

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, BIS will consult with the affected facility on the contents of the agreements and take facility comments into consideration during negotiations. The Department

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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. BIS 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.

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(d) *Further information.* For further information about facility agreements, please write or call: Inspection Management Team, Bureau of Industry and Security, 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 CWCR, 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 BIS within 90 days of an inspection on its total costs related to that inspection. Although not required, such reports should identify categories of costs separately if possible, such as personnel costs (production-line, administrative, legal), costs of producing records, and costs associated with shutting down chemical production or processing during inspections, if applicable. This information should be reported to BIS on company letterhead at the address given in §716.6(d), with the following notation: "Attn: Report of inspection-related costs."