

(g) “United States confidential business information” defined

In this section, the term “United States confidential business information” means any trade secrets or commercial or financial information that is privileged and confidential—

(1) including—

(A) data described in section 6724(e)(2) of this title,

(B) any chemical structure,

(C) any plant design process, technology, or operating method,

(D) any operating requirement, input, or result that identifies any type or quantity of chemicals used, processed, or produced, or

(E) any commercial sale, shipment, or use of a chemical, or

(2) as described in section 552(b)(4) of title 5,

and that is obtained—

(i) from a United States person; or

(ii) through the United States Government or the conduct of an inspection on United States territory under the Convention.

(Pub. L. 105–277, div. I, title I, §103, Oct. 21, 1998, 112 Stat. 2681–861.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act” and was translated as reading “this division”, meaning div. I of Pub. L. 105–277, Oct. 21, 1998, 112 Stat. 2681–856, known as the Chemical Weapons Convention Implementation Act of 1998, to reflect the probable intent of Congress. For complete classification of division I to the Code, see Short Title note set out under section 6701 of this title and Tables.

The Arms Export Control Act, referred to in subsec. (e)(2)(B)(i), (3)(B)(i), is Pub. L. 90–629, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 39 (§2751 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of this title and Tables.

The Foreign Assistance Act of 1961, referred to in subsec. (e)(3)(B)(vi), is Pub. L. 87–195, Sept. 4, 1961, 75 Stat. 424, as amended, which is classified principally to chapter 32 (§2151 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

CHANGE OF NAME

Committee on International Relations of House of Representatives changed to Committee on Foreign Affairs of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

SUBCHAPTER II—INSPECTIONS

§ 6721. Definitions**(a) In general**

In this subchapter, the terms “challenge inspection”, “plant site”, “plant”, “facility agreement”, “inspection team”, and “requesting state party” have the meanings given those terms in Part I of the Annex on Implementation and Verification of the Chemical Weapons Convention. The term “routine inspection” means an inspection, other than an “initial inspection”, undertaken pursuant to Article VI of the Convention.

(b) “Judge of the United States” defined

In this subchapter, the term “judge of the United States” means a judge or magistrate judge of a district court of the United States.

(Pub. L. 105–277, div. I, title III, §301, Oct. 21, 1998, 112 Stat. 2681–872.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original “this title”, meaning title III of div. I of Pub. L. 105–277, Oct. 21, 1998, 112 Stat. 2681–872, which enacted this subchapter and section 436 of former Title 41, Public Contracts. For complete classification of title III to the Code, see Tables. For disposition of sections of former Title 41, see Disposition Table preceding section 101 of Title 41.

§ 6722. Facility agreements**(a) Authorization of inspections**

Inspections by the Technical Secretariat of plants, plant sites, or other facilities or locations for which the United States has a facility agreement with the Organization shall be conducted in accordance with the facility agreement. Any such facility agreement may not in any way limit the right of the owner or operator of the facility to withhold consent to an inspection request.

(b) Types of facility agreements**(1) Schedule 2 facilities**

The United States National Authority shall ensure that facility agreements for plants, plant sites, or other facilities or locations that are subject to inspection pursuant to paragraph 4 of Article VI of the Convention are concluded unless the owner, operator, occupant, or agent in charge of the facility and the Technical Secretariat agree that such an agreement is not necessary.

(2) Schedule 3 facilities

The United States National Authority shall ensure that facility agreements are concluded for plants, plant sites, or other facilities or locations that are subject to inspection pursuant to paragraph 5 or 6 of Article VI of the Convention if so requested by the owner, operator, occupant, or agent in charge of the facility.

(c) Notification requirements

The United States National Authority shall ensure that the owner, operator, occupant, or agent in charge of a facility prior to the development of the agreement relating to that facility is notified and, if the person notified so requests, the person may participate in the preparations for the negotiation of such an agreement. To the maximum extent practicable consistent with the Convention, the owner and the operator, occupant or agent in charge of a facility may observe negotiations of the agreement between the United States and the Organization concerning that facility.

(d) Content of facility agreements

Facility agreements shall—

(1) identify the areas, equipment, computers, records, data, and samples subject to inspection;

(2) describe the procedures for providing notice of an inspection to the owner, occupant, operator, or agent in charge of a facility;

(3) describe the timeframes for inspections; and

(4) detail the areas, equipment, computers, records, data, and samples that are not subject to inspection.

(Pub. L. 105-277, div. I, title III, §302, Oct. 21, 1998, 112 Stat. 2681-872.)

§ 6723. Authority to conduct inspections

(a) Prohibition

No inspection of a plant, plant site, or other facility or location in the United States shall take place under the Convention without the authorization of the United States National Authority in accordance with the requirements of this subchapter.

(b) Authority

(1) Technical Secretariat inspection teams

Any duly designated member of an inspection team of the Technical Secretariat may inspect any plant, plant site, or other facility or location in the United States subject to inspection pursuant to the Convention.

(2) United States Government representatives

The United States National Authority shall coordinate the designation of employees of the Federal Government (and, in the case of an inspection of a United States Government facility, the designation of contractor personnel who shall be led by an employee of the Federal Government) to accompany members of an inspection team of the Technical Secretariat and, in doing so, shall ensure that—

(A) a special agent of the Federal Bureau of Investigation, as designated by the Federal Bureau of Investigation, accompanies each inspection team visit pursuant to paragraph (1);

(B) no employee of the Environmental Protection Agency or the Occupational Safety and Health Administration accompanies any inspection team visit conducted pursuant to paragraph (1); and

(C) the number of duly designated representatives shall be kept to the minimum necessary.

(3) Objections to individuals serving as inspectors

(A) In general

In deciding whether to exercise the right of the United States under the Convention to object to an individual serving as an inspector, the President shall give great weight to his reasonable belief that—

(i) such individual is or has been a member of, or a participant in, any group or organization that has engaged in, or attempted or conspired to engage in, or aided or abetted in the commission of, any terrorist act or activity;

(ii) such individual has committed any act or activity which would be a felony under the laws of the United States; or

(iii) the participation of such individual as a member of an inspection team would pose a risk to the national security or economic well-being of the United States.

(B) Not subject to judicial review

Any objection by the President to an individual serving as an inspector, whether

made pursuant to this section or otherwise, shall not be reviewable in any court.

(c) Exception

The requirement under subsection (b)(2)(A) shall not apply to inspections of United States chemical weapons destruction facilities (as used within the meaning of part IV(C)(13) of the Verification Annex to the Convention).

(Pub. L. 105-277, div. I, title III, §303, Oct. 21, 1998, 112 Stat. 2681-873; Pub. L. 106-280, title III, §305, Oct. 6, 2000, 114 Stat. 854; Pub. L. 107-107, div. A, title XII, §1204(a), Dec. 28, 2001, 115 Stat. 1247.)

AMENDMENTS

2001—Subsec. (b)(2). Pub. L. 107-107 inserted “(and, in the case of an inspection of a United States Government facility, the designation of contractor personnel who shall be led by an employee of the Federal Government)” after “designation of employees of the Federal Government” in introductory provisions.

2000—Subsec. (c). Pub. L. 106-280 added subsec. (c).

PROTECTION OF UNITED STATES COMPANIES

Pub. L. 106-113, div. B, §1000(a)(7) [div. B, title XI, §1117], Nov. 29, 1999, 113 Stat. 1536, 1501A-489, provided that:

“(a) REIMBURSEMENT.—During the 2-year period beginning on the date of the enactment of this Act [Nov. 29, 1999], the United States National Authority (as designated pursuant to section 101 of the Chemical Weapons Convention Implementation Act of 1998 [22 U.S.C. 6711] (as contained in division I of Public Law 105-277)) shall, upon request of the Director of the Federal Bureau of Investigation, reimburse the Federal Bureau of Investigation for all costs incurred by the Bureau for such period in connection with implementation of section 303(b)(2)(A) of that Act [22 U.S.C. 6723(b)(2)(A)], except that such reimbursement may not exceed \$2,000,000 for such 2-year period.

“(b) REPORT.—Not later than 180 days prior to the expiration of the 2-year period described in subsection (a), the Director of the Federal Bureau of Investigation shall prepare and submit to the Committee on International Relations [now Committee on Foreign Affairs] of the House of Representatives and the Committee on Foreign Relations of the Senate a report on how activities under section 303(b)(2)(A) of the Chemical Weapons Convention Implementation Act of 1998 [22 U.S.C. 6723(b)(2)(A)] will be fully funded and implemented by the Federal Bureau of Investigation notwithstanding the expiration of the 2-year period described in subsection (a).”

§ 6724. Procedures for inspections

(a) Types of inspections

Each inspection of a plant, plant site, or other facility or location in the United States under the Convention shall be conducted in accordance with this section and section 6725 of this title, except where other procedures are provided in a facility agreement entered into under section 6722 of this title.

(b) Notice

(1) In general

An inspection referred to in subsection (a) may be made only upon issuance of an actual written notice by the United States National Authority to the owner and to the operator, occupant, or agent in charge of the premises to be inspected.

(2) Time of notification

The notice for a routine inspection shall be submitted to the owner and to the operator,