

(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,

occupant, or agent in charge within six hours of receiving the notification of the inspection from the Technical Secretariat or as soon as possible thereafter. Notice for a challenge inspection shall be provided at any appropriate time determined by the United States National Authority. Notices may be posted prominently at the plant, plant site, or other facility or location if the United States is unable to provide actual written notice to the owner, operator, or agent in charge of the premises.

(3) Content of notice

(A) In general

The notice under paragraph (1) shall include all appropriate information supplied by the Technical Secretariat to the United States National Authority concerning—

- (i) the type of inspection;
- (ii) the basis for the selection of the plant, plant site, or other facility or location for the type of inspection sought;
- (iii) the time and date that the inspection will begin and the period covered by the inspection; and
- (iv) the names and titles of the inspectors.

(B) Special rule for challenge inspections

In the case of a challenge inspection pursuant to Article IX of the Convention, the notice shall also include all appropriate evidence or reasons provided by the requesting state party to the Convention for seeking the inspection.

(4) Separate notices required

A separate notice shall be provided for each inspection, except that a notice shall not be required for each entry made during the period covered by the inspection.

(c) Credentials

The head of the inspection team of the Technical Secretariat and the accompanying employees of the Federal Government (and, in the case of an inspection of a United States Government facility, any accompanying contractor personnel) shall display appropriate identifying credentials to the owner, operator, occupant, or agent in charge of the premises before the inspection is commenced.

(d) Timeframe for inspections

Consistent with the provisions of the Convention, each inspection shall be commenced and completed with reasonable promptness and shall be conducted at reasonable times, within reasonable limits, and in a reasonable manner.

(e) Scope

(1) In general

Except as provided in a warrant issued under section 6725 of this title or a facility agreement entered into under section 6722 of this title, an inspection conducted under this subchapter may extend to all things within the premises inspected (including records, files, papers, processes, controls, structures and vehicles) related to whether the requirements of the Convention applicable to such premises have been complied with.

(2) Exception

Unless required by the Convention, no inspection under this subchapter shall extend to—

- (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; or
- (H) personnel and vehicles entering and personnel and personal passenger vehicles exiting the facility.

(f) Sampling and safety

(1) In general

The Director of the United States National Authority is authorized to require the provision of samples to a member of the inspection team of the Technical Secretariat in accordance with the provisions of the Convention. The owner or the operator, occupant or agent in charge of the premises to be inspected shall determine whether the sample shall be taken by representatives of the premises or the inspection team or other individuals present. No sample collected in the United States pursuant to an inspection permitted by this chapter may be transferred for analysis to any laboratory outside the territory of the United States.

(2) Compliance with regulations

In carrying out their activities, members of the inspection team of the Technical Secretariat and representatives of agencies or departments accompanying the inspection team shall observe safety regulations established at the premises to be inspected, including those for protection of controlled environments within a facility and for personal safety.

(g) Coordination

The appropriate representatives of the United States, as designated, if present, shall assist the owner and the operator, occupant or agent in charge of the premises to be inspected in interacting with the members of the inspection team of the Technical Secretariat.

(Pub. L. 105-277, div. I, title III, §304, Oct. 21, 1998, 112 Stat. 2681-874; Pub. L. 107-107, div. A, title XII, §1204(b), Dec. 28, 2001, 115 Stat. 1247.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (f)(1), 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.

AMENDMENTS

2001—Subsec. (c). Pub. L. 107-107 substituted “Federal Government (and, in the case of an inspection of a United States Government facility, any accompanying contractor personnel)” for “Federal government”.

§ 6725. Warrants**(a) In general**

The United States Government shall seek the consent of the owner or the operator, occupant, or agent in charge of the premises to be inspected prior to any inspection referred to in section 6724(a) of this title. If consent is obtained, a warrant is not required for the inspection. The owner or the operator, occupant, or agent in charge of the premises to be inspected may withhold consent for any reason or no reason. After providing notification pursuant to subsection (b), the United States Government may seek a search warrant from a United States magistrate judge. Proceedings regarding the issuance of a search warrant shall be conducted *ex parte*, unless otherwise requested by the United States Government.

(b) Routine inspections**(1) Obtaining administrative search warrants**

For any routine inspection conducted on the territory of the United States pursuant to Article VI of the Convention, where consent has been withheld, the United States Government shall first obtain an administrative search warrant from a judge of the United States. The United States Government shall provide to the judge of the United States all appropriate information supplied by the Technical Secretariat to the United States National Authority regarding the basis for the selection of the plant site, plant, or other facility or location for the type of inspection sought. The United States Government shall also provide any other appropriate information available to it relating to the reasonableness of the selection of the plant, plant site, or other facility or location for the inspection.

(2) Content of affidavits for administrative search warrants

The judge of the United States shall promptly issue a warrant authorizing the requested inspection upon an affidavit submitted by the United States Government showing that—

(A) the Chemical Weapons Convention is in force for the United States;

(B) the plant site, plant, or other facility or location sought to be inspected is required to report data under subchapter III of this chapter and is subject to routine inspection under the Convention;

(C) the purpose of the inspection is—

(i) in the case of any facility owned or operated by a non-Government entity related to Schedule 1 chemical agents, to verify that the facility is not used to produce any Schedule 1 chemical agent except for declared chemicals; quantities of Schedule 1 chemicals produced, processed, or consumed are correctly declared and consistent with needs for the declared purpose; and Schedule 1 chemicals are not diverted or used for other purposes;

(ii) in the case of any facility related to Schedule 2 chemical agents, to verify that activities are in accordance with obligations under the Convention and consistent with the information provided in data declarations; and

(iii) in the case of any facility related to Schedule 3 chemical agents and any other chemical production facility, to verify that the activities of the facility are consistent with the information provided in data declarations;

(D) the items, documents, and areas to be searched and seized;

(E) in the case of a facility related to Schedule 2 or Schedule 3 chemical agents or unscheduled discrete organic chemicals, the plant site has not been subject to more than 1 routine inspection in the current calendar year, and, in the case of facilities related to Schedule 3 chemical agents or unscheduled discrete organic chemicals, the inspection will not cause the number of routine inspections in the United States to exceed 20 in a calendar year;

(F) the selection of the site was made in accordance with procedures established under the Convention and, in particular—

(i) in the case of any facility owned or operated by a non-Government entity related to Schedule 1 chemical agents, the intensity, duration, timing, and mode of the requested inspection is based on the risk to the object and purpose of the Convention by the quantities of chemical produced, the characteristics of the facility and the nature of activities carried out at the facility, and the requested inspection, when considered with previous such inspections of the facility undertaken in the current calendar year, shall not exceed the number reasonably required based on the risk to the object and purpose of the Convention as described above;

(ii) in the case of any facility related to Schedule 2 chemical agents, the Technical Secretariat gave due consideration to the risk to the object and purpose of the Convention posed by the relevant chemical, the characteristics of the plant site and the nature of activities carried out there, taking into account the respective facility agreement as well as the results of the initial inspections and subsequent inspections; and

(iii) in the case of any facility related to Schedule 3 chemical agents or unscheduled discrete organic chemicals, the facility was selected randomly by the Technical Secretariat using appropriate mechanisms, such as specifically designed computer software, on the basis of two weighting factors: (I) equitable geographical distribution of inspections; and (II) the information on the declared sites available to the Technical Secretariat, related to the relevant chemical, the characteristics of the plant site, and the nature of activities carried out there;

(G) the earliest commencement and latest closing dates and times of the inspection; and

(H) the duration of inspection will not exceed time limits specified in the Convention unless agreed by the owner, operator, or agent in charge of the plant.