

**DEPARTMENT OF COMMERCE****Bureau of Export Administration****15 CFR Parts 710 through 722**

[Docket No. 990611158-9311-02]

RIN 0694-AB06

**Chemical Weapons Convention Regulations****AGENCY:** Bureau of Export Administration, Commerce.**ACTION:** Interim rule and 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). This interim rule establishes the Chemical Weapons Convention Regulations (CWCER) to implement provisions of the Convention affecting U.S. industry and other U.S. persons. The CWCER 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:** *Effective Date:* December 30, 1999.

Comments: Written comments must be submitted no later than January 31, 2000.

**ADDRESSES:** Written comments should be sent to the 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 the Regulatory Policy Division, telephone: (202) 482-2440. For program information on declarations, reports, notifications, and chemical determinations, contact the Information Technology Team of the Treaty Compliance Division, Office of Chemical & Biological Controls and Treaty Compliance, telephone: (703) 235-1335; for program information on inspections and facility agreements, contact the Inspection Management Team of the Treaty Compliance Division, Office of Chemical & Biological Controls and Treaty Compliance, telephone: (202) 482-6114; for legal questions, contact Cecil Hunt, Acting Chief Counsel, Office of the Chief Counsel for Export

Administration, telephone (202) 482-5301.

**SUPPLEMENTARY INFORMATION:****I. 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 "scheduled" chemicals and unscheduled discrete organic chemicals, many of which have significant commercial applications. The Convention also requires States Parties to report exports and imports and to impose export and import 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 April 29, 2000. 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 information on exports and imports 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") (22 U.S.C. 6701 *et seq.*), 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 (E.O.) 13128 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 E.O. 12938, as revised by E.O. 13128. The Departments of State and Commerce are implementing CWC export restrictions under their respective export control authorities. E.O. 13128 designates the Department of State as the United States National Authority (USNA) for purposes of the Convention and the Act.

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

In addition to this interim rule, the Department of State is publishing a separate 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 (ITAR) (22 CFR 120–130).

Further, on May 18, 1999, the Bureau of Export Administration (BXA) of the Department of Commerce published an interim rule (64 FR 27138) amending the Export Administration Regulations (15 CFR 730–799) to implement the following trade restriction 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 Department of Commerce jurisdiction to non-States Parties;
- Prohibition on all reexports of Schedule 1 chemicals subject to Department of Commerce jurisdiction;
- Prohibition on exports of Schedule 2 chemicals subject to Department of Commerce 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 Department of Commerce jurisdiction to all destinations, including Canada.

Note that all existing export license requirements that apply to CWC Scheduled chemicals and UDOCs subject to Department of Commerce 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 Department of Commerce or Department of State export licensing jurisdiction.

#### *The Chemical Weapons Convention Regulations (CWCRC)*

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

- Apply to all U.S. persons and to facilities in the United States, except for facilities of the Departments of Defense and Energy and other U.S. Government agencies that notify the United States National Authority (USNA) 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 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 of 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, the 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. 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. Export and import data contained in declarations will also be compiled and added to export and import 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 are due to BXA BY March 30, 2000, except for the establishment of new Schedule 1 facilities, which requires submission of a technical description of the facility prior to producing above 100 grams aggregate. Any Schedule 2 or 3, or UDOC plant site that was not required to submit an initial declaration but that exceeded the applicable declaration or reporting thresholds for covered activities in a subsequent year, must submit only an annual declaration on past activities or an annual report on exports and imports. Facilities that produced more than 100 grams aggregate of Schedule 1 chemicals in calendar year 1997, 1998, or 1999 must submit an initial declaration (a technical description of the facilities). Note that the Schedule 1 Certification Form asks you to identify each year in which you produced in excess of 100 grams aggregate. Facilities that produced, processed or consumed more than specified quantities of a Schedule 2 chemical in any of the calendar years 1994, 1995, or 1996 must provide information on activities involving that 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 information 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, 1998, and 1999 will be due to BXA March 30, 2000.

**Annual declarations on anticipated activities and declarations on additionally planned 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. Facilities that have certain types of changes or additions to their annual declaration on anticipated activities must submit a declaration on additionally planned activities.

**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 by March 30, 2000.

**Amended declarations and reports.** The CWCR also provide for submission of "amended declarations" and "amended reports" to change, replace, or add information to previously submitted declarations or reports.

**Notification Requirements.** Facilities that intend to export or import Schedule 1 chemicals to or from States Parties 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 CWCR that have exported or imported a scheduled chemical, but have not produced, processed, or consumed declarable quantities of that chemical, may nevertheless have an export or import reporting requirement. The USNA will NOT forward facility-specific information contained in these reports to the OPCW. BXA will include the export and import data in the compilation of the U.S. national aggregate declaration on exports and imports of relevant chemicals.

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

**Annual reports on exports and imports.** Annual reports for exports and imports are required for all exports and imports of Schedule 1 chemicals during the previous calendar year, and for exports and imports of Schedule 2 and 3 chemicals above certain threshold quantities. Annual reports on exports and imports for calendar years 1997, 1998, and 1999 will be due to BXA March 30, 2000.

**Timing of submission of initial and annual declarations and reports.** The first declaration and report package due to the Department of Commerce will include the initial declaration plus the annual declarations and reports for activities in calendar years 1997, 1998, and 1999. The first Schedule 1 annual declaration on anticipated activities for calendar year 2001 will be due to BXA on August 3, 2000. The first Schedule 2 and Schedule 3 annual declarations on anticipated activities for calendar year 2001 will be due on September 3, 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. CWC Declaration and Report Handbooks containing necessary multipurpose forms for declarations and reports will be available by mail and through the Internet. If there are discrepancies between the CWCR and the Handbooks (including instructions and form requirements), the CWCR prevail.

#### **On-Site Inspection Requirements**

This rule also sets forth the requirements and procedures for on-site inspections of U.S. facilities subject to the CWCR, 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 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 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 Host Team notice to facilities to be inspected. The Department of Commerce intends to seek an administrative warrant, as provided for by section 305 of the Act and in E.O. 13128, if the owner or person in charge of the facility does not consent to the inspection.

#### **II. Public Comments on Proposed Rule**

On July 21, 1999, the Bureau of Export Administration published in the **Federal Register** (64 FR 39104) a proposed rule, with request for comment, to establish the Chemical Weapons Convention Regulations (CWCR) to implement provisions of the Convention and the Act affecting U.S. industry and other U.S. persons. BXA received comments from 18 respondents. Following is a summary of those comments, along with BXA's responses.

#### **Scope of the CWCR**

One respondent questioned whether the definition of "Chemical Weapons Convention" includes any annexes that have not yet entered into force under the Convention, and stated that annexes approved after January 13, 1993, should not automatically be implemented by the CWCR. This rule implements those relevant articles and annexes of the Convention that entered into force on April 29, 1997, as reflected in parts 710 through 722 of the CWCR.

To clarify what U.S. government facilities are excluded from the CWCR, one respondent sought guidance on whether the term "U.S. facilities that are contractor-operated" includes facilities owned by the U.S. Government, but leased to private companies. The CWCR reporting, declaration, and inspection requirements do apply to facilities owned by a U.S. Government agency and leased to a private company or other entity, such that the private company or other entity may independently decide for what purposes to use the facilities. BXA has revised § 710.2 of this rule to clarify the scope of the CWCR.

#### **Chemicals Subject to the CWCR**

One respondent requested that all Schedule 1, Schedule 2 and Schedule 3 chemicals subject to the CWCR be

identified by the Chemical Abstract Service registry number (CAS number) to clarify declaration and reporting requirements. Supplement No. 1 to Part 712 (Schedule 1), Supplement No. 1 to Part 713 (Schedule 2), and Supplement No. 1 to Part 714 (Schedule 3) of the CWC list certain chemicals by name or family that are subject to the CWC. These Supplements also identify certain of these chemicals by CAS number. These Supplements mirror the Schedules of Chemicals found in the Convention. BXA agrees that it is desirable to provide CAS registry numbers for all chemicals subject to the CWC. However, because there are, by conservative estimates, 25,000 or more chemicals subject to the CWC, listing each chemical by name and CAS number is not practical. In addition, new chemicals are being developed and/or assigned CAS numbers daily. Therefore, any list published by BXA would be neither exhaustive nor current. BXA believes that Supplement No. 1 to Parts 712, 713 and 714 of the CWC provide sufficient information for a qualified chemist to determine whether a chemical is subject to the CWC. In addition, BXA will, upon request, provide a binding determination of whether or not a specific chemical is subject to the CWC. (See § 711.3 of the CWC.)

#### *Confidential Business Information*

Four respondents submitted comments on confidential business information (CBI) issues, which fall into four broad categories: the amount of information BXA should collect; location and consolidation of CBI provisions in the CWC; protection of information made available to the OPCW; and protection of CBI within the United States in both Freedom of Information Act (FOIA) and non-FOIA contexts.

**Amount of information BXA should collect:** Two respondents requested BXA to collect only the minimum amount of information necessary to comply with the Convention and the Act. Consistent with section 401 of the Act, the U.S. Government is requiring only the minimal information necessary to satisfy the requirements of the Convention and Act. This is reflected in the provisions of the CWC.

One respondent suggested that BXA not make lists of companies subject to CWC verification, for fear that such lists could be exploited by persons seeking to stigmatize the lawful production of chemicals. The respondent suggested if BXA did establish such lists, that BXA implement procedures for removing facilities from those lists when such

facilities are no longer subject to declaration requirements. From time to time, BXA will need to create such lists, for example, to comply with certain U.S. national declaration requirements. However, BXA will create the minimum number of lists necessary, and will update the lists as appropriate, to ensure effective U.S. implementation of the Convention.

One respondent was concerned that language in the proposed rule on the conduct of inspections would not allow the site representative to shroud or remove from the site items that the site representative determined were irrelevant to the inspection, unless "agreed by the U.S. Government Team." The respondent suggested deletion of the cited phrase. BXA has clarified this provision by changing it to read "as determined by the Host Team," since the right to take protective measures, such as shrouding equipment not related to the purpose of an inspection, is a right granted to the State Party under the Convention.

**Consolidation and location of CBI provisions in the CWC:** One respondent suggested consolidating the CBI provisions in Part 716 (routine inspections) and Part 717 (challenge inspections). Three respondents requested BXA to consolidate all provisions in the CWC relating to CBI and place these consolidated provisions in part 710 to highlight their importance. BXA agrees that to avoid any ambiguity that may arise because of slight differences in wording, the CBI provisions should be consolidated. To highlight the importance of CBI, BXA is placing these provisions in a dedicated CBI part. Because part 710 serves as an introduction to the CWC and does not have regulatory force, BXA is placing the CBI provisions in Part 718, entitled "Confidential Business Information." BXA is creating new part 722, entitled "Interpretations," to replace Part 718, originally reserved for interpretations.

**Status of information made available to the OPCW:** Three respondents suggested that all CBI made available to the OPCW during inspections be designated "highly protected." The Convention provides that States Parties may designate information submitted to the Technical Secretariat 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 their declarations as "restricted," "protected," or "highly

protected." The U.S. Government is directing the OPCW to accord "protected" status to all information contained in declarations, reports and advance notifications of exports and imports of Schedule 1 chemicals. The "protected" level of confidentiality is consistent with the level of protection designated by many other States Parties for their industrial declarations.

It is also the policy of the U.S. Government to designate CBI that it discloses to OPCW Inspection Teams as "protected" or "highly protected," depending on the sensitivity of the information. However, the U.S. Government will not request "protected" status for information made available to OPCW Inspection Teams that is publicly available, such as company sales or marketing literature or information from the company's Internet web site. The "protected" or "highly protected" status will apply to CBI disclosed to Inspection Teams, irrespective of the form or medium in which it is made available to the OPCW, whether in oral, written or visual form.

#### **Definition and identification of CBI:**

Three respondents requested clarification about the "scope of coverage" of CBI in the CWC. Section 103(g) of the Act defines U.S. confidential business information as any trade secrets or commercial or financial information that is privileged and confidential. BXA has determined that CBI contained in information submitted to, or obtained by, the U.S. Government for CWC purposes will fall into one of two categories:

- (1) information that falls under the types of information listed in Section 103(g)(1) of the Act, called "section 103(g)(1) information"; and
- (2) information that does not meet (1) but that meets all the criteria of section 103(g)(2) of the Act because it is a "trade secret" as described in 5 U.S.C. 552(b)(4) and is obtained from a U.S. person or through the U.S. Government or the conduct of an inspection in the United States, called "section 103(g)(2) information."

Information that satisfies the criteria of both sections 103(g)(1) and 103(g)(2) will be treated as section 103(g)(1) information.

BAXA has determined that certain fields in the declaration and report forms meet the definition of section 103(g)(1) and has identified these fields in Supplement 1 to Part 718 of the CWC. BXA will continue to determine whether additional types of information meet the requirements of section 103(g)(1) and will add to Part 718 any such types of information that can apply generally to entities subject to the CWC. Section 103(g)(2) information

will likely involve specific circumstances, require case-by-case determination, and not lend itself to general use. Therefore, BXA cannot at this time provide additional clarification about the scope of coverage of section 103(g)(2).

Except for the section 103(g)(1) information BXA has identified in the declaration and report forms, the U.S. Government will not be able to distinguish CBI from non-CBI, as defined in the Act, and will require the assistance of industry in identifying such CBI, most notably in connection with inspections.

Two respondents objected to the implicit limitation of the scope of CBI in Supplement No. 1 to Part 711 of the proposed rule. BXA intends this chart to serve as general guidance by indicating the fields of information on declaration and report forms that BXA has identified as section 103(g)(1) information. BXA is revising the supplement (to new part 718) to add a note indicating that information in other fields on the forms may also be considered CBI when such information has been specifically identified by submitters and a rationale has been provided for the CBI status of such information.

In a related matter, two respondents urged BXA to indicate that CBI need not be "marked," but one respondent recommended that items not specifically identified in 103(g)(1) be marked. This rule requires companies to identify information they consider to be CBI that BXA has not specifically identified in Supplement No. 1 to Part 718 as section 103(g)(1) information. In addition, entities hosting on-site inspections will need to specifically identify to the Host Team any CBI contained in information made available to the U.S. Government to ensure proper handling and treatment of such CBI.

One respondent requested BXA to provide a box on the declaration/reporting forms so a company could check the box to indicate the form contained CBI. Checking a box would not serve to specifically identify the information on the completed form that meets the definition of CBI. BXA must reject this suggestion and require the system of identification set out in this preamble and in this rule.

One respondent asked BXA to state that all information provided to the U.S. Government for whatever purpose is confidential when it meets the CBI definition of the Act. The Act defines CBI, not for all purposes, but for specific purposes. BXA is unable to comply with this request. Certain data defined as CBI in a CWC compliance context might not

qualify as a "trade secret" or otherwise be deemed confidential when obtained by the U.S. Government in non-CWC compliance contexts (e.g., publicly available research, patent, or sales data).

One respondent urged BXA to acknowledge that CBI would arise in a variety of contexts. BXA agrees that CBI will exist in tangible and intangible forms. BXA believes that Part 718 adequately covers CBI.

*Protection of CBI by the U.S. Government in non-FOIA contexts:* All four respondents expressed concern about U.S. Government protection of CBI in situations other than requests for information under the Freedom of Information Act (FOIA), such as Department of State and Commerce enforcement proceedings or litigation in which the U.S. Government is not a party. Three respondents requested BXA to draft CBI provisions in this regulation as a broad, blanket non-disclosure requirement, except where expressly permitted by section 404 of the Act (*i.e.*, to the OPCW, U.S. law enforcement agencies, and appropriate congressional committees).

Section 404 of the Act provides exemptions from the disclosure requirements of FOIA. BXA cannot guarantee non-disclosure of information in all circumstances, such as in instances of judge-issued subpoenas. Information and documents related to CWC administrative enforcement cases will be handled and protected according to procedures set forth in part 719 of the CWC.

In a related issue, three respondents requested BXA to specify that the Act is a "confidentiality statute" for purposes of regulations administered by the Office of the Secretary of Commerce in 15 CFR Part 15 (Legal Proceedings). Part 15 sets forth procedures governing the production of Department of Commerce records or testimony by Department of Commerce employees in legal proceedings in which the United States is not a party. Federal agencies may establish such procedures under section 301 of Title 5, United States Code, to provide for the custody, use and preservation of its records. BXA has determined that it is unnecessary to specify whether the provisions of the Act fall under the meaning of "confidentiality statute," as used in 15 CFR section 15.17 because this, in and of itself, does not provide any protection other than that already available under the Act and other statutes. The Departmental regulations do not enhance existing statutory protections, but merely provide a mechanism whereby the Department can determine whether any evidentiary privileges or

statutory requirements of privacy or confidentiality apply, or if there is any other legal basis for withholding information.

One respondent stated that the U.S. Government should request the United States magistrate judge to seal all records of warrants proceedings in order to guard against public disclosure of any CBI contained in the warrant or in material submitted in support of the issuance of the warrant. BXA intends to request that warrant proceedings be sealed if the warrant or related material includes CBI.

*Protection of CBI requested under the Freedom of Information Act:* Section 404 of the Act does not provide a statutory exemption from FOIA disclosure requirements for all information that is reported to, or otherwise obtained by, the U.S. Government, but only for "certain Convention information" (*i.e.*, that which is defined as "confidential business information" in section 103(g) of the Act). BXA will withhold from disclosure pursuant to a FOIA request only CBI, as defined in section 103(g), that has either been identified by BXA or by the person from whom the information is obtained.

*National Interest Determination:* Two respondents requested BXA to narrowly define the term "national interest," or to provide factors that the U.S. Government would consider in determining disclosure under the national interest disclosure provision. BXA cannot provide a definitive list of factors, since these would depend on specific circumstances, could change over time, and would need the concurrence of other agencies.

Two respondents suggested specific language for the consolidated CBI provisions, building upon language in the proposed rule. BXA is adopting some, but not all, the provisions in the suggested text. Under the suggested text, the notification and hearing procedures that apply to CBI disclosed in the "national interest" would also apply to disclosures to appropriate committees of Congress and law enforcement agencies. BXA rejects this suggestion. The Act does not require such notice and hearing procedures in the latter cases and provides no discretion regarding disclosure to such entities. Application of these procedures would only serve to delay authorized disclosures, without affecting the outcome. Moreover, delay in disclosure to other law enforcement agencies could hamper the actions of such law enforcement agencies, thereby thwarting the intention of the statute. BXA notes, however, that section 404 of the Act contains provisions limiting

further disclosure by such Congressional committees and law enforcement agencies of CBI released to them.

#### *Recordkeeping*

One respondent requested clarification on whether the declaration responsibilities for the production of Schedule 2 and 3 chemicals for chemical weapons purposes at any time since January 1, 1946 reside with the company that originally may have produced the chemicals. Four respondents addressed the proposed rule's requirement that the facility prepare declarations for activities dating back to 1994. The respondents state that the records and information necessary to prepare declarations may not be available because: (1) necessary information was not collected at the time of the activity, since no regulatory requirement to do so was in effect; (2) if collected at the time of the activity, the information has been discarded following normal business practices; or (3) due to changes in ownership or control of a facility, the current custodian of the information may no longer be affiliated with a facility subject to the CWC. One respondent referenced a Supreme Court ruling which states that legislative rules, such as the CWC, may not have a retroactive effect unless explicitly provided for by statute. The respondents request that BXA acknowledge that information necessary to prepare declarations or reports for previous years may not be available and that failure to prepare and submit declarations or reports for this reason should not constitute a violation under the CWC.

BXA agrees that if records necessary to prepare a declaration and report are not available because one or more of the three factors cited in the preceding paragraph took place prior to the effective date of this rule, failure to prepare and submit the declaration or report should not constitute a violation under the CWC. However, BXA has the authority under the Act to require the preparation and submission of a declaration or report for activities that occurred before the regulatory requirement becomes effective and, to the extent that information necessary to prepare the declarations and reports is available, the U.S. Government has the authority to impose an administrative sanction for willful failure or refusal to do so. Such a requirement is not "retroactive" under the Administrative Procedure Act, because it does not alter the past legal status of a past action (*i.e.*, disposal of records or failure to create records). In addition, the Technical

Secretariat of the OPCW recently has confirmed that declarations and reports for activities occurring as early as 1994 may be useful to it in carrying out its verification and monitoring responsibilities. This rule includes new language in § 711.4 which addresses these issues.

One respondent requested that the 5-year record retention period be limited to 3 years. This rule maintains the 5-year requirement to correspond with the statute of limitations applicable to enforcement actions (28 U.S.C. 2462). Four respondents stated that part 721 was too vague and broad, and might be interpreted as requiring documents to be retained that are not necessary to enforcement or other administration of the CWC. BXA has revised part 721 to clarify the types of documentation required to be retained, the location of documents, and the use of copies of documents to meet the record retention requirements. Finally, one respondent questioned the meaning of "formal or informal" requests for documents that would preclude their disposal or destruction. By "formal," the CWC means a subpoena. By "informal," the CWC means a verbal or written request by the investigating agency for a particular document or documents.

#### *Declarations and Reports*

One respondent requested an explanation of how the term "report" is used in the CWC and a clearer description of the types of information that will be submitted to the OPCW. The term "report" is used to describe several different types of activities under the CWC and the Act. The Act refers to reports to describe all types of requirements under the Convention, including declarations on production, processing and consumption, as well as reports on exports and imports. For reports required by the Act, this rule uses the following terms: (1) declarations; (2) reports on export and import activities; (3) notifications; (4) end-use certificates; (5) reports on inspection-related costs; and (6) post-inspection reports. BXA submits individual declarations for each declared facility to the USNA for transmission to the OPCW. These declarations contain facility-specific information, including facility name and address, and information on production, processing, consumption, and, in certain instances, export and import of specific chemicals. In addition, BXA submits to the USNA a national aggregate declaration on exports and imports, which combines information from facility declarations as well as information from reports

submitted by other facilities and trading companies. The national aggregate declaration does not include facility-specific information, but only aggregate information by chemical or by country.

This rule provides that Schedule 1 and Schedule 3 facilities may include their export and import information with their declarations on past activities, or may submit the information separately as reports. Whether submitted as part of a declaration or as a report, Schedule 1 and Schedule 3 export and import information is included only in the national aggregate declaration; BXA does not submit facility-specific Schedule 1 or Schedule 3 export and import information from declarations or reports to the USNA for transmittal to the OPCW. (It should be noted, however, that notifications of Schedule 1 exports and imports are submitted to the USNA for transmittal to the OPCW.) For certain declared Schedule 2 plant sites, BXA does submit facility-specific production, processing, consumption, export and import information to the USNA for transmittal to the OPCW as part of the annual declaration on past activities. The Schedule 2 national aggregate declaration only includes information on exports and imports by chemical and by country. These different requirements are due to differences among the declaration provisions of the Verification Annex of the Convention for Schedule 1, 2 and 3 chemicals.

#### *Initial Declarations*

One respondent requested clarification of the initial declaration requirement for Schedule 1 facilities. For Schedule 1 facilities, unlike Schedule 2 and 3 facilities, the initial declaration does not include any production or other Schedule 1 chemical activity information; it only provides a technical description of the facility. Production and other activity information is provided in the annual declarations. For the annual declarations on past activities for calendar years 1997, 1998, and 1999, facilities are required to submit declarations only for those years during which they produced more than 100 grams aggregate of Schedule 1 chemicals.

One respondent requested clarification that for the Schedule 2 initial declaration, plant sites are not required to submit a declaration for all three years (1994, 1995, and 1996), but are only required to submit a declaration for the year(s) in which one or more plants on the plant site produced, processed, or consumed a

Schedule 2 chemical above the applicable threshold. BXA recognizes that the Schedule 2 initial declaration requirement, as well as the annual declaration on past activities, is burdensome on facilities and may appear unnecessary. However, Part VII of the Convention's Verification Annex requires initial declarations to be submitted for all three years (1994, 1995, and 1996) by plant sites comprised of one or more plants that produced, processed or consumed a Schedule 2 chemical above the applicable threshold in any one of those three previous calendar years. This initial declaration requirement will establish a profile on the plant site that will be used by the OPCW to monitor activities. The profile may be updated based on the plant site's subsequent submission of annual declarations on past activities. In order to maintain an accurate profile, a plant site must comply with the initial declaration requirement as described in the note to § 713.3(a)(1)(i). A plant site must declare each chemical that it produced processed or consumed over the applicable threshold quantity in any one of the calendar years 1994, 1995, or 1996, and must submit three Forms 2-3—one for each of the calendar years 1994, 1995, and 1996—for each chemical. For each year or years that a plant site did not produce, process or consume the declared chemical over threshold, it must declare "0" quantity only for those activities that triggered the declaration requirement. It should leave blank on Form 2-3 those questions relating to activities that did not exceed the applicable threshold quantity in any one of the three previous years. Plant sites that submit an initial declaration are subject to on-site verification if their activities exceed the applicable inspection threshold quantities set forth in part 716.

#### *Declaration and Approval Requirements for Schedule 1 Facilities*

One respondent requested clarification of whether a Schedule 1 facility would be subject to declaration requirements if all of its Schedule 1 production occurred prior to April 29, 1997, when the Convention entered into force. If a facility produced more than 100 grams aggregate of Schedule 1 chemicals in calendar year 1997, it must submit an initial declaration and an annual declaration on past activities for 1997.

A respondent requested that BXA clarify that Schedule 1 facilities must declare consumption and storage of Schedule 1 chemicals only if they produced more than 100 grams

aggregate of Schedule 1 chemicals. This is correct, but BXA does not agree that the rule requires clarification.

One respondent also requested BXA to state the grounds for disapproval of a Schedule 1 facility. The Convention requires States Parties to approve all Schedule 1 facilities. However, the Act does not authorize the U.S. Government to require a facility to stop or limit its production of Schedule 1 chemicals. Therefore, BXA cannot disapprove a Schedule 1 facility.

#### *Mixtures and other exemptions to declaration and reporting requirements*

Four respondents requested that BXA include a low-concentration threshold for mixtures containing Schedule 1 chemicals to reduce the burden on all companies of identifying, quantifying and accounting for trace amounts of Schedule 1 chemicals contained in complex product mixtures and waste streams at very low concentrations. One respondent expressed concerns about BXA not approving facilities that produce Schedule 1 chemicals as unwanted byproducts in the manufacture of another chemical, since the aggregate of such production could exceed the Convention's 10 kg limit for Schedule 1 chemicals. BXA believes that the production, export, and import of trace amounts of Schedule 1 chemicals as unavoidable by-products or impurities do not pose a threat to the object and purpose of the Convention, would capture industries totally unrelated to those involved in the intentional production of Schedule 1 chemicals, and would result in the inspection of facilities under a verification regime established for facilities that intentionally produce Schedule 1 chemicals. Therefore, this rule includes in part 712 a 0.5 percent "round to zero" rule for Schedule 1 chemicals produced as unavoidable by-products or impurities.

One respondent requested that BXA establish a uniform 30 percent low concentration exemption for Schedule 2 activities because the current two-tiered reporting system included in the proposed rule (10 percent for production, consumption, imports, exports; 30 percent for processing) would create legal and compliance problems for industry. Moreover, it puts U.S. companies at a competitive disadvantage with other major chemical producers and traders which have adopted a uniform 30 percent mixtures rule. BXA agrees that the two-tiered mixtures rule is unnecessarily complicated, creates an uneven playing field with our major industrial competitors, and will capture

downstream consumers that pose no risk to the object and purpose of the Convention. BXA also believes that adopting a 30 percent low concentration exemption for declarations and reports on Schedule 2 transfers is consistent with the U.S. Government's non-proliferation objectives. Therefore, this rule establishes in part 713 of the CWC a 30 percent mixtures exemption for production, processing, consumption, export and import of Schedule 2 chemicals. However, should conditions change, BXA will review the 30 percent low concentration exemption for Schedule 2 exports and imports to ensure that our non-proliferation interests are not being undermined.

One respondent requested BXA to clarify whether the mixtures rules contained in §§ 713.3(a)(2) (i) and (ii) are applicable to § 713.1 of the CWC. The respondent was concerned that a complete prohibition on the importation of all Schedule 2 chemicals could create a situation where importers unknowingly violate the CWC and become subject to penalties for importing of Schedule 2 chemicals. BXA agrees with the respondent. This rule adopts a 10 percent low concentration exemption for imports of Schedule 2 chemicals from non-States Parties after April 28, 2000. This exemption mirrors the mixtures rule contained in the Export Administration Regulations for exports of Schedule 2 chemicals to non-States Parties after April 28, 2000.

Four respondents requested an exemption for UDOC mixtures similar to that already existing for Schedule 3 chemicals. They noted the inconsistency between having an 80% threshold for Schedule 3 chemicals while maintaining a 0% threshold for UDOCs, which pose a much less threat to the object and purpose of the Convention. The respondents also wanted to use the mixtures rule to clarify what the term "discrete" means. Furthermore, the respondents stated that identifying, quantifying, and accounting for low concentrations of UDOCs contained in complex mixtures is excessively burdensome and provides no benefits to the object and purpose of the Convention. BXA does not accept these comments and this rule does not contain a UDOC mixtures exemption. The Convention does not specifically permit a mixtures rule similar to that for Schedule 2 or 3. Further, § 710.1 of the CWC contains the Convention's definition of a discrete organic chemical. This rule does not provide specific exemptions for individual UDOCs. If companies have specific questions about whether their products



are covered by the CWC, they should request a chemical determination from BXA. However, BXA believes that a specific exemption for UDOCs produced by synthesis as normal ingredients, by-products, or impurities in the manufacture of foods designed for consumption by humans and/or animals is warranted since such plant sites pose no threat to the object and purpose of the Convention. This rule does not include an exemption for facilities that produce UDOCs solely as consumer goods packaged for retail sale and requests that the public comment on the impact of the CWC on such producers.

One respondent requested four additional exemptions to the declaration requirements for Schedule 3 chemicals: materials that are not produced by synthesis; materials that are not isolated for use or sale as a specific end product; process intermediates that are transformed at the same plant site; and components of waste streams (or substances formed in waste streams). At this time, BXA believes it is unnecessary to add additional exemptions for Schedule 3 chemicals beyond the 80% threshold that currently exists. If the OPCW acts to set a universal Schedule 3 threshold which is lower than 80% and if Congress amends the Act, BXA will consider additional exemptions. For purposes of the CWC, the term "production" should be understood to include a scheduled chemical (*i.e.*, a Schedule 1, Schedule 2, or Schedule 3 chemical) produced by a biochemical or biologically mediated reaction. Further, Schedule 3 chemicals not isolated above 80% purity, whether used or sold as specific end products or as intermediates or disposed of as waste, are currently excluded by the Act and this rule. Finally, excluding Schedule 3 process intermediates, with concentrations greater than the applicable threshold (80% in the United States), would be inconsistent with the object and purpose of the Convention.

Another respondent suggested that in order to avoid double counting of UDOCs, a UDOC produced in salt form and pure form should only be counted once for declaration purposes, and that the substance to be declared would be the final "species" isolated for use or sale outside the facility. The CWC require declaration of only the final UDOC produced in whatever form for use or sale. If a facility is producing UDOC(s) for use within the facility, that UDOC must be declared if produced in quantities greater than the threshold specified in part 715 of the CWC.

#### *Amended Declarations and Reports*

One respondent requested clarification on whether or not the submission of amended declarations and reports will, in itself, trigger an enforcement action. An amended declaration or report will be used by BXA to replace the information on a declaration, or the aggregate national declaration that was previously submitted to the OPCW. Submission of an amended declaration or report is considered a change, a replacement, or an addition to previously submitted information. Amended declarations and reports will not automatically trigger an enforcement action.

One respondent requested clarification on the types of changes to a previously submitted declaration on the production of UDOCs that would require submission of an amended declaration or report. This rule clarifies in § 715.2 of the CWC that for declarations involving UDOCs, only changes of production quantity into a higher range, the addition of a new PSF-chemical (phosphorus, sulfur, and fluorine) produced above 30 metric tons at a PSF plant not previously declared, changes to previously reported activities and end-use purposes, or the addition of new activities or end-use purposes require an amended declaration or report under part 715 of the CWC.

One respondent requested clarification on the types of changes to declarations or reports that will not require submission of an amended declaration or report because they are considered minor or insignificant information. This rule makes such clarification in §§ 712.6, 713.7, and 714.6 of the CWC. Changes to previously submitted information on chemicals, activities and end-use purposes, or the addition of new chemicals, activities and end-use purposes require submission of an amended declaration or report. For Schedule 1, 2, or 3 facilities subject to inspection, changes that may affect verification activities, such as changes of the owner or operator, company name, address, or inspection point of contact, require submission of an amended declaration. For Schedule 1, 2, or 3 facilities not subject to inspection and UDOC plant sites, changes that do not directly affect the purpose of the Convention, such as changes to a company name, address, points of contact, non-substantive typographical errors, etc., do not require submission of an amended declaration or report and may be corrected in subsequent declarations or reports that are submitted to BXA.

#### *Timing of Submission of Declarations and Reports*

One respondent suggested that the deadline for initial declarations and reports, and annual declarations and reports on past activities for calendar years 1997, 1998, and 1999, should be extended from 90 days to 150 days after the date of publication of the interim rule. The respondent notes that it will be difficult to coordinate preparation of declarations for its many facilities within the United States. Although BXA understands the respondent's concern that it will be difficult to coordinate declarations and reports from many different facilities in the United States, the U.S. Government has committed to the OPCW that it will meet its international obligations and submit data declarations as soon as possible. In the early phases of the regulatory planning process, BXA contemplated requiring industry to submit declarations within 30 days after publication of the interim rule. However, industry representatives advised BXA that industry would need 90 days to meet its obligations, and BXA therefore extended the deadline for submission of initial and annual declarations on past activities. This respondent also requested that the submission deadline for declarations and reports should be the "postmarked" date. This rule requires that declarations and reports due to BXA be postmarked by certain dates.

One respondent requested that additionally planned activities be declared to BXA 10 days in advance of the beginning of the additional or new production, processing or consumption of Schedule 2 chemicals or the additional or new production of Schedule 3 chemicals, rather than 21 days in advance as specified in the proposed rule. Because this rule requires that declarations and reports be postmarked by specified dates, BXA does not believe that 10 days is enough time for the U.S. Government to declare such activities to the OPCW. Therefore, this rule requires additionally planned activities be declared 15 days in advance of the beginning of the activities.

Several respondents requested an extension of the due dates for submission of annual declarations on past activities from February 13 to February 28, or later. The respondents believe that industry has a more burdensome and time-consuming task in preparing declarations than the U.S. Government. They noted that the U.S. Government has an electronic means to process, compile and aggregate the data



and does not need 45 days to accomplish this task. The respondents further stated that in early February, many companies may not have compiled all of the necessary data available to complete declarations because of ordinary business cycles, inventory control systems, or other reasons, and to comply with the February 13th due date, many companies will have to institute new changes to corporate policies and procedures that may affect many aspects of their business. BXA agrees with the respondents' arguments regarding the distribution of time under the Convention's 90-day time frame. This rule reflects in Table 1 to parts 712 through 715 of the CWCR the new due date of February 28 for annual declarations and reports on past activities. Note that annual declarations and reports for past activities for calendar years 1997, 1998, and 1999 are due to BXA by March 30, 2000.

Two respondents stated that declarations and reporting requirements should be based on the effective date of publication of the CWCR in calendar year 2000. They further state that the initial and first annual declaration of past activities should be combined into a single declaration for Schedule 2, Schedule 3, and UDOCs to prevent undue burdens on industry. BXA supports the respondents' concerns about the burden declarations and reports are on U.S. industry, and has already taken steps to minimize the burden. For example, this rule includes a recordkeeping provision that requires U.S. industry to provide information for years up to the effective date of the rule for which they do have records and states that BXA will accept whatever degree of precision is found in existing records. The final section of the Cost Benefit Analysis of the costs and benefits of alternatives, as well as Section 2.5.2 of the final Regulatory Flexibility Analysis, provides examples of how BXA has interpreted the CWC requirements as narrowly as possible so that all companies will be declaring on the same basis for calculating Schedule 2 activities to minimize declaration requirements for Schedule 2 sites. Further, the instructions for Form 2-3 (for Schedule 2 declarations), instruct plants sites producing below threshold quantities in the reporting year to declare "0" because they have a declaration requirement based upon activities in previous years thus reducing burden and confidential business information disclosure. Finally, this rule includes an exemption for UDOCs produced by synthesis that

are ingredients, by-products, or impurities in the manufacture of foods designed for consumption by humans or animals.

One respondent requested that for rounding of information included on declarations and reports, no more than two significant digits be required, and that no greater precision be required than can reasonably be provided using existing documentation, equipment, and measurement techniques. This rule includes additional guidance in a new § 711.5 and in the reporting and declaration requirement sections of Parts 712 through 715 of the CWCR.

#### *Additionally Planned Activities*

One respondent was concerned that the Schedule 2 and Schedule 3 requirement for a declaration on additionally planned activities due to BXA 21 days before additionally planned activities can begin implies that the facility may not commence its activities until BXA gives permission to do so. The respondent believes that the declaration on additionally planned activities is a "notice" to BXA, and the facility should be free to commence additional production after the requisite time has passed without receipt of any type of permission from BXA. The respondent further notes that the CWCR indicate that the timing for the declaration on additionally planned activities runs from when the notice is "delivered to" BXA, stating that a facility will not know when the declaration "is delivered" to BXA, but rather when it is "sent to" BXA. BXA agrees that the additionally planned activities declaration requirement is a "notice" to BXA declaring newly planned activities. Facilities are responsible for submitting declarations to BXA within the required time frame prior to the commencement of the new activities. Facilities are not required to wait for permission from BXA to commence such activities. If a facility begins these activities prior to the required notification time frame, the facility may be in violation of the declaration requirement and may be subject to civil penalties. BXA agrees with the respondent's recommendation to make the timing for submission of a declaration on additionally planned activities the "sent to" date (e.g., the postmarked date), as reflected in §§ 713.5(b) and 714.4 of the CWCR.

Two respondents asked about the requirements for declaring additionally planned Schedule 2 and Schedule 3 activities provided in §§ 713.5 and 714.4, respectively, of the proposed CWCR. This rule expands the requirements for additionally planned

activities consistent with an OPCW decision dated May 16, 1997 (C-I/DEC.38). Declarations on additionally planned activities by plant sites declared under § 713.3(a)(1)(iii) or § 714.2(a)(1)(iii) are required for: (1) An additional plant not declared under §§ 713.3(a)(1)(iii) or 714.2(a)(1)(iii) that plans to produce, process, or consume a Schedule 2 chemical or produce a Schedule 3 chemical above the applicable declaration threshold; (2) an additional Schedule 2 chemical that will be produced, processed, or consumed above the applicable declaration threshold at a plant declared under § 713.3(a)(1)(iii) or an additional Schedule 3 chemical which will be produced above the declaration threshold at a plant declared under § 714.2(a)(1)(iii); (3) an additional planned activity (production, processing, or consumption) above the applicable threshold for a chemical declared under § 713.3(a)(1)(iii); (4) a planned increase in the production, processing, or consumption of a Schedule 2 chemical by a plant declared under § 713.3(a)(1)(iii) or a planned increase in the production of a Schedule 3 chemical by a plant declared under § 714.2(a)(1)(iii) to an amount which exceeds the applicable inspection threshold (see §§ 716.1(b)(2) and 716.1(b)(3) for the respective Schedule 2 and 3 thresholds); (5) a planned increase in the production of a Schedule 3 chemical by declared plants at a plant site to an amount above the upper limit declared under § 714.2(a)(1)(iii); (6) a change in the anticipated starting or ending date of production, processing, or consumption declared under § 713.3(a)(1)(iii) by more than three months; and (7) a planned increase in the production, processing, or consumption of a Schedule 2 chemical by a declared plant by 20 percent or more above that declared under § 713.3(a)(1)(iii).

While BXA recognizes that some of the new requirements in this rule increase the declaration burden on industry, they are required in order to meet U.S. Government obligations under C-I/DEC.38 and are consistent in scope with the original requirements contained in §§ 713.5 and 714.4 of the proposed CWCR. BXA anticipates an additional 20 declarations on additionally planned activities based upon the above new requirements, but requests that concerned parties submit comments regarding this estimate and the overall burden of requirements mandated under C-I/DEC.38. BXA will reevaluate these additionally planned

activities requirements based upon this input.

#### *Definitions*

One respondent remarked that the definition of "declaration form" states that all declared facilities will have facility-specific information transmitted to the OPCW, but pointed out that information included with UDOC declarations and Schedule 3 export and import information is only aggregated and facility-specific information is not submitted to the OPCW. The respondent suggested revisions to the definition of "declaration forms" to clarify this point. Facility-specific information contained in UDOC declarations is submitted to the OPCW by the USNA. However, to clarify what information is submitted to the OPCW, this rule revises the definitions of "declaration or report form" and "reports."

One respondent requested a revision to the definition of "consumption," noting that most chemical reactions are not 100% complete. Accounting for the majority of the material as consumed and the remainder as either waste or as recycled starting material is reasonable. Therefore, this rule defines "consumption" of a chemical as its conversion into another chemical via a chemical reaction. Un-reacted material must be accounted for as either waste or as recycled starting material.

One respondent requested clarification of "toxic chemical" as used in § 716.2(b)(1)(ii)(E) of the CWC. BXA agrees that clarification is warranted. Therefore, this rule adds a new definition of "toxic chemical" to § 710.1 of the CWC. The definition is based on the definition found in the Act.

One respondent commented that the definition of the term "trading company" appears to cover the requirements for submitting a report by an undeclared plant site, stating that the terms "entity" and "companies" in the definition are confusing. The respondent further states that the phrase "entities involved in the export or import of chemicals" could be interpreted to mean that an entity engaged in both exports and imports is not a trading company, and only scheduled chemicals are subject to reporting by trading companies. BXA agrees that the definition of "trading company" requires clarification. Therefore, this rule revises the definition of "trading company" by replacing the word "entity" with "person," which is also defined in § 710.1, and by clarifying that trading companies that export or import scheduled chemicals in amounts greater than specified thresholds are subject to

reporting requirements, but not routine inspections.

Several respondents requested that a definition of production be added to § 710.1 of the CWC to help clarify declaration requirements. This rule adds the Convention's definition of "production" as the formation of a chemical through a chemical reaction.

One respondent requested that the definition of "host team" be modified to include facility representatives to recognize that the employees of the inspected facility must contribute to the host team because of their expertise. Section 303(b)(2) of the Act states that "[t]he United States National Authority shall coordinate the designation of employees of the Federal Government to accompany members of an inspection team of the Technical Secretariat." The term "Host Team" in § 710.1 of the CWC is meant to assign a functional name to these designated federal government employees, who will be drawn from different agencies, by describing their role during inspections (i.e., to host inspectors at U.S. facilities). While BXA fully expects that facility representatives will act as "de facto" Host Team members during inspection activities, the Act imposes certain requirements on federal employees that legally cannot be performed by facility representatives (e.g., obtaining administrative warrants, negotiating facility agreements, and representing the United States' interests as a State Party). Therefore, the term "Host Team" in the CWC refers to the U.S. Government team that accompanies inspectors from the OPCW at facilities subject to inspection, and does not include civilian site representatives.

Finally, one respondent requested clarification of the definition of "storage" as it applies to Schedule 2 and 3 chemicals and UDOCs. BXA does not agree that a clarification is necessary, because no quantitative reporting of storage for Schedule 2 or 3 chemicals or UDOCs is required by the CWC.

#### *Electronic Submission of Information*

One respondent requested that BXA permit industry to electronically request assistance in determining its obligations under the CWC, including chemical determinations. The respondent further requests that BXA respond to an incomplete request for assistance if the omitted information is not required for responding to the request. BXA supports electronic submissions of information to the extent possible. Therefore, this rule includes more detailed information in § 711.3 on how to contact BXA electronically. BXA will respond to requests for chemical determinations

within 10 working days of receipt. BXA will respond to other inquiries about industry obligations under the CWC in a timely manner.

#### *Facility Agreements*

One respondent, while supporting the U.S. Government's approach on managed access, requested that the concept of managed access be introduced for UDOC inspections to strengthen the ability of Host Teams to protect confidential business information. The Convention contains strict rules for inspection team access to UDOC facilities based on the area of the plant site to be inspected. The CWC are not intended to provide this level of detail since the actual access provided to inspection teams will vary from facility to facility. Part IX of the Convention's Verification Annex provides that inspected States Parties have the right to manage inspection team access to declared plants on a plant site. However, access to other areas of the plant site will be agreed upon, which is more controlled than managed access. Therefore, this rule does not specify managed access for UDOC facilities because it could result in expanded access to inspection teams beyond the Convention, which BXA does not support. BXA will ensure that inspection team access does not exceed the terms of the Convention.

One respondent requested that BXA make a reasonable effort to complete facility agreement negotiations with the OPCW on the establishment of a new Schedule 1 facility within 200 days, stating that without this language, any new Schedule 1 production by a new facility could be delayed indefinitely. The Act does not give BXA the authority to implement the Convention's restrictions on Schedule 1 production at a new facility where a facility agreement has not been concluded. New Schedule 1 facilities must notify BXA 200 days prior to commencing production of Schedule 1 chemicals above 100 grams aggregate. BXA will work with the USNA to conclude a facility agreement for new Schedule 1 facilities with the OPCW prior to the commencement of production of Schedule 1 chemicals above 100 grams aggregate.

Two respondents requested that the facility be consulted and be authorized to approve any facility agreement prior to conclusion by the U.S. Government and the OPCW. The respondents further requested that the U.S. Government consult with the facility prior to final interpretations of the provisions of the facility agreement. BXA recognizes that facility input is critical to the successful negotiation of facility agreements. The

proposed rule inadvertently omitted language from the Act that provides facilities with the right to participate in the preparation of facility agreements. This rule includes such language in § 716.6(b) of the CWC, and BXA will consult with facilities to the maximum extent possible during negotiations with the OPCW. The United States cannot withhold conclusion of a facility agreement with the OPCW because of facility concerns. The Convention does not provide for facility approval of the facility agreement. Industry should note that BXA will inform the affected facility of the status of negotiations at the OPCW, permit facility representatives to observe negotiations with the Technical Secretariat to the maximum extent practicable, and prior to conclusion of a facility agreement with the Executive Council, will provide facilities with an opportunity to comment. During final negotiations with the OPCW, BXA will give consideration to the facility's comments. Finally, BXA will consult with facility representatives prior to interpreting the facility agreement, once completed. If a disagreement over the provisions of a facility agreement occurs between the OPCW and BXA during an inspection that cannot be resolved on-site, the issue will be included in the preliminary factual finding report. After consulting with the U.S. interagency group established by the Act and E.O. 13128, the USNA and BXA will meet with the OPCW to resolve the issue. BXA will keep the facility informed of discussions with the OPCW.

BA received several comments on the Schedule 2 Model Facility Agreement (MFA) found in Supplement No. 3 to part 716 of the CWC. First, concerns were expressed about a provision found under Section 2—Health and Safety, that states that if the inspected State Party so requests on the basis of confirmed contamination or hazardous waste requirements or regulations, any piece of equipment involved in the inspection activities will be left at the plant site at the end of the inspection. The respondent states that the facility may not be legally authorized to store or dispose of contaminated items. BXA will discuss issues related to disposal of contaminated items and hazardous waste with facilities as necessary, and facility agreements will be drafted accordingly.

Another concern raised by the respondents regarded sampling. Section 7.4, paragraph 2 of the Schedule 2 MFA states in part that "[s]ampling and analysis, for inspection purposes, may be carried out to check for the absence

of undeclared scheduled chemicals. Each 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." The respondent states that the facility should retain the right to request a sample split and analyze it. BXA does not believe that the sampling language needs revision. The language does not preclude the inspected facility from requesting split samples. Facilities should further note that attachments to the MFA are intended to be site-specific and completed with facility input.

One respondent correctly notes that Section 7.4, paragraph 12 of the Schedule 2 MFA erroneously states that the inspection must stop at the direction of the plant site representative. BXA agrees that the plant site representative should not be authorized to stop analysis activities in the event that these 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. Therefore, this rule revises the language in Section 7.4, paragraph 12 to state that the inspected State Party, in consultation with the plant site representative, may cease such activities.

BA received several other comments regarding concerns that the Schedule 2 MFA does not allow for enough consultation with the facility representative. Other comments focused on suggestions to add clarifying language in the MFA that is site specific. Industry should note that the MFAs found in Supplements No. 2 and 3 to part 716 are models that include general language that could apply to all inspected facilities. Attachments to the MFAs will make the facility agreement site-specific.

Other comments made by the public regarding the Schedule 1 and 2 MFAs have been incorporated in Supplements No. 2 and 3 to part 716. Where applicable, corresponding changes were made to both MFAs.

BA also received a request to develop and include in the CWC a Schedule 3 MFA. BXA is assessing the needs and requirements of a Schedule 3 MFA. The OPCW's Technical Secretariat has developed a draft MFA but there has been no movement by States Parties to complete it. To date, no State Party that has undergone a Schedule 3 inspection has requested a facility agreement. Moreover, the OPCW has suggested that if a State Party requests a facility agreement for a Schedule 3 plant site, the length of an initial inspection will be extended by 2 days. Since the Convention limits the

number of Schedule 3 and UDOC inspections to a total of 20 inspections per year, it is unlikely that a re-inspection will occur at a Schedule 3 facility within 5 to 10 years. Nevertheless, the Act gives Schedule 3 facilities the right to request a facility agreement and BXA will take the respondent's suggestion into consideration. BXA would prefer that States Parties reach consensus on a general framework for a model before drafting a national model, but will consider doing so if States Parties are unable or unwilling to complete a model before Schedule 3 inspections commence in the United States.

Finally, one respondent requested that language be added to the CWC to require OPCW inspection teams to follow the requirements of relevant model facility agreements during an initial inspection. During initial inspections, verification activities are subject to the Convention's "General Rules of Verification" (Part II of the Verification Annex) and the applicable annex for the type of facility being inspected (Parts VI, VII, VIII, or IX). Although BXA does not believe it is appropriate to include the respondent's suggested language in the CWC, BXA suggests that facilities subject to initial inspection develop a preliminary draft facility agreement based on the CWC's model facility agreement. This preliminary draft will be provided to the inspection team upon arrival at the facility. Although the OPCW is not bound by this preliminary draft, BXA will urge that inspection teams use it as a guide during initial inspections. Regardless, inspection teams are always under the obligation to discharge their functions with the least possible inconvenience and disturbance to the facility, and to avoid hampering or delaying the operation of a facility or affecting its safety.

#### *Initial and Routine Inspections*

Section 716.5 of the CWC provides that the Department of Commerce provide written Host Team notification of an inspection. Such notice will usually be via fax or phone. If notification by fax or phone fails, a written notification of the inspection will immediately be posted at the plant site. A respondent questioned whether there will be an additional notification that includes the contents of the OPCW inspection mandate after it has been provided to the Host Team at the point of entry. This respondent also asked how much time the facility will have to respond to the notification, and whether the facility will be asked to respond to the notification regarding warrants. The

Host Team notice from the Department of Commerce serves to notify the facility of an inspection, advise the facility of the availability of U.S. Government assistance, and to determine if an administrative warrant is required. BXA asks the facility to reply to the request for consent within 4 hours. If, after 4 hours, the request for consent is not granted, BXA will seek an administrative warrant. The notification also advises the facility of the availability of an Advance Team. The company may wish to respond as soon as possible to maximize the time available for preparation of an inspection. The Convention requires transport of the OPCW Inspection Team to the inspected site within 12 hours of presenting the mandate. Due to this time constraint, BXA may not be able to provide the mandate to the facility prior to the arrival of the Inspection Team at the facility. However, the Commerce-led Host Team currently plans to pass the mandate, if possible, to the Advance Team at the site as soon as possible.

One respondent requested BXA to share a copy of its preliminary (renamed "Host Team") notice with industry for comment. The respondent wanted to ensure that it contains certain "critical" information such as the inspection mandate and establishes a dialogue between the U.S. Government and facility on health and safety information that could impact a facility during verification activities. Once the CWCRC are published and the interagency formally clears the Host Team notification, BXA will make the notice available to the public upon request. The Host Team notification is meant to alert the facility of an impending inspection, determine whether the facility consents to the inspection, and ascertain whether the facility requests Advance Team support. The Host Team notification will also contain a copy of the OPCW's notification to the USNA, which includes health and safety information regarding special needs of inspectors and inspection equipment. However, such information will change from inspection to inspection, and BXA cannot anticipate Inspection Team needs in advance. If there are special facility-specific issues (e.g., health and safety) that the Host Team or OPCW needs to be aware of prior to the commencement of an inspection, they should be communicated to the Advance Team during pre-inspection preparation activities. The Advance Team will then inform the Host Team Leader, who will brief the Inspection Team upon arrival at the U.S. point of entry (POE) (Washington Dulles

International Airport). The inspection mandate is not part of the Host Team notification because the Host Team Leader will not receive the mandate until the Inspection Team arrives at the POE.

One respondent requested that inspections start in normal business hours, therefore reinforcing the Convention's commitment to not impact the regular operation of a facility. BXA does not agree that all inspections will be conducted during normal business working hours. Verification activities include, *inter alia*, physical plant inspections, records review, the preparation of preliminary factual findings and draft facility agreements, if applicable. Many of these activities can be done in an administrative work space outside of operations areas, but all must be completed prior to the conclusion of an inspection. Limiting inspection activities to normal working hours will increase the amount of time (*i.e.*, number of days) Inspection Teams remain on-site. Inspectors are obligated to discharge their functions with the least possible inconvenience and disturbance to the facility, and to avoid hampering or delaying the operation of a facility or affecting its safety. BXA will take all of these factors into consideration when determining whether an inspection should commence, continue, or conclude during other hours. The respondent also requested that the facility be consulted for any extension in the duration of an inspection prior to agreement by the Host Team Leader and the Inspection Team. BXA supports this request. Therefore, this rule adds to § 716.5(b)(2) and (b)(3) that the Host Team Leader will consult with the inspected facility on any extension of the inspection prior to making an agreement with the Inspection Team.

BXA has also determined that part 716 of the proposed CWCRC was deficient regarding two inspection requirements of the Convention: pre-inspection briefing and debriefing on the preliminary factual findings. The Convention requires that prior to the commencement of an inspection, facility personnel brief the Inspection Team on the facility, the activities carried out there, safety measures, and administrative and logistic arrangements necessary for the inspection. The pre-inspection briefing is limited to three hours. New § 716.4(c) of the CWCRC contains the requirement for facilities to provide a pre-inspection briefing and lists topics to be addressed. The Convention also requires that the Inspection Team meet with the inspected State Party and facility upon

completion of the inspection to review its preliminary factual findings report and to clarify any ambiguities. The debriefing must be completed no later than 24 hours after the completion of the inspection. New § 716.4(i) contains the requirement for a debriefing. Facilities should note that the time required for a pre-inspection briefing and debriefing on the preliminary factual findings is in addition to the specified period of inspection for Schedule 2, Schedule 3, and UDOC plant sites. This rule also includes new §§ 716.4(b), (d) and (e) to provide a clearer description of the inspection process and to set forth the scope of consent to an inspection. BXA invites the public to comment on the changes to part 716, particularly the new sections.

Three respondents stated that additional information should be included in § 716.3 to clarify, for facilities subject to routine inspection, that withholding consent to an inspection or withdrawing consent following the commencement of an inspection are not violations of the regulations. BXA notes that the Act provides that consent may be withheld for any reason or no reason. BXA also agrees that in most circumstances, withdrawal of consent would not be a violation under § 719.2(a)(1) of the CWCRC.

One respondent recommended that, in order to reduce the likelihood of a misunderstanding by the OPCW inspectors, and to avoid possible "international incidents," § 716.3 should also specify the procedures to be followed if consent is withdrawn during an inspection. BXA does not accept this recommendation because procedures may differ from inspection to inspection, depending on the circumstances and the timing of a withdrawal of consent, and on whether the OPCW inspectors decide to wait for BXA to obtain an administrative warrant and then to continue the inspection or to terminate the inspection.

One respondent raised Constitutional concerns about the installation of on-site monitoring equipment at Schedule 1 facilities. Although paragraph 29 of Part VI of the Convention's Verification Annex, pertaining to verification of declared Schedule 1 facilities, gives the OPCW the right to install such instruments, the U.S. Government does not anticipate that the OPCW will request to do so for facilities subject to the CWCRC. This rule moves the provision for on-site monitoring of Schedule 1 facilities from § 716.2 to a new § 716.8.

A respondent requested that BXA reduce the post-inspection reporting burden on industry by allowing reports on inspection-related costs to be voluntary, summarized, estimated by BXA or the facility, or reported in ranges, and that the time frame for submitting such reports be extended to 180 days after an inspection. BXA is sympathetic to the respondent's concerns, however, the Act specifically requires that the President report the total costs borne by United States business firms in the course of inspections to the Congress. This requires BXA to compel industry to submit reports on the total costs related to inspection. BXA gives facilities the discretion to determine the methodology for computing total costs. Because the annual report on inspections must be submitted annually to Congress, BXA must be able to provide as current figures as possible without excessively burdening industry. BXA believes that the 90 day time frame is reasonable and meets the requirements of the Act.

#### *Clarification Procedures; Challenge Inspection Requests*

Two respondents questioned whether the Department of Commerce has the authority, under the Act, to require facilities subject to the CWCR to provide information in response to a clarification request from another State Party, and suggested deletion of § 717.1(b) of the CWCR. Section 101(e) of the Act and Section 3 of Executive Order No. 13128 give the Department of Commerce adequate authority to require such information. In addition, as one respondent highlighted, the clarification procedures in Article IX of the Convention provide a means of clarifying and resolving ambiguities without the need for challenge inspections. Three respondents stated that the requirement for facilities to provide information to the Department of Commerce pursuant to a clarification request from another State Party or the OPCW should be clarified to establish substantive limits on the scope of the request and a time frame for response. Substantive limits are already provided in § 717.1(b). The information must pertain to "reporting, declaration, notification, or inspection requirements set forth in parts 712 through 716." BXA agrees that a time frame for response should be provided. Therefore, this rule requires in § 717.1(b) that information be provided to the Department of Commerce pursuant to a clarification request within five working days. This time frame will allow the U.S. Government to respond to another State

Party or to the OPCW within 10 days, as required by Article IX of the Convention.

One respondent recommended that this part establish procedures for resolving differences, including meetings with the OPCW, to avoid the need for challenge inspections. BXA does not believe it is necessary or appropriate for the CWCR to set forth procedures that the U.S. Government will follow in communicating with other States Parties or the OPCW.

Finally, one respondent suggested that a request for information under the clarification procedure amounts to a criminal investigation, and another respondent suggested that a facility should be able to require BXA to obtain an administrative warrant before providing the requested information. A request for information does not rise to the level of a criminal investigation. An administrative warrant is not appropriate in this context, because no physical inspection of a facility is involved and the information requested falls within the scope of the CWCR. Willful failure or refusal to provide information in response to a BXA request under part 717 of the CWCR would constitute a violation under § 719.2 of the CWCR.

#### *Facilities That Cease Involvement With Declarable Activities*

Respondents were concerned about whether a facility will be absolved from further requirements under the CWCR when the facility eliminates its declarable activities. The respondents recommended that BXA provide a mechanism by which the facility can commit to elimination of declared activities, and therefore not be subject to initial declaration and reporting. BXA does not agree that a facility should be able to avoid submission of a declaration based on the facility's intent to terminate the declarable activity. This would be inconsistent with the requirements of the Convention.

#### *Violations and Penalties*

BXA received several comments on part 719—Enforcement, many of which were adopted. The most significant changes that were made to part 719 concern its structure and the application of the administrative process. Part 719 of this rule is intended to more accurately reflect the three categories of Chemical Weapons Convention violations: "violations of the Act subject to administrative and criminal enforcement proceedings" (§ 719.2); "violations of IEEPA subject to judicial enforcement proceedings" (§ 719.3); and "violations and sanctions under the Act

not subject to proceedings under the CWCR" (§ 719.4). Section 719.2 of the CWCR sets forth violations of the Act. The Department of Commerce and Department of State jointly apply the administrative process that applies to these violations. The administrative procedures are found in 15 CFR §§ 719.5–719.22 and in 22 CFR part 103, subpart C. Section 719.3 sets forth the violations of the International Emergency Economic Powers Act (IEEPA). Part 719 provides no administrative process for these IEEPA violations. They are referred to the Department of Justice for judicial enforcement. The violations contained in § 719.4 have as their basis the Act, but they are not subject to the CWCR and are provided for informational purposes only.

In addition to the concerns expressed about structure and organization, there were also several comments expressing general displeasure with the precise wording of various violations and penalties. While BXA is sympathetic to some of these comments, the violations and penalties in the CWCR merely recite the violations and penalties as they appear in the relevant statutes. Thus, BXA made no substantive changes to the violation and penalty language.

Although no substantive changes were made to the language of the violations and penalties, BXA does believe it is necessary to clarify what the violation of "willfully impeding an inspection" might mean. One respondent expressed concern that this violation could be construed so that the exercise of the right to withhold consent (which makes it necessary for the government to obtain an administrative warrant), or that efforts to protect the safety of the inspectors, would constitute willfully delaying or impeding an inspection. Since § 305(a) of the Act provides that the owner or the operator, occupant, or agent in charge of the premises may withhold consent for any reason or no reason, BXA does not believe those concerns are well founded.

Finally with respect to the violations and penalties, some respondents were confused by use of the terms "knowingly" and "willfully." The basis for this confusion was the mistaken assumption that the Act was the statutory basis for the import violations, which caused confusion because the criminal penalty provision says "willfully" rather than "knowingly" as required by the Act. The reason for use of the word "willfully" rather than (or in addition to) "knowingly" is that the statutory basis for the import violations is the International Emergency

Economic Powers Act. Therefore, the criminal penalty for import violations mirrors the IEEPA penalty provision. Several respondents also asked BXA to clarify the meaning of the word "knowingly" as used to describe the criminal penalties for refusal violations. However, the penalty language and standards are statutory (see § 501(b) of the Act), and are therefore more appropriately interpreted by the courts.

#### *Administrative Procedures*

One respondent objected to § 719.6(c), which states that defenses that the respondent does not set forth in the Answer to a Notice of Violation and Assessment (NOVA) are waived, except for good cause shown. However, it is especially important that this standard administrative law provision be included in the CWCRC because the statutory time limit for administrative proceedings is very short (30 days). Interested parties should keep in mind that the provision is not an absolute waiver of defenses—it does permit a respondent to present additional defenses if the Administrative Law Judge (ALJ) determines there is a good reason for doing so.

Several respondents expressed concern about § 719.20. As proposed, it permitted documents filed with the ALJ to be made available immediately upon filing. In response to these comments, this rule revises § 719.20(c)(2) to state that the record for decision, including the NOVA and other documents that are filed in an administrative proceeding, will be available to the public only after the final administrative resolution of a case. Prior to that final resolution, any party may request that the ALJ restrict access to any portion of the record, and the ALJ may so direct. Thus, the revised Part 719 ensures that parties have the opportunity to petition for restricted access to documents or portions of documents, and to have the ALJ rule on such petitions, before the record for decision becomes public.

In addition, respondents expressed concern, pursuant to § 719.20(b) of the CWCRC, that the ALJ may transfer previously restricted material to the unrestricted portion of the record once it becomes declassified or unrestricted due to the passage of time. The respondent suggested implementing a new process whereby the ALJ would provide notice and opportunity for objection before making such a move. BXA has not made such a change as the material is already protected. Since material may not be transferred until it becomes declassified or derestricted, the ALJ would have to make inquiries if

there were any doubt about the status of the material.

Other respondents requested that § 719.14, regarding hearings, be clarified. BXA changed this section to provide that hearings are closed to the public, except upon good cause shown, and clarified that evidence of settlement discussions is not admissible in any administrative proceeding, and that witnesses may be cross-examined. However, the ALJ continues to have discretion over what evidence is admissible; the federal rules of evidence do not apply.

One respondent asked why § 719.18 sets forth factors to be considered in assessing penalties for reporting- and inspection-related violations but not for import violations. As the revised CWCRC provides no administrative process for import violations, the question is moot. However, the answer was that the statutory basis for the two types of violations is different: the Act is the basis for reporting- and inspection-related violations and the IEEPA is the basis for import violations. Only the Act requires specific factors for consideration.

Various other comments requested clarification regarding for whom the Department of Commerce provides legal representation (§ 719.1(a)(2)), service via facsimile (§ 719.8(b)), issuance of subpoenas (§ 719.11(b)), and payment for copies of the hearing transcript (§ 719.14(c)(1)). All these clarifications have been made. BXA also agreed to use the word "request" rather than the word "demand" in connection with requests for a hearing (§ 719.6). Other comments did not result in any changes. BXA did not extend the time permitted to request a hearing from 15 days to 30 days for refusal violations as the 15-day time period is statutory, and BXA did not delete the requirement for a notice of appearance.

#### *Denial of Export Privileges*

Like part 719, part 720 of the CWCRC was reorganized and clarified, though not significantly changed. This reorganization was accomplished in lieu of deleting part 720 and organizing denial cases as a third category of cases in part 719 as one respondent suggested. That suggestion was not adopted because a denial of export privileges can only occur after a conviction of crimes outside the scope of the CWCRC. The Act requires that respondents have notice and an opportunity for hearing before a denial of export privileges is imposed, and this part sets forth that process. Several respondents noted discrepancies in part 720 of the CWCRC regarding the standards for ALJ review

and the standards for Under Secretary review. BXA has changed this part to make it clear that anyone may request a hearing before an ALJ, but that there are specific grounds for appeal from the ALJ decision to the Under Secretary. The grounds for appeal include: omission of a necessary finding of fact, a necessary legal conclusion is contrary to law, a prejudicial error occurred, or the decision was arbitrary, capricious, or an abuse of discretion.

#### *Additional Public Comments*

There were several public comments that were not addressed in this Supplementary Information section, but those comments were reviewed and incorporated, as appropriate, in the CWCRC itself. Additionally, typographical errors and minor clarifications were corrected in this rule.

### **III. Public Comments on Declaration and Reporting Forms and Handbooks**

This section outlines comments received from four respondents regarding the Department of Commerce's **Federal Register** notice (Volume 64, Number 141) of July 21, 1999, announcing an Office of Management and Budget review and request for comments on BXA's proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) for the Chemical Weapons Convention Declaration Forms (OMB Approval Number 0694-0091). Two respondents requested that BXA establish an official record of the public comments received on the forms by including those comments in the supplementary information section of this rule. BXA agrees with this request and provides those comments herein. All typographical errors and minor clarifications noted by the respondents were corrected, and are not addressed here.

#### *Declaration and Report Handbooks for Schedule 1, 2 and 3 Chemicals and Unscheduled Discrete Organic Chemicals*

*Section 3 "Guide to Submission of Forms" of the Declaration and Report Handbooks for Schedules 1, 2 and 3 and Unscheduled Discrete Organic Chemicals.* One respondent stated that the "Guide to Submission of Forms" complicates industry's ability to decipher its specific obligations. The respondent requested clarification and that BXA ensure the consistency of the final reporting requirements and establish an immediate routine for fulfilling these requirements. Additionally, two respondents stated

that the Guides indicate Form A is "required, as appropriate" whereas they believe Form A is optional and should be referred to as "attached, as appropriate."

BXA clarified each of the Handbooks' "Guide to Submission of Forms" by including the routine date for submission of annual declarations on past activities and annual reports on export and import activities. However, because initial declarations and reports as well as declarations and reports on past activities from multiple years must be submitted to BXA within 90 days after publication of this rule, BXA is maintaining the specific declaration and report submission requirements as a note to the Guide. In the first revision to the Handbook, BXA will remove these notes from the Guide and the routine filing requirements will be clearly defined.

BXA also revised each of the Handbooks' "Guide to Submission of Forms" to reflect that Form A is an attachment and should be submitted as appropriate. Form A should be used to submit any attachment to a declaration or report including, but not limited to, a plant site diagram, a technical description of a Schedule 1 facility or a structural formula drawing of a chemical.

The following clarifies the specific types of declarations and/or reports that must be submitted to BXA within 90 days of the publication of the Chemical Weapons Convention Regulations (CWC) as well as the calendar years for which this information must be provided:

#### Schedule 1

- Initial Declaration: Submit a technical description of your facility if you produced in excess of 100 grams aggregate of Schedule 1 chemical in calendar years 1997, 1998, or 1999 (do not submit any production data)
- Annual Declaration on Past Activities: 1997, 1998, and 1999
- Annual Report on Exports and Imports: 1997, 1998, and 1999

#### Schedule 2

- Initial Declaration: 1994, 1995, and 1996 (For each chemical, you must submit three Forms 2–3—one for each of the calendar years 1994, 1995, and 1996.)
- Initial Report on Exports and Imports: 1996
- Declaration on Chemical Production at any time since January 1, 1946 for Chemical Weapons (CW) Purposes: one-time declaration
- Annual Declaration on Past Activities (production, processing consumption,

export and import): 1997, 1998, and 1999

- Annual Report on Exports and Imports: 1997, 1998, and 1999

#### Schedule 3

- Initial Declaration: 1996
- Initial Report on Exports and Imports: 1996
- Declaration on Chemical Production at any time since January 1, 1946 for Chemical Weapons (CW) Purposes: one-time declaration
- Annual Declaration on Past Activities (production): 1997, 1998, and 1999
- Annual Report on Exports and Imports: 1997, 1998, and 1999

#### Unscheduled Discrete Organic Chemicals (UDOCs)

- Initial Declaration: 1996
- Annual Declaration on Past Activities (production): 1997, 1998, and 1999

*Supplement 1 to the Declaration and Report Handbooks—Latitude and Longitude of the Facility.* Three respondents recommended that the plant site should be able to choose and identify a reasonable or prominent location within the declared plant site for declaring the geographical coordinates. All three respondents noted that the center of the plant site may be an inaccessible location. One respondent recommended that if the plant site chooses the location for the geographical coordinates, then it must also describe or identify the point for which the coordinates were provided, such as a control room, an administration building or the front gate. Two respondents recommended that BXA specifically authorize the use of Global Positioning System (GPS) technology as the preferred method of calculating the center point of the facility. Lastly, one respondent that recommended BXA remove Supplement 1 (How to Determine Latitude and Longitude from Topographical Maps) and put this information on the BXA web site.

BXA recognizes that most companies will use a GPS to determine its latitude and longitude and that the OPCW generally uses this method to confirm declared geographical coordinates. BXA notes, however, that a GPS reading is not the only method available for identifying the geographical coordinates of the plant site and therefore will not designate GPS as the preferable method for providing latitude and longitude. Geographical coordinates provided from a GPS reading are acceptable. In addition, upon request BXA will informally assist companies to identify its geographical coordinates. BXA has made minor clarifications to

Supplement 1 in response to the comments.

*Supplement 3 to the Declaration and Report Handbooks.* One respondent noted that Macedonia was missing from the list of country codes which are used for reporting exports and imports. Another respondent noted that Supplement 3 does not include a code for Taiwan. The respondent noted ongoing trade in CWC chemicals between the United States and Taiwan and suggested that BXA adopt a country code. Supplement 3 to the Declaration and Report Handbooks did include Macedonia as The Former Yugoslavia Republic of Macedonia (code: MKD). Consequently, BXA has not made any changes. BXA renamed Supplement No. 3 from "Country Codes" to "Destination Codes." BXA also created a new code for Taiwan (TAI) on Supplement Number 3, following the code for Zimbabwe. This new code should be used to declare or report transfers of Schedule 2 and 3 chemicals to or from Taiwan. Transfers to Taiwan of Schedule 2 and 3 chemicals require an End-Use Certificate and may also require an export license under the Export Administration Regulations (EAR) (15 CFR 730–799) or the International Traffic and in Arms Regulations (ITAR) (22 CFR 100–130). Note that effective April 29, 2000, transfers of Schedule 2 chemicals to or from Taiwan are prohibited under the EAR and the CWC.

*Glossary of Terms.* Two respondents recommended that BXA create a glossary of common terms for use in completing declaration and report forms. The respondents noted that without a glossary, industry would constantly have to cross-reference the CWC which is a time-consuming process. BXA created a Glossary of Terms which will be designated as Supplement 1 to each of the four Handbooks. Accordingly, Supplement 2 instructs industry how to determine the latitude and longitude of your plant site, Supplement 3 is the Product Group Codes, and Supplement 4 is the Destination Codes.

*Point of contact for declarations, reports and inspections.* Two respondents recommended that BXA change the term "point of contact" because it may create confusion when referring to individuals with responsibilities for declaration and report questions or inspection notifications. Both respondents recommended use of the terms "declaration point of contact" and "inspection point of contact." One respondent also recommended that BXA give the option of listing up to two



additional inspection contacts because one person may not be available 24 hours per day at the phone numbers provided. BXA changed the appropriate forms to differentiate between the two types of point of contacts: declaration and report point of contact and inspection point of contact. BXA also changed the appropriate forms to allow an optional inspection contact to be provided. Due to space constraints on the forms, BXA was unable to allocate space for a third inspection contact as requested by the respondent.

**Product Group Codes.** One respondent noted that industry may possibly be confused with the requirements for Product Group Codes because these codes combine classification of main activities by feature and function. The respondent recommended that BXA clarify the basis for selecting between the activities and suggested that industry should select the single best descriptor of any activity, whether a literal or functional descriptor, based on the company's representation of the activity. BXA has changed Form 2-2 (question 2-2.5), Form 3-2 (question 3-2.5) and the UDOC Form (question UDOC.6) to alleviate any possible confusion over what product group codes should be declared to describe the activities at the plant or plant site. Product group codes describe the type of ultimate or final products that are produced, processed or consumed at the plant or plant site. The forms have been changed to require that you provide one or more Standard International Trade Classification (SITC) Code that describes the type of ultimate products that are manufactured at the plant or plant site. If a plant site chooses to provide only one product group code, it will be accepted by BXA.

**Plant Site and/or Plant names.** One respondent noted that the forms for Schedules 1, 2 and 3 as well as for UDOCs state that BXA will assign a "unique name" to a declared plant site and/or plant. The respondent recommended that BXA clarify that a plant site and/or plant will have the same "unique name" across the different Schedules of Chemicals as well as for UDOCs, so there is no confusion and multiple "unique names" are not assigned. BXA believes the respondent has misinterpreted the instructions for assigning a "unique name" for the plant site and/or plant. Each company assigns the "unique name" to its plant site and plants, not BXA. Industry should be careful to assign the same "unique name" to its plant site and plants regardless of the Schedule of Chemicals under which the declaration or report is being submitted. Upon receipt of a

declaration or report, BXA will assign a "unique code" to each plant site and all plants associated with the plant site. These codes are referred to as the "U.S. Code," which for plant sites, consists of the letters "USC" followed by five digits (e.g., USC00123), and plants will have a three-digit extension to the plant site code (e.g., USC00123-002). Industry should be careful to provide the same location and description of the plant site and plants to ensure that BXA will not mistakenly assign multiple codes. BXA will inform industry in writing of its relevant U.S. Codes so that it will be easier to identify the plant sites and plants during discussions as well as for submission of subsequent declarations or reports and recordkeeping purposes.

**Confidential Business Information (CBI).** One respondent noted that none of the forms contains a question or a check box for companies to indicate if Confidential Business Information (CBI) is included in the declaration or report. The respondent noted that companies should have the ability to inform BXA of which information it considers to be CBI and recommended that BXA change the forms to allow for the designation of CBI. CBI is governed by the provisions of part 718 of the CWCRC Supplement No. 1 to part 718 identifies those fields on each form which contain CBI as defined by the Act. If a company seeks additional CBI protection for information in fields which are not listed in part 718 of the CWCRC, it should provide a detailed explanation describing why release of the information contained in those fields is a trade secret and should not be released to the public. This explanation should be attached to Form A.

**Create a form to report undeclared status.** One respondent recommended that BXA create a form for industry to report that it has ceased its declarable activities and is in an "undeclared status" capacity. It would be an additional burden on industry to submit a form to BXA to report its "undeclared status." If BXA does not receive a declaration or report from a company that was previously declared, BXA will conclude that the company has changed its status.

**Add gray shading to forms.** One respondent recommended that BXA add gray shading on the top of all relevant forms where the plant site and plant information is to be identified. The respondent noted that the gray shading features help it to identify what information must be completed. BXA has added the gray shading to all relevant forms.

## Schedule 2 Forms

**Schedule 2 Form 2-2—Activities of the Plant.** Two respondents requested that question 2-2.7 on Form 2-2 be changed to add a separate selection for the activity type "other" and to also include the question "Is this plant dedicated to Schedule 2 activities? Yes/No." BXA deleted the word "exclusively" from question 2-2.7 and added a separate selection for activity type "other." BXA did not include the question recommended by the respondent because it is not necessary.

**Schedule 2 Form 2-2—Definition of Nameplate and Design Capacities.** Two respondents recommended that the definitions for "nameplate capacity" and "design capacity" be clarified. One respondent noted that industry's interpretation of these two definitions is synonymous and the other respondent noted that nameplate capacity has many different industrial meanings. One respondent also noted that the production capacity was requested for all Schedule 2 chemicals at the plant that were produced, processed, and/or consumed above the applicable threshold but that the instructions were unclear if the capacity should only be provided for chemicals that were produced. BXA acknowledges that industry may have different definitions for "nameplate capacity." However, for purposes of Schedule 2 declarations, the nameplate capacity definition remains unchanged and the design capacity definition is clarified by stating that it is the corresponding theoretically calculated product output, without test data or other supportive plant specific information. BXA also clarified the instruction to question 2-2.8 to state that you identify all Schedule 2 chemicals produced, processed or consumed above the applicable threshold, but that you only provide the production capacity and calculation method for those chemicals which you produced.

**Schedule 2 Annual Declarations on Anticipated Activities and Declarations on Additionally Planned Activities.** One respondent noted that it may not be possible to be certain about the starting and ending dates for production, processing or consumption of a Schedule 2 chemical as required in the Annual Declaration on Anticipated Activities and, therefore, requested that BXA clarify the requirement for approximate, not actual, start and end dates for submission of a Declaration on Additionally Planned Activities. The respondent further requested that BXA clarify that there is not a requirement for submitting a second Declaration on

Anticipated Activities. Lastly, the respondent noted the long lead-time for processing Schedule 2 and Schedule 3 Declarations on Anticipated Activities and recommended BXA to shorten the time frame for submission of the declaration from 21 days to 10 days.

For the Annual Declaration on Anticipated Activities, the time periods when declared activities are anticipated to occur should be as precise as possible, but should in any case be accurate to within a three-month period. The declaration requirement in relation to these periods does not necessarily mean that individual planned production, processing, or consumption campaigns need to be declared, rather this three-month period provides a flexible framework for declarations and will reduce the number and frequency of Declarations on Additionally Planned Activities. Since the requirement for declaring the anticipated time periods for production, processing or consumption is already an "approximate" projection coupled with the three-month period for completion of an activity, BXA does not believe it is necessary or appropriate to state that additionally planned time periods are "approximate." BXA did not add a clarification to Form 2-3C to state that only one Declaration on Anticipated Activities is required to be submitted. There may be situations in which a company submitted a Declaration on Additionally Planned Activities to declare new or changed anticipated production periods and it has further changes to those production periods which are not covered by the three-month period. BXA believes this will rarely occur, if ever. BXA has changed Form 2-3C to include the types of changes that will require a Declaration on Additionally Planned Activities. As previously noted, BXA has changed the time-frame for submission of the Declaration on Additionally Planned Activities from 21 days to 15 days.

#### Schedule 3 Forms

*General changes to Schedule 3 Forms.* One respondent recommended that Form 3-3 be revised to require identification of the year being reported. Two respondents recommended that an instruction be added before question 3-3.1 to clarify the type of declaration or report to which the question refers. Both respondents also recommended that new types of "purposes of production" be added to Questions 3-3.1b and 3-3.2b on Form 3-3, including inter-company transfers, as well as transfers to the agricultural, manufacturing, construction, pharmaceutical, and service or other industries. BXA has

made the instructional clarifications to Form 3-3. However, we did not change Form 3-3 to require that the reporting years be identified because this information is indicated on the Certification Form and only one Form 3-3 per chemical, per year is included in the declaration package. Conversely, for the Schedule 2 Initial Declaration, three Forms 2-3 must be submitted for each chemical for calendar years 1994, 1995, and 1996. Therefore, there is a clear need for the Schedule 2-3 Form to identify the year of the data being reported. Separate Schedule 3 declarations must be submitted for the Initial Declaration (1996) and the Annual Declarations on Past Activities for calendar years 1997, 1998, and 1999. The Certification Form for each of these declarations will identify the year of the data declared. You cannot combine data from several years into one declaration. This procedure is the same for Initial Reports on Exports and Imports and Annual Reports on Exports and Imports. BXA changed the purpose of production from "transfer to other company" to "transfer to other industry." BXA believes this change broadens the scope of the purposes to cover all transfers.

*Section 3 to the Schedule 3 Handbook.* One respondent recommended that Section 3 of the Schedule 3 Handbook outline the mixtures' thresholds to assist industry in complying with its obligations. BXA has added the mixture thresholds to Section 3 of the Schedule 3 Handbook as well as to the relevant sections of the Schedule 1 and 2 Handbooks. BXA also included the exemptions for UDOCs in the UDOC Handbook.

*Delete Structural Formula from Form 3-3.* One respondent noted that Form 3-3 unnecessarily includes a check box to indicate that a structural formula is attached to the declaration or report. The respondent noted that the list of Schedule 3 chemicals is well known and identifiable and a structural formula would, therefore, not be required. BXA has changed Form 3-3 to make the requirement optional for submission of a Schedule 3 structural formula.

*Exports and Imports of Schedule 2 and Schedule 3 Chemicals.* One respondent requested that Forms 2-3B and 3-3 address the applicable threshold mixture for the export and import of Schedule 2 and Schedule 3 mixtures. The respondent also requested that Figure A on Forms 2-3B and 3-3 distinguish between the applicable threshold for declaring and reporting the chemical, including the mixture exemption, versus exporting or importing the chemical. The respondent further recommended that Forms 2-3B

and 3-3 address the licensing or End-Use Certificate requirements for exports to non-States Parties.

BXA did not reference the End-Use Certificate or license requirements on the forms for the export of Schedule 2 or Schedule 3 chemicals to non-States Parties because these requirements are not applicable to declarations or reports. Such requirements are contained in § 745.2 of the EAR, which states in part that U.S. exporters must obtain an End-Use Certificate prior to the export of a Schedule 2 or 3 chemical to a non-State Party and to submit the Certificate to BXA. This is in addition to, but separate from, any license requirement under the EAR for such exports. BXA also did not change Figure A on Forms 2-3B and 3-3 because of space constraints. However, BXA created new tables in Section 3 of the Schedule 2 and Schedule 3 Report and Declaration Handbooks that will assist industry in determining the different thresholds that apply for declaration and reporting requirements for Schedule 2 and Schedule 3 chemicals.

#### Unscheduled Discrete Organic Chemicals Forms

*General changes to the declaration form for Unscheduled Discrete Organic Chemicals (UDOCs).* Two respondents requested that BXA clarify question UDOC.7 of the UDOC Form or change it to ask for an "estimate" or the "approximate" number of plants on the plant site producing UDOCs, including all PSF chemicals, instead of asking for the actual number of plants. One respondent requested a clarification to question UDOC.9 to request the "approximate" number of PSF plants at the plant site that produced an individual PSF chemical over 30 metric tons. This respondent also requested a clarification to question UDOC.10.1-10.4 to indicate that the "approximate" number of PSF plants whose aggregate production of all PSF chemicals falls within each of the PSF-chemical production ranges.

BXA changed UDOC Form questions UDOC.7 and UDOC.10.1-10.4 to require the "approximate" number of UDOC plants (including PSF plants) and the "approximate" aggregate production of all PSF chemicals, respectively. BXA did *not* change question UDOC.9 to require the "approximate" number of PSF plants that produced an "individual" PSF chemical over 30 metric tons. Rather BXA changed this question to require the "exact" number of PSF plants at the plant site that produced an individual PSF chemical over 30 metric tons because Part IX, paragraph 6, of the Convention's

Verification Annex states “\* \* \* specify the number of PSF-plants within the plant site and include information on the approximate aggregate amount of production for PSF-chemicals produced by each PSF-plant in the previous calendar year expressed in ranges \* \* \*” BXA believes that for PSF plants you must identify the exact number of plants on your plant site, but you can provide the approximate amount of PSF-chemicals produced by these plants.

**Section 3—Exemptions—**  
**Unscheduled Discrete Organic Chemicals Handbook.** Two respondents noted that the Unscheduled Discrete Organic Chemicals (UDOCs) Handbook did not appropriately list the exemptions from declaration requirements and requested that BXA include all of the exemptions that are listed in the CWC. To assist industry in determining its obligations for UDOC declarations, BXA is listing all of the UDOC exemptions in Section 3 of the UDOC Handbook that are listed in part 715 the CWC. BXA reminds industry that where there are any discrepancies between the requirements of the Handbooks and the CWC, the CWC prevails.

#### Miscellaneous issues

**Assistance on questions and chemical determinations.** Two respondents that requested BXA accept electronic requests for assistance or chemical determinations via e-mail in addition to telephone and fax requests. Both respondents noted that an electronic mechanism for processing requests will enhance BXA's flexibility and responsiveness to assist industry. One respondent requested BXA to provide a chemical determination even if all of the required information was not submitted. Lastly, one respondent requested BXA to establish a provision or a clarification to § 711.4 of the CWC in which any assistance given to a company by BXA that turns out to be incorrect will not result in an enforcement action against the company and should be considered release from any penalty. BXA agrees with the respondents' request for an electronic means through which to seek assistance and to submit chemical determinations, and has revised § 711.4 appropriately. BXA also revised § 711.4 to identify the type of information that should be submitted for a chemical determination and established a provision for allowing facilities to explain why there are ambiguities or deficiencies that preclude them from supplying this information. BXA will make every effort to make a determination based upon the submitted

information, and only if this is not possible will BXA return the request and identify what additional information must be provided in order to complete the chemical determination. For enforcement purposes, only a written response from BXA is binding. Written advice applies only to the person or persons to whom it is addressed.

**Identification of the Owner and Operator of the facility.** The Department of State requested BXA to provide information on the owner and operator, occupant or agent in charge of a facility or plant site so that it can inform the owner and operator, occupant or agent in charge in writing of an impending inspection as required by section 304 of the Act. Section 304 of the Act requires that the USNA notify, in writing, the owner and the operator, occupant, or agent in charge of the facility. In order to fulfill this legal requirement, BXA has changed the appropriate forms and forms instructions to obtain the telephone and facsimile numbers for both the owner and the operator, occupant, or agent in charge of a facility.

**Chemicals Produced for Chemical Weapons Purposes.** One respondent recommended that Question 2-4.2 on Form 2-4 and Question 3-4.2 on Form 3-4 should be revised to require the identification of the final chemical weapon (CW) product, if known, or the Scheduled Chemical name, if known. The respondent cited difficulties industry may have in identifying the final CW product because of the confidential and proprietary nature of commercial production records, availability of records, and terms of mergers, acquisition or internal restructuring. Forms 2-4 and 3-4 (questions and instructions) already instruct industry to provide the final product or chemical, if this information is known. Therefore, no changes were made to these forms.

#### IV. Part-by-Part Analysis

The Chemical Weapons Convention Regulations (CWC) will include 13 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, reporting, and inspection provisions of the Convention.

**Part 711—General Information Regarding Declaration, Reporting, and**

**Notification 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.

**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), exports, imports, domestic transfers and storage of any quantity of Schedule 1 chemicals. This part provides that facilities that produce more than 100 grams aggregate 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 planned changes related to the initial declaration. 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 require prior notification of all exports

of Schedule 1 chemicals and annual reports of exports of such chemicals. 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 destination that is not a party to the Convention, except for mixtures containing 10 percent or less of a Schedule 2 chemical. (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 a Schedule 2 chemical in excess of specified quantities; and exports and imports 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 certain additionally planned production, processing or consumption activities. Declaration and reporting 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 and report purposes only if the concentration of the Schedule 2 chemical in the mixture is 30% or more by volume or by weight, whichever yields the lesser percent.

If the Schedule 2 chemical in a mixture equals or exceeds the stated percentage concentration, 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 a Schedule 3 chemical in excess of specified quantities; and exports and imports 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 certain additionally planned production activities. Declaration and reporting

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 and reporting 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. If the mixture contains 80 percent or more of the Schedule 3 chemical, you must count only the amount (weight) of the Schedule 3 chemical contained in the mixture, not the total weight of the mixture. 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 certain chemicals and chemical mixtures, including those 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; or products from the refining of crude oil, including sulfur-containing crude oil.

**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 United States National Authority (USNA) will provide written notification to the owner and operator, occupant or agent in charge of the premises to be inspected. BXA will provide Host Team notice to the inspection 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 and Act, and for additional declared facilities that request a facility agreement pursuant to the Act. 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 Host Team notification to the inspection point of contact of a declared facility, or to the owner or occupant of an facility that has not been declared under the declaration requirements of the Convention.

**Part 718—Confidential business information (CBI).** This part sets forth the identification and treatment of CBI as defined in the Act.

**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 a penalty, denial of export privileges, that applies to persons convicted under 18 U.S.C. 229.

**Part 721—Inspection of records and recordkeeping.** This part includes the recordkeeping requirements of the CWC, including retention and reproduction requirements.

**Part 722—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.

Comments on this interim rule must be submitted to BXA by January 31, 2000. Send comments to: the Regulatory Policy Division, Bureau of Export Administration, Room 2705, 14th Street and Pennsylvania Ave., N.W., Washington, D.C. 20230.

## Rulemaking Requirements

1. This interim rule has been determined to be significant for purposes of E.O. 12866.

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 the Office of Management and Budget has approved and reinstated under OMB Collection No. 0694-0091 (December 1999). The public reporting burdens for the new collections of information are estimated to average 10.6 hours for Schedule 1 Chemicals, 11.9 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. It is estimated to take approximately 1.18 hours to complete each of the nine Schedule 1 forms, 1.19 hours for each of the ten Schedule 2 forms, .36 hours for each of the seven Schedule 3 forms, and 1.33 hours for each of the four Unscheduled Discrete Organic Chemicals forms. The burden hours associated with completing a particular type of declaration or report package (e.g., Schedule 1 initial declaration, Schedule 2 annual declaration on past activities) will change depending on the number of forms required to comply with the specific declaration or report requirement. Table 1 to Parts 712, 713, 714, and 715 of the CWCR identifies the specific forms which must be included in each type declaration or report package. The Declaration and Report Handbooks include a "Guide to Submission of Forms" which also identifies the specific forms that must be included in a declaration or report package. To calculate the number of hours it takes to complete a specific type of declaration or report, multiply the number of forms required for a specific declaration or report type by the number of hours estimated to complete each form.

BXA will use the information contained in declarations and reports submitted by U.S. persons to compile the U.S. National Industrial Declaration in order to meet our obligations under the Chemicals Weapons Convention. BXA will submit the U.S. National Industrial Declaration to the United States National Authority who will

forward the Declaration to the Organization on the Prohibition of Chemical Weapons as required by the Convention.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 13132.

4. BXA 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 the proposed rule, and requested comments from the public. BXA received no comments from the public on either the CBA or the IRFA. Therefore, BXA is using the analysis of the IRFA and the CBA, with certain edits to make it consistent with this interim rule, for the Final Regulatory Flexibility Analysis (FRFA) required by 5 U.S.C. 604. A summary of the FRFA and CBA follows. The CBA and the FRFA are available on BXA's website at [www.cwc.gov](http://www.cwc.gov). Copies of the CBA and the complete FRFA may be obtained from the 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.

The FRFA 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 FRFA states that BXA does not have information on which SIC code categories will include companies that are subject to the declaration, reporting, notification or inspection requirements of this rule, and therefore, BXA is unable to estimate with certainty the number of small businesses that will be affected by this rule. BXA anticipates some 2,000 firms will be affected by the CWCR, and many of them may have no more than 500 employees, thus falling under the SBA generic definition of "small business."

The FRFA and the CBA report BXA's estimate that compliance with the requirements of this rule will total approximately \$377,654 to gather and maintain relevant data and to fill out declarations, reports and notifications, 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 FRFA and CBA describe the expected benefits to the United States of implementing the requirements of the Convention, including increased national and economic security.

The FRFA explains that BXA's discretion in formulating the declaration, reporting and notification requirements of this rule is limited by the Convention. The OPCW has issued forms for States Parties to use for declarations. In drafting the CWCR requirements and the forms for U.S. persons to use, BXA has consistently interpreted the Convention's requirements as narrowly as possible to ensure that only information that the United States National Authority must declare to the OPCW is to be submitted 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 of the information collected must be declared to the OPCW. In addition, certain declaration requirements of the Convention are subject to interpretation by States Parties. 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 requirements currently subject to "national discretion," BXA has adopted in this rule the minimum requirements consistent with a reasonable reading of the Convention, keeping in mind its purposes and objectives.

## List of Subjects

### 15 CFR Part 710

Chemicals, Exports, Foreign Trade, Imports, Treaties.

### 15 CFR Part 711

Chemicals, Confidential business information, Reporting and recordkeeping requirements.

### 15 CFR Part 712

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

### 15 CFR Part 713

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

### 15 CFR Part 714

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

**15 CFR Part 715**

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

**15 CFR Part 716**

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

**15 CFR Part 717**

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

**15 CFR Part 718**

Confidential business information, Reporting and recordkeeping requirements.

**15 CFR Part 719**

Administrative proceedings, Exports, Imports, Penalties, Violations.

**15 CFR Part 720**

Penalties, violations.

**15 CFR 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 722 are added to read as follows:

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

Sec.

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

710.2 Scope of the CWC.

710.3 Purposes of the Convention and CWC.

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:** 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703.

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

The following are definitions of terms used in the CWC (parts 710 through

722 of this subchapter, unless otherwise noted):

*Act (The):* Means the Chemical Weapons Convention Implementation Act of 1998 (22 U.S.C. 6701 *et seq.*).

*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.

*By-product.* Means any chemical substance or mixture produced without a separate commercial intent during the manufacture, processing, use or disposal of another chemical substance or mixture.

*Chemical Weapon.* Means the following, together or separately:

(1) 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;

(2) A munition or device, specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in paragraph (1) of this definition, which would be released as a result of the employment of such munition or device; or

(3) Any equipment specifically designed for use directly in connection with the employment of munitions or devices specified in paragraph (2) 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.

*Chemical Weapons Convention Regulations (CWC).* Means the regulations contained in 15 CFR parts 710 through 722.

*Consumption.* Consumption of a chemical means its conversion into another chemical via a chemical reaction. Unreacted material must be accounted for as either waste or as recycled starting material.

*Declaration or report 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 CWC and are "declared" facilities whose facility-specific information will be transmitted to the OPCW. Report forms will be used by entities that are "undeclared" facilities or trading companies that have limited reporting requirements for only export and import activities under the

CWC and whose facility-specific information will not be transmitted to the OPCW. Information from declared facilities, undeclared facilities and trading companies will also be used to compile U.S. national aggregate figures on the production, processing, consumption, export and import of specific chemicals. See also related definitions of declared facility, undeclared facility and report.

*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 CWC. 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, and metal carbonates, identifiable by chemical name, by structural formula, if known, and by Chemical Abstract Service registry number, if assigned.

*Domestic transfer.* Means, with regard to declaration requirements for Schedule 1 and chemicals under the CWC, any movement of any amount of Schedule 1 chemical outside the geographical boundary of a facility in the United States to another destination in the United States, 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 export or import for reporting purposes, not a domestic transfer.

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

*Explosive.* Means a chemical (or a mixture of chemicals) that is included in Class 1 of the United Nations Organization hazard classification system.

*Facility.* Means any plant site, plant or unit.

*Facility agreement.* Means a written agreement or arrangement between a State Party and the Organization relating

to a specific facility subject to on-site verification pursuant to Articles IV, V, and VI of the Convention.

**Host Team.** Means the U.S. 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.

**Hydrocarbon.** Means any organic compound that contains only carbon and hydrogen.

**Impurity.** Means a chemical substance unintentionally present with another chemical substance or mixture.

**Inspection Team.** Means the group of inspectors and inspection assistants assigned by the Director-General of the Technical Secretariat to conduct a particular inspection.

**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, the 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:

- (1) Small administrative area;
- (2) Storage/handling areas for feedstock and products;
- (3) Effluent/waste handling/treatment area;
- (4) Control/analytical laboratory;
- (5) First aid service/related medical section; and
- (6) 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:

- (1) Administration and other offices;
- (2) Repair and maintenance shops;
- (3) Medical center;
- (4) Utilities;
- (5) Central analytical laboratory;
- (6) Research and development laboratories;
- (7) Central effluent and waste treatment area; and
- (8) Warehouse storage.

**Precursor.** Means any chemical reactant which takes part, at any stage in the production, by whatever method, of a toxic chemical. The term includes any key component of a binary or multicomponent chemical system.

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

**Production.** Means the formation of a chemical through chemical reaction.

**Purposes not prohibited by the CWC.** Means the following:

- (1) Any peaceful purpose related to an industrial, agricultural, research, medical or pharmaceutical activity or other activity;
- (2) Any purpose directly related to protection against toxic chemicals and to protection against chemical weapons;
- (3) 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
- (4) Any law enforcement purpose, including any domestic riot control purpose and including imposition of capital punishment.

**Report.** Means information due to BXA on exports and imports of Schedule 1, Schedule 2 or Schedule 3 chemicals above applicable thresholds. Such information is included in the national aggregate declaration transmitted to the OPCW. Facility-specific information is *not* included in the national aggregate declaration. Note: This definition does not apply to parts 719 and 720 (see § 719.1) of this subchapter.

**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 through 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, export, import, 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.

**Toxic Chemical.** Means any chemical which, through its chemical action on life processes, can cause death, temporary incapacitation, or permanent harm to humans or animals. The term includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions, or elsewhere. Toxic chemicals that have been identified for the application of verification measures are in schedules contained in Supplements No. 1 to parts 712 through 714 of this subchapter.

**Trading company.** Means any person involved in the export and/or import of scheduled chemicals in amounts greater than specified thresholds, but not in the production, processing or consumption of such chemicals in amounts greater than threshold amounts requiring declaration. If such persons exclusively export or import scheduled chemicals in amounts greater than specified thresholds, they are subject to reporting requirements but are not subject to routine inspections.

**Transfer.** See domestic transfer.

**Undeclared facility or plant site.** Means a facility or plant site 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 and plant sites may have a reporting requirement for exports or imports 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 Department of State 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 Supplements No. 1 to parts 712 through 714 of this subchapter).

**Unscheduled Discrete Organic Chemical (UDOC).** Means any "discrete organic chemical" that is not contained in the Schedules of Chemicals (see Supplements No. 1 to parts 712 through 714 of this subchapter) and subject to the declaration requirements of part 715 of this subchapter. Unscheduled discrete organic chemicals subject to declaration under this subchapter are those produced by synthesis that are 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 722 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.** (1) The CWC declaration, reporting, and inspection requirements apply to all persons and facilities located in the United States, except U.S. Government facilities as follows:

(i) Department of Defense facilities;

(ii) Department of Energy facilities; and

(iii) Facilities of other U.S. Government agencies that notify the USNA of their decision to be excluded from the CWC.

(2) For purposes of this subchapter, "United States Government facilities" are those facilities owned and operated by a U.S. Government agency (including those operated by contractors to the agency), and those facilities leased to and operated by a U.S. Government agency (including those operated by contractors to the agency). "United States Government facilities" does not include facilities owned by a U.S. Government agency and leased to a private company or other entity such that the private company or entity may independently decide for what purposes to use the facilities.

(b) **Activities subject to the CWC.** The CWC compel data declarations and reports from facilities subject to the CWC (parts 710 through 722 of this subchapter) on activities, including production, processing, consumption, exports and imports, involving chemicals further described in parts 712 through 715 of this subchapter. These regulations do not apply to activities involving inorganic chemicals other than those listed in the Schedules of Chemicals or to other specifically exempted unscheduled discrete organic chemicals. In addition, these 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 (see part 717) that could be requested at any facility or location in the United States subject to the CWC. Finally, the CWC restrict certain imports of Schedule 1 and 2 chemicals into the United States from non-States Parties and prohibit imports of 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, as a State Party, certain declaration, inspection, and other obligations. In addition, the United States and other States Parties 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 States Parties that lawful activities of 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 722 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 facilities of other U.S. Government agencies that notify the USNA of their decision to be excluded from the CWC on activities, including exports and imports of scheduled chemicals and certain information regarding unscheduled discrete organic chemicals as described in parts 712 through 715 of this subchapter. U.S. 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 722 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 for research, pharmaceutical, medical, public health, or protective purposes.

(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 722 of this subchapter) implement certain provisions of the Chemical Weapons Convention under the authority of the Chemical Weapons Convention Implementation Act of 1998 (Act), the National Emergencies Act, the International Emergency Economic Powers Act (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 Act, and consistent with the Act, to carry out appropriate functions not otherwise assigned in the Act but necessary to implement certain reporting, monitoring and inspection requirements of the Convention and the Act.

#### **§ 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. 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 § 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 December 30, 1999*

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  
Liechtenstein  
Lithuania  
Luxembourg  
Macedonia  
Malawi  
Maldives  
Mali  
Malta  
Mauritius  
Mauritania  
Mexico  
Moldova (Republic of)  
Monaco  
Mongolia  
Morocco  
Namibia  
Nepal  
Netherlands  
New Zealand  
Nicaragua  
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

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

## **PART 711—GENERAL INFORMATION REGARDING DECLARATION, REPORTING AND NOTIFICATION REQUIREMENTS**

### **Sec.**

- 711.1 Overview of declaration, reporting, and notification requirements.
- 711.2 Who submits declarations, reports, and notifications.
- 711.3 Assistance in determining your obligations.
- 711.4 Declaration and reporting of activities occurring prior to December 30, 1999.
- 711.5 Numerical precision of submitted data.
- 711.6 Where to obtain forms.

**Authority:** 22 U.S.C. 6701 et seq.; E.O. 13128, 64 FR 36703.

### **§ 711.1 Overview of declaration, reporting, and notification requirements.**

Parts 712 through 715 of the CWCRC (parts 710 through 722 of this subchapter) describe the declaration, notification and reporting requirements for Schedules 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 § 711.6).

### **§ 711.2 Who submits declarations, reports, and notifications.**

The owner, operator, or senior management official of a facility subject to declaration, report, or notification requirements under the CWCRC (parts 710 through 722 of this subchapter) is responsible for the submission of all required documents in accordance with all applicable provisions of the CWCRC.

### **§ 711.3 Assistance in determining your obligations.**

(a) *Determining if your chemical is subject to declaration, reporting or notification requirements.*

(1) If you need assistance in determining if your chemical is classified as a Schedule 1, Schedule 2, or Schedule 3 chemical, or is an unscheduled discrete organic chemical, submit your written request for a chemical determination to BXA. Such requests may be faxed to (703) 235-1481, e-mailed to [cdrcwc.gov](mailto:cdrcwc.gov), or mailed to Information Technology Team, Bureau of Export Administration, U.S. Department of Commerce, 1555 Wilson Boulevard, Suite 710, Arlington, Virginia 22209-2405. Your request should include the information noted in paragraph (a)(2) of this section to ensure an accurate determination. Also include any additional information that you feel is relevant to the chemical or process involved (see part 718 of this subchapter for provisions regarding treatment of confidential business information). If you are unable to provide all of the information required in paragraph (a)(2) of this section, you should include an explanation identifying the reasons or deficiencies that preclude you from supplying the information. If BXA cannot make a determination based upon the information submitted, BXA will return the request to you and identify the additional information that is necessary to complete a chemical determination.

(2) Include the following information in each chemical determination request:

- (i) Date of request;
- (ii) Company name and complete street address;
- (iii) Point of contact;
- (iv) Phone and fax number of contact;
- (v) E-mail address of contact, if you want an acknowledgment of receipt sent via e-mail;
- (vi) Chemical Name;
- (vii) Structural formula of the chemical, if the chemical is not specifically identified by name and chemical abstract service registry number in Supplements No. 1 to parts 712 through 714 of the CWCRC; and
- (viii) Chemical Abstract Service registry number, if assigned.

(b) *Other inquiries.* If you need assistance in interpreting the provisions of this subchapter or need assistance with other CWC-related issues, and you require a response from BXA in writing, submit a detailed request to BXA that explains your question, issue, or request. Send the request to the address or fax included in paragraph (a) of this section, or e-mail the request to [cwcqa@cdc.gov](mailto:cwcqa@cdc.gov).

(c) *BXA response to your request.* BXA will respond in writing to your chemical determination request submitted under paragraph (a) of this section within 10 working days of receipt of the request. BXA will respond to other inquiries about industry obligations under the CWCRC in a timely manner.

(d) *Other BXA contact information.*

(1) *Declaration and report requirements.* For questions on declaration or report requirements, or help in completing forms, you may also contact BXA's Information Technology Team (ITT) by phone at (703) 235-1335.

(2) *Inquiries regarding inspections and facility agreements.* For questions regarding inspections and facility agreements, contact BXA's Inspection Management Team (IMT) by phone at (202) 482-6114 or fax (202) 482-4744.

### **§ 711.4 Declaration and reporting of activities occurring prior to December 30, 1999.**

(a) Facilities subject to the CWCRC are required to prepare and submit declarations and reports, to the extent that the necessary information and records are available, on activities occurring prior to December 30, 1999. Willful failure or refusal to submit such declarations and reports constitutes a violation under part 719 of this subchapter. Declarations and reports are not required if records and information necessary to prepare them are not available for one or more of the following reasons:

(1) The necessary information was not collected, or the necessary records were not kept, because no regulatory requirement to do so was in effect prior to December 30, 1999 and at the time of the activity;

(2) The information, though collected at the time of the activity, was discarded prior to December 30, 1999 in accordance with normal business practices; or

(3) The current custodian of the records or information is no longer affiliated with a facility subject to the CWCRC due to changes in ownership or control of that facility which took place prior to December 30, 1999.

(b) If partial information is available, facilities are required to provide whatever information is available, on the appropriate forms, with a notation on Form A indicating that complete information is not available.

(c) This § 711.4 applies only to initial declarations and reports, and to annual declarations and reports for calendar years 1997, 1998, and 1999.

**§ 711.5 Numerical precision of submitted data.**

Numerical information submitted in declarations and reports is to be provided per applicable rounding rules in each part (i.e., parts 712 through 715 of this subchapter) with a precision equal to that which can be reasonably provided using existing documentation, equipment, and measurement techniques.

**§ 711.6 Where to obtain forms.**

Forms to complete declarations and reports required by the CWC may be obtained by contacting: Information Technology Team, Bureau of Export Administration, U.S. Department of Commerce, 1555 Wilson Blvd., Suite 710, Arlington, VA 22209-2405, Telephone: (703) 235-1335. Forms may also be downloaded from the Internet at [www.cwc.gov](http://www.cwc.gov).

**PART 712—ACTIVITIES INVOLVING SCHEDULE 1 CHEMICALS****Sec.**

712.1 Round to zero rule that applies to activities involving Schedule 1 chemicals.

712.2 Prohibitions involving imports of Schedule 1 chemicals.

712.3 Initial and annual declaration requirements for facilities engaged in the production of Schedule 1 chemicals for purposes not prohibited by the CWC.

712.4 New Schedule 1 production facility.

712.5 Advance notification and annual report of all exports and imports of Schedule 1 chemicals to, or from, other States' Parties.

712.6 Frequency and timing of declarations, reports and notifications.

712.7 Amended declaration or report.

**Supplement No. 1 to Part 712—Schedule 1 Chemicals**

**Authority:** 22 U.S.C. 6701 *et seq.*; 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 Round to zero rule that applies to activities involving Schedule 1 chemicals.**

(a) See § 711.6 of this subchapter for information on obtaining the forms you will need to declare and report activities involving Schedule 1 chemicals.

(b) Facilities that produce, export or import mixtures containing less than 0.5% aggregate quantities of Schedule 1 chemicals as unavoidable by-products or impurities may round to zero and are not subject to the provisions of this part 712. Schedule 1 content may be calculated by volume or weight, whichever yields the lesser percent. Note that such mixtures may be subject

to regulatory requirements of other federal agencies.

**§ 712.2 Prohibitions involving imports of Schedule 1 chemicals.**

(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 BXA 45 calendar days prior to the import pursuant to § 712.5.

(b)(1) The provisions of paragraph (a) of this section do not apply to 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 is:

(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 § 712.2:** 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 see 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.

**§ 712.3 Initial and annual declaration requirements for facilities engaged in the production of Schedule 1 chemicals for purposes not prohibited by the CWC.**

(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 any one of the calendar years 1997, 1998, or 1999. Note: Do not include production data in your initial declaration. Such information should be included in your annual declaration on past activities. See paragraph (a)(2) of this section.

(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. As a declared Schedule 1 facility, 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) 200 calendar days before commencing operations or increasing production which 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 § 712.6, 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.* 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 the quantity of any Schedule 1, Schedule 2 or Schedule 3 precursor chemical used to produce the declared Schedule 1 chemical, rounded to the nearest gram. You must further declare the quantity of each Schedule 1 chemical consumed or stored by, or domestically transferred from, your facility, whether or not the Schedule 1 chemical was produced by your facility, rounded to the nearest gram. In calculating the amount of Schedule 1 chemical you produced, consumed or stored, count only the amount of the Schedule 1 chemical(s) in a mixture, not the total weight of the mixture (i.e., do not count the weight of the solution, solvent, or container).

**Note to § 712.3(c):** Schedule 1 reaction intermediates which exist or might exist during the course of synthesis to produce non-scheduled chemicals and which cannot be isolated using available technology should not be declared if the reaction is allowed to go to completion, completely consuming the real or hypothetical intermediates.

(d) *"Declared" Schedule 1 facilities and routine inspections.* Only facilities that produced in excess of 100 grams aggregate of Schedule 1 chemicals in calendar year 1997 or 1998, or 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 "declared" Schedule 1 facilities for the years declared. A "declared" Schedule 1 facility is subject to initial and 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 or annual declaration on anticipated activities (see paragraphs (a)(2) and (a)(3) of this section). If your facility does not produce more than 100 grams aggregate of Schedule 1

chemicals, no approval by BXA is required.

#### **§ 712.4 New Schedule 1 production facility.**

(a) *Establishment of a new Schedule 1 production facility.* (1) If your facility was not declared under § 712.3 in a previous calendar year, and 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 provide an initial declaration (a current detailed technical description of your facility) to BXA at least 200 calendar days in advance of commencing such production. Such facilities are considered "new Schedule 1 production facilities" and are subject to an initial inspection within 200 calendar days of submitting an initial declaration.

(2) New Schedule 1 production facilities that submit an initial declaration pursuant to paragraph (a)(1) of 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 that initial declaration.

(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 areas.

(c) Two hundred days after a new Schedule 1 production facility submits its initial declaration, it is subject to the annual declaration requirements of § 712.3(a)(2) and (a)(3).

#### **§ 712.5 Advance notification and annual report of all exports<sup>1</sup> 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 to the OPCW 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 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 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 under 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 exporter and importer;
- (H) Complete street address(es) of exporter and importer;

<sup>1</sup> 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).

(I) U.S. 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 subject to an export license requirement either under the EAR or the ITAR, 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 report requirements for exports and imports of Schedule 1 chemicals.* Any person subject to the CWC that exported or imported any quantity of Schedule 1 chemical to or from another State Party during the previous calendar year, beginning with calendar year 1997, has a reporting requirement under this section.

(1) *Annual report on exports and imports.* Declared and undeclared facilities, trading companies, and any other person subject to the CWC that exported or imported any quantity of a Schedule 1 chemical to or from another State Party in a previous calendar year, beginning with calendar year 1997,

must submit an annual report on exports and imports.

*Note to paragraph (b)(1):* The U.S. Government will not submit to the OPCW company-specific information relating to the export or import of Schedule 1 chemicals contained in reports. The U.S. Government will add all export and import information contained in reports to establish the U.S. national aggregate declaration on exports and imports.

(2) *Report forms to submit.* (i) *Declared Schedule 1 facilities.* (A) If your facility declared production of a Schedule 1 chemical and you also exported or imported any amount of that same Schedule 1 chemical, you may report the export or import by:

(1) Submitting, along with your declaration, Form 1-3 for that same Schedule 1 chemical to be reported. Attach Form A, as appropriate; Form B is optional; or

(2) Submitting, separately from your declaration, a Certification, Form 1-1, and a Form 1-3 for each Schedule 1 chemical to be reported. Attach Form A, as appropriate; Form B is optional.

(B) If your facility declared production of a Schedule 1 chemical and exported or imported any amount of a different Schedule 1 chemical, you may report the export or import by:

(1) Submitting, along with your declaration, a Form 1-3 for each Schedule 1 chemical to be reported. Attach Form A, as appropriate; Form B is optional; or

(2) Submitting, separately from your declaration, a Certification Form, Form 1-1, and a Form 1-3 for each Schedule 1 chemical to be reported. Attach Form A, as appropriate; Form B is optional.

(ii) If you are an undeclared facility, trading company, or any other person subject to the CWC, and you exported or imported any amount of a Schedule 1 chemical, you must submit a Certification Form, Form 1-1, and a Form 1-3 for each Schedule 1 chemical to be reported. Attach Form A, as appropriate; Form B is optional.

(c) Paragraph (a) of this section does not apply to the activities and persons set forth in § 712.2(b).

#### § 712.6 Frequency and timing of declarations, reports and notifications.

Declarations, reports and notifications required under this part must be postmarked by the appropriate date identified in Table 1 of this section. Required declarations, reports and notifications include:

(a) Initial declaration (technical description);

(b) Annual declaration on past activities (production during the previous calendar year, beginning with 1997);

(c) Annual report on exports and imports from trading companies, facilities and other persons (during the previous calendar year, beginning with 1997);

(d) Annual declaration on anticipated activities (production in the next calendar year, beginning in calendar year 2000 for production anticipated for calendar year 2001);

(e) Advance notification of any export to or import from another State Party; and

(f) Initial declaration of a new Schedule 1 production facility.

TABLE 1 TO § 712.6.—DEADLINES FOR SUBMISSION OF SCHEDULE 1 DECLARATIONS

Declarations and notifications	Applicable forms	Due dates
Initial Declaration—Declared facility (technical description).	Certification, 1-1, A, B (optional) .....	March 30, 2000.
Annual Declaration on Past Activities (previous calendar year, starting with 1997)—Declared facility (past production).	Certification, 1-1, 1-2, 1-2A, 1-2B, 1-3 (if also exported or imported), A (as appropriate), B (optional).	For 1997, 1998, and 1999 March 30, 2000. Thereafter, February 28.
Annual report on exports and imports (previous calendar year, starting with 1997) (facility, trading company, other persons).	Certification, 1-1, 1-3, A (as appropriate), B (optional).	For 1997, 1998, and 1999 March 30, 2000. Thereafter, February 28.
Annual Declaration on Anticipated Activities (next calendar year).	Certification, 1-1, 1-4, A (as appropriate), B (optional).	August 3 of each year prior to the calendar year in which anticipated activities will take place, beginning in calendar year 2000. 45 calendar days prior to the export or import.
Advance Notification of any export to or import from another State Party.	Notify on letterhead. See § 712.5 of this sub-chapter.	
Initial Declaration of a new Schedule 1 facility ..	Certification, 1-1, A (as appropriate), B (optional).	200 calendar days before commencing such production.

#### § 712.7 Amended declaration or report.

(a) You must submit an amended declaration or report for changes to previously submitted information on

chemicals, activities and end-use purposes or the addition of new chemicals, activities and end-use purposes.

(b) For declared Schedule 1 facilities, changes that may affect verification activities, such as changes of owner or operator, company name, address, or

inspection point of contact, require an amended declaration. Non-substantive typographical errors and changes to the declaration point of contact do not require submission of an amended declaration or report and may be corrected in subsequent declarations or reports.

(c) For undeclared Schedule 1 facilities, trading companies and other

persons, changes that do not directly affect the purpose of the Convention, such as changes to a company name, address, point of contact, or non-substantive typographical errors, do not require submission of an amended report and may be corrected in subsequent reports.

(d) If you are required to submit an amended declaration or report pursuant

to paragraph (a) or (b) of this section, you must complete and submit a new Certification Form and the specific form(s) 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 712—SCHEDULE 1 CHEMICALS

	(CAS registry number)
<b>A. Toxic chemicals:</b>	
(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) (96-64-0)
Soman: O-Pinacolyl methylphosphonofluoridate .....	
(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-di-methyl 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)
<b>(4) Sulfur mustards:</b>	
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)
<b>(5) Lewisites:</b>	
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)
<b>(6) Nitrogen mustards:</b>	
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>B. Precursors:</b>	
(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 on past production of Schedule 2 chemicals for chemical weapons purposes.

713.3 Initial and annual declaration 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 Schedule 2 chemicals.

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:** 22 U.S.C. 6701 *et seq.*; 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.

(a) See § 711.6 of this subchapter for information on obtaining the forms you will need to declare and report activities involving Schedule 2 chemicals. You may not import any Schedule 2 chemical (see Supplement No. 1 to this part) on or after April 29, 2000, from



any destination 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 Export Administration Regulations (15 CFR part 742) 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:

(1) The transfer or receipt of a Schedule 2 chemical from a non-State Party by a department, agency, or other entity of the United States, or by 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 transfer or receive the Schedule 2 chemical; or

(2) Mixtures containing Schedule 2 chemicals, if the concentration of each Schedule 2 chemical in the mixture is 10% or less by weight. Note, however, that such mixtures may be subject to regulatory requirements of other federal agencies.

#### **§ 713.2 Declaration on 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, 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. Form B is optional. 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 requirements for plant sites that produce, process or consume Schedule 2 chemicals in excess of specified thresholds.**

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

(1) *Quantities of production, processing or consumption that trigger declaration requirements.* You must complete the forms specified in paragraph (b) 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 100 kilograms of chemical Amiton: 0,0-Diethyl S-[2-(diethylamino) ethyl] phosphorothiolate and corresponding alkylated or protonated salts (see Schedule 2, paragraphs A.1 and A.2 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 quantity at one or more plants on your plant site in calendar years 1994, 1995, or 1996. For example, if you determine that one plant on your plant site produced greater than 1 kilogram of the chemical BZ in calendar year 1995, and no plants on your plant site produced, processed or consumed any Schedule 2 chemical above the applicable threshold quantity in calendar years 1994 or 1996, you have an initial declaration requirement under this paragraph. You must submit three Forms 2-3—one for each of the calendar years 1994, 1995, and 1996—and complete question 2-3.1 on each of the forms to declare production data on BZ for calendar years 1994, 1995 and 1996. For calendar year 1995, you would declare the quantity of BZ actually produced. For calendar years 1994 and 1996, you would declare “0” production quantity. Since the plant site did not engage in any other declarable activity (i.e., consumption, processing), you would leave blank questions 2-3.2 and 2-3.3 on Form 2-3 for calendar years 1994, 1995, and 1996. Note that declaring a “0” quantity for production in 1994 and 1996, as opposed to leaving the question blank, permits BXA to distinguish the activity that triggered the initial declaration requirement for each year from activities that were not declarable during that period.

(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.

**Note to paragraph (a)(1)(ii).** To determine whether you have an annual declaration on past activities requirement for Schedule 2 chemicals, you must determine whether you produced, processed or consumed a Schedule 2 chemical above the applicable threshold quantity at one or more plants on

your plant site in any one of the three previous calendar years. For example, for the 1997 declaration period, if you determine that one plant on your plant site produced greater than 1 kilogram of the chemical BZ in calendar year 1995, and no plants on your plant site produced, processed or consumed any Schedule 2 chemical above the applicable threshold quantity in calendar years 1996 or 1997, you still have a declaration requirement under this paragraph for the previous calendar year (1997). However, you must only declare on Form 2-3 (question 2-3.1), production data for calendar year 1997. You would declare “0” production quantity because you did not produce BZ above the applicable threshold quantity in calendar year 1997. Since the plant site did not engage in any other declarable activity (i.e., consumption, processing) in the 1995-1997 declaration period, you would leave blank questions 2-3.2 and 2-3.3 on Form 2-3. Note that declaring a “0” production quantity for 1997, as opposed to leaving the question blank, permits BXA to distinguish the activity that triggered the declaration requirement from activities that were not declarable during that period.

(iii) *Annual declaration on anticipated activities.* You anticipate that 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 2001, 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 a Schedule 2 chemical.* (i) The quantity of a Schedule 2 chemical contained in a mixture must be counted when determining the total quantity of a Schedule 2 chemical produced, processed, or consumed at your plant only if the concentration of the Schedule 2 chemical in the mixture is 30% or more by volume or by weight, whichever yields the lesser percent.

(ii) *Counting the amount of the Schedule 2 chemical in a mixture.* If your mixture contains 30% or more concentration of a Schedule 2 chemical, you must count only the amount (weight) of the Schedule 2 chemical in the mixture, not the total weight of the mixture.

(iii) *Determining declaration requirements for production, processing and consumption.* You must include the amount (weight) of a Schedule 2 chemical in a 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 32% 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 CWCRC purposes would be 800 kilograms and would not trigger a declaration requirement. This is because the concentration of thiodiglycol in the mixture is less than 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 include 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 2001. 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 a Schedule 2 chemical in amounts greater than the applicable threshold levels. For those years in which you produced, processed or consumed the declared chemical below the declaration threshold, you declare "0" only for the declared activities.

(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 a Schedule 2 chemical in amounts greater than the applicable threshold levels. If in the previous calendar year you produced, processed or consumed below the declaration threshold, but your declaration requirement is triggered because of activities occurring in an earlier year, you declare "0" only for the declared activities.

(2) *Rounding.* For the chemical BZ, report quantities to the nearest hundredth of a kilogram (10 grams). For PFIB and the Amiton family, report quantities to the nearest 1 kilogram. For all other Schedule 2 chemicals, report quantities to the nearest 10 kilograms.

(d) *"Declared" Schedule 2 plant sites.* A plant site that comprises at least one plant 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. A plant site that submitted an initial declaration for activities that occurred in 1994, 1995, or 1996 is a "declared" Schedule 2 plant site for those years.

(e) *Declared Schedule 2 plant sites subject to routine inspections.* A "declared" Schedule 2 plant site is subject to initial and routine inspection by the Organization for the Prohibition of Chemical Weapons 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). A plant site that submitted an initial declaration for calendar years 1994, 1995, and 1996, and exceeded the applicable inspection threshold is also subject to an initial inspection.

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

(a) *Declarations and reports of exports and imports of Schedule 2 chemicals.*

(1) *Declarations.* A Schedule 2 plant site that is declared because it produced, processed or consumed a Schedule 2 chemical above the applicable threshold quantity, and also exported from or imported to the plant site that same Schedule 2 chemical above the applicable threshold quantity, must submit export and import information as part of its declaration.

**Note to paragraph (a)(1):** A declared Schedule 2 plant site may need to declare exports or imports of Schedule 2 chemicals that it produced, processed or consumed above the applicable threshold quantity and also report exports or imports of different Schedule 2 chemicals that it did not produce, process or consume above the applicable threshold quantities.

(2) *Reports.* A declared plant site that does not meet the description of paragraph (a)(1) of this section, and an undeclared plant site or a trading company or any other person subject to the CWCRC must submit a report if it exported or imported a Schedule 2 chemical above the applicable threshold quantity.

**Note to paragraph (a)(2):** The U.S. Government will not submit to the OPCW company-specific information relating to the export or import of Schedule 2 chemicals contained in reports. The U.S. Government will add all export and import information contained in reports to export and import information contained in declarations to establish the U.S. national aggregate declaration on exports and imports.

**Note to paragraphs (a)(1) and (2):** Declared and undeclared plant sites must count, for

declaration or report purposes, all exports from and imports to the *entire* plant site, not only from or to individual plants on the plant site.

(b) *Quantities of exports or imports that trigger a declaration or report requirement.* (1) You have a declaration or report requirement and must complete the forms specified in paragraph (d) of this section if you exported or imported a Schedule 2 chemical in excess of the following threshold quantities:

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

(ii) 100 kilograms of chemical PFIB: 1,1,3,3,3-Pentafluoro-2(trifluoromethyl)-1-propene or 100 kilograms of Amiton : O,O Diethyl S-[2(diethylamino)ethyl] phosphorothiolate and corresponding alkylated or protonated salts (see Schedule 2, paragraphs A.1 and A.2 included in Supplement No.1 to this part);

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

(2) *Mixtures containing a Schedule 2 chemical.* The quantity of a Schedule 2 chemical contained in a mixture must be counted for the declaration or reporting of an export or import only if the concentration of the Schedule 2 chemical in the mixture is 30% or more by volume or by weight, whichever yields the lesser percent.

**Note 1 to paragraph (b)(2).** See § 713.3(a)(2)(ii) for information on counting amounts of Schedule 2 chemicals contained in mixtures and determining declaration and report requirements.

**Note 2 to paragraph (b)(2).** The "30% and above" mixtures rule applies only for declaration and report purposes. This rule does not apply for purposes of determining whether the export of your mixture to a non-State Party requires an End-Use Certificate or for determining whether you need an export license from the Department of Commerce (see §§ 742.2, 742.18 and 745.2 of the Export Administration Regulations) or from the Department of State (see the International Traffic in Arms Regulations (22 CFR parts 120 through 130)).

(c) *Declaration and report requirements.* (1) *Initial declaration.* A plant site described in paragraph (a)(1) of this section that has an initial declaration requirement for production, processing, or consumption of a Schedule 2 chemical must also declare the export or import of that same Schedule 2 chemical if the amount exported or imported in 1994, 1995 or 1996 exceeded the applicable threshold quantity set forth in paragraph (b)(1)(i)

through (iii) of this section. For the initial declaration, the plant site must only declare the export or import information for any of the calendar years (1994, 1995 and/or 1996) in which the export or import exceeded the applicable threshold quantity.

(2) *Initial report on exports and imports.* Declared plant sites described in paragraph (a)(2) of this section, undeclared plant sites, trading companies or any other person subject to the CWC that exported or imported a Schedule 2 chemical in 1996 in excess of the applicable threshold quantity set forth in paragraph (b) of this section, must submit an initial report on exports or imports for calendar year 1996.

(3) *Annual declaration on past activities.* A plant site described in paragraph (a)(1) that has an annual declaration requirement for production, processing, or consumption of a Schedule 2 chemical for the previous calendar year, beginning in 1997, must also declare the export and/or import of that same Schedule 2 chemical if the amount exceeded the applicable threshold quantity set forth in paragraph (b). The plant site must declare the export or import information for that same Schedule 2 chemical as part of its annual declaration of past activities.

(4) *Annual report on exports and imports.* Declared plant sites described in paragraph (a)(2), and undeclared plant sites, trading companies or any other person subject to the CWC that exported or imported a Schedule 2 chemical in a previous calendar year, beginning in 1997, in excess of the applicable threshold quantity set forth in paragraphs (b)(1) (i) through (iii) must submit an annual report on exports or imports.

(d) *Types of declaration and report forms to be used.* (1) *Initial declaration.* If you are a declared Schedule 2 plant site as described in paragraph (a)(1), you must complete Form 2-3B in addition to the forms required by § 713.3(b)(1). You must complete the forms for each declared Schedule 2 chemical and for each of the calendar years 1994, 1995, and 1996, in which the export or import exceeded the applicable threshold quantity.

(2) *Initial report on exports and imports.* (i) If you are a declared plant site as described in paragraph (a)(2), you may fulfill your reporting requirements by:

(A) Submitting, along with your initial declaration, a Form 2-3B for each Schedule 2 chemical you exported or imported above the applicable threshold quantity. Attach Form A, as appropriate; Form B is optional.

(B) Submitting, separately from your initial declaration, a Certification Form, Form 2-1, and Form 2-3B for each Schedule 2 chemical you exported or imported above the applicable threshold quantity. Attach Form A, as appropriate; Form B is optional.

(ii) If you are an undeclared plant site or trading company, you must complete the Certification Form, Form 2-1, and Form 2-3B for each Schedule 2 chemical you exported or imported above the applicable threshold quantity. Attach Form A, as appropriate; Form B is optional.

(3) *Annual declaration on past activities.* If you are a declared Schedule 2 plant site as described in paragraph (a)(1), you must complete Form 2-3B, in addition to the forms required by § 713.3(b)(2), for each declared Schedule 2 chemical exported or imported above the applicable threshold quantity in the previous calendar year.

(4) *Annual report on exports and imports.* (i) If you are a declared plant site as described in paragraph (a)(2), you may fulfill your annual reporting requirements by:

(A) Submitting, along with your annual declaration on past activities, a Form 2-3B for each Schedule 2 chemical you exported or imported above the applicable threshold quantity. Attach Form A, as appropriate; Form B is optional.

(B) Submitting, separately from your annual declaration on past activities, a Certification Form, Form 2-1, and Form 2-3B for each Schedule 2 chemical you exported or imported above the applicable threshold quantity. Attach Form A, as appropriate; Form B is optional.

(ii) If you are an undeclared plant site, trading company or any other person subject to the CWC, you must complete the Certification Form, Form 2-1, and Form 2-3B for each Schedule 2 chemical you exported or imported above the applicable threshold quantity. Attach Form A, as appropriate; Form B is optional.

(e) *Quantities to be declared.* (1) *Calculations.* If you exported from or imported to your plant site, trading company, or other location more than the applicable threshold quantity of a Schedule 2 chemical, you must declare or report all exports and imports by destination, and indicate the total amount exported to or imported from each destination. Only indicate the total annual quantity exported to or imported from a specific destination if the total annual quantity to or from that destination 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 a declaration or report requirement, you must include all exports and imports, including exports and imports falling within the 1% exemption in your calculation.

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

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

(a) *Declaration requirements for additionally planned activities.* (1) You must declare additionally planned production, processing, or consumption of Schedule 2 chemicals after the annual declaration on anticipated activities for the next calendar year has been delivered to BXA if:

(i) You plan that a previously undeclared plant on your plant site under § 713.3(a)(1)(iii) will produce, process, or consume a Schedule 2 chemical above the applicable declaration threshold;

(ii) You plan to produce, process, or consume at a plant declared under § 713.3(a)(1)(iii) an additional Schedule 2 chemical above the applicable declaration threshold;

(iii) You plan an additional activity (production, processing, or consumption) at your declared plant above the applicable declaration threshold for a chemical declared under § 713.3(a)(1)(iii);

(iv) You plan to increase the production, processing, or consumption of a Schedule 2 chemical by a plant declared under § 713.3(a)(1)(iii) from the amount exceeding the applicable declaration threshold to an amount exceeding the applicable inspection threshold (see § 716.1(b)(2));

(v) You plan to change the starting or ending date of anticipated production, processing, or consumption declared under § 713.3(a)(1)(iii) by more than three months; or

(vi) You plan to increase your production, processing, or consumption of a Schedule 2 chemical by a declared plant site by 20 percent or more above that declared under § 713.3(a)(1)(iii).

(2) If you must submit a declaration on additionally planned activities because you plan to engage in any of the activities listed in paragraphs (a)(1) (i) through (vi) of this section, you should also declare changes to your declaration relating to the following activities. You do not have to submit an additionally planned declaration if you are only changing the following non-quantitative activities:

(i) Changes to the plant's production capacity;

(ii) Changes or additions to the product group codes for the plant site or the plant(s);

(iii) Changes to the plant's activity status (i.e., dedicated, multipurpose, or other status);

(iv) Changes to the plant's multipurpose activities;

(v) Changes to the plant site's status relating to domestic transfer of the chemical;

(vi) Changes to the plant site's purposes for which the chemical will be produced, processed or consumed; or

(vii) Changes to plant site's status relating to exports of the chemical or the addition of new countries for export (not to exceed 10 countries).

(b) *Declaration forms to be used.* If you are required to declare additionally planned activities pursuant to paragraph (a) of this part, you must complete the Certification Form and Forms 2-1, 2-2, 2-3, and 2-3C as appropriate. Such forms are due to BXA at least 15 days prior to beginning the additional activity.

**§ 713.6 Frequency and timing of declarations and reports.**

Declarations and reports required under this part must be postmarked by the appropriate date identified in Table 1 of this section. Required declarations and reports include:

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

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

(c) Initial report on exports and imports from trading companies, plant sites and other persons (during calendar year 1996);

(d) Annual declaration on past activities (production, processing, consumption, export or import of Schedule 2 chemicals during the previous calendar year, beginning with 1997);

(e) Annual report on exports and imports from trading companies, plant sites and other persons (during the previous calendar year, beginning with 1997); and

(f) Annual declaration on anticipated activities (production, processing or consumption during the next calendar year, beginning in calendar year 2000 for activities anticipated for calendar year 2001).

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

Declarations	Applicable forms	Due dates
Initial Declaration (for calendar years 1994, 1995, and 1996)—Declared plant site (production, processing, consumption, exports and imports).	Certification, 2-1, 2-2, 2-3, 2-3A, 2-3B (if also exported or imported), A (as appropriate), B (optional).	March 30, 2000.
Initial Report on Exports and Imports (for calendar year 1996)—Plant site, trading company, other persons.	Certification, 2-1, 2-3B, A (as appropriate), B (optional).	March 30, 2000.
Annual Declaration on Past Activities (previous calendar year, starting with 1997)—Declared plant site (production, processing, consumption, exports and imports).	Certification, 2-1, 2-2, 2-3 2-3A, 2-3B (if also exported or imported), A (as appropriate), B (optional).	For 1997, 1998, and 1999. Thereafter, February 28, March 30, 2000.
Annual Report on Exports and Imports (previous calendar year, starting with 1997)—Plant site, trading company, other persons.	Certification, 2-1, 2-3B, A (as appropriate), B (optional).	For 1997, 1998, and 1999. Thereafter, February 28, March 30, 2000.

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

Declarations	Applicable forms	Due dates
Annual Declaration on Anticipated Activities (next calendar year).	Certification, 2-1, 2-2, 2-3, 2-3A, 2-3C, A (as appropriate), B (optional).	September 3 of each year prior to the calendar year in which anticipated activities will take place, beginning in calendar year 2000.
Declaration on Additionally Planned Activities—(production, processing and consumption).	Certification, 2-1, 2-3C, A (as appropriate), B (optional).	15 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 (as appropriate), B (optional).	March 30, 2000.

**§ 713.7 Amended declaration or report.**

(a) You must submit an amended declaration or report for changes to previously submitted information on chemicals, activities and end-use purposes or the addition of new chemicals, activities and end-use purposes.

(b) For declared plant sites subject to inspection, changes that may affect verification activities, such as changes of owner or operator, company name,

address, or inspection point of contact require an amended declaration.

(c) For declared plant sites not subject to inspection, undeclared plant sites, trading companies, and other persons, changes that do not directly affect the purpose of the Convention, such as changes to a company name, address, declaration point of contact, or non-substantive typographical errors, do not require submission of an amended declaration or report and may be

corrected in subsequent declarations or reports.

(d) If you are required to submit an amended declaration or report pursuant to paragraph (a) or (b) of this section, you must complete and submit a new Certification Form and the specific form(s) being amended (e.g., annual declaration on past activities). Only complete that portion of each form that corrects the previously submitted information.

## 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 on past production of Schedule 3 chemicals for chemical weapons purposes.

714.2 Initial and annual declaration requirements for plant sites that produce a Schedule 3 chemical in excess of 30 metric tons.

714.3 Initial and annual 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:** 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703.

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

(a) See § 711.6 of this subchapter for information on obtaining the forms you will need to declare and report activities involving Schedule 3 chemicals.

(b) You must complete the Certification Form, Forms 3-1, 3-2, 3-4, Form A 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. Form B is optional.

You must declare the total quantity of such chemical produced, rounded to the nearest tenth of a metric ton (or 100 kilograms). 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 plant sites that produce a Schedule 3 chemical in excess of 30 metric tons.**

(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 (b) of this section if you have

produced or anticipate producing a Schedule 3 chemical as follows:

(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.

(ii) *Annual declaration on past activities.* You produced at one or more plants on your plant site in excess of 30 metric tons of any single Schedule 3 chemical during the previous calendar year, beginning with 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 containing a Schedule 3 chemical.* (i) 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.

(ii) *Counting the amount of the Schedule 3 chemical in a mixture.* If your mixture contains 80% or more concentration of a Schedule 3 chemical, you must count only the amount (weight) of the Schedule 3 chemical in the mixture, not the total weight of the mixture.

(b) *Types of 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 that produced the Schedule 3 chemical in amounts exceeding 30 metric tons, and round to the nearest ten metric tons.

(d) *"Declared" Schedule 3 plant sites.* A plant site that comprises at least one plant that produced in excess of 30 metric tons of a Schedule 3 chemical during the previous calendar year, or that you anticipate will produce more than 30 metric tons of a Schedule 3 chemical in the next calendar year, is a "declared" Schedule 3 plant site. A plant site that submitted an initial declaration for 1996 and/or annual declaration on past activities for 1997 or 1998 is a "declared" Schedule 3 plant site for the years declared.

(e) *Routine inspections of declared Schedule 3 plant sites.* A "declared" Schedule 3 plant site is subject to routine inspection by the Organization for the Prohibition of Chemical Weapons (see part 716 of this subchapter) if the declared plants on your plant site produced during the previous calendar year or you anticipate they will produce during the next calendar year in excess of 200 metric tons aggregate of any Schedule 3 chemical. A plant site that submitted an initial declaration for 1996 and/or an annual declaration on past activities for 1997 or 1998, and exceeded the inspection threshold, is also subject to a routine inspection.

#### **§ 714.3 Initial and annual report requirements for exports and imports of Schedule 3 chemicals.**

(a) Any person subject to the CWC that exported from or imported to the United States a Schedule 3 chemical in excess of 30 metric tons in any calendar year, beginning with calendar year 1996, has a reporting requirement under this section.

(1) *Initial report on exports and imports.* Declared plant sites, undeclared plant sites, trading companies, and any other person subject to the CWC that exported from or imported to the United States in excess of 30 metric tons of a Schedule

3 chemical in calendar year 1996 must submit an initial report on exports and imports.

(2) *Annual report on exports and imports.* Declared plant sites, undeclared plant sites, trading companies, and any other person subject to the CWC that exported from or imported to the United States in excess of 30 metric tons of a Schedule 3 chemical in a previous calendar year, beginning with calendar year 1997, must submit an annual report on exports and imports.

**Note 1 to paragraphs (a)(1) and (a)(2).** Declared and undeclared plant sites must count, for report purposes, all exports from and imports to the entire plant site, not only from or to individual plants on the plant site.

**Note 2 to paragraphs (a)(1) and (a)(2):** The U.S. Government will not submit to the OPCW company-specific information relating to the export or import of Schedule 3 chemicals contained in reports. The U.S. Government will add all export and import information contained in reports to establish the U.S. national aggregate declaration on exports and imports.

(3) *Mixtures containing a Schedule 3 chemical.* The quantity of a Schedule 3 chemical contained in a mixture must be counted for reporting an export or import 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. For reporting purposes, only count the weight of the Schedule 3 chemical in the mixture, not the entire weight of the mixture.

**Note to paragraph (a)(3).** The "80% and above" mixtures rule applies only for report purposes. This rule does not apply for purposes of determining whether the export of your mixture to a non-State Party requires an End-Use Certificate or for determining whether you need an export license from the Department of Commerce (see §§ 742.2, 742.18 and 745.2 of the Export Administration Regulations) or from the Department of State (see the International Traffic in Arms Regulations (22 C.F.R. 120 through 130)).

(b) *Types of forms to be used.* (1) *Declared Schedule 3 plant sites.* (i) If your plant site is declared for production of a Schedule 3 chemical (and has completed questions 3-3.1 and 3-3.2 on Form 3-3) and you also exported or imported that same Schedule 3 chemical in excess of 30 metric tons, you may report the export or import by:

(A) Completing question 3-3.3 on Form 3-3 on your declaration for that same Schedule 3 chemical to be reported; or

(B) Submitting, separately from your declaration, a Certification Form, Form 3-1, and a Form 3-3 for each Schedule

3 chemical to be reported, completing only question 3-3.3. Attach Form A, as appropriate; Form B is optional.

(ii) If your plant site declared production of a Schedule 3 chemical and exported or imported a different Schedule 3 chemical in excess of 30 metric tons, you may report the export or import by:

(A) Submitting, along with your declaration, a Form 3-3 for each Schedule 3 chemical to be reported, completing only question 3-3.3. Attach Form A, as appropriate; Form B is optional; or

(B) Submitting, separately from your declaration, a Certification Form, Form 3-1 and a Form 3.3 for each Schedule 3 chemical to be reported, completing only question 3-3.3. Attach Form A, as appropriate; Form B is optional.

(2) If you are an undeclared plant site or trading company, or any other person subject to the CWC, you must submit a Certification Form, Form 3-1, and a Form 3-3 for each Schedule 3 chemical to be reported, completing only question 3-3.3. Attach Form A, as appropriate; Form B is optional.

(c) *Quantities to be reported.* (1) *Calculations.* If you exported from or imported to your plant site or trading company more than 30 metric tons of a Schedule 3 chemical in the previous calendar year, you must report all exports and imports of that chemical by destination, and indicate the total amount exported to or imported from each destination. Only indicate the total annual quantity exported to or imported from a specific destination if the total annual quantity to or from that destination is more than 1% of the applicable threshold (i.e., more than 0.3 metric tons). However, in determining whether your total exports and imports worldwide for the year in question trigger a report requirement, 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 and imports per calendar year per recipient or source destination and then round to the nearest 0.1 metric tons.

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

#### § 714.4 Advance declaration requirements for additionally planned production of Schedule 3 chemicals.

(a) *Declaration requirements.* (1) You must declare additionally planned production of Schedule 3 chemicals after the annual declaration on anticipated activities for the next calendar year has been delivered to BXA if:

(i) You plan that a previously undeclared plant on your plant site under § 714.2(a)(1)(iii) will produce a Schedule 3 chemical above the declaration threshold;

(ii) You plan to produce at a plant declared under § 714.2(a)(1)(iii) an additional Schedule 3 chemical above the declaration threshold;

(iii) You plan to increase the production of a Schedule 3 chemical by declared plants on your plant site from the amount exceeding the applicable declaration threshold to an amount exceeding the applicable inspection threshold (see § 716.1(b)(3)); or

(iv) You plan to increase the aggregate production of a Schedule 3 chemical at a declared plant site to an amount above the upper limit of the range previously declared under § 714.2(a)(1)(iii).

(2) If you must submit a declaration on additionally planned activities because you plan to engage in any of the

activities listed in paragraphs (a)(1)(i) through (iv) of this section, you should also declare any changes to the anticipated purposes of production or product group codes. You do not have to submit a declaration on additionally planned activities if you are only changing your purposes of production or product group codes.

(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 Forms 3-1, 3-2, and 3-3 as appropriate. Such forms are due to BXA at least 15 days in advance of the beginning of the additional or new activity.

#### § 714.5 Frequency and timing of declarations.

Declarations and reports required under this part must be postmarked by the appropriate date identified in Table 1 of this section. Required declarations and reports include:

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

(b) Initial declaration (production of Schedule 3 chemicals during calendar year 1996);

(c) Initial report on exports and imports from trading companies, plant sites and other persons (during calendar year 1996);

(d) Annual declaration on past activities (production of Schedule 3 chemicals during the previous calendar year, beginning with 1997);

(e) Annual report on exports and imports from trading companies, plant sites and other persons (during the previous calendar year, beginning with 1997); and

(f) Annual declaration on anticipated activities (production during the next calendar year, beginning in calendar year 2000 for activities anticipated for calendar year 2001).

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 (as appropriate), B (optional).	March 30, 2000.
Initial Report on Exports and Imports (for calendar year 1996)—Plant site, trading company, other persons.	Certification, 3-1, 3-3.3 and 3-3.4, A (as appropriate), B (optional).	March 30, 2000.
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 (as appropriate), B (optional).	For 1997, 1998, and 1999, March 30, 2000. Thereafter, February 28.



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

Declarations	Applicable forms	Due dates
Annual Report on Exports and Imports (previous calendar year, starting with 1997)—Plant site, trading company, other persons.	Certification, 3–1, 3–3.3 and 3–3.4, A (as appropriate), B (optional).	For 1997, 1998, and 1999, March 30, 2000. Thereafter, February 28.
Annual Declaration on Anticipated Activities (Production) (next calendar year).	Certification, 3–1, 3–3.1 and 3–3.2, A (as appropriate), B (optional).	September 3 of each year prior to the calendar year in which anticipated activities will take place, beginning in calendar year 2000.
Declaration on Additionally Planned Activities .....	Certification, 3–1, 3–3.1 and 3–3.2, A (as appropriate), B (optional).	15 calendar days before the additionally planned activity begins.
Declaration on Past Production of Schedule 3 Chemicals for CW Purposes.	Certification, 3–1, 3–2, 3–4, A (as appropriate), B (optional).	March 30, 2000.

**§ 714.6 Amended declaration or report.**

(a) You must submit an amended declaration or report for changes to previously submitted information on chemicals, activities and end-use purposes or the addition of new chemicals, activities and end-use purposes.

(b) For declared plant sites subject to inspection, changes that may affect verification activities, such as changes of owner or operator, company name,

address, or inspection point of contact, require an amended declaration.

(c) For declared plant sites not subject to inspection, undeclared plant sites, trading companies, and other persons, changes that do not directly affect the purpose of the Convention, such as changes to a company name, address, declaration point of contact, or non-substantive typographical errors, do not require submission of an amended declaration or report and may be

corrected in subsequent declarations or reports.

(d) If you are required to submit an amended declaration or report pursuant to paragraph (a) or (b) of this section, you must complete and submit a new Certification Form and the specific form(s) being amended (e.g., annual declaration on past 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 phosphite .....	(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) Methyldiethanolamine .....	(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 (UDOCs)**

Sec.

715.1 Initial and annual declaration requirements for production by synthesis of unscheduled discrete organic chemicals (UDOCs).

715.2 Frequency and timing of declarations.

715.3 Amended declaration.

**Supplement No. 1 to Part 715—Definition of an Unscheduled Discrete Organic Chemical****Supplement No. 2 to Part 715—Examples of Unscheduled Discrete Organic Chemicals (UDOCs) and UDOC Production**

**Authority:** 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703.

**§ 715.1 Initial and annual declaration requirements for production by synthesis of unscheduled discrete organic chemicals (UDOCs).**

(a) See § 711.6 of this subchapter for information on obtaining the forms you

will need to declare production of unscheduled discrete organic chemicals. *Declaration of production by synthesis of UDOCs for purposes not prohibited by the CWC.* (1) *Production quantities that trigger the declaration requirement.* You must complete the forms specified in paragraph (b) of this section if your plant site produced by synthesis:

(i) In excess of 200 metric tons aggregate of all UDOCs (including *all* UDOCs containing the elements phosphorus, sulfur or fluorine, referred to as “PSF-chemicals”) in calendar year

1996 (for the initial declaration) or the previous calendar year beginning with 1997 (for an annual declaration); or

(ii) In excess of 30 metric tons of an individual PSF-chemical at one or more plants in calendar year 1996 (for the initial declaration) or in the previous calendar year beginning with 1997 (for an annual declaration).

(2) *UDOCs subject to declaration requirements under this part.* (i) UDOCs subject to declaration requirements under this part are those produced by synthesis that have been isolated for:

(A) Use; or

(B) Sale as a specific end product.

(ii) *Exemptions.* (A) Polymers and oligomers consisting of two or more repeating units which are formed by the chemical reaction of monomeric or polymeric substances;

(B) Chemicals and chemical mixtures produced through a biological or biomediated process;

(C) Products from the refining of crude oil, including sulfur-containing crude oil;

(D) Metal carbides (i.e., chemicals consisting only of metal and carbon); and

(E) UDOCs produced by synthesis that are ingredients or by-products in foods designed for consumption by humans and/or animals.

**Note to Paragraph (a)(2):** See Supplement No. 2 to this part for examples of UDOCs

subject to the declaration requirements of this part, and for examples of activities that are not considered production by synthesis.

(3) *Exemptions for UDOC plant sites.* UDOC plant sites that exclusively produced hydrocarbons or explosives are exempt from UDOC declaration requirements. For the purposes of this part, the following definitions apply for hydrocarbons and explosives:

(i) Hydrocarbon means any organic compound that contains only carbon and hydrogen; and

(ii) Explosive means a chemical (or a mixture of chemicals) that is included in Class 1 of the United Nations Organization hazard classification system.

(b) *Types of declaration forms to be used.* (1) *Initial declaration.* You must complete the Certification Form and Form UDOC (consisting of two pages). Attach Form A as appropriate; Form B is optional.

(2) *Annual declaration on past activities.* You must complete the Certification Form and Form UDOC (consisting of two pages). Attach Form A as appropriate; Form B is optional.

(c) *"Declared" UDOC plant sites.* A plant site that produced by synthesis in excess of 200 metric tons aggregate of all UDOCs (including all PSF-chemicals), or that comprises at least one plant that produced by synthesis in excess of 30 metric tons of an individual PSF-

chemical during the previous year, is a "declared" UDOC plant site. A plant site that submitted an initial declaration for 1996 and/or annual declaration on past activities for 1997 or 1998 is a "declared" UDOC plant site for the years declared.

(d) *Routine inspections of declared UDOC plant sites.* A "declared" UDOC plant site is subject to routine inspection by the Organization for the Prohibition of Chemical Weapons (see part 716 of this subchapter) if it produced by synthesis during the previous calendar year more than 200 metric tons aggregate of UDOCs. A plant site that submitted an initial declaration for 1996 and/or annual declaration on past activities for 1997 or 1998, and exceeded the inspection threshold, is also subject to a routine inspection.

#### § 715.2 Frequency and timing of declarations.

Declarations required under this part must be postmarked by the appropriate dates identified in Table 1 of this section. Required declarations include:

(a) Initial declaration (production during calendar year 1996).

(b) Annual declaration on past activities (production during the previous calendar year, beginning with 1997).

TABLE 1 TO § 715.2—DEADLINES FOR SUBMISSION OF DECLARATIONS FOR UNSCHEDULED DISCRETE ORGANIC CHEMICAL (UDOC) FACILITIES

Declarations	Applicable forms	Due dates
Initial Declaration (calendar year 1996)—Declared plant site .....	Certification, UDOC, A (as appropriate), B (optional).	March 30, 2000.
Annual Declaration on Past Activities (previous calendar year, starting with 1997)—Declared plant site.	Certification, UDOC, A (as appropriate), B (optional).	For 1997, 1998, and 1999 March 30, 2000. Thereafter, February 28.

#### § 715.3 Amended declaration.

(a) Amended declarations are required to correct certain inaccuracies in a previously submitted declaration. These amended declarations are necessary to change a production range above the amount originally declared, or the production of a PSF-chemical above 30 metric tons by a plant not previously counted as a PSF-plant.

(b) Changes that do not directly affect the purpose of the Convention, such as changes to a company name, address, point of contact, or non-substantive typographical errors, do not require submission of an amended declaration and may be corrected in subsequent declarations.

(c) If you are required to submit an amended declaration pursuant to

paragraph (a) of this section, you must complete and submit a new Certification Form and the specific form(s) being amended (e.g., annual declaration on past activities). Only complete that portion of each form that amends the previously submitted information.

#### Supplement No. 1 to Part 715—Definition of an Unscheduled Discrete Organic Chemical

Unscheduled discrete organic chemical means any chemical: (1) belonging to the class of chemical compounds consisting of all compounds of carbon except for its oxides, sulfides and metal carbonates identifiable by chemical name, by structural formula, if known, and by Chemical Abstract Service registry number, if assigned; and

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

**Note:** 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 ( $CO_2$ ). 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 ( $CS_2$ ). Metal carbonates consist of chemical compounds that contain a metal

(i.e., the Group I Alkalis, 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 ( $Na_2CO_3$ ) and calcium carbonate ( $CaCO_3$ ). In addition, metal carbides or other compounds consisting of only a metal, as described above, and carbon (e.g., calcium carbide ( $CaC_2$ )), are exempt from declaration requirements (see § 715.1(a)(2)(ii)(D) of this part).

**Supplement No. 2 to Part 715—  
Examples of Unscheduled Discrete  
Organic Chemicals (UDOCs) and UDOC  
Production**

(1) Examples of UDOCs not subject to declaration include:

(i) UDOCs produced coincidentally as by-products that are not isolated for use or sale as a specific end product, and are routed to, or escape from, the waste stream of a stack, incinerator, or waste treatment system or any other waste stream;

(ii) UDOCs, contained in mixtures, which are produced coincidentally and not isolated for use or 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 declared UDOCs;

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

(v) Intermediate UDOCs used in a single or multi-step process to produce another declared UDOC.

(2) Examples of UDOCs that you must declare under part 715 include, but are not limited to, the following, unless they are not isolated for use or sale as a specific end product:

- (i) Acetophenone (CAS # 98-86-2);
- (ii) 6-Chloro-2-methyl aniline (CAS # 87-63-8);
- (iii) 2-Amino-3-hydroxybenzoic acid (CAS # 548-93-6); and
- (iv) Acetone (CAS # 67-64-1).

(3) Examples of activities that are not considered production by synthesis under part 715 and, thus, the end products resulting from such activities would not be declared under part 715, are as follows:

- (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.
- 716.2 Purposes and types of inspections of declared facilities.
- 716.3 Consent to inspections; warrants for inspections.
- 716.4 Scope and conduct of inspections.
- 716.5 Notification, duration and frequency of inspections.
- 716.6 Facility agreements.
- 716.7 Samples.
- 716.8 On-site monitoring of Schedule 1 facilities.
- 716.9 Report of inspection-related costs.

**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:** 22 U.S.C. 6701 *et seq.*; 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). See part 717 of this subchapter for provisions concerning challenge inspections.

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

(b) *Declared facilities subject to initial and routine inspections.* (1) *Schedule 1 facilities.* (i) Your declared facility is subject to inspection if it produced in excess of 100 grams aggregate of Schedule 1 chemicals in the previous calendar year or anticipates producing in excess of 100 grams aggregate of Schedule 1 chemicals during the next calendar year.

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

(iii) If your declared facility submitted an annual declaration on past activities for calendar year 1997 or 1998, you are subject to an initial inspection.

**Note to paragraph (b)(1):** All Schedule 1 facilities submitting a declaration are subject to inspection.

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

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

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

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

(ii) If your declared plant site submitted an initial declaration for calendar years 1994, 1995 and 1996, and at least one plant on your plant site produced a Schedule 2 chemical during any one of those three years in excess of the applicable inspection threshold quantity set forth in paragraphs (b)(2)(i)(A) through (C) of this section, you are subject to an initial inspection.

**Note to paragraph (b)(2):** The applicable inspection threshold quantity for Schedule 2 plant sites is ten times higher than the applicable declaration threshold quantity. Only declared plant sites, comprising at least one declared plant that exceeds the applicable inspection threshold quantity, are subject to inspection.

(3) *Schedule 3 plant sites.* (i) Your declared plant site is subject to inspection if the declared plants on your plant site produced during the previous calendar year, or you anticipate 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).

(ii) If your declared plant site submitted an initial declaration for calendar year 1996 and/or annual declaration on past activities for calendar year 1997 or 1998, and exceeded the inspection threshold set forth in paragraph (b)(3)(i) of this

section, you are subject to a routine inspection.

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

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

(ii) If your declared plant site submitted an initial declaration for calendar year 1996 and/or annual declaration on past activities for calendar year 1997 or 1998, and exceeded the inspection threshold set forth in paragraph (b)(4)(i) of this section, you are subject to a routine inspection.

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

**Note 2 to paragraph (b)(4):** All UDOC plant sites that submit a declaration based on § 715.1(a)(i) of this subchapter are subject to a routine inspection.

(c) *Responsibilities of the Department of Commerce.* As the host and escort for the international Inspection Team for all inspections of facilities subject to the provisions of this subchapter under this part, the Department of Commerce will: lead on-site inspections; provide Host Team notification to the facility of an impending inspection; take appropriate action to obtain an administrative warrant in the event the facility does not consent to the inspection; dispatch an advance team to the vicinity of the site to provide administrative and logistical support for the impending inspection and, upon request, to assist the facility with inspection preparation; escort the Inspection Team on-site throughout the inspection process; assist the Inspection Team with verification activities; negotiate the development of a site-specific facility agreement, if appropriate, during an initial inspection of a facility (see § 716.6); and ensure that an inspection adheres to the Convention, the Act and any warrant issued thereunder, and a site-specific facility agreement, if concluded.

#### **§ 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 Host Team and the Inspection Team will draft site-specific facility agreements (see § 716.6) for the conduct of 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 U.S. Government and the OPCW pursuant to the Convention.

(b) *Schedule 2 plant sites.* (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 plant sites 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 information 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. The inspectors will take the following criteria into account, inter alia:

(A) The toxicity of the scheduled chemicals and of the end-products produced with them, 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 plant sites, in addition to the verification activities listed in paragraph (b)(1) of this section, the Host Team and the Inspection Team will generally draft site-specific facility agreements for the conduct of routine inspections (see § 716.6).

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

(c) *Schedule 3 plant sites.* (1) *Purposes of inspections.* The general aim of inspections of declared Schedule 3 plant sites 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) *Routine inspections.* During routine inspections of declared Schedule 3 plant sites, in addition to the verification activities listed in paragraph (c)(1) of this section, the Host Team and the Inspection Team may 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 plant sites, the owner, operator, occupant or agent in charge of a plant site may request one. The Host Team will not seek a facility agreement if the owner, operator, occupant or agent in charge of the plant site does not request one. Subsequent routine inspections will be carried out pursuant to site-specific facility agreements, if applicable.

(d) *Unscheduled Discrete Organic Chemicals plant sites.* Declared unscheduled discrete organic chemical (UDOC) plant sites will be subject to inspection beginning April 29, 2000.

(1) *Purposes of inspections.* The general aim of inspections of declared UDOC plant sites 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) *Routine inspections.* During routine inspections of declared UDOC plant sites, in addition to the verification activities listed in paragraph (d)(1) of this section, the Host Team and the 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 plant sites, the owner, operator, occupant or agent in charge of a plant site may request one. The Host Team will not seek a facility agreement if the owner, operator, occupant or agent in charge of the plant site does not request one. Subsequent routine inspections will be carried out pursuant to site-specific facility agreements, if applicable.

#### **§ 716.3 Consent to inspections; warrants for inspections.**

(a) The owner, operator, occupant or agent in charge of a facility may consent to an initial or routine inspection. The individual giving consent on behalf of the facility represents that he or she has the authority to make this decision for the facility.

(b) 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 intends to seek 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 shall be conducted in the least intrusive manner, consistent with the effective and timely accomplishment of its purpose as provided in the Convention.

(b) *Scope.* (1) Description of inspections. During inspections, inspectors will receive a pre-inspection briefing from facility representatives; visually inspect the facilities or plants producing scheduled chemicals or UDOCs, which may include storage areas, feed lines, reaction vessels and ancillary equipment, control equipment, associated laboratories, first aid or medical sections, and waste and effluent handling areas, as necessary to accomplish their inspection; examine relevant records; and may take samples as provided by the Convention, the Act and consistent with the requirements set forth by the Director of the United States

National Authority (USNA) at 22 CFR part 103, and the facility agreement, if applicable.

(2) *Scope of consent.* When an owner, operator, occupant, or agent in charge of a facility consents to an initial or routine inspection, he or she is consenting to provide access to the Inspection Team and Host Team to any area of the facility, any item located on the facility, interviews with facility personnel, and any records necessary for the Inspection Team to complete its mission. When consent is granted for an inspection, the owner, operator, occupant, or agent in charge agrees to provide the same degree of access provided for under section 305 of the Act. The determination of whether the Inspection Team's request to inspect any area, building, item or record is reasonable is the responsibility of the Host Team Leader.

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

(1) The pre-inspection briefing will address:

- (i) Plant site safety and alarms;
- (ii) Activities, business and manufacturing operations;
- (iii) Physical layout;
- (iv) Delimitation of declared facility;
- (v) Scheduled chemicals/chemistries (declared and undeclared);
- (vi) Process flow;
- (vii) Units specific to declared operations; and
- (viii) Administrative and logistic information.

(2) The pre-inspection briefing may also address, inter alia:

- (i) Introduction of key facility personnel;
- (ii) Management, organization and history;
- (iii) Confidential business information concerns;
- (iv) Types and location of records/documents;
- (v) Data declaration updates/revisions;
- (vi) Draft facility agreement, if applicable; and
- (vii) Proposed inspection plan.

(d) *Visual plant inspection.* The Inspection Team may visually inspect

the declared plant or facility and other areas of the plant site or facility as agreed by the Host Team Leader after consulting with the facility representative.

(e) *Records review.* The facility must have available for the Inspection Team to review, on the inspection site, access to all supporting materials and documentation used by the facility to prepare declarations and to comply with the CWC (see §§ 721.1 and 721.2 of this subchapter). Such access may be to paper copies or via electronic remote access by computer during the inspection period or as otherwise agreed upon by the Inspection Team and Host Team Leader.

(f) *Effect of facility agreements.* Routine inspections at facilities 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 owner, operator, occupant, or agent in charge of the facility to withhold consent to an inspection request.

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

(h) *Health and safety regulations and requirements.* In carrying out their activities, the Inspection Team and Host Team shall observe federal, state, and local health and safety regulations and health and safety requirements established at the inspection site, including those for the protection of controlled environments within a facility and for personal safety. Such health and safety regulations and requirements will be set forth in, but will not necessarily be limited to, the facility agreement, if applicable.

(i) *Preliminary factual findings.* Upon completion of an inspection, the Inspection Team will meet with the Host Team and facility personnel to review the written preliminary findings of the Inspection Team and to clarify ambiguities. The Host Team will discuss the preliminary findings with the facility, and the Host Team Leader will take into consideration the facility's input when providing official comment on the preliminary findings to the Inspection Team. This meeting will be completed not later than 24 hours after the completion of the inspection.

**§ 716.5 Notification, duration and frequency of inspections.**

(a) *Notification.* (1)(i) *Content of notice.* Inspections of facilities may be made only upon issuance of written notice by the United States National Authority (USNA) to the owner and to the operator, occupant or agent in charge of the premises to be inspected. The Department of Commerce will also provide a separate Host Team notification to the inspection point of contact identified in declarations submitted by the facility. If the United States is unable to provide actual written notice to the owner, operator, or agent in charge, the Department of Commerce, or if the Department of

Commerce is unable, the Federal Bureau of Investigation, may post notice prominently at the facility to be inspected. The notice shall include all appropriate information provided by the OPCW to the USNA concerning:

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

(ii) In addition to appropriate information provided by the OPCW in its notification to the USNA, the

Department of Commerce's Host Team notification will request that the facility indicate whether it will consent to an inspection, and will state whether an advance team is available to assist the site in preparation for the inspection. If an advance team is available, facilities that request advance team assistance are not required to reimburse the U.S. Government for costs associated with these activities. If a facility does not agree to provide consent to an inspection within four hours of receipt of the Host Team notification, BXA intends to seek an administrative warrant.

(iii) The following table sets forth the notification procedures for inspection:

TABLE TO § 716.5(a)(1)

Activity	Agency action	Facility action
(A) OPCW notification of inspection	(1) U.S. National Authority transmits actual written notice and inspection authorization to the owner and operator, occupant, or agent in charge via facsimile within 6 hours. (2) Upon notification from the U.S. National Authority, BXA immediately transmits Host Team notification via facsimile to the inspection point of contact to ascertain whether the facility (1) grants consent and (2) requests assistance in preparing for the inspection. In absence of consent within four hours of transmission, BXA intends to seek an administrative warrant.	(i) Acknowledge receipt of fax. (i) Indicates whether it grants consent. (ii) May request advance team support. No requirement for reimbursement of U.S. Government's services.
(B) Preparation for inspection .....	(1) BXA advance team arrives in the vicinity of the facility to be inspected 1–2 days after OPCW notification for logistical and administrative preparations.	(i) If advance team support is provided, facility works with the advance team on inspection-related issues.

(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 USNA of a 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 Host Team notice to the inspection point of contact of the facility as soon as possible after the OPCW notifies the USNA of the inspection.

(ii) *Schedule 2 plant sites.* For declared Schedule 2 plant sites, 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. The Department of Commerce will provide Host Team notice to the inspection point of contact at the plant site as soon as possible after the OPCW notifies the USNA of the inspection.

(iii) *Schedule 3 and unscheduled discrete organic chemical plant sites.* For declared Schedule 3 and unscheduled discrete organic chemical plant sites, 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 Host Team notice to the inspection point of contact of the plant site as soon as possible after the OPCW notifies the USNA of the inspection.

(b) *Period 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 estimated period of routine inspections will be as stated in the facility agreement, unless extended by agreement between the Inspection Team and the Host Team Leader. The Host Team Leader will consult with the inspected facility on any request for extension of an inspection prior to making an agreement with the Inspection Team. Activities involving the pre-inspection briefing and preliminary findings are in addition to inspection activities. See § 716.4 (c) and (i) for a description of these activities.

(2) *Schedule 2 plant sites.* For declared Schedule 2 plant sites, the maximum duration of initial and routine inspections shall be 96 hours, unless extended by agreement between the Inspection Team and the Host Team Leader. The Host Team Leader will consult with the inspected plant site on any request for extension of an inspection prior to making an agreement with the Inspection Team. Activities involving the pre-inspection briefing and preliminary findings are in addition to inspection activities. See § 716.4 (c) and (i) for a description of these activities.

(3) *Schedule 3 and discrete organic chemical plant sites.* For declared

Schedule 3 or unscheduled discrete organic chemical plant sites, the maximum duration of initial and routine inspections shall be 24 hours, unless extended by agreement between the Inspection Team and the Host Team Leader. The Host Team Leader will consult with the inspected plant site on any request for extension of an inspection prior to making an agreement with the Inspection Team. Activities involving the pre-inspection briefing and preliminary findings are in addition to inspection activities. See § 716.4 (c) and (i) for a description of these activities.

(c) *Frequency of inspections.* The frequency of inspections is as follows:

(1) *Schedule 1 facilities.* As provided by the Convention, the frequency of 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 plant sites.* As provided by the Convention and the Act, the maximum number of inspections at declared 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, if applicable.

(3) *Schedule 3 plant sites.* As provided by the Convention, no declared Schedule 3 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 plant sites in the United States may not exceed 20 per calendar year.

(4) *Unscheduled Discrete Organic Chemical plant sites.* As provided by the Convention, no declared UDOC 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 plant sites in the United States may not exceed 20 per calendar year.

#### § 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.

(2) *Schedule 2 plant sites.* The USNA will ensure that such facility agreements are concluded with the OPCW unless the owner, operator, occupant or agent in charge of the plant site and the OPCW Technical Secretariat agree that such a facility agreement is not necessary.

(3) *Schedule 3 and unscheduled discrete organic chemical plant sites.* If the owner, operator, occupant or agent in charge of a declared Schedule 3 or unscheduled discrete organic chemical plant site requests a facility agreement, the USNA will ensure that a facility agreement for such a plant site 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, the Inspection Team and the Host Team will negotiate a draft facility agreement. To the maximum extent practicable consistent with the Convention, the owner and the operator, occupant or agent in charge of the facility may observe facility agreement negotiations between the U.S. Government and OPCW. As a general rule, BXA will consult with the affected facility on the contents of the agreements and take facility comments into consideration during negotiations. The Department of Commerce will participate in the negotiation of, and approve, all final facility agreements with the OPCW. Facilities will be notified of and have the right to observe final facility agreement negotiations between the United States and OPCW to the maximum extent practicable, consistent with the Convention. Prior to the conclusion of a final facility agreement, the affected facility will have an opportunity to comment on the facility agreement. BXA will give consideration to such comments prior to

approving 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 facilities are concluded, as appropriate, 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 facility, 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 agreements as to documents and records to be provided, specific areas of a facility to be inspected, site diagrams, sampling, photography, 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: Inspection Management Team, Bureau of Export Administration, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, N.W., Room 6087B, Washington, D.C. 20230-0001, Telephone: (202) 482-6114.

#### § 716.7 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.

#### § 716.8 On-site monitoring of Schedule 1 facilities.

Declared Schedule 1 facilities are subject to verification by monitoring with on-site instruments as provided by the Convention. For facilities subject to the CWC, however, such monitoring is not anticipated. The U.S. Government



will ensure that any monitoring that may be requested by the OPCW is carried out pursuant to the Convention and U.S. law.

#### **§ 716.9 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, if applicable. This information should be reported to BXA on company letterhead at the address given in § 716.6(d), with the following notation: "Attn: Report of inspection-related costs."

#### **Supplement No. 1 to Part 716**

#### **NOTIFICATION, DURATION AND FREQUENCY OF INSPECTIONS**

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

\*See part 717 of 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.<sup>1</sup> 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,

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

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.

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 measures 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.<sup>2</sup>

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 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. For ease of inspection, the inspected State Party will work with the facility representative to provide work space at the facility, if possible.

##### 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 controlled by 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's<sup>3</sup> 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,

<sup>2</sup> 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.

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

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 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, the inspected State Party, in consultation with the facility representative, will cease these on-site activities pending resolution. 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, the inspected State Party representative, and legal counsel.

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. The representative of the inspected facility retains the right to control the use of communications equipment in specific areas, buildings, or structures if such use would be incompatible with applicable safety or fire regulations.

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.

2. Pursuant to the Confidentiality Annex, the inspected State Party, in consultation with the facility representative, 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 team<sup>4</sup> 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.<sup>5</sup>

<sup>5</sup> The language(s) to be chosen by the inspected State Party from the languages of the Convention

#### 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: <sup>6</sup> \_\_\_\_ hrs to \_\_\_\_ hrs (local time) (days)
2. Working days: \_\_\_\_\_
3. Holidays or other non-working days: \_\_\_\_\_

4. Inspection activities which could/could not<sup>7</sup> 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 take all appropriate action under its law to 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 planning purposes): \_\_\_\_\_
  - (b) approximate inspection team size: \_\_\_\_\_
  - (c) estimated volume and weight of equipment to be brought on-site: \_\_\_\_\_

shall be the same as the language(s) referred to in paragraph 6 of Section 1 of this Agreement.

<sup>6</sup> All references to time use a 24 hour clock.

<sup>7</sup> Choose one option.

<sup>4</sup> 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.

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:  
(a) federal regulations:

(b) state regulations:

(c) local regulations:

(d) facility 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 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 facility:

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 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.  
Part B. Specific Procedures for Access by the Inspection Team to Confidential Areas or Materials:

Procedures in Relation to the Certification by the Inspection Team of the Receipt of Any Documents Provided by the Inspected Facility:

Part C. Storage of Confidential Documents at the Inspected Facility:  
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.

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 facility between inspections is listed below:

Reference	Type of data	Recorded media	Volume	Reasons for restrictions/ remarks

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

Part E. 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 F. 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 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. Agreed On-Site Monitoring Instruments:

## Part E. 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: \_\_\_\_\_  
 Facility: \_\_\_\_\_  
 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 Facility Provided in Accordance With Section 6**

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

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: \_\_\_\_\_

2. Procedures for unimpeded access within the declared facility: <sup>8</sup> \_\_\_\_\_

3. Other: \_\_\_\_\_

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: \_\_\_\_\_

**Attachment 7.—Arrangements for Site Tour**

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. \_\_\_\_\_

**Attachment 8.—Records Routinely Made Available to the Inspection Team at the Facility (i.e., Identify Records and Data)****Attachment 9.—Sampling and Analysis for Verification Purposes**

Part A. Agreed Sampling Points Chosen with Due Consideration to Existing Sampling Points Used by the Facility(s) Operator(s): \_\_\_\_\_

## Part B. Procedures for Taking Samples:

## Part C. Procedures for Sample Handling and Sample Splitting:

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

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

## Part F. Procedures for Transporting Samples:

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: \_\_\_\_\_

**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): \_\_\_\_\_

<sup>8</sup>List 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.



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.<sup>1</sup> In case of inconsistency between this Agreement and the Convention, the Convention shall prevail.

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

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.

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 plant site 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 plant site 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 plant site 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 plant 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 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 plant site 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 plant site 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.<sup>2</sup>

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. 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.

<sup>2</sup> 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.

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.<sup>3</sup>

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. For ease of inspection, the inspected State Party will work with the plant site representative to provide work space at the plant site, if possible.

##### 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

<sup>3</sup> 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.

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 whether undeclared scheduled chemicals are detected. 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 controlled by 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's<sup>4</sup> 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

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

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 and 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, the inspected State Party, in consultation with the plant site representative, will cease these on-site analysis activities pending resolution. 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, the inspected State Party representative, and legal counsel.

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. The representative of the inspected plant site retains the right to control the use of communications equipment in specific areas, building or structures if such use would be incompatible with applicable safety or fire regulations.

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.

2. Pursuant to the Confidentiality Annex, the inspected State Party, in consultation with the plant site representative, 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 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 team<sup>5</sup> 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

<sup>5</sup> 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.

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 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.<sup>6</sup>

**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: <sup>7</sup> \_\_\_\_\_ 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: \_\_\_\_\_

3. Inspection activities which could/could not <sup>8</sup> 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 take all appropriate action under its law to obtain a search warrant from a United States magistrate judge. Upon receipt of a warrant, the inspected State Party will accede to the

<sup>6</sup> 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.

<sup>7</sup> All references to time use a 24 hour clock.

<sup>8</sup> Choose one option.

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):<sup>9</sup> \_\_\_\_\_

(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/ remarks

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 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: \_\_\_\_\_

<sup>9</sup> Any figure indicated is without prejudice to paragraph 29 of Part VII of the Verification Annex.

Item of approved inspection equipment	Agreed procedures for use	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
	Nature of restriction(s) (location, time, periods, etc.), if any			

## 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, in consultation with the plant site, may provide a site tour at the request of the inspection team. Such tour shall take no more than 2 hours. If a site tour is conducted, 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:<sup>10,11</sup>

<sup>10</sup> Plant means a relatively self-contained area, structure or building containing one or more units with auxiliary and associated infrastructure, such as:

- <sup>11</sup> Areas to be inspected may include:
- (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.

(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);

(g) equipment and areas for waste and effluent handling;

(h) equipment and areas for disposition of chemicals not up to specification.

2. Declared Plant Site:<sup>12</sup>

Part B. Arrangements with Regard to the Scope of the Inspection Effort in Agreed Areas Referenced in Part A:<sup>13</sup>

**Attachment 9.—Records Routinely Made Available to the Inspection Team at the Plant Site:<sup>14</sup>****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):

<sup>12</sup> 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.

<sup>13</sup> List 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.

<sup>14</sup> 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);

(c) Schedule 2 plant(s) dispatch records within the plant site and off-site dispatches;



Part B. Procedures for Taking Samples:	Sampling and On-Site Analysis during the Inspection:	3. Working room, including adequate space for the storage of equipment:
Part C. Procedures for Sample Handling and Sample Splitting:	<b>Attachment 11.—Administrative Arrangements</b>	4. Lodging: _____
Part D. Procedures for Sample Analysis:	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:	5. Meals: _____
Part E. Procedures for Transporting Samples:	1. International and local official communication (telephone, fax), including calls/faxes between site and headquarters:	6. Medical care: _____
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	2. Vehicles: _____	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: \_\_\_\_\_  
 Plant site: \_\_\_\_\_  
 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 12.—Agreed Procedures for Conducting Interviews**

- (d) Schedule 2 plant(s) maintenance schedule records;  
 (e) Schedule 2 plant(s) waste disposal records;  
 (f) Schedule 2 plant(s) (unit) calibration records;

**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 Samples.  
 717.4 Report of inspection-related costs.

**Authority:** 22 U.S.C. 6701 *et seq.*, 2681; E.O. 13128, 64 FR 36703.

- (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;

**§ 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 to resolve such issues through consultation between themselves or through the Organization for the Prohibition of Chemical Weapons (OPCW), 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 722 of this subchapter) must, within five working days, provide information required by the Department of Commerce 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.

- (i) data on direct exports/imports and to/from which States;  
 (j) other shipments, including specification of these other purposes; and (k) other.

**§ 717.2 Challenge inspections.**

Any person or facility subject to the CWC (see § 710.2 of this subchapter), whether or not required to submit declarations or reports, may be subject to a challenge inspection by the OPCW concerning possible non-compliance with the requirements of the Convention. The Department of Commerce will host and escort the international Inspection Team for all challenge inspections of persons or facilities subject to the CWC concerning possible non-compliance with the requirements set forth in parts 712 through 716 of this subchapter.

(a) *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 assist the Department of Justice in seeking a criminal warrant as provided by the Act. The existence of a facility agreement does not in any way limit the right of the operator of the facility to withhold consent to a challenge inspection request.

(b) *Notification of challenge inspection.* Challenge inspections may be made only upon issuance of written notice by the United States National Authority (USNA) to the owner and to the operator, occupant or agent in charge of the premises. The Department of Commerce will provide Host Team notification to the inspection point of contact if such notification is deemed appropriate. If the United States is unable to provide actual written notice to the owner, operator, or agent in charge, the Department of Commerce, or if the Department of Commerce is unable, another appropriate agency, may post notice prominently at the plant, plant site or other facility or location to be inspected.

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

(2)(i) *Content of notice.* The notice 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) All appropriate evidence or reasons provided by the requesting State Party for seeking the inspection.

(ii) In addition to appropriate information provided by the OPCW in its notification to the USNA, the Department of Commerce's Host Team notification to the facility or plant site will state whether an advance team is available to assist the site in preparation for the inspection. If an advance team is available, facilities that request advance team assistance are not required to reimburse the U.S. Government for costs associated with these activities.

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

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

(2) *Scope of inspections.* If an owner, operator, occupant, or agent in charge of a facility or location consents to a challenge inspection, the inspection will be conducted in accordance with the provisions of Article IX and applicable provisions of the Verification Annex of the Convention. If consent is not granted, the inspection will be conducted in accordance with a criminal warrant, as provided by the Act, and in accordance with the provisions of Article IX and applicable provisions of the Verification Annex of the Convention. A challenge inspection will also be conducted in accordance with a facility agreement, if a facility agreement has been concluded for the subject facility, to the extent the terms of the facility agreement are relevant to the challenge inspection request.

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

(4) *Health and safety regulations and requirements.* In carrying out their activities, the Inspection Team and Host Team shall observe federal, state, and local health and safety regulations and health and safety requirements established at the inspection site, including those for the protection of

controlled environments within a facility and for personal safety.

**§ 717.3 Samples.**

The owner, operator, occupant or agent in charge of a facility or location 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.

**§ 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, if applicable. This information should be reported to BXA on company letterhead at the address given in § 716.6(d) of this subchapter, with the following notation:

"ATTN: Report of Inspection-related Costs."

**PART 718—CONFIDENTIAL BUSINESS INFORMATION**

Sec.

718.1 Definition.

718.2 Identification of confidential business information.

718.3 Disclosure of confidential business information.

**Supplement No. 1 to Part 718—Confidential Business Information Declared or Reported**

**Authority:** 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703.

**§ 718.1 Definition.**

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

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

(h) Data on personnel and vehicles entering and personnel 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

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

#### **§ 718.2 Identification of confidential business information.**

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

(b) *Confidential business information contained in declarations and reports.*

(1) BXA has identified those data fields on the declaration and report forms that request "confidential business information" as defined by the Act. These data fields are identified in the table provided in Supplement No. 1 to this part.

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

**Note to paragraph (b):** BXA has also determined that descriptions of Schedule 1 facilities submitted with Initial Declarations as attachments to Form A contain confidential business information, as defined by the Act.

(c) *Confidential business information contained in notifications.* Information contained in advance notifications of exports and imports of Schedule 1 chemicals is not subject to the confidential business information provisions of the Act. You must identify

information in your notifications of Schedule 1 imports that you consider to be privileged and confidential, and describe how disclosure would likely result in competitive harm. See § 718.3(b) for provisions on disclosure to the public of such information by the U.S. Government.

(d) *Confidential business information related to inspections disclosed to, reported to, or otherwise acquired by, the U.S. Government.* (1) During inspections, certain confidential business information, as defined by the Act, may be disclosed to the Host Team. Facilities being inspected are responsible for identifying confidential business information to the Host Team, so that if it is disclosed to the Inspection Team, appropriate marking and handling can be arranged, in accordance with the provisions of the Convention (see § 718.3(c)(1)(ii)). Confidential business information not related to the purpose of an inspection or not necessary for the accomplishment of an inspection, as determined by the Host Team, may be removed from sight, shrouded, or otherwise not disclosed.

(2) Before or after inspections, confidential business information related to an inspection that is contained in any documents or that is reported to, or otherwise acquired by, the U.S. Government, such as facility information for pre-inspection briefings, facility agreements, and inspection reports, must be identified by the facility so that it may be appropriately marked and handled. If the U.S. Government creates derivative documents from such documents or reported information, they will also be marked and handled as confidential business information.

#### **§ 718.3 Disclosure of confidential business information.**

(a) *General.* Confidentiality of information will be maintained by BXA consistent with the non-disclosure provisions of the Act, the Export Administration Regulations (15 CFR parts 730 through 799), the International Traffic in Arms Regulations (22 CFR parts 120 through 130), and applicable exemptions under the Freedom of Information Act, as appropriate.

(b) *Disclosure of confidential business information contained in notifications.* Information contained in advance notifications of exports and imports of Schedule 1 chemicals is not subject to the confidential business information provisions of the Act. Disclosure of such information will be in accordance with the provisions of the relevant statutory and regulatory authorities as follows:

(1) *Exports of Schedule 1 chemicals.* Confidentiality of all information contained in these notifications will be maintained consistent with the non-disclosure provisions of the Export Administration Regulations (15 CFR parts 730 through 799), the International Traffic in Arms Regulations (22 CFR parts 120 through 130), and applicable exemptions under the Freedom of Information Act, as appropriate; and

(2) *Imports of Schedule 1 chemicals.* Confidentiality of information contained in these notifications will be maintained pursuant to applicable exemptions under the Freedom of Information Act.

(c) *Disclosure of confidential business information pursuant to § 404(b) of the Act.* (1) *Disclosure to the Organization for the Prohibition of Chemical Weapons (OPCW).* (i) As provided by Section 404(b)(1) of the Act, the U.S. Government will disclose or otherwise provide confidential business information to the Technical Secretariat of the OPCW or to other States Parties to the Convention, in accordance with provisions of the Convention, particularly with the provisions of the Annex on the Protection of Confidential Information (Confidentiality Annex).

(ii) *Convention provisions.* (A) The Convention provides that States Parties may designate information submitted to the Technical Secretariat 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 restrict access to information which they receive from the OPCW in accordance with the level of confidentiality established for that information.

(B) 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, for five years after termination of their employment, any confidential information coming to their knowledge or into their possession in the performance of their official duties.

(iii) *U.S. Government designation of information to the Technical Secretariat.* It is the policy of the U.S. Government to designate all facility

information it provides to the Technical Secretariat in declarations, reports and Schedule 1 notifications as "protected." It is the policy of the U.S. Government to designate confidential business information that it discloses to Inspection Teams during inspections as "protected" or "highly protected," depending on the sensitivity of the information. The Technical Secretariat is responsible for storing and limiting access to any confidential business information contained in a document according to its established procedures.

(2) *Disclosure to Congress.* Section 404(b)(2) of the Act provides that the U.S. Government must disclose confidential business information to any committee or subcommittee of Congress with appropriate jurisdiction upon the written request of the chairman or ranking minority member of such committee or subcommittee. No such committee or subcommittee, and no member and no staff member of such committee or subcommittee, may disclose such information or material except as otherwise required or authorized by law.

(3) *Disclosure to other Federal agencies for law enforcement actions and disclosure in enforcement proceedings under the Act.* Section 404(b)(3) of the Act provides that the U.S. Government must disclose confidential business information to other Federal agencies for enforcement of the Act or any other law, and must disclose such information when relevant in any proceeding under the Act. Disclosure will be made in such manner as to preserve confidentiality to the extent practicable without impairing the proceeding. Section 719.14(b) of this subchapter provides that all hearings will be closed, unless the Administrative Law Judge for good cause shown determines otherwise. Section 719.20 of this subchapter provides that parties may request that the administrative law judge segregate and restrict access to confidential business information contained in material in the record of an enforcement proceeding.

(4) *Disclosure to the public; national interest determination.* Section 404(c) of the Act provides that confidential business information, as defined by the Act, that is in the possession of the U.S. Government, is exempt from public disclosure in response to a Freedom of Information Act request, except when such disclosure is determined to be in the national interest.

(i) *National interest determination.* The United States National Authority (USNA), in coordination with the CWC interagency group, shall determine on a

case-by-case basis if disclosure of confidential business information in response to a Freedom of Information Act request is in the national interest.

(ii) *Notification of intent to disclose pursuant to a national interest determination.* The Act provides for notification to the affected person of intent to disclose confidential business information based on the national interest, 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 does not determine that such notification of intent to disclose is contrary to national security or law enforcement needs, the USNA will notify the person that submitted the information and the person to whom the information pertains of the intent to disclose the information.

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

	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.
Form 1-4 .....	All fields.
Schedule 2 Forms:	
Certification Form	None.
Form 2-1 .....	None.
Form 2-2 .....	Questions 2-2.8.
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.
Form UDOC .....	None.

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

	Fields containing confidential business information
Forms A and B and attachments (all Schedules and UDOCs).	Case-by-case; must be identified by submitter.

\*This table lists those data fields on the Declaration and Report Forms that request "confidential business information" (CBI) as defined by the Act (sections 103(g) and 304(e)(2)). As provided by section 404(a) of the Act, 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 Act, that such disclosure is in the national interest. Other FOIA exemptions to disclosure may also apply. You must identify CBI provided in Form A and/or Form B attachments, and provide the reasons supporting your claim of confidentiality, except that Schedule 1 facility technical descriptions submitted with initial declarations are always considered to include CBI. If you believe that information you are submitting in a data field marked "none" in the Table is CBI, as defined by the Act, you must identify the specific information and provide the reasons supporting your claim of confidentiality in a cover letter.

**PART 719—ENFORCEMENT**

**Sec.**

- 719.1 Scope and definitions.
- 719.2 Violations of the Act subject to administrative and criminal enforcement proceedings.
- 719.3 Violations of the IEEPA subject to judicial enforcement proceedings.
- 719.4 Violations and sanctions under the Act not subject to proceedings under this subchapter.
- 719.5 Initiation of administrative proceedings.
- 719.6 Request 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:** 22 U.S.C. 6701 *et seq.*; 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; E.O. 13128, 64 FR 36703.

**§ 719.1 Scope and definitions.**

(a) *Scope.* This part 719 describes the various sanctions that apply to violations of the Act and this subchapter. It also establishes detailed administrative procedures for certain violations of the Act. The three categories of violations are as follows:

(1) *Violations of the Act subject to administrative and criminal enforcement proceedings.* This CWCER sets forth in § 719.2 violations for which the statutory basis is the Act. The Department of Commerce investigates these violations and, for administrative proceedings, prepares charges, provides legal representation to the U.S. Government, negotiates settlements, and makes recommendations to officials of the Department of State with respect to the initiation and resolution of proceedings. The administrative procedures applicable to these violations are found in §§ 719.5 through 719.22 of this part. The Department of State gives notice of initiation of administrative proceedings and issues orders imposing penalties pursuant to 22 CFR part 103, subpart C.

(2) *Violations of the International Emergency Economic Powers Act (IEEPA) subject to judicial enforcement proceedings.* Section 719.3 sets forth violations of the Chemical Weapons Convention for which the statutory basis is the IEEPA. The Department of Commerce refers these violations to the Department of Justice for civil or criminal judicial enforcement.

(3) *Violations and sanctions under the Act not subject to proceedings under this subchapter.* Section 719.4 sets forth violations and sanctions under the Act that are not violations of this subchapter and that are not subject to proceedings under this subchapter. This section is included solely for informational purposes. The Department of Commerce may assist in investigations of these violations, but has no authority to initiate any enforcement action under this subchapter.

**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 only in parts 719 and 720. For definitions of terms applicable to parts 710 through 722 of this subchapter, see part 710 of this subchapter.

*The Act.* The Chemical Weapons Convention Implementation Act of 1998 (22 U.S.C. 6701–6777).

*Assistant Secretary for Export Enforcement.* The Assistant Secretary for Export Enforcement, Bureau of Export Administration, United States Department of Commerce.

*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.

*IEEPA.* The International Emergency Economic Powers Act, as amended (50 U.S.C. 1701–1706).

*Office of Chief Counsel.* The Office of Chief Counsel for Export Administration, United States Department of Commerce.

*Report.* For purposes of parts 719 and 720 of this subchapter, the term “report” means any declaration, report, or notification required under parts 712 through 715 of this subchapter.

*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 of the Act subject to administrative and criminal enforcement proceedings.**

(a) *Violations.* (1) *Refusal to permit entry or inspection.* No person may willfully fail or refuse to permit entry or inspection, or disrupt, delay or otherwise impede an inspection, authorized by the Act.

(2) *Failure to establish or maintain records.* No person may willfully fail or refuse:

(i) To establish or maintain any record required by the Act or this subchapter; or

(ii) To submit any report, notice, or other information to the United States Government in accordance with the Act or this subchapter; or

(iii) To permit access to or copying of any record that is exempt from disclosure under the Act or this subchapter.

(b) *Civil penalties.* (1) *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 (a)(1) 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.

(2) *Civil penalty for failure to establish or maintain records.* Any person that is determined to have willfully failed or refused to establish or maintain any record or submit any report, notice, or other information required by the Act or this subchapter, or to permit access to or copying of any record exempt from disclosure under the Act or this subchapter as set forth in paragraph (a)(2) of this section, shall pay a civil penalty in an amount not to exceed \$5,000 for each violation.

(c) *Criminal penalty.* Any person that knowingly violates the Act by willfully failing or refusing to permit entry or inspection authorized by the Act; or by willfully disrupting, delaying or otherwise impeding an inspection authorized by the Act; 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 Act or CWCER, 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.

(d) *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.

**§ 719.3 Violations of the IEEPA subject to judicial enforcement proceedings.**

(a) *Violations.* (1) *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:

(i) The import is from a State Party;

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

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

(iv) The importing person has notified the Department of Commerce 45 calendar days prior to the import pursuant to § 712.4 of this subchapter.

(2) *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 of this subchapter) from any destination other than a State Party.

(b) *Civil penalty.* A civil penalty not to exceed \$11,000 may be imposed in accordance with this part on any person for each violation of this section.<sup>1</sup>

(c) *Criminal penalty.* Whoever willfully violates paragraph (a)(1) or (2) of this section 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.<sup>2</sup>

**§ 719.4 Violations and sanctions under the Act not subject to proceedings under this subchapter.**

(a) *Criminal penalties for development or use of a chemical weapon.* Any person who violates 18 U.S.C. 229 shall be fined, or imprisoned for any term of years, or both. Any person who violates 18 U.S.C. 299 and by whose action the death of another person is the result shall be punished by death or imprisoned for life.

(b) *Civil penalty for development or use of a chemical weapon.* The Attorney General may bring a civil action in the appropriate United States district court against any person who violates 18 U.S.C. 229 and, upon proof of such violation by a preponderance of the evidence, such person shall be subject to pay a civil penalty in an amount not to exceed \$100,000 for each such violation.

(c) *Criminal forfeiture.* (1) 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:

(i) Any property, real or personal, owned, possessed, or used by a person involved in the offense;

(ii) Any property constituting, or derived from, and proceeds the person obtained, directly or indirectly, as the result of such violation; and

(iii) Any of the property used in any manner or part, to commit, or to facilitate the commission of, such violation.

(2) 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.

(d) *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

(ii) 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 Act, or compel the taking of any action required by or under the Act or the Convention.

**§ 719.5 Initiation of administrative proceedings.**

(a) *Request for Notice of Violation 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 under this § 719.5 and 22 CFR 103.7. If the request is in accordance with applicable law, the Secretary of State will initiate an administrative enforcement proceeding by issuing a NOVA. The Office of Chief Counsel shall serve the NOVA as directed by the Secretary of State.

(b) *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 (a) of this section.

(c) *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 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.

(d) *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.

(e) *Notice.* Notice of the intent to charge or of the initiation of formal proceedings shall be given to the respondent (or respondent's agent for service of process, or attorney) by sending relevant documents, via first class mail, facsimile, or by personal delivery.

**§ 719.6 Request for hearing and answer.**

(a) *Time to answer.* If the respondent wishes to contest the NOVA and proposed order issued by the Secretary of State, the respondent must request a hearing in writing within 15 days from the date of the NOVA. If the respondent requests a hearing, the respondent must answer the NOVA within 30 days from the date of the request for hearing. The request for hearing and answer must be filed with the Administrative Law Judge (ALJ), 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.

(b) *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.

<sup>1</sup> 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)).

<sup>2</sup> Alternatively, sanctions may be imposed under 18 U.S.C. 3571, a criminal code provision that establishes a maximum criminal fine for a felony that is the greatest of: (1) the amount provided by the statute that was violated; (2) an amount not more than \$250,000 for an individual, or not more than \$500,000 for an organization; or (3) an amount based on gain or loss from the offense.

(c) *English required.* The request for hearing, answer, and all other papers and documentary evidence must be submitted in English.

(d) *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 U.S. 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 ALJ, or, in cases where settlement negotiations occur before any filing with the ALJ, 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 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 United States mail (first class postage prepaid), by express or equivalent parcel delivery service, via facsimile, or by hand delivery of one copy of each paper to each party in the proceeding. The Department of State is a party to 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 Office of 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 (CBI) as defined by the Act.

(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 to any person 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 may be served by any of the methods set forth in § 719.8(b).

(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 Act. Where the ALJ determines that documents containing classified or sensitive matter must be made available to a party in order to avoid prejudice, the ALJ may direct the other 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 interest of justice.

(b) *Hearing procedure.* Hearings will be conducted in a fair and impartial manner by the ALJ. All hearings will be closed, unless the ALJ for good cause shown determines otherwise. 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, except that any evidence of settlement which would be excluded under Rule

408 of the Federal Rules of Evidence is not admissible. Witnesses will testify under oath or affirmation, and shall be subject to cross-examination.

(c) *Testimony and record.* (1) A verbatim record of the hearing and of any other oral proceedings will be taken by reporter or by electronic recording, and filed with the ALJ. If any party wishes to obtain a written copy of the transcript, that party shall pay the costs of transcription. The parties may share the costs if both wish a transcript.

(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, except that 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) *Initial decision.* After considering the entire record in the 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 Act. 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 allegation(s) 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.

(b) *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 of a civil penalty 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.

(c) *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, N.W., Room 5519, Washington, D.C. 20520, to the Office of Chief Counsel at the address in § 719.8, and to the respondent, by personal delivery or overnight mail.

(d) *Review of initial decision.* The initial decision shall become the final agency decision and order unless, within 30 days, the Secretary of State modifies or vacates it, with or without conditions, in accordance with 22 CFR 103.8.

#### § 719.19 Settlement.

(a) *Settlements before issuance of a NOVA.* 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.

(b) *Settlements following issuance of a NOVA.* 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) *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.

(d) *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, prior to the close of the proceeding, 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.* The record for decision will be available only after the final administrative disposition of a case. Parties may seek to restrict access to any portion of the record under paragraph (b) of this section.

#### § 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 (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 Act, or 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; Tel: (202) 482-1208; Facsimile: (202) 482-0964.

### PART 720—DENIAL OF EXPORT PRIVILEGES

Sec.

720.1 Denial of export privileges for convictions under 18 U.S.C. 229.

720.2 Initiation of administrative action denying export privileges.

720.3 Final decision on administrative action denying export privileges.

720.4 Effect of denial.

**Authority:** 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703.

#### § 720.1 Denial of export privileges for convictions under 18 U.S.C. 229.

Any person in the United States or any U.S. national may be denied export privileges after notice and opportunity for hearing if that person has been

convicted under Title 18, Section 229 of the United States Code of knowingly:

(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 to violate paragraph (a) of this section, or attempting or conspiring to violate paragraph (a) of this section.

**§ 720.2 Initiation of administrative action denying export privileges.**

(a) *Notice.* BXA will notify any person convicted of Section 229, Title 18, United States Code, of BXA's intent to deny that person's export privileges. 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, state whether the denial order will be standard or non-standard pursuant to Supplement No. 1 to Part 764 of the Export Administration Regulations (15 CFR parts 730 through 799), and provide that the person may request a hearing before the Administrative Law Judge within 30 days from the date of the notification letter.

(b) *Waiver.* The failure of the notified person to file a request for a hearing within the time provided constitutes a waiver of the person's right to contest the denial of export privileges that BXA intends to impose.

(c) *Order of Assistant Secretary.* If no hearing is requested, the Assistant Secretary for Export Enforcement will order that export privileges be denied as indicated in the notification letter.

**§ 720.3 Final decision on administrative action denying export privileges.**

(a) *Hearing.* Any hearing that is granted by the ALJ shall be conducted in accordance with the procedures set forth in § 719.14 of this subchapter.

(b) *Initial decision and order.* After considering the entire record in the proceeding, the ALJ will issue an initial decision and order, based on a preponderance of the evidence. 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 a denial of export privileges for the length of time the ALJ deems appropriate. An order denying

export privileges may be standard or non-standard, as provided in Supplement No. 1 to part 764 of the Export Administration Regulations (15 CFR parts 730 through 799). The initial decision and order will be served on each party, and will be published in the **Federal Register** as the final decision of the Department of Commerce 30 days after service, unless an appeal is filed in accordance with paragraph (c) of this section.

(c) *Grounds for appeal.* (1) A party may, within 30 days of the ALJ's initial decision and order, 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 Office of Chief Counsel for Export Administration or on the respondent. Petitions for review may be filed only on one or more of the following grounds:

(i) That a necessary finding of fact is omitted, erroneous or unsupported by substantial evidence of record;

(ii) That a necessary legal conclusion or finding is contrary to law;

(iii) That prejudicial procedural error occurred; or

(iv) That the decision or the extent of sanctions is arbitrary, capricious or an abuse of discretion.

(2) The appeal must specify the grounds on which the appeal is based and the provisions of the order from which the appeal was taken.

(d) *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.

(e) *Decisions.* The Under Secretary's 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. Any order that imposes a denial of export privileges will be published in the **Federal Register**.

**§ 720.4 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 Regulations (15 CFR parts 730 through 799). 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—INSPECTION OF RECORDS AND RECORDKEEPING**

Sec.

721.1 Inspection of records.

721.2 Recordkeeping.

721.3 Destruction or disposal of records.

**Authority:** 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703.

**§ 721.1 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 relating to compliance with the requirements of this subchapter. This requires that you make available the equipment and, if necessary, knowledgeable personnel for locating, reading, and reproducing any record.

**§ 721.2 Recordkeeping.**

(a) *General.* Each facility required to submit a declaration, report or notification under parts 712 through 715 of this subchapter must retain all supporting materials and documentation used by a unit, plant, facility and plant site to prepare such declaration, report or notification to determine production, processing, consumption, export or import of chemicals.

(b) *Five year retention period.* All supporting materials and documentation required to be kept under paragraph (a) of this section must be retained for five years from the due date of the applicable declaration, report, or notification, or for five years from the date of submission of the applicable declaration, report or notification, whichever is later. Due dates for declarations, reports and notifications are provided in parts 712 through 715 of this subchapter.

(c) *Location of records.* If a facility is subject to inspection under part 716 of this subchapter, records retained under this section must be maintained at the facility or must be accessible electronically at the facility for purposes of inspection of the facility by Inspection Teams. If a facility is *not* subject to inspection under part 716 of this subchapter, records retained under

this section may be maintained either at the facility subject to a declaration, report, or notification requirement, or at a remote location, but all records must be accessible to any authorized agent, official or employee of the U.S. Government under § 721.1.

(d) *Reproduction of original records.*

(1) You may maintain reproductions instead of the original records provided all of the requirements of paragraph (b) of this section are met.

(2) 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:

(i) The system must be capable of reproducing all records on paper.

(ii) 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 (unless blank) of paper documents in legible form.

(iii) 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.

(iv) The system must preserve the initial image (including both obverse and reverse sides, unless blank, 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.

(v) You must establish written procedures to identify the individuals who are responsible for the operation, use and maintenance of the system.

(vi) You must keep a record of where, when, by whom, and on what equipment the records and other information were entered into the system.

(3) *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

according to the same criteria that would have been used to organize the records had they been maintained in original form.

(4) *Requirements applicable to a system based on photographic processes.* For systems based on photographic, photostatic, or miniature photographic processes, the records must be maintained according to an index of all records in the system following the same criteria that would have been used to organize the records had they been maintained in original form.

**§ 721.3 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.

**PART 722—INTERPRETATIONS—  
[RESERVED]**

**Note:** This part is reserved for interpretations of parts 710 through 721 and also for applicability of decisions by the Organization for the Prohibition of Chemical Weapons (OPCW).

Dated: December 16, 1999.

**R. Roger Majak,**

*Assistant Secretary for Export Administration.*

[FR Doc. 99-33149 Filed 12-30-99; 8:45 am]

BILLING CODE 3510-33-P

**DEPARTMENT OF STATE**

**22 CFR Part 103**

**[Public Notice 3183]**

**RIN 1400-ZA01**

**Chemical Weapons Convention and the Chemical Weapons Convention Implementation Act of 1998; Taking of Samples; Recordkeeping and Inspections**

**AGENCY:** Bureau of Arms Control, State.

**ACTION:** Final rule.

**SUMMARY:** The Department of State is issuing this final rule 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.

**EFFECTIVE DATE:** December 30, 1999.

**FOR FURTHER INFORMATION CONTACT:**

Michael Coffee, Office of the Legal Adviser (L/ACN), 2201 C Street, N.W., Washington, DC 20520.

**SUPPLEMENTARY INFORMATION:** In Part II of the July 21, 1999 **Federal Register**, the Department of State (64 Fed. Reg. 39244) and the Department of Commerce (64 Fed. Reg. 39194) published, with a thirty day public comment period, proposed rules to implement provisions of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction and the Chemical Weapons Convention Implementation Act of 1998.

On April 25, 1997, the United States ratified the CWC. 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 any 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 engaging in activity prohibited by the Convention. The verification regime includes declarations and reports by, and on-site inspection of, facilities engaged in or formerly engaged in activities involving certain chemicals. To further its nonproliferation objectives, the Convention requires restrictions on the import and export of certain chemicals. This rule implements §§ 304(f)(1) and 501 of the Chemical Weapons Convention Implementation Act of 1998, 22 U.S.C. 6701 *et seq.* These regulations provide the guidelines under which the taking of a sample may be required during an on-site inspection conducted pursuant to the Convention. These regulations will also establish the civil enforcement regime for a violation of §§ 306 or 405 of the Act.

A number of responses were received by the Department of State. Following are relevant comments raised as well as the Department of State's response.