



Chemical Weapons Convention Bulletin

Department of Commerce
Bureau of Industry and Security

Chemical Weapons Convention: Challenge Inspection Overview

On December 30, 1999, the Bureau of Industry and Security (BIS) promulgated interim regulations implementing the Chemical Weapons Convention (CWC). The CWC Regulations (CWCR) (15 CFR 710 et seq.) require commercial facilities engaged in the production, processing, or consumption of certain toxic chemicals and their precursors to submit annual declarations and to provide access for on-site inspections conducted by the [Technical Secretariat](#) of the Organization for the Prohibition of Chemical Weapons (OPCW), which administers the Convention. The CWCR also subject *any* facility, whether or not declared, to challenge inspection by the OPCW.

BIS acts as the host and escort (Host Team) for OPCW inspection teams during inspections of U.S. facilities subject to the CWCR, including challenge inspections. Although there have not been any challenge inspections to date in the United States or worldwide, this publication provides an overview of the key components of the challenge inspection process, as established in Article IX of the CWC, Part X of the Verification Annex to the CWC, and Part 717 of the CWCR.

Clarification Procedure v. Challenge Inspection

The CWC contains two formal procedures for resolving compliance concerns raised by one State Party against another: clarification requests and challenge inspections. Concerns generally relate to the alleged (1) development, production, transfer, or use of chemical weapons or (2) non-compliance with declaration, reporting, notification, or inspection requirements.

A State Party may request clarification of any matter that causes doubt or concern in relation to another State Party's compliance with the CWC. Upon receipt of a clarification request regarding a facility subject to the CWCR, whether or not declared, BIS requires the affected facility to provide a written response within *five* working days (see section 717.1(b) of the CWCR). If the requesting State Party remains unsatisfied with the results of the clarification, a

special session of the OPCW [Executive Council](#) or [Conference of States Parties](#) may be requested during which any measure deemed appropriate to resolve the situation may be recommended.

Article IX of the Convention provides that, whether or not the clarification procedure is used, a State Party may request a challenge inspection at any facility in the United States, regardless of whether it has submitted a declaration, for the sole purpose of clarifying and resolving any questions concerning possible non-compliance with the CWC. Upon receipt of a challenge inspection request, the Executive Council of the OPCW may decide within twelve hours of receipt, by a three-quarter majority vote, *against* carrying out the challenge inspection if the request is deemed frivolous, abusive, or beyond the scope of the CWC. The requesting State Party and United States may not participate in this decision.

Challenge Inspection Timeline

Pursuant to Article IX, if the Executive Council does not override the challenge inspection request, the OPCW Technical Secretariat will notify the United States of a challenge inspection 12 hours prior to arrival of the inspection team at the U.S. point of entry (POE) -- Washington Dulles International Airport. The Department of State will notify the facility to be inspected at any appropriately determined time after receipt of notification from the Technical Secretariat. The notice will include all appropriate evidence or reasons provided by the requesting State Party for seeking the inspection. BIS will transmit a Host Team notification via facsimile requesting whether the facility will grant consent and would support advanced preparation assistance at no cost to the facility, if available. If the owner, operator, occupant or agent in charge of the facility does not grant consent, BIS will assist the Department of Justice in seeking a criminal warrant.

The following description of challenge inspection activities and procedures assumes that the facility has given consent to the inspection. If a criminal warrant is sought and issued, its terms may affect the conduct of the challenge inspection.



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Maximum Inspection Timeline (Note: HT -- Host Team, IT -- Inspection Team)

	Declared Facility		Undeclared Facility		Alternative Perimeter not Accepted at POE
	Requested Perimeter Accepted	Alternative Perimeter Accepted at POE	Requested Perimeter Accepted	Alternative Perimeter Accepted at POE	
Notification	-12	-12	-12	-12	-12
IT arrival at POE	0	0	0	0	0
HT exit monitoring of requested perimeter	12	12	12	12	12
Arrival on-site and IT commencement of exit monitoring	24	36	24	36	36
Agreement on final perimeter	24	36	24	36	108
Pre-Inspection Briefing	Not to exceed three hours				
Commencement of period of inspection	27	39	108	108	108
End of inspection / preliminary findings	111	123	192	192	192

Upon arrival at the POE, the inspection team will present the inspection mandate, which will include a “requested perimeter” delineating the facility subject to inspection. The Host Team has the opportunity to request an “alternative perimeter” for inspection activities (see discussion of Perimeter Negotiation below).

No later than 12 hours after arrival of the inspection team at the POE, the CWC requires the United States to monitor all vehicular traffic exiting the perimeter (i.e., land, air and sea). The Host Team will perform this monitoring, and will provide information collected to the inspection team upon its arrival at the site. The inspection team must arrive at the perimeter no later than 36 hours after its arrival at the POE (not later than 24 hours if the facility is declared).

The period of inspection will not exceed 84 continuous hours, or 3 ½ days. For declared facilities, the facility must provide a pre-inspection briefing (PIB), which may not exceed 3 hours, upon the inspection team’s arrival at the perimeter. The inspection will commence immediately following the PIB. For other facilities, the inspection must commence no later than 108 hours after arrival of the inspection team at the POE. For these facilities, the PIB must be completed prior to commencement of the period of inspection.

Observer. The CWC provides for a requesting State Party observer (RSO) to participate in the challenge inspection, subject to State Party agreement. The RSO has the right to make recommendations to the inspection team, but is not an inspection team member or subject to the confidentiality rules of the CWC. RSO access to the



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inspection site is subject to Host Team approval. The Host Team will accompany inspectors and the RSO at all times during a challenge inspection.

Challenge Inspection Activities

A challenge inspection consists of five elements: (1) perimeter negotiation; (2) perimeter activities, to include exit monitoring; (3) PIB; (4) access and inspection activities within the final perimeter; and (5) debriefing and inspection report.

Perimeter Negotiation. As a general rule, a “requested” perimeter will normally conform with the declared perimeter for declared facilities. Otherwise, the requesting State Party will designate a requested perimeter that:

- runs at least a 10 meter distance outside any buildings or structures;
- does not cut through existing security enclosures; and
- runs at least a 10 meter distance outside any existing security enclosures that the requesting State Party intends to include the requested perimeter.

When the inspection team presents the requested perimeter of the inspection site, BIS will consult with the facility on its boundaries and the need for proposing an “alternative” perimeter. If the Host Team agrees to the requested perimeter, it becomes the “final” perimeter. Specific site features may require the proposed perimeter to be modified; manmade structures or natural boundaries may conflict with the perimeter.

Under the CWC, an alternative perimeter must include the whole of and should, as a rule, bear a close relationship to the requested perimeter, taking into account natural terrain features and man-made boundaries. It should normally run close to the surrounding security barrier if such a barrier exists. Alternative perimeter proposals will take into consideration the right of inspectors to conduct perimeter activities within a 50 meter band outside the final

perimeter. Inspection team “perimeter activities” include exit monitoring and possible sampling of air, soil or effluent.

The inspection team can accept the alternative perimeter as the final perimeter at the POE or continue negotiations after arrival at the proposed alternative perimeter. Once the inspection team arrives at the proposed alternative or final perimeter (whichever comes first), inspectors are granted access to a 50 meter band around this perimeter for commencement of exit monitoring.

If no agreement on a perimeter is reached within 72 hours after arrival of the inspection team at the location, the alternative perimeter is designated as the final perimeter.

Perimeter Activities -- Exit Monitoring. Not later than 12 hours after the arrival of the inspection team at the POE, the Host Team will monitor vehicular traffic exiting the inspected facility by collecting information from all exit points for land, air, and water vehicles. The Host Team may collect information in the form of traffic logs, photographs, or video recordings. Upon its arrival on-site, the inspection team will take over monitoring activities using these or other procedures agreed between the inspection team and the Host Team. The inspection team also may inspect vehicles on a managed access basis. Personnel and vehicles entering the facility and personnel and personal vehicles exiting the facility are not subject to inspection. Pursuant to Part X of the Verification Annex, the inspection team has the right to inspect any part of the perimeter to check that there is no other exit activity.

Pre-Inspection Briefing. Facility representatives will provide the inspection team and the Host Team with a PIB regarding the activities carried out at the facility, 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 and the Host Team. Other facility personnel involved with the inspection should attend the PIB to ensure that they have the same understanding as the inspection team of the inspection



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activities (e.g., final perimeter, areas of sensitivity). The PIB may not exceed three hours. As soon as the PIB is completed, the period of inspection begins.

Access and Inspection Activities. Inspection Team access to the requested perimeter must be provided not later than 108 hours after arrival of the inspection team at the POE. Based on BIS's experience during initial and routine inspections at declared facilities, the inspection team may request a windshield tour of the site for orientation purposes prior to commencement of inspection activities.

For declared facilities with facility agreements, the inspection team has unimpeded access within the boundaries established by the facility agreement. For all other declared facilities, access is governed by the CWC's general inspection guidelines as follows:

General Inspection Guidelines for Access:

	(Declared) Plant/Facility	(Declared) Plant Site
Schedule 1	Unimpeded	n/a
Schedule 2	Unimpeded	Managed
Schedule 3	Unimpeded	Agreed
UDOC	Managed	Agreed

The inspection team has managed access to all other areas of a facility within the perimeter (see the CWC Bulletin on inspections for further discussion of types of access).

For undeclared facilities, the extent and nature of access to particular places within the perimeter shall be negotiated between the inspection team and Host Team on a managed access basis.

Regardless of the type of access, the Host Team, in conjunction with facility recommendations, has the ability to take measures to protect sensitive installations and confidential business information not related to the purpose of the inspection. Protective measures include:

- removal of sensitive papers from office spaces;
- shrouding of sensitive displays, stores, and

- equipment;
- logging off of computer systems and turning off of data indicating devices;
- restriction of sample analysis to the presence or absence of chemicals listed in Schedules 1, 2 and 3 or appropriate degradation products;
- using random selective access techniques whereby the inspectors are requested to select a given percentage or number of buildings of their choice to inspect the same principle can apply to the interior and content of sensitive buildings; and
- in exceptional cases, giving only individual inspectors access to certain parts of the inspection site.

The Host Team is required to make every reasonable effort to demonstrate that any object, building, structure, container, or vehicle to which the inspection team is not provided access (or which has been protected using the measures discussed above) is not used for purposes related to the possible non-compliance concern raised in the inspection request.

Records. The inspection team has the right to inspect documentation and records, and collect and document facts related to possible non-compliance with the CWC. The nature of records reviewed will depend upon the specific allegation of non-compliance. Prior to the disclosure of facility information to the inspection team, the Host Team will review and assign an OPCW classification for all records. Unless agreed otherwise by the Host Team, all records reviewed by the inspection team will remain on-site and must be returned at the end of the inspection. The facility will acknowledge release and return, and the inspection team will acknowledge receipt and return of all information on the Host Team's information control log. The Host Team can take measures to protect confidential business information not related to the purpose of the inspection.

Debriefing and Inspection Report. Upon completion of the inspection, the inspection team and Host Team, along with facility representatives, may review the preliminary findings and clarify any ambiguities related to possible non-compliance concerns. The inspection team will



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provide a preliminary inspection report to the Director-General of the Technical Secretariat within 72 hours after returning to the OPCW. This report will be transmitted promptly to the U.S. Government.

The Technical Secretariat will provide a draft final inspection report (FIR) to the U.S. Government no later than 20 days after completion of the inspection. The Director-General will forward the FIR, incorporating U.S. Government and facility comments as appropriate, to the Executive Council no later than 30 days after the inspection to consider, *inter alia*, whether non-compliance occurred, and forward any recommendations to the Conference of States Parties for action.

Further Information

To learn more about CWC inspections or request a site assistance visit, visit our website at www.cwc.gov or contact BIS's Treaty Compliance Division at (703) 605-4400 or fax (703) 605-4424.