health and safety matters which, in the view

of those representatives, are relevant to the conduct of the inspection at the facility, including:

(a) the health and safety measures at the Schedule 1 facilities to be inspected and the likely risks that may be encountered during the inspection;

(b) any additional health and safety or regulations that need to be observed at the facility;

(c) procedures to be followed in case of an accident or in case of other emergencies, including a briefing on emergency signals, routes and exits, and the location of emergency meeting points and medical facilities; and

(d) specific inspection activities which must be limited within particular areas at the facility, and in particular within those Schedule 1 facilities to be inspected under the inspection mandate, for reasons of health and safety.

Upon request, the inspection team shall certify receipt of any such information if it is provided in written form.

5. During the course of an inspection, the inspection team shall refrain from any action which by its nature could endanger the safety of the team, the facility, or its personnel or could cause harm to the environment. Should the inspected State Party refuse certain inspection activities, it may explain the circumstances and safety considerations involved, and shall provide alternative means for accomplishing the inspection activities.

6. In the case of emergency situations or accidents involving inspection team members while at the facility, the inspection team shall comply with the facility's emergency procedures and the inspected State Party shall to the extent possible provide medical and other assistance in a timely and effective manner with due regard to the rules of medical ethics if medical assistance is requested. Information on medical services and facilities to be used for this purpose is contained in Part D of Attachment 2. If the Organization undertakes other measures for medical support in regard to inspection team members involved in emergency situations or accidents, the inspected State Party will render assistance to such measures to the extent possible. The Organization will be responsible for the consequences of such measures.

7. The inspected State party shall, to the extent possible, assist the Organization in carrying out any inquiry into an accident or incident involving a member of the inspection team.

8. If, for health and safety reasons given by the inspected State Party, health and safety equipment of the inspected State Party is required to be used by the inspection team, the cost so incurred shall be borne by the inspected State Party.

9. The inspection team may use its own approved health and safety equipment. If the inspected State Party determines it to be necessary, the inspected State Party shall conduct a fit test on masks brought with the inspection team. If the inspected State Party so requests on the basis of confirmed contamination or hazardous waste requirements or regulations, any such piece

of equipment involved in the inspection activities will be left at the facility at the end of the inspection. The inspection team reserves the right to destroy equipment left at the facility or witness its destruction by agreed procedures. The inspected State Party will reimburse the Organization for the loss of the inspection team's equipment.

10. In accordance with the Organization's Health and Safety Policy, the inspected State Party may provide available data based on detection and monitoring, to the agreed extent necessary to satisfy concerns that may exist regarding the health and safety of the inspection team.

Section 3. Confidentiality

1. Matters related to confidentiality are governed by the Convention, including its Confidentiality Annex and paragraph 1 of Article VII, and the Organization's Policy on Confidentiality. The specific arrangements for implementing the provisions of the Convention and the Organization's Policy on Confidentiality in relation to the protection of confidential information at the facility are contained in Attachment 3.

2. Upon request, the inspected State Party will procure a container to be placed under joint seal to maintain documents that the inspection team, inspected State Party, or the facility representative decides to keep as reference for future inspections. The inspected State Party shall be reimbursed by the Organization for the purchase of such container.

3. All documents, including photographs, provided to the inspection team will be controlled as follows:

(a) *Information to be taken off-site.* Information relevant to the finalization of the preliminary factual findings that the inspected State Party permits the inspection team to take off-site will be marked and numbered by the inspected State Party. In accordance with the inspected State Party's Procedures for Information Control, markings on the information will clearly state that the inspection team may take it off-site and will contain a classification pursuant to the Organization's Policy on Confidentiality at a level requested by the inspected State Party. The representative of the facility will acknowledge the release of such information in writing prior to disclosure to the inspection team.

(b) *Information restricted for use on-site.* Information that the inspected State Party permits the inspection team to use on-site during inspections but not take off-site will be marked and numbered by the inspected State Party. In accordance with the inspected State Party's Procedures for Information Control, markings on the information will clearly restrict its use on-site and will contain a classification pursuant to the Organization's Policy on Confidentiality at a level requested by the inspected State Party. The representative of the facility will acknowledge the release of such information in writing prior to disclosure to the inspection team. Upon conclusion of the inspection, the inspection team shall return the information to the inspected State Party, and the facility representative shall acknowledge receipt in writing. If so requested by the inspection team, the

information can be placed in the joint sealed container for future reference.

(c) *Information restricted for use on-site and requiring direct supervision.* Information that the inspected State Party permits the inspection team to use on-site only under direct supervision of the inspected State Party or the representative of the inspected facility will be marked and numbered by the inspected State Party. In accordance with the inspected State Party's Procedures for Information Control, markings on the information will clearly restrict its use on-site under direct supervision and will contain a classification pursuant to the Organization's Policy on Confidentiality at a level requested by the inspected State Party. The representative of the facility will acknowledge the release of such information in writing prior to disclosure to the inspection team. The inspection team shall return the information to the inspected State Party immediately upon completion of review and the facility representative shall acknowledge receipt in writing. If so requested by the inspection team, the information can be placed in the joint sealed container for future reference.

Section 4. Media and Public Relations

1. Inspection team media and public relations are governed by the Organization's Media and Public Relations Policy. The specific arrangements for the inspection team's contacts with the media or the public, if any, in relation to inspections of the facility are contained in Attachment 4.

Section 5. Inspection Equipment

1. As agreed between the inspected State Party and the Organization, the approved equipment listed in Part A of Attachment 5 and with which the inspected State Party has been given the opportunity to familiarize itself will, at the discretion of the Organization and on a routine basis, be used specifically for the Schedule 1 inspection. The equipment will be used in accordance with the Convention, the relevant decisions taken by the Conference of States Parties, and any agreed procedures contained in Attachment 5.

2. The provisions of paragraph 1 above are without prejudice to paragraphs 27 to 29 of Part II of the Verification Annex.

3. The items of equipment available on-site, not belonging to the Organization, which the inspected State Party has volunteered to provide to the inspection team upon its request for use on-site during the conduct of inspections, together with any procedures for the use of such equipment, if required, any requested support which can be provided, and conditions for the provision of equipment are listed in Part B of Attachment 5. Prior to any use of such equipment, the inspection team may confirm that the performance characteristics of such equipment are consistent with those for similar Organization-approved equipment, or, with respect to items of equipment which are not on the list of Organization-approved equipment, are consistent with the intended purpose for using such equipment.²

² I.e. The inspection team may confirm that the performance characteristics of such equipment meet

4. Requests from the inspection team for the inspected State Party during the inspection to provide equipment mentioned in paragraph 3 above shall be made in writing by an authorized member of the inspection team using the form contained in Attachment 5. The same procedure will also apply to other requests of the inspection team in accordance with paragraph 30 of Part II of the Verification Annex.

5. Agreed procedures for the decontamination of any equipment are contained in Part C of Attachment 5.

6. For the purpose of verification, the list of agreed on-site monitoring instruments, if any, as well as agreed conditions, procedures for use, maintenance, repair, modification, replacement and provisions for the inspected State Party's support, if required, installation points, and security measures to prevent tampering with such on-site monitoring instruments are contained in Part D of Attachment 5.

Section 6. Pre-Inspection Activities

1. The inspection team shall be given a pre-inspection briefing by the representatives of the facility in accordance with paragraph 37 of Part II of the Verification Annex. The pre-inspection briefing shall include:

(a) information on the facility as described in Attachment 6;

(b) health and safety specifications described in Section 2 above and detailed in Attachment 2;

(c) any changes to the above-mentioned information since the last inspection; and

(d) information on administrative and logistical arrangements additional to those contained in Attachment 10, if any, that shall apply during the inspection, as contained in Section 10.

2. Any information about the facility that the inspected State Party has volunteered to provide to the inspection team during the pre-inspection briefing with indications as to which information may be transferred off-site is referenced in Part B of Attachment 6.

Section 7. Conduct of the Inspection

7.1 Standing Arrangements

1. The inspection period shall begin immediately upon completion of the pre-inspection briefing unless agreed otherwise. Upon completion of the pre-inspection briefing, the inspected State Party may, on a voluntary basis, provide a site tour at the request of the inspection team. Arrangements for the conduct of a site tour, if any, are contained in Attachment 7.

2. Upon conclusion of the pre-inspection briefing, the inspection team leader shall provide to the designated representative of the inspected State Party a preliminary inspection plan to facilitate the conduct of the inspection.

3. Before commencement of inspection activities, the inspection team leader shall inform the representative of the inspected State Party about the initial steps to be taken in implementing the inspection plan. The plan will be adjusted by the inspection team as circumstances warrant throughout the inspection process in consultation with the

the technical requirements necessary to support the inspection task intended to be accomplished.

inspected State Party as to its implementability in regard to paragraph 40 of Part II of the Verification Annex.

4. The activities of the inspection team shall be so arranged as to ensure the timely and effective discharge of its functions and the least possible inconvenience to the inspected State Party and disturbance to the facility inspected. The inspection team shall avoid unnecessarily hampering or delaying the operation of a facility and avoid affecting safety. In particular, the inspection team shall not operate the facility. If the inspection team considers that, to fulfil the mandate, particular operations should be carried out in the facility, it shall request the designated representative of the facility to have them performed.

5. At the beginning of the inspection, the inspection team shall have the right to confirm the precise location of the facility utilizing visual and map reconnaissance, a site diagram, or other suitable techniques.

6. The inspection team shall, upon request of the inspected State Party, communicate with the personnel of the facility only in the presence of or through a representative of the inspected State Party.

7. The inspected State Party shall, upon request, provide a securable work space for the inspection team, including adequate space for the storage of equipment. The inspection team shall have the right to seal its work space.

7.2 Access to the Declared Facility

1. The object of the inspection shall be the declared Schedule 1 facility as referenced in Attachment 6.

2. Pursuant to paragraph 45 of Part II of the Verification Annex, the inspection team shall have unimpeded access to the declared facility in accordance with the relevant Articles and Annexes of the Convention and Attachments 6, 8, and 9.

7.3 Access to and Inspection of Documentation and Records

1. The agreed list of the documentation and records to be routinely made available for inspection purposes to the inspection team by the inspected State Party during an inspection, as well as arrangements with regard to access to such records for the purpose of protecting confidential information, are contained in Attachment 8. Such documentation and records will be provided to the inspection team upon request.

2. Only those records placed in the custody of the inspection team that are attached to the preliminary factual findings in accordance with Section 3 may leave the premises. Those records placed in the custody of the inspection team that are not attached to the preliminary factual findings must be retained in the inspection team's on-site container or returned to the inspected State Party.

7.4 Sampling and Analysis

1. Without prejudice to paragraphs 52 to 58 of Part II of the Verification Annex, procedures for sampling and analysis for verification purposes are contained in Attachment 9.

2. Sampling and analysis, for inspection purposes, may be carried out to fulfill the

inspection mandate. Each such sample will be split into a minimum of four parts at the request of the inspection team in accordance with Part C of Attachment 9. One part shall be analyzed in a timely manner on-site. The second part of the split sample may be held for the inspection team for future reference and, if necessary, analysis off-site at laboratories designated by the Organization. That part of the sample may be destroyed at any time in the future upon the decision of the inspection team but in any case no later than 60 days after it was taken. The third part may be retained by the inspected State Party. The fourth part may be retained by the facility.

3. Pursuant to paragraph 52 of the Part II of the Verification Annex, representatives of the inspected State Party or facility shall take samples at the request of the inspection team in the presence of inspectors. The inspected State Party will inform the inspection team of the authorized facility representative's³ determination of whether the sample shall be taken by representatives of the facility or the inspection team or other individuals present. If inspectors are granted the right to take samples themselves in accordance with paragraph 52 of Part II of the Verification Annex, the relevant advance agreement between the inspection team and the inspected State Party shall be in writing. The representatives of the inspected State Party or of the inspected facility shall have the right to be present during sampling. Agreed conditions and procedures for such sample collection are contained in Part B of Attachment 9 to this Agreement.

4. Facility sampling equipment shall as a rule be used for taking samples required for the purposes of the inspection. This is without prejudice to the right of the inspection team pursuant to paragraph 27 of Part II of the Verification Annex to use its own approved sampling equipment in accordance with paragraph 1 of Section 5 and Parts A and B of Attachment 5 to this Agreement.

5. Should the inspection team request that a sample be taken and the inspected State Party be unable to accede or agree to the request, the inspected State Party will make every reasonable effort to satisfy the inspection team's concerns by other means to enable the inspection team to fulfil its mandate. The inspected State Party will provide a written explanation for its inability to accede or agree to the request. Any such response shall be supported by relevant document(s). The explanation of the inspected State Party shall be included in the preliminary factual findings.

6. In accordance with paragraph 53 of Part II of the Verification Annex, where possible, the analysis of samples shall be performed on-site and the inspection team shall have the right to perform on-site analysis of samples using approved equipment brought by it for the splitting, preparation, handling, analysis, integrity and transport of samples. The assistance that will be provided by the inspected State Party and the analysis

³The authorized facility representative is the owner or the operator, occupant or agent in charge of the premises being inspected.

procedures to be followed are contained in Part D of Attachment 9 to this Agreement.

7. The inspection team may request the inspected State Party to perform the analysis in the inspection team's presence. The inspection team shall have the right to be present during any sampling and analysis conducted by the inspected State Party.

8. The results of such analysis shall be reported in writing as soon as possible after the sample is taken.

9. The inspection team shall have the right to request repeat analysis or clarification in connection with ambiguities.

10. If at any time, and for any reason, on-site analysis is not possible, the inspection team has the right to have sample(s) analyzed off-site at Organization-designated laboratories. In selecting such designated laboratories for the off-site analysis, the Organization will give due regard to requirements of the inspected State Party.

11. Transportation of samples will be in accordance with the procedures outlined in Part E of Attachment 9.

12. If at any time, the inspected State Party or facility representative determines that inspection team on-site analysis activities are not in accordance with the facility agreement or agreed analysis procedures, or otherwise pose a threat to safety or environmental regulations or laws, all analysis activities will immediately cease at the direction of the facility representative. If both parties cannot agree to proceed with the analysis, the inspection team will document this in its preliminary factual findings.

13. Conditions and procedures for the disposal of hazardous materials generated during sampling and on-site analysis during the inspection are contained in Part F of Attachment 9 to this Agreement.

7.5 Arrangements for Interviews

1. The inspection team shall have the right, subject to applicable United States legal protections for individuals, to interview any facility personnel in the presence of representatives of the inspected State Party with the purpose of establishing relevant facts in accordance with paragraph 46 of Part II of the Verification Annex and inspected State Party's policy and procedures. Agreed procedures for conducting interviews are contained in Attachment 11.

2. The inspection team will submit to the inspected State Party names and/or positions of those desired for interviews. The requested individual(s) will be made available to the inspection team no later than 24 hours after submission of the formal request, unless agreed otherwise. The inspection team may also be requested to submit questions in writing prior to conducting interviews. The specific timing and location of interviews will be determined with the facility in coordination with the inspected State Party and consistent with adequate notification of the interviewees, and minimizing the operation impacts on the facility and individuals to be interviewed.

3. The inspected State Party may recommend to the inspection team that interviews be conducted in either "panel" or individual formats. At a minimum, interviews will be conducted with a member of the facility staff and an inspected State

Party representative. Legal counsel may also be required to be present by the inspected State Party. The interview may be interrupted for consultation between the interviewee, the facility representative, and the inspected State Party representative.

4. The inspected State Party will have the right to restrict the content of interviews to information directly related to the mandate or purpose of the inspection.

5. Outside the interview process and in discharging their functions, inspectors shall communicate with personnel of the facility only through the representative(s) of the inspected State Party.

7.6 Communications

1. In accordance with paragraph 44 of Part II of the Verification Annex, the inspection team shall have the right to communicate with the headquarters of the Technical Secretariat. For this purpose they may use their own, duly certified approved equipment, in accordance with paragraph 1 of Section 5.

2. In case the inspection team and the inspected State Party agree to use any of the inspected State Party's communications equipment, the list of such equipment and the provisions for its use are contained in Part B of Attachment 5 to this Agreement.

3. The agreed means of communication between inspection team sub-teams in accordance with paragraph 44 of Part II of the Verification Annex are contained in Part E of Attachment 5.

7.7 Photographs

1. In accordance with the provisions of paragraph 48 of Part II of the Verification Annex, the Confidentiality Annex and inspected State Party's policy and procedures, the inspection team shall have the right to have photographs taken at their request by the representatives of the inspected State Party or the inspected facility. One camera of the instant development type furnished by the inspection team or the inspected State Party shall be used for taking identical photographs in sequence. Cameras furnished by the inspection team will remain either in their work space or equipment storage area except when carried by inspection team members for a specific inspection activity. Cameras will only be used for specified inspection purposes. Personal cameras are not allowed to be taken to the facility unless otherwise agreed by the inspected State Party.

2. Pursuant to the Confidentiality Annex, the inspected State Party shall have the right to determine that contents of the photographs conform to the stated purpose of the photographs. The inspection team shall determine whether photographs conform to those requested and, if not, repeat photographs shall be taken. Photographs that do not meet the satisfaction of both sides will be destroyed by the inspected State Party in the presence of the inspection team. The inspection team, the inspected State Party and the facility, if so requested, shall each retain one copy of every photograph. The copies shall be signed, dated, and classified, in accordance with Section 3, and note the location and subject of the photograph and carry the same identification number. Agreed

procedures for photography are contained in Attachment 12.

3. The representative of the inspected facility has the right to object to the use of photographic equipment in specific areas, buildings or structures if such use would be incompatible with safety or fire regulations given the characteristics of the chemicals stored in the area in question. Restrictions for use are contained in Parts A and/or B of Attachment 5 to this Agreement. If the objection is raised due to safety concerns, the inspected State Party will, if possible, furnish photographic equipment that meets the regulations. If the use of photographic equipment is not permissible at all in specific areas, buildings or structures for the reasons stated above, the inspected State Party shall provide a written explanation of its objection to the inspection team leader. The explanation, along with the inspection team leader's comments will be included in the inspection team's preliminary factual findings.

Section 8. Visits

1. This section applies to visits conducted pursuant to paragraphs 15 and 16 of Part III of the Verification Annex.

2. The size of a team on such a visit shall be kept to the minimum number of personnel necessary to perform the specific tasks for which the visit is being conducted and shall in any case not exceed the size of inspection team referenced in paragraph 5 of Section 1.

3. The duration of the visit pursuant to this Section shall be limited to the minimum time required to perform the specific tasks relating to monitoring systems for which the visit is being conducted and in any case shall not exceed the estimated period of inspection referenced in Part B of Attachment 1 of this Agreement.

4. Access provided to the monitoring systems during the visit shall be limited to that required to perform the specific tasks for which the visit is being conducted, unless otherwise agreed to with the inspected State Party.

5. General arrangements and notifications for a visit shall be the same as for the conduct of an inspection.

Section 9. Debriefing and Preliminary Findings

1. In accordance with paragraph 60 of Part II of the Verification Annex, upon completion of an inspection the inspection team shall meet with representatives of the inspected State Party and the personnel responsible for the inspection site to review the preliminary findings of the inspection team and to clarify any ambiguities. The inspection team shall provide to the representatives of the inspected State Party its preliminary findings in written form according to a standardized format, together with a list of any samples and copies of written information and data gathered and other material to be taken off-site. The document shall be signed by the head of the inspection team. In order to indicate that he has taken notice of the contents of the document, the representative of the inspected State Party shall countersign the document. The meeting shall be completed not later than 24 hours after the completion of the inspection.

2. The document on preliminary findings shall also include, inter alia, the list of results of analysis, if conducted on-site, records of seals, results of inventories, copies of photographs to be retained by the inspection team, and results of specified measurements. It will be prepared in accordance with the preliminary findings format referenced in Annex 5. Any substantive changes to this format will be made only after consultation with the inspected State Party.

3. Before the conclusion of the debriefing, the inspected State Party may provide comments and clarifications to the inspection team on any issue related to the conduct of the inspection. The inspection team shall provide to the representative of the inspected State Party its preliminary findings in written form sufficiently prior to the conclusion of the debriefing to permit the inspected State Party to prepare any comments and clarifications. The inspected State Party's written comments and clarifications shall be attached to the document on preliminary findings.

4. The inspection team shall depart from the site upon the conclusion of the meeting on preliminary findings.

Section 10. Administrative Arrangements

1. The inspected State Party shall provide or arrange for the provision of the amenities listed in detail in Attachment 10 to the inspection team throughout the duration of the inspection. The inspected State Party shall be reimbursed by the Organization for such costs incurred by the inspection team, unless agreed otherwise.

2. Requests from the inspection team for the inspected State Party to provide or arrange amenities shall be made in writing by an authorized member of the inspection team⁴ using the form contained in Attachment 10. Requests shall be made as soon as the need for amenities has been identified. The provision of such requested amenities shall be certified in writing by the authorized member of the inspection team. Copies of all such certified requests shall be kept by both parties.

3. The inspection team has the right to refuse extra amenities that in its view are not needed for the conduct of the inspection.

Section 11. Liabilities

1. Any claim by the inspected State Party against the Organization or by the Organization against the inspected State Party in respect of any alleged damage or injury resulting from inspections at the facility in accordance with this Agreement, without prejudice to paragraph 22 of the Confidentiality Annex, shall be settled in accordance with international law and, as appropriate, with the provisions of Article XIV of the Convention.

Section 12. Status of Attachments

1. The Attachments form an integral part of this Agreement. Any reference to the Agreement includes the Attachments. However, in case of any inconsistency

between this Agreement and any Attachment, the sections of the Agreement shall prevail.

Section 13. Amendments, Modifications and Updates

1. Amendments to the sections of this Agreement may be proposed by either Party and shall be agreed to and enter into force under the same conditions as provided for under paragraph 1 of Section 15.

2. Modifications to the Attachments of this Agreement, other than Attachment 1 and Part B of Attachment 5, may be agreed upon at any time between the representative of the Organization and the representative of the inspected State Party, each being specifically authorized to do so. The Director-General shall inform the Executive Council about any such modifications. Each Party to this Agreement may revoke its consent to a modification not later than four weeks after it had been agreed upon. After this time period the modification shall take effect.

3. The inspected State Party will update Part A of Attachment 1 and Part B of Attachment 5 and Attachment 6 as necessary for the effective conduct of inspections. The Organization will update Part B of Attachment 1 and Annex 5, subject to paragraph 2 of Section 9, as necessary for the effective conduct of inspections.

Section 14. Settlement of Disputes

1. Any dispute between the Parties that may arise out of the application or interpretation of this Agreement shall be settled in accordance with Article XIV of the Convention.

Section 15. Entry Into Force

1. This Agreement shall enter into force after approval by the Executive Council and signature by the two Parties. If the inspected State Party has additional internal requirements, it shall so notify the Organization in writing by the date of signature. In such cases, this Agreement shall enter into force on the date that the inspected State Party gives the Organization written notification that its internal requirements for entry into force have been met.

Section 16. Duration and Termination.

1. This Agreement shall cease to be in force when, as determined by the Executive Council, the provisions of paragraphs 3 and 8 of Article VI and Part VI of the Verification Annex no longer apply to this facility.

Done at _____ in _____ copies, in English, each being equally authentic.⁵

ATTACHMENTS

The following attachments shall be completed where applicable.

Attachment 1: General Factors for the

Conduct of Inspections

Attachment 2: Health and Safety Requirements and Procedures

Attachment 3: Specific Arrangements in Relation to the Protection of Confidential Information at the Facility

Attachment 4: Arrangements for the Inspection Team's Contacts with the Media or the Public

Attachment 5: Inspection Equipment

Attachment 6: Information on the Facility

Provided in Accordance with Section 6

Attachment 7: Arrangements for Site Tour

Attachment 8: Records Routinely Made

Available to the Inspection Team at the Facility

Attachment 9: Sampling and Analysis for Verification Purposes

Attachment 10: Administrative Arrangements

Attachment 11: Agreed Procedures for Conducting Interviews

Attachment 12: Agreed Procedures for Photography

ATTACHMENT 1

General Factors for the Conduct of Inspections

Part A. To Be Provided and Updated by the inspected State Party:

1. Schedule 1 facility(s) working hours, if applicable: ⁶ ____ hrs to ____ hrs (local time) (days)

2. Working days: _____

3. Holidays or other non-working days: _____

4. Inspection activities which could/could not ⁷ be supported during non-working hours with notation of times and activities: _____

5. Any other factors that could adversely affect the effective conduct of inspections:

(a) inspection requests:

Should the facility withhold consent to an inspection, the inspected State Party shall obtain a search warrant from a United States magistrate judge. Upon receipt of a warrant, the inspected State Party will accede to the Organization's request to conduct an inspection. Such inspection will be carried out in accordance with the terms and conditions of the warrant.

(b) other: _____

6. Other: notification procedures are contained in Annex 6.

Part B. To Be Provided and Updated by the Organization:

1. Inspection frequency: _____

2. Inspection intensity:

(a) maximum estimated period of inspection (for panning purposes): _____

(b) approximate inspection team size: _____

(c) estimated volume and weight of equipment to be brought on-site: _____

ATTACHMENT 2

Health and Safety Requirements and Procedures

Part A. Basic Principles

1. Applicable health and safety regulations of the Organization, with agreed variations from strict implementation, if any: _____

2. Health and safety regulations applicable at the facility: _____

⁶ All references to time use a 24 hour clock.

⁷ Choose one option.

⁴ The name of the authorized member(s) of the inspection team should be communicated to the inspected State Party no later than at the Point of Entry.

⁵ The language(s) to be chosen by the inspected State Party from the languages of the Convention shall be the same as the language(s) referred to in paragraph 6 of Section 1 of this Agreement.

(a) federal regulations:	Part D. Medical Requirements	Part B. Specific Procedures for Access by the Inspection Team to Confidential Areas or Materials		
(b) state regulations:	1. Applicable medical standards of the inspected State Party and, in particular, the inspected facility:			
(c) local regulations:	2. Medical screening procedures for members of the inspection team:	Procedures in Relation to the Certification by the Inspection Team of the Receipt of Any Documents Provided by the Inspected Facility:		
(d) facility regulations:	3. Agreed medical assistance to be provided by the inspected State Party:			
3. Health and safety requirements and regulations agreed between the inspected State Party and the Organization:	4. Emergency medical evacuation procedures:	Part D. Storage of Confidential Documents at the Inspected Facility		
Part B. Detection and Monitoring	5. Agreed additional medical measures to be taken by the inspection team:	1. Procedures in relation to the storage of confidential documents or use of a dual control container on-site, if applicable: Information under restrictions provided for in the Confidentiality Annex and as such to be kept in the dual control container under joint seal shall be available to the inspection team leader and/or an inspector designated by him from the beginning of the pre-inspection briefing until the end of the debriefing upon completion of the inspection. If copies of information under dual control are permitted to be attached to the preliminary factual findings by the inspected State Party, they shall be made by the inspected State Party and retained under dual control until the debriefing. Should the medium on which such information is recorded become unusable, it shall be replaced without delay by the representative of the inspected State Party.		
1. Applicable specific safety standards for workplace chemical exposure limits and/or concentrations which should be observed during the inspection, if any:	6. Procedures for emergency response to chemical casualties of the inspection team:			
2. Procedures for detection and monitoring in accordance with the Organization’s Health and Safety Policy, including data to be collected by, or provided to, the inspection team:	Part E. Modification of Inspection Activities			
Part C. Protection	1. Modification of inspection activities due to health and safety reasons, and agreed alternatives to accomplish the inspection goals:	2. The dual control container will be placed		
1. Protective equipment to be provided by the Organization and agreed procedures for equipment certification and use, if required:	ATTACHMENT 3	3. Information meeting the strict requirements for restriction pursuant to the Confidentiality Annex, and to be maintained in the dual control container located at the inspected facility between inspections is listed below:		
2. Protective equipment to be provided by the inspected State Party, and agreed procedures, personnel training, and personnel qualification tests and certification required; and agreed procedures for use of the equipment:	Specific Arrangements in Relation to the Protection of Confidential Information at the Facility			
	Part A. Inspected State Party’s Procedures for Designating and Classifying Documents Provided to the Inspection Team			
	See Annex 3 for the Organization’s Policy on Confidentiality and Annex 7 for the inspected State Party’s Procedures for Information Control.			
Reference	Type of data	Recorded media	Volume	Reasons for restrictions/re-marks

Part E. Procedures for the Removal Off-Site of Any Written Information, Data, and Other Material Gathered by the Inspection Team

Part F. Procedures for Providing the Representatives of the inspected State Party with Copies of Written Information, Inspector's Notebooks, Data and Other Material Gathered by the Inspection Team

Part G. Other Arrangements, If Any

1. Unless specified otherwise, all facility information shall be returned to the

inspected State Party at the completion of the inspection. No copies of facility information shall be made in any manner by the inspection team or the Organization.

2. Facility information shall not be released to the public, other States Parties, or the media without the specific permission of the inspected State Party, after consultation with the facility.

3. Facility information shall not be transmitted, copied or retained electronically without the specific permission of the inspected State Party after consultation with the facility. All transmissions of information off-site shall be done in the presence of the inspected State Party.

4. Information not relevant to the purpose of the inspection will be purged from documents, photographs, etc. prior to release to the inspection team.

ATTACHMENT 4

Arrangements for the Inspection Team's Contacts with the Media or the Public

ATTACHMENT 5

Inspection Equipment

Part A: List of Equipment

Item of approved inspection equipment	Agreed procedures for use			
	Nature of restriction(s) (location, time, periods, etc.), if any	Indication of reason(s) (safety, confidentiality, etc.)	Special handling or storage requirements	Alternative for meeting inspection requirement(s), if so required by the inspection team

Part B. Equipment which the inspected State Party Has Volunteered to Provide

Item of equipment	Procedures for use	Support to be provided, if required	Conditions (timing, costs, if any)

Part C. Procedures for the Decontamination of Equipment

Item of equipment	Procedures for use

Part D. Agreed On-Site Monitoring Instruments

ATTACHMENT 6

Information on the Facility Provided in Accordance with Section 6

Attachment 8

Records Routinely Made Available to the Inspection Team at the Facility (i.e., Identify Records and Data):

Part E. Means of Communication between Inspection Team Sub-Teams

Part A. Topics of Information for the Pre-Inspection Briefing

Attachment 9

Sampling and Analysis for Verification Purposes

REQUEST FOR AND CERTIFICATION OF EQUIPMENT AVAILABLE ON SITE TO BE PROVIDED IN ACCORDANCE WITH PARAGRAPH 3 OF SECTION 5

Date: _____
 Facility: _____
 Inspection number: _____
 Name of the authorized member of the inspection team: _____
 Type and number of item(s) of equipment requested: _____

1. Specification of the elements constituting the declared facility, including their physical location(s) (i.e., detail the areas, equipment, and computers), with indications as to which information may be transferred off-site: _____

Part A. Agreed Sampling Points Chosen With Due Consideration to Existing Sampling Points Used by the Facility(s) Operator(s)

Approval of the request by inspected State Party: _____

2. Procedures for unimpeded access within the declared facility: ^s _____

Part B. Procedures for Taking Samples

Comments on the request by the inspected State Party: _____

3. Other: _____

Part C. Procedures for Sample Handling and Sample Splitting

Indication of the costs, if any, for the use of the equipment requested/volunteered: _____

Part B. Any Information about the Facility that the inspected State Party Volunteers to Provide to the Inspection Team during the Pre-Inspection Briefing with Indications as to which May Be Transferred Off-Site _____

Part D. Procedures for On-Site Sample Analysis, If Any

Certification of the authorized member of the inspection team that the requested item(s) of equipment have been provided: _____

ATTACHMENT 7

Arrangements for Site Tour

Part E. Procedures for Off-Site Analysis, If Any

Comments, if any, by the authorized member of the inspection team in regard to the equipment provided: _____

The inspected State Party may provide a site tour at the request of the inspection team. The inspected State Party may provide explanations to the inspection team during the site tour. _____

Part F. Procedures for Transporting Samples

Name and signature of the authorized member of the inspection team: _____

Part G. Arrangements in Regard to the Payment of Costs Associated with the Disposal or Removal by the inspected State Party of Hazardous Waste Generated during Sampling and On-Site Analysis during the Inspection _____

Name and signature of the representative of the inspected State Party: _____

^sList the areas, equipment, and computers, if any, that are not relevant to the inspection mandate or that contain confidential business information that does not need to be divulged in order to comply with the inspection mandate.

Attachment 10

Administrative Arrangements

Part A. The Amenities Detailed Below Shall Be Provided to the Inspection Team by the inspected State Party, Subject to Payment as Indicated in Part B Below

1. International and local official communication (telephone, fax), including calls/faxes between site and headquarters:

2. Vehicles: _____
 3. Working room, including adequate space for the storage of equipment: _____
 4. Lodging: _____
 5. Meals: _____

6. Medical care: _____
 7. Interpretation Services: _____
 (a) number of interpreters: _____
 (b) estimated interpretation time: _____
 (c) languages: _____
 8. Other: _____

Part B. Distribution of Costs for Provision of Amenities by the inspected State Party (check one option for each amenity provided as appropriate):

Paragraphs 1–8 in part A above	To be paid directly by the organization after the inspection	To be paid by the inspection team on behalf of the organization during the in-country period	To be paid by the inspected state party and subsequently reimbursed by the organization	To be paid by the inspected state party
1				
2				
3				
4				
5				
6				
7				
8				

Part C. Other Arrangements.

1. Number of sub-teams (consisting of no less than two inspectors per sub-team) to be accommodated: _____

REQUEST FOR AND CERTIFICATION OF AMENITIES TO BE PROVIDED OR ARRANGED

Date: _____
 Facility: _____
 Inspection number: _____
 Category of amenities requested: _____

Description of amenities requested: _____

Approval of the request by the inspected State Party: _____

Comments on the request by the inspected State Party: _____

Indication of the costs for the amenities requested: _____

Certification of the authorized member of the inspection team that the requested amenities have been provided: _____

Comments by the authorized member of the inspection team in regard to the quality of the amenities provided: _____

Name and signature of the authorized member of the inspection team: _____

Name and signature of the representative of the inspected State Party: _____

ATTACHMENT 11

Agreed Procedures for Conducting Interviews

ATTACHMENT 12

Agreed Procedures for Photography

ANNEXES

Note: These annexes, inter alia, can be attached if requested by the inspected State Party.

Annex 1: Organization's Media and Public Relations Policy

Annex 2: Organization's Health and Safety Policy and Regulations

Annex 3: Organization's Policy on Confidentiality

Annex 4: Facility Declaration

Annex 5: Preliminary and Final Inspection Report Formats

Annex 6: Inspected State Party's Procedures for Inspection Notification

Annex 7: Inspected State Party's Procedures for Information Control

Supplement No. 3 to Part 716—Schedule 2 Model Facility Agreement

Draft Facility Agreement Between the Organization for the Prohibition of Chemical Weapons and the Government of the United States of America Regarding On-Site Inspections at the _____ Schedule 2 Plant Site Located at _____

The Organization for the Prohibition of Chemical Weapons, hereinafter referred to as "Organization," and the Government of the United States of America, hereinafter referred to as "inspected State Party," both constituting the Parties to this Agreement, have agreed on the following arrangements in relation to the conduct of inspections pursuant to paragraph 4 of Article VI of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, hereinafter referred to as "the Convention," at (insert name of the plant site, its precise location, including the address), declared under paragraphs 7 and 8 of Article VI, hereinafter referred to as "plant site":

Section 1. General Provisions

1. The purpose of this Agreement is to facilitate the implementation of the provisions of the Convention in relation to inspections conducted at the plant site pursuant to paragraph 4 of Article VI of the Convention, and in accordance with the

obligations of the inspected State Party and the Organization under the Convention.

2. Nothing in this Agreement shall be applied or interpreted in a way that is contradictory to the provisions of the Convention, including paragraph 1 of Article VII.¹ In case of inconsistency between this Agreement and the Convention, the Convention shall prevail.

3. The Parties have agreed to apply for planning purposes the general factors contained in Attachment 1.

4. The frequency and intensity of inspections at the plant site are given in Part B of Attachment 1 and reflect the risk assessment of the Organization conducted pursuant to paragraphs 18, 20 and 24 of Part VII of the Verification Annex.

5. The inspection team shall consist of no more than _____ persons.

6. The language for communication between the inspection team and the inspected State Party during inspections shall be English.

7. The period of inspection shall not last more than ninety-six (96) hours, unless an extension has been agreed to by the inspected State Party and the inspection team.

8. In case of any development due to circumstances brought about by unforeseen events or acts of nature, which could affect inspection activities at the plant site, the inspected State Party shall notify the Organization and the inspection team as soon as practically possible.

9. In case of need for the urgent departure, emergency evacuation or urgent travel of inspector(s) from the territory of the inspected State Party, the inspection team leader shall inform the inspected State Party of such a need. The inspected State Party shall arrange without undue delay such departure, evacuation or travel. In all cases, the inspected State Party shall determine the means of transportation and routes to be taken. The costs of such departure, evacuation or travel of inspectors shall be borne by the Organization.

¹ Each State Party shall, in accordance with its constitutional processes, adopt the necessary measures to implement its obligations under this Convention.

10. Inspectors shall wear identification badges at all times when on the premises of the plant site.

Section 2. Health and Safety

1. Health and safety matters during inspections are governed by the Convention, the Organization's Health and Safety Policy and Regulations, and applicable national, local and plant site safety and environmental regulations. The specific arrangements for implementing the relevant provisions of the Convention and the Organization's Health and Safety Policy in relation to inspections at the plant site are contained in Attachment 2.

2. Pursuant to paragraph 1 of this section, all applicable health and safety regulations relevant to the conduct of the inspection at the plant site are listed in Attachment 2 and shall be made available for use by the inspection team at the plant site.

3. In case of the need to modify any health- and safety-related arrangements at the plant site contained in Attachment 2 to this Agreement bearing on the conduct of inspections, the inspected State Party shall notify the Organization. Any such modification shall apply provisionally until the inspected State Party and the Organization have reached agreement on this issue. In case no agreement has been reached by the time of the completion of the inspection, the relevant information may be included in the preliminary factual findings. Any agreed modification shall be recorded in Attachment 2 to this Agreement in accordance with paragraph 2 of Section 12 of this Agreement.

4. In the course of the pre-inspection briefing the inspection team shall be briefed by the representatives of the plant site on all health and safety matters which, in the view of those representatives, are relevant to the conduct of the inspection at the plant site, including:

(a) the health and safety measures at the Schedule 2 plant(s) to be inspected and the likely risks that may be encountered during the inspection;

(b) any additional health and safety or regulations that need to be observed at the plant site;

(c) procedures to be followed in case of an accident or in case of other emergencies, including a briefing on emergency signals, routes and exits, and the location of emergency meeting points and medical facilities; and

(d) specific inspection activities which must be limited within particular areas at the plant site, and in particular within those Schedule 2 plant(s) to be inspected under the inspection mandate, for reasons of health and safety.

Upon request, the inspection team shall certify receipt of any such information if it is provided in written form.

5. During the course of an inspection, the inspection team shall refrain from any action which by its nature could endanger the safety of the team, the plant site, or its personnel or could cause harm to the environment. Should the inspected State Party refuse certain inspection activities, it may explain the circumstances and safety considerations involved, and shall provide alternative

means for accomplishing the inspection activities.

6. In the case of emergency situations or accidents involving inspection team members while at the plant site, the inspection team shall comply with the plant site's emergency procedures and the inspected State Party shall to the extent possible provide medical and other assistance in a timely and effective manner with due regard to the rules of medical ethics if medical assistance is requested. Information on medical services and facilities to be used for this purpose is contained in Part D of Attachment 2. If the Organization undertakes other measures for medical support in regard to inspection team members involved in emergency situations or accidents, the inspected State Party will render assistance to such measures to the extent possible. The Organization will be responsible for the consequences of such measures.

7. The inspected State party shall, to the extent possible, assist the Organization in carrying out any inquiry into an accident or incident involving a member of the inspection team.

8. If, for health and safety reasons given by the inspected State Party, health and safety equipment of the inspected State Party is required to be used by the inspection team, the cost so incurred shall be borne by the inspected State Party.

9. The inspection team may use its own approved health and safety equipment. If the inspected State Party determines it to be necessary, the inspected State Party shall conduct a fit test on masks brought with the inspection team. If the inspected State Party so requests on the basis of confirmed contamination or hazardous waste requirements or regulations, any such piece of equipment involved in the inspection activities will be left at the plant site at the end of the inspection. The inspection team reserves the right to destroy equipment left at the plant site or witness its destruction by agreed procedures. The inspected State Party will reimburse the Organization for the loss of the inspection team's equipment.

10. In accordance with the Organization's Health and Safety Policy, the inspected State Party may provide available data based on detection and monitoring, to the agreed extent necessary to satisfy concerns that may exist regarding the health and safety of the inspection team.

Section 3. Confidentiality

1. Matters related to confidentiality are governed by the Convention, including its Confidentiality Annex and paragraph 1 of Article VII, and the Organization's Policy on Confidentiality. The specific arrangements for implementing the provisions of the Convention and the Organization's Policy on Confidentiality in relation to the protection of confidential information at the plant site are contained in Attachment 3.

2. Upon request, the inspected State Party will procure a container to be placed under joint seal to maintain documents that the inspection team, inspected State Party, or the plant site representative decides to keep as reference for future inspections. The inspected State Party shall be reimbursed by

the Organization for the purchase of such container.

3. All documents, including photographs, provided to the inspection team will be controlled as follows:

(a) *Information to be taken off-site.* Information relevant to the finalization of the preliminary factual findings that the inspected State Party permits the inspection team to take off-site will be marked and numbered by the inspected State Party. In accordance with the inspected State Party's Procedures for Information Control, markings on the information will clearly state that the inspection team may take it off-site and will contain a classification pursuant to the Organization's Policy on Confidentiality at a level requested by the inspected State Party. The representative of the facility will acknowledge the release of such information in writing prior to disclosure to the inspection team.

(b) *Information restricted for use on-site.* Information that the inspected State Party permits the inspection team to use on-site during inspections but not take off-site will be marked and numbered by the inspected State Party. In accordance with the inspected State Party's Procedures for Information Control, markings on the information will clearly restrict its use on-site and will contain a classification pursuant to the Organization's Policy on Confidentiality at a level requested by the inspected State Party. The representative of the facility will acknowledge the release of such information in writing prior to disclosure to the inspection team. Upon conclusion of the inspection, the inspection team shall return the information to the inspected State Party, and the facility representative shall acknowledge receipt in writing. If so requested by the inspection team, the information can be placed in the joint sealed container for future reference.

(c) *Information restricted for use on-site and requiring direct supervision.* Information that the inspected State Party permits the inspection team to use on-site only under direct supervision of the inspected State Party or the representative of the inspected facility will be marked and numbered by the inspected State Party. In accordance with the inspected State Party's Procedures for Information Control, markings on the information will clearly restrict its use on-site under direct supervision and will contain a classification pursuant to the Organization's Policy on Confidentiality at a level requested by the inspected State Party. The representative of the facility will acknowledge the release of such information in writing prior to disclosure to the inspection team. The inspection team shall return the information to the inspected State Party immediately upon completion of review and the facility representative shall acknowledge receipt in writing. If so requested by the inspection team, the information can be placed in the joint sealed container for future reference.

Section 4. Media and Public Relations

1. Inspection team media and public relations are governed by the Organization's Media and Public Relations Policy. The specific arrangements for the inspection

team's contacts with the media or the public, if any, in relation to inspections of the plant site are contained in Attachment 4.

Section 5. Inspection Equipment

1. As agreed between the inspected State Party and the Organization, the approved equipment listed in Part A of Attachment 5 and with which the inspected State Party has been given the opportunity to familiarize itself will, at the discretion of the Organization and on a routine basis, be used specifically for the Schedule 2 inspection. The equipment will be used in accordance with the Convention, the relevant decisions taken by the Conference of States Parties, and any agreed procedures contained in Attachment 5.

2. The provisions of paragraph 1 above are without prejudice to paragraphs 27 to 29 of Part II of the Verification Annex.

3. The items of equipment available on-site and not belonging to the Organization which the inspected State Party has volunteered to provide to the inspection team upon its request for use on-site during the conduct of inspections, together with any procedures for the use of such equipment, if required, any requested support which can be provided, and conditions for the provision of equipment are listed in Part B of Attachment 5. Prior to any use of such equipment, the inspection team may confirm that the performance characteristics of such equipment are consistent with those for similar Organization-approved equipment, or—with respect to items of equipment which are not on the list of Organization-approved equipment—are consistent with the intended purpose for using such equipment.²

4. Requests from the inspection team for the inspected State Party during the inspection to provide equipment mentioned in paragraph 3 above shall be made in writing by an authorized member of the inspection team using the form contained in Attachment 5. The same procedure will also apply to other requests of the inspection team in accordance with paragraph 30 of Part II of the Verification Annex.

5. Agreed procedures for the decontamination of any equipment are contained in Part C of Attachment 5.

Section 6. Pre-Inspection Activities

1. The inspection team shall be given a pre-inspection briefing by the representatives of the plant site in accordance with paragraph 37 of Part II of the Verification Annex. The pre-inspection briefing shall include:

- (a) information on the plant site as described in Attachment 6;
- (b) health and safety specifications described in Section 2 above and detailed in Attachment 2;
- (c) any changes to the above-mentioned information since the last inspection; and
- (d) information on administrative and logistical arrangements additional to those contained in Attachment 11, if any, that shall apply during the inspection, as contained in Section 9.

² i.e., The inspection team may confirm that the performance characteristics of such equipment meet the technical requirements necessary to support the inspection task intended to be accomplished.

2. Any information about the plant site that the inspected State Party has volunteered to provide to the inspection team during the pre-inspection briefing with indications as to which information may be transferred off-site is referenced in Part B of Attachment 6.

Section 7. Conduct of the Inspection

7.1 Standing Arrangements

1. The inspection period shall begin immediately upon completion of the pre-inspection briefing unless agreed otherwise.

2. Upon conclusion of the pre-inspection briefing, the inspection team leader shall provide to the designated representative of the inspected State Party a preliminary inspection plan to facilitate the conduct of the inspection.

3. Arrangements for the conduct of a site tour, if any, are contained in Attachment 7 to this Agreement.

4. Before commencement of inspection activities, the inspection team leader shall inform the representative of the inspected State Party about the initial steps to be taken in implementing the inspection plan. The plan will be adjusted by the inspection team as circumstances warrant throughout the inspection process in consultation with the inspected State Party as to its implementability in regard to paragraph 40 of Part II of the Verification Annex.³

5. The inspection team leader shall inform the representative of the inspected State Party during the inspection in a timely manner about each subsequent step to be taken by the inspection team in implementing the inspection plan. Without prejudice to paragraph 40 of Part II of the Verification Annex, this shall be done in time to allow the inspected State Party to arrange for the necessary measures to be taken to provide access and support to the inspection team as appropriate without causing unnecessary delay in the conduct of inspection activities.

6. At the beginning of the inspection, the inspection team shall have the right to confirm the precise location of the plant site utilizing visual and map reconnaissance, a site diagram, or other suitable techniques.

7. The inspection team shall, upon request of the inspected State Party, communicate with the personnel of the plant site only in the presence of or through a representative of the inspected State Party.

8. The inspected State Party shall, upon request, provide a securable work space for the inspection team, including adequate space for the storage of equipment. The inspection team shall have the right to seal its work space.

³ The activities of the inspection team shall be so arranged as to ensure the timely and effective discharge of its functions and the least possible inconvenience to the inspected State Party and disturbance to the plant site inspected. The inspection team shall avoid unnecessarily hampering or delaying the operation of the plant site and avoid affecting its safety. In particular, the inspection team shall not operate the plant site. If the inspection team considers that, to fulfil the mandate, particular operations should be carried out at the plant site, it shall request the designated representative of the plant site to have them performed.

7.2 Access to and Inspection of Areas, Buildings and Structures

1. The focus of the inspection shall be the declared Schedule 2 plant(s) within the declared plant site as referenced in Attachment 8. If the inspection team requests access to other parts of the plant site, access to these areas shall be granted in accordance with the obligation to provide clarification pursuant to paragraph 51 of Part II and paragraph 25 of Part VII of the Verification Annex, and in accordance with Attachment 8.

2. Pursuant to paragraph 45 of Part II of the Verification Annex, the inspection team shall have unimpeded access to the declared Schedule 2 plant(s) in accordance with the relevant Articles and Annexes of the Convention and Attachments 8, 9, and 10. Areas of the declared plant(s) likely to be inspected are mentioned in paragraph 28 of Part VII of the Verification Annex. Pursuant to Section C of Part X of the Verification Annex, the inspection team shall have managed access to the other areas of the plant site. Procedures for access to these areas are contained in Attachment 8.

7.3 Access to and Inspection of Documentation and Records

1. The agreed list of the documentation and records to be routinely made available for inspection purposes, mentioned in paragraph 26 of Part VII of the Verification Annex, to the inspection team by the inspected State Party during an inspection, as well as arrangements with regard to access to such records for the purpose of protecting confidential information, are contained in Attachment 9. Such documentation and records will be provided upon request.

2. Only those records placed in the custody of the inspection team that are attached to the preliminary factual findings in accordance with Section 3 may leave the premises. Those records placed in the custody of the inspection team that are not attached to the preliminary factual findings must be retained in the on-site container or returned to the inspected State Party.

7.4 Sampling and Analysis

1. Without prejudice to paragraphs 52 to 58 of Part II of the Verification Annex, procedures for sampling and analysis for verification purposes as mentioned in paragraph 27 of Part VII of the Verification Annex are contained in Attachment 10 of this Agreement.

2. Sampling and analysis, for inspection purposes, may be carried out to check for the absence of undeclared scheduled chemicals. Each such sample will be split into a minimum of four parts at the request of the inspection team in accordance with Part C of Attachment 10. One part shall be analyzed in a timely manner on-site. The second part of the split sample may be held for the inspection team for future reference and, if necessary, analysis off-site at laboratories designated by the Organization. That part of the sample may be destroyed at any time in the future upon the decision of the inspection team but in any case no later than 60 days after it was taken. The third part may be retained by the inspected State Party. The fourth part may be retained by the plant site.

3. Pursuant to paragraph 52 of the Part II of the Verification Annex, representatives of the inspected State Party or plant site shall take samples at the request of the inspection team in the presence of inspectors. The inspected State Party will inform the inspection team of the authorized plant site representative's⁴ determination of whether the sample shall be taken by representatives of the plant site or the inspection team or other individuals present. If inspectors are granted the right to take samples themselves in accordance with paragraph 52 of Part II of the Verification Annex, the relevant advance agreement between the inspection team and the inspected State Party shall be in writing. The representatives of the inspected State Party or of the inspected plant site shall have the right to be present during sampling. Agreed conditions and procedures for such sample collection are contained in Part B of Attachment 10 to this Agreement.

4. Plant site sampling equipment shall as a rule be used for taking samples required for the purposes of the inspection. This is without prejudice to the right of the inspection team pursuant to paragraph 27 of Part II of the Verification Annex to use its own approved sampling equipment in accordance with paragraph 1 of Section 5 and Parts A and B of Attachment 5 to this Agreement.

5. Should the inspection team request that a sample be taken and the inspected State Party be unable to accede or agree to the request, the inspected State Party will make every reasonable effort to satisfy the inspection team's concerns by other means to enable the inspection team to fulfil its mandate. The inspected State Party will provide a written explanation for its inability to accede or agree to the request. Any such response shall be supported by relevant document(s). The explanation of the inspected State Party shall be included in the preliminary factual findings.

6. In accordance with paragraph 53 of Part II of the Verification Annex, where possible, the analysis of samples shall be performed on-site and the inspection team shall have the right to perform on-site analysis of samples using approved equipment brought by it for the splitting, preparation, handling, analysis, integrity and transport of samples. The assistance that will be provided by the inspected State Party and the analysis procedures to be followed are contained in Part D of Attachment 10 to this Agreement.

7. The inspection team may request the inspected State Party to perform the analysis in the inspection team's presence. The inspection team shall have the right to be present during any sampling and analysis conducted by the inspected State Party.

8. The results of such analysis shall be reported in writing as soon as possible after the sample is taken.

9. The inspection team shall have the right to request repeat analysis or clarification in connection with ambiguities.

10. If at any time, and for any reason, on-site analysis is not possible, the inspection

team has the right to have sample(s) analyzed off-site at Organization-designated laboratories. In selecting such designated laboratories for the off-site analysis, the Organization will give due regard to requirements of the inspected State Party.

11. Transportation of samples will be in accordance with the procedures outlined in Part E of Attachment 10.

12. If at any time, the inspected State Party or plant site representative determines that inspection team on-site analysis activities are not in accordance with the facility agreement or agreed analysis procedures, or otherwise pose a threat to safety or environmental regulations or laws, all analysis activities will immediately cease at the direction of the plant site representative. If both parties cannot agree to proceed with the analysis, the inspection team will document this in its preliminary factual findings.

13. Conditions and procedures for the disposal of hazardous materials generated during sampling and on-site analysis during the inspection are contained in Part F of Attachment 10 to this Agreement.

7.5 Arrangements for Interviews

1. The inspection team shall have the right, subject to applicable United States legal protections for individuals, to interview any plant site personnel in the presence of representatives of the inspected State Party with the purpose of establishing relevant facts in accordance with paragraph 46 of Part II of the Verification Annex and inspected State Party's policy and procedures. Agreed procedures for conducting interviews are contained in Attachment 12.

2. The inspection team will submit to the inspected State Party names and/or positions of those desired for interviews. The requested individual(s) will be made available to the inspection team no later than 24 hours after submission of the formal request, unless agreed otherwise. The inspection team may also be requested to submit questions in writing prior to conducting interviews. The specific timing and location of interviews will be determined with the plant site in coordination with the inspected State Party and consistent with adequate notification of the interviewees, and minimizing the operation impacts on the plant site and individuals to be interviewed.

3. The inspected State Party may recommend to the inspection team that interviews be conducted in either "panel" or individual formats. At a minimum, interviews will be conducted with a member of the plant site staff and an inspected State Party representative. Legal counsel may also be required to be present by the inspected State Party. The interview may be interrupted for consultation between the interviewee, the plant site representative, and the inspected State Party representative.

4. The inspected State Party will have the right to restrict the content of interviews to information directly related to the mandate or purpose of the inspection.

5. Outside the interview process and in discharging their functions, inspectors shall communicate with personnel of the plant site only through the representative(s) of the inspected State Party.

7.6 Communications

1. In accordance with paragraph 44 of Part II of the Verification Annex, the inspection team shall have the right to communicate with the headquarters of the Technical Secretariat. For this purpose they may use their own, duly certified approved equipment, in accordance with paragraph 1 of Section 5.

2. In case the inspection team and the inspected State Party agree to use any of the inspected State Party's communications equipment, the list of such equipment and the provisions for its use are contained in Part B of Attachment 5 to this Agreement.

3. The agreed means of communication between inspection team sub-teams in accordance with paragraph 44 of Part II of the Verification Annex are contained in Part D of Attachment 5.

7.7 Photographs

1. In accordance with the provisions of paragraph 48 of Part II of the Verification Annex, the Confidentiality Annex and inspected State Party's policy and procedures, the inspection team shall have the right to have photographs taken at their request by the representatives of the inspected State Party or the inspected plant site. One camera of the instant development type furnished by the inspection team or the inspected State Party shall be used for taking identical photographs in sequence. Cameras furnished by the inspection team will remain either in their work space or equipment storage area except when carried by inspection team members for a specific inspection activity. Cameras will only be used for specified inspection purposes. Personal cameras are not allowed to be taken to the plant site unless otherwise agreed by the inspected State Party.

2. Pursuant to the Confidentiality Annex, the inspected State Party shall have the right to determine that contents of the photographs conform to the stated purpose of the photographs. The inspection team shall determine whether photographs conform to those requested and, if not, repeat photographs shall be taken. Photographs that do not meet the satisfaction of both sides will be destroyed by the inspected State Party in the presence of the inspection team. The inspection team, the inspected State Party and the plant site, if so requested, shall each retain one copy of every photograph. The copies shall be signed, dated, and classified, in accordance with Section 3, and note the location and subject of the photograph and carry the same identification number. Agreed procedures for photography are contained in Attachment 13.

3. The representative of the inspected plant site has the right to object to the use of photographic equipment in specific areas, buildings or structures if such use would be incompatible with safety or fire regulations given the characteristics of the chemicals stored in the area in question. Restrictions for use are contained in Parts A and/or B of Attachment 5 to this Agreement. If the objection is raised due to safety concerns, the inspected State Party will, if possible, furnish photographic equipment that meets the regulations. If the use of photographic

⁴ The authorized plant site representative is the owner or the operator, occupant or agent in charge of the premises being inspected.

equipment is not permissible at all in specific areas, buildings or structures for the reasons stated above, the inspected State Party shall provide a written explanation of its objection to the inspection team leader. The explanation, along with the inspection team leader's comments will be included in the inspection team's preliminary factual findings.

Section 8. Debriefing and Preliminary Findings

1. In accordance with paragraph 60 of Part II of the Verification Annex, upon completion of an inspection the inspection team shall meet with representatives of the inspected State Party and the personnel responsible for the inspection site to review the preliminary findings of the inspection team and to clarify any ambiguities. The inspection team shall provide to the representatives of the inspected State Party its preliminary findings in written form according to a standardized format, together with a list of any samples and copies of written information and data gathered and other material to be taken off-site. The document shall be signed by the head of the inspection team. In order to indicate that he has taken notice of the content of this document, the representative of the inspected State Party shall countersign the document. The meeting shall be completed not later than 24 hours after the completion of the inspection.

2. The document on preliminary findings shall also include, inter alia, the list of results of analysis, if conducted on-site, records of seals, and copies of photographs to be retained by the inspection team. It will be prepared in accordance with the preliminary findings format referenced in Annex 5. Any substantive changes to this format will be made only after consultation with the inspected State Party.

3. Before the conclusion of the debriefing, the inspected State Party may provide comments and clarifications to the inspection team on any issue related to the conduct of the inspection. The inspection team shall provide to the representative of the inspected State Party its preliminary findings in written form sufficiently prior to the conclusion of the debriefing to permit the inspected State Party to prepare any comments and clarifications. The inspected State Party's written comments and clarifications shall be attached to the document on preliminary findings.

4. The inspection team shall depart from the site upon the conclusion of the meeting on preliminary findings.

Section 9. Administrative Arrangements

1. The inspected State Party shall provide or arrange for the provision of the amenities listed in detail in Attachment 11 to the inspection team in a timely manner throughout the duration of the inspection. The inspected State Party shall be reimbursed by the Organization for such costs incurred by the inspection team, unless agreed otherwise.

2. Requests from the inspection team for the inspected State Party to provide or arrange amenities shall be made in writing by an authorized member of the inspection

team⁵ using the form contained in Attachment 11. Requests shall be made as soon as the need for amenities has been identified. The provision of such requested amenities shall be certified in writing by the authorized member of the inspection team. Copies of all such certified requests shall be kept by both parties.

3. The inspection team has the right to refuse extra amenities that in its view are not needed for the conduct of the inspection.

Section 10. Liabilities

1. Any claim by the inspected State Party against the Organization or by the Organization against the inspected State Party in respect of any alleged damage or injury resulting from inspections at the plant site in accordance with this Agreement, without prejudice to paragraph 22 of the Confidentiality Annex, shall be settled in accordance with international law and, as appropriate, with the provisions of Article XIV of the Convention.

Section 11. Status of Attachments

1. The Attachments form an integral part of this Agreement. Any reference to the Agreement includes the Attachments. However, in case of any inconsistency between this Agreement and any Attachment, the sections of the Agreement shall prevail.

Section 12. Amendments, Modifications and Updates

1. Amendments to the sections of this Agreement may be proposed by either Party and shall be agreed to and enter into force under the same conditions as provided for under paragraph 1 of Section 14.

2. Modifications to the Attachments of this Agreement, other than Attachment 1 and Part B of Attachment 5, may be agreed upon at any time between the representative of the Organization and the representative of the inspected State Party, each being specifically authorized to do so. The Director-General shall inform the Executive Council about any such modifications. Each Party to this Agreement may revoke its consent to a modification not later than four weeks after it had been agreed upon. After this time period the modification shall take effect.

3. The inspected State Party will update Part A of Attachment 1 and Part B of Attachment 5, and Attachment 6 as necessary for the effective conduct of inspections. The Organization will update Part B of Attachment 1 and Annex 5, subject to paragraph 2 of Section 8, as necessary for the effective conduct of inspections.

Section 13. Settlement of Disputes

1. Any dispute between the Parties that may arise out of the application or interpretation of this Agreement shall be settled in accordance with Article XIV of the Convention.

Section 14. Entry into Force

1. This Agreement shall enter into force after approval by the Executive Council and signature by the two Parties. If the inspected

⁵ The name of the authorized member(s) of the inspection team should be communicated to the inspected State Party no later than at the Point of Entry.

State Party has additional internal requirements, it shall so notify the Organization in writing by the date of signature. In such cases, this Agreement shall enter into force on the date that the inspected State Party gives the Organization written notification that its internal requirements for entry into force have been met.

Section 15. Duration and Termination

1. This Agreement shall cease to be in force when the provisions of paragraph 12 of Part VII of the Verification Annex no longer apply to this plant site, except if the continuation of the Agreement is agreed by mutual consent of the Parties.

Done at _____ in _____ copies, in English, each being equally authentic.⁶

ATTACHMENTS

The following attachments shall be completed where applicable.

Attachment 1: General Factors for the Conduct of Inspections

Attachment 2: Health and Safety Requirements and Procedures

Attachment 3: Specific Arrangements in Relation to the Protection of Confidential Information at the Plant Site

Attachment 4: Arrangements for the Inspection Team's Contacts with the Media or the Public

Attachment 5: Inspection Equipment

Attachment 6: Information on the Plant Site Provided in Accordance with Section 6

Attachment 7: Arrangements for Site Tour

Attachment 8: Access to the Plant Site in Accordance with Section 7.2

Attachment 9: Records Routinely Made Available to the Inspection Team at the Plant Site

Attachment 10: Sampling and Analysis for Verification Purposes

Attachment 11: Administrative Arrangements

Attachment 12: Agreed Procedures for Conducting Interviews

Attachment 13: Agreed Procedures for Photography

ATTACHMENT 1

General Factors for the Conduct of Inspections

Part A. To Be Provided and Updated by the inspected State Party

1. Plant site:
 - (a) working hours: ⁷ ____ hrs to ____ hrs (local time) (days)
 - (b) working days: _____
 - (c) holidays or other non-working days: ____

2. Schedule 2 plant(s):
 - (a) working hours, if applicable: ____ hrs to ____ hrs (days)
 - (b) working days: _____
 - (c) holidays or other non-working days: ____

⁶ The language(s) to be chosen by the inspected State Party from the languages of the Convention shall be the same as the language(s) referred to in paragraph 6 of Section 1 of this Agreement.

⁷ All references to time use a 24 hour clock.

3. Inspection activities which could/could not⁸ be supported during non-working hours with notation of times and activities:

4. Any other factors that could adversely affect the effective conduct of inspections:

(a) inspection requests:

Should the plant site withhold consent to an inspection, the inspected State Party shall obtain a search warrant from a United States magistrate judge. Upon receipt of a warrant, the inspected State Party will accede to the Organization's request to conduct an inspection. Such inspection will be carried out in accordance with the terms and conditions of the warrant.

(b) other:

5. Other: Notification procedures are contained in Annex 6.

Part B. To Be Provided and Updated by the Organization

1. Inspection frequency: _____

2. Inspection intensity:

(a) maximum estimated period of inspection (for planning purposes): _____⁹

(b) approximate inspection team size: _____

(c) estimated volume and weight of equipment to be brought on-site: _____

ATTACHMENT 2

Health and Safety Requirements and Procedures

Part A. Basic Principles

1. Applicable health and safety regulations of the Organization, with agreed variations from strict implementation, if any:

2. Health and safety regulations applicable at the plant site:

(a) federal regulations:

(b) state regulations:

(c) local regulations:

(d) plant site regulations:

3. Health and safety requirements and regulations agreed between the inspected State Party and the Organization:

Part B. Detection and Monitoring

1. Applicable specific safety standards for workplace chemical exposure limits and/or concentrations which should be observed during the inspection, if any:

2. Procedures, if any, for detection and monitoring in accordance with the Organization's Health and Safety Policy, including data to be collected by, or provided to, the inspection team:

Part C. Protection

1. Protective equipment to be provided by the Organization and agreed procedures for equipment certification and use, if required:

2. Protective equipment to be provided by the inspected State Party, and agreed procedures, personnel training, and personnel qualification tests and certification required; and agreed procedures for use of the equipment:

Part D. Medical Requirements

1. Applicable medical standards of the inspected State Party and, in particular, the inspected plant site:

2. Medical screening procedures for members of the inspection team:

3. Agreed medical assistance to be provided by the inspected State Party:

4. Emergency medical evacuation procedures:

5. Agreed additional medical measures to be taken by the inspection team:

6. Procedures for emergency response to chemical casualties of the inspection team:

Part E. Modification of Inspection Activities

1. Modification of inspection activities due to health and safety reasons, and agreed alternatives to accomplish the inspection goals:

ATTACHMENT 3

Specific Arrangements in Relation to the Protection of Confidential Information at the Plant Site

Part A. Inspected State Party's Procedures for Designating and Classifying Documents Provided to the Inspection Team

See Annex 3 for the Organization's Policy on Confidentiality and Annex 7 for the inspected State Party's Procedures for Information Control.

Part B. Specific Procedures for Access by the Inspection Team to Confidential Areas or Materials

Part C. Procedures in Relation to the Certification by the Inspection Team of the Receipt of Any Documents Provided by the Inspected Plant Site

Part D. Storage of Confidential Documents at the Inspected Plant Site

1. Procedures in relation to the storage of confidential documents or use of a dual control container on-site, if applicable:

Information under restrictions provided for in the Confidentiality Annex and as such to be kept in the dual control container under joint seal shall be available to the inspection team leader and/or an inspector designated by him from the beginning of the pre-inspection briefing until the end of the debriefing upon completion of the inspection in accordance with Section 3. If copies of information under dual control are permitted to be attached to the preliminary factual findings by the inspected State Party, they shall be made by the inspected State Party and retained under dual control until the debriefing. Should the medium on which such information is recorded become unusable, it shall be replaced without delay by the representative of the inspected State Party.

2. The dual control container will be placed _____

3. Information meeting the strict requirements for restriction pursuant to the Confidentiality Annex, and to be maintained in the dual control container located at the inspected plant site between inspections is listed below:

Reference	Type of data	Recorded media	Volume	Reasons for restrictions/re-mark S

Part E. Procedures for the Removal Off-Site of Any Written Information, Data, and Other Materials Gathered by the Inspection Team

Part F. Procedures for Providing the Representatives of the inspected State Party with Copies of Written Information, Inspector's Notebooks, Data and Other Material Gathered by the Inspection Team

Part G. Other Arrangements, If Any

1. Unless specified otherwise, all plant site information shall be returned to the inspected State Party at the completion of the inspection. No copies of plant site

⁸ Choose one option.

⁹ Any figure indicated is without prejudice to paragraph 29 of Part VII of the Verification Annex.

information shall be made in any manner by the inspection team or the Organization.

2. Plant site information shall not be released to the public, other States Parties, or the media without the specific permission of the inspected State Party, after consultation with the plant site.

3. Plant site information shall not be transmitted, copied or retained electronically

without the specific permission of the inspected State Party after consultation with the plant site. All transmissions of information off-site shall be done in the presence of the inspected State Party.

4. Information not relevant to the purpose of the inspection will be purged from documents, photographs, etc. prior to release to the inspection team.

ATTACHMENT 4

Arrangements for the Inspection Team's Contacts with the Media or the Public

ATTACHMENT 5

Inspection Equipment

Part A: List of Equipment

Item of approved inspection equipment	Agreed procedures for use			
	Nature of restrictions(s) (location, time, periods, etc.), if any	Indication of reason(s) (safety, confidentiality, etc.)	Special handling or storage requirements	Alternative for meeting inspection requirement(s), if so required by the inspection team

Part B. Equipment which the inspected State Party Has Volunteered to Provide

Item of equipment	Procedures for use	Support to be provided, if required	Conditions (timing, costs, if any)

Part C. Procedures for the Decontamination of Equipment

Item of equipment	Procedures for use

Part D. Means of Communication between Inspection Team Sub-Teams:

REQUEST FOR AND CERTIFICATION OF EQUIPMENT AVAILABLE ON SITE TO BE PROVIDED IN ACCORDANCE WITH PARAGRAPH 3 OF SECTION 5

Date: _____
 Plant Site: _____
 Inspection number: _____
 Name of the authorized member of the inspection team: _____
 Type and number of item(s) of equipment requested: _____
 Approval of the request by inspected State Party: _____
 Comments on the request by the inspected State Party: _____
 Indication of the costs, if any, for the use of the equipment requested/volunteered: _____

Certification of the authorized member of the inspection team that the requested item(s) of equipment have been provided: _____

Comments, if any, by the authorized member of the inspection team in regard to the equipment provided: _____

Name and signature of the authorized member of the inspection team: _____

Name and signature of the representative of the inspected State Party: _____

ATTACHMENT 6

Information on the Plant Site Provided in Accordance with Section 6

Part A. Topics of Information for the Pre-Inspection Briefing

Part B. Any Information about the Plant Site that the inspected State Party Volunteers to Provide to the Inspection Team during the Pre-Inspection Briefing and which May Be Transferred Off-Site

ATTACHMENT 7

Arrangements for Site Tour

The inspected State Party may provide a site tour at the request of the inspection team. Such tour shall take no more than 2 hours. The inspected State Party may provide explanations to the inspection team during the site tour.

ATTACHMENT 8

Access to the Plant Site in Accordance with Section 7.2

Part A. Areas of the Declared Plant Site to which Inspectors Are Granted Access (i.e., detail the areas, equipment, and computers)

1. Declared Plant:^{10 11}

¹⁰ Plant means a relatively self-contained area, structure or building containing one or more units with auxiliary and associated infrastructure, such as:

- (a) small administrative section;
- (b) storage/handling areas for feedstock and products;
- (c) effluent/waste handling/treatment area;
- (d) control/analytical laboratory;
- (e) first aid service/related medical section;
- (f) records associated with the movement into, around and from the site, of declared chemicals and their feedstock or product chemicals formed from them, as appropriate.

¹¹ Areas to be inspected may include:

- (a) areas where feed chemicals (reactants) are delivered or stored;
- (b) areas where manipulative processes are performed upon the reactants prior to addition to the reaction vessels;
- (c) feed lines as appropriate from the areas referred to in subparagraph (a) or subparagraph (b) to the reaction vessels together with any associated valves, flow meters, etc.;
- (d) the external aspect of the reaction vessels and ancillary equipment;
- (e) lines from the reaction vessels leading to long- or short-term storage or to equipment further processing the declared Schedule 2 chemicals;
- (f) control equipment associated with any of the items under subparagraphs (a) to (e);

Continued

2. Declared Plant Site:¹²
 Part B. Arrangements with Regard to the Scope of the Inspection Effort in Agreed Areas Referenced in Part A¹³

ATTACHMENT 9

Records Routinely Made Available to the Inspection Team at the Plant Site:¹⁴

ATTACHMENT 10

Sampling and Analysis for Verification Purposes

Part A. Agreed Sampling Points Chosen with Due Consideration to Existing Sampling Points Used by the Plant(s) Operator(s)

Part B. Procedures for Taking Samples

Part C. Procedures for Sample Handling and Sample Splitting

Part D. Procedures for Sample Analysis

Part E. Procedures for Transporting Samples

Part F. Arrangements in Regard to the Payment of Costs Associated with the Disposal or Removal by the inspected State Party of Hazardous Waste Generated during Sampling and On-Site Analysis during the Inspection

ATTACHMENT 11

Administrative Arrangements

Part A. The Amenities Detailed Below Shall Be Provided to the Inspection Team by the inspected State Party, Subject to Payment as Indicated in Part B Below

1. International and local official communication (telephone, fax), including calls/faxes between site and headquarters:

2. Vehicles: _____
 3. Working room, including adequate space for the storage of equipment: _____
 4. Lodging: _____
 5. Meals: _____
 6. Medical care: _____
 7. Interpretation Services:
 (a) number of interpreters: _____
 (b) estimated interpretation time: _____
 (c) languages: _____
 8. Other: _____

Part B. Distribution of Costs for Provision of Amenities by the inspected State Party (check one option for each amenity provided as appropriate)

Paragraphs 1–8 in Part A above	To be paid directly by the organization after the inspection	To be paid by the inspection team on behalf of the organization during the in-country period	To be paid by the inspected state party and subsequently reimbursed by the organization	To be paid by the inspected State Party
1				
2				
3				
4				
5				
6				
7				
8				

Part C. Other Arrangements

1. Number of sub-teams (consisting of no less than two inspectors per sub-team) to be accommodated:
 Z _____

REQUEST FOR AND CERTIFICATION OF AMENITIES TO BE PROVIDED OR ARRANGED

Date: _____
 Plant site: _____
 Inspection number: _____
 Category of amenities requested: _____
 Description of amenities requested: _____

(g) equipment and areas for waste and effluent handling;

(h) equipment and areas for disposition of chemicals not up to specification.

¹² Plant Site means the local integration of one or more plants, with any intermediate administrative levels, which are under one operational control, and includes common infrastructure, such as:

- (a) administration and other offices;
- (b) repair and maintenance shops;
- (c) medical center;
- (d) utilities;
- (e) central analytical laboratory;
- (f) research and development laboratories;
- (g) central effluent and waste treatment area; and
- (h) warehouse storage.

¹³ List the areas, equipment, and computers, if any, that are not relevant to the inspection mandate

Approval of the request by the inspected State Party: _____

Comments on the request by the inspected State Party: _____

Indication of the costs for the amenities requested:

Certification of the authorized member of the inspection team that the requested amenities have been provided:

or that contain confidential business information that does not need to be divulged in order to comply with the inspection mandate.

¹⁴ Some illustrative examples of records and data to be detailed are given below. The actual list will be dependent on the specifics of the inspection site. Information about the format and language in which records are kept at the plant site should be mentioned. It is understood that confidential information not related to the implementation of the Convention, such as prices, will be excluded by the State Party from scrutiny.

(a) inventory and accountancy records in relation to the production, processing or consumption of the declared Schedule 2 chemicals and their storage or transportation on to or off the site;

(b) operational records for the unit(s) producing, processing or consuming Schedule 2 chemicals (units) (batch cards, log books);

Comments by the authorized member of the inspection team in regard to the quality of the amenities provided:

Name and signature of the authorized member of the inspection team: _____

Name and signature of the representative of the inspected State Party: _____

ATTACHMENT 12

Agreed Procedures for Conducting Interviews

(c) Schedule 2 plant(s) dispatch records within the plant site and off-site dispatches;

(d) Schedule 2 plant(s) maintenance schedule records;

(e) Schedule 2 plant(s) waste disposal records;

(f) Schedule 2 plant(s) (unit) calibration records;

(g) Schedule 2 plant(s) sales reports, as appropriate;

(h) sales or transfers, whether to another industry, trader, or other destination, and if possible, of final product types;

(i) data on direct exports/imports and to/from which States;

(j) other shipments, including specification of these other purposes; and

(k) other.

Attachment 13

Agreed Procedures for Photography

ANNEXES

Note: These annexes, inter alia, can be attached if requested by the inspected State Party

Annex 1: Organization's Media and Public Relations Policy

Annex 2: Organization's Health and Safety Policy and Regulations

Annex 3: Organization's Policy on Confidentiality

Annex 4: Plant Site Declaration

Annex 5: Preliminary and Final Inspection Report Formats

Annex 6: Inspected State Party's Procedures for Inspection Notification

Annex 7: Inspected State Party's Procedures for Information Control

PART 717—CLARIFICATION OF POSSIBLE NON-COMPLIANCE WITH THE CONVENTION; CHALLENGE INSPECTION PROCEDURES

Sec.

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

717.2 Challenge inspections.

717.3 Requirements for provisions of samples.

717.4 Report of inspection-related costs.

Authority: Pub. L. 105-277, 112 Stat. 2681; E.O. 13128, 64 FR 36703.

§ 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. If States Parties are unable, through consultation between themselves or through the OPCW, to resolve such issues, a State Party may 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) Any person or facility subject to the CWC (parts 710 through 721 of this subchapter) must provide information required by the Commerce Department pursuant to an Article IX clarification request from another State Party or the OPCW concerning possible non-compliance with the reporting, declaration, notification, or inspection requirements set forth in parts 712 through 716 of this subchapter.

§ 717.2 Challenge inspections.

(a) *Facilities subject to challenge inspection.* Any person or facility in the United States is subject to a challenge inspection by the OPCW concerning possible non-compliance with the requirements of the Convention. Any person or facility subject to the CWC (parts 710 through 721 of this subchapter) (i.e., not owned by the Department of Defense, Department of Energy or other United States government agency that notifies the USNA of their decision to be excluded from the CWC), whether a declared facility or not, may be subject to a challenge inspection by the OPCW concerning possible non-compliance with the requirements set forth in parts 712 through 716 of this subchapter. The Department of Commerce will host and escort the international inspector team for all challenge inspections of persons or facilities subject to CWC, will assist the inspection team in fulfilling its mandate, and will ensure that a challenge inspection adheres to the Convention, the Act, and any site-specific facility agreement.

(b) *Warrants.* In instances where consent is not provided by the owner, operator, occupant or agent in charge of the facility or location, the Department of Commerce will seek criminal warrants as provided by the Act.

(c) *Notification of challenge inspection.* Challenge inspections may be made only upon issuance of written notice by the U.S. National Authority to the owner and to the operator, occupant or agent in charge of the premises. The Department of Commerce will provide preliminary notification to the owner and the operator, occupant or agent in charge of the premises selected for a challenge inspection. If the United States is unable to provide actual written notice to the inspection point of contact, the Department of Commerce, or if the Department of Commerce is unable, the Federal Bureau of Investigation 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. The USNA will provide written notice to the owner and to the operator, occupant or agent in charge of the premises within six hours of receiving notification from the OPCW Technical Secretariat or as soon as possible thereafter.

(2)(i) *Content of notice.* The notice 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 inspectors; and

(E) The evidence or reasons provided by the requesting State Party to the Convention for seeking the inspection.

(ii) In addition to appropriate information provided by the OPCW in its notification to the United States National Authority, the Department of Commerce's preliminary notification at the facility or plant site will state whether an advance team is available to assist the site in preparation for the inspection.

(d) *Duration of challenge inspections.* Challenge inspections will not exceed 84 hours, unless extended by agreement between the inspection team and the Department of Commerce.

(e) *Scope and conduct of inspections.*

(1) *General.* Each inspection shall be limited to the purposes described in § 717.2 and conducted in the least intrusive manner, consistent with the effective and timely accomplishment of its purpose as provided in the Convention.

(2) *Hours of inspections.* Consistent with the provisions of the Convention, the Department of Commerce 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.

(3) *Effect of facility agreements.* For facilities with facility agreements, access and activities within the final perimeter shall be unimpeded within the boundaries established by the agreements. Challenge inspections will be conducted in accordance with facility agreements concluded between the U.S. Government and the OPCW, as applicable. 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. For facilities without facility agreements or in areas outside the boundaries established by facility agreements, challenge inspections will be conducted on a managed access basis.

(4) *Health and safety regulations.* In carrying out their activities, inspectors and U.S. Government representatives accompanying the inspectors shall

observe health and safety regulations established at the inspection site, including those for the protection of controlled environments within a facility and for personal safety.

(5) *Confidential business information.*

(i) *Provisions of the Act relating to confidential business information.* The Act provides a statutory exemption from disclosure in response to a Freedom of Information Act request for certain information related to initial and routine inspections reported to, or otherwise acquired by, the U. S. Government as follows:

(A) Information included in categories specifically enumerated in sections 103(g)(1) and 304(e)(2) of the Act:

- (1) Financial data;
- (2) Sales and marketing data (other than shipment data);
- (3) Pricing data;
- (4) Personnel data;
- (5) Research data;
- (6) Patent data;
- (7) Data maintained for compliance with environmental or occupational health and safety regulations;
- (8) Data on personnel and vehicles entering and personnel passenger vehicles exiting the facility;
- (9) Any chemical structure;
- (10) Any plant design, process, technology or operating method;
- (11) Any operating requirement, input, or result that identifies any type or quantity of chemicals used, processed or produced;
- (12) Any commercial sale, shipment or use of a chemical; or

(B) Information that qualifies as a trade secret under 5 U.S.C. 552(b)(4) (Freedom of Information Act) that is obtained:

- (1) From a U.S. person; or
- (2) Through the U.S. Government or the conduct of an inspection on U.S. territory under the Convention.

(ii) *Exception to Freedom of Information Act exemption.* The Act provides that the United States Government may disclose confidential business information to the OPCW, to federal law enforcement agencies, and, upon written request, to Congressional committees of appropriate jurisdiction.

(iii) *Provisions of the Convention relating to confidential business information.* The Convention provides that States Parties may designate information submitted to the Organization for the Prohibition of Chemical Weapons (OPCW) as confidential, and requires the OPCW to limit access to and to prevent disclosure of information so designated, including specific information on inspections. The OPCW has developed a classification system whereby States Parties may

designate the information they submit in their declarations as "restricted," "protected," or "highly protected," depending on the sensitivity of the information.

(iv) *Disclosure of confidential business information during inspections.* During inspections, certain confidential business information, as defined by the Act, may be disclosed to OPCW inspectors and U.S. Government representatives hosting and escorting the inspectors. Facilities being inspected are responsible for identifying confidential business information to the U.S. Government before it is disclosed to inspectors, so that appropriate marking and handling can be arranged, in accordance with the provisions of the Convention, to prevent further, unauthorized disclosure. Confidential business information not related to the purpose of an inspection or not necessary to the accomplishment of an inspection, as agreed by the United States Government team accompanying the OPCW Inspection Team, may be removed from sight, shrouded, or otherwise not disclosed.

(v) *Disclosure of confidential business information following inspections.* (A) Inspection-related confidential business information, as defined by the Act, contained in inspection reports or otherwise in the possession of the U.S. Government, is exempt from disclosure in response to a Freedom of Information Act request.

(B) The United States Government must disclose confidential business information when such disclosure is deemed to be in the national interest. The USNA, in coordination with the CWC interagency group, shall determine whether disclosure of the confidential business information is in the national interest and not contrary to national security or law enforcement needs. The Act provides for notification to the affected person of intent to disclose confidential business information, unless such notification of intent to disclose is contrary to national security or law enforcement needs. If, after coordination with the agencies that constitute the CWC interagency group, the USNA determines that such disclosure is not contrary to national security or law enforcement needs, the USNA will notify the person that submitted the information or the person to whom the information pertains of the intent to disclose the information.

(C) OPCW inspectors are prohibited, under the terms of their employment contracts and pursuant to the Confidentiality Annex of the Convention, from disclosing to any unauthorized persons any confidential

information coming to their knowledge in the performance of their official duties, even after termination of their employment.

§ 717.3 Requirements for provisions of samples.

The owner, operator, occupant or agent in charge of a facility must provide a sample, as provided for in the Convention and consistent with requirements set forth by the Director of the United States National Authority in 22 CFR part 103, if the leader from the U.S. Department of Commerce of the U.S. host team accompanying the OPCW Inspection Team notifies the owner, operator, occupant or agent in charge of the inspected facility that a sample is required. The owner, operator, occupant or agent in charge of the premises shall determine whether the sample shall be taken by representatives of the premises or the inspection team or other individuals present during the inspection.

§ 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 this subchapter during a given calendar year must report to BXA 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. This information should be reported to BXA on company letterhead at the address given in § 716.6(c) of this subchapter, with the following notation: "ATTN: Report of Inspection-related Costs."

PART 718—INTERPRETATIONS

[RESERVED]

Note: This part is reserved for interpretations of the CWC (parts 710 through 721 of this subchapter) and also for applicability of OPCW decisions.

PART 719—ENFORCEMENT

Sec.

- 719.1 Scope and definitions.
- 719.2 Violations and civil penalties.
- 719.3 Denial of export privileges.
- 719.4 Additional sanctions and other remedial action available.
- 719.5 Initiation of administrative proceedings.
- 719.6 Demand for hearing and answer.
- 719.7 Representation.
- 719.8 Filing and service of papers other than the NOVA.
- 719.9 Summary decision.

- 719.10 Discovery.
- 719.11 Subpoenas.
- 719.12 Matters protected against disclosure.
- 719.13 Prehearing conference.
- 719.14 Hearings.
- 719.15 Procedural stipulations.
- 719.16 Extension of time.
- 719.17 Post-hearing submissions.
- 719.18 Decisions.
- 719.19 Settlement.
- 719.20 Record for decision.
- 719.21 Payment of final assessment.
- 719.22 Reporting a violation.

Authority: Pub. L. 105-277, 112 Stat. 2681; 50 U.S.C. 1601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938 (59 FR 59099; 3 CFR, 1994 Comp., p. 950), as amended by E.O. 13094 (63 FR 40803; 3 CFR, 1998 Comp., p. 200); E.O. 13128, 64 FR 36703.

§ 719.1 Scope and definitions.

(a) *Scope.* This part 719 covers administrative enforcement proceedings for two categories of violations:

(1) *Violations of the CWCRC (parts 710 through 721 of this subchapter) that are subject to the imposition of civil penalties by BXA ("§ 719.1(a)(1) cases").* BXA will investigate possible violations, prepare charges, initiate administrative proceedings, negotiate settlements, and issue orders that resolve the cases. BXA will be represented in these proceedings by the Office of Chief Counsel; and

(2) *Violations of Section 306 or 405 of the CWCIA, which are subject to the imposition of civil penalties by the Department of State pursuant to section 501(a) of the CWCIA and 22 CFR Part 103 ("§ 719.1(a)(2) cases").* The Department of Commerce will investigate possible violations, prepare charges, provide legal representation, negotiate settlements, and make requests and recommendations to State Department officials with respect to the initiation and resolution of administrative proceedings. Notice will be given and orders will be issued by State Department officials under 22 CFR part 103, but, in all other respects, this part 719 shall apply.

Note to paragraph (a): This part 719 does not apply to violations of the export requirements imposed pursuant to the Chemical Weapons Convention and set forth in the Export Administration Regulations (EAR) (15 CFR parts 730 through 799) and in the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130).

(b) *Definitions.* The following are definitions of terms as used in this part 719 only. For definitions of terms applicable to the whole CWCRC, see part 710 of this subchapter.

Administrative law judge (ALJ). The person authorized to conduct hearings in administrative enforcement proceedings.

Assistant Secretary for Export Enforcement. The Assistant Secretary

for Export Enforcement, Bureau of Export Administration, United States Department of Commerce.

CWCIA. The Chemical Weapons Convention Implementation Act of 1998 (Pub. L. 105-277, Division I).

Final decision. A decision or order assessing a civil penalty, or otherwise disposing of or dismissing a case, which is not subject to further administrative review, but which may be subject to collection proceedings or judicial review in an appropriate Federal court as authorized by law.

Office of Chief Counsel. The Office of Chief Counsel for Export Administration, United States Department of Commerce.

Party. For purposes of a § 719.1(a)(1) case, BXA and any person named as a respondent under this part are parties. For purposes of a § 719.1(a)(2) case, the Department of State and any person named as a respondent under this part are parties.

Respondent. Any person named as the subject of a letter of intent to charge, or a Notice of Violation and Assessment (NOVA) and proposed order.

Under Secretary for Export Administration. The Under Secretary for Export Administration, Bureau of Export Administration, United States Department of Commerce.

§ 719.2 Violations and civil penalties.

(a) *Violations subject to civil penalties under the CWCRC (parts 710 through 721 of this subchapter).* (1) *Violations.* (i) *Import restrictions involving Schedule 1 chemicals.* Except as otherwise provided in § 712.1 of this subchapter, no person may import any Schedule 1 chemical (See Supplement No. 1 to part 712 of this subchapter) *unless:*

(A) The import is from a State Party;

(B) The import is for research, medical, pharmaceutical, or protective purposes;

(C) The import is in types and quantities strictly limited to those that can be justified for such purposes; and

(D) The importing person has notified the Department of Commerce 45 calendar days prior to the import pursuant to § 712.4 of this subchapter.

(ii) *Import restrictions involving Schedule 2 chemicals.* Except as otherwise provided in § 713.1 of this subchapter, no person may, on or after April 29, 2000, import any Schedule 2 chemical (see Supplement No. 1 to part 713) from any country other than a State Party.

(2) *Civil penalty.* A civil penalty not to exceed \$11,000 may be imposed by the Assistant Secretary for Export Enforcement in accordance with this

part on any person for each violation of paragraph (a)(1)(i) or (ii) of this section.¹

(b) *Violations subject to civil penalties under section 501(a) of the CWCIA.* (1) *Violations.* (i) *Refusal to permit entry or inspection.* No person may willfully fail or refuse to permit entry or inspection, or to disrupt, delay or otherwise impede an inspection, authorized by the CWCIA.

(ii) *Failure to establish or maintain records.* No person may willfully fail or refuse:

(A) To establish or maintain any record required by the CWCIA or the CWCRC; or

(B) To submit any report, notice, or other information to the United States Government in accordance with the CWCIA or the CWCRC; or

(C) To permit access to or copying of any record required by the CWCIA or regulations issued thereunder, including information that is exempt from disclosure under the Freedom of Information Act pursuant to section 103(g) of the CWCIA or § 711.2 or Supplement No. 1 to part 711 of this subchapter.

(2) *Civil penalties.* (i) *Civil penalty for refusal to permit entry or inspection.*

Any person that is determined to have willfully failed or refused to permit entry or inspection, or to have disrupted, delayed or otherwise impeded an authorized inspection, as set forth in paragraph (b)(1)(i) of this section, shall pay a civil penalty in an amount not to exceed \$25,000 for each violation. Each day the violation continues constitutes a separate violation.

(ii) *Civil penalty for failure to establish or maintain records.* Any person that is determined to have willfully failed or refused to establish or maintain records or submit reports, notices or other information required by the CWCIA or CWCRC, or to permit access to or copying of records exempt from disclosure under the CWCIA or CWCRC, as set forth in paragraph (b)(1)(ii) of this section, shall pay a civil penalty in an amount not to exceed \$5,000 for each violation.

§ 719.3 Denial of export privileges.

Any person in the United States or any U.S. national may be subject to a denial of export privileges after notice and opportunity for hearing pursuant to part 720 of this subchapter if that person has been convicted under Title 18, Section 229 of the United States Code, of knowingly:

¹ The maximum civil penalty allowed under the International Emergency Economic Powers Act is \$11,000 for any violation committed on or after October 23, 1996 (15 CFR 6.4(a)(3)).

(a) Developing, producing, otherwise acquiring, transferring directly or indirectly, receiving, stockpiling, retaining, owning, possessing, or using, or threatening to use, a chemical weapon; or

(b) Assisting or inducing, in any way, any person in, or attempting or conspiring to develop, produce, otherwise acquire, transfer directly or indirectly, receive, stockpile, retain, own, possess, or use, or threaten to use, a chemical weapon. See part 720 of this subchapter for administrative provisions relating to violations of 18 U.S.C. 229.

§ 719.4 Additional sanctions and other remedial action available.

(a) *Criminal penalties for § 719.1(a)(1) cases.* Whoever willfully violates § 719.2(a)(1)(i) or (ii) shall, upon conviction, be fined not more than \$50,000, or, if a natural person, imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by like fine, imprisonment, or both.

(b) *Criminal penalties for § 719.1(a)(2) cases.* Any person that knowingly violates the CWCIA by willfully failing or refusing to permit entry or inspection; or by willfully disrupting, delaying or otherwise impeding an inspection authorized by the CWCIA; or by willfully failing or refusing to establish or maintain any required record, or to submit any required report, notice or other information; or by willfully failing or refusing to permit access to or copying of any record exempt from disclosure under the CWCIA or CWCER (parts 710 through 721 of this subchapter), shall, in addition to or in lieu of any civil penalty that may be imposed, be fined under Title 18 of the United States Code, be imprisoned for not more than one year, or both.

(c) *Criminal penalties for development or use of a chemical weapon.* Any person that violates the CWCIA by knowingly:

(1) Developing, producing, otherwise acquiring, transferring directly or indirectly, receiving, stockpiling, retaining, owning, possessing, or using, or threatening to use, any chemical weapon; or

(2) Assisting or inducing, in any way, any person to violate the activities specified in paragraph (c)(1) of this section, or attempting or conspiring to violate the activities specified in paragraph (c)(1) of this section, shall be fined or imprisoned for a term of years, or both, or, if the death of another person results, shall be punished by death or imprisoned for life, in

accordance with Section 229A of Title 18 of the United States Code.

(d) *Civil penalty for development or use of a chemical weapon.* Any person that violates the CWCIA as set forth in paragraph (c) of this section, may also, upon proof of such violation by preponderance of the evidence, be subject to a civil penalty in an amount not to exceed \$100,000 for each violation.

(e) *Criminal forfeiture.* Any person convicted under Section 229A(a) of Title 18 of the United States Code shall forfeit to the United States irrespective of any provision of State law:

(1) Any property, real or personal, owned, possessed, or used by a person involved in the offense;

(2) Any property constituting, or derived from, and proceeds the person obtained, directly or indirectly, as the result of such violation; and

(3) Any of the property used in any manner or part, to commit, or to facilitate the commission of, such violation. In lieu of a fine otherwise authorized by section 229A(a) of Title 18 of the United States Code, a defendant who derived profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

(f) *Injunction.* (1) The United States may, in a civil action, obtain an injunction against:

(i) The conduct prohibited under section 229 or 229C of Title 18 of the United States Code; or

(i) The preparation or solicitation to engage in conduct prohibited under section 229 or 229D of Title 18 of the United States Code.

(2) In addition, the United States may, in a civil action, restrain any violation of section 306 or 405 of the CWCIA, or compel the taking of any action required by or under the CWCIA or the Convention.

§ 719.5 Initiation of administrative proceedings.

(a) *Initiation of a § 719.1(a)(1) case.*

(1) *Notice of Violation and Assessment (NOVA).* The Director of the Office of Export Enforcement, Bureau of Export Administration, may initiate an administrative enforcement proceeding in a § 719.1(a)(1) case by issuing a NOVA and a proposed order.

(2) *Letter of intent to charge.* The Director of the Office of Export Enforcement, Bureau of Export Administration, may notify a respondent by letter of the intent to charge, attaching a draft NOVA and proposed order, and giving the respondent a specified period of time in which to contact BXA to discuss

settlement of the proposed allegations.

An administrative enforcement proceeding is not initiated by a letter of intent to charge. If the respondent does not contact BXA within the specified time, or if the respondent requests it, BXA will initiate an administrative enforcement proceeding as set forth in paragraphs (a)(1) and (c) of this section.

(b) *Initiation of § 719.1(a)(2) case.* (1) *Request for Notice of Violations and Assessment (NOVA).* The Director of the Office of Export Enforcement, Bureau of Export Administration, may request that the Secretary of State initiate an administrative enforcement proceeding in a § 719.1(a)(2) case under this § 719.5(b)(1) and 22 CFR 103.4. If the request is in accordance with applicable law, the Assistant Secretary for Arms Control will provide notice of the initiation of proceedings through issuance of a NOVA. The Office of Chief Counsel shall serve the NOVA as directed by the Secretary of State.

(2) *Letter of intent to charge.* The Director of the Office of Export Enforcement, Bureau of Export Administration may notify a respondent by letter of the intent to charge. This letter of intent to charge will advise a respondent that the Department of Commerce has conducted an investigation and intends to recommend that the Secretary of State issue a NOVA. The letter of intent to charge will be accompanied by a draft NOVA and proposed order, and will give the respondent a specified period of time to contact BXA to discuss settlement of the allegations set forth in the draft NOVA. An administrative enforcement proceeding is not initiated by a letter of intent to charge. If the respondent does not contact BXA within the specified time, or if the respondent requests it, BXA will make its request for initiation of an administrative enforcement proceeding to the Secretary of State in accordance with paragraph (b)(1) of this part.

(c) *Provisions applicable to all proceedings.* (1) *Content of NOVA.* The NOVA shall constitute a formal complaint, and will set forth the basis for the issuance of the proposed order. It will set forth the alleged violation(s) and the essential facts with respect to the alleged violation(s), reference the relevant statutory, regulatory or other provisions, and state the amount of the civil penalty to be assessed. The NOVA will inform the respondent of the right to request a hearing pursuant to § 719.6, inform the respondent that failure to request such a hearing shall result in the proposed order becoming final and, in a § 719.2(a)(1) case, unappealable on signature of the Assistant Secretary for

Export Enforcement, or, in a § 719.2(a)(2) case, unappealable on signature of the Secretary of State, and provide payment instructions. A copy of the regulations that govern the administrative proceedings will accompany the NOVA.

(2) *Proposed order.* A proposed order shall accompany every NOVA, letter of intent to charge, and draft NOVA. It will briefly set forth the substance of the alleged violation(s) and the statutory, regulatory or other provisions violated. It will state the amount of the civil penalty to be assessed.

(3) *Notice.* Notice of the intent to charge or of the initiation of formal proceedings, shall be given to the respondent by sending, via first class mail, facsimile, or by personal delivery, the relevant documents to the respondent (or respondent's agent for service of process or attorney).

§ 719.6 Demand for hearing and answer.

(a) *Section 719.1(a)(1) case.* (1) *Time to answer.* If the respondent wishes to contest the NOVA and proposed order, the respondent must answer the NOVA within 30 days from the date of service of the NOVA. The answer must be filed with the ALJ and served on the Office of Chief Counsel, and any other address(es) specified in the NOVA, in accordance with § 719.8.

(2) *Demand for hearing.* If the respondent wishes to have a hearing, a written demand for hearing must be submitted with the respondent's answer. If BXA wishes to have a hearing, it must file a written demand for hearing with the ALJ within 30 days after service of the respondent's answer. The failure of BXA or the respondent to make a timely written demand for hearing shall be deemed a waiver of the party's right to a hearing, except for good cause shown.

(b) *Section 719.1(a)(2) case.* If the respondent wishes to contest the NOVA and proposed order issued by the Secretary of State, the respondent must demand a hearing in writing within 15 days from the date of the NOVA. If the respondent demands a hearing, the respondent must answer the NOVA within 30 days from the date of the demand for hearing. The request for hearing and answer must be filed with the Administrative Law Judge, along with a copy of the NOVA and proposed order, and served on the Office of Chief Counsel, and any other address(es) specified in the NOVA, in accordance with § 719.8.

(c) *Provisions applicable to all proceedings.* (1) *Content of answer.* The respondent's answer must be responsive to the NOVA and proposed order, and

must fully set forth the nature of the respondent's defense(s). The answer must specifically admit or deny each separate allegation in the NOVA; if the respondent is without knowledge, the answer will so state and will operate as a denial. Failure to deny or controvert a particular allegation will be deemed an admission of that allegation. The answer must also set forth any additional or new matter the respondent believes supports a defense or claim of mitigation. Any defense or partial defense not specifically set forth in the answer shall be deemed waived, and evidence thereon may be refused, except for good cause shown.

(2) *English required.* The request for hearing, answer, and all other papers and documentary evidence must be submitted in English.

(3) *Waiver.* The failure of the respondent to file a request for a hearing and an answer within the times provided constitutes a waiver of the respondent's right to appear and contest the allegations set forth in the NOVA and proposed order. If no hearing is requested and no answer is provided, the proposed order will be signed and become final and unappealable.

§ 719.7 Representation.

A respondent individual may appear and participate in person, a corporation by a duly authorized officer or employee, and a partnership by a partner. If a respondent is represented by counsel, counsel shall be a member in good standing of the bar of any State, Commonwealth or Territory of the United States, or of the District of Columbia, or be licensed to practice law in the country in which counsel resides, if not the United States. The United States Government will be represented by the Office of Chief Counsel. A respondent personally, or through counsel or other representative who has the power of attorney to represent the respondent, shall file a notice of appearance with the Administrative Law Judge, or, in cases where settlement negotiations occur before any filing with the Administrative Law Judge, with the Office of Chief Counsel.

§ 719.8 Filing and service of papers other than the NOVA.

(a) *Filing.* All papers to be filed with the Administrative Law Judge (ALJ) shall be addressed to "CWC Administrative Enforcement Proceedings" at the address set forth in the NOVA, or such other place as the ALJ may designate. Filing by United States mail (first class postage prepaid), by express or equivalent parcel delivery service, via facsimile, or by hand

delivery, is acceptable. Filing from a foreign country shall be by airmail or via facsimile. A copy of each paper filed shall be simultaneously served on all parties.

(b) *Service.* Service shall be made by personal delivery, by facsimile, or by mailing (first class mail or express mail, postage prepaid) one copy of each paper to each party in the proceeding. The Department of State is a party to § 719.1(a)(2) cases under this subchapter, but will be represented by the Office of Chief Counsel. Therefore, service on the government party in all proceedings shall be addressed to Chief Counsel for Export Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room H-3839, Washington, D.C. 20230, or faxed to (202) 482-0085. Service on a respondent shall be to the address to which the NOVA and proposed order was sent, or to such other address as the respondent may provide. When a party has appeared by counsel or other representative, service on counsel or other representative shall constitute service on that party.

(c) *Date.* The date of filing or service is the day when the papers are deposited in the mail or are delivered in person, by delivery service, or by facsimile. Refusal by the person to be served, or by the person's agent or attorney, of service of a document or other paper will be considered effective service of the document or other paper as of the date of such refusal.

(d) *Certificate of service.* A certificate of service signed by the party making service, stating the date and manner of service, shall accompany every paper, other than the NOVA and proposed order, filed and served on the parties.

(e) *Computation of time.* In computing any period of time prescribed or allowed by this part, the day of the act, event, or default from which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, a Sunday, or a legal holiday (as defined in Rule 6(a) of the Federal Rules of Civil Procedure), in which case the period runs until the end of the next day which is neither a Saturday, a Sunday, nor a legal holiday. Intermediate Saturdays, Sundays, and legal holidays are excluded from the computation when the period of time prescribed or allowed is 7 days or less.

§ 719.9 Summary decision.

The ALJ may render a summary decision disposing of all or part of a proceeding on the motion of any party to the proceeding, provided that there is no genuine issue as to any material fact

and the party is entitled to summary decision as a matter of law.

§ 719.10 Discovery.

(a) *General.* The parties are encouraged to engage in voluntary discovery regarding any matter, not privileged, which is relevant to the subject matter of the pending proceeding. The provisions of the Federal Rules of Civil Procedure relating to discovery apply to the extent consistent with this part and except as otherwise provided by the ALJ or by waiver or agreement of the parties. The ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. These orders may include limitations on the scope, method, time and place of discovery, and provisions for protecting the confidentiality of classified or otherwise sensitive information, including confidential business information as defined by the CWCIA.

(b) *Interrogatories and requests for admission or production of documents.* A party may serve on any party interrogatories, requests for admission, or requests for production of documents for inspection and copying, and a party concerned may apply to the ALJ for such enforcement or protective order as that party deems warranted with respect to such discovery. The service of a discovery request shall be made at least 20 days before the scheduled date of the hearing unless the ALJ specifies a shorter time period. Copies of interrogatories, requests for admission and requests for production of documents and responses thereto shall be served on all parties and a copy of the certificate of service shall be filed with the ALJ. Matters of fact or law of which admission is requested shall be deemed admitted unless, within a period designated in the request (at least 10 days after service, or within such additional time as the ALJ may allow), the party to whom the request is directed serves upon the requesting party a sworn statement either denying specifically the matters of which admission is requested or setting forth in detail the reasons why the party to whom the request is directed cannot truthfully either admit or deny such matters.

(c) *Depositions.* Upon application of a party and for good cause shown, the ALJ may order the taking of the testimony of any person by deposition and the production of specified documents or materials by the person at the deposition. The application shall state the purpose of the deposition and set

forth the facts sought to be established through the deposition.

(d) *Enforcement.* The ALJ may order a party to answer designated questions, to produce specified documents or things or to take any other action in response to a proper discovery request. If a party does not comply with such an order, the ALJ may make a determination or enter any order in the proceeding as the ALJ deems reasonable and appropriate. The ALJ may strike related charges or defenses in whole or in part or may take particular facts relating to the discovery request to which the party failed or refused to respond as being established for purposes of the proceeding in accordance with the contentions of the party seeking discovery. In addition, enforcement by any district court of the United States in which venue is proper may be sought as appropriate.

§ 719.11 Subpoenas.

(a) *Issuance.* Upon the application of any party, supported by a satisfactory showing that there is substantial reason to believe that the evidence would not otherwise be available, the ALJ may issue subpoenas requiring the attendance and testimony of witnesses and the production of such books, records or other documentary or physical evidence for the purpose of the hearing, as the ALJ deems relevant and material to the proceedings, and reasonable in scope. Witnesses shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt, challenge or refusal to obey a subpoena served upon any person pursuant to this paragraph, any district court of the United States, in which venue is proper, has jurisdiction to issue an order requiring any such person to comply with such subpoena. Any failure to obey such order of the court is punishable by the court as a contempt thereof.

(b) *Service.* Subpoenas issued by the ALJ shall be to the address to which the NOVA was sent or to such other address as respondent may provide. When a party has appeared by counsel or other representative, service on counsel or other representative shall constitute service on that party.

(c) *Timing.* Applications for subpoenas must be submitted at least 10 days before the scheduled hearing or deposition, unless the ALJ determines, for good cause shown, that extraordinary circumstances warrant a shorter time.

§ 719.12 Matters protected against disclosure.

(a) *Protective measures.* The ALJ may limit discovery or introduction of evidence or issue such protective or other orders as in the ALJ's judgment may be needed to prevent undue disclosure of classified or sensitive documents or information, including confidential business information as defined by the CWCIA. Where the ALJ determines that documents containing classified or sensitive matter must be made available to a respondent in order to avoid prejudice, the ALJ may direct the government party to prepare an unclassified and nonsensitive summary or extract of the documents. The ALJ may compare the extract or summary with the original to ensure that it is supported by the source document and that it omits only so much as must remain undisclosed. The summary or extract may be admitted as evidence in the record.

(b) *Arrangements for access.* If the ALJ determines that the summary procedure outlined in paragraph (a) of this section is unsatisfactory, and that classified or otherwise sensitive matter must form part of the record in order to avoid prejudice to a party, the ALJ may provide the parties opportunity to make arrangements that permit a party or a representative to have access to such matter without compromising sensitive information. Such arrangements may include obtaining security clearances or giving counsel for a party access to sensitive information and documents subject to assurances against further disclosure, including a protective order, if necessary.

§ 719.13 Prehearing conference.

(a) On the ALJ's own motion, or on request of a party, the ALJ may direct the parties to participate in a prehearing conference, either in person or by telephone, to consider:

- (1) Simplification of issues;
- (2) The necessity or desirability of amendments to pleadings;
- (3) Obtaining stipulations of fact and of documents to avoid unnecessary proof; or
- (4) Such other matters as may expedite the disposition of the proceedings.

(b) The ALJ may order the conference proceedings to be recorded electronically or taken by a reporter, transcribed and filed with the ALJ.

(c) If a prehearing conference is impracticable, the ALJ may direct the parties to correspond with the ALJ to achieve the purposes of such a conference.

(d) The ALJ will prepare a summary of any actions agreed on or taken pursuant to this section. The summary will include any written stipulations or agreements made by the parties.

§ 719.14 Hearings.

(a) *Scheduling.* Upon receipt of a written and dated request for a hearing, the ALJ shall, by agreement with all the parties or upon notice to all parties of at least 30 days, schedule a hearing. All hearings will be held in Washington, D.C., unless the ALJ determines, for good cause shown, that another location would better serve the interests of justice.

(b) *Hearing procedure.* Hearings will be conducted in a fair and impartial manner by the ALJ. The ALJ may limit attendance at any hearing or portion thereof to the parties, their representatives and witnesses if the ALJ deems this necessary or advisable in order to protect sensitive matters from improper disclosure. The rules of evidence prevailing in courts of law do not apply, and all evidentiary material deemed by the ALJ to be relevant and material to the proceeding and not unduly repetitious will be received and given appropriate weight.

(c) *Testimony and record.* (1) Witnesses will testify under oath or affirmation. A verbatim record of the hearing and of any other oral proceedings will be taken by reporter or by electronic recording, transcribed and filed with the ALJ. A respondent may examine the transcript and may obtain a copy by paying any applicable costs.

(2) Upon such terms as the ALJ deems just, the ALJ may direct that the testimony of any person be taken by deposition and may admit an affidavit or declaration as evidence, provided that any affidavits or declarations have been filed and served on the parties sufficiently in advance of the hearing to permit a party to file and serve an objection thereto on the grounds that it is necessary that the affiant or declarant testify at the hearing and be subject to cross-examination.

(d) *Failure to appear.* If a party fails to appear in person or by counsel at a scheduled hearing, the hearing may nevertheless proceed. The party's failure to appear will not affect the validity of the hearing or any proceeding or action taken thereafter.

§ 719.15 Procedural stipulations.

Unless otherwise ordered and subject to § 719.16, a written stipulation agreed to by all parties and filed with the ALJ will modify the procedures established by this part.

§ 719.16 Extension of time.

The parties may extend any applicable time limitation by stipulation filed with the ALJ before the time limitation expires, or the ALJ may, on the ALJ's own initiative or upon application by any party, either before or after the expiration of any applicable time limitation, extend the time within which to file and serve an answer to a NOVA and proposed order, except that for § 719.1(a)(2) cases, the requirement that a hearing be demanded within 15 days, and the requirement that a final agency decision be made within 30 days, may not be modified.

§ 719.17 Post-hearing submissions.

All parties shall have the opportunity to file post-hearing submissions that may include findings of fact and conclusions of law, supporting evidence and legal arguments, exceptions to the ALJ's rulings or to the admissibility of evidence, and proposed orders and settlements.

§ 719.18 Decisions.

(a) *Decisions in § 719.1(a)(1) cases.* (1) *Initial decision.* After considering the entire record in a § 719.1(a)(1) case, the ALJ will issue an initial decision based on a preponderance of the evidence. The decision will include findings of fact, conclusions of law, and a decision based thereon as to whether the respondent has violated the CWCRC (parts 710 through 721 of this subchapter). If the ALJ finds that the evidence of record is insufficient to sustain a finding that a violation has occurred with respect to one or more allegations, the ALJ shall order dismissal of the allegations in whole or in part, as appropriate. If the ALJ finds that one or more violations have been committed, the ALJ shall issue an order imposing administrative sanctions, as provided in this part. The decision and order shall be served on each party, and shall become effective as the final decision of the Department 30 days after service, unless an appeal is filed in accordance with paragraph (a)(2) of this section.

(2) *Grounds for appeal.* (i) A party may, within 30 days of the ALJ's initial decision, petition the Under Secretary for Export Administration for review of the initial decision and order. A petition for review must be filed with the Office of Under Secretary for Export Administration, Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, and shall be served on the Chief Counsel for Export Administration and all other parties. Petitions for review

may be filed only on one or more of the following grounds:

(A) That a necessary finding of fact is omitted, erroneous or unsupported by substantial evidence of record;

(B) That a necessary legal conclusion or finding is contrary to law;

(C) That prejudicial procedural error occurred; or

(D) That the decision or the extent of sanctions is arbitrary, capricious or an abuse of discretion.

(ii) The appeal must specify the grounds on which the appeal is based and the provisions of the order from which the appeal was taken.

(3) *Effect of appeal.* The filing of an appeal shall not stay the operation of any order, unless the order by its express terms so provides or unless the Under Secretary for Export Administration, upon application by a party and with opportunity for response, grants a stay.

(4) *Appeal procedure.* The Under Secretary for Export Administration normally will not hold hearings or entertain oral arguments on appeals. A full written statement in support of the appeal must be filed with the appeal and be simultaneously served on all parties, who shall have 30 days from service to file a reply. At his/her discretion, the Under Secretary may accept new submissions, but will not ordinarily accept those submissions filed more than 30 days after the filing of the reply to the appellant's first submission.

(5) *Decisions.* The decision will be in writing and will be accompanied by an order signed by the Under Secretary for Export Administration giving effect to the decision. The order may either dispose of the case by affirming, modifying or reversing the order of the ALJ, or may refer the case back to the ALJ for further proceedings.

(b) *Decisions in § 719.1(a)(2) cases.* (1) *Initial decision.* After considering the entire record in § 719.1(a)(2) cases, the ALJ will issue an initial decision based on a preponderance of the evidence. The decision will include findings of fact, conclusions of law, and a decision based thereon as to whether the respondent has violated the CWCIA or 22 CFR part 103. If the ALJ finds that the evidence of record is insufficient to sustain a finding that a violation has occurred with respect to one or more allegations, the ALJ shall order dismissal of the allegations in whole or in part, as appropriate. If the ALJ finds that one or more violations have been committed, the ALJ shall issue an order imposing administrative sanctions.

(2) *Factors considered in assessing penalties.* In determining the amount of

a civil penalty, the ALJ shall take into account the nature, circumstances, extent and gravity of the violation(s), and, with respect to the respondent, the respondent's ability to pay the penalty, the effect on the respondent's ability to continue to do business, the respondent's history of prior violations, the respondent's degree of culpability, the existence of an internal compliance program, and such other matters as justice may require.

(3) *Certification of initial decision.* The ALJ shall immediately certify the initial decision and order to the Executive Director of the Office of Legal Adviser, U.S. Department of State, 2201 C Street, NW, Room 5519, Washington, DC 20520, and to the Office of Chief Counsel at the address in § 719.8, by personal delivery or overnight mail.

(4) *Review of initial decision.* The initial decision shall become the final agency decision and order unless, within 30 days, the Director of the USNA and International Security modifies or vacates it, with or without conditions, in accordance with 22 CFR 103.8.

§ 719.19 Settlement.

(a) *Section 719.1(a)(1) cases.* (1) *Settlements based on letter of intent to charge.* In § 719.1(a)(1) cases in which settlement is reached on the basis of a letter of intent to charge, the draft NOVA, proposed order, and a recommended settlement agreement will be submitted to the Assistant Secretary for Export Enforcement for approval and signature. If the Assistant Secretary for Export Enforcement refuses to approve the settlement, the Assistant Secretary for Export Enforcement will notify the parties and the case will proceed as though no settlement proposal had been made. If the Assistant Secretary for Export Enforcement does approve the settlement, the Assistant Secretary for Export Enforcement will issue an appropriate order, and no action will be required of the ALJ.

(2) *Settlements following demand for hearing.* The parties may enter into settlement negotiations at any time during the time a case is pending before the ALJ. If necessary, the parties may extend applicable time limitations or otherwise request that the ALJ stay the proceedings while settlement negotiations continue. If settlement is reached, a draft NOVA, proposed order, and recommended settlement agreement will be submitted to the Assistant Secretary for Export Enforcement for approval and signature. If the Assistant Secretary for Export Enforcement approves the proposal, he/she will issue

an appropriate order, and notify the ALJ that the case is withdrawn from adjudication. If the Assistant Secretary for Export Enforcement does not approve the proposal, then he/she will notify the parties of the disapproval, and settlement negotiations will resume or the case will proceed to adjudication by the ALJ as though no settlement proposal had been made.

(b) *Section 719.1(a)(2) cases.* (1) *Settlements before demand for hearing.* When the parties have agreed to a settlement of the case, the Director of the Office of Export Enforcement will recommend the settlement to the Secretary of State, forwarding a proposed settlement agreement and order, which, in accordance with 22 CFR 103.9(a), the Secretary of State will sign if the recommended settlement is in accordance with applicable law.

(2) *Settlements following demand for hearing.* The parties may enter into settlement negotiations at any time during the time a case is pending before the ALJ. If necessary, the parties may extend applicable time limitations or otherwise request that the ALJ stay the proceedings while settlement negotiations continue. When the parties have agreed to a settlement of the case, the Office of Chief Counsel will recommend the settlement to the Secretary of State, forwarding a proposed settlement agreement and order, which, in accordance with 22 CFR 103.9(b), the Assistant Secretary will sign if the recommended settlement is in accordance with applicable law.

(c) *Provisions applicable to all proceedings.* (1) *Settlement scope.* Any respondent who agrees to an order imposing any administrative sanction does so solely for the purpose of resolving the claims in the administrative enforcement proceeding brought under this part. This reflects the fact that the government officials involved have neither the authority nor the responsibility for initiating, conducting, settling, or otherwise disposing of criminal proceedings. That authority and responsibility are vested in the Attorney General and the Department of Justice.

(2) *Finality.* Cases that are settled may not be reopened or appealed.

§ 719.20 Record for decision.

(a) *The record.* The transcript of hearings, exhibits, rulings, orders, all papers and requests filed in the proceedings, and, for purposes of any appeal under § 719.18 or under 22 CFR 103.8, the decision of the ALJ and such submissions as are provided for under § 719.18 or 22 CFR 103.8 will constitute the record and the exclusive basis for

decision. When a case is settled, the record will consist of any and all of the foregoing, as well as the NOVA or draft NOVA, settlement agreement, and order.

(b) *Restricted access.* On the ALJ's own motion, or on the motion of any party, the ALJ may direct that there be a restricted access portion of the record for any material in the record to which public access is restricted by law or by the terms of a protective order entered in the proceedings. A party seeking to restrict access to any portion of the record is responsible for submitting a version of the document(s) proposed for public availability that reflects the requested deletion. The restricted access portion of the record will be placed in a separate file and the file will be clearly marked to avoid improper disclosure and to identify it as a portion of the official record in the proceedings. The ALJ may act at any time to permit material that becomes declassified or unrestricted through passage of time to be transferred to the unrestricted access portion of the record.

(c) *Availability of documents.*

(1) *Scope.* All NOVAs and draft NOVAs, answers, settlement agreements, decisions and orders disposing of a case will be made available for public inspection in the BXA Freedom of Information Records Inspection Facility, U.S. Department of Commerce, Room H-6624, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20230. The complete record for decision, as defined in paragraphs (a) and (b) of this section will be made available on request.

(2) *Timing.* Documents filed with the ALJ are available immediately upon filing, except for any portion of the record for which a request for segregation is made. Parties that seek to restrict access to any portion of the record under paragraph (b) of this section must make such a request, together with the reasons supporting the claim of confidentiality, simultaneously with the submission of material for the record.

§ 719.21 Payment of final assessment.

(a) *Time for payment.* Full payment of the civil penalty must be made within 30 days of the date upon which the final order becomes effective, or within the time specified in the order. Payment shall be made in the manner specified in the NOVA.

(b) *Enforcement of order.* The government party may, through the Attorney General, file suit in an appropriate district court if necessary to enforce compliance with a final order issued under these CWCs (parts 710 through 721 of this subchapter). This

suit will include a claim for interest at current prevailing rates from the date payment was due or ordered.

(c) *Offsets.* The amount of any civil penalty imposed by a final order may be deducted from any sum(s) owed by the United States to a respondent.

§ 719.22 Reporting a violation.

If a person learns that a violation of the Convention, the CWCIA, or the CWCRC (parts 710 through 721 of this subchapter) has occurred or may occur, that person may notify: Office of Export Enforcement, Bureau of Export Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room H-4520, Washington, D.C. 20230, Telephone: (202) 482-1208, Facsimile: (202) 482-0964.

PART 720—DENIAL OF EXPORT PRIVILEGES

Sec.

720.1 Penalties for violations of 18 U.S.C. 229.

720.2 Administration action denying export privileges.

Authority: Pub. L. 105-277, 112 Stat. 2681; E.O. 13128, 64 FR 36703.

§ 720.1 Penalties for violations of 18 U.S.C. 229.

(a) *Denial of export privileges for violations of 18 U.S.C. 229.* Any person in the United States or any U.S. national may be subject to a denial of export privileges after notice and opportunity for hearing pursuant to § 719.21 of this subchapter if that person has been convicted under Title 18, Section 229 of the United States Code of knowingly:

(1) Developing, producing, otherwise acquiring, transferring directly or indirectly, receiving, stockpiling, retaining, owning, possessing, or using, or threatening to use, a chemical weapon; or

(2) Assisting or inducing, in any way, any person to violate paragraph (a)(1) of this section, or attempting or conspiring to violate paragraph (a)(1).

(b) [Reserved]

§ 720.2 Administrative action denying export privileges.

(a) *Denial of export privileges.* The Assistant Secretary for Export Enforcement may deny the export privileges, including permission to apply for or use any export license or license exception, of any person who has been convicted of violating Section 229 of Title 18, United States Code.

(b) *Notice.* The Office of Chief Counsel for Export Administration shall notify any person convicted of Section 229, Title 18, United States Code, of any

intent by BXA to deny that person's export privileges pursuant to paragraph (a) of this section. The notification letter shall reference the person's conviction, specify the number of years for which BXA intends to deny export privileges, set forth the statutory and regulatory authority for the action, and provide that the person may request a hearing before the Administrative Law Judge within 30 days on the issue of the proposed length of the denial of export privileges.

(c) *Waiver.* The failure of the convicted person to file a request for a hearing within the time provided constitutes a waiver of the person's right to appear and contest the denial of export privileges that BXA intends to impose. If no hearing is requested, the Assistant Secretary for Export Enforcement will order that export privileges be denied as provided in the notification letter.

(d) *Hearing.* Any hearing that is granted by the ALJ shall be conducted in accordance with the procedures set forth in part 719 of this subchapter. The only issue that is a proper subject of a hearing is the length of the denial of export privileges.

(e) *Initial decision and order.* After considering the entire record in the proceeding, the ALJ will issue a initial decision, based on a preponderance of the evidence, as to whether or for what length of time the convicted person will be denied export privileges. The ALJ may consider factors such as the seriousness of the criminal offense that is the basis for conviction, the nature and duration of the criminal sanctions imposed, and whether the person has undertaken any corrective measures. The ALJ may dismiss the proceeding if the evidence is insufficient to sustain a denial of export privileges, or may issue an order imposing the denial. The ALJ shall immediately certify any initial decision and order to the Under Secretary for Export Administration, and shall also immediately serve the initial decision and order on all parties by personal delivery or overnight mail.

(f) *Appeal from initial decision or order.* The initial decision of the ALJ, imposed after a requested hearing, may be appealed to the Under Secretary in accordance with the procedures set forth in § 719.16(b) of this subchapter. The order of the Assistant Secretary, imposed when no hearing was requested, may be appealed to the ALJ through a motion to show cause why the order should be set aside and a hearing granted. The ALJ has discretion to set aside the Assistant Secretary's order and schedule a hearing on the issue of the length of denial of export privileges.

(g) *Final decision.* Unless the Under Secretary, within 30 days of the date of the initial decision, modifies or vacates the initial decision and order, the ALJ's decision and order shall become effective as the final decision of the Department of Commerce. If the Under Secretary does modify or vacate the initial decision and order, the order of the Under Secretary becomes the final order of the Department of Commerce and the United States. The final decision and order shall be served on the parties and will be publicly available.

(h) *Effect of denial.* Any person denied export privileges pursuant to this part shall be considered a "person denied export privileges" for purposes of the Export Administration Act. The name and address of the denied person will be published on the Denied Persons List found in Supplement 2 to part 764 of the Export Administration Regulations (15 CFR parts 730 through 799).

PART 721—RECORDKEEPING

Sec.

721.1 Records to be retained.

721.2 Original records required.

721.3 Reproduction of original records.

721.4 Retention of records.

721.5 Inspection of records.

Authority: Pub. L. 105-277, 112 Stat. 2681; E.O. 13128, 64 FR 36703.

§ 721.1 Records to be retained.

(a) You must maintain records relating to your activities that are regulated by the CWCRC (parts 710 through 721 of this subchapter), including the following:

(1) Forms, reports, chemical determinations (classifications) and notifications submitted to BXA pursuant to parts 712 through 715 of this subchapter; and

(2) Notes, memoranda, correspondence or other records pertaining to documentation listed in paragraph (a)(1) of this section, including records pertaining to production, processing, consumption, export or import of chemicals subject to declaration under parts 712 through 715 of this subchapter, including records of your acquisition or disposition of any products or chemicals that are subject to the provisions of the CWCRC.

(b) [Reserved]

§ 721.2 Original records required.

You must maintain the original records in the form in which you receive or create them unless you meet all of the conditions of § 721.3 relating to reproduction of records. If the original record does not meet the

standards of legibility and readability described in § 721.3 and you intend to rely on that record to meet the recordkeeping requirements of the EAR, you must retain the original record.

§ 721.3 Reproduction of original records.

(a) You may maintain reproductions instead of the original records provided all of the requirements of paragraph (b) of this section are met.

(b) If you must maintain records under this part, you may use any photostatic, miniature photographic, micrographic, automated archival storage, or other process that completely, accurately, legibly and durably reproduces the original records (whether on paper, microfilm, or through electronic digital storage techniques). The process must meet all of the following requirements, which are applicable to all systems:

(1) The system must be capable of reproducing all records on paper.

(2) The system must record and be able to reproduce all marks, information, and other characteristics of the original record, including both obverse and reverse sides of paper documents in legible form.

(3) When displayed on a viewer, monitor, or reproduced on paper, the records must exhibit a high degree of legibility and readability. (For purposes of this section, legible and legibility mean the quality of a letter or numeral that enable the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readable and readability mean the quality of a group of letters or numerals being recognized as complete words or numbers.)

(4) The system must preserve the initial image (including both obverse and reverse sides of paper documents) and record all changes, who made them and when they were made. This information must be stored in such a manner that none of it may be altered once it is initially recorded.

(5) You must establish written procedures to identify the individuals who are responsible for the operation, use and maintenance of the system.

(6) You must establish written procedures for inspection and quality assurance of records in the system and document the implementation of those procedures.

(7) The system must be complete and contain all records required to be kept by this part or the regulated person must provide a method for correlating, identifying and locating records relating to the same transaction(s) that are kept in other record keeping systems.

(8) You must keep a record of where, when, by whom, and on what equipment the records and other information were entered into the system.

(c) *Requirements applicable to a system based on digital images.* For systems based on the storage of digital images, the system must provide accessibility to any digital image in the system. The system must be able to locate and reproduce all records relating to a particular transaction based on any one of the following criteria:

(1) The name(s) of the parties to the transaction;

(2) Any country(ies) connected with the transaction;

(3) Chemical Abstract Service Registry number; or

(4) A document reference number that was on any original document.

(d) *Requirements applicable to a system based on photographic processes.* For systems based on photographic, photostatic, or miniature photographic processes, the regulated person must maintain a detailed index of all records in the system that is arranged in such a manner as to allow immediate location of any particular record in the system.

§ 721.4 Retention of records.

(a) *Five year retention period.* All records required to be kept by this part must be retained for five years from the due date of forms, notifications, chemical determinations (classifications) or reports required by parts 712 through 715, 716 and 717 of this subchapter.

(b) *Destruction or disposal of records.* If the Department of Commerce or other authorized U.S. government agency makes a formal or informal request for a certain record or records, such record or records may not be destroyed or disposed of without the written authorization of the requesting entity.

§ 721.5 Inspection of records.

Upon request by the Department of Commerce or any other agency of competent jurisdiction, you must permit access to and copying of any record in accordance with section 405(3) of the Act. This requires that you make available the equipment and, if necessary, knowledgeable personnel for locating, reading, and reproducing any record in the system.

Dated: July 7, 1999.

R. Roger Majak,
Assistant Secretary for Export
Administration.

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DEPARTMENT OF STATE

22 CFR Part 103

[Public Notice 3057]

RIN 1400-ZA01

Chemical Weapons Convention and the Chemical Weapons Convention Implementation Act of 1998; Taking of Samples; Record Keeping and Inspections

AGENCY: Bureau of Arms Control, Department of State.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of State is proposing to establish regulations to implement the provisions of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, also known as the Chemical Weapons Convention (CWC or Convention) and the Chemical Weapons Convention Implementation Act of 1998 (Act) on the taking of samples and on the enforcement of the requirements concerning record keeping and inspections. The Act authorizes the United States Government to implement provisions of the Convention. These regulations will enable the United States Government to execute the relevant provisions of the Convention and the Act.

DATES: Comments must be received on or before August 20, 1999.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Michael Coffee, Office of the Legal Adviser (L/ACN), 2201 C Street, N.W., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Michael Coffee, Office of the Legal Adviser (L/ACN), 2201 C Street, N.W., Washington, DC 20520.

SUPPLEMENTARY INFORMATION: On April 25, 1997, the United States ratified the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, also known as the Chemical Weapons Convention (CWC or Convention). The Convention is both an arms control and nonproliferation treaty. As such, the Convention bans the development, production, stockpiling, and use of chemical weapons, and prohibits States Parties from assisting or encouraging anyone to engage in an activity prohibited by the Convention. States Parties to the Convention, including the United States, have agreed to a comprehensive verification regime that provides transparency and ensures that no State Party to the Convention is