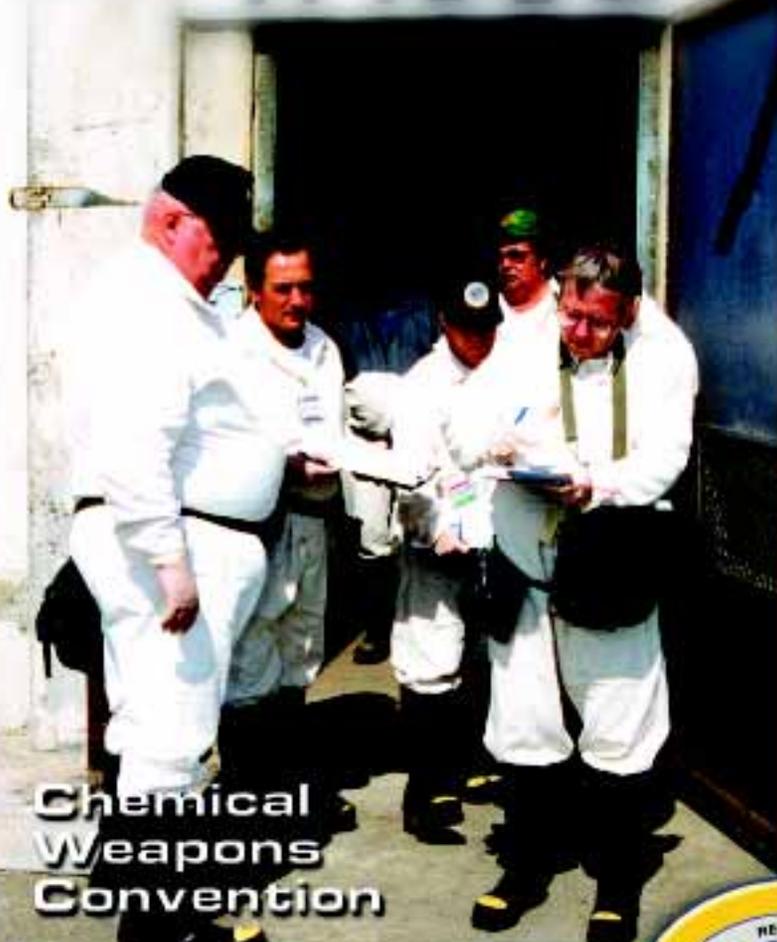


Managed Access Under the Chemical Weapons Convention

January 2004



Chemical Weapons Convention

Order No. 112 P



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Table of Contents

Introduction.....	2
Chemical Weapons Convention Background	3
Inspection Regime.....	5
Rights under the CWC.....	7
Managed Access	11
The Decision to Manage Access	19
Conclusion.....	21

This pamphlet is part of a series about the Chemical Weapons Convention and its potential security impact on DoD facilities and chemical plants. It was prepared by the Defense Treaty Inspection Readiness Program (DTIRP) to increase **Readiness Through Awareness** within the U.S. Government and defense contractor community. Additional copies of this pamphlet, as well as other information about arms control treaties and the application of security countermeasures, are available through the DTIRP Outreach Program.

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INTRODUCTION

Facility security officers, program managers, and other facility representatives need to be aware of the effects the Chemical Weapons Convention (CWC) could have on their facility. Under the Convention, certain declared chemical processing, production, and consumption activities at industry facilities are subject to verification by initial and “routine” on-site inspections. Even facilities that have no declarable activities under the CWC could be subject to a challenge inspection, which would allow an international team of inspectors to investigate an allegation of non-compliance.

CWC inspections are conducted by inspectors sent from the Organization for the Prohibition of Chemical Weapons (OPCW), the CWC’s implementation body. During CWC inspections, facility representatives will be responsible for protecting national security, as well as confidential business and other sensitive information not related to chemical weapons. They will also be obligated to grant the inspection team sufficient access to verify that their facility is in compliance with the Convention.

Managed access can help facilities achieve both of these goals. Simply defined, managed access is the use of methods, other than granting full access, to demonstrate compliance with the Convention. The purpose of this pamphlet is to discuss managed access techniques and to describe how their use can help facilities ensure that sensitive information is not compromised during CWC inspection activities.



The CWC is an international arms control agreement that prohibits the development, production, acquisition, stockpiling, transfer, and use of chemical weapons (CW). The convention has more than 150 States Parties and contains an extensive verification regime that includes initial and subsequent data declarations as well as initial, routine, and challenge inspections. The goals of this verification regime are to ensure confidence in CWC compliance and to deter chemical weapons activities.

Data declarations facilitate the OPCW’s ability to monitor the production and use of certain chemicals that could be diverted for chemical warfare purposes. These chemicals are grouped into three lists, or “schedules,” based on their previous or potential use in chemical weapons.

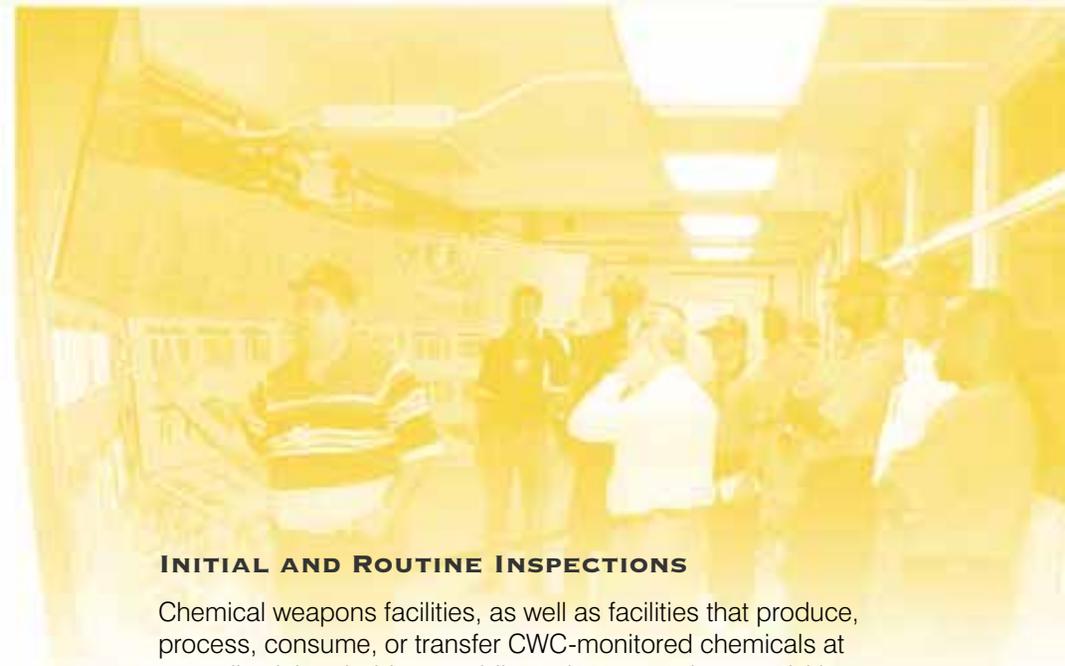
Schedule 1 chemicals include actual CW agents plus a few other chemicals, called “precursors,” that are used to make chemical weapons. Schedule 1 chemicals pose a high risk to the object and purpose of the Convention and have little use except for purposes prohibited under the Convention.

Schedule 2 chemicals pose a significant risk to the object and purpose of the Convention. They include toxic chemicals and precursors possessing properties that would enable them to be used in CW activities. Schedule 2 chemicals are not produced in large commercial quantities for purposes not prohibited under the Convention.

Chemicals listed in Schedule 3 pose a risk to the object and purpose of the Convention. They include first generation chemical weapons and other toxic chemicals and precursors that might enable them to be used in CW activities. However, the chemical industry produces Schedule 3 chemicals in large commercial quantities for purposes not prohibited under the Convention.

The Convention also monitors the production of certain levels of other unscheduled chemicals called “unscheduled discrete organic chemicals,” or “UDOCs,” especially those containing phosphorus, sulfur, or fluorine. These UDOCs are commonly referred to as “PSF” chemicals.

To accomplish the formidable task of monitoring these chemicals, the Convention’s comprehensive verification regime includes a number of different types of intrusive, on-site inspections.



INITIAL AND ROUTINE INSPECTIONS

Chemical weapons facilities, as well as facilities that produce, process, consume, or transfer CWC-monitored chemicals at prescribed thresholds, are obligated to report these activities. Facilities whose activities meet CWC-specified criteria will be “declared” by the United States and will be subject to on-site inspection.

Initial and routine inspections are conducted for the purpose of verifying the accuracy of the facility’s declaration and ensuring that no activities prohibited under the Convention are being carried out.

CHALLENGE INSPECTIONS

Concerns about compliance with the Convention, including those not resolved during routine inspections, may be addressed through challenge inspections. A challenge inspection may be requested by any State Party and may be conducted at any facility believed to be conducting prohibited CW activities.

If the Executive Council of the OPCW does not vote (by a $\frac{3}{4}$ majority) to block the requested inspection, the Director-General will issue a challenge inspection notification to the inspected State Party. Soon after, the Director-General will also send an inspection team to the specified site to gather facts related to the alleged compliance concern—essentially that a facility is producing, storing, diverting, not declaring, or exporting CW agents or CW-related equipment or munitions.

The CWC does not recognize a right of States Parties to refuse a challenge inspection. (However, the CWC Implementation Act of 1998 states, “Consistent with the objective of eliminating chemical weapons, the President may deny a request to inspect any facility in the United States in cases where the President determines that the inspection may pose a threat to the national security interests of the United States.”)

INSPECTION FEATURES

The Convention’s inspection regime provides specific rights and obligations to both the inspection team and the inspected State Party. Consequently, all CWC inspections exhibit certain standard features facility representatives should anticipate and, when appropriate, consider when preparing to protect sensitive information.

These features apply, to one degree or another, to all types of CWC inspections. Standard features may include the use of an inspection mandate, inspection plan, pre-approved equipment, inspector access (to buildings and records), personnel interviews, sampling, and photography. Perimeter negotiations and exit monitoring activities apply only to challenge inspections.

Achieving a satisfactory inspection outcome requires skillful accommodation of these features, as well as managed access, throughout the duration of the inspection. A satisfactory outcome is one providing sufficient access to the inspection team to clarify a concern or to demonstrate compliance with the Convention while still protecting sensitive information.



INSPECTION TEAM

The CWC gives inspectors the right to conduct inspection activities necessary to fulfill their inspection mandate.¹ However, the Convention charges inspectors with the obligation to conduct all inspections in the least intrusive manner possible commensurate with the timely completion of their mandate. Hence, they should be sensitive to the impact of their activities on facility operations.

Nevertheless, the United States is obligated to grant sufficient access to inspection teams to demonstrate compliance. Whenever providing less than full access, the United States, and thus the facility, incur the obligation to provide alternative means to clarify the concern or demonstrate compliance.

INSPECTED FACILITY

The CWC also provides inspected facilities with the capability to protect sensitive information and activities. For declared CW and Schedule 1 sites, a draft facility agreement will be negotiated

¹For more information, also see DTIRP pamphlet *Rights & Obligations of the Inspection Team & the Inspected State Party under the Chemical Weapons Convention* (131P)

during the initial inspection to establish inspection procedures for systematic inspections.

During the initial inspection of Schedule 2 facilities, a draft facility agreement shall be prepared unless the inspected State Party and the OPCW Technical Secretariat agree that it is not needed. These procedures, if carefully negotiated, can provide “built-in” protection for facility security concerns. However, in instances where there is no draft facility agreement—initial inspections, routine inspections of Schedule 3 and unscheduled discrete organic chemical producers, and challenge inspections—other measures must be used to curtail unwanted disclosures of information.

The CWC gives the inspected State Party the right to take measures to protect “sensitive installations” and to prevent the disclosure of “confidential information and data” not related to chemical weapons. The Convention addresses these measures as managed access. The effective use of managed access balances the rights of the inspection team with those of the U.S. Government and the facility to protect sensitive information.

INSPECTION MANDATE

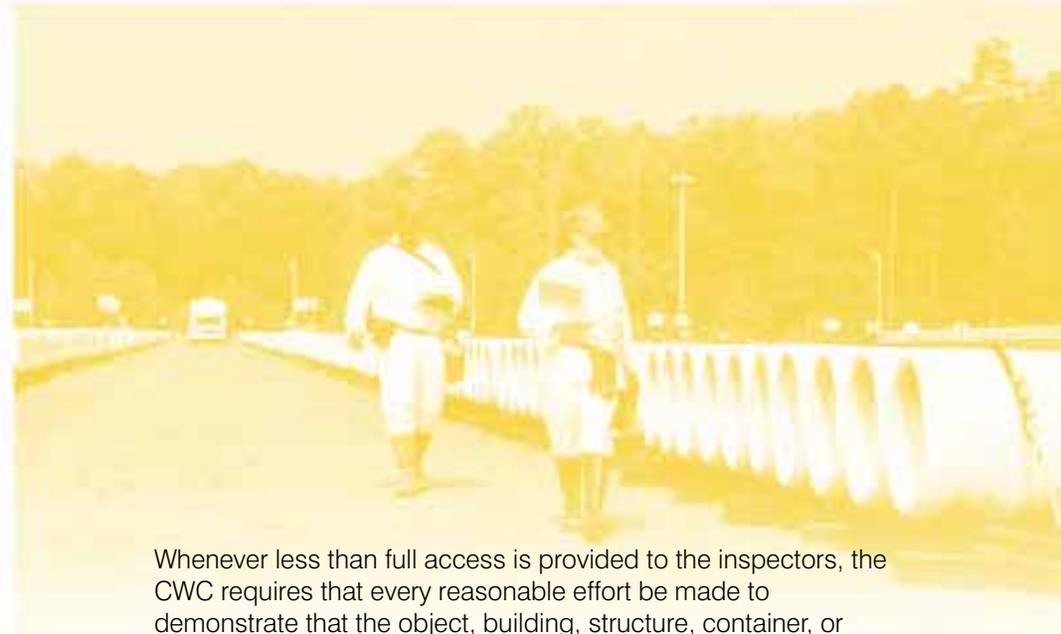
Each CWC inspection team will have an inspection mandate—instructions issued by the Director-General to the inspection team for the conduct of a particular inspection. For inspections at declared facilities, the mandate will direct inspection team efforts toward the verification of declared chemical activities. For a challenge inspection, the mandate is essentially a set of instructions for the inspection team to use when investigating a stated compliance concern. The mandate must be presented upon the arrival of the inspection team at the U.S. point of entry. The content is not negotiable. However, it can be referenced by both sides during all access-related negotiations throughout the inspection to guide and focus inspection activities.



ACCESS NEGOTIATIONS

The U.S. Government and the inspection team negotiate inspector access for all CWC inspections. As mentioned, for routine inspections, the facility agreement codifies negotiated access. These agreements will detail the extent and nature of access to be granted to inspection teams while conducting their activities. Facility personnel will be asked to assist U.S. Government representatives in negotiating access issues during the initial inspection; the outcome will be very important because it will set the “local rules” for subsequent routine inspection activities at the facility. Access during challenge inspections of facilities with facility agreements will be in accordance with those agreements.

There are numerous managed access measures that can be applied by the inspected State Party during access negotiations to protect sensitive information. The specific measure, or combination of measures, will vary according to the inspection situation. In some cases, use of managed access measures may not be necessary.



Whenever less than full access is provided to the inspectors, the CWC requires that every reasonable effort be made to demonstrate that the object, building, structure, container, or vehicle where access is limited, is not being used for purposes prohibited by the Convention. Nevertheless, the Convention also provides specific managed access measures for use by the facility to protect sensitive information not related to chemical weapons. These measures are listed below and are described briefly in the paragraphs that follow:

- Negotiation of the inspection site perimeter
- Modifications to the inspection plan
- Removal of sensitive papers
- Shrouding of sensitive displays or equipment
- Logging off of computer systems
- Restriction of sample analyses to presence or absence of scheduled chemicals
- Use of random selective access
- Use of exceptional access

PERIMETER NEGOTIATIONS

During a challenge inspection, the OPCW will provide a requested inspection perimeter for the site to be inspected. The United States may negotiate modifications to the perimeter to protect sensitive information.

For example, suppose there is a building housing a proprietary process located outside the perimeter, but within a 50-meter band around the perimeter. The Convention does not allow the inspected State Party to restrict environmental sampling within this 50-meter band. However, it does permit restriction of sampling to the presence or absence of a scheduled chemical anywhere inside the inspection perimeter and specifies that the inspected State Party will actually collect the sample.

Using managed access, the facility can ask the United States to negotiate a larger inspection perimeter, capturing the sensitive building, and thus allow the facility to restrict any sampling near the building to protect the proprietary process.

The inspected State Party may also carefully pre-plan the perimeter entry and exit points, as well as the routes between and within areas and buildings used during the inspection. This managed access measure is useful because the facility may thereby limit inspector observation of sensitive areas not related to chemical weapons.

INSPECTION PLAN MODIFICATIONS

For routine inspections, the facility agreement for a declared facility will contain many of the elements constituting the inspection plan for subsequent inspections at that facility. All requirements and procedures necessary to protect sensitive information or to accommodate operations should be negotiated into the draft agreement during the initial inspection. Consequently, extensive further negotiations will not be required.

During a challenge inspection, the inspection team will present a proposed inspection plan typically listing the areas or buildings the team would like to inspect; the number and assignment of any inspection team subgroups; and, the sequence of inspection activities. Upon review of this plan, and after consultation with the facility's managers, the U.S. Host Team may suggest modifications to protect sensitive information or areas not related to chemical weapons.

For example, suppose there is a sensitive operation or proprietary process located at your facility. You may not want to allow an inspection team to observe the process or operation. Using information provided by facility managers, the United States could suggest modifying the inspection plan to grant the inspection team access to the building of concern *after* the sensitive operations have ceased for the day.

During a challenge inspection, the Host Team can use the inspection plan and the inspection mandate to manage inspector access. For example, assume that the concern relates to the storage of chemical bulk agent or to CW munitions. If so, U.S. representatives could consult with facility managers and suggest a modification to the proposed inspection plan that focuses inspection activities toward areas where weapons may be stored and away from buildings not relevant to the inspection mandate—where confidential business or other sensitive processes might be located.

Both the United States and the inspection team may propose modifications to the inspection plan at any time during the inspection process. For example, based on information obtained during the inspection, the inspection team could request a modification that adds new areas or buildings within the perimeter to the plan. In this case, the U.S. and facility representatives would again consider the proposed plan to review the timing of the inspection team or subgroup, specific access requirements, etc., and to negotiate modifications to accommodate the team's request, to the maximum extent possible, while protecting any sensitivities.

REMOVING SENSITIVE PAPERS

The CWC allows the facility to remove and store sensitive papers not related to the compliance concern away from inspectable areas. Although inspectors cannot open file cabinets or other storage containers, this measure avoids inadvertent access to non-related documents.

However, during initial and routine inspections, inspectors must be provided access to relevant facility records to provide assurances that there have been no diversion of the declared chemical and that production has been consistent with the site's declarations. Also, during a challenge inspection, inspectors can request to review documents directly relevant to their inspection mandate and the compliance concern.

SHROUDING

Shrouding can be an effective managed access technique to permit the inspection team inside a building or area where sensitive equipment or other items are located. Shrouds can be made of virtually any material so as to conceal sensitive information not related to the compliance concern.

Shrouds may also be used to cover data indicating devices or displays in sensitive areas. You may, for example, cover an entire item to obscure its shape, or cover only a sensitive part such as a gauge or other indicating device.

Recall that the United States must demonstrate that all items within the inspection area, including shrouded items, are not used for purposes prohibited by the CWC. Consequently, it may be advantageous, in some circumstances, to construct shrouds that can be partially removed to demonstrate CWC compliance, while still protecting the item's sensitivity. One caution about over-shrouding—it can be costly and may create a compliance concern or provoke unwanted attention or interest toward a particular area, item, or process.

LOGGING OFF COMPUTER SYSTEMS

Arguably, the most economical and effective way to protect sensitive information during any CWC inspection may be simply to turn off the affected system. While shutting down an entire system may not always be practical, the Convention specifically allows the inspected State Party to log off of computer systems and turn off data indicating devices—e.g., monitors, gauges or other equipment indicating the status or level of an automated operation or activity.

This can be as simple as turning off a computer monitor or temporarily logging off of computer systems when inspectors are present.

SAMPLING FOR PRESENCE OR ABSENCE

During a challenge inspection, the inspection team has the right to request samples and to analyze the samples for evidence of scheduled chemicals. But under managed access, the inspected State Party has the right to restrict sampling and analysis within the inspection perimeter. For example, the United States may limit sampling to the detection of a specific schedule 1, 2, or 3 chemical, their degradation products, or to an unscheduled discrete organic chemical identified in advance by the inspection team.

This measure is useful to the facility because, by analyzing only for a specific chemical, inspectors cannot gain information about proprietary chemicals or processes present in the facility.

For other CWC inspections, the inspection team may request samples and analyze them on site to check only for the presence of undeclared monitored chemicals at the facility.

RANDOM SELECTIVE ACCESS

Random selective access may be used during CWC routine inspections of facilities not having an approved facility agreement and during challenge inspections at all non-declared locations. It is a technique where inspectors will be requested to select only a certain number or percentage of areas, buildings, or items for inspection. Such areas may include portions of the inspection site, specific buildings, or individual rooms or areas inside buildings. This technique allows the United States to limit the amount of exposure to areas not related to chemical weapons.

This technique also applies to challenge inspections during perimeter exit monitoring. In this case, the inspected State Party may use random selective access to limit the exposure of the contents of inspectable vehicles exiting the site. For example, if the team requests that samples be taken from a truck carrying multiple chemical containers, and the containers are similar, the United States may negotiate with the inspectors to select a specific number or percentage of the containers for sample analysis. Further, the United States may restrict the analysis to the presence or absence of specific chemicals as discussed earlier.

EXCEPTIONAL ACCESS

Exceptional access, like all other managed access measures, must also be negotiated with the inspection team. As the name implies, it should be reserved for truly exceptional circumstances where other measures cannot be applied. The CWC provides this technique to enable the inspected State Party to limit access to certain parts of the inspectable area to individual inspectors, rather than allowing the full team to enter—such as in a sensitive building or room having no association with chemical weapons. Because OPCW inspection teams have adhered to a “two-person” rule, this measure may have limited utility in practice.

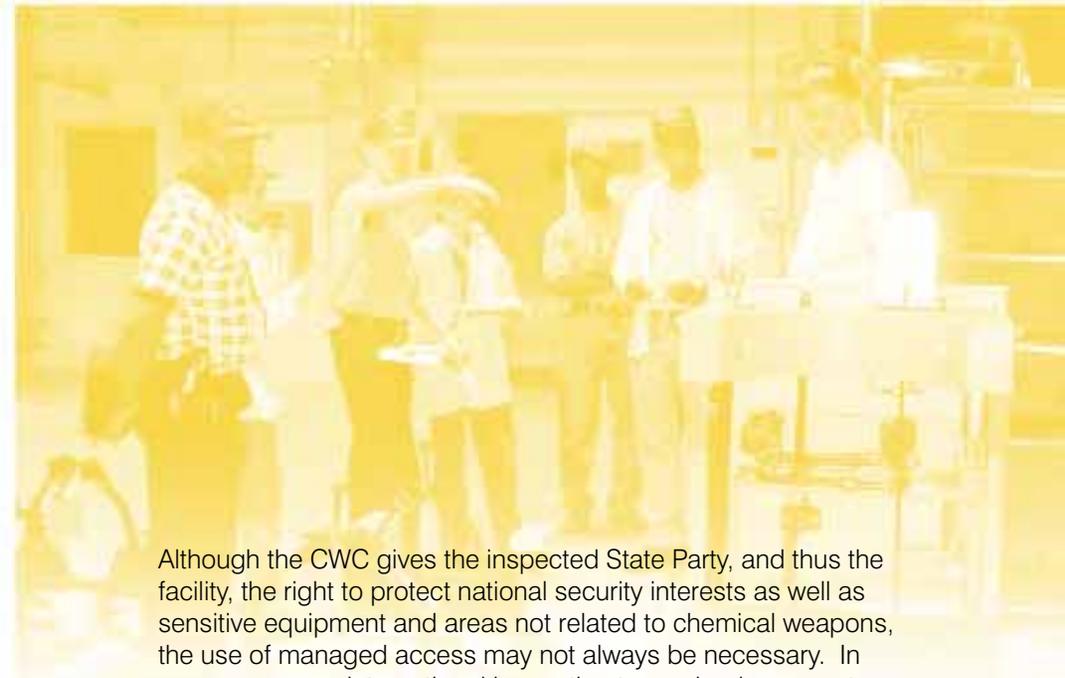


OTHER TECHNIQUES

In addition to the managed access techniques specifically designated by the Convention to protect sensitive information and areas, there are other useful techniques. The inspected facility can request that all personnel stay between marked safety lanes or within designated safety areas. Then, if the inspection team requests to go beyond marked lanes, managed access measures described earlier can be applied.

Another proven technique is to permit inspectors to view sensitive areas only from doorways or through windows, or to restrict access to certain sensitive areas only during specified times.

More drastic measures could include dismissing large segments of the work force to limit inspector access to employees during the inspection, as well as to physically remove sensitive equipment or information and material not related to chemical weapons from the site prior to the inspectors' arrival.



Although the CWC gives the inspected State Party, and thus the facility, the right to protect national security interests as well as sensitive equipment and areas not related to chemical weapons, the use of managed access may not always be necessary. In some cases, an international inspection team simply may not pose a security threat to sensitive information. In those cases, only minimal preparation or assistance would likely be required to facilitate an inspection.

Regardless of the level of assistance provided to a facility by U.S. representatives, the facility or program manager or commander is not relieved of the responsibility to protect sensitive information during any CWC inspection. The government will provide trained personnel with arms control inspection and escort experience, as well as security countermeasures expertise, to help the facility manager determine how best to demonstrate that nothing prohibited is occurring and to preclude the unwanted disclosures of information.

The U.S. Host Team must also consider any existing inspection precedents that may apply, and not set any precedents that will be unacceptable to another U.S. facility during a future inspection. Consequently, the decision to use, or not to use, managed access measures is normally made on site by facility managers in coordination with the Host Team.

The U.S. Government, cognizant of facility interests, and after consultation with facility managers, may, in exceptional cases affecting national interests, overrule facility representatives. While the government has the right to make final decisions on inspector access, it will always try to protect the proprietary interests of the inspected facility as well as national security information.

The verification provisions, and particularly the on-site inspection regime, of the Chemical Weapons Convention could impact your facility. Whether the OPCW sends an inspection team to your facility to conduct a routine inspection or to clarify a compliance concern, the Convention provides specific rights to help you. Awareness and understanding of managed access measures, as well as the techniques for their application, can improve your ability to respond to arms control security challenges during CWC inspection activities.

To obtain additional information about the CWC, other arms control treaties potentially affecting your facility, and the application of appropriate security countermeasures, contact the DTIRP Outreach Program Coordinator at 1-800-419-2899, your local Defense Security Service (DSS) Industrial Security Representative, or your government sponsor. Also see the list of related DTIRP products beginning on the next page.



Related Materials

- 101B Challenge Inspections under the
Chemical Weapons Convention
Bulletin
- 102P Chemical Weapons Convention—The Impact
Pamphlet
- 104V Chemical Weapons Convention—The Impact
Video
- 105B The Chemical Weapons Convention:
A Quick Reference Guide
Bulletin
- 107V Managed Access under the Chemical Weapons Convention
Video
- 108P Chemical Weapons Convention Challenge Inspections:
Questions Facing the U.S. Defense Industry
Pamphlet
- 114P Features of Chemical Facilities
Pamphlet
- 115P Routine Inspections under the CWC
Pamphlet
- 117P Guide for Challenge Inspections under the
Chemical Weapons Convention
Pamphlet (pocket size)
- 118P Guide for Initial and Routine Inspections under the
Chemical Weapons Convention
Pamphlet (pocket size)
- 119P CWC Challenge Inspection Planning Considerations
Pamphlet
- 122P Guide to Managed Access under the
Chemical Weapons Convention
Pamphlet (pocket size)
- 123A Development of a Chemical Weapons Convention
Pre-Inspection Briefing
Article
- 124A Site Preparation for Inspections under the
Chemical Weapons Convention
Article
- 125P CWC Inspection Preparation Guide
Pamphlet
- 127C Chemical Weapons Agreements Information
CD-ROM
- 129P Guide to Scheduled Chemicals
Pamphlet
- 130B CWC Initial Inspections—Lessons Learned
Bulletin



131P Rights & Obligations of the Inspection Team & the Inspected State Party under the Chemical Weapons Convention

Pamphlet

132P Quick Reference Guide to Chemical Equipment

Pamphlet

133B Role of the Requesting State Party Observer in CWC Challenge Inspections

Bulletin

152P CWC Inspectors' Privileges and Immunities

Pamphlet

407C Arms Control Treaties Information

CD-ROM

408P Arms Control Agreements Synopses

Pamphlet

410P Quick Reference Guide to Arms Control Inspection Timelines

Pamphlet

413A Arms Control Developments: Weapons of Mass Destruction

Article

906B Transparency During Arms Control Inspections

Bulletin

907P DTIRP Arms Control Outreach Catalog

Pamphlet

908V Facility Protection Through Shrouding

Video

930C The Arms Control OPSEC Process

Automated CD-ROM

936V Verification Provisions—Point and Counterpoint

Video

942C DTIRP Outreach Products on CD

CD-ROM

950V The Technical Equipment Inspection (TEI) Process

Video

954T Why TEI?

Trifold Brochure