

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 pos-

sible, 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.

SOURCE: 64 FR 73802, Dec. 30, 1999, unless otherwise noted.

§ 718.1 Definition.

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

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

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(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

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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.